

Investigatory Powers (Amendment) Bill [HL]

AMENDMENTS TO BE MOVED ON REPORT

Clause 2

LORD SHARPE OF EPSOM

Clause 2, page 11, line 16, at end insert –

“226DAA Report to Intelligence and Security Committee

- (1) The Secretary of State must for each relevant period provide to the Intelligence and Security Committee of Parliament a report setting out information about category authorisations and renewals of category authorisations granted in that period.
- (2) In subsection (1) “relevant period” means –
 - (a) a period of at least one year and no more than two years beginning with the date on which this Part comes fully into force, and
 - (b) subsequent periods of no more than one year, beginning with the end of the period to which the previous report related.
- (3) Each report must be provided to the Committee as soon as reasonably practicable after the end of the period to which the report relates.”

Member's explanatory statement

This amendment requires the Secretary of State to provide to the Intelligence and Security Committee of Parliament reports about category authorisations and renewals of such authorisations under new Part 7A of the Investigatory Powers Act 2016.

Clause 6

LORD SHARPE OF EPSOM

Clause 6, page 25, line 15, leave out “and (3)” and insert “to (3A)”

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Sharpe of Epsom at page 25, line 30.

LORD SHARPE OF EPSOM

Clause 6, page 25, line 30, at end insert –

“(3A) In section 229 (main oversight functions), in subsection (9), in the definition of “bulk personal dataset”, after “199” insert “(and includes a third party bulk personal dataset (see section 226E))”.”

Member's explanatory statement

This amendment clarifies that the Investigatory Powers Commissioner's oversight functions include, amongst other things, keeping under review the use of third party bulk personal datasets by an intelligence service.

Clause 8

LORD SHARPE OF EPSOM

Clause 8, page 27, line 14, at end insert –

“(aa) deciding under section 90(11) or 257(10) whether to approve a decision of the Secretary of State,”

Member's explanatory statement

This amendment provides that the function of the Investigatory Powers Commissioner (“IPC”) of deciding, under section 90(11) or 257(10) of the Investigatory Powers Act 2016 (review of notices), whether to approve decisions may be delegated to a Deputy IPC only where the IPC is unable or unavailable to exercise the function.

Clause 9

LORD SHARPE OF EPSOM

Clause 9, page 29, line 5, at end insert –

“(ba) the Scottish Ministers;”

Member's explanatory statement

This amendment requires the Investigatory Powers Commissioner to notify the Scottish Ministers of the appointment of any temporary Judicial Commissioner.

After Clause 10

LORD SHARPE OF EPSOM

After Clause 10, insert the following new Clause—

“Personal data breaches

- (1) In the Investigatory Powers Act 2016, after section 235 insert—

“235A Personal data breaches

- (1) This section applies where a telecommunications operator would, but for a relevant restriction, be required by regulation 5A(2) of the 2003 Regulations to notify a personal data breach to the Information Commissioner.
- (2) The telecommunications operator must report the personal data breach to the Investigatory Powers Commissioner.
- (3) Where a telecommunications operator reports a personal data breach to the Investigatory Powers Commissioner under subsection (2), a Judicial Commissioner must disclose information about the breach to the Information Commissioner.
- (4) Where a Judicial Commissioner discloses information about a personal data breach to the Information Commissioner under subsection (3), the Information Commissioner must—
 - (a) consider whether the breach is serious, and
 - (b) if the Information Commissioner considers that the breach is serious, notify the Investigatory Powers Commissioner.
- (5) The Investigatory Powers Commissioner must inform an individual of any personal data breach relating to that individual of which the Commissioner is notified under subsection (4)(b) if the Commissioner considers that it is in the public interest for the individual to be informed of the breach.
- (6) In making a decision under subsection (5), the Investigatory Powers Commissioner must, in particular, consider—
 - (a) the seriousness of the breach and its effect on the individual concerned, and
 - (b) the extent to which disclosing the breach would be contrary to the public interest or prejudicial to—
 - (i) national security,
 - (ii) the prevention or detection of serious crime,
 - (iii) the economic well-being of the United Kingdom, or
 - (iv) the continued discharge of the functions of any of the intelligence services.
- (7) Before making a decision under subsection (5), the Investigatory Powers Commissioner must ask—

