STATUTORY INSTRUMENTS

2018 No. 341 (C. 28)

INVESTIGATORY POWERS

The Investigatory Powers Act 2016 (Commencement No. 4 and Transitional and Saving Provisions) Regulations 2018

Made - - - - 8th March 2018

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 270(2) and 272(1) of the Investigatory Powers Act 2016 [F1].

F1 2016 c. 25.

Citation and interpretation

1.—(1) These Regulations may be cited as the Investigatory Powers Act 2016 (Commencement No. 4 and Transitional and Saving Provisions) Regulations 2018.

(2) In these Regulations—

"RIPA" means the Regulation of Investigatory Powers Act 2000 [F2];

"the 2016 Act" means the Investigatory Powers Act 2016.

F2 2000 c. 23.

The appointed day

2. The following provisions of the 2016 Act come into force on 12th March 2018—

(a) section 2 (general duties in relation to privacy) so far as it applies to decisions relating to notices under section 252 or 253 of the 2016 Act;

(b) in section 229 (main oversight functions)—

(i) subsection (1) (main oversight functions) so far as it relates to the exercise of statutory functions relating to equipment interference which are exercised in relation to a notice under section 253 of the 2016 Act (technical capability notices);

(ii) subsection (3) so far as it relates to paragraph (b) (oversight of the giving and operation of national security notices);

(iii) subsection (8) so far as it relates to—

(aa) paragraph (e)(i) so far as that paragraph applies to the giving or varying of a notice under section 252 or 253 of the 2016 Act;

(bb) paragraph (e)(ii) so far as that paragraph applies to the giving of a notice under section 257(9)(b) of the 2016 Act, and

(cc) paragraph (f) so far as that paragraph applies to participating in a review under section 257 of the 2016 Act;

(c) in section 243 (functions of the Tribunal in relation to this Act etc.)—

(i) subsection (1)(c) so far as it omits section 65(5)(c) of RIPA and inserts paragraphs—

(aa) (czb), (czc), (czi), (czj), (czl)(iii), and

(bb) (czm) so far as it applies to conduct falling within paragraphs (czb) and (czi);

(ii) subsection (1)(h) so far as inserted subsection (7ZB) of section 65 of RIPA applies to conduct which is, or purports to be, conduct falling within subsection (5)(czc), (czj) and (czl)(iii) of that section;

(iii) subsection (1)(i), so far as it omits section 65(8)(a) and (b) and inserts paragraph (bc);

(iv) subsection (2)(a), so far as it inserts paragraphs (aza) so far as that paragraph relates to an order quashing or cancelling a retention notice under Part 4 of RIPA and (azc);

(v) subsection (3);

(vi) subsection (4);

(vii) subsection (5)(b) and (c), and

(viii) subsection (6);

(d) section 245 (Technical Advisory Board);

(e) section 249 (payments toward certain compliance costs), for the purposes of the payment of a contribution in respect of costs incurred, or likely to be incurred, in complying with a notice under section 252 or 253 of the 2016 Act;

(f) section 252 (national security notices);

(g) section 253 (technical capability notices) so far as not already in force;

(h) section 254 (approval of notices by Judicial Commissioners);

(i) section 255 (further provision about notices under section 252 or 253);

(j) section 256 (variation and revocation of notices);

(k) section 257 (review of notices by the Secretary of State);

(l) section 258 (approval of notices following review under section 257);

(m) section 271(1) (Schedule 10: minor and consequential provision) so far as relating to the provisions coming into force by virtue of sub-paragraphs (n) to (q);

(n) paragraph 45 of Schedule 10 (repeal of Chapter 1 of Part 1 of RIPA) so far as it omits the following provisions of RIPA—

(i) section 12 [F3] (maintenance of interception capability);

(ii) section 13 (Technical Advisory Board), and

(iii) section 14(2)(c) (grants for interception costs in consequence of the imposition of obligations under section 12);

(o) paragraph 48 of Schedule 10 (consequential amendment to section 78 of RIPA [F4]);

(p) paragraph 99 of Schedule 10 (repeal of section 94 of the Telecommunications Act 1984 [F5]) except to the extent that a direction under section 94 of the Telecommunications Act 1984 may impose requirements relating to the acquisition of communications data in bulk, and

(q) paragraph 100 of Schedule 10 (amendment of paragraph 17 of Schedule 2 to the Northern Ireland Act 1998 [F6]).

F3 Section 12 was amended by section 4(6) and (7) of the Data Retention and Investigatory Powers Act 2014 (c. 27). Those amendments continue to have effect by virtue of paragraph 9 of Schedule 9 to the 2016 Act.

F4 There are amendments to section 78 not relevant to these Regulations.

F5 2003 c. 21; section 94 was amended by paragraph 70 of Schedule 17 to the Communications Act 2003 (c. 21).

