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Chair
Intelligence and Security Committee
35 Great Smith Street
London
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19 September 2017

Dear Chair,

DATA PROTECTION BILL

I am writing to draw the Committee's attention to the provisions of the Data Protection Bill, introduced in the House of Lords on 13 September and published the following day, insofar as they concern the processing of personal data by the intelligence services or by other persons for national security purposes.

The Bill replaces the Data Protection Act 1998 ("the 1998 Act") with new legislation that provides a comprehensive and modern framework for data protection in the UK. In doing so, it sets new standards for protecting general data, based on the EU General Data Protection Regulation ("GDPR"), ensuring that people will be better informed of their rights, and provide new rights to move or delete personal data.

As well as giving effect to derogations under the GDPR and applying, with appropriate modifications, the GDPR standards to processing which is out of scope of EU law (referred to in the Bill as the "applied GDPR" scheme), the Bill provides for a bespoke regime for processing personal data by the police and other criminal justice agencies for law enforcement purposes based on the provisions of the EU Law Enforcement Directive ("LED").

As you will be aware, national security is outside the scope of EU law. Consequently, the processing of personal data in connection with national security activities and processing by agencies or units dealing with national security issues is not within scope of the GDPR or the LED, as a result of which, the provisions of the GDPR and LED were not designed to be applicable to the unique nature of processing by the intelligence services. Part 4 of the Bill therefore provides for a separate data protection regime for the processing of personal data by the intelligence services based on the standards provided for in the updated Council of Europe "Convention

for the Protection of Individuals with regard to Automatic Processing of Personal Data” (“Convention 108”), which is currently in the final stages of negotiation.

As is currently the case under section 28 of the 1998 Act, Part 4 provides for a wide ranging exemption from relevant provisions of the Bill (including the data protection principles and the rights of data subjects) if the exemption from the provision is necessary for the purpose of safeguarding national security, for example, to avoid tipping off a terrorist suspect.

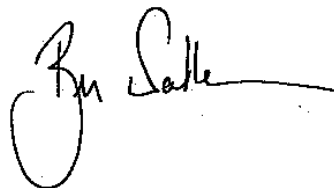
Where other organisations undertake national security activities, the Bill provides for an analogous, but tailored, national security exemption where this is necessary to safeguard national security (see clauses 23 to 25, 41(4), 42(4), 45(3), 65(7) and 76).

The Bill preserves the ability, again provided for in section 28 of the 1998 Act, to apply to a Cabinet Minister (or Attorney General or the Advocate General for Scotland) to issue a certificate certifying that a national security exemption (or restriction) is a necessary and proportionate measure to safeguard national security. Such a certificate is to be conclusive evidence of that fact in any legal proceedings.

This approach ensures consistency with the existing 1998 Act, ensuring data standards are upheld where possible, but not at the cost of national security.

If it would assist the Committee to have a briefing on the relevant provisions of the Bill, I would be happy to arrange this.

I am placing a copy of this letter in the library of the House.

A handwritten signature in black ink, appearing to read "Ben Wallace". The signature is written in a cursive style with a large initial "B" and a long horizontal stroke extending to the right.

Rt Hon Ben Wallace MP
Minister of State for Security