



Home Office

NATIONAL SECURITY NOTICES

DRAFT Code of Practice

Pursuant to Schedule 7 to the Investigatory Powers Act 2016

[February 2017]



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Introduction

- 1.1 This Code of Practice relates to the powers and duties conferred or imposed under sections 249, 252, 254, 255, 256 and 257 of Part 9 of the Investigatory Powers Act 2016 (“the Act”). It provides guidance on the procedures to be followed when a national security notice is given. This Code of Practice is intended to set out further detail on the circumstances in which a national security notice can be given; the process that must be followed before a notice can be given; the obligations that are imposed by the service of a notice and the ensuing right of review; and oversight of the use of national security notices.
- 1.2 The Act provides that all Codes of Practice issued under Schedule 7 are admissible as evidence in criminal and civil proceedings. If any provision of this code appears relevant before any court or tribunal considering any such proceedings, or to the Investigatory Powers Tribunal, or to the Investigatory Powers Commissioner responsible for overseeing the powers and capabilities conferred by the Act, it may be taken into account.
- 1.3. For the avoidance of doubt, the duty to have regard to the Code when exercising functions to which the Code relates exists regardless of any contrary content of an intercepting agency’s internal advice or guidance.

Scope and definitions

What is a national security notice?

- 2.1 Section 252 of the Act provides that a Secretary of State may give a notice to a telecommunications operator in the UK requiring the taking of such specified steps as the Secretary of State considers necessary in the interests of national security. A notice can be given only if the Secretary of State is satisfied that the steps required are necessary and proportionate. Detail on the definition of a telecommunications operator is provided later in this chapter.
- 2.2 The power to give a notice under section 252 replaces in part the power that was contained in section 94 of the Telecommunications Act 1984 which has been used for a range of purposes including for civil contingencies and to acquire communications data in bulk. Powers to acquire communications data in bulk are now contained in Chapter 2 of Part 6 of the Investigatory Powers Act. Paragraph 99 of Schedule 10 to the Investigatory Powers Act repeals section 94 of the Telecommunications Act.
- 2.3 Chapter 3 provides information on the type of support that may be required by a national security notice. It also sets out where additional warrants or authorisations may be required if a notice requires the taking of a step which would result in the acquisition of communications or data.

What is a telecommunications operator?

- 2.4 A telecommunications operator is a person who offers or provides a telecommunication service to persons in the UK or who controls or provides a telecommunication system which is (wholly or in part) in or controlled from the UK. These definitions make clear that enforceable obligations in the Part of the Act to which this code applies cannot be imposed on providers whose equipment is not in or controlled from the UK and who do not offer or provide services to persons in the UK.
- 2.5 Section 261(11) of the Act defines 'telecommunications service' to mean any service that consists in the provision of access to, and of facilities for making use of, any telecommunication system (whether or not one provided by the telecommunication service provider); and defines 'telecommunications system' to mean any system (including the apparatus comprised in it) which exists (whether wholly or partly in the UK or elsewhere) for the purpose of facilitating the transmission of communications by any means involving the use of electrical or electromagnetic energy. The definition of 'telecommunications service' in the Act is intentionally broad so that it will remain relevant for new technologies.

- 2.6 The Act makes clear that any service which consists in, or includes, facilitating the creation, management or storage of communications transmitted, or that may be transmitted, by means of a telecommunications system is included within the meaning of 'telecommunications service'. Internet based services such as web-based email, messaging applications and cloud-based services are, therefore, covered by this definition.
- 2.7 The definition of a telecommunications operator also includes application and website providers but only insofar as they provide a telecommunication service. For example, an online market place may be a telecommunications operator if it provides a connection to an application/website. It may also be a telecommunications operator if and in so far as it provides a messaging service.
- 2.8 Telecommunications operators may also include those persons who provide services where customers, guests or members of the public are provided with access to communications services that are ancillary to the provision of another service, for example in commercial premises such as hotels or public premises such as airport lounges or public transport.

