



Product Security and Telecommunications Infrastructure Act 2022

2022 CHAPTER 46

PART 1

PRODUCT SECURITY

CHAPTER 3

ENFORCEMENT

Enforcement notices

28 Compliance notices

- (1) If the Secretary of State has reasonable grounds to believe that a person has failed to comply with a relevant duty, the Secretary of State may give a compliance notice to the person.
- (2) A compliance notice is a notice under this section requiring the person to whom it is given to comply with the relevant duty specified in the notice within a specified period.
- (3) A compliance notice given to a person must—
 - (a) set out the reasons for giving the compliance notice;
 - (b) explain what may happen if the person does not comply with it;
 - (c) explain how the person may appeal against it.
- (4) A compliance notice given to a person may—
 - (a) require the person to take any specified steps within a specified period in order to comply with the relevant duty;

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- (b) require the person within a specified period to provide evidence to the satisfaction of the Secretary of State that the person has complied with, or is complying with, the relevant duty.
- (5) Before giving a compliance notice to a person, the Secretary of State must—
- (a) notify the person that the Secretary of State intends to give a compliance notice to the person, and
 - (b) give the person an opportunity to make representations about the giving of the notice.
- (6) The Secretary of State may not give a compliance notice to the person until the end of the period of 10 days beginning with the day on which the notification required by subsection (5)(a) is given.
- (7) A compliance notice may not be given to a person more than once in respect of the same act or omission.
- (8) In this section—
- “relevant duty” means a duty imposed by or under Chapter 2;
 - “specified” means specified in the compliance notice.

29 Stop notices

- (1) If the Secretary of State has reasonable grounds to believe that a person is carrying on, or is likely to carry on, an activity in breach of a relevant duty, the Secretary of State may give a stop notice to the person.
- (2) A stop notice is a notice under this section requiring the person to whom it is given to stop carrying on an activity specified in the notice within a specified period.
- (3) A stop notice given to a person must—
- (a) set out the reasons for giving the stop notice;
 - (b) explain what may happen if the person does not comply with it;
 - (c) explain how the person may appeal against it.
- (4) A stop notice given to a person may—
- (a) require the person to take any specified steps within a specified period for the purpose of complying with the stop notice;
 - (b) require the person within a specified period to provide evidence to the satisfaction of the Secretary of State that the person is complying with the stop notice;
 - (c) require the person to take steps to inform customers of any risks posed by using a product to which the notice relates;
 - (d) provide that, if the person takes specified steps within a specified period for the purpose of complying with the relevant duty, the stop notice will be revoked;
 - (e) require the person within a specified period to provide evidence to the satisfaction of the Secretary of State that the person has taken those steps.
- (5) Before giving a stop notice to a person, the Secretary of State must—
- (a) notify the person that the Secretary of State intends to give a stop notice to the person, and
 - (b) give the person an opportunity to make representations about the giving of the notice.

- (6) The Secretary of State may not give a stop notice to the person until the end of the period of 10 days beginning with the day on which the notification required by subsection (5)(a) is given.
- (7) Subsections (5) and (6) do not apply if the Secretary of State considers that there is an urgent need to give a stop notice to the person.
- (8) In this section—
“relevant duty” means a duty imposed by or under Chapter 2;
“specified” means specified in the stop notice.

30 Recall notices

- (1) Subsection (2) applies if—
- the Secretary of State has reasonable grounds to believe that there is a compliance failure in relation to any UK consumer connectable products that have been supplied to customers,
 - the Secretary of State considers that the action (if any) being taken by any relevant person in relation to the compliance failure is inadequate, and
 - the Secretary of State considers that any action which the Secretary of State may take under section 28, 29 or 42 would not be sufficient to deal with the risks posed by the compliance failure.
- (2) The Secretary of State may give a recall notice to any of the following—
- in the case of a compliance failure by a manufacturer of the products—
 - any manufacturer of the products;
 - an authorised representative of a manufacturer of the products;
 - any importer or distributor who made any of the products available in the United Kingdom;
 - in the case of a compliance failure by an importer or distributor who supplied any of the products to a customer, that importer or distributor.
- (3) A recall notice is a notice under this section requiring the person to whom it is given (“P”) to make arrangements within a specified period for the return of the products to P or to another person specified in the notice.
- (4) A recall notice given to a person must—
- set out the reasons for giving the recall notice;
 - explain what may happen if the person does not comply with it;
 - explain how the person may appeal against it.
- (5) A recall notice given to a person may—
- require the person to take specified steps within a specified period for the purpose of complying with the recall notice;
 - require the person within a specified period to provide evidence to the satisfaction of the Secretary of State that the person is complying with the recall notice;
 - require the person to provide the Secretary of State with specified information in relation to the products, including information relating to times after the products have been returned;

