



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,

- (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).
- (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.

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).

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),

Status: This is the original version (as it was originally enacted).

- (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”,

Status: This is the original version (as it was originally enacted).

- (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”.

*Reports and investigation and information powers***234 Annual and other reports**

- (1) The Investigatory Powers Commissioner must, as soon as reasonably practicable after the end of each calendar year, make a report to the Prime Minister about the carrying out of the functions of the Judicial Commissioners.
- (2) A report under subsection (1) must, in particular, include—
 - (a) statistics on the use of the investigatory powers which are subject to review by the Investigatory Powers Commissioner (including the number of warrants or authorisations issued, given, considered or approved during the year),
 - (b) information about the results of such use (including its impact),
 - (c) information about the operation of the safeguards conferred by this Act in relation to items subject to legal privilege, confidential journalistic material and sources of journalistic information,
 - (d) information about the following kinds of warrants issued, considered or approved during the year—
 - (i) targeted interception warrants or targeted examination warrants of the kind referred to in section 17(2),
 - (ii) targeted equipment interference warrants relating to matters within paragraph (b), (c), (e), (f), (g) or (h) of section 101(1), and
 - (iii) targeted examination warrants under Part 5 relating to matters within any of paragraphs (b) to (e) of section 101(2),
 - (e) information about the operational purposes specified during the year in warrants issued under Part 6 or 7,
 - (f) the information on errors required by virtue of section 231(8),
 - (g) information about the work of the Technology Advisory Panel,
 - (h) information about the funding, staffing and other resources of the Judicial Commissioners, and
 - (i) details of public engagements undertaken by the Judicial Commissioners or their staff.
- (3) The Investigatory Powers Commissioner must, at any time, make any report to the Prime Minister which has been requested by the Prime Minister.
- (4) The Investigatory Powers Commissioner may, at any time, make any such report to the Prime Minister, on any matter relating to the functions of the Judicial Commissioners, as the Investigatory Powers Commissioner considers appropriate.
- (5) A report under subsection (1) or (4) may, in particular, include such recommendations as the Investigatory Powers Commissioner considers appropriate about any matter relating to the functions of the Judicial Commissioners.
- (6) On receiving a report from the Investigatory Powers Commissioner under subsection (1), the Prime Minister must—
 - (a) publish the report, and
 - (b) lay a copy of the published report before Parliament together with a statement as to whether any part of the report has been excluded from publication under subsection (7).

- (7) The Prime Minister may, after consultation with the Investigatory Powers Commissioner and (so far as the report relates to functions under Part 3 of the Police Act 1997) the Scottish Ministers, exclude from publication any part of a report under subsection (1) if, in the opinion of the Prime Minister, the publication of that part 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.
- (8) The Prime Minister must send a copy of every report and statement as laid before Parliament under subsection (6)(b) to the Scottish Ministers and the Scottish Ministers must lay the copy report and statement before the Scottish Parliament.
- (9) The Investigatory Powers Commissioner may publish any report under subsection (3) or (4), or any part of such a report, if requested to do so by the Prime Minister.
- (10) Subsection (11) applies if the Prime Minister receives a report from the Investigatory Powers Commissioner under subsection (1) or (4) which relates to an investigation, inspection or audit carried out by the Commissioner following a decision to do so of which the Intelligence and Security Committee of Parliament was informed under section 236(2).
- (11) The Prime Minister must send to the Intelligence and Security Committee of Parliament a copy of the report so far as it relates to—
 - (a) the investigation, inspection or audit concerned, and
 - (b) the functions of the Committee falling within section 2 of the Justice and Security Act 2013.

235 Investigation and information powers

- (1) A Judicial Commissioner may carry out such investigations, inspections and audits as the Commissioner considers appropriate for the purposes of the Commissioner's functions.
- (2) Every relevant person must disclose or provide to a Judicial Commissioner all such documents and information as the Commissioner may require for the purposes of the Commissioner's functions.
- (3) Every relevant person must provide a Judicial Commissioner with such assistance as the Commissioner may require in carrying out any investigation, inspection or audit for the purposes of the Commissioner's functions.
- (4) Assistance under subsection (3) may, in particular, include such access to apparatus, systems or other facilities or services as the Judicial Commissioner concerned may require in carrying out any investigation, inspection or audit for the purposes of the Commissioner's functions.
- (5) A public authority may report to the Investigatory Powers Commissioner any refusal by a telecommunications operator or postal operator to comply with any requirements imposed by virtue of this Act.

