



Telecommunications (Security) Act 2021

2021 CHAPTER 31

Monitoring and enforcement

19 Monitoring directions: inspection notices

- (1) The Communications Act 2003 is amended as follows.
- (2) After section [105Z13](#) insert—

“105Z14 Power of OFCOM to give inspection notices

- (1) This section applies where the Secretary of State has given OFCOM a monitoring direction relating to a public communications provider (and the monitoring direction has not been revoked).
- (2) OFCOM may by notice (“an inspection notice”) given to the provider impose on the provider a duty to take any of the actions mentioned in subsection (4).
- (3) OFCOM may exercise the power in subsection (2) for the purpose of obtaining—
 - (a) information (in any form) that would assist the Secretary of State in determining whether the provider has complied or is complying with—
 - (i) the designated vendor direction; or
 - (ii) a specified requirement imposed by the designated vendor direction;
 - (b) information (in any form) about a specified matter which is relevant to whether the provider has complied or is complying with a requirement imposed by the designated vendor direction.
- (4) The actions are—
 - (a) to carry out surveys of a specified description of—
 - (i) the public electronic communications network provided by the provider;

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- (ii) the public electronic communications service provided by the provider; or
 - (iii) the associated facilities made available by the provider that are associated facilities by reference to such a network or service (as the case may be);
- (b) to make arrangements of a specified description for another person to carry out surveys of a specified description of the network, service or associated facilities;
 - (c) to make available for interview a specified number of persons of a specified description who are involved in the provision of the network or service or the making available of the associated facilities (not exceeding the number who are willing to be interviewed);
 - (d) to permit an authorised person to enter specified premises;
 - (e) to permit an authorised person to observe any operation taking place on the premises that relates to the network, service or associated facilities;
 - (f) to direct an authorised person to equipment or other material on the premises that is of a specified description;
 - (g) to direct an authorised person to documents on the premises that are of a specified description;
 - (h) to assist an authorised person to view information of a specified description that is capable of being viewed using equipment on the premises;
 - (i) to comply with a request from an authorised person for a copy of the documents to which the person is directed and the information the person is assisted to view;
 - (j) to permit an authorised person to inspect or examine the documents, information, equipment or material to which the person is directed or which the person is assisted to view;
 - (k) to provide an authorised person with an explanation of such documents, information, equipment or material.
- (5) An inspection notice may not impose on the provider a duty to permit an authorised person to enter domestic premises.
- (6) An inspection notice may not impose on the provider a duty to do anything that would result in—
- (a) the disclosure of documents or information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality of communications) could be maintained in legal proceedings; or
 - (b) a disclosure of documents or information that is prohibited by or under an enactment mentioned in section 105A(4).
- (7) An inspection notice must, in relation to each duty imposed by the notice, specify the time or times at which, or period or periods within which, the duty must be complied with.
- (8) A time or period specified under subsection (7) must not be a time that falls or a period that begins before the end of the period of 28 days beginning with the day on which the inspection notice is given.
- (9) In this section—

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“authorised person” means an employee of, or person authorised by, OFCOM;

“domestic premises” means premises, or a part of premises, used as a dwelling;

“specified” means specified in an inspection notice.

105Z15 Inspection notices: further provision

- (1) An inspection notice must provide information about the consequences of failing to comply with a duty imposed by the notice.
- (2) An inspection notice may by further notice—
 - (a) be revoked by OFCOM;
 - (b) be varied by OFCOM so as to make it less onerous.
- (3) Where an inspection notice is given to a public communications provider, the provider may not act in such a way as to defeat the purpose of the inspection notice.
- (4) Where an inspection notice is given to a public communications provider, the provider must pay the costs reasonably incurred by OFCOM in connection with obtaining information by means of the inspection notice.

105Z16 Inspection notices: information about entering premises

Every report under paragraph 12 of the Schedule to the Office of Communications Act 2002 (OFCOM’s annual report) must include a statement of the number of occasions during the financial year to which the report relates on which premises have been entered in pursuance of a duty imposed under section [105Z14\(4\)\(d\)](#).

105Z17 Inspection notices: enforcement of compliance

- (1) Sections 96A to 100, 102 and 103 apply in relation to—
 - (a) a contravention of a duty imposed by an inspection notice, or
 - (b) a contravention of the duty imposed by section [105Z15\(3\)](#),as they apply in relation to a contravention of a condition set under section 45, other than an SMP apparatus condition.
- (2) Subsection (1) is subject to subsections (3) and (4).
- (3) In its application in relation to a contravention referred to in subsection (1), section 96B(5) has effect as if the maximum penalty specified were £50,000 per day.
- (4) In its application in relation to a contravention referred to in subsection (1), section 97(1) has effect as if the maximum penalty specified were £10 million.
- (5) The Secretary of State may by regulations amend this section so as to substitute a different amount for the amount for the time being specified in subsection (3) or (4).

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- (6) No regulations are to be made containing provision authorised by subsection (5) unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.”
- (3) In section 113 (suspension of application of the electronic communications code) in subsection (2)(b) (a condition for suspension) at the end of the words in parentheses insert “or 105Z17”.
- (4) In section 151 (interpretation of Chapter 1 of Part 2) at the appropriate place in subsection (1) insert—
““inspection notice” has the meaning given by section 105Z14;”.
- (5) In Schedule 8 (decisions not subject to appeal) before paragraph 8 insert—
“7D A decision to impose a duty under section 105Z14.”

Commencement Information

II S. 19 in force at Royal Assent, see s. 28(1)(c)

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