

CRIME (OVERSEAS PRODUCTION ORDERS) BILL FACTSHEET

Overview

- The Crime (Overseas Production Orders) Bill will provide law enforcement agencies and prosecutors the power to apply for and obtain electronic data **directly** from service providers based outside the UK for the purposes of criminal investigations and prosecutions for serious crime, where a relevant international agreement is in place.
- The Government has been clear that the police, and prosecuting authorities, must be able to detect, investigate and secure convictions in serious criminal and terrorist cases.
- Currently, when UK agencies are seeking access to data for evidence purposes - and that data is held by providers based overseas – they must seek access to the data using Mutual Legal Assistance (MLA) channels.
- Obtaining evidence via Mutual Legal Assistance can be a slow and cumbersome process and in some cases, evidence cannot be obtained in time to support a prosecution or an investigation
- This legislation will allow law enforcement agencies and prosecutors to apply directly to service providers based in a territory with whom the UK has a relevant international agreement, by way of a UK court approved order. This will make the process for gaining access to this type of data faster and more reliable.

What the Bill will do

- The Bill will provide a framework that law enforcement agencies and prosecution authorities can use to apply for an overseas production order **only once an international agreement is in place** between the UK and the territory in which the relevant provider is based.
- Each application for an overseas protection order would be subject to robust safeguards, and decided by a judge with due regard for the right to privacy.
- Once an order has been authorised the subject of that order, which would most likely be a private company, would provide the requested data to the investigating or prosecuting authority that applied for the order.
- An application for an overseas production order must specify what data is being sought, and a judge must be satisfied that the data is likely to be of substantial value to the criminal proceedings or the investigation in relation to which it is requested, and that production of the data would be in the public interest.

The provisions in the Bill will set out:

- Scope and reach of an overseas production order and who may apply for one
- Requirements which need to be met before a judge makes an overseas production order and what must be included in the application for an order
- Restrictions on serving an overseas production order, including the time period within which the data covered by the overseas production order must be supplied
- Additional safeguards and protections for certain types of data
- The ways in which an overseas production order can be served

BACKGROUND

Enabling cross-border access to crucial data and information in investigations and prosecutions is a high priority for the UK Government and our operational agencies. This information can be crucial in securing a conviction for serious criminal activity or terrorist offences. Judicial cooperation between different states is a key component of tackling crime and terrorism in the 21st century.

This data can already be obtained if there are reasonable grounds for believing that the data is stored on, or accessible from, premises in the UK.

The Investigatory Powers Act 2016 allowed for the acquisition of data – even when that was based overseas - for investigation purposes, but this does not apply to the use of such data as evidential basis. This Bill would ensure that such material is available to UK law enforcement officers and prosecutors for evidential purposes via a court approved production order, and would bring into line the powers of the courts to seek access to data stored by companies based in the UK, with those based in territories with whom we have a relevant international agreement.