



INTELLIGENCE AND SECURITY COMMITTEE OF PARLIAMENT



PRESS RELEASE

The Intelligence and Security Committee of Parliament (ISC) has today published its Report on the Draft Investigatory Powers Bill. The Chairman of the ISC, the Rt. Hon. Dominic Grieve QC MP, said:

“The Investigatory Powers Bill will be the first major piece of legislation governing the Agencies’ powers in over 15 years. Given the debate over the past few years regarding both the necessity and extent of those capabilities, it is essential that the legislation receives proper consideration and independent scrutiny by both Houses of Parliament. Therefore, while the Joint Committee chaired by Lord Murphy of Torfaen is providing formal pre-legislative scrutiny of the draft Bill published by the Government in November last year, the Intelligence and Security Committee of Parliament has provided scrutiny of those aspects which relate to the Agencies’ investigatory powers.

The Committee supports the Agencies’ use of investigatory powers where it is necessary and proportionate. We also support the Government’s broad intent to provide greater transparency around those powers through new legislation, and note that the draft Bill incorporates a number of the recommendations in our 2015 Report on Privacy and Security: in particular, it provides explicit authorisation for Bulk Personal Datasets, Bulk Communications Data and Computer Network Exploitation for the first time. Against that backdrop, it is nevertheless disappointing that the draft Bill does not cover all the Agencies’ intrusive capabilities – as the Committee recommended last year. This means that the various powers and authorisations remain scattered throughout different pieces of legislation and, as a result, the draft Bill is limited in the extent to which it can provide a comprehensive legal framework. In our view this is a missed opportunity.

Taken as a whole, the draft Bill fails to deliver the clarity that is so badly needed in this area. The issues under consideration are undoubtedly complex, however it has been evident that even those working on the legislation have not always been clear as to what the provisions are intended to achieve. The draft Bill appears to have suffered from a lack of sufficient time and preparation. Therefore while we are conscious of the time constraints upon the Government due to the sunset clause in the Data Retention and Investigatory Powers Act 2014, we would urge them to take time when bringing forward the new legislation in order to construct a comprehensive and clear legal framework for authorising the actions of the intelligence Agencies.

Turning to the detail of the provisions, our Report focuses on those areas where we believe substantive amendment is required. The first such change relates to the approach taken toward privacy protections. We had expected to find universal privacy protections applied consistently throughout, or at least an overarching statement at the forefront of the legislation. Instead, the draft Bill adopts a rather piecemeal approach, which lacks clarity and undermines the importance of the safeguards associated with these powers. We have therefore recommended that the new legislation contains an entirely new Part dedicated to overarching privacy protections, which should form the backbone of the

draft legislation around which the exceptional powers are then built. This will ensure that privacy is an integral part of the legislation rather than an add-on.

We also recommend major changes to the powers contained in the draft Bill in the following three areas:

- ***Equipment Interference.*** *At present the draft Bill only covers the Agencies' ability to conduct Equipment Interference to obtain information (Computer Network Exploitation): other IT operations will continue to sit under the broad authorisations provided to the Agencies under the Intelligence Services Act 1994 regime. This discrepancy is unnecessary and counter to transparency. We therefore recommend that all IT operations are brought under the same legislation, with the same authorisation process and the same safeguards.*
In relation to the authorisation process, we have not been provided with sufficiently compelling evidence as to why 'Bulk' Equipment Interference warrants are required: in our opinion 'Targeted' Equipment Interference warrants can be drawn sufficiently broadly that a separate 'Bulk' warrant is unnecessary. We therefore recommend that Bulk Equipment Interference warrants are removed from the legislation.
- ***Bulk Personal Datasets.*** *The draft Bill provides for the Agencies to obtain a Class warrant allowing them to obtain any number of Bulk Personal Datasets of a general class or type (for example, travel data). As a general principle the Committee consider that class authorisations should be kept to an absolute minimum. In this case, given that each Bulk Personal Dataset potentially contains personal information about a large number of individuals - the majority of whom will not be of any interest to the Agencies - the Committee considers that each dataset is sufficiently intrusive that it should require a specific warrant. We therefore recommend that Class Bulk Personal Dataset warrants are removed from the legislation.*
- ***Communications Data.*** *The approach to the examination of Communications Data is currently inconsistent and confusing. The Committee considers it essential that the same safeguards are applied to the examination of all Communications Data, irrespective of how it has been acquired. This must be clearly set out on the face of the legislation: it is not sufficient to rely on policy and good practice.*

In addition to these substantive issues of principle, there are a number of more detailed matters requiring specific amendment which we address in our Report – such as 'operational purposes', timeframes and the extra-territoriality of the draft Bill. We consider these changes necessary if the Government is to bring forward legislation which provides the security and intelligence Agencies with the investigatory powers they require, while protecting our privacy through robust safeguards and controls."

NOTES TO EDITORS

1. The Intelligence and Security Committee of Parliament (ISC) is a statutory committee of Parliament that has responsibility for oversight of the UK intelligence community. The Committee was originally established by the Intelligence Services Act 1994, and has since been reformed by the Justice and Security Act 2013.
2. The Committee oversees the intelligence and security activities of the UK, including the policies, expenditure, administration and operations of the Security Service (MI5), the Secret Intelligence Service (MI6) and the Government Communications Headquarters (GCHQ). The Committee also scrutinises the work of other parts of the UK intelligence community, including the Joint Intelligence Organisation and the National Security Secretariat in the Cabinet Office; Defence Intelligence in the Ministry of Defence; and the Office for Security and Counter-Terrorism in the Home Office.
3. The Committee consists of nine members drawn from both Houses of Parliament. The Chair is elected by its members. The Members of the Committee are subject to Section 1(1) (b) of the Official Secrets Act 1989 and are routinely given access to highly classified material in carrying out their duties.
4. The Committee's membership is as follows:

The Rt. Hon. Dominic Grieve QC MP (Chair)
The Rt. Hon. Sir Alan Duncan KCMG MP
The Rt. Hon. George Howarth, MP
The Rt. Hon. the Lord Janvrin, GCB GCVO QSO
The Most Hon. the Marquess of Lothian QC PC
The Rt. Hon. Fiona Mactaggart MP
The Rt. Hon. Angus Robertson MP
The Rt. Hon. Keith Simpson MP
The Rt. Hon. Gisela Stuart MP
5. The Committee sets its own agenda and work programme. It takes evidence from Government Ministers, the Heads of the Intelligence Agencies, officials from the intelligence community, and other witnesses as required.
6. The Committee produces an Annual Report on the discharge of its functions. The Committee may also produce Reports on specific investigations.