



Law Society
of Scotland

Investigatory Powers (Amendment) Bill

Stage 2 Briefing

November 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We welcome the opportunity to consider and provide comment on the Investigatory Powers (Amendment) Bill ahead of the Bill's Second Reading in the House of Lords on 20 November 2023¹.

General remarks.

We welcome the introduction of the Bill which seeks to reform and update parts of the Investigatory Powers Act 2016 (IPA 2016) to ensure the United Kingdom's investigatory powers structure can adapt to evolving circumstances and threats, and that the IPA 2016 is effective for intelligence services, law enforcement and other public authorities.

The Bill has been introduced following the report on the operation of the IPA 2016 in February 2023² and an independent review by Lord Anderson of Ipswich KBE KC on the IPA 2016 in June 2023³.

The main parts of the Bill are:

- Changes to the Bulk Personal Dataset (BPD) regime
- The intelligence services' examination of bulk personal datasets held by third parties on a statutory basis.
- Changes to the Notices regimes
- Establishing a new condition for the use of Internet Connection Records by the intelligence services and the National Crime Agency (NCA)
- Creating new powers for the Investigatory Powers Commissioner
- increase resilience of the warrant authorisation processes for the intelligence services and the NCA.
- Amend the Communications Data regime for lawful data acquisition.

¹ [Investigatory Powers \(Amendment\) Bill \[HL\] \(parliament.uk\)](https://www.parliament.uk/bills/2023/investigatory-powers-amendment)

² [Report on the Operation of the Investigatory Powers Act 2016 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118888/report-on-the-operation-of-the-investigatory-powers-act-2016.pdf)

³ [Independent review of the IPA 2016 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118888/independent-review-of-the-ipa-2016.pdf)

Comments on the Bill

The Bill is divided into six parts and has one schedule. We do not seek to comment in detail on each of these.

Part 1

This Part sets out the provisions on bulk personal datasets.

Clauses 1 and 2 concern the provisions on low or no reasonable expectation of privacy.

Clause 1 concerns the requirement for authorisation and amends section 199 of IPA 2016 (bulk personal datasets: interpretation). Clause 2 inserts a new Part 7A in IPA 2016 on bulk personal datasets, and it applies to a bulk personal dataset if the nature of the bulk personal dataset is such that the individuals to whom the personal data relates could have no, or only a low, reasonable expectation of privacy in relation to the data (clause 2 (1)).

The provisions on the duration of bulk personal dataset warrants are set out in clause 3, which amends section 213 of the IPA 2016.

Clause 4 concerns Agency head functions. This amends sections 202, 206, 219, 220 and 225 of IPA 2016.

Clause 5 deals with third party bulk personal datasets and inserts a new Part 7B in IPA 2016 and clause 6 sets out the minor and consequential amendments, which amends sections 1 and 2 of IPA and section 65 of the Regulation of Investigatory Powers Act. We note the Bill does not include the Regulation of Investigatory Powers (Scotland) Act 2000, and we believe the proposed amendments should be consistent with the regulation of investigatory powers legislation in the UK.

Part 2

This Part sets out the provisions on oversight arrangements.

Clause 7 concerns the Deputy Investigatory Powers Commissioners, and it amends sections 227, 228, 263 and 265 of IPA 2016, and the delegation of functions provisions are contained in clause 8. Clause 8 amends section 227 of IPA 2016 (Investigatory Powers Commissioner and other Judicial Commissioners).

The provisions on Temporary judicial Commissioners are sets out in clause 9, and this amends section 228 of IPA 2016.

Clause 10 concerns the main functions of the Investigatory Powers Commissioner and this amends section 229 (main oversight functions) of IPA 2016, and section 230 of IPA 2016 (additional directed oversight functions) and section 231 (error reporting).

Part 3 and Schedule 1 – Parts 1 and 2.

This Part concerns Communications Data.

Clause 11 concerns the offence of unlawfully obtaining communications data, and this amends section 11 of the IPA 2016, and clause 12 provides a meaning of “communications data”: subscriber details. Clause 12 amends section 261 of IPA 2016.

The provisions on the powers to obtain communications data are set out in clause 13, this amends section 12 of IPA (abolition or restriction of certain powers to obtain communications data), and clause 14 concerns internet connection records, which amends section 62 of IPA 2016 (restrictions in relation to 30 internet connection records).

Part 4

This Part concerns Notices.

Clause 15 concerns the powers to require retention of certain data and it amends section 87 of IPA 2016, and clause 16 (Extra-territorial enforcement of retention notices etc), amends Part of IPA 2016 and sections 95 and 97.

The provisions on the review of notices by the Secretary of State are in clause 17 and this amends sections 90, 95, 255 and 257 of IPA 2016.

The meaning of “telecommunications operator” is set out in clause 18, and this amends sections 261 and 253 of IPA 2016, and renewal notices are detailed in clause 19, which amends section 87 of IPA 2016.

Clause 20 concerns the notification of proposed changes to telecommunications services, and this amends section 258 of IPA 2016 and inserts a new section 258A (Notification of proposed changes to telecommunications services), 258B (Variation and revocation of notices given under section 258A) into IPA 2016.

Part 5

Part 5 contains the Miscellaneous provisions.

Clause 21 concerns the Interception and examination of communications: Members of Parliament etc provisions, and it amends section 26 of IPA 2016, and clause 22 sets out the provisions on Equipment interference: Members of Parliament etc. and this amends section 111 of IPA 2016.

The issue of equipment interference warrants provisions are contained in clause 23, and this amends Part 1 of the table in Schedule 6 of IPA 2016 (issue 5 of warrants under section 106 etc) and section 107 (3) of IPA 2016.

Clause 24 concerns the modification of equipment interference warrants, and this amends section 121 of IPA 2016, and the provision regarding the Issue of targeted examination warrants to intelligence services are contained in clause 25, which amends section 102 of IPA 2016.

The exclusion of matters from legal proceedings etc: exceptions are set out in clause 26, which amends Schedule 3 of IPA 2016 and the freedom of information - bodies dealing with security matters are contained in clause 27, which amends section 23 (3) of the Freedom of Information Act 2000. We note the Bill does not include the Freedom of Information (Scotland) Act 2002, and we believe the proposed amendments to the bodies dealing with security matters should be consistent with freedom of information legislation in the UK, and the Bill should include the implications of any proposed amendments to the Freedom of Information (Scotland) Act 2002.

Part 6

Part 6 contains the general provisions, including the power to make consequential provision at clause 28, and under clause 28 (2), the Secretary of State can by regulations made by statutory instrument to amend or repeal provision made by or under an Act passed before, or in the same session as the Bill.

Clause 30 is the commencement clause.

Clause 31 is the short title. We have no comments.

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