



Police Act 1997

Chapter 50

REPORT
OF THE CHIEF SURVEILLANCE
COMMISSIONER FOR 2000-2001

Chief Commissioner:
THE RT HON SIR ANDREW LEGGATT

Presented to Parliament by the Prime Minister
by Command of Her Majesty
January 2002

Laid before the Scottish Parliament
by the Scottish Ministers
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From The Right Honourable Sir Andrew Leggatt, Chief Surveillance Commissioner

Office of Surveillance Commissioners
PO Box 29105, London SW1V 1ZU

The Right Honourable Tony Blair MP
10 Downing Street
London
SW1A 2AA

29 June 2001

Dear Prime Minister,

In accordance with my duty under section 107 of the Police Act 1997 (as amended by the Regulation of Investigatory Powers Act 2000) I am sending to you my annual report on the discharge of my functions under those Acts. As the provisions of Part II of the Regulation of Investigatory Powers Act 2000 and the RIP (Scotland) Act are closely related and have only been in force for a few months, I have on this occasion prepared a combined report to cover my functions under both Acts and under Part III of the Police Act 1997. In future years I will consider whether it would be more appropriate to report to you under the principal Acts and separately to the Scottish Minister under the Scottish Act.

Before laying a copy of the report before both Houses of Parliament, you may of course exclude matters from it, if it appears to you, after consultation with me, that their publication would be prejudicial to any of the purposes for which authorisations may be given or granted under any of the three Acts or to the discharge of the functions of the law enforcement agencies.

With these powers in mind I have followed the practice adopted in my last report of placing in a confidential annex those matters which in my view should not be published. I trust that this is a convenient course.

The Right Honourable Sir Andrew Leggatt

From The Right Honourable Sir Andrew Leggatt, Chief Surveillance Commissioner

Office of Surveillance Commissioners
PO Box 29105, London SW1V 1ZU

The Right Honourable Henry McLeish SMP
Scottish Executive
5th Floor
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

29 June 2001

Dear First Minister,

In accordance with my duty under section 22 (3) of the Regulation of Investigatory Powers (Scotland) Act 2000 (the RIP (Scotland) Act) I am sending to you on behalf of the Scottish Ministers my annual report on the discharge of my functions under that Act.

As the provisions of the RIP (Scotland) Act and Part II of the Regulation of Investigatory Powers Act 2000 are closely related and have only been in force for a few months, I have on this occasion prepared a combined report to cover my functions under both Acts and under Part III of the Police Act 1997. In future years I will consider whether a separate report relating solely to the RIP (Scotland) Act would be more suitable.

Before a copy of the report is laid before the Scottish Parliament, the Scottish Minister may of course, after consultation with me, exclude any matter from the report if it appears to them that its publication in the report would be prejudicial to the prevention or detection of serious crime or to the continued discharge of the functions of the relevant public authorities. The Prime Minister also has the power to exclude matters from it, if it appears to him that their publication would be prejudicial to any of the purposes for which authorisations may be given or granted under any of the three Acts or to the discharge of the functions of the law enforcement agencies.

With these powers in mind I have followed the practice adopted in my last report of placing in a confidential annex those matters which in my view should not be published. None of these matters relate to anything authorised under the RIP (Scotland) Act.

The Right Honourable Sir Andrew Leggatt

ANNUAL REPORT OF THE CHIEF SURVEILLANCE COMMISSIONER TO THE PRIME MINISTER AND SCOTTISH MINISTERS

FOR 2000/2001
UNDER PART III OF THE POLICE ACT 1997 AND PARTS II AND III OF THE
REGULATION OF INVESTIGATORY POWERS ACT 2000

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1. INTRODUCTION

1.1 I was appointed as Chief Surveillance Commissioner on 1 July 1998 to hold office until 30 June 2001 (unless re-appointed). This is my second report and covers the period from 1 April 2000 to 31 March 2001.

1.2 On appointment my main responsibility as Chief Surveillance Commissioner was to keep under review the performance of functions under Part III of the Police Act 1997 (the 1997 Act).

1.3 During the past year my responsibilities have been extended to include keeping under review, (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 Parts II and III of the Regulation of Investigatory Powers Act 2000 (the 2000 Act). I am also responsible for the oversight of the Regulation of Investigatory Powers (Scotland) Act 2000 (the RIP (Scotland) Act). Part III of the 2000 Act is not yet in force.

1.4 As the provisions of the 1997 Act and the 2000 Act are so closely related I have prepared a combined report to cover both Acts. Since I am also reporting to the Scottish Ministers under the RIP (Scotland) Act, I shall refer in this report to my functions under all three Acts.

1.5 I have placed in a confidential annex those matters which in my view should not be published, including those which cannot be fully explained without disclosing sensitive information relating to particular agencies or individuals.

2. OVERVIEW OF THE YEAR

2.1 This has been a busy and interesting year. By the end of last year most of the law enforcement agencies had become familiar with the provisions of Part III of the 1997 Act. They then had to prepare themselves, however, for the implementation of the 2000 Act, Part II of which significantly changed the way covert surveillance operations are authorised. The amount of preparation that could be done in advance was limited by the shortness of the time between the passing of the Act and the implementation of Part II. This placed considerable demands on law enforcement agencies which had to ensure that their staff were trained, and forms and procedures updated, to comply with the new legislation.

