

Crime (Overseas Production Orders) Bill [HL]

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

[Amendments marked ★ are new or have been altered]

Amendment
No.

Clause 1

LORD ROSSER
LORD PADDICK
LORD KENNEDY OF SOUTHWARK
BARONESS HAMWEE

1 Page 1, line 19, at end insert –

“(4A) The Secretary of State may not make regulations designating an international agreement under section 52 of the Investigatory Powers Act 2016 (interception in accordance with overseas requests) where that agreement provides for requests to be made by the competent authorities of a country or territory, or of more than one country or territory, in which a person found guilty of a criminal offence may be sentenced to death for the offence under the general criminal law of the country or territory concerned.

(4B) Subsection 4A does not apply if the country or territory has, within the international agreement, given assurances that the death penalty will not be imposed in any case in which or in whose preparation electronic data obtained under this Act has been used.”

LORD PADDICK
BARONESS HAMWEE

As an amendment to Amendment 1

2★ Leave out from beginning to “given” in subsection (4B) and insert –

“(4A) The Secretary of State may not make regulations designating an international co-operation agreement providing for the use of –

(a) section 52 of the Investigatory Powers Act 2016 (interception in accordance with overseas requests), or

(b) any other enactment which provides for the collection of electronic data,

unless the condition in subsection 4B is met.

Clause 1 - continued

(4B) The condition is that the states party to or participating in the international co-operation agreement have”

As an amendment to Amendment 1

3★ In subsection (4B) after “preparation” insert “the intercepted communication or”

BARONESS WILLIAMS OF TRAFFORD

4 Page 1, line 21, leave out from “means” to end of line 3 on page 2 and insert “a relevant treaty which—

- (a) relates (in whole or in part) to the provision of mutual assistance in connection with the investigation or prosecution of offences, and
- (b) is designated by the Secretary of State by regulations.

(5A) For the purposes of subsection (5) a treaty is a relevant treaty if a Minister of the Crown has laid before Parliament a copy of the treaty under section 20(1)(a) of the Constitutional Reform and Governance Act 2010.

(“Treaty” and “Minister of the Crown” have the same meaning for the purposes of this section as they have for the purposes of Part 2 of that Act.)”

LORD PADDICK

BARONESS HAMWEE

As an amendment to Amendment 4

5★ In subsection (5A), after “2010” insert “and it has been ratified in accordance with that Act”

Clause 3

LORD ROSSER

LORD KENNEDY OF SOUTHWARK

6 Page 4, line 21, at end insert—

“(8A) “Journalistic data” means electronic data that—

- (a) was created or acquired for the purposes of journalism, and
- (b) is stored by or on behalf of a person who created or acquired it for the purposes of journalism.

(8B) Where a person (“R”) receives electronic data from another person (“S”) and S intends R to use the data for the purposes of journalism, R is to be taken to have acquired the data for those purposes.

(8C) Journalistic data is “confidential journalistic data” if—

- (a) it is acquired or created by a person or persons in their capacity as a journalist and is held in confidence, or
- (b) it is communications data of a person acting in their capacity as a journalist, or
- (c) it is held subject to a restriction on disclosure, or an obligation of secrecy, contained in any enactment (whenever passed or made).”

Clause 5

LORD PADDICK
BARONESS HAMWEE

- 7★ Page 6, line 7, leave out “the judge has reasonable grounds for believing”

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

- 8★ Page 6, line 9, at end insert – “or
(b) specify or describe in the order electronic data that is confidential journalistic data unless, in addition to the requirements in section 4(2) to (5), the requirements of section (*Confidential journalistic data*)(2) are fulfilled.”

Clause 11

LORD PADDICK
BARONESS HAMWEE

- 9★ Page 9, line 36, leave out “may” and insert “shall”

- 10★ Page 9, line 38, at end insert “, including with regard to the service of notice –
(a) on a controller or a data subject, or
(b) relating to journalistic data”

Clause 12

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

- 11 Leave out Clause 12 and insert the following new Clause –

“Confidential journalistic data

- (1) If there are grounds for believing that the electronic data specified or described in the application consists of or includes journalistic data that is confidential journalistic data, an application for an overseas production order must be made on notice to both –
 - (a) the person against whom the order is sought, and
 - (b) any person entitled to assert a right of confidence in the journalistic data in accordance with section 3(8C).
- (2) The requirements for an overseas production order relating to data which consists of or includes confidential journalistic data are, in addition to the requirements in section 4(2) to (5) –
 - (a) the persons referred to in subsection (1)(a) and (b) must have been given a reasonable opportunity to oppose the making of the overseas production order, and

Clause 12 - continued

- (b) the judge must be satisfied that the benefit likely to accrue to the proceedings or investigation mentioned in section 4(3)(a) or, as the case may be to a terrorist investigation, if all or part of the electronic data specified or described in the application for the order is obtained, is required by a public interest which overrides the public interest in the confidentiality of the journalistic data.”

After Clause 16

LORD PADDICK

12★ Insert the following new Clause—

“Priority

In the event of any conflict between this Act and the Data Protection Act 2018 (“the DPA”) or the General Data Protection Regulation 2018 (“the GDPR”), the provisions of the DPA or the GDPR shall prevail.”

Clause 17

BARONESS WILLIAMS OF TRAFFORD

13 Page 14, line 15, at end insert—

- “() References in this Act to proceedings relating to an overseas production order include proceedings for the making, variation or revocation of an order under section 8(4) or 13(3) or (4)(b).”

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18 October 2018
