

<b>Title:</b> <b>RIPA and Local Authorities</b>  <b>Lead department or agency:</b> Home Office  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> HO0031
	<b>Date:</b> 22/12/2010
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary Legislation
<b>Contact for enquiries:</b> Home Office Enquiry line	

## Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**

The coalition is committed to stop local authority use of RIPA (Regulation of Investigatory Powers Act 2000) unless it is for serious crime and approved by a magistrate. This stems from perceptions that local authorities have misused RIPA powers particularly in relation to low level issues.

Local authorities have been criticised for using covert surveillance in less serious investigations, for example dog fouling or checking an individual resides in a school catchment area. The Protection of Freedoms Bill will require local authorities' authorisations under RIPA relating to the acquisition and use of communications data, directed surveillance and covert human intelligence sources (CHIS) to be subject to approval by a magistrate. An order-making power will enable the requirement for judicial approval to be extended to other public authorities eligible to use RIPA powers.

In order to achieve this, a threshold based on maximum custodial sentence of 6 months for local authority use of directed surveillance will be introduced via secondary legislation. A judicial approval mechanism will be introduced as part of the Protection of Freedoms Bill.

**What are the policy objectives and the intended effects?**

The policy objective is to address criticism of local authority use of sensitive covert techniques in cases of a trivial nature such as low level littering, cases of dog fouling and confirming an individual resides within a school catchment area. The intended effect resulting from the introduction of a magistrate's approval is to provide an additional safeguard which is independent to the local authority. The intended effect resulting from the introduction of the threshold is to stop councils from using directed surveillance in trivial cases.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

- 1) Do nothing.
- 2) Introduce an approval system using the existing Surveillance and Interception of Communications Commissioners.
- 3) Introduce a magistrate's approval mechanism. This is the preferred option which best achieved the government's objective to ensure there is independent judicial oversight of local authority RIPA authorisations. During the development of this policy, a number of issues had to be considered and resolved. These are detailed in the evidence base.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** Month/Year

**What is the basis for this review?** Duty to review. **If applicable, set sunset clause date:** Month/Year

<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes
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**SELECT SIGNATORY Sign-off** For final stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible SELECT SIGNATORY:  Date: \_\_\_\_\_

# Summary: Analysis and Evidence

# Policy Option 3

## Description:

Introduce a magistrate's approval mechanism

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/K
2011	2011	10			

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	10k	670k	5.9m
High	30k	670k	6.0m
Best Estimate	30k	670k	6.0m

### Description and scale of key monetised costs by 'main affected groups'

The introduction of the requirement on local authorities to obtain judicial approval for the exercise of the covert investigatory powers under RIPA will incur additional cost for the use of magistrates. This is estimated to be £700k/£670k/£670k in the financial years 2012/13, 2013/14 and 2014/15 respectively. Costs over the rest of the period will be agreed with MOJ dependent on usage.

### Other key non-monetised costs by 'main affected groups'

There will be resource required from local authorities in light of the new approval mechanism. A member of local authority staff will need to present the authorisation to the magistrate in person.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/K	N/K	N/K

### Description and scale of key monetised benefits by 'main affected groups'

N/A

### Other key non-monetised benefits by 'main affected groups'

The magistrate will provide an independent, judicial safeguard. The purpose of this is to ensure that local authorities do not use covert techniques in trivial cases.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

The transitional costs are based on an estimated figure of 10k to train magistrates. Depending on Ministers' decision, this may need to be replicated for Scotland and Northern Ireland where there are independent judicial systems. The annual running costs are based on the magistrate's time being £365/hr. We have assumed there will be 5,500 authorisations based on last year's usage and we assess the magistrate's assessment will take 20 mins. One risk is that the estimate provided on training and the cost of magistrate's is inaccurate. Another risk is that there is a delay to the introduction of the magistrate's approval mechanism. Additionally, there is a risk of a magistrate approving an authorisation for a trivial case. This should be mitigated by training and guidance.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	N/A

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		United Kingdom			
From what date will the policy be implemented?		2012			
Which organisation(s) will enforce the policy?		HO/CLG/LGA			
What is the annual change in enforcement cost (£m)?		N/A			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		N/A			
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		Traded: N/A		Non-traded: N/A	
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs: N/A		Benefits: N/A	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties<sup>1</sup></b> <a href="#">Statutory Equality Duties Impact Test guidance</a>	Yes	x
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	
Human rights <a href="#">Human Rights Impact Test guidance</a>	Yes	Please see bill ECHR Memorandum
Justice system <a href="#">Justice Impact Test guidance</a>	Yes	x
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	