- (a) the Secretary of State, and
 - (b) any public authority that the Investigatory Powers Commissioner considers appropriate,
- to make submissions to the Commissioner about the matters concerned.
- (8) When informing an individual under subsection (5) of a breach, the Investigatory Powers Commissioner must –
- (a) inform the individual of any rights that the individual may have to apply to a court or tribunal in relation to the breach, and
 - (b) provide such details of the breach as the Commissioner considers to be necessary for the exercise of those rights, having regard in particular to the extent to which disclosing the details would be contrary to the public interest or prejudicial to anything falling within subsection (6)(b)(i) to (iv).
- (9) The Investigatory Powers Commissioner may not inform the individual to whom it relates of a personal data breach notified to the Commissioner under subsection (4)(b) except as provided by this section.
- (10) For the purposes of this section, a personal data breach is serious if the breach is likely to result in a high risk to the rights and freedoms of individuals.
- (11) In this section –
- “2003 Regulations” means the Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426);
 - “personal data breach” has the same meaning as in the 2003 Regulations (see regulation 2(1) of those Regulations);
 - “relevant restriction” means any of the following –
 - (a) section 57(1) (duty not to make unauthorised disclosures) (including as applied by section 156);
 - (b) section 132(1) (duty not to make unauthorised disclosures) (including as applied by section 197);
 - (c) section 174(1) (offence of making unauthorised disclosure), (read with regulation 29(1)(a)(i) of the 2003 Regulations).”
- (2) In regulation 5A of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426) (personal data breach), omit paragraph (9) (notification to the Investigatory Powers Commissioner).
- (3) In consequence of subsection (2), in Schedule 10 to the Investigatory Powers Act 2016 (minor and consequential provision), omit paragraph 14 (personal data breach) and the italic heading before it.”

Member's explanatory statement

This new Clause provides for the Investigatory Powers Commissioner to notify affected individuals of serious personal data breaches relating to warrants issued under the Investigatory Powers Act 2016.

Clause 11

LORD SHARPE OF EPSOM

Clause 11, page 30, line 19, leave out “a public authority” and insert “wholly or mainly funded out of public funds”

Member's explanatory statement

This amendment ensures that the amendment made by clause 11(2) (which excludes certain cases from the offence in section 11(1) of the Investigatory Powers Act 2016) refers to a telecommunications operator which is not wholly or mainly funded out of public funds instead of a telecommunications operator which is not a public authority (within the meaning of the 2016 Act).

Clause 12

LORD SHARPE OF EPSOM

Clause 12, page 31, line 20, leave out from “to” to end of line 25 and insert “relevant subscriber data.

- (5B) In subsection (5A) “relevant subscriber data” means entity data, other than data comprised in a recording of speech, which—
- (a) constitutes any or all of the content of a communication made for the purpose of initiating or maintaining an entity’s access to a telecommunications service, and
 - (b) is about an entity to which that telecommunications service is (or is to be) provided.””

Member's explanatory statement

This amendment revises the amendment made by clause 12(3) to ensure that it does not bring unwanted cases within the definition of “communications data” in section 261 of the Investigatory Powers Act 2016.

Clause 17

LORD SHARPE OF EPSOM

Clause 17, page 35, line 18, at end insert—

- “(b) in subsection (5) —
- (i) after “must” insert “, before the end of the review period,”;
 - (ii) after “(1)” insert “(and accordingly decide what action to take under subsection (10))”;
- (c) after subsection (5) insert —
- “(5A) In subsection (5) “the review period” means—
- (a) such period as may be provided for by regulations made by the Secretary of State, or

- (b) if that period is extended by the Secretary of State in accordance with the regulations (see subsection (14)), such extended period.”;
- (d) after subsection (9) insert –
- “(9A) The Commissioner may give a direction to the operator concerned or the Secretary of State specifying the period within which the operator or the Secretary of State (as the case may be) may provide evidence, or make representations, in accordance with subsection (9)(a).
- (9B) If the Commissioner gives such a direction to the operator or the Secretary of State, the Board and the Commissioner are not required to take into account any evidence provided, or representations made, by the operator or the Secretary of State (as the case may be) after the end of that period.”;
- (e) in subsection (10) –
- (i) for “may” substitute “must”;
- (ii) after “Commissioner” insert “but before the end of the relevant period, decide whether to”;
- (f) after subsection (11) insert –
- “(11A) In subsection (10) “the relevant period” means –
- (a) such period as may be provided for by regulations made by the Secretary of State, or
- (b) if that period is extended by the Secretary of State in accordance with the regulations (see subsection (15)), such extended period.”;
- (g) after subsection (13) insert –
- “(14) Regulations under subsection (5A)(a) may include provision enabling any period provided for by the regulations to be extended by the Secretary of State where the extension is agreed by the Secretary of State, the telecommunications operator concerned and a Judicial Commissioner.
- (15) Regulations under subsection (11A)(a) may include provision enabling any period provided for by the regulations to be extended by the Secretary of State –
- (a) where the Secretary of State considers that there are exceptional circumstances that justify the extension, or
- (b) in any other circumstances specified in the regulations.
- (16) Where regulations under subsection (11A)(a) include provision mentioned in subsection (15), the regulations must also include provision requiring the Secretary of State to notify a Judicial Commissioner and the telecommunications operator concerned of the duration of any extended period.””

