



Investigatory Powers Act 2016

2016 CHAPTER 25

PART 8

OVERSIGHT ARRANGEMENTS

CHAPTER 1

INVESTIGATORY POWERS COMMISSIONER AND OTHER JUDICIAL COMMISSIONERS

Main functions of Commissioners

229 Main oversight functions

- (1) The Investigatory Powers Commissioner must keep under review (including by way of audit, inspection and investigation) the exercise by public authorities of statutory functions relating to—
 - (a) the interception of communications,
 - (b) the acquisition or retention of communications data,
 - (c) the acquisition of secondary data or related systems data under Chapter 1 of Part 2 or Chapter 1 of Part 6, or
 - (d) equipment interference.
- (2) Such statutory functions include, in particular, functions relating to the disclosure, retention or other use of—
 - (a) any content of communications intercepted by an interception authorised or required by a warrant under Chapter 1 of Part 2 or Chapter 1 of Part 6,
 - (b) acquired or retained communications data,
 - (c) data acquired as mentioned in subsection (1)(c), or
 - (d) communications, equipment data or other information acquired by means of equipment interference.

Status: This is the original version (as it was originally enacted).

- (3) The Investigatory Powers Commissioner must keep under review (including by way of audit, inspection and investigation)—
- (a) the acquisition, retention, use or disclosure of bulk personal datasets by an intelligence service,
 - (b) the giving and operation of notices under section 252 (national security notices),
 - (c) the exercise of functions by virtue of section 80 of the Serious Crime Act 2015 (prevention or restriction of use of communication devices by prisoners etc.),
 - (d) the exercise of functions by virtue of sections 1 to 4 of the Prisons (Interference with Wireless Telegraphy) Act 2012,
 - (e) the exercise of functions by virtue of Part 2 or 3 of the Regulation of Investigatory Powers Act 2000 (surveillance, covert human intelligence sources and investigation of electronic data protected by encryption etc.),
 - (f) the adequacy of the arrangements by virtue of which the duties imposed by section 55 of that Act are sought to be discharged,
 - (g) the exercise of functions by virtue of the Regulation of Investigatory Powers (Scotland) Act 2000 ([2000 asp 11](#)) (surveillance and covert human intelligence sources),
 - (h) the exercise of functions under Part 3 of the Police Act 1997 (authorisation of action in respect of property),
 - (i) the exercise by the Secretary of State of functions under sections 5 to 7 of the Intelligence Services Act 1994 (warrants for interference with wireless telegraphy, entry and interference with property etc.), and
 - (j) the exercise by the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998) of functions under sections 5 and 6(3) and (4) of the Act of 1994.
- (4) But the Investigatory Powers Commissioner is not to keep under review—
- (a) the exercise of any function of a relevant Minister to make subordinate legislation,
 - (b) the exercise of any function by a judicial authority,
 - (c) the exercise of any function by virtue of Part 3 of the Regulation of Investigatory Powers Act 2000 which is exercisable with the permission of a judicial authority,
 - (d) the exercise of any function which—
 - (i) is for the purpose of obtaining information or taking possession of any document or other property in connection with communications stored in or by a telecommunication system, or
 - (ii) is carried out in accordance with an order made by a judicial authority for that purpose,
 and is not exercisable by virtue of this Act, the Regulation of Investigatory Powers Act 2000, the Regulation of Investigatory Powers (Scotland) Act 2000 or an enactment mentioned in subsection (3)(c), (h), (i) or (j) above,
 - (e) the exercise of any function where the conduct concerned is—
 - (i) conduct authorised by section 45, 47 or 50, or
 - (ii) conduct authorised by section 46 which is not conduct by or on behalf of an intercepting authority (within the meaning given by section 18(1)), or

