



# Investigatory Powers Act 2016

## 2016 CHAPTER 25

### PART 8

#### OVERSIGHT ARRANGEMENTS

#### CHAPTER 1

##### INVESTIGATORY POWERS COMMISSIONER AND OTHER JUDICIAL COMMISSIONERS

##### *The Commissioners*

#### **227 Investigatory Powers Commissioner and other Judicial Commissioners**

- (1) The Prime Minister must appoint—
  - (a) the Investigatory Powers Commissioner, and
  - (b) such number of other Judicial Commissioners as the Prime Minister considers necessary for the carrying out of the functions of the Judicial Commissioners.
- (2) A person is not to be appointed as the Investigatory Powers Commissioner or another Judicial Commissioner unless the person holds or has held a high judicial office (within the meaning of Part 3 of the Constitutional Reform Act 2005).
- (3) A person is not to be appointed as the Investigatory Powers Commissioner unless recommended jointly by—
  - (a) the Lord Chancellor,
  - (b) the Lord Chief Justice of England and Wales,
  - (c) the Lord President of the Court of Session, and
  - (d) the Lord Chief Justice of Northern Ireland.
- (4) A person is not to be appointed as a Judicial Commissioner under subsection (1)(b) unless recommended jointly by—
  - (a) the Lord Chancellor,

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***Changes to legislation:** Investigatory Powers Act 2016, Cross Heading: The Commissioners is up to date with all changes known to be in force on or before 14 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (b) the Lord Chief Justice of England and Wales,
  - (c) the Lord President of the Court of Session,
  - (d) the Lord Chief Justice of Northern Ireland, and
  - (e) the Investigatory Powers Commissioner.
- (5) Before appointing any person under subsection (1), the Prime Minister must consult the Scottish Ministers.
- (6) The Prime Minister must have regard to a memorandum of understanding agreed between the Prime Minister and the Scottish Ministers when exercising functions under subsection (1) or (5).
- (7) The Investigatory Powers Commissioner is a Judicial Commissioner and the Investigatory Powers Commissioner and the other Judicial Commissioners are to be known, collectively, as the Judicial Commissioners.
- (8) The Investigatory Powers Commissioner may, to such extent as the Investigatory Powers Commissioner may decide, delegate the exercise of functions of the Investigatory Powers Commissioner to any other Judicial Commissioner.
- (9) Subsection (8) does not apply to the function of the Investigatory Powers Commissioner of making a recommendation under subsection (4)(e) or making an appointment under section 247(1).
- [<sup>F1</sup>(9A) Subsection (8) applies to the functions of the Investigatory Powers Commissioner under section 60A or 65(3B) only where the Investigatory Powers Commissioner is unable to exercise the functions because of illness or absence or for any other reason.]
- (10) The delegation under subsection (8) to any extent of functions by the Investigatory Powers Commissioner does not prevent the exercise of the functions to that extent by that Commissioner.
- (11) Any function exercisable by a Judicial Commissioner or any description of Judicial Commissioners is exercisable by any of the Judicial Commissioners or (as the case may be) any of the Judicial Commissioners of that description.
- (12) Subsection (11) does not apply to—
  - (a) any function conferred on the Investigatory Powers Commissioner by name (except so far as its exercise by any of the Judicial Commissioners or any description of Judicial Commissioners is permitted by a delegation under subsection (8)), or
  - (b) any function conferred on, or delegated under subsection (8) to, any other particular named Judicial Commissioner.
- (13) References in any enactment—
  - (a) to a Judicial Commissioner are to be read as including the Investigatory Powers Commissioner, and
  - (b) to the Investigatory Powers Commissioner are to be read, so far as necessary for the purposes of subsection (8), as references to the Investigatory Powers Commissioner or any other Judicial Commissioner.

#### Textual Amendments

**F1** S. 227(9A) inserted (5.2.2019) by [The Data Retention and Acquisition Regulations 2018 \(S.I. 2018/1123\)](#), reg. 1(4)(d)(5), [Sch. 1 para. 24](#) (see S.I. 2019/174, reg. 2(c))

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### Modifications etc. (not altering text)

- C1** S. 227(4)-(6) excluded (temp.) (27.3.2020) by [The Investigatory Powers \(Temporary Judicial Commissioners and Modification of Time Limits\) Regulations 2020 \(S.I. 2020/360\)](#), regs. 1(2), **3(3)** (with [reg. 5](#))

## 228 Terms and conditions of appointment

- (1) Subject as follows, each Judicial Commissioner holds and vacates office in accordance with the Commissioner's terms and conditions of appointment.
- (2) Each Judicial Commissioner is to be appointed for a term of three years.
- (3) A person who ceases to be a Judicial Commissioner (otherwise than under subsection (5)) may be re-appointed under section 227(1).
- (4) A Judicial Commissioner may not, subject to subsection (5), be removed from office before the end of the term for which the Commissioner is appointed unless a resolution approving the removal has been passed by each House of Parliament.
- (5) A Judicial Commissioner may be removed from office by the Prime Minister if, after the appointment of the Commissioner—
  - (a) a bankruptcy order is made against the Commissioner or the Commissioner's estate is sequestrated or the Commissioner makes a composition or arrangement with, or grants a trust deed for, the Commissioner's creditors,
  - (b) any of the following orders is made against the Commissioner—
    - (i) a disqualification order under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002,
    - (ii) an order under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order),
    - (iii) an order under section 429(2) of the Insolvency Act 1986 (disabilities on revocation of county court administration order),
  - (c) the Commissioner's disqualification undertaking is accepted under section 7 or 8 of the Company Directors Disqualification Act 1986 or under the Company Directors Disqualification (Northern Ireland) Order 2002, or
  - (d) the Commissioner is convicted in the United Kingdom, the Channel Islands or the Isle of Man of an offence and receives a sentence of imprisonment (whether suspended or not).

### Modifications etc. (not altering text)

- C2** S. 228(2) excluded (temp.) (27.3.2020) by [The Investigatory Powers \(Temporary Judicial Commissioners and Modification of Time Limits\) Regulations 2020 \(S.I. 2020/360\)](#), regs. 1(2), **3(3)** (with [reg. 5](#))

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 3 para. 8A and cross-heading inserted by [2023 c. 32 Sch. 18 para. 10\(2\)](#)
- Sch. 3 para. 20(2)(ha)(hb) inserted by [2023 c. 32 Sch. 18 para. 10\(3\)\(a\)](#)