



Home Office

Consultation:

Covert Surveillance and Covert Human
Intelligence Sources Codes of Practice

Ministerial Foreward

The use of covert techniques by law enforcement agencies are a vital part of protecting the public both from terrorism and crime, but they need to be closely supervised and constantly reassessed to ensure that what is being done is justified. Following a number of serious allegations surrounding historical cases and a detailed investigation and report by Her Majesty's Inspectorate of Constabulary, I announced in June that we would amend the law to allow an independent body – the Office of Surveillance Commissioners – to provide enhanced judicial oversight of all undercover law enforcement deployments, giving prior approval for all deployments that last longer than 12 months. I also announced we would increase the rank of the authorising officers within a law enforcement agency from police superintendent or equivalent to Assistant Chief Constable, with Chief Constables authorising any deployment lasting longer than 12 months. These changes have been implemented through the introduction of The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013.

The Codes of Practice published today for public consultation reflect these significant changes and a number of others including the introduction in the Protection of Freedoms Act 2012 of judicial supervision for local authorities' use of these powers. I trust these changes will promote the highest standards of professionalism and excellence in this most sensitive aspect of law enforcement.

Rt. Hon. Damian Green MP

Minister of State for Policing, Criminal Justice and Victims

Why are we consulting?

This consultation contains proposals to update the Covert Human Intelligence Sources Code of Practice and the Covert Surveillance Code of Practice. The Regulation of Investigatory Powers Act (RIPA) requires the Secretary of State to prepare and publish a draft of the Code and to consider any representations made about the draft. This consultation fulfils that requirement.

A number of the proposed amendments are being made as a result of changes already made to RIPA or via secondary legislation, but some are technical or other amendments which provide greater clarity for those authorising and using covert techniques.

Scope of the consultation

Topic of this consultation:	This consultation is on the draft Covert Human Intelligence Sources Code of Practice and the Covert Surveillance and Property Interference Code of Practice.
Scope of this consultation:	This consultation seeks representations on the draft Codes of Practice.
Geographical scope:	UK wide.

Basic Information

To:	Representations are welcomed from individuals and public bodies who authorise and use covert techniques under RIPA and from the wider public.
Duration:	6 weeks
Enquiries and responses:	RIPA@homeoffice.x.gsi.gov.uk
After the consultation:	Following the consultation period, responses will be collated and analysed. The revised Codes of Practice will be submitted to Parliament for approval.

Background

Getting to this stage:	Officials have engaged with public bodies that authorise and use covert techniques under RIPA including the law enforcement community. Officials have also sought opinion from the Office of Surveillance Commissioners which oversees and monitors the operation of the legislation.
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Introduction

For many years, public authorities, including the law enforcement and intelligence agencies, various regulatory bodies, and local authorities, have used a wide range of covert investigatory techniques. They use these techniques to investigate suspects without alerting them to the fact that they are under investigation.

Since the Regulation of Investigatory Powers Act (RIPA) was introduced in 2000, public authorities who want to use any of these techniques must first ask whether it would be necessary and proportionate to do so. That is: 'necessary' to meet a Human Rights Act purpose, such as the prevention or detection of crime or in the interest of national security. And 'proportionate' in terms of the gravity of the investigation and not being able to acquire the information sought using a less intrusive method. They must consider the impact of these techniques on the privacy of those under investigation, and on any other people who might be affected. Different techniques can only be used if they are authorised at appropriately senior levels; and the most deeply intrusive techniques must be given prior independent approval. All public authorities using techniques under RIPA are subject to independent inspection. In addition, there is an independent tribunal, the Investigatory Powers Tribunal, to consider any complaints relating to the way covert investigatory techniques have been used.

RIPA and its associated Codes of Practice have greatly improved control and oversight of the way public authorities use covert investigatory techniques, in order to protect our right to privacy.

The revised Codes of Practice included in this consultation, on which we are seeking views, cover:

- **Covert surveillance and property interference** (covert monitoring of specifically targeted individuals in public places or in residential premises or private vehicles and interference with property); and
- **Covert human intelligence sources** (people who at the direction of a public authority establish or maintain a relationship with someone else for the covert purpose of obtaining and disclosing information).

Additional Safeguards

The Government recognises that public authority use of covert investigatory techniques must be kept under review and has acted to introduce further safeguards to RIPA. In order to reflect these changes we have revised the Codes of Practice to:

- include the requirement for local authorities to get judicial approval for their use of RIPA (Protection of Freedoms Act 2012);
- restrict local authority use of directed surveillance under RIPA to offences which attract a sentence of six months imprisonment or more (Protection of Freedoms Act 2012);
- increase the authorisation levels for the use of undercover officers and introduce judicial oversight by the Office of the Surveillance Commissioners (the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013);
- include a reference that when an undercover officer is deployed to build up their cover profile an authorisation should be obtained if the officer wishes to establish or maintain a covert relationship with another person who is not the subject of an operation.

Technical Changes

We have also made some changes which reflect issues raised by practitioners in the course of their investigations. These are in the main technical changes which reflect best practice. They include:

- Noise abatement – revised language to make it clear that investigation of sustained loud noise is unlikely to have privacy implications requiring a RIPA authorisation.
- Agents acting for public authorities – necessary to provide clarity on application of RIPA to individuals and non-governmental organisations.
- Reflect changes to Police landscape in Scotland

The changes made to the draft codes, on which we are seeking views, are highlighted throughout the documents attached.