



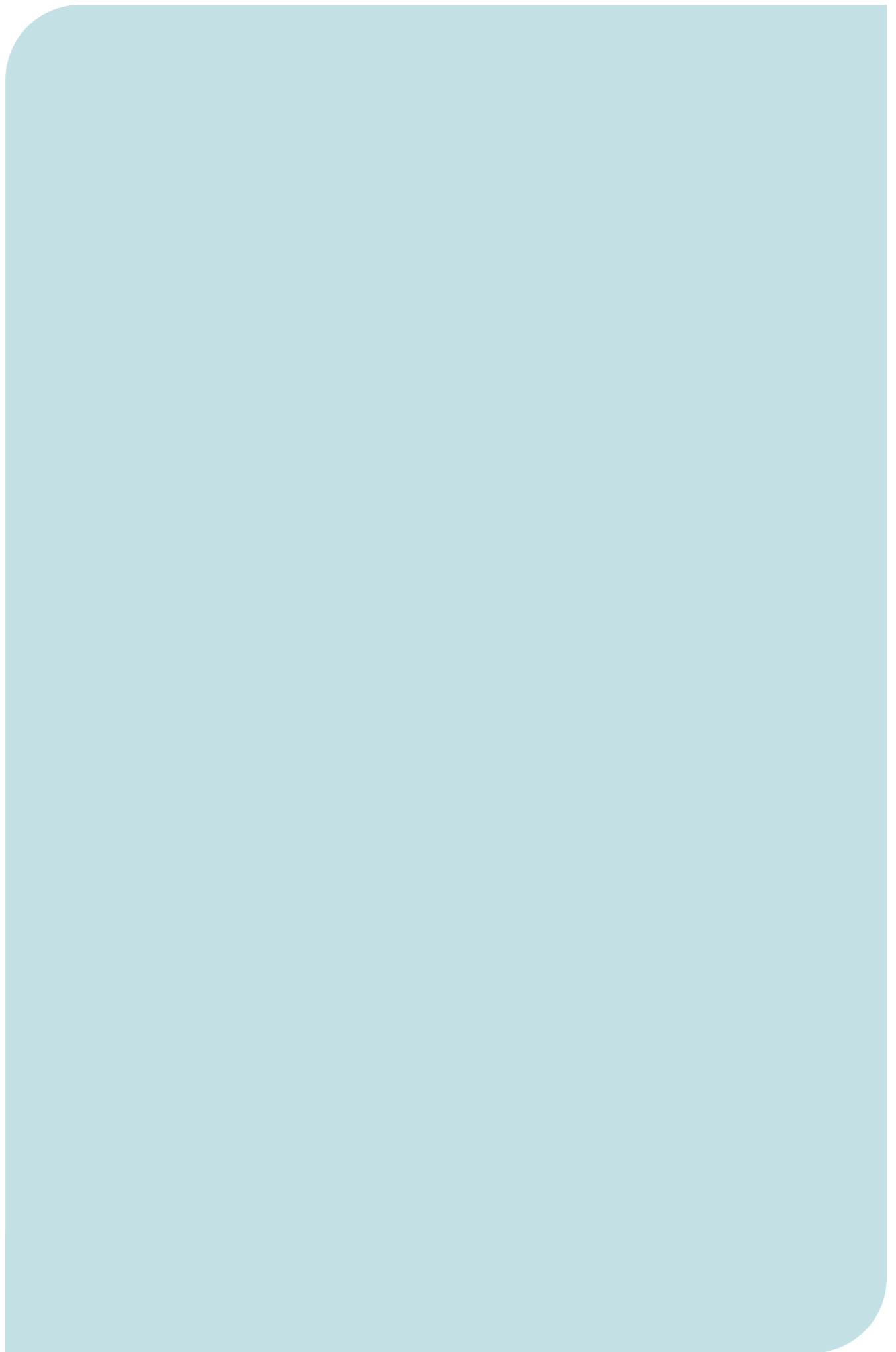
Office of Surveillance
Commissioners

ANNUAL REPORT

of the Chief Surveillance Commissioner
to the Prime Minister and
to Scottish Ministers
for **2007-2008**

HC 659

SG/2008/86



ANNUAL REPORT

of the Chief Surveillance Commissioner
to the Prime Minister and
to Scottish Ministers
for **2007-2008**

Chief Commissioner:

The Rt. Hon. Sir Christopher Rose

Presented to Parliament by the Prime Minister
pursuant to section 107(3)
of the Police Act 1997

Ordered by the House of Commons
to be printed on 22nd July 2008

Laid before the Scottish Parliament
by the Scottish Ministers
July 2008

HC 659

SG/2008/86

London: The Stationery Office

£7.70

© Crown Copyright 2008

The text in this document (excluding the Royal Arms and other departmental or agency logos) may be reproduced free of charge in any format or medium providing it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

For any other use of this material please write to Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW9 4DU or e-mail: licensing@opsi.gov.uk

Contents

	<i>Page</i>
1. Introduction	2
2. Overview of the year	3
3. The statutory provisions	3
4. Organisation of OSC business	4
5. Particular matters relating to the OSC	6
6. Property interference and intrusive surveillance	7
7. Directed surveillance and CHIS	8
8. Inspections of law enforcement agencies	9
9. Inspections of Government Departments and Local Authorities	12
10. Freedom of Information	15
11. The year ahead	16

Annexes

Annex A Authorisations given under Part III of the Police Act 1997 during the last three years	17
Annex B Analysis by offence of authorisations given under Part III of the Police Act 1997 during the last three years	18
Annex C Intrusive surveillance authorisations given under Part II of the Regulation of Investigatory Powers Act 2000 and under the Regulation of Investigatory Powers (Scotland) Act 2000 during the last three years	19
Annex D Analysis by offence of authorisations given under Part II of the Regulation of Investigatory Powers Act 2000 and under the Regulation of Investigatory Powers (Scotland) Act during the last three years	20
Annex E Inspection priorities	21
Annex F OSC Expenditure	23
Annex G Members of the Office of Surveillance Commissioners	24



