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**Office of Surveillance  
Commissioners**

**OFFICE OF SURVEILLANCE COMMISSIONERS**  
**INSPECTION REPORT**

**Department for Environment Food And Rural Affairs**  
**28<sup>th</sup> September and 29<sup>th</sup> November 2012**

**Assistant Surveillance Commissioner:**  
**Sir David Clarke**

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**Office of Surveillance  
Commissioners**

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11<sup>th</sup> December 2012

**DEPARTMENT FOR ENVIRONMENT FOOD AND RURAL AFFAIRS**

**INSPECTION REPORT**

Inspection dates 28<sup>th</sup> September and 29<sup>th</sup> November 2012

Inspector Sir David Clarke  
Assistant Surveillance Commissioner

**Introduction**

1. The Department (DEFRA) has policy responsibility for animal health and welfare, environmental protection, food, farming, fisheries, land use and rural affairs. It has a complex "delivery network" including executive agencies, non-departmental public bodies (NDPBs), public corporations and other agencies which it funds. Through these agencies it enforces a wide range of legal obligations, in accordance with the principles contained in its Enforcement Policy Statement.
2. The last OSC inspection of DEFRA was carried out by Clare Ringshaw-Dowle, Surveillance Inspector, in July 2010. In her report dated 19<sup>th</sup> July 2010, endorsed by you, Mrs Ringshaw-Dowle made four formal recommendations.
3. Since the 2010 report a number of structural changes have taken place. Those relevant to DEFRA's RIPA structure at headquarters are as follows:
  - Legal Services are now provided by the Treasury Solicitor's Department, DEFRA itself no longer having its own legal department. [REDACTED] and [REDACTED] whilst still located within DEFRA, are now employed by the Treasury Solicitor.
  - The Enforcement Policy Unit, which in 2010 was headed by [REDACTED] no longer exists. Its functions are now exercised by Improving Regulatory Delivery (IRD), which forms part of DEFRA's Better Regulation Programme.

4. The Permanent Secretary of DEFRA is Bronwyn Hill, whose address for correspondence is Nobel House, Smith Square, London SW1P 3TR.
5. Despite its widespread regulatory and investigatory activities, DEFRA remains a very infrequent user of its RIPA powers. [REDACTED]

### Inspection

6. The purpose of my inspection was to examine DEFRA's policies and procedures in place for compliance with RIPA and to ascertain that RIPA awareness is maintained so as to ensure that unauthorised covert activity does not take place. I started by visiting DEFRA's London headquarters on 28<sup>th</sup> September.
7. Following that meeting, arrangements were made for me to meet representatives of the two key executive agencies of DEFRA which remain scheduled with RIPA authorisation powers under SI 2010/521, namely DEFRA Investigation Services (DIS) and the Centre for Environment, Fisheries and Aquaculture Science (CEFAS). On 29<sup>th</sup> November I travelled to DIS's offices near Bristol for these meetings. I also received written information and spoke by telephone to the Maritime Management Organisation (MMO). I deal with each of these separately below.
8. I am grateful to all concerned, particularly Ms Govindasamy who supplied advance material at short notice and made the arrangements for my visits, for their helpful and constructive engagement with my inspection. I regret that my visit to DIS's offices had to be postponed from 1<sup>st</sup> November for personal reasons.

### Progress against recommendations

9. Mrs Ringshaw-Dowle made four formal recommendations.

1. *Where directed surveillance or use of a CHIS is authorised, officers must ensure that the paperwork is provided to the EPU as quickly as possible to enable timely quality assurance and feedback.*

A more specific procedure is now in place to ensure that this is done.  
Discharged

2. *The members of the EPU should be assisted by a member of the legal department of DEFRA to quality assure the next few authorisations.*

A procedure, with flow chart, has been put in place to meet this recommendation, as it was understood within DEFRA. The recommendation can therefore be regarded as discharged. This is discussed further at paragraphs 15ff below.

3. *RIPA training should be repeated at regular intervals and should include all those within DEFRA who might be required to act as applicants, authorising officers (AOs), handlers or controllers. Such training should emphasise the importance of detailed form completion.*

Partly completed. High quality training for applicants and AOs took place in January 2012, but DIS (unlike CEFAS) does not presently have trained CHIS handlers and controllers in place.

