

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

24th Report of Session 2023–24

Investigatory Powers (Amendment) Act 2024: Government Response

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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.

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Publications

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

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.

Twenty Fourth Report

INVESTIGATORY POWERS (AMENDMENT) ACT 2024: GOVERNMENT RESPONSE

1. We considered this Bill in our 2nd Report¹ and 18th Report² of the current Session. The Government have responded by way of a letter from Lord Sharpe of Epsom OBE, Parliamentary Under Secretary of State for the Home Office. The response is printed at Appendix 1.

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

2 *18th Report* (Session 2023–24, HL Paper 100)

APPENDIX 1: INVESTIGATORY POWERS (AMENDMENT) ACT 2024: GOVERNMENT RESPONSE

Letter from Lord Sharpe of Epsom OBE, Parliamentary Under Secretary of State for the Home Office, to the Rt Hon. the Lord McLoughlin CH, Chair of the Delegated Powers and Regulatory Reform Committee

I am writing to you as the Chair of the Delegated Powers and Regulatory Reform Committee following the Committee's Report on the Investigatory Powers (Amendment) Act, issued on 18 April 2024. Due to Parliamentary scheduling and the timing of the Committee's Report, the Government was not able to respond before the final Bill stage. However, I hope that the further explanation below will provide reassurance to the Committee.

The Committee's Report raised concerns with the delegated power contained in the Government's amendments to Clause [now Section] 14, tabled on 20 March 2024. Clause 14 of the Bill restores public authorities' general information powers to secure the disclosure of communications data from a telecommunications operator where requests are made in support of supervisory or regulatory functions.

The Government amendments made at Commons Report stage mean that only those public authorities that are specified in existing Schedule 4 to the Investigatory Powers Act 2016 and new Schedule 2A (which is inserted into the 2016 Act by the Government amendments) will be able to compel telecommunications operators to provide communications data in reliance on their general information gathering powers; and this will only be possible in respect of their regulatory or supervisory functions. It is important to note that public authorities will have various powers to gather information for the purposes of exercising their statutory functions. The amendments to Clause 14 simply re-inserted powers to acquire communications data (for regulatory or supervisory functions) into these pre-existing wider powers.

I note the Committee's concern that this power is a negative one. I agree fully that the use of delegated powers should not be used to circumvent Parliamentary oversight. However, I remain of the view that the Government amendments and use of the negative procedure are the most appropriate and proportionate way of providing that oversight in this case.

The new delegated power is tightly drafted to allow only the addition or removal of public authorities from new Schedule 2A. Its scope is therefore limited only to regulatory or supervisory purposes and will only be available where there is no intention for public authorities to use that data for the purposes of investigating or prosecuting a criminal offence. The delegated power will *not* be able to be used to give authorities new functions, amend the definition of Communications Data or anything else beyond this narrow scope, which is constrained on the face of the Act. The power allows for further bodies to be added to new Schedule 2A, if necessary, in the event that the data those bodies require under their existing regulatory or supervisory powers starts to come within scope of the definition of communications data in the future.

Furthermore, as set out in the Department's Second Supplementary Delegated Powers Memorandum of 19 March 2024, in all cases the powers will be pre-existing statutory powers agreed by Parliament. It is therefore proportionate to have a delegated power available to ensure those bodies can exercise such functions in order to carry out their statutory duties and responsibilities which have already been scrutinised and bestowed by Parliament. I would like to emphasise to the

Committee that the delegated power will not create new powers, but ensures that the exercise of statutory functions are not unintentionally impeded by the IPA. Data which was historically available will continue to be accessible. An example of this is ensuring that local authorities can acquire relevant data in respect of their civil enforcement functions such as trading standards and protecting tenants from unlawful tenancy fees.

I would also like to reiterate to the Committee that the specific intention and effect of these amendments were to give Parliament greater oversight of which bodies can use these powers in comparison to Clause 14 as included on Introduction, which extended to all public authorities without the need for an authority to be listed in a Schedule. The amendments were brought forward in response to concerns from members of both Houses that Parliament should have greater ability to scrutinise which bodies were in scope of the provisions.

I hope this offers the reassurances you need, and would be happy to provide any further information that would be helpful to the Committee.

16 May 2024

APPENDIX 2: 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.