



Investigatory Powers Act 2016

2016 CHAPTER 25

PART 4

RETENTION OF COMMUNICATIONS DATA

Safeguards

90 Review by the Secretary of State

- (1) A telecommunications operator to whom a retention notice is given may, within such period or circumstances as may be provided for by regulations made by the Secretary of State, refer the notice back to the Secretary of State.
- (2) Such a reference may be in relation to the whole of a notice or any aspect of it.
- (3) In the case of a notice given to a description of operators—
 - (a) each operator falling within that description may make a reference under subsection (1), but
 - (b) each such reference may only be in relation to the notice, or aspect of the notice, so far as it applies to that operator.
- (4) There is no requirement for an operator who has referred a retention notice under subsection (1) to comply with the notice, so far as referred, until the Secretary of State has reviewed the notice in accordance with subsection (5).
- (5) The Secretary of State must review any notice so far as referred to the Secretary of State under subsection (1).
- (6) Before deciding the review, the Secretary of State must consult—
 - (a) the Technical Advisory Board, and
 - (b) a Judicial Commissioner.
- (7) The Board must consider the technical requirements and the financial consequences, for the operator who has made the reference, of the notice so far as referred.

Changes to legislation: *Investigatory Powers Act 2016, Section 90 is up to date with all changes known to be in force on or before 22 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (8) The Commissioner must consider whether the notice so far as referred is proportionate.
- (9) The Board and the Commissioner must—
- (a) give the operator concerned and the Secretary of State the opportunity to provide evidence, or make representations, to them before reaching their conclusions, and
 - (b) report their conclusions to—
 - (i) the operator, and
 - (ii) the Secretary of State.
- (10) The Secretary of State may, after considering the conclusions of the Board and the Commissioner—
- (a) vary or revoke the retention notice under section 94, or
 - (b) give a notice under this section to the operator concerned confirming its effect.
- (11) But the Secretary of State may vary the notice, or give a notice under subsection (10) (b) confirming its effect, only if the Secretary of State's decision to do so has been approved by the Investigatory Powers Commissioner.
- (12) A report or notice under this section is given to an operator by giving or publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of the operator.
- (13) The Secretary of State must keep a retention notice under review (whether or not referred under subsection (1)).

Commencement Information

- I1** S. 90(1)-(12) in force at 1.11.2018 by S.I. 2018/873, **reg. 4(a)**
- I2** S. 90(13) in force at 30.12.2016 by S.I. 2016/1233, **reg. 2(e)**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 58(4)(e) inserted by [2023 c. 41 Sch. 13 para. 9](#)