

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eleventh Delegated Legislation Committee

DRAFT INVESTIGATORY POWERS
(COMMUNICATIONS DATA) (RELEVANT PUBLIC
AUTHORITIES AND DESIGNATED SENIOR
OFFICERS) REGULATIONS 2020

DRAFT FUNCTIONS OF THE INVESTIGATORY
POWERS COMMISSIONER (OVERSIGHT OF THE
DATA ACCESS AGREEMENT BETWEEN THE
UNITED KINGDOM AND THE UNITED STATES OF
AMERICA AND OF FUNCTIONS EXERCISABLE
UNDER THE CRIME (OVERSEAS PRODUCTION
ORDERS) ACT 2019) REGULATIONS 2020

Thursday 10 September 2020

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The Committee consisted of the following Members:

Chair: SIR CHRISTOPHER CHOPE

Abrahams, Debbie (*Oldham East and Saddleworth*)
(Lab)

† Ahmad Khan, Imran (*Wakefield*) (Con)

† Brokenshire, James (*Minister for Security*)

Dowd, Peter (*Bootle*) (Lab)

Eagle, Ms Angela (*Wallasey*) (Lab)

† Elmore, Chris (*Ogmore*) (Lab)

† Everitt, Ben (*Milton Keynes North*) (Con)

† Gideon, Jo (*Stoke-on-Trent Central*) (Con)

Grady, Patrick (*Glasgow North*) (SNP)

† Henry, Darren (*Broxtowe*) (Con)

† Levy, Ian (*Blyth Valley*) (Con)

† McGinn, Conor (*St Helens North*) (Lab)

Owatemi, Taiwo (*Coventry North West*) (Lab)

† Pursglove, Tom (*Corby*) (Con)

† Sambrook, Gary (*Birmingham, Northfield*) (Con)

Williams, Craig (*Montgomeryshire*) (Con)

† Wood, Mike (*Dudley South*) (Con)

Kevin Maddison, Nicholas Taylor, *Committee Clerks*

† **attended the Committee**

The following also attended, pursuant to Standing Order No. 118(2):

Crabb, Stephen (*Preseli Pembrokeshire*) (Con)

Eleventh Delegated Legislation Committee

Thursday 10 September 2020

[SIR CHRISTOPHER CHOPE *in the Chair*]

Draft Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) Regulations 2020

11.30 am

The Minister for Security (James Brokenshire): I beg to move,

That the Committee has considered the draft Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) Regulations 2020.

The Chair: With this it will be convenient to consider the draft Functions of the Investigatory Powers Commissioner (Oversight of the Data Access Agreement between the United Kingdom and the United States of America and of functions exercisable under the Crime (Overseas Production Orders) Act 2019) Regulations 2020.

James Brokenshire: It is a pleasure to serve under your chairmanship, Sir Christopher, and to be given the opportunity to debate the regulations today. Both sets of regulations are made under the Investigatory Powers Act 2016. That legislation brought together powers available to our public authorities to obtain communications and data about communications. Such powers are vital to their efforts to tackle crime and protect our citizens. The legislation also creates extensive and world-leading safeguards, including a powerful new Investigatory Powers Commissioner who provides independent oversight and authorisation of the use of such powers. As the operational requirements of our public authorities continue to evolve, it is vital that the use of investigatory powers can adapt in response, within the strict parameters that Parliament agreed during the passage of the Act. The regulations we are debating today collectively represent this adaption in action.

The first set of regulations is the draft Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) Regulations 2020. They amend schedule 4 of the Investigatory Powers Act to add five public authorities to the list of bodies that can legally obtain communications data. The regulations also make minor amendments to bring certain role titles and the names of organisations into line with current terminology. They do not lower the rank or seniority of any authorising officers.

For clarification, communications data includes the who, the when, the where and the how of a communication, but, most importantly, not the content: what was said or what was written. It includes the method and way in which one person or thing communicates with another person or thing. Access to the data is a crucial investigative tool for a variety of law enforcement bodies and has a

range of operational uses. The five public authorities that we propose adding to schedule 4 by the regulations have each demonstrated through extensive consultation with the Home Office and the Investigatory Powers Commissioner's Office that access to the data is now necessary, and is proportionate to their operational requirements and statutory duties. The relevant authorities are the Civil Nuclear Constabulary, which requires the powers to investigate threats to the most sensitive nuclear sites in the UK; the Environment Agency, to tackle serious and organised waste crime; the Insolvency Service, to investigate and prosecute criminal wrongdoing connected to personal and company insolvencies; the UK National Authority for Counter Eavesdropping, to protect the Government from technical espionage attacks by hostile state actors; and the Pensions Regulator, to investigate serious crimes associated with workplace pension schemes, including fraud and money laundering.

