

INVESTIGATORY POWERS (AMENDMENT) BILL 2023

Memorandum from the Home Office to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Investigatory Powers (Amendment) Bill 2023 (“the Bill”). It is supplemental to the memorandum shared with the Committee on the 08 November 2023, and the supplemental memorandum shared on 19 January 2024.
2. This memorandum identifies the provisions in the Government amendments to the Bill tabled on 19 March for Commons Report Stage that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. AMENDMENTS TO, OR MEASURES RELATING TO, EXISTING DELEGATED POWERS

Clause 14: XX

Power conferred on: Secretary of State

Power exercised by: statutory instrument

Parliamentary procedure: negative

Context and Purpose

3. Clause 14 of the Bill makes changes to the Investigatory Powers Act 2016 (IPA) to reinstate communications data within the types of data that may be acquired by public authorities under their general information gathering powers.
4. This will only extend to those public authorities with regulatory or supervisory powers, such as those responsible for: the regulation of financial institutions and markets; or ensuring compliance with money laundering regulations in the finance sector.
5. The amendments to Clause 14 tabled on 19 March 2024 will limit the reinstatement of those regulatory or supervisory powers to bodies listed on the existing Schedule 4 to the IPA (those who can already acquire communications data under Part 3 of the Act).
6. These amendments would additionally create a new schedule which would list those bodies who do not have Part 3 IPA powers, but whose regulatory and supervisory powers need to be restored.
7. This would necessarily be accompanied by a new delegated power to amend this schedule as new bodies are identified. It would not create new powers, but instead make clear that these bodies can use their existing powers – as conferred on them by Parliament through other legislation – to compel telecommunications operators to provide data which may now be captured by the definition of communications data for the purposes of the IPA.
8. The intention of these amendments is to give Parliament greater oversight and understanding of which bodies will be able to benefit from the changes made to section 12 by clause 14.

Justification for the Power

9. Over time, it may emerge that additional bodies need to be added to or removed from the new schedule. For example, if an existing body takes on new regulatory or supervisory responsibilities which require its existing powers to be used in ways which would necessitate the acquisition of communications data.
10. Taking this power will allow them to be added as they are identified via

statutory instrument, rather than waiting to do so through primary legislation which can be a long process. Since the information gathering powers are necessary for these bodies to fulfil their regulatory and supervisory functions, any delay could hinder a body from operating effectively. It is also important to note that in the majority of cases the powers will be pre-existing statutory powers agreed by Parliament, so it would be proportionate to have a delegated power available to ensure those bodies can exercise their functions.

Justification for the Procedure

11. The negative procedure is most appropriate here, as it allows for additions to be made to the Schedule swiftly to ensure that existing statutory powers are not unduly inhibited from being exercised.
12. As the process would be focused on ensuring that pre-existing statutory powers can be effectively exercised, an affirmative process would not be proportionate since the appropriate parliamentary scrutiny has already taken place in respect of them being granted through the relevant Act or Regulations.

Home Office
March 2024