

<b>Committee(s):</b>	<b>Date(s):</b>
Economic Crime Board of the Police Committee	
<b>Subject:</b> Investigatory Powers Bill	<b>Public</b>
<b>Report of:</b> Remembrancer	<b>For Information</b>

## **Summary**

This Report summaries the Bill's main points of interest to your Committee, including:-

- Intercept communications
- Acquire and retain data
- Interfere with communications equipment
- Generalised, 'bulk', data interceptions

## **Recommendation**

To note the Report.

## **Main Report**

### **Background**

1. The Investigatory Powers Bill is the latest in a line of proposals stretching back to at least 2000 that permit the security services and the police to intercept communications and access their content. An attempt in 2012 to enact similar provisions foundered due to the weight of critical technical and political opinion.
2. The present Bill follows high-profile inquiries by David Anderson QC, Parliament's Intelligence and Security Committee (ISC) - members of which have access to highly classified material - and the Independent Surveillance Review carried out by the Royal United Services Institute.
3. The Bill, which has completed its progressing through the House of Commons, proposes wide-ranging powers for the security services and police to gather and retain data, acquire communications information such as webpages visited and gather bulk data based on themes such as flight booking and health records.
4. Introducing the Bill in the Commons, the Home Secretary said "The Bill will provide world-leading legislation setting out in detail

the powers available to the police and the security and intelligence services to gather and access communications and communications data. It will provide unparalleled openness and transparency about our investigatory powers, create the strongest safeguards, and establish a rigorous oversight regime". She sought to reassure MPs that "Where the police or the security and intelligence agencies wish to interfere with a computer or a smartphone to obtain vital evidence and intelligence, a warrant under the Bill will be required" and added that "the Bill also responds to the recommendations of the Intelligence and Security Committee and places a statutory bar on the making of requests, in the absence of a warrant, to other countries to intercept the communications of a person in the UK. There can be no suggestion that the security and intelligence agencies could use their international relationships to avoid the safeguards in the Bill". In an exchange with David Davis (Con) it was explained that, at present, warrants to access electronic communications are granted "about 2,500 times a year, or about 10 times in each working day".

5. Shadow Home Secretary Andy Burnham indicated his party's general agreement to the Bill's aims - "The Bill is commonly seen through the prism of terrorism, but, as the Home Secretary said, it is about much more. The parents of a young child who had gone missing would want the police to have full and urgent access to all the information they need to bring them to safety. The Bill is about the ability to locate missing children or vulnerable adults. It is about reducing risks to children from predatory activities online. It is about preventing extremists of any kind creating fear and hatred in our communities, and it is about defending the liberties we all enjoy each and every day". He indicated, however, that his party disagreed with the Government's plans. The proposals attracted significant criticism from parliamentarians on both sides and groups concerned with Government transparency and civil liberties.
6. Following extensive debate and hostility from Government and Opposition backbenchers, the Bill was amended so as to give greater emphasis to privacy. Security Minister John Hayes described the changes as offering more "checks and balances, more in respect of safeguards and more in respect of oversight". By the time the Bill reached the House of Lords, over 800 amendments had been tables and a number of changes had been made.

## **Interception of Communications**

7. The Bill proposes that the heads of the intelligence services, the NCA, the Metropolitan Police, HMRC and the Chief of Defence Intelligence would be able to apply for warrants to intercept communications. The grounds for a warrant are national security, preventing or detecting serious crime, safeguarding economic wellbeing of the UK. In all cases, those who exercise functions under the Bill must have regard to the public interest in respecting privacy.
8. Applications for a warrant may not be made if the information is obtainable by less intrusive methods. Applications are also subject to approval by a ‘judicial commissioner’ although in urgent cases a warrant may be issued without approval of the commissioner but must then be ratified within 3 days (reduced, due to the controversy surrounding the issue, from the original proposal of 5 days). The Lord Chief Justice will have a role in making recommendations for appointment.
9. The Bill proposes 3 types of interception warrants
  - a. A targeted interception warrant that focuses on a person or organisation
  - b. A warrant to examine material under a warrant which has the primary purpose of permitting the interception of large quantities of data
  - c. A warrant relating to overseas interception.

## **Obtaining Communications Data**

10. Separately from the interception provisions, the Bill proposes powers for certain public bodies to obtain internet connection data (descriptions of connections at website-level but not particular pages visited). The grounds for obtaining the data include public safety, public health, in relation to the collection of taxes or levies, to prevent miscarriages of justice and to help to identify a person who has died. Government departments, regulatory bodies and the NHS are among the bodies that would be entitled to obtain communications; local authorities would not have such a power.
11. In some respects, this part of the Bill attracted the greatest outcry from internet service providers – the Bill would require service

providers to retain huge volumes of data which, they said, may be technically impossible to achieve and would be very costly.

## **Interference with Equipment**

12. Commonly referred to as hacking, the proposed power to interfere with equipment might relate to the location of a device, data, texts or emails. During debates on the Bill, the proposals to allow interference with equipment belonging people or organisations linked to the principal subject under suspicion were widely criticised as offering too broad a power to access information that might not be directly related to a suspect.
13. The Home Secretary would be required to authorise any interference with equipment.

## **Bulk Warrants**

14. Parliament's ISC voiced strong criticism of the Bill's proposal to allow the collection of a volume of data relating to individuals. This wide-ranging collection of information might include, but is not limited to, telephone, internet and email data, for example by collecting all data passing over a fibre optic cable. Under the Bill, only the heads of the security services would be allowed to apply for bulk warrants and only the Secretary of State would be permitted to grant such a warrant.
15. Similar powers currently contained in the Telecommunications Act 1984 and the Regulation of Investigatory Powers Act 2000 would be repealed.
16. Under the Bill, judges will have a power, akin to judicial review, to examine decisions by the Secretary of State based on whether the decision was 'necessary and proportionate'. The Government has promised to introduce further amendments to ensure there is clarity about the operational purpose of any bulk warrant. As a further concession, the Government has agreed that David Anderson QC will consider the necessity of the powers and whether the same result could be achieved through alternative means – and without the need to introduce this element of the Bill.

## **Consultation**

17. The Police Commissioner has been consulted in the preparation of this report.

## **Conclusion**

18. The Government has introduced noteworthy changes to the Bill. The proposed significant new powers for the security services and, in some cases, the police have, however, been strongly opposed during the Bill's passage through the Commons and it seems likely that, in due course, the Lords will greet the Bill with greater hostility.

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