



Investigatory Powers Bill

Introduction

The Investigatory Powers Bill has been introduced to enhance the surveillance powers of the security services. The Bill has been introduced following a review by David Anderson QC in 2014 that recommended updated powers with robust oversight.

Background

The Edward Snowden revelations in 2013 raised public awareness of the scale and scope of digital surveillance by US and UK authorities, and has led to widespread concerns around privacy and freedom. Nonetheless, this has been accompanied by the rise of ISIS and an escalation in global terrorism and the Government is keen to legislate to enable greater surveillance and justify ongoing action. The Bill had originally been planned in the last Parliament, but faced opposition from the Conservatives' coalition partners, the Liberal Democrats, who named it the 'Snoopers Charter' and blocked it from being tabled. Due to such concerns, early plans for the Secretary of State to have the power to approve surveillance have been set aside, with a judicial committee to be appointed instead. The Investigatory Powers Bill is undergoing a different level of scrutiny than a usual Bill, and is current in its draft phase. It is now subject to inquiry by a Joint Committee of Peers and MPs, with cross-party membership, and chaired by Labour Peer Lord Murphy of Torfaen. The aim is to ensure a robust Bill is drafted that can engender cross-party support before it passes through Parliament.

Key changes

The Bill looks to legislate for intelligence gathering through online and phone communications. This includes enhanced judicial oversight. As part of this, interception warrants involving confidential information relating to sensitive professions such as journalists, doctors and lawyers, will have to detail in full the justification for a request when the Minister approves the warrant.

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Act contents

- **Judicial oversight:** Limits on ministers so that they cannot authorise surveillance without the approval of a panel of seven judicial commissioners, with exemptions made in “urgent cases” needing approval within five days. Additionally, there will be oversight of surveillance activities by a single investigatory powers commissioner, who will be a senior judge.
- **Powers for security services to collect in bulk personal communication data:** Data will be retained as an “itemised shopping list” of websites, but not specific webpages.
- **Powers to allow security services to hack and bug computers and phones:** Companies will be legally obliged to assist security services with requests.
- **Permanent capability:** Requirements for internet and phone companies to maintain “permanent capability” to collect personal data.
- **Enforcement of overseas web and phone companies:** Limited to interception and targeted data requests. Bulk requests will not be enforceable.
- **Communications of MPs:** Provision to ensure communications of MPs cannot be accessed without approval from the Prime Minister.

Thus far, witnesses to the Joint Committee have raised concerns around clarity, with regards to definition of terms such as “telecommunications service” and “reasonably practicable”, and on obligations placed on Communication Service Providers (CSPs).

Contact

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State of play

The Joint Committee's inquiry on the Draft Bill began taking evidence on 30 November 2015 and published its report in February 2016. In its report, the Joint Committee supported the Draft Bill's intention to bring together in one place a number of provisions which already exist in statute governing intrusive powers. The Joint Committee made 86 detailed recommendations to ensure the Draft Bill's provisions are workable, clear and contain proper safeguards.

The Joint Committee's key recommendations called for: clarification that the Government's approach to encryption is not designed to compromise security or require the creation of 'backdoors'; a fuller justification for the inclusion of bulk powers in the Bill; further proof from the Government

that Internet Connection Records are necessary; and a provision for a joint committee of the two Houses to review the operation of the Bill's powers five years after it is enacted.

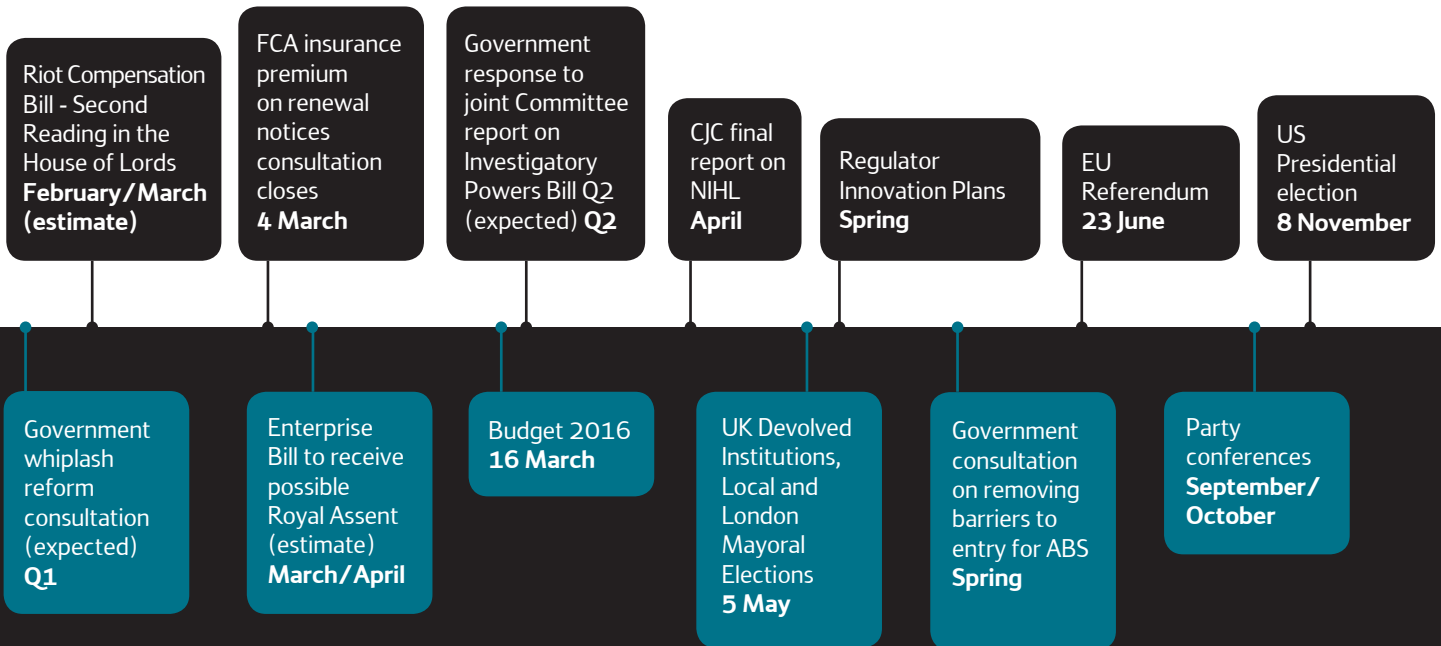
In Recommendation 46, the report also called for a provision for the protection of Legal Professional Privilege (LPP), in relation to all

categories of acquisition and interference addressed in the Bill, to be included on the face of the Bill and not solely in a code of practice. This followed representations from the Bar Council, the Law Society of England and Wales and the Law Society of Scotland who expressed concerns as to the potential impact of the draft Bill on legal professional and journalistic privilege.

The Government introduced the Bill to the House of Commons on 1 March 2016. In a statement to the House, Home Secretary Theresa May MP noted the recommendations of the Joint Committee, and said that in response the Government will set out an operational case for the use of bulk powers. On the recommendation that there should be a specially constituted joint committee of the two Houses to conduct a post-legislative review of the legislation after five years' operation, May said that the Bill cannot bind Parliament in statute but that the Bill requires the Secretary of State to consider any report which may have been made by a joint select committee. May has not specifically responded to the call for further protection of Legal Professional Privilege in the Bill.

2016

Political timeline



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