1. Introduction

- 1.1. This is my second report since taking up my appointment as the Chief Surveillance Commissioner in July 2006 and relates to the period 1st April 2007 to 31st March 2008.
- 1.2. It is my duty to keep under review:
 - (a) The performance of functions under Part III of the Police Act 1997 ('the 1997 Act');
 - (b) (except in relation to the Interception of Communications and the Intelligence Services) the exercise and performance of the powers and duties conferred or imposed by or under Part II of the Regulation of Investigatory Powers Act 2000 ('RIPA'); and
 - (c) The exercise and performance of the powers and duties conferred or imposed by or under the Regulation of Investigatory Powers (Scotland) Act 2000 ('RIP(S)A').
- 1.3. This covers the covert activities (except telephone and mail interception) carried out by all public authorities, except the intelligence services. This now includes Part III of RIPA relating to protected electronic information which came into force during the period covered by this report.
- 1.4. It is the duty of the Surveillance Commissioners ('the Commissioners') to appraise all authorisations for property interference and intrusive surveillance either before or immediately after they have been given. There is a right of appeal against their decisions to me.
- 1.5. In performance of my duty under all three Acts ('the Acts') to report annually, I continue to prepare a combined report.

2. Overview of the year

- 2.1. The statistics relating to property interference and intrusive surveillance are set out in Section 6 below.
- 2.2. The numbers of authorisations for directed surveillance and the use of Covert Human Intelligence Sources ('CHIS') are set out in Section 7 below.
- 2.3. Issues that continue to be of concern to me are those which I have previously raised: technological advances not anticipated by current legislation and the legislation not contemplating the operational advantages of combined operations and units. These issues have been raised repeatedly by me, and my predecessor, to the Home Office and I have encouraged ACPO and ACPOS to press for legislative amendment. I am disappointed at the apparent lack of momentum.
- 2.4. The use made, by the public authorities, of the Acts has been the subject of an increased interest by members of both Houses of Parliament and by the media. I am unable to comment on the conclusions reached by the two Select Committees because in one case its report has not yet been placed before the House of Commons and the other has not yet concluded its business. I am, however, able to say that much of the media reporting has been misguided.
- 2.5. Finally, I was asked by the Lord Chancellor and the Secretary of State for Justice to investigate and report on two visits by Sadiq Khan MP to Babar Ahmad at Her Majesty's Prison Woodhill. I submitted my Report to the Prime Minister, the Lord Chancellor and the Home Secretary on 20th February 2008. I make no further reference to it in this report. The Report was presented to the House of Commons by the Home Secretary on 21st February and published in full. It speaks for itself.

3. The statutory provisions

- 3.1. The purposes and provisions of Part III of the 1997 Act, Part II of RIPA and RIP(S)A that are relevant to oversight of covert surveillance, together with an account of the statutory functions of the Commissioners, are available on the OSC website at www.surveillancecommissioners.gov.uk and are also set out in the 2000-2001 Annual Report to the Prime Minister and Scottish Ministers.
- 3.2. I have now conducted the first inspections of the Healthcare Commission, the Gambling Commission and the Gangmasters Licensing Authority. I no longer intend to inspect the special hospitals at Ashworth, Broadmoor and Rampton because legislative adjustments indicate that they can no longer grant covert activity independently. Any covert activity to be conducted in these establishments should be authorised by the NHS Counter Fraud and Security Management Service which I already inspect.

- 3.3.** I have not inspected the Local Authorities in Northern Ireland as I have not been given the power to do so. I note that these authorities have never been inspected.
- 3.4.** The Commissioners have deduced that they do not currently have the statutory powers to provide the independent judicial oversight required by the judgment delivered in the High Court of Justice in Northern Ireland, Queen's Bench Division (Judicial Review) in the matter of an application by C, A, W, M and McE ([2007] NIQB 101) relating to the conduct of covert activity that is considered likely to acquire confidential information as defined by the legislation. I understand that the judgement is the subject of appeal to the House of Lords.



4. Organisation of OSC business

- 4.1.** My statutory responsibilities continue to be fulfilled by the Commissioners' oversight of authorisations, inspections by Assistant Commissioners and Inspectors, and follow up inspection visits by the Commissioners to all law enforcement agencies. Chief Officers continue to respond favourably to the inspection process.
- 4.2.** The responsibility for the inspection of Local Authorities falls mainly on my Assistant Commissioners but the Inspectors have taken on an increasingly active role in this area. This has allowed the Assistant Commissioners to attend the inspections of the larger law enforcement agencies. This approach shares experience and knowledge and affords an immediate, judicial interpretation of the legislation when an issue arises that may not have previously been considered by me or the Commissioners.
- 4.3.** All law enforcement agencies and major Government departments have been inspected as planned within this reporting period. My Chief Inspector is testing alternative inspection methodologies designed to reduce, wherever possible, disruption for the authorities.

