



Home Office

Detention Services Order 02/2015

Regulation of Investigatory Powers Act 2000 (RIPA)

February 2020



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Document Details

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 February 2020)

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Version: 2.0

Contains Mandatory Instructions

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

For Information: Escorting Officers

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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 visible¹.

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. 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.

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 Central Authorities Bureau (CAB) via the agreed process. A copy of the SV1 and completion guide can be obtained from the IRC security manager. Staff should note that surveillance can only be sought for purposes related to the prevention and detection of crime or in the interests of public safety. The CAB will quality assure the surveillance application to assure its compliance with the legislation before passing to the Home Office authorising officer for authorisation.
14. The Home Office authorising officer² 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 Covert Surveillance and Property Interference Revised Codes of Practice 2018 4.11 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. 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 sought.
17. In such cases contact should first be made with the CAB to confirm the case meets the urgent oral criteria. The applicant will then be put in contact with the authorising officer to discuss the case. Both the applicant and authorising officer should make contemporaneous notes of their conversation and record the date and time the authorisation was given. Copies of these contemporaneous notes must be copied to the CAB for their records. It should be clear from these notes what was expressly

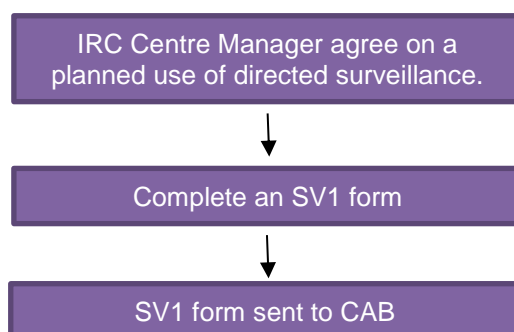
².. The authorising officer for surveillance within IRCs is a prescribed role..

authorised by the authorising officer. A standard written authorisation for surveillance will cease to have effect after 3 months unless cancelled or renewed. Authorities must not “lapse” and must be cancelled as soon as they are no longer necessary via a cancellation form SV4. Surveillance authorities must be regularly reviewed by means of a Sv2 review form during the period they are valid.

18. An urgent oral authority lasts 72 hours from the time the surveillance was first authorised, unless renewed. A form SV5 should therefore be completed by the applicant immediately following authorisation and sent to the CAB.

Scotland

19. Where surveillance takes place in Scotland, authorisation would normally be granted under RIP(S)A. However, public authorities listed in section (46(3) of RIPA 2000 and the Regulation of Investigatory Powers (Authorisations Extending to Scotland) Order 2000; SI No. 2418, are able to obtain authorisation for surveillance under Part II of RIPA where the conduct authorised will be taking place in Scotland. The Home Office is one of those public authorities. 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 published by the Scottish Government applies in relation to authorisations granted under RIP(S)A.



Revision History

Review date	Reviewed by	Review outcome	Next review
April 2019	J Andrews	Reformat	April 2021
February 2020	S Ali	RIP(S)A guidance updated	February 2020