National Security Notices – general rules

The activity authorised by a notice

3.1 Section 252 of the Act states that a Secretary of State may give a notice to a telecommunications operator in the UK requiring the taking of specified steps as are considered necessary in the interests of national security. A notice can only be given if the Secretary of State considers that the conduct required by the notice is proportionate to what is sought to be achieved by the conduct. Subsection (8) makes clear that the conduct required by a national security notice is lawful for all purposes.

3.2 The Act does not set out an exhaustive list of the type of conduct that might be required by a national security notice. Section 252(3) does however provide that a notice may, in particular require an operator:

- to carry out any conduct for the purpose of facilitating anything done by an intelligence service;
- to carry out any conduct for the purpose of dealing with an emergency;
- to provide services or facilities for the purpose of assisting an intelligence service to carry out its functions more securely or more effectively.

In practice, the steps that an operator may be required to take include the provision of services or facilities which would help the intelligence agencies in safeguarding the security of their personnel and operations, or in providing assistance with an emergency as defined in section 1 of the Civil Contingencies Act 2004. An emergency is described in that Act as:

- a) An event or situation which threatens serious damage to human welfare in the UK
- b) An event or situation which threatens serious damage to the environment in the UK
- c) War, or terrorism, which threatens serious damage to the security of the UK

3.3 It is not possible to give a list of the full range of the steps that telecommunications operators may be required to take in the interests of national security; not only would this affect the ability of the police and security and intelligence agencies to carry out their work, but as communications technology changes the Secretary of State will need to retain flexibility to respond. However, a notice may typically require a telecommunications operator to provide services to support secure communications by the agencies, for example by arranging for a communication to travel via a particular route in order to improve security, or asking a communications

service provider to refrain from doing something they might otherwise do. They may additionally cover the confidential provision of services to the agencies within the telecommunications operator, such as by maintaining a pool of trusted staff for management and maintenance of sensitive communications services.

Limitations as to what can be authorised by a notice

- 3.4 Section 252(4) and (5) restrict when a national security notice can be given. A notice cannot be given when the main purpose of the notice is something for which a warrant or authorisation under a relevant enactment is required. Section 252(6) defines relevant enactments as: the Investigatory Powers Act 2016; the Intelligence Services Act 1994 (ISA); the Regulation of Investigatory Powers Act 2000 (RIPA); and the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A). This is intended to ensure that a national security notice cannot be used to require an operator to do something where a means of authorising the activity required exists elsewhere in statute. For example, a national security notice cannot be used as an alternative to an interception warrant where the activity could be authorised by such a warrant. Therefore, where the notice requires the taking of a step that involves an interference with privacy (though it is not the primary purpose of the notice), a warrant or authorisation under one or more of the enactments set out above must be obtained to authorise that conduct. For example, this might occur where the notice requires an operator to provide a service and one of the steps involved in the provision of that service involves the obtaining of communications data. The obtaining of such data (which cannot be the primary purpose of the notice) would need to be authorised under the relevant provisions in the Investigatory Powers Act.
- 3.5 The Act does not provide any limitations on the giving of a notice which would result in an interference with privacy where a warrant or authorisation in the statutes listed above is not available. However, in the event that a notice requires the taking of any steps that involve an interference with privacy (the acquisition of communications or data) for which an alternative warrant or authorisation under this or another enactment (as listed above) is not available, the Secretary of State must be satisfied that an alternative warrant or authorisation is not available, and must, in authorising the conduct required in the notice, consider whether it is necessary and proportionate for the data to be acquired. For example, an operator may provide a service to an agency. The agency might require information about staff involved in providing the service. This would be an interference with privacy, but it isn't something for which a warrant or authorisation is required.

Necessity and proportionality

- 3.6 The Act provides that a national security notice can only be given if the steps it requires are necessary in the interests of national security, and proportionate to that purpose.
- 3.7 Any assessment of proportionality involves balancing the reasonableness of the steps that must be taken, against the need for the activity in protecting national security. Each action authorised should bring an expected benefit and should not be disproportionate or arbitrary.

