

# Investigatory Powers (Amendment) Bill [HL]

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MARSHALLED  
LIST OF AMENDMENTS  
TO BE MOVED  
ON REPORT

*The amendments have been marshalled in accordance with the Instruction of 18th January 2024, as follows –*

Clauses 1 to 13  
Schedule

Clauses 14 to 31  
Title

*[Amendments marked ★ are new or have been altered]*

**Amendment  
No.**

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**Clause 2**

LORD FOX

**1** Clause 2, page 6, line 7, after “must” insert “, as soon as possible and in any event within 24 hours,”

***Member's explanatory statement***

*This amendment requires a person granting an authorisation in urgent cases to notify a Judicial Commissioner within, at most, 24 hours that they have done so.*

LORD WEST OF SPITHEAD

**2★** Clause 2, page 11, line 5, after “Secretary of State” insert “, the Intelligence and Security Committee of Parliament, and the Investigatory Powers Commissioner,”

***Member's explanatory statement***

*This amendment would ensure that the annual report provided to the Secretary of State, regarding bulk personal datasets authorised under Part 7A to be retained, or retained and examined, by the intelligence service during the period to which the report relates, is also provided to the Intelligence and Security Committee of Parliament and the Investigatory Powers Commissioner, to provide enhanced oversight of the new regime.*

## LORD WEST OF SPITHEAD

- 3★ Clause 2, page 11, line 14, after “the Secretary of State” insert “, the Intelligence and Security Committee of Parliament, and the Investigatory Powers Commissioner”

*Member's explanatory statement*

*This is consequential to my other amendment to Clause 2, page 11, line 5.*

## LORD SHARPE OF EPSOM

- 4 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.*

## LORD COAKER

- 5★ Clause 2, page 11, line 16, at end insert –

**“226DAA Report: Prime Minister’s engagement with the Intelligence and Security Committee**

- (1) The Secretary of State must publish a report about the Prime Minister’s engagement with the Intelligence and Security Committee in relation to the investigatory powers regime.
- (2) The report under subsection (1) must be published within six months of the passage of this Act, and annually thereafter.”

*Member's explanatory statement*

*This amendment would ensure the Secretary of State publishes a report on the engagement, including any meeting held, between the Prime Minister and the Intelligence and Security Committee in relation to the investigatory powers regime.*

## LORD WEST OF SPITHEAD

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

**“226DAA Notification of bulk personal datasets added to category authorisations**

The head of an intelligence service, or a person acting on their behalf, must notify the Investigatory Powers Commissioner as soon as is reasonably practical after a decision has been taken to include a bulk personal dataset within a category authorisation in effect under section 226BA.”

***Member's explanatory statement***

*This amendment would require that the Investigatory Powers Commissioner is notified when a new bulk personal dataset is added by an intelligence agency to an existing category authorisation.*

**Clause 5**

LORD FOX

7 Clause 5, page 16, line 34, after “must” insert “, as soon as possible and in any event within 24 hours,”

***Member's explanatory statement***

*This amendment requires the Secretary of State granting an authorisation in urgent cases to notify a Judicial Commissioner within, at most, 24 hours that they have done so.*

**Clause 6**

LORD SHARPE OF EPSOM

8 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

9 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

10 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

11 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

12 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

- 13 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

- 14 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 13**

LORD WEST OF SPITHEAD

- 15★** Leave out Clause 13

***Member's explanatory statement***

*This amendment would remove the broad restoration of disclosure powers for a number of regulatory bodies. The Bill seeks to extend powers to a wide range of public bodies and reduces restrictions on these powers from the original legislation.*

**The Schedule**

LORD WEST OF SPITHEAD

- 16★** Leave out the Schedule

***Member's explanatory statement***

*This amendment would remove the broad restoration of disclosure powers for a number of regulatory bodies. The Bill seeks to extend powers to a wide range of public bodies and reduces restrictions on these powers from the original legislation.*

**Clause 14**

LORD WEST OF SPITHEAD

- 17★** Clause 14, page 32, line 35, leave out paragraph (b)

***Member's explanatory statement***

*This is consequential to my other amendment to Clause 14, page 33, leave out lines 17 to 38.*

LORD WEST OF SPITHEAD

- 18★** Clause 14, page 33, line 10, leave out “or (c)”

**Member's explanatory statement**

*This amendment would limit the purposes for which the new, broader target discovery power (Condition D1) could be used to obtain Internet Connection Records. The amendment would mean that the power could only be used “in the interests of national security” or “for the purpose of preventing or detecting serious crime”, and would prevent the Intelligence Agencies from using the new power for the purpose of “the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security”.*

LORD WEST OF SPITHEAD

- 19★ Clause 14, page 33, leave out lines 17 to 38

**Member's explanatory statement**

*This amendment removes the ability of the Agencies to internally authorise the obtaining of Internet Connection Records to identify which persons or apparatuses are using one or more specified internet services. The Agencies would therefore be required in all cases to seek the approval of the Investigatory Powers Commissioner to grant the authorisation for an application under new Condition D1.*

LORD WEST OF SPITHEAD

- 20★ Clause 14, page 33, line 39, leave out “subsections (5A)(b) and (5B)(b)” and insert “subsection (5A)(b)”

**Member's explanatory statement**

*This amendment is consequential to my other amendment to Clause 14, page 33, leave out lines 17 to 38.*

**Clause 16**

LORD FOX

- 21 Clause 16, page 34, line 29, leave out from “insert” to end of line 30 and insert ““(where the requirement or restriction applies to a person within the United Kingdom)”.”