- (f) the exercise of any function which is subject to review by the Information Commissioner or the Investigatory Powers Commissioner for Northern Ireland.
- (5) In keeping matters under review in accordance with this section, the Investigatory Powers Commissioner must, in particular, keep under review the operation of safeguards to protect privacy.
- (6) In exercising functions under this Act, a Judicial Commissioner must not act in a way which the Commissioner considers to be contrary to the public interest or prejudicial to—
 - (a) national security,
 - (b) the prevention or detection of serious crime, or
 - (c) the economic well-being of the United Kingdom.
- (7) A Judicial Commissioner must, in particular, ensure that the Commissioner does not—
 - (a) jeopardise the success of an intelligence or security operation or a law enforcement operation,
 - (b) compromise the safety or security of those involved, or
 - (c) unduly impede the operational effectiveness of an intelligence service, a police force, a government department or Her Majesty's forces.
- (8) Subsections (6) and (7) do not apply in relation to any of the following functions of a Judicial Commissioner—
 - (a) deciding—
 - (i) whether to serve, vary or cancel a monetary penalty notice under section 7 or paragraph 16 of Schedule 1, a notice of intent under paragraph 4 of that Schedule or an information notice under Part 2 of that Schedule, or
 - (ii) the contents of any such notice,
 - (b) deciding whether to approve the issue, modification or renewal of a warrant,
 - (c) deciding whether to direct the destruction of material or how otherwise to deal with the situation where—
 - (i) a warrant issued, or modification made, for what was considered to be an urgent need is not approved, or
 - (ii) an item subject to legal privilege is retained, following its examination, for purposes other than the destruction of the item,
 - (d) deciding whether to—
 - (i) approve the grant, modification or renewal of an authorisation, or
 - (ii) quash or cancel an authorisation or renewal,
 - (e) deciding whether to approve—
 - (i) the giving or varying of a retention notice under Part 4 or a notice under section 252 or 253, or
 - (ii) the giving of a notice under section 90(10)(b) or 257(9)(b),
 - (f) participating in a review under section 90 or 257,
 - (g) deciding whether to approve an authorisation under section 219(3)(b),
 - (h) deciding whether to give approval under section 222(4),
 - (i) deciding whether to approve the giving or varying of a direction under section 225(3),
 - (j) making a decision under section 231(1),

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- (k) deciding whether to order the destruction of records under section 103 of the Police Act 1997, section 37 of the Regulation of Investigatory Powers Act 2000 or section 15 of the Regulation of Investigatory Powers (Scotland) Act 2000,
 - (l) deciding whether to make an order under section 103(6) of the Police Act 1997 (order enabling the taking of action to retrieve anything left on property in pursuance of an authorisation),
 - (m) deciding—
 - (i) an appeal against, or a review of, a decision by another Judicial Commissioner, and
 - (ii) any action to take as a result.
- (9) In this section—
- “bulk personal dataset” is to be read in accordance with section 199,
 - “equipment data” has the same meaning as in Part 5 (see section 100),
 - “judicial authority” means a judge, court or tribunal or any person exercising the functions of a judge, court or tribunal (but does not include a Judicial Commissioner),
 - “police force” has the same meaning as in Part 2 (see section 60(1)),
 - “related systems data” has the meaning given by section 15(6),
 - “relevant Minister” means a Minister of the Crown or government department, the Scottish Ministers, the Welsh Ministers or a Northern Ireland department,
 - “secondary data” has the same meaning as in Part 2 (see section 16).

230 Additional directed oversight functions

- (1) So far as directed to do so by the Prime Minister and subject to subsection (2), the Investigatory Powers Commissioner must keep under review the carrying out of any aspect of the functions of—
 - (a) an intelligence service,
 - (b) a head of an intelligence service, or
 - (c) any part of Her Majesty’s forces, or of the Ministry of Defence, so far as engaging in intelligence activities.
- (2) Subsection (1) does not apply in relation to anything which is required to be kept under review by the Investigatory Powers Commissioner under section 229.
- (3) The Prime Minister may give a direction under this section at the request of the Investigatory Powers Commissioner or the Intelligence and Security Committee of Parliament or otherwise.
- (4) The Prime Minister must publish, in a manner which the Prime Minister considers appropriate, any direction under this section (and any revocation of such a direction) except so far as it appears to the Prime Minister that such publication would be contrary to the public interest or prejudicial to—
 - (a) national security,
 - (b) the prevention or detection of serious crime,
 - (c) the economic well-being of the United Kingdom, or

- (d) the continued discharge of the functions of any public authority whose activities include activities that are subject to review by the Investigatory Powers Commissioner.