- (6) A public authority, telecommunications operator or postal operator must report to the Investigatory Powers Commissioner any relevant error (within the meaning given by section 231(9)) of which it is aware.
- (7) In this section “relevant person” means—
 - (a) any person who holds, or has held, an office, rank or position with a public authority,
 - (b) any telecommunications operator or postal operator who is, has been or may become subject to a requirement imposed by virtue of this Act,
 - (c) any person who is, has been or may become subject to a requirement to provide assistance by virtue of section 41, 43, 126, 128, 149, 168, 170 or 190, or
 - (d) any person to whom a notice is given under section 49 of the Regulation of Investigatory Powers Act 2000.

236 Referrals by the Intelligence and Security Committee of Parliament

- (1) Subsection (2) applies if the Intelligence and Security Committee of Parliament refers a matter to the Investigatory Powers Commissioner with a view to the Commissioner carrying out an investigation, inspection or audit into it.
- (2) The Investigatory Powers Commissioner must inform the Intelligence and Security Committee of Parliament of the Commissioner’s decision as to whether to carry out the investigation, inspection or audit.

237 Information gateway

- (1) A disclosure of information to the Investigatory Powers Commissioner or another Judicial Commissioner for the purposes of any function of the Commissioner does not breach—
 - (a) an obligation of confidence owed by the person making the disclosure, or
 - (b) any other restriction on the disclosure of information (whether imposed by virtue of this Act or otherwise).
- (2) But subsection (1) does not apply to a disclosure, in contravention of any provisions of the Data Protection Act 1998, of personal data which is not exempt from those provisions.

Supplementary provision

238 Funding, staff and facilities etc.

- (1) There is to be paid to the Judicial Commissioners out of money provided by Parliament such remuneration and allowances as the Treasury may determine.
- (2) The Secretary of State must, after consultation with the Investigatory Powers Commissioner and subject to the approval of the Treasury as to numbers of staff, provide the Judicial Commissioners with—
 - (a) such staff, and
 - (b) such accommodation, equipment and other facilities and services,

as the Secretary of State considers necessary for the carrying out of the Commissioners' functions.

- (3) The Scottish Ministers may pay to the Judicial Commissioners such allowances as the Scottish Ministers consider appropriate in respect of the exercise by the Commissioners of functions which relate to the exercise by Scottish public authorities of devolved functions.

- (4) In subsection (3)—

“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.

- (5) The Investigatory Powers Commissioner or any other Judicial Commissioner may, to such extent as the Commissioner concerned may decide, delegate the exercise of functions of that Commissioner to any member of staff of the Judicial Commissioners or any other person acting on behalf of the Commissioners.

- (6) Subsection (5) does not apply to—

- (a) the function of the Investigatory Powers Commissioner of making a recommendation under section 227(4)(e) or making an appointment under section 247(1),

- (b) any function which falls within section 229(8), or

- (c) any function under section 58(4) or 133(3) of authorising a disclosure,

but, subject to this and the terms of the delegation, does include functions which have been delegated to a Judicial Commissioner by the Investigatory Powers Commissioner.

- (7) The delegation under subsection (5) to any extent of functions by the Investigatory Powers Commissioner or any other Judicial Commissioner does not prevent the exercise of the functions to that extent by the Commissioner concerned.

239 Power to modify functions

- (1) The Secretary of State may by regulations modify the functions of the Investigatory Powers Commissioner or any other Judicial Commissioner.

- (2) But such regulations may not modify any function conferred by virtue of this Act on a Judicial Commissioner to approve, quash or cancel—

- (a) an authorisation or warrant, or

- (b) the variation or renewal of an authorisation or warrant.

- (3) The power to make regulations under this section (including that power as extended by section 267(1)(c)) may, in particular, be exercised by modifying any provision made by or under an enactment (including this Act).

