

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Tenth Delegated Legislation Committee

DRAFT INVESTIGATORY POWERS (COMMUNICATIONS DATA) (RELEVANT PUBLIC AUTHORITIES AND DESIGNATED SENIOR OFFICERS) REGULATIONS 2022

Tuesday 13 December 2022

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The Committee consisted of the following Members:

Chair: HANNAH BARDELL

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| † Bell, Aaron (<i>Newcastle-under-Lyme</i>) (Con) | † Hollern, Kate (<i>Blackburn</i>) (Lab) |
| † Benn, Hilary (<i>Leeds Central</i>) (Lab) | † Hudson, Dr Neil (<i>Penrith and The Border</i>) (Con) |
| † Double, Steve (<i>Lord Commissioner of His Majesty's Treasury</i>) | † Lynch, Holly (<i>Halifax</i>) (Lab) |
| † Duddridge, Sir James (<i>Rochford and Southend East</i>) (Con) | † McDonald, Stewart Malcolm (<i>Glasgow South</i>) (SNP) |
| † Elmore, Chris (<i>Ogmore</i>) (Lab) | † Owatemi, Taiwo (<i>Coventry North West</i>) (Lab) |
| † Firth, Anna (<i>Southend West</i>) (Con) | Smith, Cat (<i>Lancaster and Fleetwood</i>) (Lab) |
| † French, Mr Louie (<i>Old Bexley and Sidcup</i>) (Con) | † Tugendhat, Tom (<i>Minister for Security</i>) |
| † Green, Damian (<i>Ashford</i>) (Con) | |
| Heald, Sir Oliver (<i>North East Hertfordshire</i>) (Con) | Nicholas Taylor, <i>Committee Clerk</i> |
| † Henderson, Gordon (<i>Sittingbourne and Sheppey</i>) (Con) | |
| | † attended the Committee |

Tenth Delegated Legislation Committee

Tuesday 13 December 2022

[HANNAH BARDELL *in the Chair*]

Draft Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) Regulations 2022

2.30 pm

The Minister for Security (Tom Tugendhat): I beg to move,

That the Committee has considered the draft Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) Regulations 2022.

It is, as always, a pleasure to serve under your chairmanship, Ms Bardell. Protecting our national security and public safety are key priorities for this Government, and I hope every Government. One of the main ways in which we achieve that is by ensuring that our intelligence agencies, law enforcement bodies and public authorities are equipped with the powers to carry out their statutory duties.

The Investigatory Powers Act 2016, which I will refer to as the IPA, provides extensive and robust privacy safeguards for investigatory powers. We rightly have in place world-leading standards on transparency, privacy, redress and oversight to accompany the exercise of those important powers. The regulations will make two necessary amendments to schedule 4 of the IPA.

The first will implement the findings of the High Court in the case of *Liberty v. the Secretary of State for the Home Department and the Secretary of State for Foreign and Commonwealth Affairs*. The judgment in the case was handed down in June this year, and its coming into effect was stayed until 1 January 2023 to allow for the appropriate changes to be made to the legislation and for the appropriate processes to be put in place. This amendment will remove the power for the UK intelligence community to internally authorise the acquisition of communications data for purposes that relate solely to serious crime other than in urgent circumstances. From this point, I will refer to communications data as CD and the UK intelligence community as UKIC.

In line with the Court's judgment, it will be a requirement for UKIC to seek authorisations for acquisitions of this type from the Office for Communications Data Authorisations. The OCDA is currently responsible for considering nearly all CD applications made by public authorities in the UK, on behalf of the Investigatory Powers Commissioner. OCDA operates during normal office hours only and our intelligence services need to be able to access CD at all hours in urgent situations. It is imperative that UKIC retains the ability to self-authorise the acquisition of CD for urgent applications. The regulations give it the power to self-authorise in urgent situations where those authorisations relate solely to serious crime. It is important to note that law enforcement

bodies such as police forces are already able to self-authorise urgent CD requests in the same way. The statutory instrument simply puts UKIC in the same position as the police in relation to serious crime applications. If the change were not made, there would be an increase in the risk of serious crime impacting our communities because of the delays that would cause to UKIC's operations.