We have not published the full business cases of each authority owing to potential operational sensitivities, but I will of course answer as many questions as hon. Members wish to ask. The authorities will be subject to the stringent safeguards that already govern the use of communications data, which include the independent authorisation of most requests by the Office for Communications Data Authorisations, a serious crime threshold requiring certain types of communications data, and inspections conducted by the Investigatory Powers Commissioner's Office.

The second set of regulations we are debating today is the draft Functions of the Investigatory Powers Commissioner (Oversight of the Data Access Agreement between the United Kingdom and the United States of America and of functions exercisable under the Crime (Overseas Production Orders) Act 2019) Regulations 2020. This agreement will allow UK public authorities with the appropriate legal authorisation to obtain data directly from US-based telecommunications operators, again for the purposes of preventing, detecting, investigating and prosecuting serious crime.

The agreement was signed by the Home Secretary in October 2019, and was laid before Parliament that month under the Constitutional Reform and Governance Act 2010 process. It was also subject to a six-month review period in the US Congress, which completed this July. Following the completion of those processes, we are now in the final phases of entering the agreement into force, which we expect to happen later this year via an exchange of diplomatic notes.

It is a requirement of the agreement to ensure that there is an appropriate level of audit and oversight of its use. Given that the agreement has been designated under the 2016 Act, and that almost all the authorities using the agreement fall under the Investigatory Powers Commissioner's remit for aspects of their work already, it was decided that the commissioner and his team should oversee the UK's use of the agreement.

The commissioner will, in accordance with the agreement, keep under review the compliance of UK public authorities with its terms. That will include the ex post facto review by a judicial commissioner of communications data authorisations and certain modifications to targeted interception warrants that would not otherwise be specifically subject to a commissioner's review. That ex post facto review must be conducted as soon as is reasonably practicable and no later than three months from when the authorisation is given effect.

In addition to the Investigatory Powers Act, the agreement has been designated under the Crime (Overseas Production Orders) Act 2019. The draft regulations therefore amend the 2016 Act to provide a statutory basis for the commissioner to perform his role in relation to the agreement and to oversee the use of overseas production orders under the agreement. The commissioner is supportive of that, and his team has recruited additional resource in preparation for the agreement's coming into force.

Although, as I have described, the regulations require the commissioner to perform his review of public authorities' compliance in accordance with the agreements, the commissioner, as an independent office holder, will continue to discharge the functions of inspection, investigation and audit as he sees fit. The Government remain absolutely committed to the independence of the Investigatory Powers Commissioner.

In summary, the draft regulations relate to provisions already set out in the 2016 Act and will allow the use of the investigatory powers by our public authorities to changes in their operational requirements as they respond to an evolving threat picture, while ensuring that the appropriate safeguards can continue to apply.

11.38 am

Conor McGinn (St Helens North) (Lab): It is a pleasure to serve under your chairmanship, Sir Christopher, and to see the Minister who, along with the hon. Member for Corby, is certainly earning his keep, given the amount of Home Office business that we have had this week. As always, I thank the Minister for his courtesy and that of his officials in providing us with information prior to this sitting so that the Opposition, as I have said before, can work in partnership with Government, UK law enforcement, key operational partners and—this is pertinent to this morning's business—public bodies to improve our country's resilience to threats, prevent criminality and ultimately uphold international security.

Although largely technical in scope, the draft regulations have implications for that vital task, and we thus approach them in a collaborative and constructive spirit. Having carefully considered them, we will not oppose them; however, I am sure that the Minister will understand that we wish to seek some clarity, assurances, safeguards and oversights of the changes, particularly when they relate to such sensitive matters and powers.

The first instrument to be considered amends part 1 of schedule 4 to the Investigatory Powers Act 2016. As the Minister said, it adds five new public authorities to the list of bodies with power to obtain communications data from UK telecoms operators. As hon. Members know, the 2016 Act contained important and welcome safeguards to ensure that widening access to investigatory powers and sensitive data would be used only where necessary, proportionate, authorised and accountable. That is backed up by statutory codes of practice.

That was done for good reason. It is important to make sure that any broadening of access to data powers is always for essential reasons, is well scrutinised by parliamentary and other sources of independent oversight and is applied only to public authorities that show a clear and demonstrable need for them. As such, we acknowledge the reasonable operational case for adding the five public authorities listed, as shown in the instrument's

purpose and effect memorandum, but can the Minister clarify why that is taking place now and why it was not introduced sooner? Has a particular development made widening such access imperative?

Furthermore, we welcome that all the additions and amendments were subject to a 12-week consultation period with the relevant public authorities and the Investigatory Powers Commissioner. It is right that the consultation considered factors such as the gravity of offences dealt with by the public authority, their statutory remit and the frequency of requests for data the body is estimated to make.