240 Abolition of existing oversight bodies

- (1) The offices of the following are abolished—

- (a) the Interception of Communications Commissioner,

- (b) the Intelligence Services Commissioner,

- (c) the Chief Surveillance Commissioner,

- (d) the other Surveillance Commissioners,
 - (e) the Scottish Chief Surveillance Commissioner, and
 - (f) the other Scottish Surveillance Commissioners.
- (2) Accordingly, the following enactments are repealed—
 - (a) sections 57 and 58 of the Regulation of Investigatory Powers Act 2000 (the Interception of Communications Commissioner),
 - (b) sections 59, 59A and 60 of that Act (the Intelligence Services Commissioner),
 - (c) sections 62 and 63 of that Act and sections 91 and 107 of the Police Act 1997 (the Surveillance Commissioners), and
 - (d) sections 2(1) to (9), 3 and 4 of the Regulation of Investigatory Powers (Scotland) Act 2000 ([2000 asp 11](#)) (the Scottish Surveillance Commissioners).
- (3) The Secretary of State may by regulations, with the consent of the Northern Ireland Assembly, provide for the abolition of the office of the Investigatory Powers Commissioner for Northern Ireland.
- (4) The power to make regulations under subsection [\(3\)](#) (including that power as extended by section 267(1)(c)) may, in particular, be exercised by modifying any provision made by or under an enactment (including this Act).
- (5) Regulations made by virtue of subsection [\(4\)](#) may, in particular, repeal—
 - (a) section 61 of the Regulation of Investigatory Powers Act 2000 (the Investigatory Powers Commissioner for Northern Ireland), and
 - (b) the words “or the Investigatory Powers Commissioner for Northern Ireland” in section 229(4)(f) of this Act.
- (6) In this section—
 - “the Chief Surveillance Commissioner” means the Chief Commissioner appointed under section 91(1)(a) of the Police Act 1997,
 - “the other Scottish Surveillance Commissioners” means—
 - (a) the Surveillance Commissioners appointed under section 2(1)(b) of the Regulation of Investigatory Powers (Scotland) Act 2000, and
 - (b) the Assistant Surveillance Commissioners appointed under section 3 of that Act,
 - “the other Surveillance Commissioners” means—
 - (a) the Commissioners appointed under section 91(1)(b) of the Police Act 1997, and
 - (b) the Assistant Surveillance Commissioners appointed under section 63(1) of the Regulation of Investigatory Powers Act 2000,
 - “the Scottish Chief Surveillance Commissioner” means the Chief Surveillance Commissioner appointed under section 2(1)(a) of the Regulation of Investigatory Powers (Scotland) Act 2000.

CHAPTER 2

OTHER ARRANGEMENTS

Codes of practice

241 Codes of practice

Schedule 7 (codes of practice) has effect.

Investigatory Powers Tribunal

242 Right of appeal from Tribunal

(1) After section 67 of the Regulation of Investigatory Powers Act 2000 insert—

“67A Appeals from the Tribunal

- (1) A relevant person may appeal on a point of law against any determination of the Tribunal of a kind mentioned in section 68(4) or any decision of the Tribunal of a kind mentioned in section 68(4C).
- (2) Before making a determination or decision which might be the subject of an appeal under this section, the Tribunal must specify the court which is to have jurisdiction to hear the appeal (the “relevant appellate court”).
- (3) This court is whichever of the following courts appears to the Tribunal to be the most appropriate—
 - (a) the Court of Appeal in England and Wales,
 - (b) the Court of Session.
- (4) The Secretary of State may by regulations, with the consent of the Northern Ireland Assembly, amend subsection (3) so as to add the Court of Appeal in Northern Ireland to the list of courts mentioned there.
- (5) The Secretary of State may by regulations specify criteria to be applied by the Tribunal in making decisions under subsection (2) as to the identity of the relevant appellate court.
- (6) An appeal under this section—
 - (a) is to be heard by the relevant appellate court, but
 - (b) may not be made without the leave of the Tribunal or, if that is refused, of the relevant appellate court.
- (7) The Tribunal or relevant appellate court must not grant leave to appeal unless it considers that—
 - (a) the appeal would raise an important point of principle or practice, or
 - (b) there is another compelling reason for granting leave.
- (8) In this section—

“relevant appellate court” has the meaning given by subsection (2),

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

“relevant person”, in relation to any proceedings, complaint or reference, means the complainant or—

- (a) in the case of proceedings, the respondent,
- (b) in the case of a complaint, the person complained against, and
- (c) in the case of a reference, any public authority to whom the reference relates.”

(2) In section 67 of that Act (no appeal from the Investigatory Powers Tribunal except as provided by order of the Secretary of State)—

- (a) in subsection (8) for “Except to such extent as the Secretary of State may by order otherwise provide,” substitute “Except as provided by virtue of section 67A,”, and
- (b) omit subsections (9) to (12).

