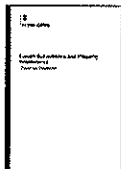




Member Bulletin No 573

14 February 2014



Consultation: Covert surveillance code of practice

Yesterday [13 February] the government published its consultation on proposals to update the covert surveillance and covert human intelligence source codes of practice as are required by The Regulation of Investigatory Powers Act 2000 (RIPA).

The majority of the proposals to update the codes of practice are as a consequence of the Regulation of Investigatory Powers Order 2013 which came into force on 1 January 2014. With SLCNG's interest being primarily in the covert surveillance code, it is worth noting that the proposals also reflect other changes such as the introduction in the Protection of Freedoms Act 2012 of judicial supervision for local authorities' use of these powers.

Accordingly, the Codes of Practice have been revised to:

- include the requirement for local authorities to get judicial approval for their use of RIPA (Protection of Freedoms Act 2012);
- restrict local authority use of directed surveillance under RIPA to offences which attract a sentence of six months imprisonment or more (Protection of Freedoms Act 2012);

Some changes are of a technical nature in that they "reflect issues raised by practitioners in the course of their investigations and which reflect best practice." This includes revised language to make it clear that investigation of sustained loud noise is unlikely to have privacy implications requiring a RIPA authorisation.

The changes made to the draft codes, on which the government is seeking views, are highlighted within the consultation document(s). Set out below for ease of reference are the principal changes proposed to the Covert Surveillance and Property Interference Code of Practice with the changes highlighted. (Please note that provisions which are not changing have been omitted in the interests of brevity).

CCTV and ANPR (Automatic Number Plate Recognition) Cameras

2.27 The use of overt CCTV cameras by *public authorities* does not normally require an *authorisation* under the 2000 Act. *Members* of the public should be made aware that such systems are in use. For example, by virtue of cameras or signage being clearly visible, through the provision of information and by

undertaking consultation. Guidance on their operation is provided in the Surveillance Camera Code of Practice issued under the Protection of Freedoms Act 2012. This sets out a framework of good practice that includes existing legal obligations, including the processing of personal data under the Data Protection Act 1998 and a public authority's duty to adhere to the Human Rights Act 1998. Similarly, the overt use of ANPR systems to monitor traffic flows or detect motoring offences does not require an *authorisation* under the 2000 Act.

Specific situations not requiring directed surveillance authorisation

2.29 The following specific activities also constitute neither directed nor intrusive surveillance:

the covert recording of suspected noise nuisance where: the recording is of decibels only or constitutes non-verbal noise (such as music, machinery or an alarm) or the recording of verbal content is made at a level which does not exceed that which can be heard from the street outside or adjoining property with the naked ear. In the latter circumstance the perpetrator would normally be regarded as having forfeited any claim to privacy. In either circumstance, an *authorisation* is unlikely to be required;

Collaborative working

3.18 Where an individual or a non-governmental organisation is acting under direction of a public authority then they are acting as an agent of that public authority and any activities they conduct which meet the 2000 Act definitions of directed or intrusive surveillance or the 1994 or 1979 Act definition of property interference should be considered for authorisation under those Acts.

General best practices

3.28 The following guidelines should be considered as best working practices by all *public authorities* with regard to all *applications* for *authorisations* covered by this code:

Local authorities

3.30 The Protection of Freedoms Act 2012 amended the 2000 Act to make local authority authorisations subject to judicial approval. The change means that local authorities need to obtain an order approving the grant or renewal of an authorisation from a Justice of the Peace (JP) before it can take effect. If the JP is satisfied that the statutory tests have been met and that the use of the technique is necessary and proportionate, he/she will issue an order approving the grant or renewal for the use of the technique as described in the application. The amendment means that local authorities are no longer able to orally authorise the use of RIPA techniques. All authorisations must be made in writing and require JP approval. The authorisation cannot commence until this has been obtained. In Scotland this requirement only applies to authorisations for communications data as the use of the other techniques is governed by RIP(S)A. Further information for local authorities and the judiciary is given in Home Office-issued guidance available on the [gov.uk](http://www.gov.uk) website.

3.31 The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 has the following effects:

Local authorities in England and Wales can only authorise use of directed surveillance under RIPA to prevent or detect criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months' imprisonment or are related to the underage sale of alcohol and tobacco. The offences relating to the latter are in article 7A of the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010.

Local authorities **cannot** authorise directed surveillance for the purpose of preventing disorder unless this involves a criminal offence(s) punishable (whether on summary conviction or indictment) by a maximum term of at least 6 months' imprisonment.

Local authorities may therefore continue to authorise use of directed surveillance in more serious cases as long as the other tests are met – i.e. that it is necessary and proportionate and where prior approval from a JP has been granted. Examples of cases where the offence being investigated attracts a maximum custodial sentence of six months or more could include more serious criminal damage, dangerous waste dumping and serious or serial benefit fraud.

Local authorities may also continue to authorise the use of directed surveillance for the purpose of preventing or detecting specified criminal offences relating to the underage sale of alcohol and tobacco where the necessity and proportionality test is met and prior approval from a JP has been granted.

A local authority **may not authorise** the use of directed surveillance under RIPA to investigate disorder that does not involve criminal offences or to investigate low-level offences which may include, for example, littering, dog control and fly-posting.

3.32. Local Authorities in Scotland and Northern Ireland should refer to their own devolved legislation. Further information for local authorities and the judiciary about these provisions is given in separately issued Home Office guidance.

Directed and intrusive surveillance authorisations

8.1 A record of the following information pertaining to all *authorisations* shall be centrally retrievable within each *public authority* for a period of at least three years from the ending of each *authorisation*. This information should be regularly updated whenever an *authorisation* is granted, renewed or cancelled and should be made available to the relevant Commissioner or an Inspector from the Office of Surveillance Commissioners upon request.

- for local authorities, details of attendances at the magistrates' court;
- the dates of any reviews;

8.2 The following documentation should also be centrally retrievable for at least three years from the ending of each *authorisation*:

- for local authorities a copy of the order approving the grant or renewal of an authorisation from a Justice of the Peace (JP).

Further information

The full suite of documents is available on the Home Office website at <https://www.gov.uk/government/consultations/covert-surveillance>

The consultation lasts for 6 weeks and closes on 27 March 2014

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