- 4.4.** Conscious that mine is one of several inspections that public authorities (particularly the law enforcement agencies) are required to accommodate each year, I have reviewed the frequency and duration of my inspections and the priorities for each type of authority. I have concluded that the priorities shown at Annex E remain appropriate and that there is little scope for adjustment to the duration of inspections.
- 4.5.** The Commissioners met on three occasions during this reporting period and the meetings were attended by the Assistant Commissioners, Inspectors, Secretary to the OSC and managers from my Secretariat. They continue to be a valuable mechanism for making collective decisions about matters of interpretation emanating from inspections, follow up visits and, occasionally, requests that have been received from authorities. Guidelines are issued periodically to inform public authorities of the views of the Commissioners on points of interpretation and practice. I am aware that this guidance is eagerly sought but I point out that the OSC is not an advisory service. I continue to encourage public authorities to persuade their own legal advisers to become more familiar with and give advice about the legislation.
- 4.6.** The Chief Inspector continues to participate in meetings with other public bodies, conferences and national training events in order to help them improve their understanding of the requirements for compliance with the legislation and of the business of the OSC.
- 4.7.** I have decided to disband the law enforcement and local authority consultation group meetings that were previously chaired by the Secretary to OSC. I am aware that regional groups have been set up by the National Policing Improvement Agency in their place. My Chief Inspector will establish a RIPA Consultation Group in the coming year to which he will invite representatives from the ACPO RIPA Peer Review Group, the Local Authorities Coordinators of Regulatory Services, Her Majesty's Inspector of Constabularies and the Interception Commissioner, among others.
- 4.8.** The OSC website is designed to help promote public awareness and to assist public bodies to carry out their statutory responsibilities under RIPA and associated legislation. I rely on the resources of others to maintain this website but recognise that it would benefit from an overhaul. There have been 21,063 visits and 19,848 different visitors to the site during the year, a slight decrease on last year. The most visited pages by far with 41.6% of the visits were the Advice and Guidance pages. The favoured route to the website is via the Google search engine with occasional links from the Home Office and Investigatory Powers Tribunal websites.
- 4.9.** I summarise the expenditure of the OSC at Annex F. It shows that our expenditure has come in just under budget. Our organisation chart can be found at Annex G.

5. Particular matters relating to the OSC

Appeals by authorising officers

- 5.1. There has been one appeal lodged by an authorising officer during this reporting period. I allowed the appeal.

Reporting irregularities

- 5.2. I continue to require Chief Officers to report to me all covert operations in which statutory requirements have not been observed and also cases which fail in Court on account of defects in covert surveillance. Out of the 56 unauthorised surveillance activities reported to me by law enforcement agencies in this reporting year, most have resulted from the non-retrieval of technical equipment either because circumstances prevented early retrieval or a failure to confirm retrieval at the time the relevant authorisation was cancelled. I am, however, satisfied that appropriate remedial action has been taken in each case.

Reporting to the Prime Minister and Scottish Ministers

- 5.3. I have had no occasion during the reporting year to make a report to the Prime Minister or Scottish Ministers about any of the matters with which I am concerned.
- 5.4. I wish to reiterate the view that I expressed last year (in paragraph 5.5) regarding the scope of my reports. My inspections are neither superficial nor an indicator of trend. They are the result of the detailed examination of a random sample of documentation and interviews with practitioners but they can represent no more than a 'snap-shot' in time. I do not have the resources to do more and I am unable to certify future compliance. If something is not reported on, it should not be construed that a practice is endorsed by me.

Changes in personnel

- 5.5. Since my last report, Mrs Jennifer Riach (the Secretary to OSC) has left and was succeeded by Ms Linda Ward from the Home Office. I am very grateful to Mrs Riach for the service which she provided to the organisation and to me and my predecessor personally.
- 5.6. Mr. David Wilson retired at the end of the reporting period. He was one of the original inspectors and I am grateful to him for the efficient way in which he carried out his duties for seven years. He has been part-time (sharing with Mr Richard Allsopp) for the last two years and is replaced by Mr Neil Smart who joins us on a full-time basis after retirement from the Avon and Somerset Constabulary.
- 5.7. The modest changes to the management structure of the Secretariat, which I reported on last year, have not yet been completed. The inspection resources

available to me have reached their capacity and I am preparing a business case for additional funding to enable me properly to continue fulfilling my statutory responsibilities.

Recognition

- 5.8.** I wish to record my thanks to the Chief Surveillance Inspector, Sam Lincoln, the Secretary to the OSC, Linda Ward and all the members of the OSC for the indispensable support which they give me in performing my statutory role. My thanks go, likewise to Joanne Breen, Protective Security Division, Northern Ireland and to the staff within the Police Division of the Scottish Government Justice Department for the invaluable administrative support they provide to the Commissioners based in Northern Ireland and Scotland respectively.
- 5.9.** I would also like to thank the Director General of the Serious and Organised Crime Agency and, in particular, the staff of his technical support unit for facilitating an excellent series of presentations on the innovative technology and capabilities in use. This enabled the Commissioners and my inspectors to remain up to date with the latest technological and operational developments.

6. Property interference and intrusive surveillance

- 6.1.** The powers and duties of the Commissioners in scrutinising, and deciding whether to approve, authorisations under the 1997 Act and under RIPA or RIP(S)A, have been explained in earlier reports and are publicly available on our website.

Statistics

- 6.2.** Statistics for property interference and intrusive surveillance authorisations for the past year are set out in the tables at Annexes A to D. I continue my practice of not reporting the number of authorisations per agency because to do so could be misleading. Offences relating to drug trafficking, murder and firearms continue to be the major targets of authorisations. Offences relating to kidnap and terrorism are also significant although numbers remain relatively stable.

Property interference

- 6.3.** Excluding renewals, there were 2,493 property interference authorisations during 2007-2008, which is slightly up on the previous year (2,311). There were 525 renewals of authorisations made during 2007-2008, compared with 481 in the previous year.
- 6.4.** There were 242 cases where the urgency provisions allowed for in the legislation were used. There were also two cases where an authorisation was properly given

in the absence of the Chief Officer. In the previous year these figures were 216 and four respectively. The increase in the number of urgent cases again appears to be due to the large numbers of investigations into offences of kidnapping.

