

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT POLICE, CRIME, SENTENCING AND
COURTS ACT 2022 (EXTRACTION OF
INFORMATION FROM ELECTRONIC DEVICES)
(AMENDMENT OF SCHEDULE 3)
REGULATIONS 2023

Tuesday 9 May 2023

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The Committee consisted of the following Members:

Chair: MARTIN VICKERS

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| † Bailey, Shaun (<i>West Bromwich West</i>) (Con) | † Jones, Sarah (<i>Croydon Central</i>) (Lab) |
| Blomfield, Paul (<i>Sheffield Central</i>) (Lab) | † Mak, Alan (<i>Havant</i>) (Con) |
| Bonnar, Steven (<i>Coatbridge, Chryston and Bellshill</i>) (SNP) | † Mann, Scott (<i>Lord Commissioner of His Majesty's Treasury</i>) |
| † Bruce, Fiona (<i>Congleton</i>) (Con) | † Moore, Damien (<i>Southport</i>) (Con) |
| Carden, Dan (<i>Liverpool, Walton</i>) (Lab) | † Pawsey, Mark (<i>Rugby</i>) (Con) |
| † Duffield, Rosie (<i>Canterbury</i>) (Lab) | † Philp, Chris (<i>Minister for Crime, Policing and Fire</i>) |
| † Fuller, Richard (<i>North East Bedfordshire</i>) (Con) | † Whittome, Nadia (<i>Nottingham East</i>) (Lab) |
| † Green, Chris (<i>Bolton West</i>) (Con) | George James, <i>Committee Clerk</i> |
| † Greenwood, Lilian (<i>Nottingham South</i>) (Lab) | † attended the Committee |
| † Hughes, Eddie (<i>Walsall North</i>) (Con) | |

Second Delegated Legislation Committee

Tuesday 9 May 2023

[MARTIN VICKERS *in the Chair*]

Draft, Police, Crime, Sentencing and Courts Act 2022 (Extraction of information from electronic devices) (Amendment of Schedule 3) Regulations 2023

6 pm

The Minister for Crime, Policing and Fire (Chris Philp): I beg to move,

That the Committee has considered the Draft, Police, Crime, Sentencing and Courts Act 2022 (Extraction of information from electronic devices) (Amendment of Schedule 3) Regulations 2023.

It is a pleasure, as always, to serve under your chairmanship, Mr Vickers. In recent years, the extraction of information from electronic devices has become a pivotal part of preventing, detecting, investigating and prosecuting crime. With around 90% of all crime having a digital element, digital forensics has become crucial in criminal investigations.

For that reason, the Home Office led on the introduction of the extraction of information powers in the Police, Crime, Sentencing and Courts Act 2022, which came into force in November last year. Those powers established a statutory basis for extracting information from electronic devices, ensuring that information is extracted only for specific purposes, when necessary and proportionate, and where relevant to a reasonable line of inquiry.

In relation to victims and witnesses, there were various specific safeguards to ensure that information is extracted only once an individual has volunteered their device and agreed to the extraction of information from it. Additional measures were included to ensure that victims and witnesses are notified in writing of what information is being sought and how it will be used. They are also provided with various rights to refuse permission, if appropriate.

Those powers can be exercised by the authorised persons named in schedule 3 to the Act. The schedule is divided into three parts, which set out the different purposes for which authorised persons may exercise the powers. It is crucial that only authorised persons can extract information for the purposes set out in the schedule.

Those listed under part 1 of the schedule can exercise these powers for the purposes set out in section 37 of the Act, which concerns the investigation of crime, and for the purposes set out in section 41, which concerns an investigation or inquest into a person's death. Those listed under part 2 may extract information only for the purposes of section 37. Part 3 lists the authorised persons who can extract the information only for the specific purpose under section 37(1), which is preventing, detecting, investigating or prosecuting a crime.

