



Investigatory Powers Bill

Key points

- The use of investigatory powers must be both rigorously overseen and be accountable to Parliament, to the Executive and to the courts.
- Investigatory powers exercised by the security and intelligence agencies are overseen by the Intelligence and Security Committee of Parliament (ISC) who have access to the most sensitive of information. The Bill does not limit the role of the ISC whose powers and resources were significantly strengthened in the Justice and Security Act 2013.
- The Investigatory Powers Tribunal provides a right of redress to those who believe they have been unlawfully subjected to investigatory powers or have had their human rights breached by a security and intelligence, military or law enforcement agency. The Bill will strengthen the system of judicial redress by providing for a domestic right of appeal to the Investigatory Powers Tribunal (IPT).
- The current tripartite structure of three Commissioners who oversee all investigatory powers exercised by public authorities, will be consolidated into a new single and more powerful oversight body, the Investigatory Powers Commission, headed in statute by the Investigatory Powers Commissioner.

Background

The UK's system of oversight for law enforcement and the security and intelligence agencies' is comprised of a number of bodies:

- the cross-party Intelligence and Security Committee of Parliament (ISC);
- the Interception of Communications Commissioner's Office (IOCCO), which looks at public authorities' use of interception and communications data powers;
- the Office of Surveillance Commissioners (OSC) which oversees public authorities' conduct of covert surveillance and use of covert human intelligence sources; and
- the Intelligence Services Commissioner who oversees the use of the intelligence agencies' powers apart from those covered by IOCCO;
- The Investigatory Powers Tribunal (IPT) investigates complaints of unlawful use of covert investigative techniques by public authorities, and claims of human rights breaches by security and intelligence, military or law enforcement agencies. Anyone can bring a complaint or a claim.

Key facts

- The current independent bodies were established by the Regulation of Investigatory Powers Act 2000.
- The Justice and Security Act 2013 strengthened the powers of the ISC and it was given additional resources.
- In 2014 the Investigatory Powers Tribunal received 215 complaints and claims in total.
- The OSC and Intelligence Services Commissioner publish annual reports and IOCCO produce on a 6 monthly basis. They can, and do, produce ad hoc reports – such as IOCCO's investigation into the use of communications data powers to identify journalistic sources (published February 2015).

“...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 Commissioners 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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What does the Intelligence and Security Committee do?

- The ISC was established by the Intelligence Services Act 1994.
- It is a cross-party Committee set up to examine the policy, administration and expenditure of the security and intelligence agencies and the work of the Office for Security and Counter Terrorism in the Home Office, intelligence related work of the Cabinet Office and Defence Intelligence in the Ministry of Defence.
- Members of the ISC are appointed by Parliament and the Committee reports directly to Parliament.
- The Committee may make some reports to the Prime Minister directly where matters are national security sensitive.
- Members have access to highly classified material to carry out their duties.
- They make annual reports to Parliament and special reports on particular issues: recent reports include the results of their inquiry into the murder of Fusilier Lee Rigby.

Recent reforms to the Intelligence and Security Committee

- The ISC's powers were strengthened and it was given additional resources as a result of the Justice and Security Act 2013 and the preceding Green Paper on Justice and Security.
- Given these recent reforms, we do not think that further reform is necessary – the ISC's powerful reports into the post-Snowden 'Prism' allegation (July 2013); the Woolwich attack (November 2014) and Privacy and Security (March 2015) show that it has the necessary powers, resource and independence to provide robust Parliamentary oversight.

So what will change?

- Currently, the Secretary of State issues warrants, considering the necessity and proportionality of the need to use investigatory powers. 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.
- The Investigatory Powers Commissioner will head up a new oversight body, the Investigatory Powers Commission, with the powers to look at any area of the work relating to the security and intelligence agencies or public authorities' use of investigatory powers.
- The IPT will provide a strengthened right of redress to individuals who believe themselves unlawfully subject to investigatory powers.
- The ISC will remain, as now, a Parliamentary Committee with the right to scrutinise all the work of the intelligence agencies.

What are the changes to the Investigatory Powers Tribunal?

- Currently those wishing to challenge a judgment from the IPT must bring it before the European Court of Human Rights (ECtHR), a system which has been identified as time consuming, opaque and difficult to understand.
- We are creating a right to challenge the decisions of the IPT in a higher court within the UK.
- This is intended to increase public confidence that those who use investigatory powers are fully held to account by the law, and that Articles 8 and 10 of the European Convention on Human Rights are respected.
- While the IPT's rules and procedures have been found to be lawful by the European Court of Human Rights (*Kennedy v United Kingdom* [2011] 52 EHRR 4), there still remains a concern that the decisions of the IPT should be subject to scrutiny, just as other Tribunals are.
- All applications (complaints and claims) will be capable of being subject to an appeal, where there is a substantive point of law at issue.

"The IPT is unusual in being subject to no process of appeal, an incongruous state of affairs given that it is the only appropriate tribunal for certain categories of human rights appeals (RIPA s65(2)(3)), and that it can decide issues of great general importance involving vital issues of principle.

The Court of Appeal is now accustomed to hearing appeals involving closed materials. It is desirable that human rights cases should be finally determined in the UK if possible; and if not, that the ECtHR should have the benefit of views reached after the benefit of argument in more than one court, and expressed at a very senior judicial level within the UK." David Anderson QC, "A Question of Trust", June 2015