231 Error reporting

- (1) The Investigatory Powers Commissioner must inform a person of any relevant error relating to that person of which the Commissioner is aware if the Commissioner considers that—
 - (a) the error is a serious error, and
 - (b) it is in the public interest for the person to be informed of the error.
- (2) In making a decision under subsection (1)(a), the Investigatory Powers Commissioner may not decide that an error is a serious error unless the Commissioner considers that the error has caused significant prejudice or harm to the person concerned.
- (3) Accordingly, the fact that there has been a breach of a person's Convention rights (within the meaning of the Human Rights Act 1998) is not sufficient by itself for an error to be a serious error.
- (4) In making a decision under subsection (1)(b), the Investigatory Powers Commissioner must, in particular, consider—
 - (a) the seriousness of the error and its effect on the person concerned, and
 - (b) the extent to which disclosing the error would be contrary to the public interest or prejudicial to—
 - (i) national security,
 - (ii) the prevention or detection of serious crime,
 - (iii) the economic well-being of the United Kingdom, or
 - (iv) the continued discharge of the functions of any of the intelligence services.
- (5) Before making a decision under subsection (1)(a) or (b), the Investigatory Powers Commissioner must ask the public authority which has made the error to make submissions to the Commissioner about the matters concerned.
- (6) When informing a person under subsection (1) of an error, the Investigatory Powers Commissioner must—
 - (a) inform the person of any rights that the person may have to apply to the Investigatory Powers Tribunal, and
 - (b) provide such details of the error as the Commissioner considers to be necessary for the exercise of those rights, having regard in particular to the extent to which disclosing the details would be contrary to the public interest or prejudicial to anything falling within subsection (4)(b)(i) to (iv).
- (7) The Investigatory Powers Commissioner may not inform the person to whom it relates of a relevant error except as provided by this section.
- (8) A report under section 234(1) must include information about—
 - (a) the number of relevant errors of which the Investigatory Powers Commissioner has become aware during the year to which the report relates,
 - (b) the number of relevant errors which the Commissioner has decided during that year were serious errors, and
 - (c) the number of persons informed under subsection (1) during that year.

- (9) In this section “relevant error” means an error—
- (a) by a public authority in complying with any requirements which are imposed on it by virtue of this Act or any other enactment and which are subject to review by a Judicial Commissioner, and
 - (b) of a description identified for this purpose in a code of practice under Schedule 7,
- and the Investigatory Powers Commissioner must keep under review the definition of “relevant error”.

232 Additional functions under this Part

- (1) A Judicial Commissioner must give the Investigatory Powers Tribunal all such documents, information and other assistance (including the Commissioner’s opinion as to any issue falling to be determined by the Tribunal) as the Tribunal may require—
 - (a) in connection with the investigation of any matter by the Tribunal, or
 - (b) otherwise for the purposes of the Tribunal’s consideration or determination of any matter.
- (2) A Judicial Commissioner may provide advice or information to any public authority or other person in relation to matters for which a Judicial Commissioner is responsible.
- (3) But a Judicial Commissioner must consult the Secretary of State before providing any advice or information under subsection (2) if it appears to the Commissioner that providing the advice or information might be contrary to the public interest or prejudicial to—
 - (a) national security,
 - (b) the prevention or detection of serious crime,
 - (c) the economic well-being of the United Kingdom, or
 - (d) the continued discharge of the functions of any public authority whose activities include activities that are subject to review by the Investigatory Powers Commissioner.
- (4) In addition to consulting the Secretary of State under subsection (3), the Judicial Commissioner must also consult the Scottish Ministers if it appears to the Commissioner that providing the advice or information might be prejudicial to—
 - (a) the prevention or detection of serious crime by a Scottish public authority, or
 - (b) the continued discharge of any devolved functions of a Scottish public authority whose activities include activities that are subject to review by the Investigatory Powers Commissioner.
- (5) In subsection (4)—

“devolved function” means a function that does not relate to reserved matters (within the meaning of the Scotland Act 1998), and

“Scottish public authority” has the same meaning as in the Scotland Act 1998.
- (6) Subsections (3) and (4) do not apply to any advice or information provided under subsection (2) to the Investigatory Powers Tribunal.