F6 1998 c. 47; paragraph 17 was amended by paragraph 9 of Schedule 4 to the Regulation of Investigatory Powers Act 2000.

Saving provision regarding section 12 notices

3. Despite the repeal of sections 12 and 14(2)(c) of RIPA (interception capability and costs) –

(a) a notice given under section 12 of RIPA which is in force immediately before 12th March 2018 continues to have effect until 12th September 2018 unless withdrawn earlier,

(b) section 12(1) to (4), (7), (8), (11) and (12) of RIPA, and any order made under subsection (1) of that section, continues to have effect for the purpose of any notices which continue to have effect in consequence of paragraph (a), and

(c) section 14(2)(c) continues to have effect in relation to obligations imposed by a notice which continues to have effect in consequence of subparagraph (a).

Saving provision regarding section 94 directions

4.—(1) A direction given under section 94 of the Telecommunications Act 1984 which does not impose requirements relating to the acquisition of communications data in bulk and which is in force immediately before 12th March 2018 continues to have effect until 12th September 2018 unless revoked earlier.

(2) Section 94 of the Telecommunications Act 1984 continues to have effect for the purpose of any direction which continues to have effect in consequence of paragraph (1).

Transitional provision regarding the implementation of warrants

5. Until the repeal of section 11 [F7] of RIPA (implementation of warrants) by paragraph 45 of Schedule 10 to the Act is fully in force, section 11(6) of RIPA has effect as if after "section 12" there were inserted " or a technical capability notice given under section 253 of the Investigatory Powers Act 2016 ".

F7 Section 11 was amended by section 4(2) to (5) of the Data Retention and Investigatory Powers Act 2014 (c. 27). Those amendments continue to have effect by virtue of paragraph 9 of Schedule 9 to the 2016 Act.

Transitional provision regarding technical capability notices

6.—(1) Until section **[**[F8]18(1)**]** of the 2016 comes into force for all purposes—

(a) section 253(3) of the 2016 Act has effect as if in the definition of "relevant authorisation", before paragraph (a) there were inserted—

"(za) any warrant issued under Chapter 1 of Part 1 of the Regulation of Investigatory Powers Act 2000,", and

(b) section 255(11) of the 2016 Act has effect as if before paragraph (a) there were inserted—

"(za) a warrant issued under Chapter 1 of Part 1 of the Regulation of Investigatory Powers Act 2000;".

(2) Until section **[**F9106(1)**]** of the 2016 Act comes into force for all purposes, section 253(3) of the 2016 Act has effect as if in the definition of "relevant authorisation"—

(a) in paragraph (a) "or" were omitted, and

(b) after paragraph (a) there were inserted—

"(aa) any warrant issued under section 5 of the Intelligence Services Act 1994 F10, to extent that the warrant authorises conduct to which the prohibition in section 13(1) would apply were that section in force, or".

F8 Word in reg. 6(1) substituted (29.5.2018) by The Investigatory Powers Act 2016 (Commencement No. 5 and Transitional and Saving Provisions) Regulations 2018 (S.I. 2018/652), **reg. 27(a)**

F9 Word in reg. 6(2) substituted (29.5.2018) by The Investigatory Powers Act 2016 (Commencement No. 5 and Transitional and Saving Provisions) Regulations 2018 (S.I. 2018/652), **reg. 27(b)**

F10 1994 c. 13. Section 5 was amended by section 2 of the Intelligence Services Act 1996 (c. 35) and section 74(1) and (2) of the Regulation of Investigatory Powers Act 2000.

Transitional provisions regarding functions of the Tribunal

7.—(1) Until the repeal of Chapter 1 of Part 1 of RIPA by paragraph 45 of Schedule 10 to the 2016 Act is fully in force, section 65(8) F11 of RIPA (the Tribunal) has effect as if before paragraph (a) there were inserted—

"(za) an interception warrant;".

(2) Until the repeal of Chapter 2 of Part 1 of RIPA by paragraph 54 of Schedule 10 to the 2016 Act is fully in force—

(a) section 65 of RIPA has effect as if—

(i) in subsection (5), after paragraph (b) there were inserted—

"(bb) conduct to which Chapter 2 of Part 1 of this Act applies;", and

(ii) in subsection (8), after paragraph (a) there were inserted—

"(aa) an authorisation or notice under Chapter 2 of Part 1 of this Act;", and

(b) section 68(7) of RIPA F12 (persons required to provide or disclose documents and information to the Tribunal) has effect as if for paragraphs (g) and (h) there were substituted—

"(g) every person by or to whom an authorisation under section 22(3) or (3B) has been granted;

(h) every person to whom a notice under section 22(4) has been given;".

(3) Paragraph (4) applies where the Tribunal exercises the jurisdiction conferred on them by or under section 65 of RIPA, or otherwise exercises or performs any power or duty conferred or imposed on them under RIPA, in relation to conduct taking place before 12th September 2018.