4. *Where a CHIS is authorised, associated records must be maintained...*



#### Visit to DEFRA Headquarters

10. At Ergon House on 28<sup>th</sup> September 2012, I met the following senior personnel:

- [redacted] formerly Deputy Director of Legal Services, now Deputy Director in DEFRA Legal Advisers (employed by the Treasury Solicitor);
- Dawn Woodward, Head of IRD;
- Charmaine Govindasamy, Project Manager in IRD (who, until shortly before my visit, had been Acting Head of IRD covering Ms Woodward's absence on a special project).

11. At the time of the last inspection the 2010 Home Office Codes of Practice were newly published. [redacted] rôle was effectively that of Senior Responsible Officer (SRO), exercising the responsibilities described in paragraph 3.28 of the Covert Surveillance etc Code. Since he is no longer an officer of DEFRA, the position of SRO is now held by Stephen Gleave, Head of the Better Regulation Programme (of which IRD forms part). The legal expertise of [redacted] and indeed of the senior legal adviser [redacted] remains readily available behind the scenes, so there is no reason to believe that this change will bring any disadvantage.

12. Mr Gleave was on leave at the time of my visit to Ergon House. Though he is not a qualified lawyer he is a university graduate in law. I spoke to him by telephone following my meetings with DIS and CEFAS and after preparing this report in draft, giving some feedback and briefly discussing my findings.

13. DEFRA's *Policy and Operational Document* (the *Policy*) was duly revised following the 2010 inspection, providing the practical guidance found to be missing in 2008 and 2010<sup>1</sup>. It has recently undergone further drafting changes and I was able to make suggestions for further improvement before it is finalised. Some of these changes have been made during the interval between my visit to Ergon House and the date of this report, and therefore need no further mention here; other improvements are yet to be made:

<sup>1</sup> 2010 OSC report, paragraphs 6.9-6.10

- Specific periods of validity of authorisations (3 months and 12 months respectively, not “a maximum of” (paragraphs 5.17 and 6.31<sup>2</sup>);
- Greater clarity in the definition of a CHIS, to include not only investigators acting covertly to form or establish relationships to obtain information, but also members of the public as informants who, although not tasked to do so, covertly provide information which they have obtained in consequence of the existence of a personal or other relationship<sup>3</sup> (paragraphs 6.1ff);
- The sections on setting and holding reviews (5.25ff and 6.39ff) should logically precede those on renewals (5.19ff and 6.33ff); the processes of review and renewal are quite distinct but sometimes cause confusion.

See recommendation

14. The *Policy* provides in Annex 1 that the AOs shall be “Senior Investigating Officer DIS and Senior Investigating Officer CEFAS”. This reflects the offices prescribed in SI 2010/521. I shall deal separately with these in considering DIS and CEFAS separately below.
15. In response to the Inspector’s observations in her 2010 report calling for improved quality assurance at DEFRA HQ (i.e EPU, now replaced by IRD), with a legal input for the “next few authorisations”, arrangements have been devised by IRD and provided to DIS and CEFAS in the form of a flowchart, to be followed in future use of RIPA powers.
16. The flowchart has been redrafted and reissued since my visit to HQ, and is now in two parts. Stage 1 is intended to cover the first few authorisations. It provides that once the need for a “surveillance operation”<sup>4</sup> is identified, the draft application is to be submitted to a Gatekeeper, who will check it before sending a redacted copy to DEFRA HQ Legal for quality assurance checking. It will then be returned to the Gatekeeper who will return it to the applicant for submission to the AO. Stage 2 is the conventional authorisation process which will then follow for all future RIPA usage.
17. In a document prepared for my visit, but not in the flowchart itself, the Gatekeepers are named as [REDACTED] for DIS and [REDACTED] for CEFAS. In the case of CEFAS, this presents a difficulty to which I shall refer later. But, more generally, I have concluded that the process which has been devised is not only unduly cumbersome but also represents a misinterpretation of Mrs Ringshaw-Dowle’s observations and her second formal recommendation.
18. As I have confirmed with her, it was not her intention that there should be a lawyer’s quality check of each of the next few RIPA applications before they are seen and authorised by an AO, but on receipt of the completed

<sup>2</sup> References are to the paragraph numbers of the revised *Policy*, as provided to me in November.

<sup>3</sup> RIPA s26(8)(c) and CHIS Code of Practice paragraph 2.22

<sup>4</sup> The flowchart is ambiguous as to whether it includes CHIS as well as directed surveillance applications

authorisations at EPU. A careful reading of her report shows this to be the case; she referred to the receipt by EPU of "completed RIPA documentation" and of "RIPA authorisations"<sup>5</sup>, not of applications which are yet to be placed before AOs.

