



HOUSE OF LORDS

Select Committee on the Constitution

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Lord Sharpe of Epsom
2 Marsham Street
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By email

27 November 2023

Dear Lord Sharpe,

Investigatory Powers (Amendment) Bill

I write on behalf of the Constitution Committee about the Investigatory Powers (Amendment) Bill. In our view the Bill raises two issues of constitutional interest, which I have outlined below.

Safeguards on the retention of Bulk Personal Datasets

Clauses 1 and 2 create a new subset of Bulk Personal Datasets—those for which there is low or no reasonable expectation of privacy. While we are broadly satisfied with the provisions introduced by these clauses, we would be grateful to receive assurance that a Code of Practice will be published. As recommended by the Independent Review of the Investigatory Powers Act 2016, the Code of Practice should guide the conduct of the initial examination and the internal authorisations process applicable to Bulk Personal Datasets where there is low or no reasonable expectation of privacy.¹ We recommend that the Code of Practice be made available during the Bill's passage through Parliament.

Interception and equipment interference

Clauses 21 and 22 amend provisions in the Investigatory Powers Act 2016 relating to interception and equipment interference where the purpose is to obtain communications of members the UK Parliament or the devolved legislatures. The 2016 Act imposed a 'triple

¹ Home Office, 'Independent review of the Investigatory Powers Act 2016' (10 November 2023), para 3.61: <https://www.gov.uk/government/publications/independent-review-of-the-investigatory-powers-act-2016--2/independent-review-of-the-investigatory-powers-act-2016-accessible>. The review was prepared by Lord Anderson of Ipswich, KBE KC, who is a member of the Constitution Committee. Lord Anderson declared that interest.

lock' on warrants for these purposes, requiring the approval of the relevant Secretary of State, a Judicial Commissioner and the Prime Minister. The Bill empowers the Prime Minister to designate a Secretary of State to take this decision on his or her behalf when the Prime Minister is unavailable and there is an urgent need for a decision to be made.

We would be grateful to receive clarification on:

- what is meant by 'unavailable';
- whether being 'unavailable' extends to occasions in which the Prime Minister has a conflict of interest; and
- whether a designated and limited list of secretaries of state should be empowered to act on the Prime Minister's behalf in such circumstances.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Drake', written in black ink.

Baroness Drake
Chair of the Constitution Committee