- 6.5. Again, three law enforcement agencies accounted for significant use of the urgency provisions but the numbers have reduced to a more reasonable 10-12% of their total number of property authorisations. I am content that these forces are not misusing the urgency provisions.
- 6.6. Four authorisations were quashed, where the necessity test was not met – the same number as in the previous year. There were also four invalid cases where there was no power to quash or cancel the authorisations because they did not fall within the relevant Act.

Intrusive surveillance

- 6.7. There were 355 intrusive surveillance authorisations during 2007-2008 which is comparable with numbers authorised in the previous year (350). Renewals of authorisations also remain relatively stable, with 77 renewals granted this year, compared with 88 during 2006-2007.
- 6.8. Urgency provisions were used in 25 authorisations this year, without any needing to be signed in the absence of the Chief Officer. This is a significant increase on the previous year where the numbers were 11 and nil respectively.



7. Directed surveillance and CHIS

Statistics

- 7.1. Statistics for the use of directed surveillance and CHIS have been provided by all law enforcement agencies and the majority of other public authorities.

Directed surveillance

- 7.2.** Law enforcement agencies granted 18,767 directed surveillance authorisations during the period 1 April 2007 to 31 March 2008, and 3,020 were still in place at the end of that period. This compares with 19,651 and 2,526 respectively in the previous year indicating a relatively stable situation.
- 7.3.** In relation to other public authorities 9,535 directed surveillance authorisations were granted during the year, of which 1,217 were still in place at the end of the reporting year. With a similar number of public authorities providing statistics as in the previous year, this indicates a significant decrease in the use of such powers, the figures for the previous year being 12,494 and 1,800 respectively.

CHIS

- 7.4.** There were 4,498 CHIS recruited by law enforcement agencies during the year; 4,653 were cancelled during the year (including some who were recruited in the previous year); and 3,776 were in place at the end of March 2008. The figures for the previous year which were 4,373, 4,800 and 3,705 respectively indicate a stable usage of CHIS.
- 7.5.** During the current reporting year other public authorities recruited 204 CHIS, of whom 105 were cancelled during the year with 72 in place on 31 March 2008. This is a significant reduction in the use of these powers compared with the previous year when there were 429 recruited, 345 cancelled and 143 in place at the end of the year.

8. Inspections of law enforcement agencies

- 8.1.** I continue to use the term ‘law enforcement agencies’ to refer to those bodies which are authorised to use intrusive surveillance (shown at Annex E). These major users of covert activity continue to be inspected on an annual basis.
- 8.2.** I am generally satisfied with the standards achieved or maintained in most law enforcement agencies. There is little doubt that in those agencies where the most senior officers take a proactive interest in the use of the legislation standards are the highest. In nearly every case there has been a positive response to the recommendations made in my reports. Where there have been delays in taking action it is usually the result of financial or procurement realities in the introduction of software solutions.
- 8.3.** The training of those designated as, or to be, authorising officers appears to have improved. Many agencies are running bespoke courses in addition to the national courses provided by the National Policing Improvement Agency. There has been a noticeable increase in the number of officers who are not yet authorising officers

attending these courses; this is an encouraging development and one that I welcome. I reiterate the comment I made last year that better training results in higher quality authorisations but also makes the generally poorer performance of untrained authorising officers more obvious. I have not noticed a significant adjustment to the selection of officers for the authorising officer role.

- 8.4.** The Commissioners and I were afforded the opportunity to comment on the principal document of a series of guidance documents – entitled the Lawful and Effective Use of Covert Techniques – produced by the National Policing Improvement Agency on behalf of the Association of Chief Police Officers. It is not my practice to endorse policy or guidance documents that I may later have to criticise but I warmly welcomed the move to guide public authorities towards common standards and to provide a single advice point. I publicly commend those involved in its production.
- 8.5.** I have, occasionally, considered it necessary to rebuke a small number of agencies for proffering advice which it is known conflicts with guidance published by the OSC. I have reminded these agencies that if such advice is given, it is the OSC guidance which my inspectors on inspections and which I on reporting to the Prime Minister will follow. This is because the high judicial office which all Commissioners have held suggests that their collective view, when interpreting the legislation, is likely to be the most reliable pointer as to what a trial judge may decide. It is for this reason, also, that the shortage of case law is not, in my view, the major problem in relation to the authorisation of covert activity which is suggested in some quarters: OSC guidance, in many scenarios, authoritatively plugs the gap, pending judicial decision.
- 8.6.** I have encouraged the Associations of Chief Police Officers, relevant agencies and Government departments, to press for amendment to the legislation where it is inhibiting operational effectiveness. The increase in co-operative working practices and the creation of joint operating units, for example, requires convoluted processes for the authorisation of covert activity and the management of CHIS to be followed. Sir Ronnie Flanagan, HM Chief Inspector of Constabulary, has also publicly commented on this. It would also be useful if amendments were made that address the significant Article 6 and 8 issues which arise from the use of CHIS that are authorised to ‘participate’ in crime. I will avoid the temptation to rehearse the arguments that I and my predecessor have presented over consecutive years for amendments that enable public authorities lawfully to take advantage of the opportunities that improvements in technology offer. I have declared that I would be sympathetic to amendments that provide greater clarity providing that the amendments remain compliant with the principles of the protection of privacy and human rights. I have not been sympathetic to those that have adopted simplistic interpretations of other legislation (such as the Data Protection Act) as an alternative to RIPA legislation. I am concerned by the apparent reluctance to make necessary amendments and at the suggestion made in some quarters that it would be more helpful if the

Commissioners would change their opinions. I understand that the scope for amendment is to be considered later this year and I urge appropriate momentum.