Member's explanatory statement

This amendment enables the Secretary of State to make regulations, and a Judicial Commissioner to give a direction, setting time limits in connection with reviews carried out under section 90 of the Investigatory Powers Act 2016 (review of retention notices).

LORD SHARPE OF EPSOM

Clause 17, page 35, line 41, at end insert –

- “(b) in subsection (4) –
 - (i) after “must” insert “, before the end of the review period,”;
 - (ii) after “(1)” insert “(and accordingly decide what action to take under subsection (9))”;
- (c) after subsection (4) insert –
 - “(4A) In subsection (4) “the review period” means –
 - (a) such period as may be provided for by regulations made by the Secretary of State, or
 - (b) if that period is extended by the Secretary of State in accordance with the regulations (see subsection (13)), such extended period.”;
 - (d) after subsection (8) insert –
 - “(8A) The Commissioner may give a direction to the person concerned or the Secretary of State specifying the period within which the person or the Secretary of State (as the case may be) may provide evidence, or make representations, in accordance with subsection (8)(a).
 - (8B) If the Commissioner gives such a direction to the person or the Secretary of State, the Board and the Commissioner are not required to take into account any evidence provided, or representations made, by the person or the Secretary of State (as the case may be) after the end of that period.”;
- (e) in subsection (9) –
 - (i) for “may” substitute “must”;
 - (ii) after “Commissioner” insert “but before the end of the relevant period, decide whether to”;
- (f) after subsection (10) insert –
 - “(10A) In subsection (9) “the relevant period” means –
 - (a) such period as may be provided for by regulations made by the Secretary of State, or
 - (b) if that period is extended by the Secretary of State in accordance with the regulations (see subsection (14)), such extended period.”;

(g) after subsection (12) insert –

- “(13) Regulations under subsection (4A)(a) may include provision enabling any period provided for by the regulations to be extended by the Secretary of State where the extension is agreed by the Secretary of State, the person concerned and a Judicial Commissioner.
- (14) Regulations under subsection (10A)(a) may include provision enabling any period provided for by the regulations to be extended by the Secretary of State –
- (a) where the Secretary of State considers that there are exceptional circumstances that justify the extension, or
 - (b) in any other circumstances specified in the regulations.
- (15) Where regulations under subsection (10A)(a) include provision mentioned in subsection (14), the regulations must also include provision requiring the Secretary of State to notify a Judicial Commissioner and the person concerned of the duration of any extended period.”

Member's explanatory statement

This amendment enables the Secretary of State to make regulations, and a Judicial Commissioner to give a direction, setting time limits in connection with reviews carried out under section 257 of the Investigatory Powers Act 2016 (review of national security and technical capability notices).

LORD SHARPE OF EPSOM

Clause 17, page 35, line 41, at end insert –

- “(6) In section 267(3) (regulations: affirmative procedure) –
- (a) in paragraph (e), after “90(1)” insert “, (5A)(a) or (11A)(a)”;
 - (b) in paragraph (j), after “257(1)” insert “, (4A)(a) or (10A)(a)”.

Member's explanatory statement

This amendment applies the affirmative procedure to regulations made under section 90(5A)(a) or (11A)(a) or 257(4A)(a) or (10A)(a) of the Investigatory Powers Act 2016 (time limits in connection with reviews of notices).

Clause 19

LORD SHARPE OF EPSOM

Clause 19, page 37, line 25, at end insert –

- “(4A) In section 229 (main oversight functions), in subsection (8)(e)(i), for “or varying” substitute “, varying or renewal”.

Member's explanatory statement

This amendment is consequential on clause 19(4) and (6) (renewal of notices). It inserts into section 229 of the Investigatory Powers Act 2016 (main oversight functions) a reference to the Investigatory Powers Commissioner deciding whether to approve the renewal of certain notices.