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- (d) require the person to take steps to inform customers of any risks posed by using the products.
- (6) Before giving a recall notice to a person, the Secretary of State must—
 - (a) notify the person that the Secretary of State intends to give a recall notice to the person, and
 - (b) give the person an opportunity to make representations about the giving of the notice.
- (7) The Secretary of State may not give a recall notice to the person until the end of the period of 10 days beginning with the day on which the notification required by subsection (6)(a) is given.
- (8) Subsections (6) and (7) do not apply if the Secretary of State considers that there is an urgent need to give a recall notice to the person.
- (9) In this section—
 - “compliance failure”, in relation to a product, means a failure by a relevant person to comply with a relevant security requirement in relation to the product;
 - “specified” means specified in the recall notice.

31 Power to vary or revoke enforcement notices

- (1) The Secretary of State may vary or revoke an enforcement notice.
- (2) But the Secretary of State may not vary an enforcement notice in order to make it more onerous.

32 Failure to comply with enforcement notice

- (1) It is an offence for a person to fail to comply with an enforcement notice.
- (2) It is a defence for a person (“P”) charged with an offence under this section to show that P took all reasonable steps to comply with the notice.
- (3) P is to be taken to have shown the fact mentioned in subsection (2) if—
 - (a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and
 - (b) the contrary is not proved beyond reasonable doubt.
- (4) P may not rely on a defence under subsection (2) which involves a third party allegation unless P has—
 - (a) given a notice to the prosecutor in accordance with this section, or
 - (b) obtained the permission of the court.
- (5) In subsection (4) “third party allegation” means an allegation that the failure to comply with the notice was due to—
 - (a) the act or omission of another person, or
 - (b) P’s reliance on information provided by another person.
- (6) The notice under subsection (4)(a) must give any information in P’s possession which identifies, or may assist in identifying, the person mentioned in subsection (5).

- (7) In the case of proceedings in England and Wales or Northern Ireland, the notice under subsection (4)(a) must be given to the prosecutor no later than 7 clear days before the hearing of the proceedings.
- (8) In the case of proceedings in Scotland, the notice under subsection (4)(a) must be given to the prosecutor—
 - (a) where an intermediate diet is to be held, at or before that diet;
 - (b) where such a diet is not to be held, no later than 10 clear days before the trial diet.
- (9) A person guilty of an offence under this section is liable—
 - (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland, to a fine not exceeding level 5 on the standard scale;
 - (c) on summary conviction in Northern Ireland, to a fine not exceeding level 5 on the standard scale.

33 Appeals against enforcement notices

- (1) A person who is given an enforcement notice may appeal to the First-tier Tribunal (“the Tribunal”) against the enforcement notice or any provision of it.
- (2) An appeal under this section is to be brought before the end of the period of 28 days beginning with—
 - (a) the day on which the notice was given, or
 - (b) if the appeal is in respect of the variation of a notice under section 31, the day on which the notice was varied.
- (3) On an appeal under this section, the Tribunal—
 - (a) if it is satisfied that any of the grounds in subsection (4) applies, may—
 - (i) vary the notice, or
 - (ii) cancel the notice or any part of it;
 - (b) if it is not so satisfied, must confirm the notice.
- (4) The grounds referred to in subsection (3)(a) are—
 - (a) that the decision to give the notice, or to include any provision in the notice, was based, wholly or partly, on an error of fact;
 - (b) that the decision to give the notice, or to include any provision in the notice, was wrong in law;
 - (c) that the notice, or any provision of it, was unfair or unreasonable for any other reason.
- (5) If the Tribunal cancels an enforcement notice (in whole or in part), it may refer the matter back to the person that gave the notice with a direction to reconsider and make a new decision in accordance with its ruling.
- (6) But the Tribunal may not direct the person that gave the notice to take any action which the person would not otherwise have the power to take.
- (7) In determining an appeal under this section, the Tribunal may—
 - (a) review any determination of fact on which the decision to give the notice, or to include any provision in it, was based;

