



Investigatory Powers Bill

Key points

- Interception involves making available the content of a communication to someone other than the sender or intended recipient during the course of its transmission. In practice that means listening to a phone call or reading an email.
- Interception can only be undertaken by a limited number of agencies, in limited circumstances, when a warrant is in place. It is a vital tool for law enforcement and the intelligence agencies to protect the public and prevent or detect serious crime.
- Interception warrants will be subject to a 'double-lock' authorisation process of Secretary of State issued warrants approved by a Judicial Commissioner before coming into force.
- Only nine agencies can apply for an interception warrant. These include the Security and Intelligence Agencies, five Law Enforcement Agencies and the armed forces.
- As is currently the case, the Bill makes clear that targeted interception warrants can be served on Communications Service Providers (CSPs) who offer services to customers in the UK irrespective of where they are based in the world. CSPs have a duty to give effect to a warrant if required to do so.

Background

- Warrants can only be issued when the Secretary of State is satisfied that it is necessary and proportionate, and that an assessment has been made that the information sought cannot be obtained by other means. The Bill will require that a Judicial Commissioner must approve an interception warrant before it comes into force.
- The existence of a warrant must be kept secret. Intercept material cannot be used as evidence in criminal proceedings. Successive Governments have reviewed whether it would be possible to introduce intercept as evidence. Each has concluded that it would not be possible - the Agencies' abilities to conduct the investigations that we rely on to keep us safe would diminish.
- Interception is not solely used to fight terrorism. It is also used for counter-espionage and counter-proliferation investigations and in murder investigations, the investigation of organised crime, the detection of child sexual exploitation and the prevention of online fraud.

Key facts

- The majority of MI5's priority investigations rely on interception in some form to identify, understand or disrupt plots seeking to harm the UK and its citizens.
- The Government's legislative proposals are compatible with the UK's human rights obligations.
- A Judicial Commissioner will, following issue by the Secretary of State, also be required to approve a warrant before it comes into force.

Key Quotes

"The targeted interception of communications (primarily in the UK) is an essential investigative capability which the Agencies require in order to learn more about individuals who are plotting against the UK". **Intelligence and Security Committee of Parliament, Privacy and Security Report, March 2015**

"Interception can be of vital importance for intelligence, for disruption, and for the detection and investigation of crime". **David Anderson QC, Independent Reviewer of Terrorism Legislation, "A Question of Trust", June 2015**



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Why do we need it?

- Interception is a vital tool that allows law enforcement and the security and intelligence agencies to identify and understand serious crime and national security threats facing the UK. It provides the intelligence to support operational activity which leads to arrests and prosecutions.
- Terrorists increasingly use a range of communications services to radicalise, recruit and plan their attacks. Criminals use these services to commit crime and evade detection.
- Law enforcement and the security and intelligence agencies must be able to continue to access terrorists' and criminals' communications to counter these threats and protect the public.

What is new?

- The Bill will provide a new 'double-lock' authorisation procedure whereby warrants are issued by a Secretary of State and must also be approved by a Judicial Commissioner before coming into force.
- The Bill will make clear the distinction between targeted interception and bulk interception. Information about bulk interception is contained in a separate factsheet.
- The interception provisions in the Bill replace the existing interception powers in the Wireless Telegraphy Act 2006.
- In line with David Anderson's recommendation, serious Crime warrants will now last for 6 months, bringing them into line with national security warrants.

Who can do it? When? Under what authorities?

The nine intercepting agencies: GCHQ, SIS, MI5, the Ministry of Defence, Her Majesty's Revenue and Customs, the National Crime Agency, the Police Service Northern Ireland, Police Scotland and the Metropolitan Police Service.

For three specific purposes: in the interest of national security, for the prevention or detection of serious crime; safeguarding the economic well-being of the UK (for national security).

What are the safeguards?

- Interception should not be undertaken if the information could be obtained by another less intrusive method. Therefore, interception warrants will only be sought and granted where information about terrorists/ criminals and their networks cannot be acquired via other means.
- 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.
- In addition to Judicial Commissioner approval, the Bill will include a requirement for the Prime Minister to be consulted before the Secretary of State can decide to issue a warrant to intercept an MP's communications.
- The legislation makes clear what constitutes unauthorised interception. It remains a criminal offence to undertake unlawful interception in the UK.
- The legislation sets out the handling arrangements for material obtained via interception and limited circumstances in which it can be shared.
- Interception powers will be overseen by the Investigatory Powers Commissioner. The Commissioner will inspect the intercepting agencies in order to monitor compliance with the legislation and publish his findings in an annual report.
- Anyone who believes that they may have been subject to unlawful interception can complain to the Investigatory Powers Tribunal to review their case.
- The Bill will provide for more detail on the handling of intercept material to be included in codes of practice, including the circumstances in which it can be shared, and the special protections that apply to material that is deemed confidential information, such as legally privileged material or medical information.