After Clause 25

LORD SHARPE OF EPSOM

After Clause 25 insert the following new Clause –

“Bulk equipment interference: safeguards for confidential journalistic material etc

- (1) The Investigatory Powers Act 2016 is amended as follows.
- (2) For section 195 (additional safeguard for confidential journalistic material) substitute –

“195 Additional safeguards for confidential journalistic material etc

- (1) Subsection (2) applies if, in a case where material obtained under a bulk equipment interference warrant (“BEI material”) is to be selected for examination –
 - (a) the purpose, or one of the purposes, of using those criteria to be used for the selection of the BEI material for examination (“the relevant criteria”) is to identify any confidential journalistic material or to identify or confirm a source of journalistic information, or
 - (b) the use of the relevant criteria is highly likely to identify confidential journalistic material or identify or confirm a source of journalistic information.
- (2) The BEI material may be selected for examination using the relevant criteria only if the use of those criteria has been approved by –
 - (a) the Investigatory Powers Commissioner, or
 - (b) in a case where a senior official acting on behalf of the Secretary of State considers there is an urgent need to do so, the senior official.
- (3) The Investigatory Powers Commissioner or a senior official may give an approval under subsection (2) only if the Commissioner or official considers that –
 - (a) the public interest in obtaining the information that would be obtained by the selection of the BEI material for examination outweighs the public interest in the confidentiality of confidential journalistic material or sources of journalistic information, and
 - (b) there are no less intrusive means by which the information may reasonably be obtained.
- (4) Subsection (5) applies where –

- (a) material obtained under a bulk equipment interference warrant (“the relevant material”) is retained, following its examination, for purposes other than the destruction of the relevant material, and
 - (b) the person to whom the warrant is addressed considers that the relevant material contains confidential journalistic material or material that would identify or confirm a source of journalistic information.
 - (5) The person to whom the warrant is addressed must inform the Investigatory Powers Commissioner of the retention of the relevant material as soon as reasonably practicable.
 - (6) Unless the Investigatory Powers Commissioner considers that subsection (8) applies to the relevant material, the Commissioner must direct that the relevant material is destroyed.
 - (7) If the Investigatory Powers Commissioner considers that subsection (8) applies to the relevant material, the Commissioner may impose such conditions as to the use or retention of the relevant material as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of confidential journalistic material or sources of journalistic information.
 - (8) This subsection applies to material containing –
 - (a) confidential journalistic material, or
 - (b) material identifying or confirming a source of journalistic information,if the public interest in retaining the material outweighs the public interest in the confidentiality of confidential journalistic material or sources of journalistic information.
 - (9) The Investigatory Powers Commissioner –
 - (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsections (6) and (7), and
 - (b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).
 - (10) “Affected party” has the meaning given by section 194(14).
- (For provision about the grounds for retaining material obtained under a warrant, see section 191.)

195A Section 195: procedure where use of criteria approved by senior official

- (1) This section applies where material obtained under a bulk equipment interference warrant is selected for examination using criteria the use of which was approved by a senior official under section 195(2).
- (2) The Secretary of State must, as soon as reasonably practicable, inform the Investigatory Powers Commissioner that the approval has been given.

- (3) The Investigatory Powers Commissioner must, as soon as reasonably practicable –
 - (a) consider whether the relevant condition is met as regards the use of the criteria for the selection of the material for examination, and
 - (b) notify the Secretary of State of their decision.
- (4) For this purpose, “the relevant condition” is that –
 - (a) the public interest in obtaining the information that would be obtained by the selection of the material for examination outweighs the public interest in the confidentiality of confidential journalistic material or sources of journalistic information, and
 - (b) there are no less intrusive means by which the information may reasonably be obtained.
- (5) On the giving of a notification of a decision that the relevant condition is not met, the senior official’s approval ceases to have effect.
- (6) Nothing in subsection (5) affects the lawfulness of –
 - (a) anything done by virtue of the approval before it ceases to have effect, or
 - (b) if anything is in the process of being done by virtue of the approval when it ceases to have effect –
 - (i) anything done before that thing could be stopped, or
 - (ii) anything done which it is not reasonably practicable to stop.”
- (3) In section 229 (main oversight functions), in subsection (8), before paragraph (g) insert –
 - “(fb) deciding whether –
 - (i) to approve the use of criteria under section 195(2)(a),
 - (ii) subsection 195(8) applies for the purposes of subsection 195(6) and (7),
 - (iii) the relevant condition is met for the purposes of subsection 195A(3)(a).”

Member's explanatory statement

This amendment replaces section 195 of the Investigatory Powers Act 2016 with new sections 195 and 195A which include additional protections in relation to confidential journalistic material and sources of journalistic material.

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