- 8.7.** There has been a continued improvement in the general presentation of RIPA documentation. I am disappointed that there continues to be a perception that RIPA is the cause of unnecessary bureaucracy. Where bureaucracy results it is usually the consequence of poor training, less than skilful writing or a lack of time available to the author to construct the case for the use of covert activity coherently. It should not, in my opinion, be construed as unnecessary – when seeking the protection that this powerful legislation provides – to produce documentation which will withstand scrutiny in a court of law.
- 8.8.** The areas that have received the most criticism in this reporting period are:
- (a)** the incorrect reference to biographical detail as the method to judge whether private information will be acquired when the proper consideration is whether privacy, in its widest sense, will be intruded upon;
 - (b)** the use of templated wording which invariably leads to error and is often an indicator of speculative activity;
 - (c)** the timely cancellation of authorisations and insufficient detail in cancellations;
 - (d)** an apparent over-reliance, by authorising officers, on information technology to prompt management actions and the incorrect use of set times before review; and
 - (e)** the continued failure to articulate properly why the proportionality test has been met.
- 8.9.** I reported last year on the use of the term ‘tasked witness’ as an alternative to the correct, legally recognised term (CHIS). The Commissioners have reconsidered their stance on this issue and confirm that the use of the term is acceptable on the understanding that whatever term is used anyone acting as a CHIS within the legislative definition is treated accordingly.
- 8.10.** Last year I said that there was a need for agreement on who holds the authority to accredit information technology solutions designed to enhance application and authorisation processes. I have not detected any enthusiasm for this but it seems to be an inhibitor to the proper transfer or storage of information especially in the domain of counter terrorism and inter-agency management of CHIS. In my opinion it is an area on which I am entitled to express a view because it is a requirement for RIPA authorising officers to assess risk; they cannot do so if either they do not have the confidence that they have access to all relevant information or the information that they do have is held on systems that they are not certain are secure.

- 8.11.** I reported last year that I would welcome an improvement to the regulatory oversight of privately run prisons. I have been informed that it is intended to include these establishments, by way of a Statutory Instrument, on the Schedule of public authorities to be inspected by me.
- 8.12.** I recognise that it is Government policy that terrorism should be treated as a National Security issue and that this is the responsibility of the Security Service. However, when the Service refuses to take responsibility, it is the opinion of the Commissioners that the legislation does not prohibit a Chief Officer from using covert techniques on those grounds providing that the Security Service has first been offered the opportunity to take responsibility. Despite its apparent fear that this might dilute the definition of National Security, the Service cannot reasonably complain if a Chief Officer, after the Service has not accepted responsibility, feels obliged to take action. It is improbable that a Chief Officer would be criticised by the courts providing that the tests of necessity and proportionality are met. I will question any attempt to cover activity that is properly National Security as crime (serious or otherwise).
- 8.13.** I have no responsibility for the inspection of the Security Service's authorisations but have had occasion to criticise the duplication, by the law enforcement agencies, of RIPA authorisations resulting from dissatisfaction with the details contained in the proper authorisation from the Security Service. If those conducting the surveillance are uncomfortable or unsure of what is being required of them then the authorising officer should be challenged to clarify. There can only be one authorising officer per authorisation and one set of documentation.
- 8.14.** Finally, although operational areas are not my responsibility, it is to be noted that the setting of performance targets can adversely influence the judgement of necessity and proportionality. It can also cause difficulty when a CHIS is in use, if priorities change so that the importance of a particular activity is downgraded or action on information received has to be curtailed.

9. Inspections of Government Departments and Local Authorities

- 9.1.** This year 174 inspections of Local Authorities were carried out, which is a slight decrease over the preceding year (184). These authorities do not have the power to grant authorisations for property interference or intrusive surveillance and continue to be inspected less often than law enforcement agencies as they use their powers much less (see Annex E).
- 9.2.** The evidence is that these authorities tend to resort to covert activity as a last resort but, when they do, have a tendency to expose lack of understanding of the

legislation by completing documentation poorly. In particular there is a serious misunderstanding of the concept of proportionality. It is not acceptable, for example, to judge, that because directed surveillance is being conducted from a public place, this automatically renders the activity overt or to assert that an activity is proportionate because it is the only way to further an investigation. At the end of the reporting period, media reports highlighted the need for a public debate on the use of these powers and specifically the issue of proportionality. I encourage any debate which assists in educating the public and which enables authorising officers to judge proportionality better.

- 9.3.** The inexperience of some authorising officers is matched, in many cases, by poor oversight by those nominated as monitoring officers and a tendency for Chief Executives not to understand the risks that face their authorities. Many authorities do not recognise that they are vulnerable to criticism – and potentially the exclusion of evidence – if activity is conducted without appropriate management or if activity is being conducted in a disproportionate manner. If authorities wish to retain the protection that RIPA affords, I encourage a greater attention to detail.
- 9.4.** An area of concern is the increasing temptation to use innovative technology without properly considering the application of the legislation. I cautioned against this last year (paragraph 11.2). It is not necessarily the fault of the authority but is often a reaction to Government initiatives. For example, the use of tracking devices often introduces the need to acquire a property interference authorisation, as well as a directed surveillance authorisation, and this prevents Local Authorities from using this type of activity. Another example is the use of covert techniques to monitor activities which may provide a product, of the same quality as that of a surveillance device inside a private vehicle, which requires consideration of whether the activity is crossing the line into intrusive surveillance, for which Local Authorities do not have the power.
- 9.5.** I reported last year on the need for some authorities to invest in appropriate CHIS management facilities. There has been no demonstrable improvement to this situation and I am uneasy about the large number of Local Authorities which are electing not to exercise the powers given them for the use of CHIS. The usual reason provided is that there is a reluctance to invest in the specialist training required when the likely use of such a capability is low. Quite often the authority says that it will refer any matter requiring the use of a CHIS to the local police force. The police force commonly says that the activity does not meet its requirements, and so the activity is either not undertaken or another method to conduct the investigation is found. It is not my role to encourage the use of covert activity but it is my view that public authorities empowered to use CHIS must ensure that they possess the capability to conduct the activity in a manner required by the legislation. Taking risks in this area of covert activity is not acceptable.