(3) After section 68(4) of that Act (requirement to give notice of determinations to complainant) insert—

“(4A) Where the Tribunal make any determination of a kind mentioned in subsection (4), they must also give notice to—

- (a) in the case of proceedings, the respondent,
- (b) in the case of a complaint, the person complained against, and
- (c) in the case of a reference, any public authority to whom the reference relates.

(4B) A notice under subsection (4A) is (subject to any rules made by virtue of section 69(2)(j)) to be confined, as the case may be, to either—

- (a) a statement that they have made a determination in the complainant’s favour, or
- (b) a statement that no determination has been made in the complainant’s favour.

(4C) Where the Tribunal make any decision which—

- (a) is a final decision of a preliminary issue in relation to any proceedings, complaint or reference brought before or made to them, and
- (b) is neither a determination of a kind mentioned in subsection (4) nor a decision relating to a procedural matter,

they must give notice of that decision to every person who would be entitled to receive notice of the determination under subsection (4) or (4A).

(4D) A notice under subsection (4C) is (subject to any rules made by virtue of section 69(2)(i) or (j)) to be confined to a statement as to what the decision is.

(4E) Subsections (4C) and (4D) do not apply so far as—

- (a) the Tribunal are prevented from giving notice of a decision to a person by rules made by virtue of section 69(4) or decide under such rules not to give such a notice, or
- (b) the giving of such a notice is inconsistent with such rules.”

(4) In section 69(2) of that Act (Tribunal rules)—

- (a) in paragraph (i), after “section 68(4)” insert “or notice under section 68(4C)”, and
- (b) after paragraph (i), insert “;

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

- (j) require information about any determination, award, order or other decision made by the Tribunal in relation to any proceedings, complaint or reference to be provided (in addition to any statement under section 68(4A) or notice under section 68(4C)) to—
 - (i) in the case of proceedings, the respondent,
 - (ii) in the case of a complaint, the person complained against, and
 - (iii) in the case of a reference, any public authority to whom the reference relates,
 or to the person representing their interests;
 - (k) make provision about the making and determination of applications to the Tribunal for permission to appeal”.
- (5) In section 78 of that Act (orders, regulations and rules)—
- (a) in subsection (4), after “applies” insert “(other than regulations under section 67A(5))”, and
 - (b) after subsection (4) insert—

“(4A) A statutory instrument containing regulations under section 67A(5) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

243 Functions of Tribunal in relation to this Act etc.

- (1) In section 65 of the Regulation of Investigatory Powers Act 2000 (the Investigatory Powers Tribunal)—
- (a) in subsection (2)(c) (jurisdiction of the Investigatory Powers Tribunal where possible detriment due to evidential bar) for “section 17” substitute “section 56 of the Investigatory Powers Act 2016”,
 - (b) in subsection (5) (conduct in relation to which the Tribunal has jurisdiction) after paragraph (b) insert—
 - “(ba) conduct for or in connection with the obtaining of secondary data from communications transmitted by means of such a service or system;
 - (bb) the issue, modification, renewal or service of a warrant under Part 2 or Chapter 1 of Part 6 of the Investigatory Powers Act 2016 (interception of communications);”
 - (c) in subsection (5) for paragraph (c) substitute—
 - “(c) conduct of a kind which may be permitted or required by an authorisation or notice under Part 3 of that Act or a warrant under Chapter 2 of Part 6 of that Act (acquisition of communications data);
 - (cza) the giving of an authorisation or notice under Part 3 of that Act or the issue, modification, renewal or service of a warrant under Chapter 2 of Part 6 of that Act;
 - (czb) conduct of a kind which may be required or permitted by a retention notice under Part 4 of that Act (retention of communications data) but excluding any conduct which is subject to review by the Information Commissioner;

