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Guide to the Regulation of Surveillance

A shared approach to the regulation of surveillance in the United Kingdom.

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This guidance has been drawn up by the Commissioners whose work it describes to explain their roles and responsibilities in relation to surveillance matters. The document will be updated periodically.

Published February 2019 by the Surveillance Camera Commissioner's Office.

This guidance will be kept under regular review.

Introduction

The purpose of this guidance is to clarify the roles and responsibilities of the bodies involved in overseeing legislation concerning surveillance in the United Kingdom and provide an overview of who is responsible for what. It is designed to ensure that respective roles are understood and that the privacy of individuals is considered alongside the development and deployment of surveillance camera systems.

The legislation referred to in this guidance and the associated codes of practice all sit under the umbrella of the European Convention on Human Rights (ECHR) and the Human Rights Act 1998 (HRA). The bodies involved in regulating surveillance must seek to ensure that any surveillance carried out by public authorities does not interfere with the individual rights set out in the ECHR, whilst also ensuring that their own decisions are compliant with Human Rights legislation. The arrangements outlined in this document help to ensure that where overlaps exist responsibilities are clear and there are no areas that are neglected.

This guidance is primarily aimed at members of the public, but is also designed to facilitate an understanding between the bodies involved in the regulation of surveillance for their own use.

The regulation of surveillance is a complex area. This document does not aim to be exhaustive. There are bodies that are not mentioned that have responsibilities for overseeing or advising on legislation referred to within this document. These include the Equality and Human Rights Commission and the Northern Ireland Human Rights Commission who have statutory remits to promote and monitor human rights.

This document shows the relationship and overlaps between different pieces of legislation, including the Regulation of Investigatory Powers Act 2000 (RIPA), the General Data Protection Regulation (GDPR), the Data Protection Act 2018 (DPA) and the Protection of Freedoms Act 2012 (PoFA).

Surveillance legislation

[European Convention on Human Rights \(ECHR\)](#)

The ECHR sets out the fundamental rights and freedoms that signatory governments must secure to everyone within their jurisdiction. Article 8 provides a right to respect for an individual's private and family life, home and correspondence.

[Intelligence Services Act 1994 \(ISA\)](#)

The ISA makes provisions for the issue of warrants and authorisations enabling certain actions to be taken by the Intelligence Services in relation to interference with property and wireless telegraphy.

[Part III Police Act 1997](#)

Part III Police Act 1997 outlines the requirements for the consideration and authorisation of interference in respect of property and wireless telegraphy.

[Human Rights Act 1998 \(HRA\)](#)

The HRA gives further legal effect in the UK to the fundamental rights and freedoms contained in the ECHR. Its effect is that all public bodies such as police and local governments, and other bodies carrying out public functions, have to comply with an individual's ECHR rights. Among other things it also means that individuals can take human rights cases to domestic courts rather than having to take their case in the European Court of Human Rights.

[Regulation of Investigatory Powers Act 2000 \(RIPA\)](#)

RIPA provides the regulatory framework for determining whether a range of covert investigatory techniques by public authorities is proportionate and necessary in compliance with Article 8 of the ECHR.

[Regulation of Investigatory Powers \(Scotland\) Act 2000 \(RIPSA\)](#)

RIPSA provides the regulatory framework in Scotland for determining whether covert surveillance and the use of covert human intelligence sources by public authorities acting on devolved matters, is proportionate and necessary in compliance with Article 8 of the ECHR.

[Protection of Freedoms Act 2012 \(PoFA\)](#)

The PoFA introduces a code of practice for surveillance camera systems, the appointment of Surveillance Camera and Biometrics Commissioners and provides for judicial approval of certain surveillance activities by local authorities.

[Data Protection Act 2018 \(DPA\)](#)

The DPA regulates the processing of personal data. It provides seven principles of good information handling with which organisations must comply and provides individuals with rights with respect to the processing of their personal data.

[General Data Protection Regulation \(GDPR\)](#)

The GDPR is a Europe-wide law that applies to the use of 'personal information' which means any information relating to an identifiable person who can be directly or indirectly identified, in particular by reference to an identifier. The GDPR sets out requirements for how organisations need to handle personal data from 25 May 2018.

