

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

18th Report of Session 2023–24

**Investigatory Powers
(Amendment) Bill [HL]:
Government Amendments**

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session, most recently on 8 November 2023, and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
 - (b) section 7(2) or section 19 of the Localism Act 2011, or
 - (c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) section 85 of the Northern Ireland Act 1998,
 - (b) section 17 of the Local Government Act 1999,
 - (c) section 9 of the Local Government Act 2000,
 - (d) section 98 of the Local Government Act 2003, or
 - (e) section 102 of the Local Transport Act 2008.

Members

[Baroness Bakewell of Hardington Mandeville](#)

[Lord Carlile of Berriew](#)

[Baroness Chakrabarti](#)

[Lord Cunningham of Felling](#)

[Baroness Finlay of Llandaff](#)

[Baroness Humphreys](#)

[The Earl of Lindsay](#)

[Lord McLoughlin](#) (Chair)

[Lord Rooker](#)

Registered Interests

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.

Publications

The Committee's reports are published by Order of the House in hard copy and on the internet at www.parliament.uk/hldprcpublications.

Committee Staff

The staff of the Committee are Jen Mills (Clerk) and Kiran Kaur (Committee Operations Officer).

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk to the Delegated Powers and Regulatory Reform Committee, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103. The Committee's email address is hldelegatedpowers@parliament.uk.

Eighteenth Report

INVESTIGATORY POWERS (AMENDMENT) BILL [HL]: GOVERNMENT AMENDMENTS

1. We considered this Bill in our 2nd Report¹ of the current Session. It has now been through all its Lords and Commons stages and is at the stage of Lords consideration of Commons amendments. During Report stage in the House of Commons, a new delegated power was inserted into the Bill by means of a Government amendment.² The Home Office has provided a supplementary delegated powers memorandum³ relating to this new power.
2. The relevant amendments are to clause 14 of the Bill which itself amends section 12 of the Investigatory Powers Act 2016 (IPA). As it currently has effect, section 12 prevents public authorities from using general information gathering powers to require the disclosure by a telecommunications operator or a postal operator of communications data, without the consent of the operator or a court order etc. The purpose of clause 14 of the Bill is to amend section 12 to reinstate elements of public authorities' powers to require disclosure of such data. As amended by clause 14, public authorities will be allowed to use general information gathering powers to require the provision of such information where it involves the exercise of a regulatory or supervisory power.
3. As introduced, clause 14 of the Bill allowed the gathering of communications data by any public authority exercising a regulatory or supervisory power. This is being changed as a result of the Commons Amendments so that clause 14 will allow the information to be gathered only by specified public authorities. The specified authorities fall into two categories:
 - The authorities which are specified in the existing Schedule 4 to the IPA. These are authorities which are given powers to obtain communications data under the IPA.
 - The public authorities listed in a new Schedule 2A to the IPA, namely the Treasury and local authorities.
4. Commons Amendment 4 amends clause 14 to insert a new delegated power into section 12 of the IPA. The new power will allow the Secretary of State by regulations to amend new Schedule 2A by adding or removing a public authority to or from the list in that Schedule. Despite being a Henry VIII power, the new power is subject only to the negative resolution procedure. In our Guidance to Departments, while we recognise that the appropriate level of parliamentary scrutiny for Henry VIII powers will not always be the affirmative procedure, we make clear that there is a presumption that the affirmative procedure will apply. Accordingly, we expect a full and

1 *2nd Report* (Session 2023-24, HL Paper 11)

2 See Commons Amendments 3 to 6. The delegated power appears in Commons Amendment 4: <https://bills.parliament.uk/publications/54911/documents/4630>.

3 Home Office, Memorandum to the Delegated Powers and Regulatory Reform Committee: <https://bills.parliament.uk/publications/54904/documents/4626>

convincing explanation to be given where a procedure other than the affirmative is chosen.⁴

5. The Home Office gives two reasons for providing for the negative resolution procedure to apply:⁵
 - The need to be able to act swiftly.
 - The fact that the affirmative procedure would not be proportionate since “the process would be focused on ensuring that pre-existing statutory powers can be effectively exercised” in respect of which “the appropriate parliamentary scrutiny has already taken place”. What the Home Office appears to be referring to here is the fact that when originally enacted section 12 of the IPA removed information gathering powers which had previously been granted by Parliament; and therefore the effect of the delegated power would be to allow for the restoration of those powers. This is seen as not requiring a high level of parliamentary scrutiny because of the parliamentary scrutiny which took place when the relevant information gathering powers were originally enacted.
6. We do not consider these reasons are sufficient to justify the use of the negative resolution procedure:
 - In our report *Democracy Denied?*, we ask Departments to ensure that, where the negative procedure has been chosen on the ground that there is a need to act more quickly than allowed by the draft affirmative procedure, the memorandum explains why the made affirmative procedure cannot be applied instead.⁶ No such explanation has been given in this case, and we cannot see any reason why it would not be possible to provide for the made affirmative procedure to apply to urgent cases. Doing so would offer a mechanism for acting quickly without reducing the level of parliamentary scrutiny.
 - We also do not find the second reason convincing. As the law currently has effect, public authorities exercising general information gathering powers are prohibited from using those powers to require the provision of communications data by telecommunications operators and postal operators without consent. The effect of clause 14 is to change the existing position to allow certain specified public authorities exercising regulatory or supervisory functions to be able to require telecommunications operators and postal operators to provide such information. The new delegated power will enable the list of the authorities having these powers both to be added to and to be made smaller. In our view, this constitutes a significant Henry VIII power.
7. **Accordingly, we consider that the delegated power inserted by Commons Amendment 4 should be made subject to the affirmative procedure, with (if necessary) the made affirmative procedure applying in cases of urgency.**

4 See *Guidance to Departments on the role of the Committees* (December 2023), para 7.

5 See the supplementary delegated powers memorandum, paras 11 and 12.

6 See *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive* (12th Report, Session 2021-22, HL Paper 106), para 117.

APPENDIX 1: MEMBERS' INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 17 April 2024, Members declared no interests.

Attendance

The meeting was attended by Lord Rooker, Lord Carlile of Berriew, Baroness Chakrabarti, Baroness Finlay of Llandaff and The Earl of Lindsay.