Home Office

REGULATION OF INVESTIGATORY POWERS ACT 2000:

CONSOLIDATING ORDERS AND CODES OF PRACTICE

Summary of responses to the 2009 consultation paper

Contents

A. INTRODUCTION

On 17 April 2009 the Home Office launched a three month public consultation relating to the Regulation of Investigatory Powers Act 2000 ('RIPA'). The consultation paper described the system of regulation for a range of key investigatory techniques set out in RIPA, including techniques of covert surveillance which were previously used without any regulation at all. RIPA established a comprehensive set of safeguards to ensure these techniques were used appropriately and compatibly with the European Convention on Human Rights ('ECHR'). It ensured that they were subject to independent oversight and it provided for an independent, judicial, complaints mechanism. It was not 'anti-terrorism' legislation, nor did it give public authorities any new powers to use covert investigatory techniques.

The consultation paper was designed to assist the Government, amongst other things, to:

- review the public authorities able to authorise the use of communications data, covert surveillance in public places ('directed surveillance') and covert human intelligence sources, under RIPA;
- provide better guidance to ensure that the tests of necessity and proportionality are properly understood and applied lawfully, consistently and with common sense;
- reduce bureaucracy by providing greater clarity on when authorisations are needed – and when they are not (in line with a recommendation in Sir Ronnie Flanagan's Review of Policing); and
- ensure that the constituency business of MPs is treated in the same way as other confidential material (following the report of Sir Christopher Rose into the bugging of conversations at HMP Woodhill between Babar Ahmad and Sadiq Khan MP).

The text of the consultation paper is at:
http://www.homeoffice.gov.uk/documents/cons-2009-ripa?view=Binary.

The Home Office asked the following questions:

1. Taking into account the reasons for requiring the use of covert investigatory techniques under RIPA set out for each public authority, should any of them nevertheless be removed from the RIPA framework?
2. If any public authorities should be removed from the RIPA framework, what, if any, alternative tools should they be given to enable them to do their jobs?
3. What more should we do to reduce bureaucracy for the police so they can use RIPA more easily to protect the public against criminals?
4. Should the rank at which local authorities authorise the use of covert investigatory techniques be raised to senior executive?
5. Should elected councillors be given a role in overseeing the way local authorities use covert investigatory techniques?
6. Are the Government's other proposed changes in the Consolidating Orders appropriate?
7. Do the revised Codes of Practice provide sufficient clarity on when it is necessary and proportionate to use techniques regulated in RIPA?

222 responses were received. This document summarises the responses and explains what steps the Government is proposing to take next. Any queries about this document should be made to:

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B. SUMMARY OF RESPONSES

The 222 respondents comprised:

- 104 local authorities;
- 9 local authority associations;
- 10 law enforcement bodies;
- 9 other public authorities;
- 6 legal reform or scrutiny bodies;
- 5 communications service providers;
- 3 training organisations;
- 2 housing agencies;
- 2 oversight commissioners (the Chief Surveillance Commissioner and the Interception of Communications Commissioner);
- 68 members of the public (of whom 27 had experience of working with RIPA); and
- 4 other NGOs with interests in the prosecution of offenders, waste management, computing and children's rights.

A full list is set out in Section D.

Contributions ranged from direct answers to some or all of the seven questions asked in the consultation paper, through wider but related comments, to more general remarks on the regulatory regime in RIPA.

62.5% of the respondents were organisations operating under or connected with the regulatory regime (such as local authority associations and communications service providers). Among these respondents, there was almost unanimous support for the proposals in the consultation paper, as well as the RIPA framework generally. This was because they felt that the proposals would ensure that public authorities could continue to carry out their functions of protecting the public with due regard for the ECHR, particularly Article 8 (the right to private and family life).

15% of the responses came from individuals in public authorities with experience of the RIPA regulatory regime, or organisations co-operating with RIPA (for instance registered social landlords and training organisations). They too were broadly positive about the Government's proposals.

The remaining 22.5% were from members of the public, or organisations concerned by the form and purpose of RIPA. The strongest criticisms of the RIPA framework, and of the Government's proposals, came from members of this group, 20% of whom (10 respondents) argued that most public authorities currently able to grant authorisations under RIPA should be removed from the RIPA framework. But 14% of this segment (7 members of the public) argued that the Home Office should not, as it proposed, seek to limit the way public authorities use covert investigatory techniques in relation to matters of purely local concern, such as dog-fouling or other forms of anti-social behaviour.