**Member's explanatory statement**

*This amendment specifies that enforcement of retention notices applies only to UK recipients of such notices.*

**Clause 17**

LORD FOX

- 22 Clause 17, page 35, line 14, after second “change” insert “for persons in the United Kingdom”



**Member's explanatory statement**

*This amendment, together with others in the name of Lord Fox, seeks to limit extraterritoriality by ensuring that operators can make changes to their services and systems for users in other jurisdictions.*

LORD FOX

- 23 Clause 17, page 35, line 15, leave out “have a negative effect on” and insert “substantially limit”

**Member's explanatory statement**

*This amendment, together with others in the name of Lord Fox, increases the threshold for changes, ensuring that operators can make a wider range of changes while a retention notice is under review.*

LORD FOX

- 24 Clause 17, page 35, line 16, after “may” insert “reasonably”

**Member's explanatory statement**

*This amendment, together with others in the name of Lord Fox, increases the threshold for changes, ensuring that operators can make a wider range of changes while a retention notice is under review.*

LORD FOX

- 25 Clause 17, page 35, line 18, at end insert –

“(4C) Nothing in subsection (4A) is to be read as preventing an operator from making changes to telecommunications services or telecommunication systems for persons outside the United Kingdom.”

**Member's explanatory statement**

*This amendment, together with others in the name of Lord Fox, seeks to limit extraterritoriality by ensuring that operators can make changes to their services and systems for users in other jurisdictions.*

LORD SHARPE OF EPSOM

- 26 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 FOX

- 27 Clause 17, page 35, line 33, after the first “person” insert “for a period of 180 days or until the review process is completed (whichever is the shorter)”

**Member's explanatory statement**

*This amendment imposes a limit on the length of time that the Secretary of State may take to review a national security notice or a technical capability notice.*

LORD FOX

- 28 Clause 17, page 35, line 37, after second “change” insert “for persons in the United Kingdom”

**Member's explanatory statement**

*This amendment, together with others in the name of Lord Fox, seeks to limit extraterritoriality by ensuring that operators can make changes to their services and systems for users in other jurisdictions.*

LORD FOX

- 29 Clause 17, page 35, line 38, leave out “have a negative effect on” and insert “substantially limit”

**Member's explanatory statement**

*This amendment, together with others in the name of Lord Fox, increases the threshold for changes, ensuring that operators can make a wider range of changes while a retention notice is under review.*

LORD FOX

- 30 Clause 17, page 35, line 39, after “may” insert “reasonably”

**Member's explanatory statement**

*This amendment, together with others in the name of Lord Fox, increases the threshold for changes, ensuring that operators can make a wider range of changes while a retention notice is under review.*

## LORD FOX

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

“(3C) Nothing in subsection (3A) is to be read as preventing an operator from making changes to telecommunications services or telecommunication systems for persons outside the United Kingdom.”

***Member's explanatory statement***

*This amendment, together with others in the name of Lord Fox, seeks to limit extraterritoriality by ensuring that operators can make changes to their services and systems for users in other jurisdictions.*

## LORD SHARPE OF EPSOM

32 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

**33** 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

34 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.*

**Clause 20**

LORD FOX

35 Clause 20, page 39, line 23, at end insert –

“(3A) Before making regulations under this section the Secretary of State must consult the following persons –

- (a) the Technical Advisory Board;
- (b) persons appearing to the Secretary of State to be likely to be subject to any obligations specified in the regulations;
- (c) persons representing persons falling within paragraph (b); and
- (d) persons with statutory functions in relation to persons falling under that paragraph.

(3B) When making regulations under this section the Secretary of State must have regard to –

- (a) the public interest in the integrity and security of telecommunications systems and postal services;
- (b) the impact on users arising from any delay to implementing relevant changes;
- (c) the desirability of encouraging innovation by relevant operators; and
- (d) any other aspects of the public interest in the protection of privacy.”

