



Investigatory Powers Bill

Key points

- All of the powers in the Bill will be overseen by independent and powerful Judicial Commissioners.
- The most intrusive powers in the Bill will be subject to a ‘double-lock’ of Executive and Judicial authorisation. A Secretary of State will issue warrants for interception, equipment interference by the security and intelligence agencies, and powers in bulk – retaining democratic accountability. A Judicial Commissioner must approve the warrant before it comes into force.
- In an emergency, powers can be authorised orally by the Secretary of State, and reviewed by a Judicial Commissioner who will have the power to quash a warrant.

Background

- Currently interception (e.g. to access content of a telephone call or email) by law enforcement or the security and intelligence agencies, or property interference (e.g. a bag search) by the intelligence agencies must be authorised by a Secretary of State. The Regulation of Investigatory Powers Act 2000 (RIPA) and the Intelligence Services Act 1994 (ISA) provide the statutory bases and safeguards for these powers. Judicial Commissioners provide retrospective oversight.
- Law enforcement’s use of property interference powers (under the Police Act 1997) is authorised by Chief Constables or equivalents as specified in the relevant code.
- The acquisition of communications (content and data) in bulk requires a warrant authorised by a Secretary of State, with a certificate to examine the content acquired.
- The Home Secretary authorises warrants for the Security Service (MI5) and for law enforcement. The Foreign Secretary authorises warrants for the Secret Intelligence Service (SIS) and GCHQ. The Secretary of State for Defence authorises warrants for the armed forces. The Secretary of State for Northern Ireland authorises warrants relating to Northern Ireland, and Scottish Ministers authorise interception warrants for serious crime in Scotland.
- In the future this authorisation role will be undertaken by Secretaries of State (or Scottish Ministers as appropriate) and Judicial Commissioners.

Key facts

- In 2014, 2795 interception warrants were authorised. Of those 2795 warrants, 68% were issued for preventing and detecting serious crime, 31% in the interests of national security and 1% for a combination of statutory purposes.
- In 2014/15, 2091 property interference authorisations were granted for law enforcement agencies by the Office of the Surveillance Commissioners (OSC). The OSC agreed 321 intrusive surveillance authorisations.

Quotes

“...one aspect which we found compelling is that Ministers are able to take into account the wider context of each warrant application and the risks involved, whereas judges can only decide whether a warrant application is legally compliant.... In addition, Ministers are democratically accountable for their decisions... It is Ministers, not judges, who should (and do) justify their decisions to the public.”

ISC, Privacy and Security, March 2015

“Secretaries of State and the judiciary both have an important role in the authorisation of intrusive powers. Judges are best suited to applying the necessary legal test, but ministers are better informed about the nature of the threat and are best placed to assess necessity and proportionality as they relate to national security.”

RUSI, Independent Surveillance Review, July 2015



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Who will authorise what?

- 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.
- Targeted communications data acquisition will, as now, be authorised at official level.
- Bulk interception, communications data and equipment interference warrants will be authorised by a Secretary of State and, before they can come into force, must be approved by a Judicial Commissioner.
- Targeted equipment interference warrants will be authorised by:
 - For the intelligence agencies and armed forces by a Secretary of State and, before it can come into force, it must be approved by a Judicial Commissioner.
 - For law enforcement by a Chief Constable and a Judicial Commissioner – this is consistent with the current property interference regime for law enforcement.
- The acquisition and use of Bulk Personal Datasets by the security and intelligence agencies must be authorised by a Secretary of State and, before it can come into force, approved by a Judicial Commissioner.

What will the legal test be for authorisation?

- The action must be necessary for one or more of the statutory purposes. The most intrusive powers are limited to a small number of purposes: national security, preventing or detecting serious crime, or safeguarding the economic wellbeing of the UK.
- It must be proportionate – this means that the expected benefit from the use of the power must justify the intrusion into people’s privacy or the interference with their property or equipment.
- And of course, it must be lawful which means that, as well as having a statutory basis, it must be compliant with the UK’s human rights obligations.
- The Secretary of State’s decision must be approved by a Judicial Commissioner on judicial review principles prior to the warrant coming into force.

Is this consistent with what the independent reviews recommended?

- There were significant differences between the recommendations from three independent reviews.
- The ISC recommended that we maintain the current system of Secretary of State authorisation with retrospective Judicial Commissioner oversight.
- David Anderson QC recommended that Judicial Commissioners authorise all warrantry apart from those national security cases relating to foreign policy or defence and bulk warrants. In these cases the Secretary of State’s decision would be subject to prior review by a Judicial Commissioner.
- RUSI recommended a hybrid model where the Secretary of State’s authorisation was subject to judicial review by a Judicial Commissioner before it could come into force where the warrant was for national security. Judicial Commissioner would authorise warrants for serious crime.

What other safeguards apply?

- For each of the powers to acquire data in bulk, the Bill will provide additional safeguards at the point an analyst wishes to interrogate the data. In order to examine content or communications data acquired under a bulk warrant, it must be necessary and proportionate for an approved Operational Purpose. Examination of content relating to a UK person acquired under a bulk EI or bulk interception warrant will require a targeted examination warrant.
- Renewals of interception and equipment interference warrants must be issued by Secretaries of State and approved by a Judicial Commissioner.
- For combined warrants (requesting authorisation for the use of more than one power), the level of authorisation required automatically defaults to the highest between the powers requested.
- The Investigatory Powers Commission will audit agencies on an annual basis in order to monitor their compliance with legislation.
- Codes of Practice will set out further details of the safeguards around access, retention, storage, destruction, disclosure and auditing of the data

Why are you not going for full judicial authorisation?

- The Intelligence and Security Committee of Parliament made strong arguments about the importance of executive authorisation in overseeing the use of intrusive powers and ensuring accountability to Parliament.
- There is an important role for both the Executive and the judiciary.
- The Bill will significantly strengthen the role of the judiciary in the authorisation process so that there will be a ‘double lock’ of Judicial Commissioner and Secretary of State authorisation.