

Title:
Investigatory Powers Bill: Bulk Personal Datasets
IA No: HO0202

Lead department or agency:

Home Office

Other departments or agencies:

FCO, GCHQ, MI5, SIS

Impact Assessment (IA)

Date: 4 November 2015

Stage: Consultation

Source of intervention: Domestic

Type of measure: Primary legislation

Contact for enquiries:

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Summary: Intervention and Options

RPC Opinion: Not Applicable

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?	
£0m	£0m	£0m	No	NA

What is the problem under consideration? Why is government intervention necessary?

As terrorists and organised crime groups become more security and technologically aware, they are using increasingly sophisticated techniques to evade detection and threaten the UK and perpetrate serious and organised crime. A BPD (Bulk Personal Dataset) refers to a dataset that contains personal information about a wide range of individuals, the majority of whom are unlikely to be of intelligence, security or law enforcement interest. Analysis of BPDs is a vital tool that helps the security and intelligence agencies to keep pace with these threats. While the legal basis for use of this capability is established, there is a need to clarify the safeguards and oversight of the acquisition and use of BPDs.

What are the policy objectives and the intended effects?

To provide clearer safeguards, oversight and accountability for the acquisition and use of BPDs by the security and intelligence agencies. To provide greater transparency and give greater assurance to the continued use of this capability by the security and intelligence agencies to investigate and tackle terrorist groups, threats to our national security and serious and organised crime. This legislation will reinforce the existing safeguards around authorisation and use.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

OPTION 1: No legislation – No changes are made to the safeguards and oversight regime for the security and intelligence agencies' use of BPDs. Additional handling instructions will be published setting out how the intelligence agencies use, retain, destroy and audit BPDs.

OPTION 2: Legislate to increase the safeguards and oversight for security and intelligence agencies' use of BPD

Option 2 is our preferred option as it best meets the policy objectives set out above.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: December 2021

Does implementation go beyond minimum EU requirements?				N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro	< 20	Small	Medium	Large	
	No	No	No	No	No	
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: N/A	Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:

Date

3/11/15

Summary: Analysis & Evidence

Policy Option 1

Description: No legislation

FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0		0	0
High	0		0	0
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised costs by 'main affected groups'

This is the baseline option; there are no additional costs.

Other key non-monetised costs by 'main affected groups'

This is the baseline option; there are no additional costs.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0		0	0
High	0		0	0
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

This is the baseline option; there are no additional benefits.

Other key non-monetised benefits by 'main affected groups'

This is the baseline option; there are no additional benefits.

Key assumptions/sensitivities/risks	Discount rate (%)
The lack of certainty around these safeguards could result in a lack of public confidence concerning the security and intelligence agencies' use of bulk personal datasets. This could, in time, have an impact on public trust in the agencies and may have a bearing on the ability of the security and intelligence agencies to tackle national security and serious crime threats.	3.5

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

Summary: Analysis & Evidence

Policy Option 2

Description: Legislate to increase the safeguards and oversight for security and intelligence agencies' use of BPD

FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised costs by 'main affected groups'

The security and intelligence agencies will be required to report on their acquisition and use of bulk personal datasets to the oversight bodies, which will create additional staffing and training costs. These costs are covered in the Oversight Impact Assessment, and are therefore not included in the costs of this Impact Assessment.

Other key non-monetised costs by 'main affected groups'

There will be additional training and familiarisation costs for the reporting arrangements, applicable to the Commissioners, security and intelligence agencies, the Home Office and the Foreign and Commonwealth Office, policy officials and legal advisers as they spend time understanding the new authorisation and reporting arrangements.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	N/K	N/K	N/K

Description and scale of key monetised benefits by 'main affected groups'

No benefits have been monetised for this option.

Other key non-monetised benefits by 'main affected groups'

Will improve public confidence in the safeguards that apply to the SIA use of bulk personal datasets, providing the public with greater understanding and transparency.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
Greater transparency of this capability and its safeguards may lead to changes in criminal behaviour, which could reduce the effectiveness of BPD analysis.		

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

Evidence Base

A) Define the Problem

As terrorists and organised crime groups become more security and technologically aware, they are using increasingly sophisticated techniques to evade detection and threaten the UK and perpetrate serious and organised crime. To combat this, the security and intelligence agencies need to employ a range of investigative methods to combat them. Analysis of Bulk Personal Datasets (BPDs) is a vital tool that helps them keep pace with these threats.