***Member's explanatory statement***

*This amendment, together with others in the name of Lord Fox, place a duty on the Secretary of State to consult with relevant persons before making regulations that will specify what a “relevant change” will include.*

LORD FOX

36 Clause 20, page 39, line 32, leave out “any”

**Member's explanatory statement**

*This amendment, together with others in the name of Lord Fox, aims to provide more proportionality in the process for giving notices that require operators to notify the Secretary of State of any proposed changes. In particular, they include consideration of the impact on users and innovation.*

LORD FOX

37 Clause 20, page 39, line 33, after “may” insert “reasonably”

**Member's explanatory statement**

*This amendment, together with others in the name of Lord Fox, aims to provide more proportionality in the process for giving notices that require operators to notify the Secretary of State of any proposed changes. In particular, they include consideration of the impact on users and innovation.*

LORD FOX

38 Clause 20, page 40, line 2, at end insert –

- “(ba) any adverse impact on users arising from any delay to implementing relevant changes;
- (bb) the desirability of encouraging innovation by relevant operators;”

**Member's explanatory statement**

*This amendment, together with others in the name of Lord Fox, aims to provide more proportionality in the process for giving notices that require operators to notify the Secretary of State of any proposed changes. In particular, they include consideration of the impact on users and innovation.*

**Clause 21**

LORD WEST OF SPITHEAD

39★ Clause 21, page 42, line 8, leave out “is unavailable to decide whether to give approval under subsection (2)” and insert “is unable to decide whether to give approval under subsection (2), due to incapacity or inability to access secure communications”

**Member's explanatory statement**

*This amendment would specify that the only exceptional circumstances in which the Prime Minister would be permitted the use of a designate is when he or she is unable to make a decision due to incapacity (ill-health) or lack of access to secure communications.*

LORD ANDERSON OF IPSWICH  
LORD HOPE OF CRAIGHEAD  
LORD FOX

40 Clause 21, page 42, line 8, leave out “unavailable” and insert “unable”

***Member's explanatory statement***

*This amendment (based on paragraph 8.20 of the Anderson Report on the Investigatory Powers Act 2016) would permit the use of a designate whenever the Prime Minister is unable to make a decision, whether through incapacity, lack of access to secure communications or conflict of interest.*

LORD WEST OF SPITHEAD

**41★** Clause 21, page 42, leave out lines 13 and 14 and insert –

“(2C) The Prime Minister may designate up to five individuals under this section.

(2CA) The Prime Minister may designate an individual under this section only if the individual holds the office of Secretary of State and is required in their routine duties to issue warrants under section 19 or section 102.”

***Member's explanatory statement***

*This amendment would permit the Prime Minister to nominate up to five Secretaries of State to act for the Prime Minister if he or she is unable to decide whether to give approval under subsection (2A). The amendment also specifies that those nominated Secretaries of State must already have responsibility for the issuing of warrants under sections 19 or 102 of the Investigatory Powers Act 2016 (which governs warranting for interception and examination of communications, and equipment interference).*

LORD WEST OF SPITHEAD

**42★** Clause 21, page 42, line 14, at end insert –

“(2CA) The Prime Minister must be notified of the individual’s decision, as soon as it is reasonably practical to do so.”

***Member's explanatory statement***

*This amendment would specify that the Prime Minister must be notified of the decision of the designated Secretary of State, as soon as is reasonably practicable once they are no longer incapacitated or without access to secure communications.*

**Clause 22**

LORD WEST OF SPITHEAD

**43★** Clause 22, page 42, line 38, leave out from “Minister” to end of line 39 and insert “is unable to decide whether to give approval under subsection (3) or (as the case may be) (6), due to incapacity or inability to access secure communications.”

***Member's explanatory statement***

*This amendment would specify that the only exceptional circumstances in which the Prime Minister would be permitted the use of a designate is when he or she is unable to make a decision due to incapacity (ill-health) or lack of access to secure communications.*



## LORD WEST OF SPITHEAD

44★ Clause 22, page 43, leave out lines 4 and 5 and insert—

“(7C) The Prime Minister may designate up to five individuals under this section.

(7CA) The Prime Minister may designate an individual under this section only if the individual holds the office of Secretary of State and is required in their routine duties to issue warrants under section 19 or section 102.”

*Member's explanatory statement*

*This amendment would permit the Prime Minister to nominate up to five Secretaries of State to act for the Prime Minister if he or she is unable to decide whether to give approval under subsections (3) or (6). The amendment also specifies that those nominated Secretaries of State must already have responsibility for the issuing of warrants under sections 19 or 102 of the Investigatory Powers Act 2016 (which governs warranting for interception and examination of communications, and equipment interference).*

## LORD WEST OF SPITHEAD

45★ Clause 22, page 43, line 5, at end insert—

“(7CA) The Prime Minister must be notified of the individual’s decision, as soon as it is reasonably practical to do so.”

*Member's explanatory statement*

*This amendment would specify that the Prime Minister must be notified of the decision of the designated Secretary of State, as soon as is reasonably practicable once they are no longer incapacitated or without access to secure communications.*

**After Clause 25**

## LORD SHARPE OF EPSOM

46 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.*

**After Clause 27**

LORD COAKER

**47★** After Clause 27, insert the following new Clause –

**“Impact of Act on EU data adequacy decisions**

Within six months of the day on which this Act is passed, a Minister of the Crown must publish a report assessing the potential impact of this Act on EU data adequacy decisions relating to the United Kingdom.”

***Member's explanatory statement***

*This amendment would require the Secretary of State to publish a report on potential impact of the provisions within this Bill on the requirements necessary to maintain a data adequacy decision by the EU.*



# Investigatory Powers (Amendment) Bill [HL]

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MARSHALLED  
LIST OF AMENDMENTS  
TO BE MOVED  
ON REPORT

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*19 January 2024*

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