



Understanding in relation to Subscriber Information and Preservation
Process under the Agreement between the Government of the United
Kingdom of Great Britain and Northern Ireland and the Government of
the United States of America on Access to Electronic Data for the
Purpose of Countering Serious Crime

Washington, 3 October 2019

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
October 2019*



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**UNDERSTANDING IN RELATION TO SUBSCRIBER INFORMATION
AND PRESERVATION PROCESS UNDER THE AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND AND THE GOVERNMENT OF THE
UNITED STATES OF AMERICA ON ACCESS TO ELECTRONIC DATA
FOR THE PURPOSE OF COUNTERING SERIOUS CRIME**

3 October 2019

Dear Attorney General Barr,

I have the honour to refer to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America on Access to Electronic Data for the Purpose of Countering Serious Crime (“the Agreement”), signed today, and to propose that Article 10 of the Agreement be applied as per the following understandings.

The issuance of Legal Process, as recognised in Article 10 of the Agreement, by an Issuing Party conforms with the relevant requirements of the Convention on Cybercrime, done at Budapest November 23, 2001, including the principle of proportionality and other conditions and safeguards as set forth in article 15.

Where the Issuing Party is the United States, preservation process is issued pursuant to Title 18, United States Code, Section 2703(f), which is the domestic law that grants the government authority to request preservation of data by electronic communication service providers and remote computing service providers. Section 2703(f) directs providers to preserve data upon request for an initial period of 90 days, which time period can be extended once for an additional 90 days. Where the Issuing Party is the United Kingdom, preservation process is issued pursuant to the relevant common law. For the purposes of Article 10 of the Agreement, the United Kingdom intends to limit such preservation to an initial period of 90 days that can be extended once for up to an additional 90 days.

Where the Issuing Party is the United States, all Legal Process for Subscriber Information, as recognised in Article 10 of the Agreement, has a domestic legal basis in Title 18, United States Code, Sections 2703 or 2709, which are the domestic laws that permit governmental entities to obtain legal process seeking to compel disclosure of such information by electronic communication service providers and remote computing service providers. This Legal Process is subject to all rights and protections granted by the Constitution, legal precedent, and the relevant domestic Rules of Criminal Procedure, including the ability to quash such a process where it is unreasonable. Where the United Kingdom is the Issuing Authority, all Legal Process for Subscriber Information, as recognised in Article 10 of the Agreement, has a domestic legal basis in the Investigatory Powers Act 2016, the Regulation of Investigatory Powers Act 2000, and Judicial Orders, which are the domestic laws or mechanisms pursuant to which a UK authority may compel disclosure of communications data by a telecommunications provider.

If the foregoing is acceptable to your Government, I have the honour to propose that this letter and your affirmative letter in reply would constitute an understanding between our two Governments as to the application of the Agreement, which would be operative on the date of entry into force of the Agreement.

Sincerely,

The Rt. Hon. Priti Patel MP, Secretary of State for the Home Department.

October 3, 2019

Dear Home Secretary Patel,

I have the honor to refer to your letter dated October 3, 2019, regarding the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland on Access to Electronic Data for the Purpose of Countering Serious Crime (“the Agreement”), signed today, which reads as follows:

I have the honour to refer to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America on Access to Electronic Data for the Purpose of Countering Serious Crime (“the Agreement”), signed today, and to propose that Article 10 of the Agreement be applied as per the following understandings.

The issuance of Legal Process, as recognised in Article 10 of the Agreement, by an Issuing Party conforms with the relevant requirements of the Convention on Cybercrime, done at Budapest November 23, 2001, including the principle of proportionality and other conditions and safeguards as set forth in article 15.

Where the Issuing Party is the United States, preservation process is issued pursuant to Title 18, United States Code, Section 2703(f), which is the domestic law that grants the government authority to request preservation of data by electronic communication service providers and remote computing service providers. Section 2703(f) directs providers to preserve data upon request for an initial period of 90 days, which time period can be extended once for an additional 90 days. Where the Issuing Party is the United Kingdom, preservation process is issued pursuant to the relevant common law. For the purposes of Article 10 of the Agreement, the United Kingdom intends to limit such preservation to an initial period of 90 days that can be extended once for up to an additional 90 days.

Where the Issuing Party is the United States, all Legal Process for Subscriber Information, as recognised in Article 10 of the Agreement, has a domestic legal basis in Title 18, United States Code, Sections 2703 or 2709, which are the domestic laws that permit governmental entities to obtain legal process seeking to compel disclosure of such information by electronic communication service providers and remote computing service providers. This Legal Process is subject to all rights and protections granted by the Constitution, legal precedent, and the relevant domestic Rules of Criminal Procedure, including the ability to quash such a process where it is unreasonable. Where the United Kingdom is the Issuing Authority, all Legal Process for Subscriber Information, as recognised in Article 10 of the Agreement, has a domestic legal basis in the Investigatory Powers Act 2016, the Regulation of Investigatory Powers Act 2000, and Judicial Orders, which are the domestic laws or mechanisms pursuant to which a UK authority may compel disclosure of communications data by a telecommunications provider.

If the foregoing is acceptable to your Government, I have the honour to propose that this letter and your affirmative letter in reply would constitute an understanding between our two Governments as to the application of the Agreement, which would be operative on the date of entry into force of the Agreement.

On behalf of the Government of the United States of America, I am pleased to convey that your proposal is acceptable. Your letter and this reply constitute an understanding of our two Governments as to the application of the Agreement, which would be operative on the date of entry into force of the Agreement.

Sincerely,

William P. Barr, Attorney General of the United States of America.

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