2.2 The effect of the extension of my jurisdiction mentioned in paragraph 1.3 above has been to make me responsible for keeping under review (except in relation to interception of communications and the intelligence services) all covert surveillance carried out by all public authorities in the United Kingdom.

2.3 In preparation for these responsibilities I met representatives of several public authorities to ascertain the number and type of surveillance activities that they undertake. I would like to mention in particular the assistance afforded to me by the National Crime Squad (NCS) and the Metropolitan Police. Both provided useful briefing sessions for all the Commissioners about the use of directed surveillance and of covert human intelligence sources.

2.4 There are about 950 public authorities (including local authorities and health trusts) which are entitled to conduct covert surveillance under the provisions of the 2000 Act, and the performance of which I must keep under review. I clearly cannot carry out any meaningful oversight of so many bodies without assistance. Because the additional Commissioners and staff needed to assist me in keeping these surveillance operations under review could not be recruited until after the legislation had been passed, it has not yet been possible to carry out the necessary inspections except in relation to law enforcement agencies. The Prime Minister has now appointed three Assistant Surveillance Commissioners who are to take up their posts at the end of April. I have also recruited a team of five inspectors to join the Office of Surveillance Commissioners (OSC) at the same time.

2.5 In general, law enforcement officers have recognised the need for proper authorisation of covert surveillance operations. The statutory requirements undoubtedly add to their workload, but this has generally been accepted as a price worth paying for the protection that it gives them.

3. PURPOSES AND MAIN PROVISIONS OF THE 1997 ACT

3.1 The 1997 Act was introduced to provide a statutory scheme for the authorisation by chief officers of police (since 25 September 2000 this includes British Transport Police and the Services Police), of the National Criminal Intelligence Service ('NCIS'), of the NCS, and of HM Customs & Excise of operations which include entry on or interference with property or wireless telegraphy without the consent of the owner. By virtue of the Act no authorised entry on or interference with property or with wireless telegraphy is unlawful. During the past year only one authorisation relating to wireless telegraphy has been notified to OSC.

3.2 For an authorisation to be valid, an authorising officer must believe, when it is given, that the action proposed is necessary for the purpose of preventing or detecting serious crime, and that the taking of the action is proportionate to what it seeks to achieve.

3.3 Conduct is regarded as ‘serious crime’ if it involves the use of violence, results in substantial financial gain, or is conduct by a large number of persons in pursuit of a common purpose, or if it involves an offence for which a person of twenty-one or more with no previous convictions would be likely to be sentenced to at least three years’ imprisonment.

3.4 Authorisations under Part III are given by chief officers of the law enforcement agencies that I have mentioned. They are required to notify a Commissioner whenever they decide to give, renew or cancel an authorisation. For certain sensitive operations the prior approval of a Commissioner is required before the authorisation becomes effective. These are authorisations which in the belief of the authorising officer relate to property used as a dwelling, a hotel bedroom, or an office, or are likely to reveal matters subject to legal privilege, or confidential personal information, or confidential journalistic material.

4. PURPOSE AND MAIN PROVISIONS OF PART II OF THE 2000 ACT

4.1 Covert surveillance inevitably involves an invasion of people’s privacy. Whilst the 1997 Act enabled law enforcement officers to enter or interfere with property in carrying out investigations concerning serious crime, it did not directly address the issue of interference with the right to respect for private and family life. Part II of the 2000 Act, which was brought into force on 25 September 2000, puts such covert surveillance on a statutory basis. It enables public authorities to carry out such operations without breaching the European Convention on Human Rights or the Human Rights Act 1998, which was brought into force on 2 October 2000.

4.2 Part II of the 2000 Act renders covert surveillance which does not involve entry on or interference with private property subject to a measure of oversight and sets up a Tribunal to deal with complaints. It identifies three categories of covert surveillance. The circumstances under which they may be authorised and the levels of authorisation required vary according to the category.

4.3 Part II also applies to authorisations given by the Secretary of State and activities carried out by the Intelligence Services but they are overseen by other Commissioners. In outlining the main provisions below I shall refer only to those aspects which come under my remit.

Intrusive Surveillance

4.4 Intrusive surveillance is covert surveillance that is carried out in relation to anything taking place on any residential premises or in any private vehicle, and involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device. Surveillance which is carried out without the device being present in the premises or in the vehicle is not intrusive unless the device consistently provides information of the same quality as if it were present.

4.5 Authorisations for intrusive surveillance may be given by the Chief Constable (or equivalent) of a police force, the Deputy Chief Constable of the RUC, any Assistant Commissioner of the Metropolitan Police, the Director General of the NCS or his Deputy, the Director General of NCIS, and any of the senior customs officers designated by the Commissioners of Customs & Excise.

4.6 When giving an authorisation the authorising officer must be satisfied that it is necessary in the interests of national security or for the purpose of preventing or detecting serious crime and that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out. Serious crime is defined in the same way as under the 1997 Act.

