



**11<sup>th</sup> February 2016**

**IOCCO Response to the Draft Investigatory Powers Bill Report of the Joint Committee**

Today the Joint Committee appointed to conduct pre-legislative scrutiny of the Government's Investigatory Powers Bill has published their report. We welcomed the opportunity to give oral and written evidence to the Joint Committee on the Investigatory Powers Bill.

The Joint Committee's report is very comprehensive, which is particularly impressive considering the short timeframe they had to carry out their work. The Committee makes 86 recommendations and a number of additional observations which we now urge the Government to consider carefully.

We are very pleased to note that the Joint Committee's report makes recommendations in relation to the majority of the concerns and inadequacies that we highlighted to the Committee in our evidence. We have produced a summary overleaf of how the Committee's recommendations link to our evidence.

## IOCCO Evidence to the Joint Committee for the Investigatory Powers Bill



### Summary of Points for the Committee to Consider

-  We have concerns with the aggressive timeline for the Investigatory Powers Bill (hereafter the "IP Bill"). There should be a review provision included in the IP Bill to enable the legislation to be re-visited regularly by the Government and revisions to take place in light of experience, especially given the fact that communications technology is ever changing. **Joint Committee Recommendation 86 (Para 710).**
-  The oversight provisions in Part 8 of the IP Bill require significant enhancement in order to prescribe properly the legal mandate and functions of the "world-leading oversight body" which the Government is seeking to create. 3 of the 6 elements of our oversight wish-list have been partly addressed and the remaining 3 have not been addressed by the clauses. This section of our evidence submission provides a number of key recommendations. **Joint Committee Recommendations 51 (Para 574), 52 (Para 575), 53 (Para 588), 54 (Para 593), 55 (Para 597), 59 (Para 626), 60 (Para 629), 61 (Para 630), 63 (Para 637), 64 (Para 638), 76 (Para 670).**
-  Clause 171 is a paradox which requires substantial re-drafting and clarification to ensure that a) the delineation of responsibility between the Investigatory Powers Commissioner and the Investigatory Powers Tribunal (hereafter "the IPT") is clear and, b) individuals are able to seek effective remedy. **Joint Committee Recommendations 57 (Para 621), 58 (Para 622), 65 (Para 640).**
-  Clause 8 (offence of unlawfully obtaining communications data) could have the unintended consequence of undermining the open and co-operative self-reporting of errors and contraventions currently undertaken. There is a real danger that this provision will reduce accountability and individuals' and public authorities' co-operation with our investigations into errors and contraventions. **No recommendation made on this point by Joint Committee.**
-  Is it desirable to have the same body responsible for authorising investigatory powers and undertaking the post facto oversight of the exercise of those powers? If so, the judicial authorisation and oversight elements of that body must be operationally distinct. **Joint Committee Para 612 emphasises need for these two functions to have clear delineation.**
-  There appear to be a number of clauses which provide exceptions for national security or which exempt the intelligence agencies from key safeguards (e.g. clauses 47(2), 47(3), 60(2), 60(3) and 61). Are these exceptions, especially the combined effect, justified? **Joint Committee Recommendation 112 (Para 556).**
-  The Government has not taken the opportunity to bring all of the investigatory powers used by public authorities into the IP Bill. The result is a lack of clarity and inconsistency in application and approval procedures. **No recommendation made on this point by Joint Committee but there are a number of references to inconsistencies.**
-  The IP Bill also curiously prescribes different authorisation and modification procedures for targeted equipment interference warrants made on behalf of the intelligence services (or Chief of Defence intelligence) to those made on behalf of law enforcement. The different procedures are confusing and it is not clear on what basis they are justified. **Joint Committee Recommendation 35 (Para 450).**