An examination of the responses to each question asked in the consultation paper, and some of the wider comments raised, follows below.

OTHER CONSULTATIONS

The Home Office has a parallel consultation on how to ensure that public authorities' communications data capabilities to protect the public are maintained against a backdrop of rapidly changing technology. The consultation document 'Protecting the Public in a Changing Communications Environment' can be found at:

http://www.homeoffice.gov.uk/documents/cons-2009-communications-data?view=Binary.

The summary of responses to that consultation will also be published on the Home Office website.

1. Taking into account the reasons for requiring the use of covert investigatory techniques under RIPA set out for each public authority, should any of them nevertheless be removed from the RIPA framework?

5% (11 respondents) were in favour of removing a number of public authorities from the RIPA lists set out in section 7 of the consultation paper. However, there was no consensus between them on how many, or which, authorities should be removed. They ranged from removing all, to removing some, to removing only local authorities. A further 2% (5 responses) were in favour of limiting local authority use of RIPA to investigative activity where they felt a clear case had been made out. These included such areas as benefit fraud, trading standards and environmental health or other crimes which could result in the imposition of substantial custodial sentences.

37% (83 respondents, primarily with experience of using RIPA) argued that there should be no or minimal change to the list of public authorities in the RIPA framework. Some stated that removal should be a matter for the independent oversight Commissioners, not Government, to recommend. Others pointed to the benefits of having one framework for all public authorities, facilitating co-operation with such bodies as nationwide regulators and the police. Separately, although the question was not directly asked, 50% (110 respondents) said specifically that they supported continuing proportionate use of RIPA by local authorities. Some of these argued that improved training and advice, rather than changes to the regulatory framework, were the key to ensuring that authorised covert investigatory techniques were used appropriately.

Some respondents suggested that removing public authorities from the regulatory framework might only result in them using covert techniques as they themselves saw fit rather than subject to regulation, limitation, oversight and an appeals mechanism. This suggestion is also relevant to Question 2.

4% (9 respondents, comprising 8 members of the public and Liberty) suggested that public authorities should only be able to carry out covert activity or access communications data with an authorisation from a magistrate.

Two public authority respondents, which cannot currently access communications data under RIPA, argued that they should be able to do so. These authorities were the Department of the Environment in Northern Ireland, and the Child Maintenance and Enforcement Commission.

Most of the local authority responses welcomed the Home Office's correction of inaccurate media reporting on RIPA, such as describing it as 'anti-terrorism legislation'. Some wanted the Home Office to be more assertive in countering such inaccuracies. Many said that public authorities with statutory enforcement and prevention responsibilities should be given the requisite tools to respond effectively. They noted that if Parliament gave local authorities the statutory responsibility for enforcing legislation then it must also allow them the tools to detect, stop and prosecute individuals who deliberately breach it.

GOVERNMENT'S POSITION

The Home Office is satisfied, on the basis of the material set out in the consultation paper, supplemented by the responses to it, that the public authorities currently listed in RIPA all need to be able to use some or all of the techniques regulated by the Act in order to carry out their statutory functions. We do not propose to remove any public authority entirely from the RIPA framework. However, we are making a number of changes to the entries for 19 public authorities. These affect either the techniques the authorities can use, or the statutory purposes for which they can use them. We are proposing to make changes in relation to local authorities (see below and Questions 4 and 5). In addition, there are minor changes to the titles of authorising officers from a range of public authorities to reflect recent organisational changes.

The Home Office accepts the argument from a number of respondents, including the Chief Surveillance Commissioner, that the best way to address some of the reported inappropriate uses of RIPA is to provide better training and access to advice. The Home Office proposes to help all public authorities, including local

authorities, use RIPA proportionately and appropriately by:

- revising the statutory covert surveillance and covert human intelligence sources codes of practice, including taking into account comments received during the consultation (see Question 7 below);
- working with the Local Government Association (LGA), Local Authorities Co-ordinators of Regulatory Services (LACORS) and the Office of Surveillance Commissioners to develop a tailor-made guidance manual for local authority use of covert surveillance under RIPA;
- working with these groups to develop accredited training packages for local authority trainers and authorising officers.