19. I can see how this interpretation may have arisen. It may have been thought that if the lawyer detects errors or omissions in an application which has passed scrutiny by an AO and has become a completed authorisation, it is too late to be corrected. What I believe the Inspector had in mind is that lessons can be learned for the future, or (if the errors or omissions are fundamental) the authorisation can be returned to the AO with a view to cancellation and (if still necessary and proportionate) starting afresh.
20. I recognise the time and effort which have been devoted to devising a process to meet the need for improved quality assurance in the light of the 2010 report, and I am in no way critical of it. But following my discussions with DIS and CEFAS, I conclude that the process is too cumbersome, and that DEFRA can properly proceed on the basis that the quality check by a lawyer will take place when the completed authorisation is submitted to IRD to be entered into the central record, rather than before submission to an AO.
21. It may be that the process which has been devised mirrors that in use at the Environment Agency (EA). The training materials provided to me, produced by [REDACTED] of EA who provided the January 2012 training for DEFRA personnel, includes a process flowchart for directed surveillance authorisations, incorporating both the involvement of a gatekeeper and submission for legal quality assurance before the application goes to the AO<sup>6</sup>.
22. Annex 3 of the Policy provides links to the four standard RIPA forms on the Home Office website. These include the form normally known as RIP1, being the usual combined application and authorisation form. At my visit to Ergon House, however, I was shown separate application and authorisation forms which it was intended to use in future. The authorisation form provides for the AO to record his reasoning on necessity and proportionality before describing the surveillance itself (the "5 Ws"), which is somewhat illogical and is no longer a feature of the standard Home Office forms. It may be that these were devised as separate forms in order to facilitate the applications being submitted (pre-authorisation) to DEFRA HQ for quality checking under the flowchart procedure, which will not now occur if my report is endorsed by you and accepted by DEFRA. I consider that in future, the usual combined application/authorisation form should be used.
23. The *Policy* itself, in its latest version, omits any reference to the role of a Gatekeeper. Whereas in DIS [REDACTED] will continue to act de facto in this role in any future RIPA usage, there is no equivalent officer in CEFAS because [REDACTED] is likely to be the applicant. Since the *Policy* applies throughout DEFRA, it would be inappropriate to create an inflexible Gatekeeper requirement.

<sup>5</sup> Paragraphs 6.12-13, and recommendations 10.1 and 10.2

<sup>6</sup> Interestingly, no such legal quality assurance appears in the separate flowchart for urgent oral authorisations, even at the review stage after 72 hours.

## Training

24. Two RIPA training day workshops took place on 25<sup>th</sup> and 26<sup>th</sup> January 2012, the first for AOs and the second for Applicants. I have been provided with the Powerpoint training materials and lists of those who attended. On each day, the primary trainer was [REDACTED] of EA, whose presentation was supplemented by Mr Burke to provide the legal perspective.
25. DEFRA are to be commended for providing this training [REDACTED]. Unlike the training reviewed in the 2010 report, the relevant CEFAS officers were included this time. The training did not, however, include the processes for CHIS authorisation and the roles of handler, controller etc.

## DEFRA Investigation Service (DIS)

26. On my visit to DIS on 29<sup>th</sup> November 2012, I met the following officers:

- [REDACTED] Head of DIS
- [REDACTED] Head of Intelligence;
- [REDACTED] one of the two Senior Investigations Officers (SIOs).<sup>7</sup>

27. DIS's role remains as described in paragraph 8.16 *ff* of the 2010 report. For historical reasons, it located within the Rural Payments Agency, which is one of the major "clients" for which it carries out its investigation work<sup>8</sup>. But it undertakes investigatory work for many other bodies within the DEFRA network, including the Food and Environment Research Agency<sup>9</sup>, the Animal Health and Veterinary Laboratories Agency<sup>10</sup> and the Forestry Commission for England. It also carries out disciplinary and leak investigations for DEFRA itself, or "DEFRA Core".

28. DIS's structure and activities, and its position in the DEFRA network, are presently under review by Professor Wooldridge, a senior official of the Veterinary Laboratories Agency. I encountered a strong feeling, shared by CEFAS, that a more intelligence-led approach, with improved joined-up intelligence arrangements, should bring about increased efficiency and effectiveness.

29. SI 2010/521 prescribes Senior Investigation Officer as AO in DIS. In any RIPA usage, an Investigation Officer (IO) acts as applicant and one of the two SIOs, not being one who has been involved in the investigation, authorises. In

<sup>7</sup> All three officers participated in the 2010 inspection. The other SIO at that time, [REDACTED] has since retired. His replacement, [REDACTED] was away on the date of my visit.

