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Criminal Justice Committee

Report on the Legislative Consent Memorandum for the Investigatory Powers Amendment Bill (UK Parliament legislation)



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Email: sp.info@parliament.scot

Contents

Introduction	1
Outline of the UK Bill	2
Consideration by the Delegated Powers and Law Reform Committee	4
Consideration by the Committee and recommendation	5

Criminal Justice Committee

To consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Home Affairs, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

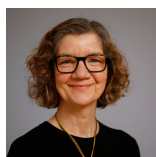


justice.committee@parliament.scot



0131 348 5973

Committee Membership



Convener
Audrey Nicoll
Scottish National Party



Deputy Convener
Russell Findlay
Scottish Conservative
and Unionist Party



Katy Clark
Scottish Labour



Sharon Dowey
Scottish Conservative
and Unionist Party



Fulton MacGregor
Scottish National Party



Rona Mackay
Scottish National Party



Pauline McNeill
Scottish Labour



John Swinney
Scottish National Party

Introduction

1. At its meeting on Wednesday 21 February 2024, the Criminal Justice Committee considered a Legislative Consent Memorandum ("LCM") from the Scottish Government for the [Investigatory Powers Amendment Bill](#) (UK Parliament).
2. The Scottish Government's [LCM](#) was lodged on 15 December 2023.

Outline of the UK Bill

3. The [Investigatory Powers Amendment Bill](#) was introduced in the House of Lords on 8 November 2023. The Bill had its first reading in the House of Commons on 31 January 2024.
4. Most of the provisions of the Bill operate by amending, and inserting substantial new provision into, the Investigatory Powers Act 2016 ("the 2016 Act").
5. The stated purpose of the Bill is to amend the 2016 Act; to make provision about information supplied by, or relating to, the Judicial Commissioners; and for connected purposes.
6. The 2016 Act gives statutory powers to security and intelligence agencies, law enforcement and other public authorities to obtain communications and data about communications. This covers, for example, the interception of communications and the retention and acquisition of data about communications. The 2016 Act also requires certain categories of warrants to be approved by independent Judicial Commissioners, and provides for judicial oversight of how investigatory powers are used.
7. The [Explanatory Notes](#) state that the Bill updates elements of the 2016 Act to ensure that the UK's investigatory powers framework remains fit for purpose in the face of evolving threats.
8. The Explanatory Notes identify the main elements of the Bill as follows.
 - Changes to the Bulk Personal Dataset (BPD) regime, which will improve the intelligence services' ability to use less sensitive datasets (such as publicly and commercially available data).
 - Placing the intelligence services' examination of bulk personal datasets held by third parties (i.e. an external organisation outside of the intelligence services) on a statutory footing. If the examination was of datasets retained by intelligence services, existing provisions in the 2016 Act would apply.
 - Changes to the Notices regimes, which will help the UK anticipate and develop mitigations against the risk to public safety posed by multinational companies rolling out technology that precludes lawful access to data for the statutory purposes set out under the 2016 Act.
 - Creating a new condition for the use of Internet Connection Records by the intelligence services and the National Crime Agency.
 - Improvements to the oversight regime to support the Investigatory Powers Commissioner to effectively carry out their role, including powers to enable the IPC to delegate some of their functions to Judicial Commissioners, appoint deputies and putting certain functions on a statutory basis (Part 2 of the Bill, clauses 7-10).
 - Measures to increase resilience of the warranty authorisation processes for the intelligence services as well as for the National Crime Agency.

- Changes to the communications data regime to provide greater certainty on the circumstances for lawful data acquisition.
9. A Legislative Consent Memorandum was lodged by Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs, on 15 December 2023.
 10. The Scottish Government is supportive of the intent of the relevant provisions in the Bill and has published a draft motion recommending that the Scottish Parliament gives its legislative consent to those provisions.
 11. The areas which are subject to the legislative consent motion are largely concerned with making improvements to the oversight arrangement by strengthening independent judicial oversight.

Consideration by the Delegated Powers and Law Reform Committee

12. The Delegated Powers and Law Reform Committee ("DPLR Committee") considered the LCM at its meeting on 20 February 2024 .
13. The DPLR Committee stated in its [report](#) that it was content with the relevant provisions.

Consideration by the Committee and recommendation

14. The Committee considered the LCM at its meeting on 21 February 2024. Members raised no issues of concern.

15. The Committee agreed to recommend to Parliament that the relevant provisions of the Investigatory Powers (Amendment) Bill, introduced in the House of Lords on 8 November, relating to Investigatory Powers, so far as these matters fall within the legislative competence of the Scottish Parliament should be considered by the UK Parliament.

