

Report on Joint AEB/EURIM Workshop on RIP Act Section 12 & 13 Draft Orders

This Workshop was held on 31 January under Chatham House rules and hosted by e-centre. It was attended by officials from the Home Office implementation team and a broad range of EURIM and AEB members. This note records the key points raised at the meeting.

Background

During debate on the RIP Act as it progressed through the Parliamentary process there was much debate on the need to clarify the scope of possible interception requirements that could be placed on a CSP, as defined in the Section 12 Order. The Technical Advisory Board was successfully introduced to provide this, and to provide a means for individual CSPs to challenge the appropriateness of Section 12 Notices placed on them. The draft Orders for both Section 12 and Section 13 were recently issued for consultation by the Home Office, and this workshop met to discuss them.

Timescales

Responses on the draft Section 13 Order are required by 14 February. The Home Office wants to implement this Order urgently, since only then can the TAB be formed – and the Section 12 Order has to be reviewed by the TAB.

There is currently no date for responses on the draft Section 12 Order since its final form will depend, in part, on the results of the TAB review.

Introductory Comments

The Section 12 Order, as legislation, needs to be only a high level requirement and technology neutral. The draft was based on IUR95, but uses telephony-type language. It is not meant to provide any technical detail – which will be included in Section 12 Notices served on specific CSPs. The detail in italics in the draft Order will not be included in the published Order, being for information only. There was currently no intention of providing any reference to other, supporting, documents in the Order. Once the TAB had reviewed the Order, it was not envisaged that it would need to look at it again, although it would look at individual Section 12 Notices where a CSP had requested a review.

It was confirmed that the definition of CSP is very broad, encompassing almost all on-line public service provision. However, it was again stated that the intention was only to serve Section 12 Notices on those few large service providers that provided the vast majority (80%-90% was quoted) of public services, directly or via virtual CSPs.

Major Points Raised

The major points and issues raised during the workshop are summarised below.

Section 12 Order

- The lack of reference to any useful detail bounding the scope of interception requirements was seen as a major issue. Even statements such as “take the emerging ETSI Requirement on Interception as a basis for the requirement” would be helpful.
- There was a general need to tidy up definitions and use of terms to avoid confusion. There was also concern that the requirement, as stated, was not technology neutral, assuming basic telephony/ISP concepts of operations.
- The statements on costs were wholly inadequate. There needed to be reference at least to a statement on the basis of calculation, what constitutes a small or large CSP, how capital investment and ongoing support costs are separated and covered, etc.
- It was very unclear how the *reasonableness* test in Section 12(1) would be applied in areas such as response times to warrants, and costs in the Order.
- There was general concern at the crude way the capability for simultaneous interception capability was defined. A better approach could be to define bands of such capability (up to 2, 5, 10, etc), with a Section 12 Notice stating which band the CSP should support.
- Confirmation was sought that the form of words included the type of information used to identify interception sources under a Section 8.4 warrant.

Section 13 Order

- It was noted that the TAB is anticipated to be some form of Non-Departmental Public Board (NDPB), but the details are still being discussed.
- It was strongly felt that the Board membership should represent all key stakeholders, including those that supply equipment. Where a CSP was challenging a Section 12 Notice, this could include experts experienced in that CSP’s particular technologies and practices, and exclude close competitors (to avoid conflicts of interest).
- Members should be selected by appropriate industry bodies and not by the Home Secretary (even if he has, under the primary legislation, to “approve” them).
- Results of the deliberations of the TAB should be made public – at least any guiding principles that would be of interest to other CSPs.
- There was a need to clarify the relationship between the TAB and the Interception of Communications Commissioner.

Summary

Overall, there was concern that the Section 12 Order would not provide any level of information sufficient to enable those, especially outside the UK, to estimate potential costs resulting from a Section 12 Notice. While officials continue to maintain that only a very few large CSPs will be affected, the Act contains no such restriction. In the absence of any legally binding statement from government, it would be prudent for any business that considers it provides public CSP services to assess the possible investment impact of such a notice. The Orders, as they stand, do not enable such an assessment to be made.

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