<sup>1</sup> Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

# Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

## References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	RIPA <a href="http://www.legislation.gov.uk/ukpga/2000/23/contents">http://www.legislation.gov.uk/ukpga/2000/23/contents</a>
2	<a href="http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_187876.pdf">http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_187876.pdf</a>
3	The Coalition: Our Plan for Government, HMG (2010) ( <a href="http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf">http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf</a> )
4	

+ Add another row

## Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	30k									
<b>Annual recurring cost</b>	670k	670k	670k	670k	670k	670k	670k	670k	670k	670k
<b>Total annual costs</b>	700k	670k	670k	670k	670k	670k	670k	670k	670k	670k
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>										
<b>Total annual benefits</b>										

\* For non-monetised benefits please see summary pages and main evidence base section

# Evidence Base (for summary sheets)

## A. Strategic Overview

### A.1 Background

The Regulation of Investigatory Powers Act (RIPA) 2000 is the law which governs the use of a number of covert techniques for the investigation of serious crime and terrorism. It was introduced to ensure that public authority use of covert techniques was properly controlled in line with the UK's human rights obligations.

Using covert techniques allows a range of public authorities (from the police and security agencies to councils and organisations like the Office of Fair Trading) to investigate suspected offences without alerting an individual that they are part of that investigation. This can include using hidden cameras to film activity, using phone records or using people to provide intelligence on others. Such techniques can be a vital way of gathering information for a range of important purposes, for example to protect public health (if someone is dumping hazardous waste illegally), to prevent fraud (if someone is falsely claiming disability benefits) or to assess or collect taxes or other statutory charges.

RIPA requires local authorities to use these investigatory techniques only if they are necessary to prevent or detect crime or prevent disorder and their use is proportionate to what is sought to be achieved. Authorisation is at Director or Head of Department level.

There have been a number of concerns around local authority use of covert surveillance in less serious investigations, for instance dog fouling or checking an individual lives in a school catchment area. A recent case against Poole Council provides an example of this. In this case, Poole Council used covert surveillance to investigate whether a girl was entitled to a nursery place at a popular local school. The Tribunal ruled that Poole Council's use of RIPA was neither necessary (it was not a criminal offence) nor proportionate (the information that the family lived inside the school catchment area was available without recourse to covert techniques).

Therefore, the Home Office is reviewing local authorities' access to, and the approvals process for, their use of techniques under RIPA. There are two main aspects of this review:

- establishing a system for magistrates to approve all local authority authorisations; and
- the definition of serious crime and establishing a threshold for local authorities.

The threshold will apply to local authority use of directed surveillance only and will be limited to any criminal offence which carries a prison sentence of at least six months. A carve-out will be applied to underage sales of alcohol and tobacco. This means that local authorities will be limited to using directed surveillance authorised under RIPA to underage sales of alcohol and tobacco as well as those offences with at least a six month custodial sentence. This was decided following a period of public consultation and will be implemented via secondary legislation. The magistrate's approval mechanism will be introduced via the Protection of Freedoms Bill.

### A.2 Groups Affected

This policy is aimed at local authority use of covert techniques. 'Local authority' for this purpose is defined as local councils throughout the UK (for judicial approval) and local councils in England, Wales and Northern Ireland (for the directed surveillance crime threshold). Directed surveillance in Scotland is authorised under the Regulation of Investigatory Powers (Scotland) Act 2000 under arrangements introduced by the Scottish Parliament.

Local authorities are limited to using the least intrusive techniques. RIPA allows local authorities to authorise the use of three covert techniques:

- communications data (such as telephone billing information – but not traffic data, the most intrusive form of communications data, which can be used to identify the location of devices);
- covert surveillance on individuals in public places; and
- covert human intelligence sources (CHISs).

Local authority use of all three techniques will need to be considered and approved by a magistrate.

### **A.3 Consultation**

#### **Within Government**

The Department for Communities and Local Government, the Ministry of Justice, Her Majesty's Court Service, Local Government Association, Local Government Regulation, Northern Ireland Office, Scotland Office, Department of Work and Pensions and Department of Business, Innovation and Skills.

#### **Independent of Government**

The Interception of Communications Commissioner and the Chief Surveillance Commissioner.