BPDs refers to datasets that contain personal information about a wide range of individuals, the majority of whom are unlikely to be of intelligence, security or law enforcement interest. Examples include public telephone directories and the electoral roll. Datasets like these are held on one or more analytical systems within the security and intelligence agencies.

Agencies use BPDs to identify subjects of interest, to validate intelligence, or to ensure the security of operations or staff. They can be used to establish links between subjects that would otherwise not be known and help to rule out individuals from an investigation without resorting to more intrusive or expensive methods, such as surveillance or interception. A BPD is primarily acquired and used by the security and intelligence agencies under provisions in Security Service Act 1989 and the Intelligence Services Act 1994. We intend for this to remain the case, but will use the Investigatory Powers Bill to increase the safeguards and oversight around the agencies' acquisition and use of BPDs. The security and intelligence agencies' use of BPDs and its oversight was avowed in March 2015. While the legal basis for use of this capability is established, there is a need to clarify the safeguards and oversight of the acquisition and use of BPDs.

David Anderson's Report, entitled "A Question of Trust" was published in June 2015. In the report it was recommended that BPDs should be made subject to equivalent safeguards as those he recommended for other investigative powers in his report (Recommendation 6(d) page 285).

In the ISC's report entitled "Privacy and Security: A modern and transparent legal framework" (March 2015) they stated "... *The Intelligence Services Act 1994 and the Security Service Act 1989 provide the legal authority for the acquisition and use of Bulk Personal Datasets. However, this is implicit rather than explicit. In the interests of transparency, we consider that this capability should be clearly acknowledged and put on a specific statutory footing.*"

B) Rationale

New legislation is necessary to clarify and put the safeguards around the security and intelligence agencies' use of BPDs onto a more robust and firmer statutory footing and to provide greater public confidence in the transparency and accountability of the security and intelligence agencies' use of BPDs.

Analysis of BPDs is a vital tool for security and intelligence agencies. It helps provide immediate context for other targeted intelligence received and enables agencies to develop leads more quickly. Importantly it also enables agencies to rule out people who are not of concern more quickly without resorting to more intrusive and resource-intensive intelligence methods. For example, if information is received that a person with a specific name is planning to commit a serious crime, then BPDs can be used to identify which person with that name fits other elements of the information given and therefore eliminate others with that same name from further investigation.

Additionally, when significant events, such as the NATO Summit, take place the agencies work in conjunction with law enforcement and other partners to ensure that national security is not put at risk. The use of BPDs is an important tool to trace the details of individuals with access to venues so as to mitigate the risk that subjects of national security interest might gain access to these events. The capability BPDs provide therefore contributes to the safety and security of the UK.

Legislation will provide greater public confidence in the continued ability of the security and intelligence agencies' use of analysis of BPDs to prioritise and investigate threats to ensure they can keep the public safe. It will also provide greater public confidence that will allow law enforcement agencies to continue to focus their finite resources as effectively as possible, as they will not need to resort to other more costly and resource-intensive capabilities such as targeted surveillance.

The Intelligence and Security Committee of Parliament highlighted the value of BPDs in their report "Privacy & Security: A modern and transparent legal framework" (March 2015):

"The Agencies use Bulk Personal Datasets ... to identify individuals in the course of investigations, to establish links, and as a means of verifying information obtained through other sources. These datasets are an increasingly important investigative tool for the Agencies...."

Recommendation X, Page 59

In his report "A Question of Trust", David Anderson also stated:

"MI5 considers that, due to the proliferation of communications platforms and techniques available to those it is investigating, it needs to use a wider range of techniques more frequently to obtain comparable insight. Equipment interference, for example, which may require both a property and an interception warrant, epitomises that need. Access to bulk personal data sets is also becoming more important to its investigative work." Section 10.35, Page 199

C) Objectives

The objective of new legislation is to provide greater public confidence in and understanding of the use of bulk personal datasets by the security and intelligence agencies. Greater understanding will stem from increased transparency of the safeguards that apply, and greater public confidence from the strengthening of these safeguards in new legislation and the associated accountability and oversight that is in place. Greater public confidence will help maintain the ability of law enforcement, supported by the intelligence agencies to investigate those who wish to do us harm. This legislation does not seek to extend the UK's reach or increase the powers of the security and intelligence agencies beyond their current capability in respect of bulk personal datasets.

