Comment: Snoopers' charter is anti-business as well as anti-privacy

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By Guy Wilmot

On the day of David Cameron's appearance at the Leveson inquiry last week, the coalition government published its heavily trailed (but not by the coalition) communications data bill – commonly known as the 'snooper's charter'.

The government does not seem keen to champion the bill – for reasons which are obvious when one considers the implications of the proposed legislation.

The draft legislation is relatively short. In most cases this is a blessing – however in this case (and as is now standard practice) difficult decisions, controversial rules and key detail are going to be left to delegated legislation. Parliament is being asked to trust the home secretary and her civil servants to craft rules which will have a fundamental impact on data privacy.

The law provides the home secretary with power to make rules to allow government authorities to seize data from 'telecommunications operators' and rules forcing those operators to collect and hand over data.

The legislation defines a 'telecommunications operator' as anyone operating any system allowing for electronic communication. This means not just BT, Vodafone and Virgin but also Skype, Facebook and other internet services. Even a not-for-profit local community or parish website which allows members to send private messages would be covered by the law.

As well as being (by definition) anti-privacy the draft legislation is also arguably anti-business. The rules which any business operating a communication system will need to follow are likely to be voluminous. The new rules will include requirements that operators comply with certain standards, use specified equipment or systems and use specified techniques to collect data about their customers to be handed over to government agencies – so much for a bonfire of red tape.

Businesses may also be required to install 'black boxes' to record and filter information. Just how these devices will work is not clear, but technical experts have cast doubt on the feasibility of collecting this data without having an impact on communications systems generally.

All of these rules, costs and requirements are being imposed on a competitive international industry which is likely to be a key driver of growth for the UK economy in future years.

The blurb which accompanies the text of the legislation makes great play of the various protections included but many believe that these are unlikely to have much impact. They include a non-binding 'consultation', a requirement that government officials seeking to seize

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data act in good faith and proportionately, some general oversight and rules about how long data can be kept. There is also a right to complain to a tribunal (but the tribunal will have only limited powers to quash an authorisation to seize data).

These 'protections' do not address either the main privacy concern, which is that government can engage in regular 'fishing expeditions' against undesirables (who civil rights campaigners fear may be activists and campaigners with no criminal or illegitimate intent). Then there's the main practical concern, which is that the new powers will lumber internet and communications businesses operating in Britain with disproportionate costs and a competitive disadvantage against their overseas competition.

Before the legislation was published the government implied that there would be judicial oversight of the new powers. It was hoped that the rules would require a warrant to seize data but, except in a very small number of cases, no warrant will be required, and internet and telecoms businesses will have to hand over information about who users are communicating with on the say so of a 'senior officer'.

The legislation is in draft form at the moment and is subject to change and consultation. Both civil libertarians and technology and communications businesses will hope that the government ignores concerns about another U-turn and will heavily amend the legislation.

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