

HOUSE OF LORDS

Select Committee on the Constitution

5th Report of Session 2021–22

Telecommunications (Security) Bill

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Select Committee on the Constitution

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[Baroness Corston](#)

[Baroness Fookes](#)

[Lord Sherbourne of Didsbury](#)

[Baroness Doocey](#)

[Lord Hennessy of Nympsfield](#)

[Baroness Suttie](#)

[Baroness Drake](#)

[Lord Hope of Craighead](#)

[Baroness Taylor of Bolton](#) (Chair)

[Lord Dunlop](#)

[Lord Howarth of Newport](#)

[Lord Faulks](#)

[Lord Howell of Guildford](#)

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Committee staff

The current staff of the committee are Michael Torrance (Clerk), and Rita Cohen (Committee Operations Officer). Professor Stephen Tierney and Professor Jeff King are the legal advisers to the Committee.

Contact details

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Telecommunications (Security) Bill

Introduction

1. The Telecommunications (Security) Bill was introduced in the House of Commons on 24 November 2020 and, having been carried over into the current session, completed its passage on 26 May 2021. It was brought to the House of Lords on 26 May and its second reading is scheduled for 29 June.
2. The deployment of 5G and full fibre networks creates security challenges. The Bill amends the Communications Act 2003¹ to place duties on providers to address and remedy security compromises and confers regulatory powers on the regulator Ofcom to monitor and enforce compliance.

Duties of providers

3. Clauses 1 and 2 impose duties on providers of a public electronic communications network or service (“providers”). These include taking such measures as are appropriate and proportionate for the purposes of identifying and reducing the risk of security compromises occurring. The Bill defines security compromises, but the Explanatory Notes acknowledge this definition is broad and do not explain their intended scope.² The consequences of a security compromise for providers are potentially significant, including substantial and costly duties of due diligence.³
4. **The House may wish to consider whether narrowing the definition of security compromises would be appropriate. To retain flexibility, this could include amending clause 1 to empower the Secretary of State to add new definitions by regulations laid before Parliament and applied prospectively.**

Role of Ofcom

5. Clause 13 provides that in appeals against “relevant security-related” Ofcom decisions the Competition Appeal Tribunal is to apply ordinary judicial review principles “notwithstanding any retained case law or retained general principle of EU law.” This means that the tribunal should not adopt a modified approach to proceedings, as required under EU law which provides that “the merits of the case” must be “duly taken into account.”⁴ This provision therefore disapplies aspects of the ongoing effect and supremacy of retained EU law, as permitted by section 7 of the European Union (Withdrawal) Act 2018.⁵ The rationale for reducing the powers of the tribunal in respect of security matters is unclear and is not justified in the Explanatory Notes.

1 [Communications Act 2003](#)

2 [Explanatory Notes to the Telecommunications \(Security\) Bill](#), [HL Bill 15 (2021-22)–EN], para 54

3 *Ibid.*, clauses 1, 4 and 8

4 [Explanatory Notes](#), para 175, which explains the effect of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (Text with EEA relevance) ([OJ L 321/36](#), 17 December 2018) Article 31

5 [European Union \(Withdrawal\) Act 2018](#)

6. **The House may wish to ask the Government to justify reducing the powers of the Competition Appeal Tribunal in respect of appeals under clause 13.**

Designated vendor directions

7. Clause 15 creates a scheme for dealing with particularly high-risk vendors, inserting new sections in the Communications Act 2003. These empower the Secretary of State to give a designated vendor direction where they consider it “necessary in the interests of national security” and the requirements imposed are “proportionate” to what is sought by the direction. The designated vendor direction can impose wide-ranging requirements on providers on the use of “goods, services or facilities” made available by a designated vendor specified in the direction.
8. While vendors are entitled to notice of their designation if reasonably practicable to do so, they are not entitled to be consulted or informed of the reasons for designation if the Secretary of State considers it contrary to national security. Vendors are also entitled to notice of when directions are imposed on providers, or when a designated vendor direction is revoked, but this right does not apply if the Secretary of State considers it contrary to national security. The effect is that while a vendor may know of its designation, the providers with whom it does business can have various restrictions imposed because of their relation to the designated vendor without the vendor knowing about the reasons or possibly the existence of such directions. In several scenarios the vendors would have no real prospect of mounting a legal challenge even under the closed material procedures provided for in the Justice and Security Act 2013.⁶
9. **The House may wish to consider whether to amend the Bill to provide greater accountability for the exercise of the Secretary of State’s powers to give a designated vendor direction—for example by making some, or all, of those powers within the remit of the Investigatory Powers Commissioner.**

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Baroness Corston
 Baroness Doocey
 Baroness Drake
 Lord Dunlop
 Lord Faulks
 Baroness Fookes
 Lord Hennessy of Nympsfield
 Lord Hope of Craighead
 Lord Howarth of Newport
 Lord Howell of Guildford
 Lord Sherbourne of Didsbury
 Baroness Suttie
 Baroness Taylor of Bolton (Chair)

Declarations of interest

Baroness Corston
No relevant interests
 Baroness Doocey
No relevant interests
 Baroness Drake
No relevant interests
 Lord Dunlop
No relevant interests
 Lord Faulks
No relevant interests
 Baroness Fookes
No relevant interests
 Lord Hennessy of Nympsfield
No relevant interests
 Lord Hope of Craighead
No relevant interests
 Lord Howarth of Newport
No relevant interests
 Lord Howell of Guildford
No relevant interests
 Lord Sherbourne of Didsbury
No relevant interests
 Baroness Suttie
No relevant interests
 Baroness Taylor of Bolton (Chair)
No relevant interests

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Professor Jeff King, University College London, and Professor Stephen Tierney, University of Edinburgh, acted as legal advisers to the Committee. They both declared no relevant interests.