

JUSTICE AND SECURITY ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Oversight of intelligence and security activities

Section 5: Additional review functions of the Commissioner

63. This section adds to the functions of the Intelligence Services Commissioner (the “Commissioner”) set out in section 59 of the Regulation of Investigatory Powers Act 2000 (“RIPA”). Section 59 provides for the appointment of a Commissioner who will provide oversight of a number of key investigatory techniques employed by the Agencies, and by members of Her Majesty’s forces and Ministry of Defence personnel outside Northern Ireland. Under section 60 of RIPA all relevant persons are required to disclose or provide to the Commissioner all such documents or information as might be required for the purpose of enabling the Commissioner to carry out the Commissioner’s functions under section 59. This power to require documents and information is to apply also to the new functions of the Intelligence Services Commissioner under this section (see *paragraph 4* of Schedule 2).
64. The section inserts a new section 59A into RIPA. *Subsections (1), (2) and (3)* of that new section add to the Commissioner’s existing functions by enabling the Prime Minister to issue a direction to the Commissioner, either of the Prime Minister’s own motion or on the recommendation of the Commissioner, to keep under review other aspects of the functions of the Agencies or any part of Her Majesty’s forces or the Ministry of Defence engaged in intelligence activities. *Subsection (4)* provides an example of the type of activity which the Commissioner may be directed to provide oversight of, by reference to the policies which govern the manner in which the Agencies carry out their functions.
65. The purpose of this statutory extension of the Commissioner’s remit is twofold: (i) to provide a clear statutory basis for the duties which the Commissioner has occasionally agreed, at the request of the Prime Minister, to take on outside the Commissioner’s previous statutory remit; and (ii) to enable an extension of that remit in the future. With regard to the former it is the intention that the Prime Minister will give a direction to the Commissioner to monitor compliance with the Consolidated Guidance on Detention and Interviewing of Detainees by Intelligence Officers and Military Personnel in relation to detainees held overseas, which has previously been an extra-statutory function.
66. Under *subsection (5)*, a direction given by the Prime Minister to the Commissioner should be brought to the attention of the public in such manner as the Prime Minister considers appropriate (except in some cases where doing so would be detrimental, for example because it would prejudice national security). In practice, it is envisaged that the Prime Minister will write to the Commissioner and a copy of that letter will be placed in the House of Commons library.