The draft regulations set out the requirement to move the Royal Navy Police, the Royal Military Police and the Royal Air Force Police from part 2 of schedule 3 to part 1 of schedule 3. That means that those forces can extract information not just for the purposes of section 37, but also for the purposes of section 41—supporting an investigation or inquest into a person's death. I am sure the Committee would agree that, where a person has died in unexplained circumstances, it is crucial that the various military police forces are able to investigate the death as thoroughly as their civilian equivalents. That is what these simple regulations aim to provide for.

Richard Fuller (North East Bedfordshire) (Con): The Minister has given a very clear exposition, but it does prompt a question as to why those police forces were not given the powers in the original legislation passed in 2022 and why there is a need for the change now.

Chris Philp: In answer to my hon. Friend, I am afraid that I do not recall the details of the debates at the time. I am not convinced that I was a Minister at the time this went through the Bill Committee, although I may have been—in fact, I may have been a Ministry of Justice Minister, and a Home Office Minister may have taken this through the Committee.

Sarah Jones (Croydon Central) (Lab): You were at Justice.

Chris Philp: The shadow Minister seems to agree with my recollection. I hesitate to delve into the history of this, but I think it is clear that this simple move is sensible, and I hope it commands the agreement of the whole Committee.

6.5 pm

Sarah Jones: It is a pleasure to serve under your chairmanship, Mr Vickers. As the Minister stated, this relatively straightforward statutory instrument adds a new group of authorised persons—members of the Royal Navy Police, Royal Military Police and Royal Air Force Police—to part 1 of schedule 3 to the Police, Crime, Sentencing and Courts Act. The Opposition will not vote against it today.

The regulations give those authorised persons the power to extract information from a device, when the user has died, for the purpose of an investigation or inquest into the person's death, as well as for the purpose of investigating crime and safeguarding others. When we debated the Police, Crime, Sentencing and Courts Bill—the Minister is correct that he was the Justice Minister and therefore debated some aspects of the Bill and not others—we had extensive debates about the changes it introduced, and Labour tabled several amendments that would have placed new checks on the police powers to extract data from electronic devices. We agreed with the direction of travel of the Bill, but we were concerned about vulnerable people and about those who do not want to hand over phones and the like because of the intrusive nature of such searches.

We spent months urging the Government to protect victims, particularly victims of rape and sexual abuse, from painful and often unnecessary intrusion into their lives by the mining of their phone data. In the end, the Government accepted some vital changes that mean that the police officer or other authorised person must

“reasonably believe” that information stored on the device is relevant to a “reasonable line of enquiry”. It took the Government time to accept those amendments, but they did so in the end.

In this case, of course, the situation is slightly different as the owner of the device is deceased, but that person must still be treated with respect and we have to ensure that we are not too intrusive in how we mine people’s devices. I would like an assurance from the Minister that information will be used sensitively, because people deserve that even after they have passed away.

Serious problems remain about the lack of resources available to the police when it comes to carrying out data extraction from electronic devices—in this case, when a user has died. We know that there is a real problem with a lack of digital resources in forces. Just last year, a report by His Majesty’s inspectorate of constabulary and fire and rescue services found a raft of errors in this area. The inspectorate found

“delays...so egregious that victims were being failed”,

and a system of digital forensic examination that was “slow” and “ineffective”, and where

“the needs of victims were rarely taken into consideration”.

It noted that

“there are no set standards or oversight services”,

with victims let down by a postcode lottery.

At a time when most, if not quite all, crimes have some form of digital footprint—the Minister gave us the stats—the delays, oversights and lack of professionalism exposed by the inspectorate are unacceptable.

Richard Fuller: If I can drag the hon. Lady back to the regulations we are discussing today, they are about expanding the number of people who can extract information from devices. She has listed a litany of concerns, but can she answer the question that I put to the Minister, as I think she was involved in the scrutiny of the Bill? Why did Labour agree to this separation and why has she changed her mind today?