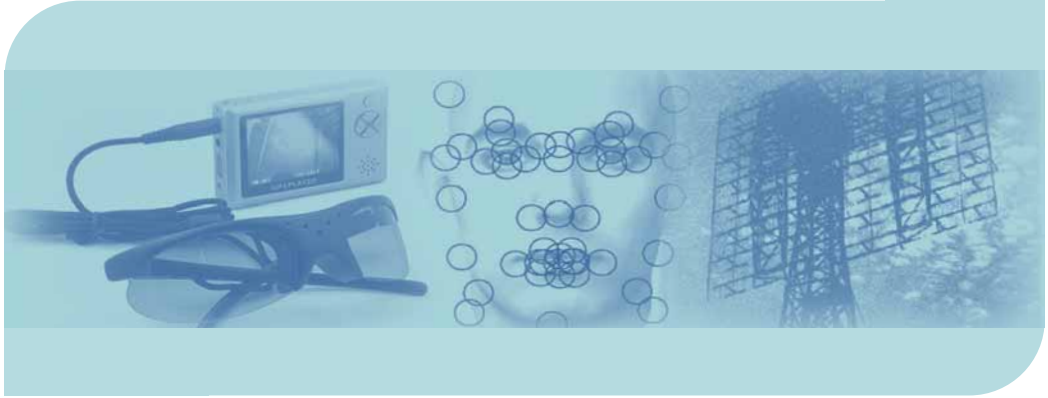
- 9.6.** Those authorities which have invested in high quality training and education perform to a much higher standard of compliance than those which have not. It is important that the lack of recourse to covert activity is not considered sufficient mitigation for lack of investment in training; if anything, better training is necessary to compensate for the lack of practical experience.
- 9.7.** Another common weakness is where the authorising officer is head of the department conducting the surveillance. If an authorising officer is too close to the investigation it is difficult to demonstrate the independence and objectivity encouraged by the legislation. On the other hand, it is necessary for authorising officers to have sufficient operational experience to exercise judgment. In many cases, authorising officers are conducting detailed operational discussions and managing investigations well, but this sometimes results in scant description of the details of the activity on the RIPA application – the ‘who, what, when, where, why and how’ of the surveillance activity: this is often not noticed by the authorising officer partly because such discussions have taken place. In these situations, it is often advisable that another authorising officer, less familiar with the specific operational tactics, be used.
- 9.8.** I have been encouraged by the increasing number of Local Authorities engaging in constructive dialogue with their local police forces. Traditionally this has centred on the use of CCTV but has increasingly developed into proper consideration of other interpretational issues. I welcome this trend and encourage its continuance.
- 9.9.** It would be wrong to conclude that all Local Authorities are performing poorly. In many authorities where executive officers, legal advisers or motivated individuals show an interest in the legislation, and where there is investment in practical training for authorising officers as well as awareness education for potential applicants, there is a high standard of compliance. The performance of these authorities sets the benchmark, but they are not yet in the majority.



10. Freedom of Information

- 10.1.** During this reporting period there has been a significant increase in the number of Freedom of Information requests from the media. It is not usually an area on which I comment but I report my concern. I never disclose the contents of my reports to anyone other than the relevant Chief Constable or Chief Executive. But requests to the recipients of my reports have been aimed at acquiring my reports, my correspondence to and from Chief Officers and the action plans related to the recommendations that I make. Responses by public authorities have been inconsistent and there is the perception that a decision by one authority to respond positively may lead the requestor to view negatively those which do not disclose the information requested.
- 10.2.** When asked for guidance I have responded that it is in the public interest to demonstrate that covert surveillance conducted on behalf of the State is properly regulated. This Annual Report is designed to provide that assurance. Seeking assurance of regulation is one thing, but attempting to acquire, under the auspices of freedom of information, operational details or knowledge of covert techniques is another. Redaction of these details from my reports could be misconstrued as secrecy or might adversely affect context and meaning.
- 10.3.** I favour the advice provided by the Information Commissioner (Guidance Note 25). I regard myself as a ‘qualified person’ as defined by Section 36 of the Freedom of Information Act and it is my ‘reasonable opinion’ that for public authorities to disclose the contents of my reports would prejudice the effective conduct of public affairs. The risk of disclosure might tempt some individuals to withhold the full details of covert activities from me or my representatives; it might inhibit my ability to provide the evidence that is necessary to support my recommendations and it might inhibit the free and frank exchange of views and provision of advice that is currently the hallmark of the relationship which my Office enjoys with public authorities.
- 10.4.** I was particularly concerned by one reporter who declared that the reason for seeking the information (detailed statistical data) would “save him time”. This is an abuse of the Act and damages the prospects of those making legitimate

requests. It seems to me that there is insufficient emphasis on the need for requestors to clarify the grounds on which information is required and the use to which the response may be put. It is in the public interest that any information provided is both accurate and placed in the context of its intended use.



11. The year ahead

- 11.1.** I welcome the intention to identify and amend those elements of the legislation or Codes of Practice that, in the light of experience, are unnecessarily inhibiting operational effectiveness. My Chief Inspector will present those areas which we have identified to the Home Office.
- 11.2.** I have been notified of the changes to the structure of local government planned for 1st April 2009. My Chief Inspector will adjust the inspection programme to take account of them. I have decided that I will continue, in the interim, to inspect those authorities affected to ensure that there are satisfactory arrangements in place for the transfer of relevant RIPA records. I will inspect the unitary authorities which replace them as soon as is practicable.