4.7 Except in cases of urgency, authorisations for intrusive surveillance require the prior approval of a Commissioner before they take effect. As with directed surveillance authorisations, unless given orally or by someone other than the senior authorising officer, they last for three months and can be renewed.

Directed surveillance and covert human intelligence sources

4.8 Schedule 1 of the 2000 Act lists those public authorities which may authorise directed surveillance or the use of what the Act calls covert human intelligence sources (known by the unlovely acronym of CHIS).

4.9 Directed surveillance is defined as surveillance that is not intrusive, and is undertaken for the purposes of a specific investigation or operation in such a manner as is likely to result in the obtaining of private information about a person, and otherwise than by way of an immediate response to events.

4.10 A person is a CHIS if he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the covert use of such a relationship to obtain information or the covert disclosure of information obtained by the use of such a relationship.

4.11 The authorising officer must be satisfied that the authorised conduct or use of a CHIS is proportionate to what is sought to be achieved by that conduct or use, and that such arrangements for the source’s case are in force as are necessary for ensuring that there will at all times be a manager with day-to-day responsibility for the source, a handler with general oversight of the use made of the source, and a registrar responsible for maintaining a record of the use of the source; that the records relating to the source contain the statutory particulars; and that records disclosing the identity of the source are not available except on a need-to-know basis.

Authorisations

4.12 Directed surveillance and CHIS may be authorised by a police superintendent, or in other public bodies at a level specified by the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000, S.I. No. 2417. Authorisations last for three months unless they are given under an urgency provision, in which case they are limited to 72 hours. They may be renewed, if necessary, also for periods of three months.

4.13 When giving an authorisation for directed surveillance or CHIS the authorising officer must believe that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out, and that the action is necessary for the purpose of preventing crime or disorder, or of protecting public health, or of assessing or collecting any tax, or for other specified purposes.

4.14 Public authorities must keep a record of all directed surveillance and CHIS authorisations. These records are subject to review by me and by the Commissioners and Assistant Commissioners on my behalf.

Part III

4.15 My remit also covers Part III, which relates to the investigation of electronic data protected by encryption, but this Part has not yet come into force and is not expected to do so until later this year.

5. DISCHARGE OF MY FUNCTIONS

Oversight

5.1 In fulfilling my mandate to keep under review the performance of functions under all three Acts I visit the central office of the OSC every week. In the course of each such visit I receive from the Secretary a report of the week's activities, together with a summary of the previous week's figures, as a basis for discussion of interpretational issues, operating issues, visits to be made to public authorities, any targets which have been missed and any other matters relating to the business of the office.

5.2 During these visits I also review all the papers for authorisations for intrusive surveillance and those in respect of which prior approval for property interference has been sought, together with the most important of the other authorisations.

5.3 Personal visits to public authorities are an important part of my responsibility for review. During the year I have visited HM Customs & Excise, the NCS, the Metropolitan Police, West Midlands Police, Strathclyde Police and HM Forces in Northern Ireland.

5.4 I have had useful meetings with the Provost Marshals of the Royal Military Police, the Royal Navy Regulating Branch and the Royal Air Force Police, the Deputy Chief Constable of the Ministry of Defence Police, the Head of Revenue Policy at the Inland Revenue and the Chief Investigating Officer of the Benefits Agency.

5.5 In addition I addressed ACPO's National Surveillance Conference, and Sir Charles McCullough spoke on my behalf at the NCIS National Conference for Directors of Intelligence.

5.6 Both Acts require me to make arrangements for the notification of authorisations. I have updated the arrangements for the notification of property interference authorisations and issued directions for the notification of authorisations for intrusive surveillance under the 2000 Act. I have also updated the Interpretational Guidelines which I issued last year, setting out how those aspects of the legislation which are most frequently queried are likely to be interpreted by the Commissioners, including the 2000 Act.

Appeals by authorising officers

5.7 During the period covered by this report there have been two appeals by authorising officers. One was dismissed, and as the 1997 Act requires, I have made a report of my findings to the authorising officer concerned, to the Commissioner against whose decision the appeal was made, and, by way of annex to this annual report, to the Prime Minister. The other appeal I allowed and advised the authorising officer accordingly, together with the Commissioner whose decision it had been to quash the authorisation.

Report to the Prime Minister and Scottish Ministers

5.8 In advance of this annual report to the Prime Minister and Scottish Ministers on the discharge of functions under this Act, I have not had cause to report any matters to him or them.

6. THE SURVEILLANCE COMMISSIONERS

6.1 During the past year one Surveillance Commissioner, Sir Christopher Staughton, resigned. A new Commissioner, Sir Philip Otton, was appointed in February of this year. The six Surveillance Commissioners all carry out their statutory functions across the whole of the United Kingdom. In the ensuing paragraphs I examine the way in which the Commissioners' functions have been discharged over the past year.