3.8 Paragraph 2 of Schedule 7 of the Investigatory Powers Act provides that a code issued under the Act must contain particular provision designed to protect the public interest in the confidentiality of journalistic information and any data which relates to a member of a profession which routinely holds items subject to legal privilege or confidential information. Where a notice requires the taking of a step that involves an interference with privacy, and a warrant or other authorisation has been obtained to authorise that conduct, the Code of Practice relevant to that authorisation will contain provisions required by Paragraph 2 of Schedule 7 of the Act. Where a warrant or authorisation is not available to authorise an interference with privacy, it will never be appropriate to obtain journalistic information or any data which relates to a member of a profession which routinely holds items subject to legal privilege or confidential information via a national security notice. As such, it is not necessary to include more detailed safeguards in respect of such information in this code as they are not relevant.

Matters to be considered by the Secretary of State

3.9 Section 255(2) provides that before giving a notice to an operator, the Secretary of State must consult the operator. More detail on the consultation is set out in chapter 4 of this code. Following the conclusion of consultation with a telecommunications operator, the Secretary of State will decide whether to give a notice. This consideration should include all the aspects of the proposed notice. It is an essential means of ensuring that the notice is justified and that proper processes have been followed.

3.10 As part of the decision the Secretary of State must take into account, amongst other factors, the matters specified in section 255(3):

- The likely benefits of the notice – this may take into account projected as well as existing benefits.
- The likely number of users of any telecommunications service to which the notice relates, if known.
- The technical feasibility of complying with the notice – taking into account any representations made by the telecommunications operator.
- The likely cost of complying with the notice – this will include the costs of any requirements or restrictions placed on the telecommunications operator as part of the notice, such as those relating to security. This will enable the Secretary of State to consider whether the imposition of a notice is affordable and represents value for money.

Any other effect of the notice on the telecommunications operator – again taking into account any representations made by the company.

3.11 In addition to the points above, the Secretary of State should consider any other issue which is relevant to the decision. Section 2 of the Act sets out the general duties that apply to public authorities in relation to privacy, and section 2(1)(e) makes clear that the duties apply to the giving of a national security notice, so far as they are relevant¹. Section 2(3) acknowledges the need to take other considerations into account, including but not limited to the considerations set out at section 2(4). In many cases where a national security notice is to be given, the considerations set out at section 2(4) may not be relevant but where they are relevant, they must be taken into account.

Format of national security notice applications

3.12 Responsibility for giving a national security notice rests with the Secretary of State. An application to be made to the Secretary of State for a national security notice to be given to a telecommunications operator should contain the following information:

- a) The purpose of the notice and what it seeks to achieve;
- b) Why it is not possible to achieve the required outcome by using one of the other powers contained in the Investigatory Powers Act or any other relevant enactment;
- c) Why the activity required by the notice is necessary and how that activity is proportionate to what it seeks to achieve;
- d) Whether the activity proposed is likely to interfere with privacy;
- e) An assessment of the reasonableness of the steps the telecommunications operator is required to take, and details of the consultation that has taken place with the telecommunications operator to whom the notice will be given.

3.13 Where another warrant or authorisation is required (by virtue of Section 252(4)), the application must provide details of the warrant or authorisation that has been obtained and the date it was obtained and annex the warrant or authorisation to the application. If a notice requires the taking of any steps that involve an interference with privacy (the acquisition of communications or data) for which an alternative warrant or authorisation under this or another enactment is not available, the application must:

- i. Set out known/expected interference or where there is a potential for interference to occur;
- ii. Explain why the interference is necessary and proportionate; and

¹ See section 2(3)(a)

- iii. Describe any mitigating action which will be taken to keep the interference to a minimum.

3.14 An example of what should be contained in an application for a national security notice is attached at Annex A.

Giving a national security notice

3.15 Paragraph 3.9 details the matters that must be taken into account before a notice can be given and makes clear that an operator must be consulted prior to a notice being given. Section 252 provides that the Secretary of State may only give a notice if the Secretary of State considers the following tests are met:

- **The notice is necessary in the interests of national security;**
- **The conduct authorised by the notice is proportionate to what it seeks to achieve;**
- **Any interference with privacy is authorised** by an appropriate authorisation under the Investigatory Powers Act 2016 (or other statute where appropriate²) or, where it is incidental and cannot be authorised by other means, it is necessary and proportionate to what the notice seeks to achieve; and
- **There are satisfactory safeguards in place.**
- **Judicial Commissioner approval has been obtained.** The Secretary of State may not give a notice unless and until the decision to give the notice has been approved by a Judicial Commissioner. Section 254 of the Act sets out that the Judicial Commissioner must review the conclusions that have been reached as to whether the notice is necessary, and whether the conduct that would be authorised is proportionate to what is sought to be achieved.

