Amnesty International UK

BRIEFING

Investigatory Powers Bill – 14 March 2016

Introduction

At a time when there is a growing body of international court rulings and clear statements that mass surveillance of this kind is contrary to international human rights law, the Investigatory Powers Bill (the Bill) is being rushed through parliament at break neck speed. This legislation, if adopted in its current form, would have devastating effects for people's right to privacy and other human rights in the UK and beyond. The actions of the UK Government contrast with those of the USA who are at least partly rolling back surveillance programmes because of concerns over people's privacy. The UK's surveillance measures presented in the Bill go too far, too fast. Vast powers to monitor communications, access information and tamper with computers, phones and software are lacking critical safeguards, including proper independent judicial scrutiny.

Adequate scrutiny

Despite the many radical proposals in the Bill, which would fundamentally impinge upon the human rights of people inside and outside the UK, the Bill is being rushed through Parliament by the government, ignoring criticism from parliamentary committees, industry, international bodies and civil society. Three separate parliamentary committees made extensive recommendations on the draft Bill, urging redrafting, further safeguards and greater consultation. Despite this, the Bill has been speedily reintroduced and scheduled for second reading on March 15, with the government having spent just two weeks looking at the 100+ complex committee recommendations, and giving MPs two weeks to prepare to debate a 245 page Bill and other lengthy related documents and codes of practice.

International criticism of mass surveillance

Mass surveillance programmes have been condemned in numerous reports, including by the UN High Commissioner for Human Rights, the UN Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism and most recently the UN Special Rapporteur on Privacy.[1] Recent rulings by the Court of Justice of the European Union (CJEU)[2] and the European Court of Human Rights (ECtHR) have strongly criticised mass surveillance programmes. The Grand Chamber of the ECtHR ruled in December 2015 in *Roman Zakharov v. Russia* (Application No 47143/06)[3] that surveillance must be judicially authorised based on individualised reasonable suspicion of wrongdoing, and the Court also ruled in January this year against problematic communications surveillance laws in *Szabo and Vissy v. Hungary* (Application No 37138/14)[4]

On March 8 2016, the United Nations Special Rapporteur on the right to privacy condemned several provisions of the Bill – including bulk powers - as contrary to human rights law and urged that they "be outlawed rather than legitimised."[5]

Amnesty International urges the UK government to take appropriate measures to ensure that the Bill complies with existing international standards, including the findings made in the recent judgements of the CJEU and the ECtHR. With regards to the latter, the UK should take into account and not repeat the flaws contained in the Russian and Hungarian legislation denounced by the Court. Furthermore, it

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[1] UN High Commissioner for Human Rights, *The Right to Privacy in the digital age*, Report to the UN Human Rights Council, 30 June 2014, A/HRC/27/37 ; UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report to the UN General Assembly, 23 September 2014, A/69/397; UN Special Rapporteur on the right to privacy, Report to the UN Human Rights Council, 8 March 2016, A/HRC/31/64,

[2] See EU Court of Justice (Grand Chamber), *Digital Ireland Ltd* case, 8 April 2014, C-293/12,; EU Court of Justice (Grand Chamber), *Maximillian Schrems* case, 6 October 2015, C-362/14,

[3] European Court of Human Rights (Grand Chamber), *Roman Zakharov v Russia*, Application 47143/06, 4 December 2015

[4] European Court of Human Rights, *Szabo and Vissy v Hungary*, Application 37138/14, 12 January 2016, available at

[5] UN Special Rapporteur on the right to privacy, Report to the UN Human Rights Council, 8 March 2016, A/HRC/31/64, para. 39,

should consider the global ramifications of this legislation and the adverse precedent it will set to other states.

Bulk Powers

This Bill bestows broad powers on a wide range of public bodies for bulk interception of communications, bulk retention and acquisition of communications data, vast access to bulk personal datasets and bulk equipment interference. Such indiscriminate powers, lacking any requirement of individualised reasonable suspicion, are contrary to human rights law. Furthermore, so-called "targeted" warrants envisioned by the Bill may apply to ill-defined sets of individuals, including groups of persons "who share a common purpose or who carry on, or may carry on, a particular activity." These so-called "targeted" powers are lacking the specific and individualised reasonable suspicion required by international human rights law. Furthermore, key definitions are either nowhere to find in the Bill, such as that of 'national security', or blatantly circular, such as that of 'data'. The vague, ill-defined nature of the powers, combined with their breadth, gives unprecedented intrusive power to snoop on law abiding individuals.

Amnesty International recommends that bulk surveillance powers contained in the Bill, including bulk interception warrants, be excised from the UK statutory regime. Further, that the broadly defined thematic warrants under the targeted warrants regime be amended to conform to the UK's human rights obligations, e.g. cover more specific categories of persons and include the need for reasonable suspicion of wrongdoing. Finally, it must ensure all relevant terms in the Bill are clearly defined.

Lack of proper judicial oversight

Despite their breadth and intrusiveness, warrants for such powers will be authorised not by Judges but by the executive, with mere 'approval' of that decision by a so-called 'Judicial Commissioner'. That approval function will be limited to reviewing the Secretary of State's decision on judicial review principles, rather than undertaking a full assessment of the merits of the actual warrant application. There is no proper guarantee as to what materials the reviewer will have access to, and no counsel involved to advocate properly for civil liberties in the assessment. . Even this limited review will not be required for cases deemed urgent by the issuer of the warrant, where review can be sidestepped for three days. Similarly, major modifications of warrants, which can include adding the names of persons, places or organisations would not involve Judicial Commissioners. Nor will they always be involved in decisions as to what material obtained under a bulk warrant is further examined. The Bill as a whole contains woefully inadequate safeguards against abuse.

Amnesty International recommends that the authorisation process oversight mechanisms amended to ensure that there are adequate safeguards against abuse. This process must ensure that:

- ***Decisions to authorise warrants are taken by an independent judicial body following the application of (or with the interim non-statutory approval of the application by) the Secretary of State, or through a similarly full judicial authorisation process.***
- ***Such a decision would require full disclosure of all relevant materials underlying the application.***
- ***To the extent the decision to authorise the warrant has to be made without the knowledge and presence of the person concerned, it should also involve the participation of a designated person challenging the request and advocating for the protection of human rights and fundamental freedoms.***

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