



Statement by the Interception of Communications Commissioner's Office (IOCCO) on the publication of IOCCO's Review of Directions given under Section 94 of the Telecommunications Act 1984

7 July 2016

**EMBARGOED FOR USE AFTER THE REPORT IS LAID IN THE HOUSE BY THE PRIME MINISTER, THE RT HON. DAVID CAMERON MP**

Today the Government has published a report submitted to the Prime Minister by the Rt Hon. Sir Stanley Burnton, Interception of Communications Commissioner, on IOCCO's review of directions given under Section 94 of the Telecommunications Act 1984.

Sir Stanley said:

*"This review of section 94 directions has been extremely challenging. Our report highlights clearly the difficulties when statutes are operated in secret and without codified statutory procedures. We make extensive recommendations that the intelligence and law enforcement agencies must implement to clarify and bring consistency to their procedures, to remedy the lack of record-keeping requirements and to ensure that we can oversee properly how section 94 directions are given and used."*

In summary:

- There are 23 extant section 94 directions within the scope of IOCCO's oversight. Fifteen are for bulk communications data given on behalf of GCHQ and the Security Service which require Public Electronic Communications Networks (PECNs) to disclose regular feeds of traffic data. The remaining eight section 94 directions, given on behalf of the intelligence agencies and law enforcement, concern the provision of services in emergencies, for civil contingencies or to help the agencies safeguard the security of their personnel and operations.
- All of the section 94 directions under IOCCO's oversight are subject to secrecy restrictions and this severely limits what IOCCO can say about the nature of the directions and the action taken in consequence.
- The Telecommunications Act does not have any provision for codes of practice, independent oversight or record-keeping. IOCCO has made extensive recommendations calling for there to be clear and mandatory processes for the application, authorisation, review, modification and cancellation of any directions. The Commissioner requires the public authorities and, where relevant, the PECNs to implement the recommendations without delay. The Investigatory Powers Bill, as drafted, addresses some of these issues.

- It is unsurprising that the lack of a codified process, along with the different functions and missions of GCHQ and the Security Service, have led to a number of dissimilar processes evolving within those agencies relating to section 94 directions to acquire bulk communications data.
- IOCCO's review did not seek to determine whether the section 94 regime satisfies legal requirements, including clarity and accessibility, as this is the exclusive role of the Investigatory Powers Tribunal (IPT). But, as part of the review, IOCCO examined a series of 12-year old correspondence between a former Commissioner from 2004, Home Office legal advisers and GCHQ. The Commissioner concluded the correspondence was incomplete because, for example, it did not consider the genesis of section 94, nor did it take full account of the European Convention on Human Rights (ECHR), in particular the principle of legal certainty, or legality.

**Notes for editors:**

IOCCO is an independent oversight body – independent of Government and Parliament.

IOCCO conducts thorough and robust inspections of public authorities with powers to intercept communications and acquire communications data and of the interception of prisoners' communications. IOCCO carried out over 150 inspections in 2015, and made over 800 recommendations to ensure compliance or to improve systems and procedures.

**Contact:**

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