Scrutiny of notices of authorisation

6.2 The Acts require the Commissioners to scrutinise as soon as is reasonably practicable every notice received of the giving, renewal or cancellation of an authorisation for property interference, and urgent authorisations for intrusive surveillance where there has been insufficient time to seek the prior approval of a Commissioner.

6.3 All such notifications have been scrutinised by a Commissioner. In 97% of cases the authorising officer has been informed of the Commissioner's decision within 16 working hours from the time that the Commissioner received all necessary information.

6.4 In scrutinising the authorisations the Commissioners are required to consider whether there are reasonable grounds for believing that the action proposed is necessary for the purpose of preventing or detecting serious crime, and that the taking of the action is proportionate to what the action seeks to achieve. They also have to take into account whether what it was thought necessary to achieve could reasonably have been achieved by other means.

6.5 The Commissioners considered whether each of the notifications of the grant or renewal of an authorisation met these criteria. In seven cases the Commissioner scrutinising the notification was satisfied that, at the time the authorisation was given, there were no reasonable grounds for believing that the relevant criteria were met. These authorisations were quashed. As I mentioned in the previous section, one authorisation was reinstated when I allowed the appeal by the authorising officer against the decision to quash.

7. AUTHORISATIONS REQUIRING THE PRIOR APPROVAL OF A COMMISSIONER

7.1 In property interference cases that require prior approval, and in all cases of intrusive surveillance (except those which are urgent) the Commissioner must decide whether to give or refuse approval of the authorisation. He must then inform the authorising officer whether he has approved the authorisation. The property interference cases which fall into this category are those which in the belief of the authorising officer either involve property used as a dwelling, a hotel bedroom or an office, or are likely to elicit matters subject to legal privilege, or confidential personal information, or confidential journalistic material.

7.2 In the period covered by this report 371 authorisations for property interference were notified to a Commissioner which in the belief of the authorising officer required the prior approval of a Commissioner. 285 authorisations of intrusive surveillance were submitted for a Commissioner's prior approval. All were considered. In only one case did a Commissioner decide to refuse his prior approval; this was where the authorised surveillance had started before the authority was notified to the Commissioner. The Commissioners have continued to be very careful to make prompt decisions in the cases which require their prior approval and to ensure that their decisions are returned to the authorising officer concerned as soon as possible.

7.3 If a case is one which would normally require the prior approval of a Commissioner, but is treated as not doing so because it is believed to be urgent, the Commissioner will also consider whether there were reasonable grounds for believing the case to be urgent. 46 fell into this category in the period covered by this report. All were scrutinised by a Commissioner as soon as practicable after the receipt of the notification, and none was quashed.

8. QUASHINGS AND CANCELLATIONS

8.1 A Commissioner has power to quash an authorisation or renewal where he is satisfied at any time that there were no reasonable grounds for believing that it met the criteria for authorisation or for believing the case to be urgent. He also has power to cancel an authorisation where he is satisfied that, at any time, there were no reasonable grounds for continuing to believe that it met the criteria.

8.2 The small number of cases quashed indicates that applications continue to be properly considered by the agencies before they are authorised. No authorisations for intrusive surveillance given under the 2000 Act were quashed in the period covered by this report. Seven authorisations for property interference were quashed. Details of these cases are set out below:

Cheshire Police

An authorisation was given for property interference in an investigation into murder. The Duty Commissioner was not satisfied that the action authorised was likely to be of substantial value in bringing the murderer to justice.

Devon & Cornwall Police

The Duty Commissioner quashed an authorisation for property interference as he did not consider that it could reasonably be believed that the action authorised was necessary to prevent or detect serious crime (as defined in s.93(4) of the 1997 Act as amended). The authorising officer appealed against the decision.

I considered the initial authorisation, the reason given by the Commissioner for quashing it and the subsequent appeal. I was not satisfied that there were no reasonable grounds for believing that the offence under investigation amounted to serious crime, and I therefore allowed the appeal.

Essex Police

This operation concerned the handling of stolen goods. The Duty Commissioner was not satisfied that the crime met the statutory definition of serious crime.

Lothian & Borders

The Duty Commissioner felt that the action authorised went beyond the property interference necessary in this investigation. The authorisation included the removal of papers but the same information could have been obtained by an examination of those papers.

National Crime Squad

An application was made by officers of the NCS to enter land in the course of an investigation into serious crime. An authorisation was subsequently granted, but it was for entry on to different land to that which had been described in the application. The Duty Commissioner was not satisfied that a case had been made for entry on to the land mentioned in the authorisation and quashed the authorisation. The Deputy Director General appealed against the Commissioner's decision, but having considered the matter, I upheld the Commissioner and dismissed the appeal.

Sussex

The Duty Commissioner was not satisfied that the investigation concerned serious crime as defined by the Act.

Thames Valley

The Duty Commissioner was not satisfied that the action authorised was likely to be of substantial value in the prevention or detection of serious crime.

8.3 When a Commissioner decides to cancel or quash an authorisation he is required to report the findings to the authorising officer and to me. The Commissioners have ensured that their decisions to quash authorisations are returned to the authorising officers within four working hours of that decision being made, so that appropriate action can be taken by the agency concerned as soon as possible.

