

Draft Regulations laid before Parliament under section 267(3)(f) of the Investigatory Powers Act 2016, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2020 No.

INVESTIGATORY POWERS

The Functions of the Investigatory Powers Commissioner
(Oversight of the Data Access Agreement between the
United Kingdom and the United States of America and
of functions exercisable under the Crime (Overseas
Production Orders) Act 2019) Regulations 2020

Made - - - - - ***
Coming into force - - - - - ***

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 239(1) of the Investigatory Powers Act 2016 (“the 2016 Act”)(1).

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 267(3)(f) of the 2016 Act.

Citation and commencement

1. These Regulations may be cited as the Functions of the Investigatory Powers Commissioner (Oversight of the Data Access Agreement between the United Kingdom and the United States of America and of functions exercisable under the Crime (Overseas Production Orders) Act 2019) Regulations 2020 and come into force on the day after the day on which they are made.

Amendment of section 229 of the Investigatory Powers Act 2016

2. In section 229 of the Investigatory Powers Act 2016 (main oversight functions of the Investigatory Powers Commissioner)—

(a) after subsection (3), insert—

(1) 2016 c. 25. Section 22(6) of the Coronavirus Act 2020 (c. 7) (“the 2020 Act”) modifies references to Judicial Commissioners in the 2016 Act so that they include references to temporary Commissioners appointed under regulations made under section 22 of the 2020 Act. S.I. 2020/360 was made under the powers in sections 22 and 23 of the 2020 Act to change certain time frames relating to urgent warrants and also allowed the Investigatory Powers Commissioner to appoint temporary Commissioners.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Functions of the Investigatory Powers Commissioner (Oversight of the Data Access Agreement between the United Kingdom and the United States of America and of functions exercisable under the Crime (Overseas Production Orders) Act 2019) Regulations 2020 No. 1009*

“(3A) The Investigatory Powers Commissioner must, in accordance with the Agreement between the Government of the United Kingdom and the Government of the United States of America on access to electronic data for the purpose of countering serious crime dated 3rd October 2019⁽²⁾, keep under review the compliance by public authorities with the terms of that Agreement.”;

- (b) in subsection (4)(d), after “2000”, in the second place it occurs, insert “, the Crime (Overseas Production Orders) Act 2019⁽³⁾”.

Date

Name
Minister of State
Home Office

(2) CP 178.
(3) 2019 c. 5.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend section 229 of the Investigatory Powers Act 2016 (“the 2016 Act”) which sets out the main functions of the Investigatory Powers Commissioner (“the Commissioner”).

Regulation 2(a) makes provision in relation to the Agreement reached by the United Kingdom and the United States of America on access to electronic data for the purpose of countering serious crime dated 3rd October 2019 (“the Agreement”). The Agreement will provide additional access to electronic data required in the United Kingdom for the purpose of countering serious crime but held in the United States of America. Regulation 2(a) amends the oversight functions of the Commissioner to include the responsibility for keeping under review the compliance by public authorities in the United Kingdom with the terms of the Agreement.

Under section 229 of the 2016 Act, the Commissioner’s oversight of functions of public authorities is limited to functions exercised under the Investigatory Powers Act 2016, the Regulation of Investigatory Powers Act 2000 and the Regulation of Investigatory Powers (Scotland) Act 2000. Regulation 2(b) amends section 229 to include within the scope of the oversight of the Commissioner functions exercised by public authorities under the Crime (Overseas Production Orders) Act 2019. That Act grants law enforcement agencies and prosecuting authorities the power to apply for and obtain electronic data directly from service providers (those who create, process, communicate or store electronic data) for the purposes of criminal investigations and prosecutions. Overseas production orders may only be used when permitted under an international co-operation arrangement between the United Kingdom and the country where the subject of the order is located. Such an agreement has been reached with the United States of America and the change made by regulation 2(a) expressly requires the Commissioner to keep under review the compliance by public authorities in the United Kingdom with the terms of the Agreement.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

The Agreement is available online at <https://www.gov.uk/government/publications/ukusa-agreement-on-access-to-electronic-data-for-the-purpose-of-countering-serious-crime-cs-usa-no62019>. A hard copy of the Agreement can be obtained on request by writing to the Office for Security and Counter-Terrorism, Home Office, Peel Building, 2 Marsham Street, London, SW1P 4DF.