D) Options

Option one - No legislation: No changes to the statutory basis for safeguards and reporting; additional handling instructions will be published setting out how the security and intelligence agencies use, retain, destroy and audit BPD.

Option two - Legislate to increase the safeguards and oversight for security and intelligence agencies' use of BPD.

E) Appraisal (Costs, Benefits)

OPTION (1) – No legislation – rely on current provisions in legislation and publish handling arrangement / do nothing

This option would see the security and intelligence agencies continue to rely on existing provisions, including in the Intelligence Services Act and Security Service Act, and subject to safeguards set out in existing internal handling arrangements. Base costs will remain the same under this option. There will be no additional benefits under this option.

Risks

This option assumes security and intelligence agencies' BPD handling instructions will be published.

In this option, the lack of certainty around these safeguards could lead to a reduction in public trust concerning the security and intelligence agencies' use of bulk personal data. In time, this might have an impact on the willingness of the security and intelligence agencies to use bulk personal data capabilities. If that were the case, the security and intelligence agencies would not be able to use BPD to quickly rule out individuals in investigations and would therefore not be able to prioritize their resources as effectively. Operations and investigations run without information from BPD would take longer to progress. Those unconnected to investigations would be subjected to more intrusive investigative methods before they were ruled out of an investigation. More crimes would go unsolved and the public could be put at risk. Financial costs would also be higher.

OPTION (2) – Legislate to explicitly state safeguards and oversight for security and intelligence agencies' use of BPD as recommended by David Anderson and the ISC

This option would increase accountability and transparency of the use of this capability and provide reassurance to the general public, ensuring that this capability would continue and that security and intelligence agencies may continue to acquire and use BPD where it is necessary and proportionate to do so.

This option would provide for class-based warrants issued by the Secretary of State followed by approval by a judicial commissioner to security and intelligence agencies for the use of BPDs on a six-monthly basis for certain purposes. It would also introduce a mechanism by which the Secretary of State can issue, after judicial commissioner approval, a warrant for specific datasets.

The safeguards that apply to security and intelligence agencies access, retention, storage, destruction, disclosure and audit of BPD would be set out in a statutory code of practice.

Costs of Option 2

As this policy intends to maintain the status quo in terms of the powers security and intelligence agencies can exercise in relation to BPD, the only additional costs are from increased levels of reporting BPD activity to the oversight bodies. The agencies will be required to provide requested information on their acquisition and exploitation of BPDs, such that additional staff and training may be required. These costs are captured in the **Oversight Impact Assessment** for the Investigatory Powers Bill, and are therefore not included in the costs in this Impact Assessment.

Benefits of Option 2

This would ensure that security and intelligence agencies' use of BPD was subject to strong safeguards and robust oversight, enhancing public confidence and ensuring that BPD powers remain available to the agencies.

F) Risks

There is an overarching risk that in consolidating existing legislation criminals and terrorists will be more greatly aware of the capabilities of the security and intelligence agencies to detect and prevent terrorism and serious crime, and will take new or additional measures to evade exposure through BPD analysis.

If the risk associated with OPTION (1) were realised, if the lack of additional safeguards and oversight eroded public trust and had an impact on the agencies' willingness to use BPD, the associated intelligence gaps would represent a significant loss for the security and intelligence agencies, and would seriously undermine their ability to detect, investigate and prevent serious crime and terrorism, putting lives at risk. The additional monetary costs and the increased level of intrusion associated with deploying other investigative techniques in lieu of analysis of BPDs could be substantial.

G) Implementation

The Government will introduce a Bill following any revisions necessary after pre-legislative scrutiny in the New Year. The Bill will need to be enacted by 31 December 2016, by which point the Data Retention and Investigatory Powers Act 2014 will fall away.

H) Monitoring and Evaluation

The proposed Bill will be subject to pre-legislative scrutiny by a Joint Committee of Parliament before being introduced to Parliament in the New Year. The Intelligence and Security Committee of Parliament will continue to oversee the activities of the security and intelligence agencies, including their exercise of investigatory powers. And the Investigatory Powers Tribunal will provide a right of redress to any individual who believes they have been unlawfully surveilled.

I) Feedback

The Government will consider carefully the recommendations of the Joint Committee before bringing forward revised proposals for Introduction. Public consultation will form part of the pre-legislative scrutiny process.