8.4 On quashing or cancelling an authorisation a Commissioner must decide whether to order the destruction of records, other than those required for pending criminal or civil proceedings. In two cases the Commissioner ordered the destruction of records obtained. In the other cases the authorisations were quashed before any information had been obtained.

8.5 The Commissioners also have the power to order, in appropriate cases, that an authorisation remains effective for a specific period to retrieve anything from the property. This was not necessary in any of the cases.

9. COMPLAINTS

9.1 Until October 2000 the 1997 Act provided for complaints from members of the public to be investigated, if and so far as anything was alleged to have been done in relation to any property of the complainant under a property interference authorisation. Where a determination was made upholding a complaint, the Commissioner would notify the complainant and report his findings to the authorising officer who gave the authorisation (or in whose absence it was given) and to me. Except in such reports a Commissioner would not give reasons.

9.2 The powers of the Commissioners in relation to complaints were in practice very limited. They could only investigate whether a relevant authorisation had been given, and, if so, whether it was properly given. They had no power to investigate whether any action took place without authorisation. As the Act require the Commissioners to scrutinise all authorisations as soon as practicable after they have been given, a complaint was unlikely to lead to the discovery of errors in an authorisation that had not previously been detected.

9.3 The 2000 Act amended the provisions of the 1997 Act by setting up a tribunal to deal with complaints from members of the public and removing the responsibility for considering complaints from the Surveillance Commissioners.

9.4 Eighteen complaints were received between 1 April and 2 October 2000. Fifteen of these did not fall to be considered under the 1997 Act because they did not allege that anything had been done in relation to any property of the complainant in pursuance of an authorisation given under the 1997 Act. In the remainder no determination was made in the complainants' favour, and they were notified accordingly.

10. VISITS AND MEETINGS

10.1 Proactive visits to law enforcement agencies are an important part of the Commissioners' job. They help me with my responsibility for ensuring that the statutory provisions are being correctly observed. Between them Commissioners have made visits to 27 law enforcement agencies over the past year. The agencies were:

1. Bedfordshire Police
2. Central Scotland Police
3. Cumbria Police
4. Devon & Cornwall Police
5. Dyfed Powys Police
6. Gloucestershire Police
7. HM Customs & Excise
8. Humberside Police
9. Merseyside Police
10. Metropolitan Police
11. National Crime Squad
12. Norfolk Police
13. Northumbria Police
14. Royal Ulster Constabulary
15. Staffordshire Police
16. Strathclyde Police
17. Suffolk Police
18. Surrey Police
19. Sussex Police
20. South Yorkshire Police
21. West Mercia Police
22. West Midlands Police
23. Ministry of Defence Northern Ireland
24. Ministry of Defence Police
25. Royal Military Police
26. Royal Naval Regulating Branch
27. Royal Air Force Police

10.2 A Commissioners' meeting is held twice a year for a whole day, in order to pool experiences, maintain an integrated approach and discuss matters of policy.

11. AUTHORISATIONS FOR PROPERTY INTERFERENCE AND INTRUSIVE SURVEILLANCE

11.1 Authorisations for property interference under the 1997 Act and for intrusive surveillance under the 2000 Act must be submitted to a Surveillance Commissioner as soon as is reasonably practicable after they are granted.

11.2 I have not identified separately the number of authorisations given by each agency. To do so could lead to unfair or misleading inferences as to the operating practices of the various forces.

Police Act

11.3 The total number of authorisations (excluding renewals) given by authorising officers under the 1997 Act in England, Wales and Northern Ireland was 2509 and in Scotland 56. Of these 365 and 5 respectively required the prior approval of a Commissioner; and 333 and 5 respectively were given under the urgency provisions.

11.4 Of these cases, 360 required the prior approval of a Commissioner because they authorised entry on or interference with private dwellings, hotel bedrooms or offices, and seven because they were believed to be likely to elicit matters subject to legal privilege, or confidential personal information (as narrowly defined by the Act), or confidential journalistic material.

Regulation of Investigatory Powers Act

11.5 The total number of authorisations (excluding renewals) given by authorising officers under the 2000 Act in England, Wales and Northern Ireland was 298 and one was given in Scotland. Of these 31 were given under the urgency provisions.

12. USE OF URGENCY PROVISIONS

12.1 All three Acts provide for urgent authorisations to be given in three situations:

— In cases of urgency Assistant Chief Constables (or equivalent for the National Crime Squad, NCIS, HM Customs & Excise, the Metropolitan Police and City of London Police) have power to give a written authorisation for 72 hours.

— In cases of urgency an authorising officer or, in his absence, his designated deputy, has power to give oral authorisations for 72 hours.

— An authorisation that would normally require the prior approval of a Commissioner does not require it where the person who gives the authorisation believes that the case is one of urgency.

12.2 The total number of authorisations given under each of these provisions respectively were 30, 294 and 46.

12.3 These provisions have, in the great majority of cases, been used responsibly and in accordance with the guidelines that I have issued. There have been some occasions when Authorising Officers have avoided the need for prior approval on the ground of urgency, but have not notified a Commissioner until the following working day. Such instances have been infrequent and the Authorising Officers concerned have been reminded of my direction that such authorisations are to be notified as soon as practicable.