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

- (czc) the giving or varying of a retention notice under that Part of that Act;
- (czd) conduct of a kind which may be required or permitted by a warrant under Part 5 or Chapter 3 of Part 6 of that Act (equipment interference);
- (cze) the issue, modification, renewal or service of a warrant under Part 5 or Chapter 3 of Part 6 of that Act;
- (czf) the issue, modification, renewal or service of a warrant under Part 7 of that Act (bulk personal dataset warrants);
- (czg) the giving of an authorisation under section 219(3)(b) (authorisation for the retention, or retention and examination, of material following expiry of bulk personal dataset warrant);
- (czh) the giving or varying of a direction under section 225 of that Act (directions where no bulk personal dataset warrant required);
- (czi) conduct of a kind which may be required by a notice under section 252 or 253 of that Act (national security or technical capability notices);
- (czj) the giving or varying of such a notice;
- (czk) the giving of an authorisation under section 152(5)(c) or 193(5)(c) of that Act (certain authorisations to examine intercepted content or protected material);
- (czl) any failure to—
 - (i) cancel a warrant under Part 2, 5, 6 or 7 of that Act or an authorisation under Part 3 of that Act;
 - (ii) cancel a notice under Part 3 of that Act;
 - (iii) revoke a notice under Part 4, or section 252 or 253, of that Act; or
 - (iv) revoke a direction under section 225 of that Act;
- (czm) any conduct in connection with any conduct falling within paragraph (c), (czb), (czd) or (czi);”
- (d) in subsection (6) (limitation for certain purposes of what is conduct falling within subsection (5))—
 - (i) after “on behalf of” insert “an immigration officer or”, and
 - (ii) after paragraph (d) insert—
 - “(dza) the Competition and Markets Authority;”
- (e) after subsection (6) insert—
 - “(6A) Subsection (6) does not apply to anything mentioned in paragraph (d) or (f) of subsection (5) which also falls within paragraph (czd) of that subsection.”
- (f) in subsection (7) after “if” insert “it is conduct of a public authority and”,
- (g) in subsection (7ZA) (role for Tribunal where judicial authority involved) for “under section 23A or 32A” substitute “by a Judicial Commissioner or under section 32A of this Act or section 75 of the Investigatory Powers Act 2016”,
- (h) after subsection (7ZA) insert—
 - “(7ZB) For the purposes of this section conduct also takes place in challengeable circumstances if it is, or purports to be, conduct falling

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

- within subsection (5)(bb), (cza), (czc), (cze), (czf), (czg), (czh), (czj), (czk) or (czl) or (so far as the conduct is, or purports to be, the giving of a notice under section 49) subsection (5)(e).”,
- (i) in subsection (8) (matters that may be challenged before the Tribunal) for paragraphs (a) and (b) substitute—
- “(a) a warrant under Part 2, 5, 6 or 7 of the Investigatory Powers Act 2016;
- (b) an authorisation or notice under Part 3 of that Act;
- (ba) a retention notice under Part 4 of that Act;
- (bb) a direction under section 225 of that Act;
- (bc) a notice under section 252 or 253 of that Act;”, and
- (j) after subsection (9) insert—
- “(9A) In subsection (5)(ba) the reference to obtaining secondary data from communications transmitted by means of a postal service or telecommunication system is to be read in accordance with section 16 of the Investigatory Powers Act 2016.”
- (2) In section 67(7) of the Act of 2000 (powers of the Tribunal)—
- (a) after paragraph (a) insert—
- “(aza) an order quashing or cancelling a notice under Part 3 of the Investigatory Powers Act 2016 or a retention notice under Part 4 of that Act;
- (azb) an order quashing or revoking a direction under section 225 of that Act;
- (azc) an order quashing or revoking a notice under section 252 or 253 of that Act;”,
- (b) in paragraph (aa) for “section 23A or 32A” substitute “section 75 of the Investigatory Powers Act 2016 or section 32A of this Act”, and
- (c) in paragraph (b)(i) after “authorisation” insert “or by a notice under Part 3 of the Investigatory Powers Act 2016”.
- (3) In section 68(5)(b) of the Act of 2000 (report of certain findings to the Prime Minister) after “permission” insert “, or notice under Part 4 of the Investigatory Powers Act 2016 or under section 252 or 253 of that Act or direction under section 225 of that Act,”.
- (4) In section 68(6)(b) of the Act of 2000 (disclosures etc. to the Tribunal to enable the exercise of functions conferred by or under that Act) after “this Act” insert “or the Investigatory Powers Act 2016”.
- (5) In section 68(7) of the Act of 2000 (persons subject to duty to co-operate with the Tribunal)—
- (a) in paragraph (e)—
- (i) for “section 11” substitute “section 41, 126, 149, 168 or 190 of the Investigatory Powers Act 2016”, and
- (ii) for “an interception warrant” substitute “a warrant”,
- (b) in paragraph (f) for “section 12” substitute “section 252 or 253 of that Act”,
- (c) for paragraphs (g) and (h) substitute—
- “(g) every person by or to whom an authorisation under Part 3 of that Act has been granted;