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- (b) take into account evidence which was not available to the person that gave the notice.
- (8) Where an appeal in respect of an enforcement notice, or the variation of an enforcement notice, is made under this section, the notice or variation (as the case may be) is of no effect until the appeal is determined or withdrawn.
- (9) Where an appeal is or may be made to the Upper Tribunal in relation to a decision of the Tribunal under this section, the Upper Tribunal may suspend the notice to which the appeal relates, or any provision of it, until the appeal is determined or withdrawn.

34 Compensation for notices wrongly given

- (1) This section applies if—
 - (a) the Secretary of State gives a stop notice or a recall notice to a person,
 - (b) the relevant breach in respect of which the notice was given did not occur, and
 - (c) the decision to give the notice was not attributable to any neglect or default by the person.
- (2) The Secretary of State is liable to pay compensation to the person to whom the notice was given in respect of any loss or damage caused as a result of the giving of the notice.
- (3) The amount of compensation payable to a person under this section is to be determined by the Secretary of State.
- (4) In determining that amount, the Secretary of State may have regard to the extent to which the person took reasonable steps to reduce any loss or damage caused as a result of the giving of the notice.
- (5) A person seeking compensation under this section must make a claim to the Secretary of State.
- (6) The claim—
 - (a) must be made in such form, and such manner, as the Secretary of State may direct;
 - (b) must contain evidence of the loss or damage in respect of which compensation is sought;
 - (c) must specify the amount of compensation which the person is seeking.
- (7) The Secretary of State must, before the end of the period of 45 days beginning with the day on which the Secretary of State receives the claim—
 - (a) decide whether the person is entitled to compensation under this section and, if so, the amount of that compensation, and
 - (b) notify the person of the decision.
- (8) In this section “relevant breach” means—
 - (a) in the case of a stop notice, a breach of a duty imposed by or under Chapter 2;
 - (b) in the case of a recall notice, a compliance failure within the meaning of section 30.

35 Appeals against decisions under section 34

- (1) A person may appeal to the First-tier Tribunal (“the Tribunal”) against—

- (a) a decision not to award compensation to the person under section 34, or
 - (b) the amount of compensation awarded to the person under that section.
- (2) An appeal under this section is to be brought before the end of the period of 28 days beginning with the day on which the person is notified in accordance with section 34(7)(b).
- (3) On an appeal under this section against a decision not to award compensation under section 34, the Tribunal—
 - (a) if it is satisfied that the ground in subsection (6)(a) or the ground in subsection (6)(b) applies, may quash the decision;
 - (b) if it is not so satisfied, must confirm the decision.
- (4) If the Tribunal quashes a decision under subsection (3)(a), the Tribunal may—
 - (a) direct the Secretary of State to pay compensation of an amount determined by the Tribunal, or
 - (b) refer the matter back to the Secretary of State with a direction to reconsider and make a new decision in accordance with its ruling.
- (5) On an appeal under this section against the amount of compensation awarded under section 34, the Tribunal—
 - (a) if it is satisfied that any of the grounds in subsection (6) applies, may—
 - (i) vary the amount of compensation awarded, or
 - (ii) refer the matter back to the Secretary of State with a direction to reconsider and make a new decision in accordance with its ruling;
 - (b) if it is not so satisfied, must confirm the amount of compensation awarded.
- (6) The grounds referred to in subsections (3)(a) and (5)(a) are—
 - (a) that the decision appealed against was based, wholly or partly, on an error of fact;
 - (b) that the decision appealed against was wrong in law;
 - (c) that the amount of compensation awarded was unfair or unreasonable for any other reason.
- (7) In determining an appeal under this section, the Tribunal may—
 - (a) review any determination of fact on which the decision appealed against was based;
 - (b) take into account evidence which was not available to the Secretary of State.
- (8) The Tribunal may not direct the Secretary of State under this section to pay any compensation which the Secretary of State would not otherwise be liable to pay under section 34(2).