Investigatory Powers Commissioner's Office (IPCO)

IPCO

Investigatory Powers
Commissioner's Office

Lead	Sir Adrian Fulford
Description of regulatory role	<p>The Investigatory Powers Commissioner, Lord Justice Fulford, and his Judicial Commissioners are responsible for overseeing the use of investigatory powers by public authorities. This includes law enforcement, the intelligence agencies, prisons, local authorities and other government agencies (e.g. regulators). In total over 600 public authorities and institutions can make use of investigatory powers.</p> <p>The Commissioners are supported in this work by a small team of civil servants – the Investigatory Powers Commissioner's Office (IPCO).</p> <p>The more intrusive powers such as interception, equipment interference and the use of surveillance in sensitive environments are subject to the prior approval of both a Secretary of State and a Judicial Commissioner. Use of these and other surveillance powers, including the acquisition of communications data and the use of covert human intelligence sources, are also subject to a programme of retrospective inspection and audit by Judicial Commissioners and IPCO's inspectors.</p>
Description of regulatory remit regarding surveillance	IPCO provides independent oversight of the use of investigatory powers by intelligence agencies, police forces and other public authorities.
Relevant legislation regulated by this body	<ul style="list-style-type: none">• Investigatory Powers (IP) Act 2000• The Regulation of Investigatory Powers Act 2000 (RIPA)• Regulation of Investigatory Powers (Scotland) Act 2000• Security Services Act (1996)• Data Retention and Investigatory Powers Act (DRIPA)• Police Act 1997• The Intelligence Services Act (1994)
Key roles / powers relevant to surveillance	<p>IPCO performs the double lock function of providing Judicial Commissioner approval of the more intrusive powers such as interception, equipment interference and surveillance in sensitive environments.</p> <p>IPCO is also responsible for overseeing the use of:</p> <ul style="list-style-type: none">• Covert surveillance by designated public authorities based in the UK, and by the Police and Customs operating within the Sovereign Base Areas of Cyprus.• The interception of communications and the acquisition and disclosure of communications data by intelligence agencies, police forces and other public authorities.• The intrusive powers of the UK intelligence services and parts of the MOD.
Links to website for further information	https://www.ipco.org.uk/

Information Commissioner's Office (ICO)



Lead	Elizabeth Denham
Description of regulatory role	The Information Commissioner's role is to uphold information rights in the public interest across all sectors, UK wide. She investigates complaints from individuals about the processing of their personal data, including when this is using surveillance camera systems. She also has audit and enforcement powers including the power to issue monetary penalties when there has been a breach where there are serious or systemic compliance concerns.
Description of regulatory remit regarding surveillance	The majority of surveillance systems are used to monitor or record the activities of individuals, or both. As such they process individuals' information - their personal data. Most uses of surveillance systems will therefore be covered by the Data Protection Act 2018.
Relevant legislation regulated by this body	<ul style="list-style-type: none">• Data Protection 2018 (DPA)• General Data Protection Regulation (GDPR)• Freedom of Information Act 2000 (FOIA)• Associated legislation including the Privacy and Electronic Communications Regulations 2003 (PECR) and Environmental Information Regulations 2004 (EIR)
Key roles / powers relevant to surveillance	<p>The Information Commissioner's powers apply where personal data is being processed, so processing by surveillance camera systems fall in the scope of these powers. They include, but are not limited to:</p> <ul style="list-style-type: none">• overseeing data protection impact assessments;• conducting data protection audits of data controllers and processors;• overseeing the establishment of data protection certification mechanisms;• encouraging the development of codes of conduct, and accrediting bodies to monitor compliance with codes of conduct;• requiring a data controller or digital service provider to inform an individual of a personal data breach;• issuing a reprimand for infringements of relevant data protection legislation;• issuing enforcement notices, warnings, reprimands, practice recommendations and other orders requiring specific actions by an individual or organisation to resolve breaches (including potential breaches) of data protection legislation and other information rights obligations.• certifying contempt of court should an authority fail to comply with an information notice, decision notice or enforcement notice under FOIA and EIR;• administering fines by way of penalty notices• prosecuting criminal offences before the courts.
Links to website for further information	<p>https://ico.org.uk/</p> <p>https://ico.org.uk/media/for-organisations/documents/1542/cctv-code-of-practice.pdf</p>

Forensic Science Regulator (FSR)