3.16 The notice must specify the period within which the steps specified in the notice are to be taken. The period of time must be one the Secretary of State considers to be reasonable.

Duration and Review of National Security Notices

3.17 A national security notice remains in force until it is cancelled. Section 256(2) of the Act imposes an obligation on the Secretary of State to keep a notice under review. This helps to ensure that the notice itself, or any of the requirements specified in the notice, remain necessary and proportionate. This evaluation differs from the process provided for in section 256 of the Act, which permits a telecommunications operator to request a review of the requirements placed on them in a national security notice (as set out in paragraph 4.19 to 4.23). A review of a national security notice will take place at least once every two years.

² See section 252(6)

However, the exact timing of the review is at the Secretary of State's discretion. Where a notice relies on another warrant or authorisation, the Secretary of State may wish to review the notice at the same time the other warrant or authorisation is renewed. In reviewing the notice, the Secretary of State must consider whether the activity required by the notice remains necessary and proportionate. As part of the review, the Secretary of State must consider whether any interference with privacy which is not authorised by a warrant or authorisation remains necessary and proportionate and should continue to be authorised by the notice and not an alternative authorisation provided for in the Investigatory Powers Act or in other relevant statutes. The review must also consider whether any interference with privacy has occurred since the last review that was not anticipated, and the Secretary of State must be satisfied that any continued interference is justified, and should not be authorised by alternate means.

- 3.18 The Secretary of State must cancel the notice if the conduct it requires is no longer necessary or proportionate.

Variation of a national security notice

- 3.19 Section 256 of the Act provides that national security notices may be varied by the Secretary of State if the Secretary of State considers that the variation is necessary and the conduct required by the notice as varied is proportionate to what is sought to be achieved. Where the notice as varied imposes new obligations on the telecommunications operator, the decision to vary a notice must be approved by a Judicial Commissioner. Judicial Commissioner approval is not required where a variation removes obligations from the notice.
- 3.20 Where a telecommunications operator has changed name, for example as part of a rebranding exercise or due to a change of ownership, the Government, in consultation with the telecommunications operator, will need to consider whether the existing notice should be varied or whether a new notice should be given.
- 3.21 Before varying a notice, the Government is required to consult the communications service provider to understand the impact of the change, including cost and technical implications. Once this consultation process is complete, the Secretary of State will consider whether it is necessary to vary the notice and whether the requirements imposed by the notice as varied are proportionate to what is sought to be achieved by that conduct.
- 3.22 Once a notice has been varied by the Secretary of State, and the decision to vary a notice has been approved by a Judicial Commissioner where that is required, arrangements will be made for the telecommunications operator to be notified of this variation and details of the timeframe in which the steps specified in the notice as varied are to be taken by the telecommunications operator. The time taken to

take these steps will be taken into account and, accordingly, different elements of the variation may take effect at different times.

Revocation of national security notices

- 3.23 Section 256 provides for the revocation of a national security notice.
- 3.24 Circumstances where it may be necessary to revoke a notice include where an operator no longer operates or provides the services to which the notice relates, where operational requirements have changed, or where such requirements would no longer be necessary or proportionate.
- 3.25 The revocation of a national security notice does not prevent the Secretary of State giving a new notice, covering the same, or different services, to the same operator in the future should it be considered necessary and proportionate to do so³.

³ See Section 256(8)

Telecommunications operator compliance

- 4.1 Where a national security notice is given to anyone providing a telecommunications service, or who has control of a telecommunication system in the UK, that person is under a duty to take all the steps required by the notice. This applies to any company in the UK. Section 255 sets out the means by which that duty may be enforced.
- 4.2 An example of what a national security notice will look like is contained at Annex B. It is necessarily blank so as not to reveal sensitive capabilities and undermine their effectiveness.