13. INTERPRETATIONAL ISSUES

13.1 I issued revised interpretational guidelines in September 2000 to ensure that the guidance relating to the 1997 Act and the 2000 Acts was consistent. My guidance on the 1997 Act required substantive alteration in relation to one matter.

13.2 Originally the Commissioners took the view for the purposes of the 1997 Act that it was not appropriate to treat the continuing presence of a surveillance device on private property as a continuing interference, because so construed a fresh authorisation would have been required in respect of a vehicle fitted with a device every time it crossed a force boundary. However, amendments introduced by the 2000 Act made it possible for an Authorising Officer to authorise the maintaining of a surveillance device outside his own area. In the light of these altered circumstances the Commissioners decided that, for purposes of authorisations for property interference made on and after 25 September 2000, they would regard the continuing presence of a surveillance device placed on any private property as a continuing interference with it.

13.3 This means that a property interference authorisation should be given, and where necessary a Commissioner's prior approval sought, for the continued presence of a surveillance device on any property, including hotel bedrooms and hire cars, regardless of whether the device was installed before the subject took possession of the property.

14. CODES OF PRACTICE

14.1 All the public authorities, whose conduct of covert surveillance and use of CHIS I am responsible for keeping under review, have in my judgement been considerably and unfairly handicapped by the fact that there have not yet been issued under section 71(1) of the 2000 Act codes of practice relating to the exercise and performance of the powers and duties conferred or imposed on public authorities under that Act and the 1997 Act. The Scottish Ministers have elected to await the issue of those codes of practice before issuing their own under section 24(1) of the RIP (Scotland) Act.

14.2 As a result, for nearly nine months public authorities throughout the United Kingdom (including law enforcement agencies) have had to make do with drafts. But drafts cannot afford them the assistance and support that they will derive from codes having the effect prescribed by section 72 of the 2000 Act or section 26 of the RIP (Scotland) Act; and the drafts so far published are notably unhelpful as well as lacking Parliamentary approval.

14.3 In these circumstances a large number of responses to the consultation process on the codes was to be expected: and some of them may well have raised important legal issues. By now those issues have no doubt been thoroughly considered. But there continues to be a disappointing failure to indicate when the codes are to be laid before Parliament and when they are to be brought into force.

15. OPERATING ISSUES

Authorisations for operations outside the force area

15.1 I mentioned in my last report that the stipulation in the 1997 Act that authorisations can only be given by an authorising officer of the force in whose area an action is to be taken had caused operating difficulties to law enforcement agencies.

15.2 The 2000 Act amended the 1997 Act to allow maintenance and retrieval of equipment, the placing of which has been authorised under the 1997 Act, to take place outside an Authorising Officer's force area if it is so specified. This has been helpful, but it has been necessary to remind Authorising Officers of the need to authorise the taking of such action outside the force area if they wish to take advantage of this provision.

Invalid authorisations

15.3 There have continued to be a few authorisations for property interference that are invalid either because they have been given by a person who is not empowered by the legislation to do so or because they fail in some other way to meet the statutory requirements.

Cancellations

15.4 In my last report I expressed my concern that some authorising officers did not recognise the importance of cancelling authorisations promptly. I have had to remind some officers of this over the past year, but the situation has improved. I shall continue to monitor this.

Disclosure

15.5 The amount of detail about covert surveillance operations that the Courts sometimes require them to disclose is a matter of concern to law enforcement agencies. Occasionally they have decided not to proceed with prosecutions which rest on evidence obtained through covert surveillance, as the disclosure of their methods would reduce the effectiveness of similar techniques in future operations.

Dates of effectiveness

15.6 Some law enforcement agencies are still making mistakes about the dates of effectiveness of authorisations. Common mistakes include giving authorisations which purport to become effective at a time in the future, and wrongly assuming that authorisations which require a Commissioner's approval are effective from the time that they are granted.

Application and Authorisation Forms

15.7 The application and authorisation forms for covert surveillance changed when the 2000 Act was implemented. Some forces were slow to adopt the updated forms.

15.8 There have been a number of cases where Authorising Officers have given authorisations on inappropriate forms. For example, an authorisation for intrusive surveillance was given on the standard form for property interference authorisations. Since the forms are designed to ensure that statutory requirements are complied with, and contain declarations pertinent to the relevant statute, the use of the wrong form means that the wrong declaration is given.

Wording of authorisations

15.9 I have been disappointed by the poor wording of some authorisations. Quite frequently a vital part of an operation is left unauthorised simply through lack of attention to detail. There have been examples where Chief Officers have authorised the removal of property to attach surveillance equipment to it but have failed to authorise the entry on to property necessary to do so or even the return of a vehicle after the device has been fitted. In other cases authorisations have been given for 'monitoring and recording an audio device' rather than monitoring conversations by means of the audio device. It is not the job of the Commissioners to re-word poorly drafted authorisations, and there have been too many occasions when they have had to point out deficiencies in the wording. Even if the meaning may be apparent, such carelessness in the wording of authorisations is a cause for concern, because unauthorised activities will not be lawful.

