



Investigatory Powers Bill

Key points

- The Bill will significantly reform the current independent oversight regime for investigatory powers by:
 - Creating a new body of commissioners, headed by the Investigatory Powers Commissioner, responsible for overseeing the use of all investigatory powers.
 - The Commissioners will provide a ‘double lock’ on the authorisation of warrants – before a warrant issued by a Secretary of State can come into force a Judicial Commissioner must approve it.
- The new single oversight body, which will be called the Investigatory Powers Commission, will have significantly greater resources, including technical and legal resources, to ensure that they can effectively hold the intelligence agencies and law enforcement to account.
- A key role for the Investigatory powers Commission will be to ensure the public and Parliament are informed about how these powers are used. The Investigatory Powers Commissioner will have to report annually and will have the power to report more frequently, on any matter that he or she considers appropriate.

Background

- We currently have one of the strongest oversight models in the world, that includes the:
 - Intelligence Services Commissioner (ISCom);
 - Interception of Communications Commissioner (IoCC); and
 - Chief Surveillance Commissioner (CSC).
- Headed by senior serving or retired judges these Commissioners oversee the use of investigatory powers.
- The Intelligence and Security Committee of Parliament and the Executive also have an important role to play in overseeing the activity of the security and intelligence agencies and authorising their activities.
- The reports by David Anderson QC and the Royal United Services Institute recommended reform to the oversight regime, consolidating the existing structures into a single oversight body.

Key facts

- The current independent bodies were established by the Regulation of Investigatory Powers Act 2000.
- In 2014, IOCCO, the OSC and the Intelligence Services Commissioner inspected or authorised 3968 warrants.
- The OSC and Intelligence Services Commissioner publish annual reports and IOCCO produce reports on a 6 monthly basis. They can, and do, produce ad hoc reports – such as IOCCO’s investigation into the use of communications data power to

“...having spoken in depth to IOCCO, and reviewed a number of reports of similar review bodies from different countries, I would comment that they are a model of their kind.” **David Anderson QC, “A Question of Trust”, June 2015**

“..we note that inspector Generals often provide more of an internal audit function, operating within the Agencies themselves. As such, the Committee does not accept the case for transferring to this system: it is important to maintain the external audit function that the Commissioner’s provide.”

ISC, Privacy and Security report, March 2015

“In the past few years a number of improvements have been made to the oversight regime, but further reform is required. Reorganisation and better resourcing of the existing setup could create a more streamlined, robust and systematic oversight regime that would be genuinely visible to the public”

RUSI, Independent Surveillance Review, July 2015



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Why do we need it?

- The public and Parliament have the right to understand how investigatory powers are overseen. Security and intelligence and law enforcement agencies must be held accountable for what they do.
- Oversight by independent bodies is a key part of this. The current system is working but it can be improved. The Bill will do this – in particular by merging a number of the existing bodies into a new single and more powerful body, headed by the Investigatory Powers Commissioner.
- The Commission will become a clear, authoritative source of information and advice about the use of investigatory powers.
- The Commission will also provide for the approval of warrants issued by a Secretary of State before they come into force.
- This new body will benefit from greater resources including legal and technical expertise.

Who will work in the Commission?

- The Investigatory Powers Commission (IPC) will be headed by the Investigatory Powers Commissioner, who must hold or have held high judicial office.
- The IPC will be supported by a number of Judicial Commissioners, who will have also held high judicial office, to help the IPC perform their extensive range of functions.
- The Commissioners will be supported by a team of specialist technical inspectors who can fully question and hold to account those using investigatory powers.
- The IPC will also have in-house legal and communications support.
- The Government will ensure the IPC has the resources needed to “buy in” specialist expertise on a wide range of subjects, including the appointment of legal Counsel, should the Commission consider this appropriate.
- The Commission will be run administratively by a range of senior and junior officials.

To what will the IPC oversee?

- The use of all investigatory powers. This means: communications data, interception, equipment interference, the work of the agencies formerly overseen by the Intelligence Services Commissioner (including bulk personal datasets) and the work of public authorities formerly overseen by the Chief Surveillance Commissioner.

What will the IPC do?

- The Commissioner will have a very extensive remit to keep under review the exercise of investigatory powers by public authorities.
- It will be for the Commissioner to determine how the IPC will operate: the Government will not dictate its remit, beyond ensuring that the current areas subject to substantial oversight by the incumbent Commissioners will continue.
- The IPC will be able to set their own priorities and can look at any public authority use of investigatory powers that they believe needs scrutiny.
- David Anderson QC, RUSI and the ISC have offered detailed recommendations on the functions that an incoming Commissioner is likely to want the IPC to undertake.
- We anticipate that they will carry out this scrutiny through authorisations, inspections, investigations and assurance and continue to provide the substantial retrospective audit currently undertaken by the incumbent Commissioners.
- Judicial Commissioners will approve the use of certain surveillance and equipment interference powers by law enforcement.
- They will have to approve Secretary of State’s decision to issue warrants relating to interception, bulk powers and the security and intelligence agencies’ use of equipment interference powers. These powers cannot be used until the Judicial Commissioner has given their approval. More detail on the authorisation reform is provided in a separate fact sheet.

Visibility

- A key role of the Commission will be to better engage the public and Parliament so that they can have confidence in how investigatory powers are being used and overseen.
- There will be a duty on the Commissioner to publically report at least annually on its work. But this is the minimum that we would expect of the Commission and we anticipate that wherever possible they publish summaries and updates of their work.
- It is our clear expectation of the Commission that it will make itself accessible to traditional media whilst also maintaining an active social media presence.