

# Science and Technology Committee

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From Nicola Blackwood MP, Chair

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## Investigatory Powers Bill

I am grateful for the Government's response to my Committee's report on the draft Investigatory Powers Bill, and for the consideration you have given to our recommendations. Previously arranged select committee business, taking evidence from the science minister, will prevent me from attending the whole second reading debate. I wanted to write to you therefore to set out some of the continuing concerns we have about the Bill. Doubtless these will receive further consideration as the Bill progresses through its parliamentary stages but I thought it would be helpful to flag up some of these now.

The revised Bill, together with the newly-issued draft codes of practice, have added some clarity and consistency to key definitions, such as 'internet connection records'. I note also that further reassurance has been offered to communications service providers about what can practicably be requested of them in terms of 'removal of electronic protection'. We agree with the need for the Investigatory Powers Commissioner to closely monitor and report on the use of equipment interference powers. It remains to be seen whether these relatively modest changes will provide the UK communications industry with the reassurances it needs. On this, there still seems some way to go, as TechUK have recently said:

"Neither the face of the Bill nor the Codes of Practice acknowledge the dangers inherent within equipment interference provisions. In fact, the key recommendations by the Committees that attempted to safeguard the use of equipment interference have all been ignored and in some instances EI powers have been extended, rather than limited." [*TechUK Briefing and Response to New Investigatory Powers Bill, March 2016*]

The extent to which 'technical capability notices' could compromise encryption services — directly or indirectly — remains a key area of uncertainty (as the high profile case involving Apple and the FBI illustrates). This situation will only deteriorate as we become ever more dependent on increasingly connected and pervasive technologies in all aspects of daily life. In our report we recommended that the Government should produce an explicit framework for mediating and resolving disputes and challenge, and that remains an essential requirement.

We note the Government's rationale for the Government's decision not to place 100% cost recovery for communications businesses on the face of the Bill. We were nevertheless disappointed with that decision; doing so would have gone some way to allay the concerns of our innovative technology industries in this globally

highly competitive sector. While we are sure your commitment from the floor of the House to meet 100% compliance costs will have offered some reassurance, your response acknowledges the uncertainty about costs, stating that "it is unlikely that the Government will be able to publish final costs during the passage of the Bill." It will clearly be important to keep Parliament, not to mention industry, abreast of cost estimates as they continue to be refined and to offer the most robust and durable commitment possible on costs to ensure this Bill does not undermine competitiveness.

I look forward to seeing further details on how the Technical Advisory Board's role will evolve both in relation to influencing decisions on both the cost and technical feasibility of requests for data access. I welcome the Government's recognition, in its response to our report, of the need to continue to work with industry to develop implementation plans for the retention of internet connection records. It is essential these plans are not only completely clear for both established tech companies and new entrants, but also reasonable and proportionate.

I welcome the Government's commitment that the TAB's terms of reference will include keeping Codes of Practice up to date, as we had recommended, although there is no mention of the "set intervals" that we recommended for this process. This leaves too much discretion with the Home Secretary of the day, leaving industry without an automatic mechanism for bringing forward their own proposals for revising the codes, especially given how quickly these codes are likely to become outdated in such a fast moving sector. For this reason, it is important that the TAB has a specific remit to keep under review the evolution of the digital and internet industries, so that it is better placed to influence the modification of the regulatory regime in the future. A key test of the TAB's ability to safeguard against overly burdensome or costly investigatory measures will be its composition, and for that reason it will be essential that the envisaged secondary legislation for this is published early in the Bill's passage.



**Nicola Blackwood MP**  
*Chair*