15.10 Poor wording may be partially explained, though it cannot be excused, by authorising officers neglecting to check forms of authorisation drafted for them by their support staff.

Adequacy of information

15.11 In a relatively small number of cases Commissioners referred an authorisation back to the agency which granted it because the information contained in the application form was not sufficient to enable the

Commissioner to judge whether the Authorising Officer had had reasonable grounds to believe that the action authorised was necessary and proportionate. In most of these cases the Commissioner was supplied with information which had been available to the authorising officer at the time that he gave the authorisation. I have advised all authorising officers that when they notify the Commissioners of an authorisation they must provide all the relevant information that they took into account when deciding to grant it.

Timeliness

15.12 The Acts require that all decisions to grant, renew or cancel an authorisation for property interference or intrusive surveillance must be notified to a Commissioner as soon as reasonably practicable. This is an important provision because it enables Commissioners to quash or cancel an authorisation, and to put a stop to inappropriate surveillance, as quickly as possible.

15.13 I believe that it is reasonable to require such decisions to be notified within four working hours of their being made, and I have advised authorising officers accordingly. In return the Commissioners try to consider every authorisation, to make a decision about it, and to notify the authorising officer of that decision within 16 working hours of receipt by the OSC of all relevant information. Generally law enforcement agencies have tried hard to comply with the time limit, and have failed only when they have experienced problems with the encrypted communications system or, occasionally, due to administrative mistakes. My office has reminded those agencies which have erred most frequently of the importance of timely notifications. I shall continue to do all I can to ensure that this aspect of the legislation is complied with.

Intrusive v directed surveillance

15.14 Law enforcement agencies have been confused by the statutory definitions of intrusive and directed surveillance. The Act is quite clear and there is little scope for confusion if officers refer to the Act. Nevertheless 'intrusive surveillance' authorisations have been submitted for such activities as using a covert camera in a hedgerow focussed on an open field, and recording conversations in offices and business vehicles. None of these activities fall within the statutory definition of intrusive surveillance and they should all have been authorised as directed surveillance. As authorisations for directed surveillance are not notified to my office, I shall not know until my inspectors carry out detailed inspections, whether similar mistakes have been made in reverse. But from my dealings with law enforcement agencies I think this is unlikely. If law enforcement agencies do err it tends to be on the side of caution.

16. ERRORS

16.1 I have listed below some of the errors that I am aware of relating to authorisations for property interference and intrusive surveillance. This is not a comprehensive list, but provides examples of the types of mistakes that have occurred over the past year. Where I refer to authorising officers, I am referring to those who have the power to grant an authority for property interference or intrusive surveillance.

1. A vehicle registration number was wrongly noted in an authorisation. The mistake was noticed at the second review. No deployment had taken place, and the agency cancelled the authorisation immediately and gave a new one with the correct details.

2. A law enforcement agency notified my office of a minor error in the noting of an address. The Duty Commissioner was satisfied that the circumstances were such that there was no possibility of the wrong property being entered and noted the slight amendment to the authorisation.

3. The Duty Commissioner requested further information about an authorisation for property interference which had been issued in connection with an investigation into distraction burglaries. It took three days for the authorising officer to supply the information requested.

4. The notification, renewal and cancellation of one authorisation were unsatisfactory in that they were submitted late, the urgency provisions had been used without explanation, and the renewal differed from the initial authorisation. Nevertheless the Duty Commissioner was satisfied that the authorised action was necessary and proportionate.

5. The vehicle registration number in an authorisation differed from that in the application. Enquiries revealed that the number in the application was the correct one, but the numbers had been transposed in the authorisation. The Duty Commissioner was satisfied that there was no possibility of surveillance being carried out on an unrelated vehicle, and the authorisation was amended to show the correct details.

6. Notification of an oral authorisation failed to explain the urgency and the connection between the targets, the vehicle, and the offence.

7. A particularly wide oral authorisation was given with regard to any vehicle used by a man known as "xxx". The Commissioner re-worded the authorisation to clarify which particular individual was the subject of the authorisation.

8. A law enforcement agency installed a vehicle tracking device before authorisation had been given under the mistaken belief that they already had authority. The organisation concerned has put safeguards in place to prevent a recurrence.

9. A law enforcement agency submitted an authorisation for the use of audio equipment in the general visiting area of a prison. They were advised that the visits area is not normally to be regarded as part of 'residential premises' within the meaning of s.48(1) of the 2000 Act.

10. Officers from a police force acted on an authority given by their Chief Constable before the approval of a Commissioner had been obtained. As this was an authorisation that required the approval of a Commissioner before it became effective, the activity carried out was unauthorised.

11. An officer who is empowered to grant an authorisation in writing in a case of urgency gave an authorisation on the basis on an oral application to him. The officer did not provide a written record of the grounds on which he had given the authorisation, and the information was not supplied to a Commissioner until two days later.

