Home Office

Lord Sharpe of Epsom OBE
Parliamentary Under Secretary of State

2 Marsham Street
London SW1P 4DF
www.gov.uk/home-office

Lord Fox
House of Lords
London
SW1A 0PW

30 January 2024

Dear Christopher,

INVESTIGATORY POWERS (AMENDMENT) BILL: LORDS REPORT FOLLOW UP

During the debate at the Lords Report stage of the Investigatory Powers (Amendment) Bill on 23 January 2024, you asked me about territoriality regarding notices and what the Government would be seeking to do extraterritorially.

Firstly, Data Retention Notices (DRNs) and Technical Capability Notices (TCNs) already have extraterritorial effect under the Investigatory Powers Act 2016 (IPA 2016). Both notices can be given to persons outside the UK in relation to conduct outside the UK, and those to whom notices are given have a duty to comply (under sections 95(1), 97(1), 253(8) and 255(9) of the IPA 2016). The amendments proposed by the Bill do not change that. DRNs and TCNs are both also enforceable against UK recipients; however, only TCNs are currently enforceable against persons outside the UK (sections 95(5), 97(2) and 255(10) of the IPA 2016). Clause 16 (now Clause 17, following Report stage amendments) brings DRNs in line with TCNs, allowing enforcement against persons outside the UK, if required.

I emphasised at Lords Report that the control of telecommunication systems used to provide telecommunications services in the UK does not stop at borders, and it is highly likely that any such arbitrary geographical limitations would in fact be unworkable in practice. This is due to the way in which multinational companies structure themselves. There are instances where the telecommunication system used to provide the telecommunications service to persons in the UK, is not itself controlled from the UK. In this scenario, if there is a requirement to safeguard lawful access to data provided by the telecommunications service to the UK, a notice may be given to the company that controls the telecommunication system from outside the UK.

Whilst I understand the amendments you tabled to Clause 17 (now Clause 18) sought to limit the extraterritoriality of changes by an operator during a review period, I would point you to Clause 18 (now Clause 19), which clarifies that operators who control or provide a telecommunication system, which is not wholly or partly in, or controlled from, the UK, but which is used to provide telecommunications services to persons in the UK, are still within the remit of

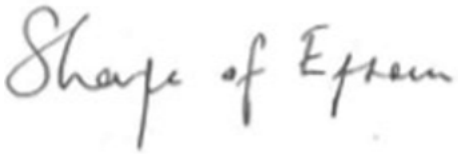
Home Office

the Investigatory Powers Act. This means that a UK nexus is still required in relation to notices, as the definition of a Telecommunications Operator is linked to the provision, or control of, telecommunications services and/or telecommunication systems connected to the UK.

To reiterate, during a review period, companies will be able to choose to roll out new technologies and services whilst the review is ongoing, including in other jurisdictions, so long as lawful access is built into them as required. Maintaining lawful access is critical to enable law enforcement and the intelligence community to continue protecting citizens during the review period.

With regards to what the Government would be seeking to do extraterritorially, the UK-US Data Access Agreement (DAA) entered into force in 2022, meaning that the UK is able to lawfully access the data held by US companies for the investigation, detection, prevention, and prosecution of serious crime, more quickly than ever before. Advancements such as the DAA must be protected from unilateral action by tech companies, which may result in restricting lawful access to data. To achieve this, the amendments to the IPA notices regime are necessary. The benefits of access to this data are clear, I would point you towards the recently laid Ministerial statement which outlines them further.

Yours,



Lord Sharpe of Epsom OBE
Parliamentary Undersecretary of State
Home Office