

3rd October 2019(a), 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(b)”.

Date

Name
Minister of State
Home Office

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.

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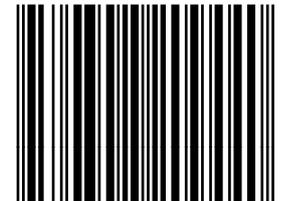
(a) CP 178.
(b) 2019 c. 5.

£4.90

UK202007021018 07/2020 19585

<http://www.legislation.gov.uk/id/ukdsi/2020/9780348209440>

ISBN 978-0-34-820944-0



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