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Dear Bill,

Thank you for your letter 5 June to the Home Secretary enclosing a further one from Mr Richard Lamont of concerning the Regulation of Investigatory Powers Bill. I am replying as the Minister with Parliamentary responsibility for this legislation.

With reference to the provisions within the Bill relating to communications data, Mr Lamont sets out a scenario whereby an employee of a company, alleging corruption within that company, is communicating with a journalist. He seems to be suggesting that the fact that the employee has communicated with a journalist is as important as the disclosure of the content of the communications itself.

The communications data provisions of the Bill clearly set out the purposes for which communications data can be sought and the relevant public authorities that can acquire it. The purposes are set out in Clause 21 (2) and the relevant public authorities are listed in 24 (1). I can see no relevance in either of these clauses to the scenario that Mr Lamont sets out in his letter. There is no provision in this Bill to allow any of the listed public authorities, such as the police, security or intelligence agencies, to obtain this individual's communications data on the grounds that he is alleging malpractice by his employers and communicating this allegation to a journalist. The Bill sets out clearly the specified purposes for which communications data can be obtained. It places requirements of necessity and proportionality on those seeking to obtain such data and there are also strict limits on the disclosure of said material. Furthermore, the communications data regime will be subject to oversight by the Interception Commissioner.

Mr Lamont contends that Government access to communications data is becoming more intrusive. Such data is already obtained on a voluntary basis from communication service providers under the Data Protection Act. We believe that the system under the RIP Bill represents an enhancement of the protection given to the public. It is the first time that the arrangements for acquiring communications data will have been put on a specific and statutory basis, with effective, statutory oversight. In addition, the safeguards provided by the Code of Practice will require special consideration to be given by the authorising officer in cases where the communications data in question might affect religious, medical or journalistic confidentiality or legal privilege. This additional consideration is over and above the normal tests of necessity and proportionality, and, as I have indicated, any decision made by an authorising officer will be subject to inspection by the Interception Commissioner. Mr Lamont may be interested to learn that there is no current statutory basis requiring that authorisation be made at Deputy Chief Constable level as he suggests. We intend to tighten up the existing regime by placing the level of authorisation at superintendent or equivalent.

Mr Lamont states that the Bill proposes to extend the power to obtain communications data to "a range of officials in several public-sector bodies including local authorities and ...government departments." Currently, the relevant public authorities listed on the face of the Bill who may seek authorisation for such data include the police, National Criminal Intelligence Service, the National Crime Squad, HM Customs and Excise and the three intelligence agencies. Mr Lamont may be referring to the provision in the Bill allowing for the Secretary of State to make further additions to this list at some future stage if it is deemed necessary. This provision has been added to the Bill so that a door remains open to take account of unforeseen future developments such as the amalgamation of law enforcement bodies or the creation of new ones. Mr Lamont may be reassured to know that any such proposals will be made by an order to be debated in both Houses of Parliament by means of the affirmative resolution procedure. I can, however, confirm even at this stage that such powers will not be made available to local authorities.

Mr Lamont also referred to "warrantless interception". This relates to the interception of the content of communications without authorisation have been granted by the Secretary of State by means of a warrant. Mr Lamont asks if the Telecommunications Act 1984 allows public telecommunication operators to intercept communications and pass the contents to Government without a warrant having been authorised by the Secretary of State. I can assure Mr Lamont that there is no such provision within that Act. Section 45(3) clearly states that communications can only be lawfully intercepted "in obedience to a warrant under the hand of the Secretary of State". I can confirm that Government agencies are only able to obtain communications data without a warrant, not the contents of communications.

Of course, we do not deny that unwarranted interception of communications takes place. For example, companies do sometimes monitor their employees' communications with the public for perfectly legitimate business practices, such as training or for the purposes of monitoring fraud and financial transactions. The Telecommunications Data Protection Directive, which we intend to implement this year, allows for the interception of communications for lawful business practice. We have incorporated this provision in Clause 4(2) of the RIP Bill and the Department of Trade and Industry will very shortly be taking forward the consultation process with industry. Any interception carried out which does not fall under the lawful business practice provisions will be subject to civil liability.

Clauses 3 and 4 of the Bill provide further circumstances whereby interception can be carried out without a warrant having been authorised. It is therefore completely untrue to suggest that the Government somehow denies that interception can occur without the use of a warrant. We have two entire clauses in the Bill which relate specifically to this practice.

However, a fundamental principle of the Bill, as it was in the Interception of Communications Act 1985, is the creation of the offence of unlawful interception. The Bill then goes on to describe the exceptions to this offence. Interception of communications (not "interception with a warrant") is defined in the Bill at Clause 2(4) and by following this through it is possible to see that if warrantless interception took place (and did not fall within the exceptions clearly spelt out in the Bill) then it would be an offence.

Finally, Mr Lamont queries the provision in Clause 5(3) of the Bill to authorise a warrant "for the purpose of safeguarding the economic well-being of the United Kingdom". With reference to the economic well-being terminology which Mr Lamont questions, the kind of behaviour that might fit within this definition could include identifying warning of threats to the supply of energy, commodities and raw materials on which the United Kingdom is particularly dependent or identifying attempts by rogue traders or others to manipulate commercial markets, especially when such actions could undermine confidence in the City of London or affect the stability of financial or other markets.

This is not a new provision. The meaning of the phrase was debated at length during the passage of the Interception of Communications Act 1985, and the description used by the Ministers at that time remains valid. Safeguarding the economic wellbeing of the United Kingdom does not mean industrial espionage or intelligence gathering on behalf of United Kingdom companies. In all cases the aim of work carried out under this heading is to allow the government to take such protective actions as are appropriate and consistent with obligations under national, EU and international law. It is a crucial part of the United Kingdom's foreign policy to protect the country against adverse developments overseas which may have grave and damaging consequences for our economic

wellbeing. By definition, therefore, the matter must be one of national significance and cannot be of a trivial kind.

Mr Lamont has little confidence in what the all-party Intelligence and Security Committee may say on this subject. I do not share this view. The ISC is a statutory body with many distinguished and well-respected parliamentarians from across the political spectrum as members. In their 1996 annual report the ISC made the following statement on the economic well-being purpose:

"We reviewed the subject with both the intelligence producers and consumers, and came to the overall conclusion that intelligence work in support of economic well-being is an important, valuable and, on the evidence we have taken, properly conducted area of the Agencies' activities."

In his 1991 report the then Interception Commissioner, Lord Lloyd, stated that there had never been more than a few warrants issued on the ground of safeguarding the economic well-being of the United Kingdom. Mr Lamont is aware that it is longstanding practice not to go into specific details on such matters but I am able to confirm that this remains the case.

I am sorry to have gone on at such length, but Mr Lamont did raise a large number of queries which I have endeavoured to answer as fully as possible.

Yours
CMI