Detention Services Order 02/2015

April 2019
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contents</td>
<td>3</td>
</tr>
<tr>
<td>Document Details</td>
<td>4</td>
</tr>
<tr>
<td>Contains Mandatory Instructions</td>
<td>4</td>
</tr>
<tr>
<td>Instruction</td>
<td>5</td>
</tr>
<tr>
<td>Introduction</td>
<td>5</td>
</tr>
<tr>
<td>Purpose</td>
<td>5</td>
</tr>
<tr>
<td>Policy</td>
<td>5</td>
</tr>
<tr>
<td>Procedures</td>
<td>5</td>
</tr>
<tr>
<td>Authorisation procedures for directed surveillance</td>
<td>6</td>
</tr>
<tr>
<td>Scotland</td>
<td>7</td>
</tr>
<tr>
<td>Revision History</td>
<td>8</td>
</tr>
</tbody>
</table>
Process: To make all staff aware of the legislative requirements of the Regulation of Investigatory Powers Act 2000 (RIPA) and how they relate to surveillance within a Home Office immigration removal centre.

Implementation Date: February 2015 (reissued April 2019)

Review Date: April 2021

Version: 2.0

Contains Mandatory Instructions

For Action: Immigration removal centres, pre-departure accommodation and short-term holding facilities.

For Information: Escorting Officers

Author and Unit: James Andrews, Detention and Escorting Security Team, Detention and Escorting Services

Owner: Alan Gibson, Head of Detention Operations

Contact Point: Detention and Escorting Security Team

Processes Affected: Surveillance undertaken within the detention estate.

Assumptions: All staff will have the necessary knowledge to follow these procedures.

Notes:
Instruction

Introduction

1. This order provides guidance on the legislative requirements of the Regulation of Investigatory Powers Act 2000 (RIPA) to all staff in Home Office immigration removal centres (IRC), pre-departure accommodation and short-term holding facilities.

2. RIPA provides a framework to ensure investigatory techniques are used in a way that is compatible with the Article 8 right to respect for private and family life, enshrined in the European Convention on Human Rights (ECHR). RIPA ensures that these techniques are used in a regulated way and provides safeguards against the abuse of such methods. Use of these covert techniques will only be authorised if considered legal, necessary and proportionate.

Purpose

3. The purpose of this order is to ensure that all staff within the detention estate, as well as escorting staff, are fully aware of RIPA and how it applies to surveillance and other covert techniques within a detention facility or to escorting activity. References to “centre” in this document cover IRCs, short-term holding facilities, pre-departure accommodation and escort activity.

Policy

4. RIPA sets out the authorisation requirements for all covert surveillance done by public authorities where that surveillance is likely to result in the obtaining of private information about a person.

5. Surveillance, for the purposes of RIPA, includes monitoring, observing or listening to persons, their movements, conversations or other activities and communications. It may be conducted with or without the assistance of a surveillance device and includes the recording of any information obtained.

6. Surveillance is covert if, and only if, it is carried out in a manner calculated to ensure that any persons who are subject to the surveillance are unaware that it is or may be taking place.

Procedures

7. Staff in centres can undertake general observations, or surveillance, as part of their daily duties.
8. Surveillance in a centre could include overt activity such as general observations of detainees and routine monitoring of overt CCTV cameras or body worn cameras.

9. In accordance with RIPA, the use of overt camera systems for general observational duties, such as CCTV or body worn cameras, does not normally require an authorisation. Members of the public should be made aware that such systems are in use. For example, by virtue of cameras or signage being clearly visible.

**Authorisation procedures for directed surveillance**

10. Staff can also undertake covert observations, which are carried out discreetly to ensure the detainee who is being monitored is unaware that the surveillance is taking place. This could include a detainee custody officer (DCO) concealing themselves to observe detainees acting suspiciously. The planned use by supplier security staff of covert techniques to investigate detainees or other individuals in a centre, without alerting them to the fact that they are under investigation, is likely to require a directed surveillance authorisation under RIPA. Directed surveillance is defined in section 26(2) RIPA as surveillance which is covert, but not intrusive, and:

a) Undertaken for the purposes of a specific investigation or specific operation;

b) Conducted in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and

c) Is conducted otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under Part II of RIPA to be sought for the carrying out of the surveillance.

11. Where overt CCTV cameras are used in a covert and pre-planned manner as part of a specific investigation or operation, for the surveillance of a specific person or group of people, a directed surveillance authorisation is likely to be required. Such covert surveillance is likely to result in the obtaining of private information about a person (namely, a record of their movements and activities) and therefore falls properly within the definition of directed surveillance. The use of the CCTV system in these circumstances goes beyond their intended use for the general prevention or detection of crime and protection of the public.

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1 The Surveillance Camera Code of Practice issued under the Protection of Freedoms Act 2012 sets out a framework of good practice that includes existing legal obligations, including the processing of personal data under the data protection legislation and a public authority’s duty to adhere to the Human Rights Act 1998.
12. Covert surveillance activity does not require application or authorisation when it takes place as an immediate response to an event or during a patrol, rather than being pre-planned.

13. Once directed surveillance is considered operationally necessary by the IRC centre manager, an SV1 application form detailing the need for surveillance should be completed by a member of the IRC security team (the applicant) and the security manager should forward the application to the Home Office via the agreed process. A copy of the SV1 and completion guide can be obtained from the IRC security manager.

14. The Home Office authorising officer\(^2\) must believe that the proposed surveillance is necessary and proportionate to what is sought to be achieved or surveillance will not be authorised. This involves balancing the intrusiveness of the activity on the target of the surveillance and others who might be affected by it (known as collateral intrusion), against the need for the activity in operational terms. Collateral intrusion is defined in the RIPA Code of Practice 3.8 as:

“.. the risk of obtaining private information about persons who are not subjects of the surveillance activity…..”

15. The application for an authorisation should include an assessment of the risk of any collateral intrusion and details of what measures are being taken to limit this. The authorising officer will take this into account, when considering the proportionality of the proposed surveillance.

16. The authorising officer must give authorisations in writing, except in urgent cases when they may be given orally by the authorising officer. In such cases both the applicant and authorising officer should make contemporaneous notes of their conversation and record the date and time the authorisation was given. A form SV5 should then be completed by the applicant and sent to the authorising officer, stating that the authorising officer has authorised the surveillance.

17. An urgent case for oral authorisation should only be made if the applicant believes that the time required for an authorising officer to grant a written authorisation would, in the applicant’s judgement, be likely to endanger life or jeopardise the investigation or operation for which the authorisation was being given.

**Scotland**

18. Where all the conduct authorised is likely to take place in Scotland, authorisations should be granted under RIP(S)A, unless:

\(^2\) The Home Office authorising officer is a description of the role under RIPA and is unrelated to Immigration Enforcement or suppliers.
• the authorisation is to be granted or renewed (by any relevant public authority) for
the purposes of national security or the economic well-being of the UK;

• the authorisation is being obtained by, or authorises conduct by or on behalf of,
those public authorities listed in section 46(3) RIPA and the Regulation of
2418); or,

• the authorisation authorises conduct that is surveillance by virtue of section 48(4)
RIPA.

19. This code of practice is extended to Scotland in relation to authorisations granted
under Part II of RIPA which apply to Scotland. A separate code of practice applies in
relation to authorisations granted under RIP(S)A.

IRC Centre Manager agree on a
planned use of directed surveillance.

Complete an SV1 form

SV1 form sent to authorising officer

Revision History

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<thead>
<tr>
<th>Review date</th>
<th>Reviewed by</th>
<th>Review outcome</th>
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<tr>
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<td>J Andrews</td>
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