#### **Public Consultation**

The development of this policy has been handled as part of the counter terrorism review and there has been a public consultation as part of that review. During the consultation the Home Office received correspondence from a number of human rights groups including Liberty, Justice, a number of councils and the Local Government Association. The Home Office received some correspondence from members of the public.

## **B. Rationale**

Local authorities have been heavily criticised by the media and human rights groups for using covert surveillance in instances in which it is not considered proportionate and where it does not safeguard an individual's human rights. Therefore, in disproportionate cases the Coalition Government will ban the use of the Regulation of Investigatory Powers Act (RIPA) by councils, unless they are signed off by a magistrate and required for stopping serious crime.

## **C. Objectives**

The Government wants to ensure that local authorities do not use covert techniques in trivial cases in order to protect an individual's Right to Respect for Private and Family Life under Article 8 of the ECHR. Requiring each local authority authorisation to be approved by a magistrate prior to use will provide this additional safeguard.

## **D. Options**

Option 1 is to make no changes (do nothing).

This option has been rejected as it will not meet the Government's objectives.

Option 2 is to introduce an approval system using the existing Surveillance and Interception of Communications Commissioners.

The Chief Surveillance Commissioner and Interception Commissioner oversee local authority use of RIPA. They conduct inspections of local authority authorisations of directed surveillance, CHIS and communications data. This independent scrutiny examines whether the tests of necessity and proportionality have been appropriately met and is equivalent to the test we envisage for magistrates. Due to this latter role, we considered whether the Commissioners could undertake a function to approve local authority authorisations prior to use, instead of a magistrate.

This option has been rejected as it does not meet the Government's objective to provide judicial oversight. The Coalition commitment specifies approval by a magistrate. Although, the Commissioners are former members of the judiciary, there is a strong public perception that judicial oversight offers greater independence and scrutiny rather than what would be the case if the Commissioners both inspected and approved.

Option 3 is to introduce a magistrate's approval mechanism. This is the preferred option. During the development of this option a number of policy issues had to be decided. These are detailed below:

- a) Whether local authority use of all three techniques should be approved by a magistrate. It was decided that, in order to meet the coalition commitment and ensure that independent oversight was exercised, all local authority authorisations should be considered and approved by a magistrate.
- b) Whether the magistrate considering the case should be a stipendiary or lay magistrate. It was concluded that due to a smaller number of the former that lay magistrates should be used.
- c) Whether the provision of a judicial approval should be applied, where possible, to Scotland and Northern Ireland.
- d) Whether the magistrate will provide a reconsideration or review of the authorisation. It was concluded that the magistrate will reconsider the authorisation afresh. One of the tests the magistrate will apply in the case of directed surveillance is whether the offence under investigation meets the crime threshold (or concerns the underage sales carve-out).

## **E. Appraisal (Costs and Benefits)**

### **Option 2 – Introduce an approval system using the existing Surveillance and Interception of Communications Commissioners**

We based our approximate costings for a non-judicial approval regime on that carried out currently by the Surveillance Commissioners for intrusive surveillance and property interference.

There are six Surveillance Commissioners. Approximately 95% of a Commissioner's job is authorisation (the rest is follow-up inspections). There are approximately 3,000 applications for authorisation each year. Each Commissioner is paid in the region of £30,000 per annum, plus £40.34 per authorisation. The cost of the regime is approximately £300k annually.

Statistics on the use of RIPA techniques by councils are not collated centrally; however we estimate that there were around 5,500 authorisations in 2009/2010. Inserting the threshold

would remove some of these authorisations but, including set up costs, a regime approving 5,500 authorisations per year would cost in the region of £600k annually.

### **Option 3 – Legislate to introduce a magistrate’s approval mechanism for local authorities**

Statistics on the use of RIPA techniques by councils are not collated centrally; however we estimate that there were around 5,500 authorisations in the UK in 2009/2010. Inserting the threshold would remove some of these authorisations.

MOJ have estimated the cost of 5,500 20 minute magistrate hearings to be £670k per annum. This is based on an average magistrate’s court cost per hour of £365. As the sponsoring department, the Home Office would be responsible for providing this budget into the future. Further one-off set up costs including training would need to be added but these will probably be in the region of £10k for England and Wales. This may need to be done additionally for Northern Ireland and Scotland and this has been estimated at a further £20k.