Forensic Science Regulator
O v e r s e e i n g Q u a l i t y

Lead	Dr Gillian Tully
Description of regulatory role	The Forensic Science Regulator ensures that the provision of forensic science services across the criminal justice system is subject to an appropriate regime of scientific quality standards.
Description of regulatory remit regarding surveillance	Any forensic science services intended for use in the criminal justice system, including but not limited to comparison of images extracted from video for intelligence or evidential use.
Relevant legislation regulated by this body	The process for establishing a statutory basis for the FSR is ongoing.
Key roles / powers relevant to surveillance	<p>The Forensic Science Regulator sets standards for forensic science, including issuing Codes of Practice and Conduct and subject specific appendices to these Codes such as on Video Analysis. Additionally, of relevance to surveillance is the publication Forensic Image Comparison and Interpretation Evidence: Guidance for Prosecutors and Investigators, jointly developed with the Crown Prosecution Service, National Crime Agency and Metropolitan Police service.</p> <p>The Forensic Science Regulator currently has no statutory basis (although Government has committed to putting the role on a statutory basis), and therefore has no statutory enforcement powers. The Regulator however does investigate and report on complaints about quality failures in the forensic sciences that are intended for use in the criminal justice system, including the comparison of images taken from CCTV.</p>
Links to website for further information	<p>www.gov.uk/government/organisations/forensic-science-regulator</p> <p>www.gov.uk/government/publications/forensic-science-providers-codes-of-practice-and-conduct-2017</p> <p>www.gov.uk/government/publications/forensic-image-comparison-and-interpretation-evidence-issue-2</p> <p>www.gov.uk/government/publications/video-analysis-codes-of-practice-for-forensic-service-providers</p>

Surveillance Camera Commissioner (SCC)



Lead	Tony Porter
Description of regulatory role	The SCC was appointed by the Home Secretary under the provisions of the Protection of Freedoms Act 2012 (PoFA) – but is independent of Government. His role is to encourage compliance with the Surveillance Camera Code of Practice (the Code) and its 12 guiding principles, review the operation of the Code, and provide advice about the Code (including changes to it or breaches of it). The Code came into force in 2013 and applies to relevant authorities in England and Wales who are operating surveillance camera systems, overtly, in public places. Relevant authorities are principally local authorities and the police. The SCC also encourages non-relevant authorities who are operating surveillance camera systems to adopt the Code voluntarily.
Description of regulatory remit regarding surveillance	The meaning of “surveillance camera systems” is defined under Section 29(6) of PoFA. Typically, the types of surveillance cameras falling within the remit of the SCC include CCTV, body worn video, drones, dashboard cameras, Automatic Number Plate Recognition (ANPR) and Automatic Facial Recognition technology (AFR).
Relevant legislation regulated by this body	<ul style="list-style-type: none"> • Surveillance Camera Code of Practice issued under PoFA.
Key roles / powers relevant to surveillance	<p>The SCC works with relevant authorities to make them aware of their duty to have regard to the Code. A failure on the part of any person to act in accordance with any provision of the Code does not of itself make that person liable to criminal or civil proceedings. The Code is, however, admissible in evidence in criminal or civil proceedings, and a court or tribunal may take into account a failure by a relevant authority to have regard to the Code in determining a question in any such proceedings.</p> <p>The SCC is responsible for:</p> <ul style="list-style-type: none"> • being a lead voice on matters relating to the overt use of surveillance camera systems by relevant authorities in England and Wales. • providing advice on the effective, appropriate, proportionate and transparent use of surveillance camera systems (this may include the preparation of a manual of regulation that sets out how the SCC will fulfil his functions). • being a source of advice on validation of surveillance camera systems. • reviewing how the Code is working and making recommendations to government to add others to the list of relevant authorities who must have due regard to the Code. • providing information and advice on appropriate and approved operational and technical standards for various aspects of surveillance camera systems. • providing information and advice on appropriate and approved occupational and competency standards for persons using these systems or processing images and information obtained by these systems. • encouraging non-relevant authorities to voluntarily adopt the Code. • Issuing certification to organisations who can demonstrate their compliance with the Code under the SCC’s third party certification scheme. • delivering the National Surveillance Camera Strategy. • reporting annually to the Home Secretary about the exercise of his functions, and this report is laid before Parliament.

Links to website for further information	<p>https://www.gov.uk/government/organisations/surveillance-camera-commissioner</p> <p>https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157901/code-of-practice.pdf</p> <p>https://www.gov.uk/government/publications/national-surveillance-camera-strategy-for-england-and-wales</p> <p>https://www.gov.uk/government/collections/surveillance-camera-guidance-tools-and-templates</p>
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