

Investigatory Powers Bill – Parliamentary Checklist

What should MPs keep in mind when debating the upcoming review of UK surveillance legislation?



The Draft Investigatory Powers Bill is due to be laid before a joint Parliamentary Committee imminently. The Bill is of fundamental importance to the more than 200 internet companies that the Internet Services Providers' Association (ISPA) represents, but also to UK citizens, economy, law enforcement and the intelligence services.

The Bill provides an opportunity to update a hugely complex array of existing surveillance laws. At its core is to ensure that the future regulatory framework provides a secure legal footing and adequately balances the need to respect citizens' privacy with the need to protect UK security.

Ahead of the publication of the Bill, we have provided you with a checklist of some of the key tests that the Bill needs to pass to ensure an effective outcome. Please get in touch if you have any questions or if you want to discuss these issues in more detail either now or after the Draft Bill has been published.

1 Full, extensive Parliamentary scrutiny and consultation with all stakeholders



The Investigatory Powers Bill will be a highly complex piece of legislation. In order that Parliament is able to provide the in-depth scrutiny that is required, it is vital that Government not only allocates a sufficient amount of time for debate but also provides a clear and straightforward explanation about the aims and details of the Bill.

When similar proposals - the Draft Communications Data Bill (CD Bill) and the Data Retention and Investigatory Powers Act (DRIPA) - were taken through the last Parliament, the Government failed to live up to this criteria. The bill process and opportunity to scrutinise DRIPA was curtailed, the CD Bill was presented as a mere update to the framework rather than an extension of powers, and the Joint Committee on the CD Bill concluded that there was a lack of consultation with stakeholders.

We call on all parliamentarians to ensure that the Investigatory Powers Bill is fully and extensively scrutinised in Parliament. This scrutiny can only occur if the Government is fully clear about the scope and aims of its proposals and if stakeholders are properly involved throughout the policy making process.

2 Effective on a technical and public policy level



The Investigatory Powers Bill will be a challenging piece of legislation as it seeks to draw together and answer fundamental questions on both technical issues and matters of public policy.

Experience suggests that surveillance legislation tends to be debated at a high-level and detailed questions about the application of surveillance provisions tend to be classed as mere technical issues that are too complex or not sufficiently important to be fully explored in Parliament. This has led to a situation where large sections of the relevant bills have not received an appropriate level of scrutiny and where public policy decisions are taken without considering their effectiveness and full impact.

We call on all parliamentarians to ensure that the Investigatory Powers Bill is scrutinised on both a technical and a public policy level. Debating one of these levels without considering the other risks passing a Bill that is a) not as effective as it should be and b) may have a disproportionate impact on UK businesses and individual freedoms.

3 | A stable framework that complies with all relevant legal obligations



The current legal framework is not only highly complex and outdated, it has also been found to be unlawful following the UK and EU courts striking down DRIPA and the Data Retention Directive.

Aside from dealing with the practical issues of updating and extending powers, it is vital that the Investigatory Powers Bill is drafted so that it complies with all relevant legal obligations. The repeated rejection of some surveillance legislation in the courts not only undermines public trust, but also jeopardises companies that are required to comply with the relevant legislation.

We call on parliamentarians to ensure that the Investigatory Powers Bill fully complies with all relevant obligations so that the process does not have to be repeated in a few years' time. This will not only provide industry with certainty but also rebuild public trust

4 | Adequate balance of powers, oversight and transparency



The current legal framework is outdated and has not kept up with developments. ISPA agrees with the conclusions of the various reviews in this area that reform is needed. We believe that the level of oversight and transparency need to be scaled up with the more intrusive nature of modern surveillance practice and reliance on internet communications.

We encourage Parliamentarians to be wary of arguments that the Investigatory Powers Bill will merely update existing powers and fill a gap in data availability. The nature of surveillance, investigatory powers and technology have changed as communications have evolved from phone and post to online communication, leading to even existing powers becoming more intrusive over time.

We call on all parliamentarians to carefully assess the level of intrusiveness of powers contained in the Investigatory Powers Bill and to ensure that an appropriate level of oversight and safeguards are provided.

5 | Full consideration of impact on business



Internet and digital businesses are one of the most important sectors in the UK economy and an engine for growth. "Software, IT and telecoms services together generated 4.2% of UK gross value added (£59bn) in 2011 and provided 885,000 jobs. We have 107,000 software businesses, and are the world's number two exporter of telecoms services (£5.4bn) and number three in computer services (£7.1bn) and information services (£2bn)."¹

For these businesses, many of which are small and highly innovative, it is important to know whether they will be subject to the provisions in the Bill, either now or at a later stage when they have grown in size. This includes both direct and indirect effects. It is also important that any provisions do not put UK businesses at a disadvantage against international competitors.

We call on all parliamentarians to ensure that the Investigatory Powers Bill does not put competitiveness of the UK economy at a disadvantage. Online and digital business recognise their responsibilities but the impact of any new provision in the Bill needs to be clearly considered and costed. A full Impact Assessment needs to be provided and closely scrutinised by Parliament.

For further information contact secretariat@ispa.org.uk or call 020 3397 3304

¹ Innovate UK (2008): Digital Economy Strategy. <http://bit.ly/1JRzLoW>. The value would be higher if digital and creative businesses were included.