There will be resource required from local authorities in light of the new approval mechanism. A member of local authority staff will need to present the authorisation to the magistrate. This cost will be the staff time/travelling costs to that member of staff attending court. This cost will be negligible.

The benefit of introducing the magistrate’s approval mechanism is to ensure that local authority authorisations are subject to independent judicial scrutiny. This will ensure that local authorities do not use the techniques in trivial cases.

## **F. Risks**

The figures provided are estimated costs. One risk is that the estimates provided on training and the cost of magistrates are inaccurate. We are working with MOJ in order to get more definite costs.

Another risk is that there is a delay to the introduction of the magistrate's approval mechanism. We will be working to ensure that the system can be implemented as soon as possible following Royal Assent. We are engaged with MOJ, the Scotland Office and the Northern Ireland Office and will ensure we are linked in to their training programme for magistrates/sheriffs. Additionally, there is a risk of a magistrate approving an authorisation for a trivial case. This should be mitigated by training and guidance.

## **G. Enforcement**

The policy will be enforced by the Home Office, Communities and Local Government, Ministry of Justice and the Local Government Association. Enforcement will be achieved by advice, guidance and training. The guidance will likely be a Home Office/CLG circular.

## **H. Summary and Recommendations**

The table below outlines the costs and benefits of the proposed changes.



<b>Table H.1 Costs and Benefits</b>		
<b>Option</b>	<b>Costs</b>	<b>Benefits</b>
<b>3</b>	£10k-30k (one-off) plus 670k per year	Provision of independent, judicial safeguard.
	Resource of local authority engaging with magistrate's court.	
Source:		

Option 3 is the preferred option because it meets the policy requirements set out by Ministers whilst allowing local authorities to continue to access RIPA techniques in key cases.

Option 2 has been rejected as it does not meet the Government's objective to provide judicial oversight. The coalition commitment specifies approval by a magistrate. Although, the Commissioners are former members of the judiciary, there is a strong public perception that judicial oversight offers greater independence and scrutiny rather than what would be the case if the Commissioners both inspected and approved.

## **I. Implementation**

The Government plans to implement the magistrate's approval system via the Protection of Freedoms Bill.

## **J. Monitoring and Evaluation**

The effectiveness of the new regime would be monitored through feedback from practitioners. Additionally, there will be a need to review the number of cases and the cost of the magistrate's time nine months post-implementation.

## **K. Feedback**

The Home Office has frequent contact with CLG, MOJ and Local Government Regulation (part of the LGA). Prior to implementation we will discuss and develop the best mechanism of obtaining feedback.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p><b>Basis of the review:</b> [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)]; To review the existing policy and assess its effectiveness.</p>
<p><b>Review objective:</b> [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] Intended to ensure that local authority use of covert techniques are not used in trivial cases and that cases for the use of directed surveillance will meet the threshold.</p>
<p><b>Review approach and rationale:</b> [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] Evaluation of how the system has been used, what the impact to the local authority has been and whether the system has caused any delay. Will obtain views from various stakeholders.</p>
<p><b>Baseline:</b> [The current (baseline) position against which the change introduced by the legislation can be measured] We will use the statistics available from the commissioners to assess whether the number of authorisations has reduced. We will develop a mechanism whereby we can obtain statistics on magistrates' decisions.</p>
<p><b>Success criteria:</b> [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives] That there are no cases of misuse of these covert powers by local authorities.</p>
<p><b>Monitoring information arrangements:</b> [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review] We will rely upon statistics currently collect by the Commissioners and look to ensure that the court service can provide figures on magistrates's decisions.</p>
<p><b>Reasons for not planning a review:</b> [If there is no plan to do a PIR please provide reasons here] N/A</p>

## **Annex 2. Specific Impact Tests**

### **Statutory Equality Duties**

#### **Equality Impact Assessment**

It was assessed that this policy does not have any direct consequences for equality in terms of race, gender, disability, socio-economic etc. This applies both to the crime threshold for local authority use of directed surveillance (including for the carve-out for underage sales of alcohol and tobacco) and the judicial approval for all three covert techniques used by local authorities.

#### **Justice Impact Test**

The impact on the justice system has been assessed as minimal. The Ministry of Justice confirmed that they were content with the estimated costings provided in the Justice Impact Test.

#### **Human Rights Test**

A full ECHR memorandum was developed and published for the Protection of Freedoms Bill.