Annex A

AUTHORISATIONS GIVEN UNDER PART III OF THE POLICE ACT 1997 (AS AMENDED) DURING LAST THREE YEARS

	2005-2006		2006-2007		2007-2008	
	England, Wales & N.I.	Scotland	England, Wales & N.I.	Scotland	England, Wales & N.I.	Scotland
Total number of authorisations (not including renewals)	2,177	133	2,195	116	2,372	121
		Total		Total		Total
		2,310		2,311		2,493

PRIOR APPROVALS

	2005-2006		2006-2007		2007-2008	
	England, Wales & N.I.	Scotland	England, Wales & N.I.	Scotland	England, Wales & N.I.	Scotland
Number of cases requiring approval	220	7	173	15	194	11
		Total		Total		Total
		227		188		205
Cases requiring prior approval by category:						
• Dwelling	158	5	130	10	133	7
• Office premises	27	1	25	2	37	1
• Hotel bedroom	33	1	16	1	24	3
• Matters subject to legal privilege	2	0	1	0	0	0
• Confidential journalistic material	0	0	0	0	0	0
• Confidential personal information	0	0	1	2	0	0
		Total		Total		Total
		163		140		140
		28		27		38
		34		17		27
		2		1		0
		0		0		0
		0		3		0

**ANALYSIS OF AUTHORISATIONS GIVEN UNDER PART III OF THE POLICE ACT 1997
(AS AMENDED) FOR THE LAST THREE YEARS BY OFFENCE***

	2005-2006			2006-2007			2007-2008		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
Assault	15	0	15	6	0	6	5	0	5
Burglary/Robbery	109	0	109	96	0	96	59	0	59
Conspiracy	12	0	12	41	0	41	39	0	39
Drug trafficking	1,198	101	1,299	1,333	84	1,417	1,418	91	1,509
Firearms offences (including armed robbery)	119	2	121	157	3	160	131	2	133
Kidnap/extortion	35	0	35	66	7	73	74	3	77
Money laundering	67	0	67	53	0	53	60	0	60
Murder/loss of life	161	8	169	140	11	151	147	15	162
Organised illegal immigration	41	0	41	34	1	35	40	3	43
Tax evasion	56	0	56	37	0	37	59	0	59
Terrorism	215	9	224	114	2	116	118	2	120
Other	151	11	162	118	8	126	222	5	227

* Only the most common type of offences featuring authorisation are listed. As a result, these totals may not reflect the number of authorisations granted.

Annex C

AUTHORISATIONS GIVEN UNDER PART II OF THE REGULATION OF INVESTIGATORY POWERS ACT 2000 AND THE REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 DURING THE LAST THREE YEARS

	2005-2006			2006-2007			2007-2008		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
Total number of authorisations (not including renewals)	418	17	435	329	21	350	339	16	355
Cases by category:									
• Private vehicle	199	8	207	157	10	167	179	7	188
• Residential premises	219	9	228	172	11	183	160	9	167

ANALYSIS OF AUTHORISATIONS GIVEN UNDER PART II OF THE REGULATION OF INVESTIGATORY POWERS ACT AND THE REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 IN THE LAST THREE YEARS BY OFFENCE*

	2005-2006			2006-2007			2007-2008		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
Assault	7	0	7	2	0	2	6	0	6
Burglary/Robbery	18	0	18	17	0	17	4	0	4
Conspiracy	6	0	6	9	0	9	3	0	3
Drug trafficking	166	11	177	156	11	167	153	11	164
Firearms offences (including armed robbery)	23	0	23	10	1	11	29	1	30
Kidnap/extortion	13	1	14	8	2	10	7	0	7
Money laundering	4	0	4	3	0	3	10	0	10
Murder/loss of life	111	3	114	83	5	88	72	4	76
Organised illegal immigration	2	0	2	6	0	6	5	0	5
Tax evasion	6	0	6	0	0	0	6	0	6
Terrorism	14	0	14	1	0	1	12	0	12
Other	41	2	43	34	2	36	32	0	32

* Only the most common type of offences featuring authorisation are listed. As a result, these totals may not reflect the number of authorisations granted.

Annex E

Inspection priorities

Subject to annual inspection

British Transport Police
 Civil Nuclear Constabulary
 Environment Agency
 HM Prison Service
 HM Revenue and Customs
 Borders and Immigration Agency
 Northern Ireland Prison Service
 Office of Fair Trading
 Police forces for England and Wales
 Police Service of Northern Ireland
 Police forces for Scotland
 Port of Dover Police
 Port of Liverpool Police
 Serious Organised Crime Agency
 Scottish Drugs Enforcement Agency
 Royal Mail Group plc
 Scottish Prison Service

Subject to inspection every other year

Ministry of Defence Police & Guarding Agency
 Royal Navy Regulating Branch
 Royal Military Police
 Royal Air Force Police

British Broadcasting Corporation
 Department for Environment, Food and Rural Affairs
 Department for Work and Pensions
 NHS Scotland (National Services Division)
 Department of Trade and Industry
 Department for Transport (incl. Driving Standards Agency)
 Gangmasters Licensing Authority
 Healthcare Commission
 Health and Safety Executive
 Independent Police Complaints Commission
 Local Authorities – Unitary, Metropolitan, London Boroughs, Scottish & Welsh Councils
 Maritime and Coastguard Agency
 National Assembly for Wales
 NHS Counter Fraud & Security Management Service

Annex E

Office of the Police Ombudsman for Northern Ireland
Rural Payments Agency
Scottish Environment Protection Agency
Scottish Executive Environment and Rural Affairs Department
Serious Fraud Office
Vehicle & Operator Services Agency

To be inspected every 3 years

Charity Commission
Child Support Agency
Financial Services Authority
Food Standards Agency
Gambling Commission
Information Commissioner
Local Authorities – County & District Councils
Medicines & Healthcare Products Regulatory Agency
Office of Communications
Office for Standards in Education
Royal Pharmaceutical Society of Great Britain
Scottish Accountant in Bankruptcy

