

# Crime (Overseas Production Orders) Bill 2018

## Overarching Fact Sheet

### What are we going to do?

- Enhance our international judicial cooperation capacity, a key component to tackling serious crime (including terrorism), in a way which keeps pace with the increasing use of global electronic communications services by criminals.
- Give law enforcement agencies and prosecuting authorities the power to obtain electronic information controlled by service providers outside the UK where needed for the purposes of a UK criminal investigation or prosecutions, and where an international agreement is in place.
- Enable law enforcement officers and prosecutors to access this electronic information directly and more swiftly, using overseas production orders issued by UK courts, which will also require overseas providers to co-operate directly.

### Key quote

*“This Bill will give law enforcement officers and prosecutors the ability to get crucial data, from overseas providers, under strict legal safeguards and where an international arrangement exists, if they need it for their criminal investigations and prosecutions.”*

**Rt Hon Ben Wallace MP,  
Minister of State for Security  
and Economic Crime**

### How are we going to do it?

The Bill will:

- Allow specified individuals (e.g. constables) to apply to a UK judge for an overseas production order which, if granted, will require the overseas service provider against which it is made to provide (or allow access to) stored electronic information specified in the order, for the purposes of investigating or prosecuting serious crime.
- Supplement existing production order powers (under the Police and Criminal Evidence Act 1984, the Terrorism Act 2000, and the Proceeds of Crime Act 2002) currently used by law enforcement officers and prosecutors to seek electronic information where that information is located in or accessible from premises in the UK. Overseas production orders will have extra-territorial scope, so that they can be served in a foreign jurisdiction (where the UK has entered into an agreement with the territory concerned).

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### How are we going to do it? (continued)

- Permit an overseas production order to be granted by a judge, for all or part of the information applied for, only if satisfied that certain conditions (tests and safeguards drawn from our domestic regime) have been met. These include:
  - that there are reasonable grounds for believing an indictable offence has been committed and that proceedings have been instigated in respect of that offence, or it is being investigated (or that the order is sought for the purposes of a terrorism investigation)
  - that the data sought is likely to be of substantial value to the proceedings or investigation and that it is in the public interest for all or part of the data requested to be produced or accessed
  - that the application does not request excepted data (for example legally privileged material or personal records that are confidential personal records such as medical records)
  - that the judge determines whether a non-disclosure requirement is appropriate, for example to prevent the provider from informing its customer (who may be a subject to the proceedings or the investigation)
- Require an overseas production order to state who will need to produce the electronic information in a visible and legible form and by when (usually within seven days but with discretion for the judge depending on the circumstances).
- Confer a power on a judge to vary or revoke an overseas production order following an application from the officer who applied for the order, the Secretary of State (in England, Wales and Northern Ireland) or Lord Advocate (in Scotland), or a person affected by the order.
- Ensure that the overseas production order is served only by the Secretary of State (in England, Wales and Northern Ireland) and the Lord Advocate (in Scotland) on a specified person and provide for the order to be treated as quashed if not served within three months of the day of the order being made.
- Require, under strict conditions, persons to be put on notice of an application of an order for journalistic material held confidentially. This provides similar protections, as currently the case domestically, for such material.
- Provide for all documents including the overseas production order, notice, any other document for the purposes of proceedings relating to these orders to be served directly on a service provider based abroad.

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### Background

- Increasingly, terrorists and criminals are using global communications services to facilitate their criminal activities. This makes the data generated by those applications a vital source of evidence for the prosecution of criminal offences, including terrorism. Law enforcement agencies and prosecution authorities are clear on the value of obtaining the evidence that they need for their investigations and prosecutions as swiftly as possible, even when that data is held overseas. The majority of this relevant electronic data is controlled by service providers outside of the UK.
- Current UK legislation which allows law enforcement and prosecuting authorities to access stored electronic data is not explicitly extra territorial and so only effective when the company possessing or controlling the information is located in the UK. For example, the Police and Criminal Evidence (PACE) Act 1984 enables law enforcement officers and prosecutors to apply for a production order to obtain electronic data held by UK-based service providers, but does not explicitly provide for circumstances when the provider is based outside the UK.
- As such, currently when the required stored electronic data is controlled by a company based outside the UK, *Mutual Legal Assistance (MLA)* channels are used. MLA is a form of judicial cooperation between States that allows law enforcement officers and prosecutors to obtain data for evidence purposes from a foreign jurisdiction via relevant authorities in that jurisdiction. However, the MLA process can take time and, in some cases, may result in delayed or abandoned investigations or prosecutions. It can also delay people from being eliminated from a criminal investigation.
- This Bill provides UK law enforcement officers and prosecutors with the power to apply to courts for **overseas production orders**. These UK court approved orders will be capable of being served in a foreign jurisdiction where a designated international cooperation agreement exists between that country and the UK. These overseas production orders will allow appropriate UK law enforcement officers and prosecutors agencies (as set out in the Bill and any subsequent additions made by regulation) to seek stored electronic evidence, mainly content data including messages, files, pictures, directly from overseas service providers for the purposes of investigation and prosecution of serious criminal offences only, including terrorism. This is likely to result in quicker access to this data to support domestic investigations and prosecutions of serious crime to secure criminal convictions.
- Each application for an overseas production order will be robustly scrutinised by a UK court and subject to stringent tests set out in the Bill. The provisions in the Bill reflect our existing high levels of privacy protection, respect for freedom of speech and international human rights law in our similar UK process for applying for a domestic production order (e.g. as under PACE 1984).

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### How much will these measures cost?

- The Impact Assessment published alongside the Bill indicates that over a 10-year period, the estimated costs associated with the implementation of the process enabled by the Bill is between £26,000 and £44,000. This cost is associated with providing judicial oversight of the overseas production orders here in the UK.

### Will these measures apply across the United Kingdom?

- The provisions in the Bill will extend and apply to the whole of the UK, with the exception of two consequential amendments which have the same (limited) extent as the existing legislation being amended.