The commissioner's independent oversight was also welcome. Can the Minister clarify the exact role and oversight function of the commissioner during the consultation process and perhaps commit to publishing information on that point? For example, were they fully in accord with widening access to those bodies, or did they have any specific reservations or contentions? Were those acted on and adequately addressed before the public authorities were listed?

Given the widened access, can the Minister also outline whether the full list of public authorities with such powers will be regularly reviewed? As with all investigatory powers, it is important that the operational case for bodies having powers to access information is kept under close and strict review. Those are important issues.

On the second instrument to be considered, article 12(1) of the 2019 agreement between the United Kingdom and United States of America on access to electronic data for the purpose of countering serious crime requires a review to be fulfilled to ensure each side's general compliance. As with the previous instrument, we welcome the independent oversight and role of the Investigatory Powers Commissioner. They often undertake tasks in relation to similar investigatory powers, therefore the move seems sensible and practical. In the same vein, the instrument provides the Investigatory Powers Commissioner's Office with a welcome sense of clarity and purpose as it undertakes the new role. It is welcome that, following consultation with the IPCO and its operational partners, it is content that it is adequately equipped to carry out the new function.

I want to press the Minister on a couple of issues relating to the wider UK-US agreement, notably whether the Government will continue, as I believe they have stated elsewhere, including in the agreement, to keep seeking key assurances from the United States that the death penalty will not be sought or implemented in cases where data and information are acquired from UK telecommunication sources. Similarly, it is worth restating that similar safeguards around data and the protection of journalists and their vital work in that context are critical. The Opposition vehemently oppose the death penalty and we respect the protection of journalistic sources and material. I hope that the Minister can reassure us and renew that commitment to promoting safeguards on those important matters.

In conclusion, we will not oppose the two instruments. Although they are technical in carrying out specific functions and scope, they have important ramifications for preventing criminality and upholding our national security, which are key priorities for hon. Members on both sides of the House. In the aforementioned constructive spirit, we look forward to working with the Government,

[Conor McGinn]

law enforcement and relevant public agencies to get the approach right. We will continue, where appropriate, to seek reassurances that the full and proper safeguards are being upheld in spirit and practice for all matters relating to these investigatory powers.

11.44 am

James Brokenshire: I thank the hon. Member for St Helens North for his support for the measures. As I have already discussed, he will be aware of the position on the Investigatory Powers Commissioner. It requires the commissioner and the judicial commissioners to conduct audits, investigations and inspections.

To reassure the hon. Gentleman and other members of the Committee, that absolutely remains in place, notwithstanding the addition of the different bodies that we are proposing in the regulations. Clearly, the Investigatory Powers Act 2016 rightly put in place that oversight, governance and reassurance to recognise the power of those particular capabilities and the need to ensure that they are used properly and appropriately. That concept of proportionality and necessity is therefore imbued in the 2016 Act. We keep the bodies under review, hence the addition of the order and the businesses cases that each of them have provided for its utility and how it will add to their means of providing public safety and combating crime.

I underline to the hon. Gentleman that this is effectively part of a regular review. I am sure that he will note that the fire service, for example, has been removed from the list. As well as seeing what additional bodies should be considered, equally, when the power no longer seems to be justified or appropriate for a listed body, we will remove that body through the negative resolution process when there is reason to do so. Through our consultation and engagement with the commissioner, we assessed the need for those additional bodies to be added to the list. No doubt, the commissioner's office will look at the

cases that are made and report on the use of the powers, therefore ensuring in the normal way that their utilisation is appropriate.

On the second order, the hon. Gentleman rightly asked for assurances about the death penalty. He will recognise that the Government take that incredibly seriously. I point him towards the separate signed letter that was provided in support of the agreement, and which specifically addresses his point. The assurances in that separate and publicly available recorded document underline our upholding of those very clear rules under mutual legal assistance, but they also apply in this context.

In the light of those responses and words of assurance, I trust that the Committee will be minded to support the regulations.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) Regulations 2020.

**DRAFT FUNCTIONS OF THE
INVESTIGATORY POWERS
COMMISSIONER (OVERSIGHT OF THE
DATA ACCESS AGREEMENT BETWEEN
THE UNITED KINGDOM AND THE UNITED
STATES OF AMERICA AND OF FUNCTIONS
EXERCISABLE UNDER THE CRIME
(OVERSEAS PRODUCTION ORDERS) ACT
2019) REGULATIONS 2020**

Resolved,

That the Committee has considered the draft Functions of the Investigatory Powers Commissioner (Oversight of the Data Access Agreement between the United Kingdom and the United States of America and of functions exercisable under the Crime (Overseas Production Orders) Act 2019) Regulations 2020.—(*James Brokenshire.*)

11.49 am

Committee rose.

