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## EXPLANATORY NOTE

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

Section 90(1) of the Investigatory Powers Act 2016 (c. 25) (“the Act”) provides that a person to whom a retention notice has been given may refer that notice back to the Secretary of State for review. Section 257(1) of the Act similarly makes provision that a person to whom a national security notice or technical capability notice has been given may refer that notice to the Secretary of State for review. Regulation 2 sets out the period within which, and the circumstances in which, a person given such a notice may refer it back to the Secretary of State for review. Regulation 3 provides for the membership of the Technical Advisory Board (the Board) which must be consulted by the Secretary of State before deciding a review.

A person given a notice may refer it to the Secretary of State for review if the person considers that any part of the notice is unreasonable. This also applies when a notice is varied (see sections 94 and 256 of the Act), but only so far as the variation of the notice is concerned. In each case, the referral to the Secretary of State must be made within a period of 28 days starting from the day the notice is given or varied.

Section 245 of the Act provides for the continued existence of the Board. The Secretary of State must consult the Board when reviewing a notice. The Board must consider the technical requirements and the financial consequences of the notice for the person who made the reference and report those conclusions to both that person and the Secretary of State.

Regulation 3 requires that the Board must consist of a minimum of thirteen members and a maximum of fifteen members. Six of the members must represent the interests of the operators on whom obligations can be imposed by a retention notice, national security notice or technical capability notice.

Six of the members must represent the interests of persons entitled to apply for certain warrants and authorisations. The persons are as follows:

- warrants under Part 2 may be applied for by, or on behalf of, the intercepting authorities listed in section 18(1) of the Act;
- warrants under Part 5 may be applied for by, or on behalf of, the heads of the intelligence services, the Chief of Defence Intelligence and any of the law enforcement chiefs listed in Schedule 6 to the Act;
- warrants under Parts 6 and 7 may be applied for by, or on behalf of, the heads of the intelligence services;
- authorisations under Part 3 of the Act may be applied for by officers within the public authorities listed in Schedule 4 to the Act or within local authorities.

The Board will have at least one and a maximum of three further members. They must be independent members who do not represent either the persons on whom obligations can be imposed or the persons who can apply for certain warrants and authorisations. Of these independent members one must be appointed the chair of the Board. Another of the independent members may be appointed as deputy chair.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.