Consultation with operators

- 4.3 As set out at paragraph 3.9, before giving a notice, the Secretary of State must consult the operator.⁴ In practice, consultation is likely to take place long before a notice is given. However, the time taken for the consultation will vary depending on the individual circumstances in each case, such as the complexity of the notice, the nature of the obligations to be imposed, and the resources available to the operator to consider the proposed obligations. The Government will engage with an operator who is likely to be subject to a notice in order to provide advice and guidance, and prepare them for the possibility of receiving a notice.
- 4.4 In the event that the Secretary of State considers it appropriate to give a notice, the Government will take steps to consult the telecommunications operator formally before the notice is given. Should the person to whom the notice is to be given have concerns about the reasonableness, cost or technical feasibility of requirements to be set out in the notice, these should be raised during the consultation process. Any concerns outstanding at the conclusion of these discussions will be presented to the Secretary of State and will form part of the decision making process.

Receiving a notice

- 4.5 Once the Secretary of State has made a decision to give a notice, and the decision has been approved by the Judicial Commissioner, arrangements will be made for it to be given to the telecommunications operator. During consultation, it will be agreed who within the company should receive the notice and how it should be

⁴ See section 255(2).

provided (i.e. electronically or in hard copy). If no recipient is agreed, then the notice will be given to a senior executive within the company.

- 4.6 A person to whom a national security notice is given is under a duty to comply with the notice. The duty to comply with a national security notice is enforceable against a person in the UK by civil proceedings brought by the Secretary of State⁵. The duty to comply with a notice applies despite any other duty imposed by Part 1, or Chapter 1 of Part 2 of the Communications Act 2003.⁶

Disclosure

- 4.7 Any person to whom a national security notice is given, or any person employed or engaged for the purposes of that person's business, is under a duty not to disclose the existence or contents of that notice to any person⁷ unless they are given permission to disclose the existence or contents of the notice by the Secretary of State. Such circumstances may include disclosure:
- To a person (such as a system provider) who is working with the communications service provider to give effect to the notice;
 - To relevant oversight bodies;
 - To regulators in exceptional circumstances where information relating to a capability may be relevant to their enquiries;
 - To other communications service providers subject to a technical capability notice to facilitate consistent implementation of the obligations; and
 - In other circumstances notified to and approved in advance by the Secretary of State.

⁵ See section 255(10)(a).

⁶ See section 255(12)

⁷ See section 255(8)

Contribution to the costs of taking the steps required by a national security notice

- 4.8 Section 249 of the Act recognises that operators incur expenses in complying with requirements in the Act, including steps required by a national security notice. The Act, therefore, requires the Secretary of State to have in place arrangements to ensure that operators receive an appropriate contribution to these costs.
- 4.9 Public funding and support is made available to operators to ensure that they can provide, outside of their normal business practices, the support that is required by a national security notice.
- 4.10 It is legitimate for an operator to seek contributions towards its costs which may include an element of providing funding of those general business overheads required in order to take the steps specified by a national security notice.
- 4.11 This is especially relevant for operators which employ staff specifically to manage compliance with the requirements made under the Act, supported by bespoke systems.
- 4.12 Contributions may also be appropriate towards costs incurred by an operator which needs to update its systems to maintain, or make more efficient, the support required by a national security notice. Similarly, contributions may be appropriate where the provision of new services will require investment in technology in order to comply with requirements specified in the notice.
- 4.13 The cost of complying with the requirements in a notice will be discussed during the consultation before a notice is given. Any operator seeking to recover appropriate contributions towards its costs should make available to the Government such information as the Government requires in order to provide assurance that proposed cost recovery charges represent an appropriate contribution to the costs incurred by the operator.
- 4.14 Any operator that has claimed contributions towards costs may be required to undergo a Government audit before contributions are made. This is to ensure that expenditure has been incurred for the stated purpose. An audit may include visits to premises, the inspection of equipment, access to relevant personnel, and the examination of documents or records.
- 4.15 The level of contribution which the Secretary of State determines should be made in respect of the costs incurred, or likely to be incurred, by the telecommunications operator in complying with the notice must be specified on the notice⁸.

