

Investigatory Powers (Amendment) Bill [HL]

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

Clause 2

LORD FOX

Clause 2, page 3, leave out lines 31 to 34

Member's explanatory statement

This amendment is to probe the extent to which new section 226A(3)(d) and (e) departs from current privacy laws.

LORD FOX

Clause 2, page 4, line 17, leave out “any function” and insert “training and learning functions”

Member's explanatory statement

This amendment is to probe the purpose for which bulk personal datasets will be used by the intelligence services.

LORD FOX

Clause 2, page 4, leave out lines 31 and 32

Member's explanatory statement

This amendment is to probe the circumstances in which an authorisation is urgent and is therefore not authorised in advance by a Judicial Commissioner.

LORD FOX

Clause 2, page 4, line 32, at end insert –

“(6A) In subsection (6)(b), there is an urgent need to grant the authorisation if there is an imminent threat that requires immediate preventive or protective action.”

Member's explanatory statement

This amendment is to probe the circumstances in which an authorisation is urgent and is therefore not authorised in advance by a Judicial Commissioner.

LORD FOX

Clause 2, page 6, line 7, after “must” insert “immediately”

Member's explanatory statement

This amendment requires a person granting an authorisation in urgent cases to immediately notify a Judicial Commissioner that they have done so.

LORD FOX

Clause 2, page 10, line 23, leave out “so far as is reasonably practicable”

Member's explanatory statement

This amendment is to probe the meaning of “reasonably practicable”.

LORD FOX

Clause 2, page 11, line 2, at end insert –

- “(6) Notwithstanding subsection (5), any information or knowledge acquired while the authorisation was in effect must not be used or relied upon for anything once the authorisation ceases to have effect.”

Member's explanatory statement

This amendment is intended to ensure that, when an authorisation ceases to have effect, the intelligence services must ‘forget’ the information or knowledge acquired during the period when the authorisation was in force.

LORD FOX

Clause 2, page 11, line 7, at end insert –

- “(1A) A report under subsection (1) must include –
- (a) the number of authorisations sought; and
 - (b) the number of authorisations granted;
- for each year under this Part.”

Member's explanatory statement

This amendment requires the annual report to include details of the number of authorisations sought and granted under new Part 7A.

Clause 5

LORD FOX

Clause 5, page 14, leave out lines 7 to 9

Member's explanatory statement

This amendment is to probe the circumstances in which information would be available to the intelligence services that is not generally available.

LORD FOX

Clause 5, page 15, line 42, at end insert “and includes genomic and genetic data”

Member's explanatory statement

This amendment is intended to confirm that genomic and genetic data is included in the definition of sensitive data under this section.

LORD FOX

Clause 5, page 16, line 34, after “must” insert “immediately”

Member's explanatory statement

This amendment requires the Secretary of State granting an authorisation in urgent cases to immediately notify a Judicial Commissioner that they have done so.

Clause 11

LORD FOX

Clause 11, page 30, leave out lines 38 and 39

Member's explanatory statement

This amendment is intended to probe the legal basis for surveillance of the type of data described in new subsection (3A)(e).

Clause 16

LORD FOX

Lord Fox gives notice of his intention to oppose the Question that Clause 16 stand part of the Bill.

Clause 17

LORD FOX

Lord Fox gives notice of his intention to oppose the Question that Clause 17 stand part of the Bill.

Clause 20

LORD SHARPE OF EPSOM

Clause 20, page 39, line 5, leave out “as follows” and insert “in accordance with subsections (2) and (3)”

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Sharpe of Epsom at page 41, line 14.

LORD SHARPE OF EPSOM

Clause 20, page 41, line 2, leave out “(or description of persons)”

Member's explanatory statement

This amendment and the amendment in the name of Lord Sharpe of Epsom at page 41, line 4 correct an inconsistency in clause 20 by omitting references to a notice under section 258A of the Investigatory Powers Act 2016 being given or revoked in relation to a description of persons.

LORD SHARPE OF EPSOM

Clause 20, page 41, line 4, leave out “(or description of persons)”

Member's explanatory statement

See the amendment in the name of Lord Sharpe of Epsom at page 41, line 2.

LORD SHARPE OF EPSOM

Clause 20, page 41, line 14, at end insert –

- “(4) The Regulation of Investigatory Powers Act 2000 is amended as follows.
- (5) In section 65 (the Tribunal) –
- (a) in subsection (5)(czi) –
 - (i) for “or 253” substitute “, 253 or 258A”;
 - (ii) for “or technical capability” substitute “, technical capability or proposed changes to telecommunications services etc”;
 - (b) in subsection (5)(czl)(iii), for “or 253” substitute “, 253 or 258A”;
 - (c) in subsection (8)(bc), for “or 253” substitute “, 253 or 258A”.
- (6) In section 67 (exercise of the Tribunal’s jurisdiction), in subsection (7)(azc), for “or 253” substitute “, 253 or 258A”.
- (7) In section 68 (Tribunal procedure) –
- (a) in subsection (5)(b), for “or 253” substitute “, 253 or 258A”;
 - (b) in subsection (7)(f), for “or 253” substitute “, 253 or 258A”;
 - (c) in subsection (7)(ha), for “or 253” substitute “, 253 or 258A”.

Member's explanatory statement

This amendment provides for the Investigatory Powers Tribunal to consider complaints about notices given under new section 258A of the Investigatory Powers Act 2016 (proposed changes to telecommunications services etc) in the same way as it considers complaints about other notices given under Part 9 of that Act.

LORD FOX

Lord Fox gives notice of his intention to oppose the Question that Clause 20 stand part of the Bill.

