

**Written evidence submitted by the Information Technology Industry Council (ITI)  
to the Commons Public Bill Committee on the Investigatory Powers (Amendment) Bill**

4 March 2024

The Information Technology Industry Council (ITI) is the premier voice, advocate and thought leader for the global technology industry, representing the world's leading innovation companies. We write to express concerns with the proposed creation of additional UK government powers relating to the scope and operation of the notices regime in the Investigatory Powers (Amendment) Bill<sup>1</sup>.

ITI recognizes the legitimate interests of democratic, rule of law governments to hold proportionate powers including to access data held by private sector entities for law enforcement and national security purposes. Such practices require strong, independent oversight mechanisms that safeguard human rights, including privacy, and maintain citizens' trust.

ITI understands the Bill's objective is to make targeted changes so that UK agencies maintain existing capabilities as technology develops. However, we believe that these changes, specifically to the definition of a telecommunications operator and to the notices regime, introduce significant new issues for global companies and risk upsetting the balance struck by the 2016 Investigatory Powers Act (IPA). ITI calls on the Committee to introduce amendments that will ensure the notices regime will avoid irreconcilable conflicts of law for operators and not disrupt their ability to operate within the increasingly complex regulatory environment that has evolved since 2016, both in the UK and globally.

The Committee should recall that the 2016 Act established an investigatory powers regime with important safeguards and greater transparency. Parliament played a crucial role in introducing these changes. Importantly, Parliament explicitly recognised the conflicts of laws created by assertions of extraterritorial jurisdiction and this built momentum for a new legal framework<sup>2</sup> for lawful access of communications data from US operators and a safe harbour from enforcement. It is crucially important that Parliament continues to be guided by these same principles in order for the regime as a whole to remain both workable in a global context and worthy of emulation overseas.

ITI submits the following specific concerns to the Committee. We look forward to continuing to support the thorough consideration of the Bill and remain available to discuss these issues in greater detail.

***Notice review period (Clause 17)***

Requiring operators to maintain an existing capability for the duration of a notice review period would weaken a key step in the IPA oversight process and risks delaying a company's ability to develop their products, including responding to cybersecurity threats. We ask the Committee to seek greater clarity in the Bill on how this provision would work in practice. As currently drafted, it

<sup>1</sup> <https://bills.parliament.uk/bills/3508>

<sup>2</sup> <https://www.justice.gov/opa/pr/landmark-us-uk-data-access-agreement-enters-force>

does not provide sufficient reassurances to operators and could hinder a company's freedom to operate in the UK market and elsewhere.

### ***Definition of Telecommunications Operator (Clause 18)***

Clause 18 would expand the scope of covered entities, including to those with no nexus to the UK. This is intended to give UK authorities expanded reach into parent companies and control how companies design global products and provide them globally. This raises a number of practical and legal issues. First, it exposes more companies to the risk of extraterritorial enforcement without recourse to a clear redress mechanism. Second, this would set a significant global precedent that has the potential to result in a patchwork of overlapping and conflicting global laws with a chilling effect on the development of global tech businesses, including those involved in cutting-edge AI and security technologies. Third, the potential for conflicts of law is multiplied by many times as a result of the vast increase in the volume of regulation introduced in many countries over the last five years. We ask that the committee probe how this can practically operate as intended and reconsider this amendment accordingly. We explore this point in more detail below.

We also ask for greater consideration of implications for the UK's role and standing in relation to international efforts to align and facilitate cross-border access to e-evidence, such as the U.S.-UK Data Access Agreement<sup>3</sup> and the OECD Trusted Government Access Principles<sup>4</sup>.

### ***Notification Requirement (Clause 20)***

The Bill proposes to introduce a new notification requirement or notice, requiring certain operators to inform the Secretary of State in advance of specified product or technical changes. Although intended to be targeted<sup>5</sup>, this power represents a significant change to the already far-reaching notices regime and the UK would be the first rule of law country to introduce such an obligation. The Bill proposes such notification notices would be authorised by the Home Secretary only and without a 'double-lock' authorisation by a Judicial Commissioner, as is required for all other notices.

### ***Notification notices and existing notices***

Taken as a whole, the proposed changes in the Bill have their greatest impact when considered together and in combination with the existing notice regime. We invite the Committee to consider this in detail.

For example, a notification notice given under clause 20 could be followed by a technical capability notice under clause 17 and significantly delay a company's plans to evolve its products in the UK market (or globally if the UK Government seeks to exert extraterritoriality). Taken together, these powers could impede or otherwise interfere with UK or global roll-outs of innovations or broader product updates which benefit users and society. This could also impact on competition within the market if certain companies are given certain combinations of notices and are prevented from introducing new product updates, while others are not, including new entrants. We request the Bill

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<sup>3</sup> <https://www.gov.uk/government/publications/uk-us-data-access-agreement-factsheet>

<sup>4</sup> <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0487>

<sup>5</sup> <https://www.gov.uk/government/publications/investigatory-powers-amendment-bill-factsheets/investigatory-powers-amendment-bill-notification-requirement>

be amended to provide greater clarity on how the notice powers would operate as a whole and alongside other legal obligations in the UK to safeguard privacy and security.

Additionally, the terms of all notices legally prevent a company from disclosing that a notice has been given and this could have significant implications where a notice conflicts with a company's ability to comply with statutory regulation in the UK or elsewhere. In many cases, non-compliance comes with the risk of significant turnover fines and, in some cases, criminal prosecution of company directors. We ask the Committee to probe whether it is envisaged that a notice could be given that puts a company in breach of statutory regulation. We also ask the Committee to introduce specific safeguards for operators including:

- (1) requiring amendments to the IPA code of practice to explicitly allow disclosures to statutory regulators and judicial authorities in the UK and overseas, where required as exculpatory evidence;
- (2) allowing a company to request a review of any notice within the two-year period of application to address new conflicts of law arising in the UK or elsewhere (e.g., from new statutory regulation or novel interpretations of existing rules);
- (3) ensuring any proportionality test explicitly considers the impact on a company's freedom to conduct its business, all relevant conflicts of law (in the UK and overseas) and likely collateral effects of the proposed terms of a notice.

### **Concluding remarks**

As set out above, the proposed new definition of telecommunications operator and amendments to the notices regime introduce significant changes that could have extensive implications for global companies. Given the UK's record of developing trusted and proportionate investigatory powers laws and practices, it is critical to ensure any changes are more precisely targeted. We strongly encourage greater scrutiny of these implications, so that the Bill will not have a chilling effect on a company's ability to conduct business, or on current or future innovations, and that it will serve to further international efforts on shared goals around trust and security.

### **About ITI**

*The Information Technology Industry Council (ITI) is the premier voice, advocate, and thought leader for the global information and communication technology (ICT) industry. Our [member companies](#) include the world's leading innovation companies, with headquarters worldwide and value chains distributed around the globe. ITI member companies represent the breadth of the technology ecosystem, including semiconductor and computer hardware and software companies, network equipment manufacturers and suppliers, cybersecurity providers, and leading Internet services and consumer technology companies.*