12. An authorisation covered more than had been sought in the application. The Duty Commissioner considered that this was not inappropriate in the particular circumstances of the case. He pointed out that where an authorising officer grants more than is requested he should explain this in his notification to the Commissioner.

13. An authority for property interference was cancelled by a Deputy Chief Constable instead of by the Chief Constable. When this was queried, it transpired that the support staff had thought that the officer who gave an authorisation should cancel it even if the senior authorising officer was available to do so.

14. An ACC purported to give an oral authority in the absence of the Chief Constable and his Designated Deputy. He has no statutory power to do so and was advised that the authorisation was invalid.

15. An authorisation for property interference was given on an intrusive surveillance authorisation form, the page on which the authorisation was given was unsigned (leaving potential for it to be altered), and the wording did not empower the force to carry out maintenance or retrieval within their own area.

16. A property interference authorisation was dealt with under the urgency provisions as the Authorising Officer's encrypted fax was faulty. In the same case I was advised that property belonging to someone other than the subject was searched and copied without authorisation.

17. An authorisation was given orally by an Assistant Chief Constable who was empowered only to give written authorisations in cases of urgency. The error was noticed and a proper authorisation given before any deployment took place.

18. A property interference authorisation was given orally by a Chief Constable who then went on annual leave without completing written confirmation of the authority and the grounds on which it was given.

17. THE YEAR AHEAD

17.1 As my responsibilities for oversight have expanded I have seen a broader range of surveillance operations. I was previously only concerned with intrusive operations involving investigations into serious crime. It is obvious that surveillance is a useful tool for public authorities, but it is essential for the protection of the public that it should be used only when necessary, and that the action taken should be proportionate to what it seeks to achieve. Although I have mentioned various errors in my report, I am satisfied that authorising officers take their responsibilities seriously. The very fact that my criticisms are no more significant than they are demonstrates that the vast majority of operations were completed to the high standards that are to be expected of the law enforcement agencies. This is a good augury.

17.2 Now that three part-time Assistant Commissioners have been appointed, who will serve the equivalent of one full-time Assistant Commissioner in any year, together with five full-time Inspectors, it has become possible to plan for the coming year a comprehensive review all surveillance operations conducted by all public authorities, including the law enforcement agencies. I envisage that the detailed work of inspection will be undertaken by the Inspectors. That will enable the Commissioners, with the aid of the Inspectors, to continue to concentrate on the surveillance activities of the law enforcement agencies, while the Assistant Commissioners, also with the aid of the Inspectors, devote themselves to those of the other public authorities.

17.3 Although the full extent of the surveillance work carried out by these other public authorities cannot be known without more detailed information than is so far available, I am hopeful that, with the assistance of the Commissioners, Assistant Commissioners and Inspectors, I shall be able to keep under review, as amply as Parliament must be taken to expect of me, the exercise and performance, by the members of all the relevant public authorities, of such powers and duties as each of them has in relation to the carrying out of surveillance, the use of covert human intelligence sources, and the acquisition of the means by which electronic data protected by encryption may be accessed.

17.4 An important feature of that process will be the promotion of uniform practices within and between public authorities. But the principal purpose of review must always be to do all that I can to ensure that the covert operations of public authorities are lawfully conducted, because, unless they are, the public will be at risk as well as the authorities themselves.

NUMBER OF AUTHORISATIONS GIVEN UNDER PART III OF THE POLICE ACT 1997
BETWEEN 1 APRIL 2000 AND 31 MARCH 2001

	<i>England, Wales & Northern Ireland</i>	<i>Scotland</i>	<i>Total</i>
Total number of authorisations (excluding renewals)	2509	56	2565
Total number of cases requiring prior approval	365	6	371
Cases requiring prior approval by category			
—Dwelling	234	5	239
—Office	44	0	44
—Hotel bedroom	76	1	77
—Matters subject to legal privilege	4	0	4
—Journalistic material	0	0	0
—Confidential personal information	3	0	3
Number given orally – s.95(1)	290	1	291
Number given without prior approval of a Commissioner due to urgency under s.97(3)	20	1	21
Number given at ACC or equivalent level under s.94(2)	23	2	25
Number quashed by a Commissioner	6	1	7
Number cancelled by a Commissioner	0	0	0
Appeals by authorising officers	2	0	2
Appeals by authorising officers dismissed	1	0	1
Appeals by authorising officers upheld	1	0	1

NUMBER OF AUTHORISATIONS FOR INTRUSIVE SURVEILLANCE GIVEN UNDER PART II
OF THE RIP ACT 2000 AND THE RIP (SCOTLAND) ACT BETWEEN 25 SEPTEMBER 2000
AND 31 MARCH 2001

	England, Wales & Northern Ireland	Scotland	Total
Total number of authorisations (excluding renewals)	298	12	310
Number given orally	2	1	3
Number given without prior approval of a Commissioner due to urgency	24	1	25
Number given at ACC or equivalent level	5	1	6
Number quashed by a Commissioner	0	0	0
Number cancelled by a Commissioner	0	0	0
Appeals by authorising officers	0	0	0
Appeals by authorising officers dismissed	0	0	0
Appeals by authorising officers upheld	0	0	0

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