UK bill hands vast surveillance powers to police and intelligence agencies

By Barry Mason
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On March 1, Home Secretary Theresa May published the Investigatory Powers Bill (IPB), known by critics as the "snooper's charter".

It enshrines in law the previously hidden mass gathering of Internet data by the Government Communications Headquarters (GCHQ) spying agency, as exposed by whistleblower Edward Snowden in 2013.

The IPB is a far-reaching attack on privacy and democratic rights and greatly enhances the power of the growing surveillance state, as it brings the current diverse rules governing state surveillance into one piece of legislation.

In an unprecedented level of intrusion, Internet Service Providers (ISPs) will have to keep records of the browsing history of everyone who accesses the Internet for a period of 12 months. State security forces will have the power to access this data unhindered, which would enable them to see every web site a person visited.

The introduction to the all-embracing bill states its purpose is to: "Make provision about the interception of communications, equipment interference and the acquisition and retention of communications data, bulk personal datasets and other information; to make provision about the treatment of material held as a result of such interception, equipment interference or acquisition or retention; to establish the Investigatory Powers Commissioner and other Judicial Commissioners and make provision about them and other oversight arrangements; to make further provision about investigatory powers and national security …"

It will establish in law the activities of GCHQ, providing the spy agency with access to all the data travelling on Internet cables passing through UK territory, its bulk storage and analysis. GCHQ's nefarious practices, in which vast amounts of data entering and leaving the UK are hoovered up and shared with the US National Security Agency, as revealed by Snowden, will now be given legal sanction.

The IPB grants GCHQ, the National Crime Agency and, for the first time, a number of major police forces, the power to hack into mobile devices such as mobile phones and tablets and the licence to carry out non-targeted "mass hacking" of such devices.

The Home Office claim that the police power to hack individuals' electronic devices dates back to the 1997 Police Act and would, in any case, only be used in "exceptional circumstances". This is flatly contradicted by the head of the Metropolitan Police technical unit, Paul Hudson, who, in evidence to Parliament's scrutiny committee, said such powers were used by police "in the majority of serious crime cases". Hudson refused to provide any further information on his assertion in a public forum.

The Conservative government is allowing the unprecedented state surveillance of citizens on the basis that its snoopers need judicial legislation as well as the say-so of a government minister—the so-called "double lock" system. The double lock was trumpeted by the government as an assurance that the privacy of UK citizens would not be violated. This is a fraud.

In effect, the role of the judiciary will be to ensure there is a prima facia case for any hacking and establish that procedures have been followed. Their designated role under the IPB is to merely rubber stamp the minister's decision, which will be paramount.

Moreover, access to web browsing records by the police and other security forces is totally exempt from the double lock and does not need to be authorised by a minister backed up by a judge.

The IPB also explicitly permits the use of spying techniques to bolster the country's "economic well-being", if this is linked to "national security" concerns. This could be widely interpreted to include many events, including industrial action taken by a group

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The IPB has enormous legal implications, as it also undermines confidentiality between lawyers and their clients. Peter Carter QC, chair of the Bar Council Surveillance and Privacy Working Group, in a posting on the PoliticsHome web site on March 3 stated: “The Bill undermines the right to a fair trial because barristers will no longer be able to reassure clients that their communications, which the public interest demands should be immune from state intrusion, are in fact private and confidential. It will, for example, allow authorities to listen in on clients and lawyers who are in the middle of a legal dispute against the Government”.

An attempt by the Tories to introduce the snooper’s charter under the previous Conservative/Liberal Democrat coalition was blocked when the Liberal Democrats withdrew support. Immediately following the outcome of the May 2015 election, in which the Tories gained an absolute majority, Home Secretary Theresa May announced her intentions to reintroduce the bill and make it law by the end of 2016.

The government is keen to rush the IPB through Parliament, and hopes to utilise the campaign leading up to the referendum on the UK’s membership of the European Union on June 23, in order to minimise public scrutiny of its passage through Parliament.

This has led to criticism even from within the ranks of the Tory party. The *Independent* newspaper noted February 27, “The former Tory leadership contender David Davis said there was ‘no doubt’ that the government wanted to rush the Bill through Parliament to avoid scrutiny. Government whips have told Labour that the Bill will be published on 1 March, with a second reading—giving MPs a line-by-line debate on the Bill scheduled for 14 March. The Bill will then go to committee stage from scrutiny on 22 March, with a final vote expected in Parliament by the end of April”.

An open letter, urging the government to delay the bill, published in the Conservative supporting *Daily Telegraph* , had over 100 signatories including Davis, Liberal Democrat leader Tim Farron and Green Party MP Caroline Lucas, as well as the directors of human rights organisations Amnesty UK and Liberty, and leading academics.

The letter does not oppose state spying on the population in principle, stating, “Intelligence agencies and the police *require strong surveillance powers*. Their powers and responsibilities—as well as their limits—must be clear to be effective. All three parliamentary reports on the draft Investigatory Powers Bill concluded that it does not meet the requirements of clarity, consistency and coherence”. The letter states that the “intention to pass the IPB this year *is not in the nation’s interest*” (emphasis added).

A draft version of the bill published in November last year was scrutinised by three parliamentary committees, as part of the pre-legislative process. Their concerns and recommendations over privacy implications were supposed to be addressed in the revised March 1 bill.

The most important of these, the Intelligence Services Committee (ISC), produced an 18-page report on the proposed bill. The ISC is tasked with overseeing the work of the intelligence services. It is composed of former ministers, appointed by the prime minister, in consultation with the Leader of the Opposition, currently Jeremy Corbyn. Its workings are kept secret, and the prime minister filters its reports to Parliament.

The ISC and the other committees, while critical of the wording and presentation of the IPB, fully support its intentions.

Online IT industry news web site The Register posted a commentary on this fraudulent “scrutiny” process last month, noting, “The Intelligence and Security Committee of Parliament has warned the Government that it needs to make ‘substantive amendments’ to its draft Investigatory Powers Bill, before proceeding to outline changes which don’t appear to be very ‘substantive’ at all”. It described the ISC report as, “essentially a diligence exercise in legislative drafting” that was “largely targeted at the bill’s sloppy and rushed construction … rather than the powers contained therein”.

In response to the feeble treatment from the bodies ostensibly charged with scrutinising the bill, the Home Office did nothing more than add the single word, “privacy” to the title of Part 1 of the bill, and sent it back to be passed into legislation.

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