

# Investigatory Powers Bill

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## MOTION TO BE MOVED ON CONSIDERATION OF COMMONS REASONS

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*[The page and line references are to HL Bill 40, the bill as first printed for the Lords.]*

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### MOTION A

#### LORDS AMENDMENT 15

##### After Clause 8

15 Insert the following new Clause –

**“Interception without lawful authority: award of costs**

- (1) This section applies where –
  - (a) a claim is made under section 8 (civil liability for certain unlawful interceptions) against a person (“the defendant”),
  - (b) the defendant was a relevant publisher at the material time, and
  - (c) the claim is related to the publication of news-related material.
- (2) If the defendant was a member of an approved regulator at the time when the claim was commenced (or was unable to be a member at that time for reasons beyond the defendant’s control or it would have been unreasonable in the circumstances for the defendant to have been a member at that time), the court must not award costs against the defendant unless satisfied that –
  - (a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator, or
  - (b) it is just and equitable in all the circumstances of the case to award costs against the defendant.
- (3) If the defendant was not a member of an approved regulator at the time when the claim was commenced (but would have been able to be a member at that time and it would have been reasonable in the circumstances for the defendant to have been a member at that time), the court must award costs against the defendant unless satisfied that –

- (a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator (had the defendant been a member), or
  - (b) it is just and equitable in all the circumstances of the case to make a different award of costs or make no award of costs.
- (4) This section is not to be read as limiting any power to make rules of court.
- (5) This section does not apply until such time as a body is first recognised as an approved regulator.
- (6) Subsections (2) and (3) shall apply to any claim issued after this section comes into force.
- (7) For the purposes of this section “approved regulator” shall have the same meaning as in section 42 of the Crime and Courts Act 2013, and “relevant publisher” shall have the same meaning as in section 41 of that Act.”

#### COMMONS DISAGREEMENT AND REASON

*The Commons disagree to Lords Amendment No. 15 for the following Reason –*

- 15A** *Because it would not be appropriate to make such provision in relation to claims under clause 8 while consideration is being given to commencing section 40 of the Crime and Courts Act 2013.*

#### LORDS NON-INSISTENCE AND AMENDMENTS IN LIEU

*The Lords do not insist on their Amendment 15, to which the Commons have disagreed for their Reason 15A, and do propose Amendments 15B and 15C in lieu –*

- 15B** Insert the following new Clause –

##### **“Civil liability for certain other unlawful interceptions**

- (1) An interception of a communication is actionable at the suit or instance of –
  - (a) the sender of the communication, or
  - (b) the recipient, or intended recipient, of the communication, if conditions A to C are met.
- (2) Condition A is that the interception is carried out in the United Kingdom.
- (3) Condition B is that the communication is intercepted in the course of its transmission, by means of a public telecommunications system.
- (4) Condition C is that the interception is carried out without lawful authority.
- (5) For the meaning of “interception” and other key expressions used in this section, see sections 4 to 6.”

- 15C** Insert the following new Clause –

##### **“Interception without lawful authority: awards of costs**

- (1) This section applies where –

- (a) a claim is made under section (*Civil liability for certain other unlawful interceptions*) against a person (“the defendant”), or a claim is made for misuse of private information arising from an interception of a communication carried out before the date on which section (*Civil liability for certain other unlawful interceptions*) comes into force,
  - (b) the defendant was a relevant publisher at the material time, and
  - (c) the claim is related to the publication of news-related material.
- (2) If the defendant was a member of an approved regulator at the time when the claim was commenced (or was unable to be a member at that time for reasons beyond the defendant’s control or it would have been unreasonable in the circumstances for the defendant to have been a member at that time), the court must not award costs against the defendant unless satisfied that—
    - (a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator, or
    - (b) it is just and equitable in all the circumstances of the case to award costs against the defendant.
  - (3) If the defendant was not a member of an approved regulator at the time when the claim was commenced (but would have been able to be a member at that time and it would have been reasonable in the circumstances for the defendant to have been a member at that time), the court must award costs against the defendant unless satisfied that—
    - (a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator (had the defendant been a member), or
    - (b) it is just and equitable in all the circumstances of the case to make a different award of costs or make no award of costs.
  - (4) This section is not to be read as limiting any power to make rules of court.
  - (5) This section does not apply until such time as a body is first recognised as an approved regulator.
  - (6) Subsections (1) to (3) shall only apply to a claim issued after this section comes into force.
  - (7) For the purposes of this section “approved regulator”, “material time” and “news-related material” shall have the same meaning as in section 42 of the Crime and Courts Act 2013, and “relevant publisher” shall have the same meaning as in section 41 of that Act.”

#### COMMONS REASONS

*The Commons disagree to Lords Amendments No. 15B and No. 15C for the following Reasons:*

- 15D** *Because it is inappropriate to extend civil liability in respect of the interception of communications.*
- 15E** *Because it would not be appropriate to make such provision before the conclusion of the public consultation on press regulation.*

## LORDS AMENDMENT 338

**Clause 243**

**338** Page 191, line 38, leave out “(2) and” and insert “(1A) to”

## COMMONS DISAGREEMENT AND REASON

*The Commons disagree to Lords Amendment No. 338 for the following Reason –*

**338A** *Because it is consequential on Lords Amendment No. 339 to which the Commons disagree.*

## LORDS NON-INSISTENCE AND AMENDMENT IN LIEU

*The Lords do not insist on their Amendment 338, to which the Commons have disagreed for their Reason 338A, and do propose Amendment 338B in lieu –*

**338B** Page 191, line 38, after “(2)” insert “, (2A)”

## COMMONS REASON

*The Commons disagree to Lords Amendment No. 338B for the following Reason:*

**338C** *Because it is consequential on Lords Amendment No. 339B to which the Commons disagree.*

## LORDS AMENDMENT 339

**Clause 243**

**339** Page 191, line 40, at end insert –

“(1A) Sections 8 and (*Interception without lawful authority: award of costs*) come into force on the day following that on which this Act is passed.”

## COMMONS DISAGREEMENT AND REASON

*The Commons disagree to Lords Amendment No. 339 for the following Reason –*

**339A** *Because it is inappropriate for clauses 8 and 9 to come into force before the other provisions of the Bill relating to interception.*

## LORDS NON-INSISTENCE AND AMENDMENTS IN LIEU

*The Lords do not insist on their Amendment 339, to which the Commons have disagreed for their Reason 339A, and do propose Amendments 339B and 339C in lieu –*

**339B** Page 192, line 2, at end insert –

“(2A) Sections (*Civil liability for certain other unlawful interceptions*) and (*Interception without lawful authority: awards of costs*) come into force on the day following that on which this Act is passed.”

**339C** Page 192, line 4, at end insert –

“(3A) Sections (*Civil liability for certain other unlawful interceptions*) and (*Interception without lawful authority: awards of costs*) are repealed at the end of the period of six years starting with the day on which they come into force.”

#### COMMONS REASONS

*The Commons disagree to Lords Amendments No. 339B and No. 339C for the following Reasons:*

**339D** *Because it is inappropriate for the new clauses that would be inserted by Lords Amendments Nos. 15B and 15C to come into force before the other provisions of the Bill relating to interception.*

**339E** *Because it is consequential on Lords Amendments Nos. 15B and 15C to which the Commons disagree.*

**A** **Earl Howe to move, That this House do not insist on its Amendments 15B, 15C, 338B, 339B and 339C, to which the Commons have disagreed for their Reasons 15D, 15E, 338C, 339D and 339E.**

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