The Home Office believes that any requirement for authorisation by magistrates could seriously impair the effectiveness of the techniques in question without bringing any benefits in terms of protecting privacy. Magistrates are not best placed to apply the test of necessity and proportionality because they will not be familiar with the operational parameters within which investigations are carried out. Nor would a system of authorisation by magistrates be compatible with the speed and flexibility which are frequently necessary to ensure that these techniques can be used effectively.

The Home Office accepts the case provided in respect of the Department of the Environment in Northern Ireland for access to the least intrusive types of communications data, but not traffic or location data. This is on the basis that the least intrusive forms will be used to identify and prosecute landowners complicit in large-scale industrial dumping of hazardous waste amounting to thousands of tonnes each year. The authority faces potential EC infraction proceedings if it cannot take effective action against environmental pollution. The problem is compounded by close proximity to the Republic of Ireland and higher disposal rates south of the border, leading to the illegal disposal of waste from the Republic north of the border. The Home Office intends to limit the authority's access to the purposes of preventing or detecting crime or preventing disorder, and protecting public health. This is broadly in line with equivalent departments in the rest of the United Kingdom.

The Home Office also accepts the case provided in respect of the Child Maintenance and Enforcement Commission for access to service use and subscriber data in criminal investigations. This information would be used to locate and prosecute non-resident parents who disappear after failing to co-operate with the Commission or to prosecute where they knowingly provide false information in connection with their financial situation. There are some 5,000 non-resident parents, in relation to whom other investigatory techniques cannot be deployed successfully, with the result that communications data is the only viable technique. The Interception of Communications Commissioner's Office has agreed that the Child Maintenance and Enforcement Commission's need is proportionate. The ability to obtain communications data and take action in these cases would translate to an estimated £40 extra per week on average being made available for children receiving no or minimal support from absent parents.

2. If any public authorities should be removed from the RIPA framework, what, if any, alternative tools should they be given to enable them to do their jobs?

26% (58 respondents) commented that there was sometimes simply no way for public authorities to obtain the information they needed to discharge their enforcement role apart from using RIPA. 14% (30 public authority respondents) said that if they were taken out of the RIPA framework they would have to seek equivalent legislative provisions to allow them to carry out their functions. 10 respondents made suggestions which they believed would permit public authorities to carry out their functions. The suggestions were:

- passing to the police the investigative work currently carried out by local authorities, together with the additional resources to discharge these responsibilities;
- developing shared public authority covert services and accountability;
- increasing use of official enquiries and inspection visits;
- creating a new system of court orders granted by magistrates; and
- increasing use of overt techniques, such as CCTV, community wardens and custom-made byelaws.

A further 4 respondents wanted authorised access under RIPA to be the only means of obtaining communications data. 28 out of 30 respondents who addressed the question directly suggested that reliance on alternative regimes, such as that in the Social Security and Fraud Act 2001, would be likely to lead to inconsistency and weakened safeguards, or to lose public and practitioner confidence.

GOVERNMENT'S POSITION

The Home Office acknowledges that the use of different statutory frameworks to access communications data may be undesirable. It is arguable that communications data should only be obtained through RIPA. This is because RIPA combines a robust regulatory regime which requires compliance with human rights, with separate independent oversight and redress mechanisms and a fair system of reimbursement to communications service providers. We therefore propose to review all mechanisms by which public authorities can obtain communications data to see if a single means of authorised access through RIPA would be practicable.

The Home Office agrees with suggestions that local authorities should always consider using a variety of overt investigatory tools (such as improved community advice, warning signposting, enquiries, inspections, local byelaws, overt CCTV, community patrols) before considering whether an authorisation under RIPA is required. Covert investigation authorised under RIPA should be used only when other reasonable options have been considered and ruled out. The Government is bringing forward revised codes of practice and bespoke guidance for local authorities to emphasise this point.

We accept that creating different frameworks for different public authorities would be unlikely to raise public confidence, practitioner efficiency or the availability of effective redress in the case of misuse. This is why we have chosen not to remove public authorities from the RIPA framework entirely.

