

UN Human Rights Council 47: UK statement for the response to the Report of the Special Rapporteur on the Right to Privacy

Thank you Madame President,

The United Kingdom welcomes the report from the UN Special Rapporteur on the Right to Privacy, following his visit to the UK in 2018, and his positive assessment of the UK's approach to understanding issues around privacy and security, and recognition of the UK's status as a world-leader in this field.

During his visit to the United Kingdom, the Special Rapporteur had a number of positive meetings with officials from Her Majesty's Government, the Devolved Administrations in Northern Ireland, Scotland and Wales, with the Police, the UK regulatory bodies and other stakeholders that are relevant to his mandate.

In addition to hosting his official country visit, the United Kingdom was pleased to further support the Special Rapporteur's International Intelligence Oversight Forum (IIOF) at Lancaster House, London, in October 2019.

IIOF 2019 was an excellent forum that was well attended by over 100 representatives from governments, intelligence agencies, academic institutions and non-governmental organisations. The United Kingdom was pleased that IIOF provided a platform to have an informed and sensible discussion on ways to address security and privacy.

The United Kingdom is pleased that the Special Rapporteur recognises the positive steps the UK has taken to strengthen the safeguards on the right to privacy, and the oversight of investigatory powers more broadly, which he described as "more vigorous, robust and effective" when compared to his previous visits.

A key basis of these safeguards is provided for through the Data Protection Act (2018) and the Investigatory Powers Act (2016). Alongside this legislation, the Human Rights Act (1998) underpins the protections provided to data subjects in the UK.

The United Kingdom welcomes the recognition by the Special Rapporteur that the introduction of the Investigatory Powers Act (2016), has significantly strengthened provisions of intelligence oversight by law.

This legislation introduced unprecedented transparency and world leading privacy, redress, and oversight arrangements. For example:

The legislation makes clear the circumstances in which various investigatory

powers may be used and the strict safeguards that apply to prevent abuse.

It requires that the use of investigatory powers must always be justified on the grounds of both necessity and proportionality.

It places the protection of privacy at the heart of the legislation. Public authorities therefore must have regard to whether the same effect could reasonably be achieved by less intrusive means and whether additional safeguards are required due to the sensitivity of the information.

The legislation is supported by statutory codes of practice, providing a transparent and comprehensive explanation of how powers are to be used by public authorities.

It introduced a double-lock mechanism, whereby ministerial decisions to authorise specific use of the most intrusive powers, is also subject to mandatory review and approval by an independent Judicial Commissioner before it can have legal effect.

The United Kingdom is disappointed by the Special Rapporteur's suggestion that "the system of having politicians involved in signing off on warrants of interception remains inherently open to abuse if a conflict of interest should arise as to whom it is being proposed be put under surveillance."

All UK Ministers are subject to a strict set of rules and principles which outline the standards of conduct as set out in the Ministerial Code. Ministers are also accountable to UK Parliament as well as to the UK's regulatory oversight bodies, oversight which the Special Rapporteur has praised and which we don't see in non-democratic countries. In addition, the vast majority of UK Ministers are directly elected Members of Parliament in addition to their Ministerial duties and have direct accountability to their electorate, with the exception of the limited number serving on the front bench in the Upper House.

The United Kingdom has considered the Special Rapporteur's comments regarding the use of 'bulk' data in the context of maintaining national security.

Bulk powers are not indiscriminate and can only be used where it is necessary and proportionate to do so, as with other powers. Those authorised to use these powers are always required to operate in accordance with strict safeguards and under parliamentary, independent judicial and ministerial oversight.

Given that data is more dispersed, localised and anonymised, bulk powers have proved essential over the last decade and will be increasingly important in the future to identify threats that cannot be identified by other means.

In line with statutory requirements, a report on the operation of the Investigatory Powers Act (2016) will be prepared in 2022. The United Kingdom will give careful consideration to the comments made by the Special Rapporteur in his report during this process.

The United Kingdom wishes to thank the Special Rapporteur for his leadership

during his tenure on these important issues that fall within his mandate, and looks forward to working with his successor accordingly.

Thank you, Madame President.