Referral of national security notices

- 4.16 The recipient of a notice may request a review of any aspect of a national security notice should they wish to do so. A person may refer the notice, or part of a notice, back to the Secretary of State for review under section 257 of the Act.

⁸ See section 249(7) of the Act.

- 4.17 The circumstances and timeframe within which a telecommunications operator may request a review are set out in regulations made by the Secretary of State and approved by Parliament. Details of how to submit a notice to the Secretary of State for review will be provided either before or at the time the notice is given.
- 4.18 Before deciding the review, the Secretary of State must consult and take account of the views of the Technical Advisory Board (TAB) and a Judicial Commissioner. The Board must consider the technical requirements and the financial consequences of the notice for the person who has made the referral. The Judicial Commissioner will consider whether the notice is proportionate.
- 4.19 Both bodies must give the relevant telecommunications operator and the Secretary of State the opportunity to provide evidence and make representations to them before reaching their conclusions.
- 4.20 After considering reports from the TAB and the Judicial Commissioner, the Secretary of State may decide to vary, withdraw or confirm the effect of the notice. Where the Secretary of State's decision is to confirm the effect of the notice, this decision must be approved by the Investigatory Powers Commissioner (IPC). Until this decision is made and approved by the IPC, there is no requirement for the telecommunications operator to comply with those part of the notice that have been referred.

Oversight

- 5.1 The Investigatory Powers Act provides for an Investigatory Powers Commissioner ('the IPC'), whose remit is to provide comprehensive oversight of the use of the powers contained within the Act and adherence to the practices and processes described by this code. The Commissioner will be, or will have been, a member of the senior judiciary and will be entirely independent of Her Majesty's Government or any of the public authorities authorised to use investigatory powers. The Commissioner will be supported by inspectors and others, such as technical experts and legal experts, qualified to assist the Commissioner in his or her work.
- 5.2 The Investigatory Powers Commissioner, and those that work under the authority of the Commissioner, will ensure compliance with the law by inspecting public authorities and investigating any issue which they believe warrants further independent scrutiny. Section 229(3)(b) sets out that the IPC must keep under review the giving and operating of notices under section 252 – national security notices. The IPC may undertake these inspections, as far as they relate to the IPC's statutory functions, entirely on his or her own initiative or they may be asked to investigate a specific issue by the Prime Minister.
- 5.3 The IPC will have unfettered access to all locations, documentation and information systems as necessary to carry out their full functions and duties. In undertaking such inspections, the IPC must not act in a way which is contrary to the public interest or jeopardise operations or investigations. All public authorities using investigatory powers must, offer all necessary assistance to the Commissioner and anyone who is acting on behalf of the Commissioner.
- 5.4 The Commissioner must report annually on the findings of their inspections and investigations. This report will be laid before Parliament and will be made available to the public, subject to any necessary redactions made in the national interest. Only the Prime Minister will be able to authorise redactions to the Commissioner's report. If the Commissioner disagrees with the proposed redactions to his or her report then the Commissioner may inform the Intelligence and Security Committee of Parliament that they disagree with them.
- 5.5 The Commissioner may also report, at any time, on any of his or her investigations and findings as they see fit. These reports will also be made publically available subject to public interest considerations. Public authorities and telecommunications operators may seek general advice from the Commissioner on any issue which falls within the Commissioner's statutory remit. The Commissioner may also produce guidance for public authorities on how to apply and use investigatory powers. Wherever possible this guidance will be published in the interests of public transparency.

- 5.6 Anyone working for a public authority or communications service provider who has concerns about the way that investigatory powers are being used may report their concerns to the Commissioner, who will consider them. In particular, any person who exercises the powers described in the Investigatory Powers Act or this code must report to the Commissioner any action undertaken which they believe to be contrary to the provisions of this code. This may be in addition to the person raising concerns through the internal mechanisms for raising concerns within the public authority.

