



# Investigatory Powers Bill

## Key points

- Bulk interception is a vital tool designed to obtain foreign-focused intelligence and identify individuals, groups and organisations overseas that pose a threat to the UK.
- The Bill will ensure that the security and intelligence agencies can continue to undertake bulk interception, subject to enhanced safeguards. It will clearly differentiate between targeted interception warrants and those which are issued for the purpose of bulk collection.
- It will be subject to a 'double-lock' authorisation procedure, requiring warrants issued by a Secretary of State to be approved by a Judicial Commissioner before coming into force.
- If an intelligence agency wishes to examine the content of a communication collected through a bulk interception warrant, of a person believed to be in the UK, they must apply to a Secretary of State for a targeted examination warrant, which must also be approved by a Judicial Commissioner.
- Interception powers will be overseen by the Investigatory Powers Commissioner, who will audit the intercepting agencies to monitor their compliance with the legislation.

## Background

- Bulk interception is currently provided for under section 8(4) of the Regulation of Investigatory Powers Act 2000 (RIPA). It describes the process for the collection of a volume of communications followed by the selection of specific communications to be read, looked at or listened to where it is necessary and proportionate.
- Bulk interception warrants allow for the collection of communications of persons who are outside the UK in order to discover threats that could not otherwise be identified. Therefore a bulk interception warrant does not name or describe a person or premises as the subject of interception in the same way as a targeted interception warrant must.
- Only the security and intelligence agencies may apply for a bulk interception warrant and only in relation to three statutory purposes: national security; prevention and detection of serious crime; and safeguarding the economic well-being of the UK as it pertains to national security. National security must be always be a statutory purpose when a warrant is sought to collect material in bulk.
- A bulk interception warrant must set out the specific purposes which must be met before any of the data that has been collected can be examined, i.e. looked at, read or listened to. Those specific purposes are approved by a Secretary of State and Judicial Commissioners and might include, for example, "attack planning by ISIL in Syria against the UK".
- Due to the global nature of modern online communications, a bulk warrant may incidentally intercept communications of persons who are in the UK. Where this is the case, content of such communications that only relate to persons in the UK may not be read, looked at or listened to unless an examination warrant has been obtained.

## Key facts

- GCHQ's bulk interception systems operate on a small proportion of the bearers that make up the global internet. They filter this traffic still further to focus on that most likely to meet their approved operational purposes, resulting in the collection of only a fraction of the traffic that is carried.
- In December 2014, the independent Investigatory Powers Tribunal found in the case of Liberty & Others that the current regime governing the intelligence agencies' external (bulk) interception regime is lawful and compliant with the European Convention on Human Rights.

## Key quotes

*"They [GCHQ case studies] leave me in not the slightest doubt that bulk interception, as it is currently practiced, has a valuable role to play in protecting national security."*

**David Anderson QC, Independent Reviewer of Terrorism Legislation, "A Question of Trust", June 2015**

*"Our inquiry has shown that the Agencies do not have the legal authority, the resources, the technical capability, or the desire to intercept every communication of British Citizens, or of the Internet as a whole: GCHQ are not reading the emails of everyone in the UK."*

**ISC Privacy and Security Report, March 2015**

*"Despite the disclosures made by Edward Snowden, we have seen no evidence that the British government knowingly acts illegally in intercepting private communications, or that the ability to collect data in bulk is used by the government to provide it with a perpetual window into the private lives of British citizens."*

**Royal United Services Institute "A Democratic Licence to Operate: Report of the Independent Surveillance Review", July 2015**



# Investigatory Powers Bill

## Why do we need it?

- Bulk interception allows the security and intelligence agencies to collect the communications of persons outside the UK and then filter that material in order to identify communications of intelligence value.
- Due to the nature of the global internet, the route a particular communication will travel is hugely unpredictable. Access to large volumes of data is essential to enable communications relating to subjects of interest to be identified and subsequently pieced together in the course of an investigation.
- Bulk interception is also crucial to identify new and emerging threats to the UK that could not be identified through other means.
- For example, where there is a known subject of interest in an investigation it may be possible to obtain a targeted warrant to intercept their communications. However, where an intelligence agency only has a fragment of intelligence, communications intercepted in bulk may be the only way of identifying a subject of interest in the first instance.
- Carefully directed searches of large volumes of data also allow the agencies to identify patterns of internet activity that significantly narrows down the areas for investigation and allows them to prioritise intelligence leads.

## What is new?

- The new legislation clarifies our existing legal framework, differentiating between those interception warrants that are issued on a targeted basis and those which are issued for the purpose of bulk collection.
- The Bill will provide a new ‘double-lock’ authorisation procedure requiring warrants issued by a Secretary of State to be approved by a Judicial Commissioner before coming into force.
- The Bill introduces the ability for the Secretary of State to authorise collection of communications data acquired in the course of its transmission, without the associated content. Before a bulk interception warrant is issued, consideration must be given to whether the intelligence requirement could be met by obtaining CD.

## What are the safeguards?

- There are strict safeguards governing the use of bulk interception, which ensure the agencies comply fully with their human rights obligations.
- Applications for bulk interception warrants will continue to be limited to the security and intelligence agencies and only for limited purposes.
- A ‘double-lock’ authorisation procedure will be in place requiring warrants issued by a Secretary of State to be approved by a Judicial Commissioner before coming into force.
- Any application for a bulk interception warrant must contain a consideration of necessity and proportionality. It must also include an assurance that intercepted material will be read, looked at or listened to only when it meets the operational purposes that have been authorised by a Secretary of State and a Judicial Commissioner.
- In circumstances where one of the security and intelligence agencies wishes to examine the content of the communications, collected through a bulk warrant, relating only to a person believed to be in the UK, they must apply for a targeted examination warrant.
- Interception should not be undertaken if the information could be obtained by another less intrusive method. Therefore, bulk interception warrants will only be sought and granted where information cannot be acquired via other means. Under the Bill, this will include consideration of whether the necessary information could be acquired by only obtaining the related communications data.
- Unauthorised interception is a criminal offence.
- There are tight controls over the handling of intercepted material to ensure it is only shared with those who must see it.
- Interception powers will be overseen by the Investigatory Powers Commissioner. The Commissioner will audit the intercepting agencies in order to monitor compliance with the legislation and publish his findings in an annual report.
- Anyone who believes that they may have been subject to unlawful interception can complain to the Investigatory Powers Tribunal to review their case.
- The Bill will provide for comprehensive safeguards governing the handling of intercept material to be included in codes of practice.

## Who can do it? When? Under what authorities?

Only the security and intelligence agencies may apply for a bulk interception warrant and only in relation to three statutory purposes: in the interests of national security; for the prevention and detection of serious crime; and safeguarding the economic well-being of the UK involving national security. National security must always be a statutory purpose when collecting material in bulk. A warrant must be issued by a Secretary of State and approved by a Judicial Commissioner before coming into force.