Hilary Benn (Leeds Central) (Lab): The explanatory memorandum states that the High Court held that the ability to self-authorise was

"incompatible with retained European Union law."

Will the Minister identify which part of retained European law was the cause of the problem and confirm that the regulations solve the problem in its entirety? In other words, do there need to be any other changes to retained EU law in order to deal with the difficulties identified? If he wants to write to me afterwards, I would be happy to receive a letter.

Tom Tugendhat: The right hon. Gentleman will be getting a letter.

Hilary Benn: I am very grateful—happy Christmas!

Tom Tugendhat: It will not be a Christmas card!

Additionally, the regulations will amend the schedule 4 entry for the United Kingdom National Authority for Counter-Eavesdropping, which I will refer to as UK NACE. UK NACE is a critical organisation that protects our national security, and it is essential that it is equipped with the appropriate powers to carry out that activity effectively. That is why UK NACE was added to schedule 4 in 2020.

The regulations do not change the powers afforded to UK NACE but will make its designation more consistent with the approach taken for other similar bodies in schedule 4 to the IPA. I can also provide reassurance that as per the obligations set out in section 72 of the IPA, appropriate consultation has taken place with UK NACE, the Foreign, Commonwealth and Development Office and the Investigatory Powers Commissioner's Office in respect of these amendments. In summary, the regulations will enable UKIC and UK NACE to continue carrying out their statutory duties effectively in order to protect the public, while ensuring that the appropriate oversight is in place to ensure compliance with the Investigatory Powers Act and to protect the privacy of UK citizens. I commend the draft regulations to the Committee.

2.35 pm

Holly Lynch (Halifax) (Lab): It is a pleasure to serve under your chairmanship, Ms Bardell. I thank the Minister for his opening remarks. He has outlined what the statutory instrument does, and we are very aware that these changes come as a result of the High Court ruling in June this year in the case of *Liberty v. the Secretary of State for the Home Department and the Secretary of State for Foreign and Commonwealth Affairs*. The SI will now allow for the internal authorisation of the acquisition of communications data solely for serious crime purposes in urgent situations, as prescribed by section 61A of the Investigatory Powers Act 2016.

I understand that parts of the wider case were dismissed, however the High Court ruled in favour of Liberty on a key point, deeming it to be unlawful for the security services to obtain individuals' communications data from telecom providers without having prior independent authorisation in certain circumstances. We welcome the weight of the ruling of the High Court and, therefore, the Government's corrective action with this statutory instrument. In an ever-changing world, it is crucial we get the investigatory powers available to our security services right in order to deal properly with the modern threats we face, including from serious and organised crime. However, that must always be prudently balanced against civil liberties.

I see that there was a period of consultation on these changes with the agencies most affected, and while I am curious to know what their response was, I know from my work in the area that a great deal will not be able to be shared with the Committee or more widely. I welcome the fact that the consultation took place. I also welcome the letter the Minister promised to my right hon. Friend the Member for Leeds Central, and I would be grateful for a copy.

Tom Tugendhat: I would be delighted.

Holly Lynch: I will not detain the Committee any longer, and we will not divide on the regulations.

2.37 pm

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): I can be brief as well. The Investigatory Powers Act 2016 had a lot of good stuff in it, but it was not without controversy. Part of that was Opposition assertions that there was not enough by way of prior independent scrutiny before intelligence agencies and others were able to help themselves to communications data and other types of information. The draft statutory instrument does some good work in fixing a little bit of that, and it contains the exceptions on urgent situations, as outlined by the Minister, which is also appropriate.

The regulations came about because of the Liberty court case. Liberty has said to me that it is content and pleased with the SI. In short, if Liberty is happy, I am happy, and we welcome that the Minister and the Government have acted to implement the judgment in good time.

2.38 pm

Tom Tugendhat: I am delighted that the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East is happy now that Liberty is happy. That leaves us all happy. On that note, I will rest.

Question put and agreed to.

2.38 pm

Committee rose.