- (h) every person to whom a notice under Part 3 of that Act has been given;
 - (ha) every person to whom a retention notice under Part 4 of that Act or a notice under section 252 or 253 of that Act has been given;”,
 - (d) in paragraph (k), for the words from “an authorisation” to the end substitute “
 - (i) an authorisation under Part 3 of the Investigatory Powers Act 2016, Part 2 of this Act or Part 3 of the Police Act 1997, or
 - (ii) a warrant under Chapter 2 of Part 6 of the Investigatory Powers Act 2016;”,
 - (e) in paragraph (l) after “authorisation” insert “or warrant”, and
 - (f) in paragraph (n) after “(h)” insert “, (ha)”.
- (6) In section 68(8) of the Act of 2000 (meaning of “relevant Commissioner”) for the words from “Interception” to the end substitute “Investigatory Powers Commissioner or any other Judicial Commissioner or the Investigatory Powers Commissioner for Northern Ireland”.

Information Commissioner

244 Oversight by Information Commissioner in relation to Part 4

The Information Commissioner must audit compliance with requirements or restrictions imposed by virtue of Part 4 in relation to the integrity, security or destruction of data retained by virtue of that Part.

Advisory bodies

245 Technical Advisory Board

- (1) There is to continue to be a Technical Advisory Board consisting of such number of persons appointed by the Secretary of State as the Secretary of State may by regulations provide.
- (2) The regulations providing for the membership of the Technical Advisory Board must also make provision which is calculated to ensure—
 - (a) that the membership of the Board includes persons likely effectively to represent the interests of persons on whom obligations may be imposed by virtue of retention notices under Part 4, national security notices under section 252 or technical capability notices under section 253,
 - (b) that the membership of the Board includes persons likely effectively to represent the interests of persons entitled to apply for warrants under Part 2, 5, 6 or 7 or authorisations under Part 3,
 - (c) that such other persons (if any) as the Secretary of State considers appropriate may be appointed to be members of the Board, and
 - (d) that the Board is so constituted as to produce a balance between the representation of the interests mentioned in paragraph (a) and the representation of those mentioned in paragraph (b).

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

- (3) Regulations under this section may also make provision about quorum and the filling of vacancies.

246 Technology Advisory Panel

- (1) The Investigatory Powers Commissioner must ensure that there is a Technology Advisory Panel to provide advice to the Investigatory Powers Commissioner, the Secretary of State and the Scottish Ministers about—
- (a) the impact of changing technology on the exercise of investigatory powers whose exercise is subject to review by the Commissioner, and
 - (b) the availability and development of techniques to use such powers while minimising interference with privacy.
- (2) The Technology Advisory Panel must provide advice to the Investigatory Powers Commissioner about such matters falling within subsection (1)(a) or (b) as the Commissioner may direct.
- (3) Subject to this, the Panel may provide advice to the Investigatory Powers Commissioner about such matters falling within subsection (1)(a) or (b) as it considers appropriate (whether or not requested to do so).
- (4) The Panel may provide advice to the Secretary of State or the Scottish Ministers about such matters falling within subsection (1)(a) or (b) as it considers appropriate (whether or not requested to do so) but such advice to the Scottish Ministers may only relate to matters for which the Scottish Ministers are responsible.
- (5) The Panel must, as soon as reasonably practicable after the end of each calendar year, make a report to the Investigatory Powers Commissioner about the carrying out of the functions of the Panel.
- (6) The Panel must, at the same time, send a copy of the report to the Secretary of State and (so far as relating to matters for which the Scottish Ministers are responsible) the Scottish Ministers.

247 Members of the Panel

- (1) The Investigatory Powers Commissioner must appoint such number of persons as members of the Technology Advisory Panel as the Commissioner considers necessary for the carrying out of the functions of the Panel.
- (2) Subject as follows, each member of the Panel holds and vacates office in accordance with the member's terms and conditions of appointment.
- (3) A member of the Panel must not act in a way which the member 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.
- (4) A member of the Panel must, in particular, ensure that the member 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.
- (5) Section 235(2) and (7) (information powers) apply to a member of the Panel as they apply to a Judicial Commissioner.