Sarah Jones: I thank the hon. Gentleman for his intervention. I suspect that it was an oversight in the legislative drafting that is being rectified, and I would rather it was rectified than not. The emphasis in our discussions on the Bill was on living people, particularly rape victims, who were loth to give up their electronic devices but who needed to. We needed to ensure that the legislative framework was right for them so that they could give up their devices in a way that they were prepared to and that protected them. We did not have a debate about inquests or about cases where people had passed away, but clearly that is increasingly a consideration as digital devices are used more and more.

Specifically on the Royal Military Police, the inspectorate recommended in a separate investigation that a formal digital investigation strategy should be introduced, because:

“RMP investigators don’t give enough consideration to how digital investigation would help the specific cases they are working on”.

That statement does not give me much confidence. I would like some reassurance from the Minister that he has faith that extending these powers to these forces will have tangible positive impacts on inquests and on the investigation of crime. Does he have evidence to suggest

that the situation in the military forces, covering the Army, Navy and RAF, is any better than in the 43 territorial forces?

On recommendation 5 of the HMICFRS report, what progress has been made on reviewing digital forensics budgets and funding? I note that a formal consultation has not taken place, but the views of three military forces were captured on why this amendment is necessary; I do not know whether the Minister can share any of those findings with us. I would be grateful if he indicated when the code of practice for the extraction of information from electronic devices is likely to be updated, and if he explained how the forces that this statutory instrument relates to—the RAF Police, Royal Military Police and Royal Navy Police—will be trained to exercise their new powers, but we will not be objecting to this legislation today.

6.11 pm

Chris Philp: There was quite a lot there that probably went a little beyond the strict scope of the regulations, but I will try to answer some of the hon. Lady’s questions. The Government accept the point that digital evidence needs to be extracted from witnesses and victims sensitively, only where necessary and in a carefully managed way. There is evidence that it has been a barrier to rape and serious sexual violence prosecutions and investigations, in particular. We have tried to move things forward since the debates that took place more than a year ago. For example, with the commitment to get witnesses’ and victims’ phones back within 24 hours—particularly in the case of rape victims—we have tried to remove that barrier.

The Government are working on the digital evidence programme, which is designed to make sure that police forces have the relevant capabilities. We have created a RASSO—rape and serious sexual offences—technology partnership board to make sure that the technology and extraction capability and approaches are as good as they possibly can be.

In relation to investment, which the hon. Lady asked about, we want to make sure that digital forensics have the investment and the capabilities in place. We have invested in the creation of a forensics capability network, sponsored by the Home Office, and in the digital forensics programme, which is located in the Police Digital Service, to support police forces through automation, to better safeguard victims’ privacy and to make sure that new technology is explored and taken up as quickly as it can be. As the Royal Navy Police, Royal Military Police and Royal Air Force Police take up these new powers, they will do so in the same way as they already do with the section 37 powers, so the various requirements around sensitivity and necessity apply. Since we are clearly talking in this case about people who are deceased, it is a slightly different set of considerations. None the less, proper sensitivity needs to be displayed.

On the question about the code, we intend to update it in due course. That will not be done immediately, but work is under way to make sure that the code is updated so it is as effective as it possibly can be. I should also add that in relation to rape and serious sexual assault, which is one of the main areas of concern here, there is a rape review taskforce chaired by the Justice Secretary and attended by the Home Office, the Crown Prosecution Service and the Attorney General’s Office. That rape review steering group meets regularly to try to increase

[Chris Philp]

the number of rape prosecutions, and a key element of it is considering questions around digital forensics and things such as the 24-hour commitment on getting a rape victim's phone back to them. I assure the Committee and the shadow Minister that these issues are very much at the front of our minds on an ongoing basis, particularly in the RASSO context.

I hope that addresses most, if not all, the questions that have been asked, and I repeat my previous commendation of these regulations to the Committee.

Question put and agreed to.

6.15 pm

Committee rose.

