

INVESTIGATORY POWERS BILL: OVERSIGHT

What happens now?

The UK's system of oversight for law enforcement and the security and intelligence agencies' use of investigatory powers is provided for in different Acts of Parliament. These include the Regulation of Investigatory Powers Act 2000 (RIPA), the Police Act 1997, and the Justice and Security Act 2013 (JSA). Oversight of the powers and their use is carried out by a number of different bodies.

Parliamentary oversight is carried out by the cross-party ISC, whose powers were strengthened by the JSA. Independent non-Parliamentary oversight is carried out by:

- The Interception of Communications Commissioner (IoCC), who oversees public authorities' use of interception and communications data powers under RIPA and powers under section 94 of the Telecommunications Act 1984 (which has been repealed in the Bill).
- The Chief Surveillance Commissioner (CSC), who oversees law enforcement agencies' use of covert surveillance powers and covert human intelligence sources under RIPA Part II and property interference powers under the Police Act 1997.
- The Intelligence Services Commissioner (ISCom), who oversees the intelligence agencies' use of the powers available to them under RIPA Part II (covert surveillance and covert human intelligence sources) and the Intelligence Services Act 1994.

Right of redress

The Investigatory Powers Tribunal (IPT) investigates complaints that law enforcement and the security and intelligence agencies have used their covert investigative techniques unlawfully, or claims that the intelligence or law enforcement agencies have breached human rights legislation. It is an independent Tribunal comprised of judges and senior members of the legal profession.

Why does oversight need to change?

The reports published by David Anderson QC, the ISC and the RUSI panel all agreed that our oversight regime should be strengthened. The present system of three separate oversight bodies, with overlapping responsibilities and distinct identities, is more confusing than a single, authoritative body which is equipped with all the skills and resources it needs.

What will happen in the future?

The Bill will create a single new independent and more powerful Commissioner, the IPC. The Commissioner will be properly supported and will have a significantly expanded role in authorising the use of investigatory powers and a wide-ranging and

self-determined remit to oversee any aspect of law enforcement and the security and intelligence agencies' use of the powers available to them.

The IPC will hold or have held high judicial office and with his or her supporting staff will have three key roles. First, they will authorise and approve the use of investigatory powers. Judicial Commissioners, who will be serving or former High Court judges, will undertake this role. Secondly, they will be responsible for inspecting public authorities on their use of the powers contained in the Bill. The IPC will audit compliance and undertake independent investigations. Judicial Commissioners will undertake this role and will be supported by a team of expert inspectors.

Third, the Commissioner will have a clear mandate to inform Parliament and the public about the need for, and use of, investigatory powers. The Commissioner will report publicly and make recommendations on the findings that emerge in the course of his or her work. The Commissioner will also publish guidance, when it is required, on the use of investigatory powers. The Commissioner should have a high public profile and active media and online presence so that he or she is quickly established as an authoritative source of advice and information. To support these three roles, the Commissioner will also have dedicated legal, technical and communications support.

The Bill will also strengthen the right of redress by allowing a domestic right of appeal from the IPT.

What are the key provisions in the Bill?

- **The Bill will replace the IoCC, the CSC and the ISCom with a powerful new IPC**
- **The IPC will be supported by Judicial Commissioners, who will themselves be senior judges; they will be supported by staff with relevant expertise, both legal and technical**
- **The Judicial Commissioners will, for the first time, be responsible for approving the issue of interception, equipment interference and bulk warrants**
- **The Judicial Commissioners will also oversee the use of all the powers under the Bill and will be required to publish their findings in an annual report**
- **The IPC will have a power to inform individuals who have been the subject of serious errors by law enforcement, the security and intelligence agencies and other public authorities**
- **The IPT will be strengthened through the creation of a new domestic right of appeal**