<sup>8</sup> The RPA incorporates the British Cattle Movement Service and the Horticultural Marketing Inspectorate

<sup>9</sup> incorporating the Central Science Laboratory, and the Bee Health, Plant Health and Seeds and Genetically Modified Crops Inspectorates

<sup>10</sup> incorporating the Egg Marketing and Dairy Hygiene Inspectorates



practice, any such application passes through the hands of [REDACTED] who acts as gatekeeper even if not formally so designated.

30. There is no established structure within DIS for CHIS management. However, the need to consider making a CHIS authorisation, either in relation to an IO or a member of public as a CHIS, might arise unexpectedly and at short notice.
31. [REDACTED] and [REDACTED] explained to me that in such a situation, they could arrange immediate training through their police contacts, and could have the necessary structure in place within 24 hours. Two IOs would be designated and trained as handlers, one SIO would act as controller and the other would authorise as AO.
32. I am doubtful whether such an ad hoc arrangement is entirely satisfactory. In my view DIS should consider following the example of CEFAS and arrange CHIS training for a number of its IOs in advance of the need arising.

See recommendation

33. Messrs [REDACTED] and [REDACTED] all attended the AOs' training workshop in January. The majority of DIS's complement of IOs, 15 in number, attended the applicants' workshop on the following day. The defects described in the 2010 OSC report were discussed in the course of the training, and I am optimistic that such errors will be avoided in future. An annual conference of the entire team is held, at which any updates and necessary reminders on RIPA issues are provided.

#### Centre for Environment, Fisheries and Aquaculture Protection (CEFAS)

34. Following my meeting with officers of DIS, I met the following officer of CEFAS, which incorporates the Fish Health Inspectorate (FHI):
  - [REDACTED] Senior Fish Health Inspector.
35. The activities of CEFAS in general, and FHI in particular, were fully described in paragraphs 8.1ff of the 2010 report and do not need to be repeated here. Though CEFAS is a large organisation, FHI is a small part and is the only part with an investigative function. Because of the technical scientific nature of its work, it retains its own team of IOs rather than commissioning DIS, and is specifically scheduled in SI 2010/521 designating a Senior Fish Health Inspector as AO.
36. In practice any investigation which may give rise to RIPA usage will be one undertaken by or under the supervision of [REDACTED]. He therefore cannot act as AO. Indeed, in the authorisations inspected in 2010, he was the applicant. In reality, in any future RIPA usage, [REDACTED] is likely to be the applicant, in which case he cannot also be a gatekeeper. If, of course, an IO under his supervision acts as applicant, he will act de facto as gatekeeper to provide a quality check. The normal AO is [REDACTED] the head of FHI, or [REDACTED]

Both these officers participated, with [REDACTED] in the 2010 inspection, and all three attended the AOs' training workshop in January 2012<sup>11</sup>.

37. [REDACTED] is the only officer primarily employed in intelligence and investigation within FHI. Any evidence or intelligence which might give rise to the need for covert surveillance is submitted to him on a 5x5 intelligence form. He has identified a need for more specific investigator training for his inspectors, and selected two to attend training with Greater Manchester Police; these two also attended the DEFRA applicants' training workshop in January 2012.
38. [REDACTED] has also recognised the need for CHIS readiness. Three of his inspectors have completed a CHIS training course arranged through the Serious Organised Crime Agency, part of which he also attended. A CHIS Register has been created to comply with the record-keeping requirements, and he would himself act as CHIS Controller in the event of a CHIS authorisation being made.
39. I conclude that CEFAS is well equipped for future RIPA usage if and when the need arises, and that defects of the sort uncovered in the 2010 inspection should not arise in future.

#### Marine Management Organisation

40. As Mrs Ringshaw-Dowle explained in paragraphs 6.1 and 6.2 of the 2010 report, the Marine and Fisheries Agency (MFA) is scheduled as an arm of DEFRA having RIPA powers; SI 2010/521 specifies that directed surveillance may be authorised by a District Inspector, and CHIS by the Deputy Chief Inspector. But MFA no longer exists, having been subsumed into the Maritime Management Organization (MMO), a NDPB created by the Marine and Coastal Access Act 2009.
41. MMO has not inherited MFA's powers under RIPA<sup>12</sup>. The Marine and Coastal Access Act 2009 did not effect any amendment to Schedule 1 of RIPA, nor did SI 2010/521 include MMO in the list of public authorities entitled to designate RIPA AOs. This appears to have been a legislative oversight; neither DEFRA nor MMO is aware of any good reason for the failure to invest MMO with RIPA powers.<sup>13</sup>
42. I discussed this state of affairs by telephone with [REDACTED] the recently appointed Head of Marine Compliance based at MMO's headquarters in Newcastle-upon-Tyne. [REDACTED] kindly supplied a briefing note in advance of our conversation. I decided that it was not necessary to visit Newcastle; if and when MMO acquires RIPA powers, it will of course be subject to periodic OSC inspection.

