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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations bring into force provisions in the Investigatory Powers Act 2016 (c. 25) (“the 2016 Act”) relating to the giving of national security notices and technical capability notices.

A national security notice is a notice given by the Secretary of State under section 252 of the 2016 Act requiring a telecommunications operator in the United Kingdom to take such specified steps as the Secretary of State considers necessary in the interests of national security. A technical capability notice is a notice given by the Secretary of State under section 253 of the 2016 Act imposing obligations on a postal or telecommunications operator for the purpose of securing that the operator is able to provide assistance in relation to certain warrants and authorisations under the 2016 Act.

Regulation 2 brings into force provisions of the 2016 Act providing for the giving of national security notices and technical capability notices by the Secretary of State, approval by Judicial Commissioners of the decision to give a notice, and the processes for review, variation and cancellation of notices. Regulation 2 also brings into force provisions relating to oversight of national security notices and technical capability notices by the Investigatory Powers Commissioner and amendments to the Regulation of Investigatory Powers Act 2000 (c. 23) (“RIPA”) giving the Investigatory Powers Tribunal jurisdiction in relation to such notices.

Technical capability notices replace, in part, notices under section 12 of RIPA. Regulation 3 provides that, despite section 12 of RIPA being repealed, existing section 12 notices continue to have effect for a transitional period. In addition, regulations 5 and 6(1) provide that for a transitional period the technical capability regime can be used to require operators to maintain the capability to provide assistance in relation to RIPA interception warrants.

Technical capability notices may require an operator to maintain the capability to provide assistance in relation to equipment interference warrants. For a transitional period, until the power of the Secretary of State to issue equipment interference warrants comes into force, regulation 6(2) provides that technical capability notices may be given for the purpose of requiring an operator to maintain the capability to give effect to warrants under section 5 of the Intelligence Services Act 1995 (c. 13) (“ISA”) but only to the extent that a warrant under section 5 of ISA authorises conduct that will not, when section 13(1) of the 2016 Act is in force, be capable of being authorised by a warrant under section 5 of ISA.

National security notices replace, in part, the power to give directions under section 94 of the Telecommunications Act 1984 (c. 12). Section 94 is therefore repealed, but not to the extent that such directions may impose requirements relating to the acquisition of communications data in bulk. That use of section 94 directions will be replaced by Chapter 2 of Part 6 of the 2016 Act, which is not yet in force. To the extent that section 94 is repealed, regulation 4 provides that existing directions continue to have effect for a transitional period.

Regulation 7 provides that despite the amendments made to the jurisdiction of the Investigatory Powers Tribunal, the Tribunal will continue to have jurisdiction over functions of public authorities exercised under RIPA while the relevant provisions of RIPA remain in force. Regulation 7 provides that where the Investigatory Powers Tribunal is dealing with conduct taking place before 12th September 2018, the duty to provide the Tribunal with documents and information continues to apply to any person on whom an obligation has been imposed under a section 12 notice.