- 5.7 Further information about the Investigatory Powers Commissioner, their office and their work may be found at: [website for IPC once created]

Annex A: Detail which must be contained in a national security notice application

National security notice application

An application to the Secretary of State for a national security notice should set out:

- The likely benefits of the notice – this may take into account projected benefits.
- The likely number of users of any telecommunications service to which the notice relates, if known.
- The technical feasibility of complying with the notice – taking into account any representations made by the telecommunications operator.
- The likely cost of complying with the notice – this will include the costs of any requirements or restrictions placed on the telecommunications operator as part of the notice, such as those relating to security. This will enable the Secretary of State to consider whether the imposition of a notice is affordable and represents value for money.
- Any other effect of the notice on the telecommunications operator – again taking into account any representations made by the company.
- Any other relevant considerations such as those set out in section 2 of the Investigatory Powers Act 2016.

An application should also address the following questions:

Necessity

- **What is the purpose of the notice/ what are you seeking to achieve and why is it necessary?** *[Brief description of what the telecommunications operator will be asked to do and why it is necessary in the interest of national security]*
- **Can the same result be achieved using any other statute or other powers in the Investigatory Powers Act, or by any other means?** *[if so, explain why a national security notice is necessary to achieve the objective]*

Proportionality

- **How is the conduct required by the notice proportionate to what you are seeking to achieve?** *[the application must set out how what the telecommunications operator is being asked to do is proportionate to the objective sought]*

- **Will the activity proposed interfere with an individual's privacy?** *[The application must set out: known/expected interference or where there is a potential for interference to occur; explain why the interference is necessary and; describe any mitigating action which will be taken to keep the interference to a minimum.]*
- **Is another warrant or authorisation required?**
[Where a national security notice requires the taking of a step for which a warrant or authorisation under the IPA, ISA RIPA, or RIPSAs is required, the application must explain that such an authorisation or warrant has been obtained, the date it would cease to have effect if not renewed, and the conduct the authorisation or warrant authorises.]
- **Is it reasonable to require the operator to take the steps set out in the notice? Provide details of the consultation Confirm that has taken place with the telecommunications operator to whom the notice will be given** *[The application should highlight any concerns which have been expressed by the intended recipient and describe what action has been/can be taken to mitigate their concerns. The application should also set out the period within which the steps specified in the notice are to be taken and an assessment of why that period is reasonable.]*
- **Is the telecommunications operator on whom the notice is to be given uniquely placed to undertake the activity required by the notice or are other operators subject to similar obligations?**

Annex B: Example of a national security notice

NATIONAL SECURITY NOTICE UNDER SECTION 252(1) OF THE INVESTIGATORY POWERS ACT 2016

[Insert telecommunications operator's name]

1. In exercise of the power conferred by section 252 of the Investigatory Powers Act 2016 the Secretary of State considers that it is necessary to require ***[insert telecommunications operator's name]*** to take the steps set out in this notice. A Judicial Commissioner has approved the Secretary of State's decision to give this notice.
2. The requirements set out in paragraph 4 of this notice are necessary in the interests of national security and proportionate to what is being sought to be achieved.
3. ***[insert telecommunications operator's name]*** must :
 - a. **[Have appropriate systems in place to carry out the task required]**
 - b. **[Issue instructions to staff which achieve the requirements set out in article 3]**
4. The requirements and results referred to in paragraph 2 are:
 - a. **[List the specific tasks which the operator is required to undertake in support of the notice]**
 - b.
 - c.
5. The steps set out in paragraph 4 must be taken by [date].
6. [insert other information as necessary relating to the operation of the direction].
7. [insert the contribution to costs that will be made]
8. Insert one of the following statements:
 - a. no private/personal data will be acquired as a result of the activity required by this notice

- b. any private/personal data acquired as a result of the activity required by this notice has been authorised under *[insert as required]* or
- c. any private/personal data acquired as a result of the activity required by this notice cannot be authorised under any other statute and is hereby authorised

9. The direction(s) given to *[insert telecommunications operator's name]* by the Secretary of State under **section 94 of the Telecommunications Act 1984**

Or

The notice given to *[insert telecommunications operator's name]* under section 252 of the Investigatory Powers Act []

is revoked.

In accordance with section 257 of the Investigatory Powers Act [], *[insert telecommunications operator's name]* may seek a review of this notice

Signed.....On behalf Her Majesty's Secretary of State for **[the Home Department]**

Dated