<sup>11</sup> [REDACTED] name was omitted from the attendance list supplied to me, but [REDACTED] assured me that [REDACTED] attended.

<sup>12</sup> Nor, indeed, its powers under the Proceeds of Crime Act 2002

<sup>13</sup> By contrast, the Gangmasters Licensing Authority was specifically accorded RIPA powers under SI 2010/521 when it was separated from DEFRA and became a NDPB, and is accordingly subject to periodic OSC inspection.

43. MMO's functions, including its enforcement functions, are much wider than those of the former MFA. Though within the DEFRA Network (or "DEFRA Family"), it has various functions previously associated with other departments including the Department for Transport, the Department of Energy and Climate Change and the Ministry of Defence. As well as managing UK fishing fleet capacities and fisheries quotas, it licenses activities such as the installation of offshore wind turbines and the extraction of sand and other minerals from the sea bed, as well as other activities which are unlawful unless validly licensed. It works with other agencies to manage a network of marine protected areas to preserve vulnerable habitats. All these activities potentially involve investigation and enforcement tasks.

44. [REDACTED]

45. Marine Scotland is invested with directed surveillance and CHIS powers by virtue of the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA). It is subjected to periodic OSC inspection on your behalf. The latest report, by His Honour Norman Jones QC dated 8<sup>th</sup> June 2011, shows that it has a compliant RIPSA structure and high quality management, using directed surveillance only as a last resort [REDACTED]


46. [REDACTED] explained to me that MMO continues as described in 2010, not using directed surveillance or CHIS until such time as the legislative anomaly is corrected. To quote his note to me: *"This has significantly reduced the investigative tools available to MMO compared to MFA, which limits the effectiveness of MMO's enforcement capability"*. I have been given examples of investigations which might usefully have been progressed by the use of authorised directed surveillance and/or CHIS<sup>14</sup>. It is no exaggeration to say that in some of their important investigations, MMO has been hamstrung by its lack of RIPA powers.

47. It is recognised that as soon as MMO acquires RIPA powers in its own right, steps will immediately be taken to establish a compliant RIPA structure, policy and management. A Senior Responsible Officer (SRO) will be designated in accordance with paragraph 3.28 of the Covert Surveillance etc Code of Practice, and suitable AOs will be designated and trained. A central record of authorisations will be created, in compliance with paragraph 8.1 of the same Code. Refresher training will be arranged for investigators, most of whom had RIPA awareness from their time in MFA.

<sup>14</sup> One of the examples, involving the use of a vehicle tracker, would be likely to require an interference with property authorisation under the Police Act 1997 and would therefore not be within DEFRA's powers

48. I shall therefore recommend that DEFRA take renewed steps as soon as possible to promote the necessary secondary legislation, adding MMO to Schedule 1 of RIPA and to Schedule 1 of SI 2010/521, while removing all references to MFA from the DEFRA part of that Schedule. During my visit to DEFRA I was told that such a request had previously been made to the Home Office, but had been refused.

### Conclusion

49.  But substantial work, albeit some of it misdirected, has been done to meet the recommendations of the 2010 report.

50. I am satisfied that the arrangements within both DIS and FHI are such that RIPA awareness is maintained so as to reduce any risk of unauthorised covert activity taking place. The officers whom I met, particularly those with senior police experience, are key individuals in their respective organisations and impressed me with their knowledge and commitment.

51. I regard MMO's lack of RIPA powers, arising from what appears to have been a legislative error in 2010, as a matter which should be rectified by statutory instrument at the earliest opportunity.

52. I therefore make the following

### Recommendations

- I. *That DEFRA's RIPA Policy be further revised (see paragraph 13)*
- II. *That the next few RIPA authorisations be quality assured, not only by IRD as keeper of the Central Record but by legal advisers (see paragraphs 15-21; revised recommendation)*
- III. *That training be provided for those in DIS who might be required to act as CHIS operatives and handlers, including record-keeping (paragraph 32);*
- IV. *That action be taken within Government at a high level to have MMO invested with RIPA powers as soon as possible (paragraph 48)*

David Clarke  
Assistant Surveillance Commissioner