233 Functions under other Parts and other enactments

- (1) The Investigatory Powers Commissioner and the other Judicial Commissioners have the functions that are exercisable by them by virtue of any other Part of this Act or by virtue of any other enactment.
- (2) In Part 3 of the Police Act 1997 (authorisations of action in respect of property: approval by Commissioners)—
 - (a) in sections 96(1), 103(7)(b) and (8), 104(3) to (8) and 105(1) and (2) for “Chief Commissioner” substitute “Investigatory Powers Commissioner”,
 - (b) in sections 96(1), 97(1)(a) and 103(1), (2), (4) and (5)(b) for “a Commissioner appointed under section 91(1)(b)” substitute “a Judicial Commissioner”,
 - (c) in sections 96(4), 97(4) and (6) and 103(3) and (6) for “a Commissioner” substitute “a Judicial Commissioner”,
 - (d) in section 103(7) for “a Commissioner” substitute “a Judicial Commissioner (other than the Investigatory Powers Commissioner)”,
 - (e) in section 104(1) for “Chief Commissioner” substitute “Investigatory Powers Commissioner (except where the original decision was made by that Commissioner)”,
 - (f) in section 104(3) and (8)(a) for “the Commissioner” substitute “the Judicial Commissioner concerned”,
 - (g) in section 105(1)(a)(ii) and (b)(ii) for “the Commissioner” substitute “the Judicial Commissioner”, and
 - (h) in sections 97(5) and 103(9) for “A Commissioner” substitute “A Judicial Commissioner”.
- (3) In Part 2 of the Regulation of Investigatory Powers Act 2000 (surveillance and covert human intelligence sources: approval by Commissioners)—
 - (a) in sections 35(1) and (4), 36(2)(a) and (5) and 37(2) to (6) and (8) for “an ordinary Surveillance Commissioner”, wherever it appears, substitute “a Judicial Commissioner”,
 - (b) in sections 35(2)(b), 36(6)(g), 37(9)(b), 38(1) and (4) to (6) and 39(1), (2) and (4) and in the heading of section 39 for “Chief Surveillance Commissioner”, wherever it appears, substitute “Investigatory Powers Commissioner”,
 - (c) in sections 35(3)(a) and 36(4)(a) and (b) for “Surveillance Commissioner” substitute “Judicial Commissioner”,
 - (d) in section 37(8)(b) for “Chief Surveillance Commissioner” substitute “Investigatory Powers Commissioner (if he is not that Commissioner)”,
 - (e) in section 38(1)(a) for “an ordinary Surveillance Commissioner” substitute “a Judicial Commissioner (other than the Investigatory Powers Commissioner)”,
 - (f) in sections 38(5)(b) and 39(1)(b) for “ordinary Surveillance Commissioner” substitute “Judicial Commissioner”, and
 - (g) in the heading of section 38 for “Surveillance Commissioners” substitute “Judicial Commissioners”.
- (4) In Part 3 of the Act of 2000 (investigation of electronic data protected by encryption etc.)—
 - (a) in section 51(6) (notification to Intelligence Services Commissioner or Chief Surveillance Commissioner of certain directions relating to the disclosure of a key to protected information) for the words from “done so” to the end substitute “done so to the Investigatory Powers Commissioner”,

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- (b) in section 54(9) (tipping-off: protected disclosures to a relevant Commissioner) for “relevant Commissioner” substitute “Judicial Commissioner”,
 - (c) in section 55(7) (court to have regard to opinion of a relevant Commissioner in certain circumstances relating to a disclosed key) for “relevant Commissioner” substitute “Judicial Commissioner or the Investigatory Powers Commissioner for Northern Ireland”, and
 - (d) omit sections 54(11) and 55(8) (definitions of “relevant Commissioner”).
- (5) In the Regulation of Investigatory Powers (Scotland) Act 2000 ([2000 asp 11](#)) (surveillance and covert human intelligence sources: approval by Commissioners and review by the Chief Commissioner)—
- (a) in sections 13(1) and (4), 14(1)(a) and (4) and 15(1) to (5) and (7) for “an ordinary Surveillance Commissioner”, wherever it appears, substitute “a Judicial Commissioner”,
 - (b) in sections 13(2)(b), 15(8)(b), 16(1) and (4) to (6) and 17 and in the heading of section 17 for “Chief Surveillance Commissioner”, wherever it appears, substitute “Investigatory Powers Commissioner”,
 - (c) in sections 13(3)(a) and 14(3)(a) and (b) for “Surveillance Commissioner” substitute “Judicial Commissioner”,
 - (d) in section 15(7)(b) for “Chief Surveillance Commissioner” substitute “Investigatory Powers Commissioner (if the Commissioner is not that Commissioner)”,
 - (e) in section 16(1)(a) for “an ordinary Surveillance Commissioner” substitute “a Judicial Commissioner (other than the Investigatory Powers Commissioner)”,
 - (f) in sections 16(5)(b) and 17(1)(b) for “ordinary Surveillance Commissioner” substitute “Judicial Commissioner”, and
 - (g) in section 16(5) for “ordinary Surveillance Commissioner’s” substitute “Judicial Commissioner’s”.
- (6) In Part 2 of the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013 ([S.I. 2013/2788](#)) (notification of certain authorisations to, and approval of certain authorisations by, ordinary Surveillance Commissioner)—
- (a) in article 4(1), for “an ordinary Surveillance Commissioner” substitute “a Judicial Commissioner”,
 - (b) in article 5(8) and the heading of Part 2, for “ordinary Surveillance Commissioner” substitute “Judicial Commissioner”,
 - (c) in article 6(1) and (3) for “Chief Surveillance Commissioner” substitute “Investigatory Powers Commissioner”,
 - (d) in article 6(1) for “an ordinary Surveillance Commissioner” substitute “a Judicial Commissioner (other than the Investigatory Powers Commissioner)”, and
 - (e) in the heading of article 6 for “Surveillance Commissioners” substitute “Judicial Commissioners”.