Clause 21

LORD FOX

Clause 21, page 42, line 6, at end insert –

“(4) After subsection (3) insert –

“(4) A Judicial Commissioner must inform a member of a relevant legislature that their communications have been subject to a targeted interception warrant or a targeted examination warrant as soon as practicable following the expiration of that warrant.”

Member's explanatory statement

This amendment places a duty on Judicial Commissioners to notify parliamentarians subjected to surveillance once the relevant warrant has expired.

Clause 22

LORD FOX

Clause 22, page 42, line 33, at end insert –

“(7E) A Judicial Commissioner must inform a member of a relevant legislature that their communications have been subject to a targeted equipment interference warrant as soon as practicable following the expiration of that warrant.”

Member's explanatory statement

This amendment places a duty on Judicial Commissioners to notify parliamentarians subjected to surveillance once the relevant warrant has expired.

Clause 26

LORD SHARPE OF EPSOM

Clause 26, page 44, line 22, at end insert –

“(3) After paragraph 24 insert –

“25 (1) Nothing in section 56(1) prohibits –

- (a) a disclosure to a relevant coroner conducting an NI investigation or inquest, or
- (b) a disclosure to a qualified person –
 - (i) appointed as legal adviser to an inquest conducted by the coroner, or
 - (ii) employed under section 11(3) of the Coroners Act (Northern Ireland) 1959 (c. 15) (“the 1959 Act”) by a relevant coroner to assist the coroner in an investigation conducted by the coroner,

where, in the course of the investigation or inquest, the relevant coroner (“C”) has ordered the disclosure to be made to C alone or (as the case may be) to C and any qualified person appointed or employed by C as mentioned in paragraph (b).

- (2) A relevant coroner may order a disclosure under sub-paragraph (1) only if the coroner considers that the exceptional circumstances of the case make the disclosure essential in the interests of justice.
- (3) In a case where a coroner (“C”) conducting, or who has been conducting, an NI investigation or inquest is not a relevant coroner, nothing in section 56(1) prohibits –
 - (a) a disclosure to C that there is intercepted material in existence which is, or may be, relevant to the investigation or inquest;
 - (b) a disclosure to a qualified person appointed by C as legal adviser to the inquest or employed by C under section 11(3) of the 1959 Act to assist C in the investigation, which is made for the purposes of determining –
 - (i) whether any intercepted material is, or may be, relevant to the investigation, and
 - (ii) if so, whether it is necessary for the material to be disclosed to the person conducting the investigation.
- (4) In sub-paragraph (3) “intercepted material” means –
 - (a) any content of an intercepted communication (within the meaning of section 56), or
 - (b) any secondary data obtained from a communication.
- (5) In this paragraph –
 - “the 1959 Act” has the meaning given by sub-paragraph (1);
 - “coroner” means a coroner appointed under section 2 of the 1959 Act;

“NI investigation or inquest” means an investigation under section 11(1) of the 1959 Act or an inquest under section 13 or 14 of that Act;

“qualified person” means a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland);

“relevant coroner” means a coroner who is a judge of the High Court or of a county court in Northern Ireland.

- 26 (1) Nothing in section 56(1) prohibits –
- (a) a disclosure to a relevant person conducting an inquiry under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (2016 asp 2) (“IFASDA 2016”), or
 - (b) a disclosure to a qualified person appointed under section 24 of that Act to assist a relevant person in the inquiry,
- where, in the course of the inquiry, the person conducting the inquiry has ordered the disclosure to be made to that person alone or (as the case may be) to that person and any qualified person appointed to assist a relevant person in the inquiry.
- (2) A relevant person may order a disclosure under sub-paragraph (1) only if the person considers that the exceptional circumstances of the case make the disclosure essential in the interests of justice.
- (3) Nothing in section 56(1) prohibits –
- (a) a disclosure to a relevant person conducting an inquiry under IFASDA 2016, or
 - (b) a disclosure to a qualified person appointed under section 24 of that Act to assist a relevant person in the inquiry,
- that there is intercepted material in existence which is, or may be, relevant to the inquiry.
- (4) In sub-paragraph (3) “intercepted material” means –
- (a) any content of an intercepted communication (within the meaning of section 56), or
 - (b) any secondary data obtained from a communication.
- (5) In this paragraph “relevant person” means –
- (a) a sheriff principal,
 - (b) a temporary sheriff principal, or
 - (c) a sheriff or part-time sheriff (but not a summary sheriff or part-time summary sheriff) designated as a specialist under section 37(1) or (3) of IFASDA 2016.
- (6) In this paragraph “qualified person” means an advocate or solicitor; and “advocate” and “solicitor” have the same meaning as in IFASDA 2016 (see section 40 of that Act).”

Member's explanatory statement

This amendment inserts into Schedule 3 to the Investigatory Powers Act 2016 (exceptions to exclusion of matters from legal proceedings etc) exceptions about disclosures to inquiries or inquests

in Northern Ireland or Scotland into a person's death. The exceptions are similar to existing provision in relation to England and Wales.

Clause 29

LORD SHARPE OF EPSOM

Clause 29, page 45, line 12, leave out “to subsection (2)” and insert “as follows”

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Sharpe of Epsom at page 45, line 14.

LORD SHARPE OF EPSOM

Clause 29, page 45, line 14, at end insert –

“(3) The power under section 272(6) of the Investigatory Powers Act 2016 may be exercised so as to extend to the Isle of Man or any of the British overseas territories any amendment or repeal made by or under this Act of any part of that Act (with or without modifications).”

Member's explanatory statement

This amendment provides for the power in section 272(6) of the Investigatory Powers Act 2016 (extent) to be capable of being exercised so as to extend to the Isle of Man or any of the British overseas territories any amendments of that Act made by this Bill.

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