Annex F

OSC expenditure for April 2007-March 2008

Description	Total cost £
Staff costs, including recruitment and training	1,352,692
Travel and subsistence	121,378
Conferences and meetings	7,046
IT and telecommunications	30,701
Stationery, printing and postage	29,894
Office equipment, including security equipment	7,662
Accommodation costs	73,038
Total	1,622,411

**MEMBERS OF THE OFFICE OF SURVEILLANCE COMMISSIONERS
AS AT MARCH 2008**



Members of OSC who have left during the reporting period:

Jeremy Fordham, Assistant Surveillance Commissioner

David Wilson, Inspector

Jennifer Riach, Secretary to OSC

Henrietta Hutcheon, Casework Officer

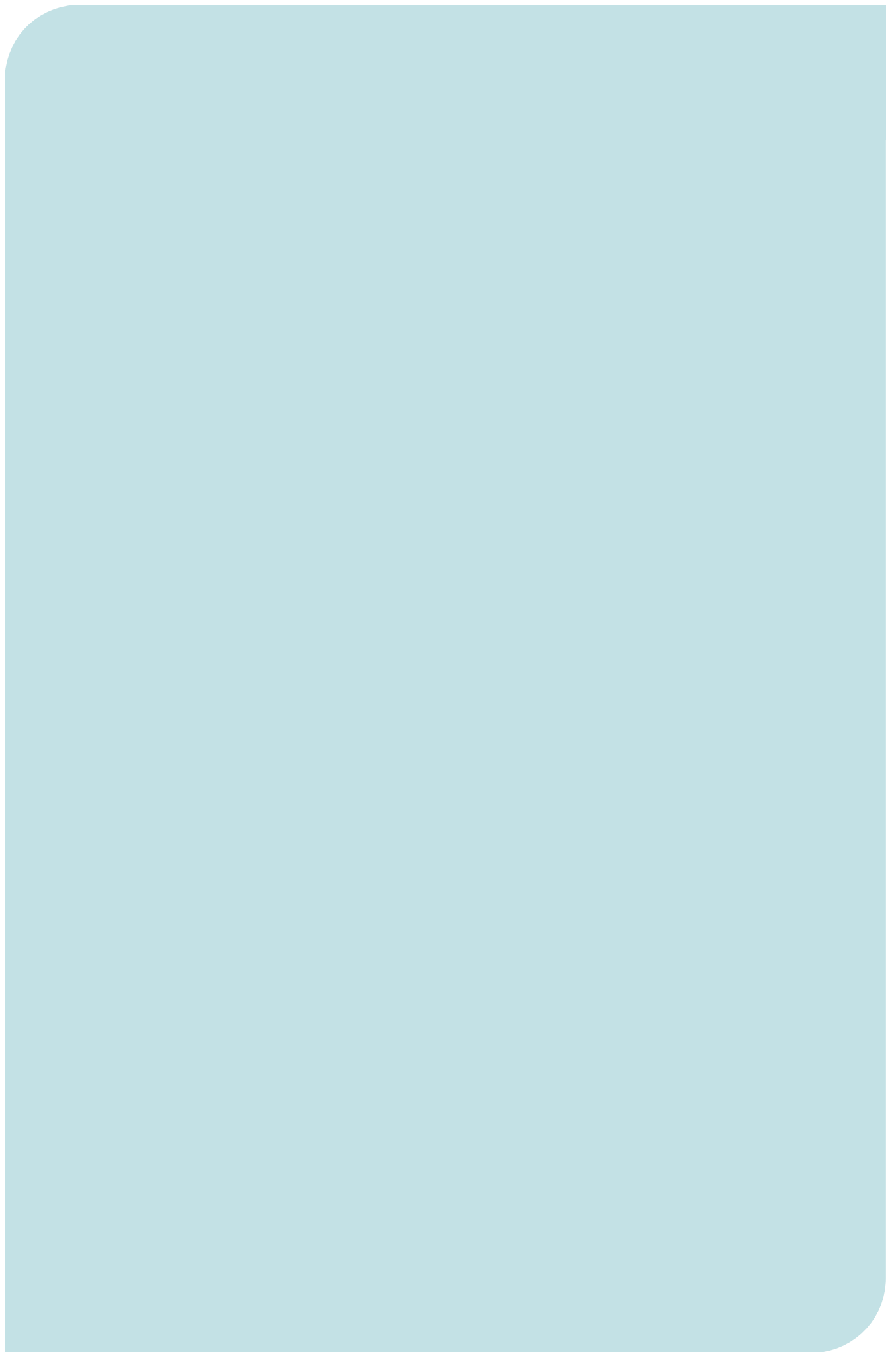
Joan Soole, Admin Support

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID5811999 07/08

Printed on Paper containing 75% recycled fibre content minimum.

With thanks to the Technical Operations Group (South), SOCA for supplying photographs
and to Brightside Print & Design Ltd for assisting with the report design.





Office of Surveillance
Commissioners

PO Box 29105
London SW1V 1ZU

Telephone: 020 7828 3421

Facsimile: 020 7592 1788

www.surveillancecommissioners.gov.uk



www.tso.co.uk

Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, Telephone Fax & E-Mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries 0870 600 5522

Order through the Parliamentary Hotline Lo-Call 0845 7 023474

Fax orders: 0870 600 5533

E-mail: customer.services@tso.co.uk

Textphone: 0870 240 3701

TSO Shops

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 5566 Fax 0870 606 5588

The Parliamentary Bookshop

12 Bridge Street, Parliament Square,

London SW1A 2JX

TSO@Blackwell and other Accredited Agents

ISBN 978-0-10-295512-5



9 780102 955125