With regard to the suggestion from several respondents that the police, not local authorities, should be responsible for investigating and enforcing certain anti-social offences such as benefit fraud, consumer scams and fly tipping, this indeed used to be the case. However, Parliament has progressively chosen instead to place these responsibilities on local authorities, in part as a means of reducing the burden on police. This is reflected in the statutory duties placed on them by a range of provisions, including Consumer Protection from Unfair Trading Regulations, the Trademarks Act and the Consumer Credit Act. The system is established and functioning effectively, although a clear need has been identified for better training and tighter use.

3. What more should we do to reduce bureaucracy for the police so they can use RIPA more easily to protect the public against criminals?

The Chief Surveillance Commissioner argued that an approach aimed at reducing bureaucracy is misconceived because paperwork is necessary in order to provide a reliable audit trail to enable actions to be defended in court. Some respondents believed it was artificial to distinguish between bureaucracy for the police and for other public authorities. Others suggested that proposals to reduce bureaucracy for the police while proposing further authorisation and oversight measures for local authorities showed an inconsistent approach.

3% (7) considered that the paperwork and procedures associated with RIPA were entirely proper in order to decide whether it was proportionate to carry out actions which would have an impact on someone's privacy and to provide the necessary audit trail. One of these suggested that police time could be saved by using civilians to complete and process the RIPA forms.

We received 20 suggestions from the 22% (49 respondents) who addressed the question directly to help reduce the time spent on RIPA authorisations. The most commonly cited was a reduction or simplification of the approved RIPA forms which are made available to public authorities. A further 6 respondents wanted to see clearer guidance and training in order to avoid creating unnecessary RIPA authorisations or putting more detail than was required into them (this clearly links in with the more detailed responses to the draft codes of practice in Question 7).

Two responses identified the problems caused if advice received from the Home Office, police and oversight Commissioners was not consistent.

Other suggestions included measures such as:

- extended authorisation periods, lower authorisation levels and a reduction in the written consideration;
- streamlined processes, such as combining the two ways of obtaining communications data (by notices or authorisations) or permitting combined police force authorisations;
- standardisation between the covert surveillance provisions of RIPA and the property interference provisions of the Police Act 1997;
- adopting the European Telecommunications Standards Institute Retained Data Handling Interface standard to improve the handling of requests for communications data; and
- clarifying that RIPA applies to the obtaining of private information, not its processing under the Data Protection Act 1998.

Other suggestions called for a more fundamental reform of the regime, including through:

- a shared 'single point of contact' centre, handling communications data requests for all public authorities;
- a single authorisation for all covert aspects of an investigation;
- a combined single oversight regime for all covert techniques; and
- a repeal of RIPA in favour of simple risk assessments to justify proportionality or a system of judicial warrants.

GOVERNMENT'S POSITION

The Home Office agrees that it is in no-one's interests for documentation to be unnecessarily time-consuming, but also that the potential invasion of privacy caused by using techniques regulated by RIPA should be properly justified in a clear, concise paper trail. We do not accept that short-cutting this trail would produce a better outcome, but we do accept that clearer guidance is needed to assist some public authorities to get the balance right.

The number of RIPA authorisations created without sufficient cause has already been reduced. Under the oversight of the Office of Surveillance Commissioners, the total number of directed surveillance authorisations fell from 26,986 in 2003/04 to 16,118 in 2008/09. We plan to reduce unnecessary authorisations further by providing greater clarity on when authorisations are needed – and when they are not. Draft revisions in the covert surveillance and covert human intelligence sources codes of practice provide practical examples and an enhanced definition of proportionality. They require public authorities to consider the seriousness of the offence in addition to the requirement that they weigh up the benefits to the investigation when seeking whether to authorise covert techniques under RIPA.

The Government is facilitating the work of police collaborative units, such as the regional counter-terrorist units, in line with a recommendation for cross authorisation in Sir Ronnie Flanagan's Review of Policing. This means officers seeking to use techniques under RIPA will be able to apply to authorising officers in different forces, where the Chief Officers have made a collaboration agreement that permits this.

4. Should the rank at which local authorities authorise the use of covert investigatory techniques be raised to senior executive?

22.5% (50 respondents) commented that 'senior executive' could mean different things or have different implications for differently-sized local authorities. Many suggested this could lead to confusion and inconsistency across councils. There were twenty-four suggestions as to what the titles of the ranks covered by the descriptor could be. These included Chief Officer, Deputy Chief Officer, Head of Department, Director, Assistant Director, Head of Service, and a designated legal or monitoring officer, and references to numbers of management tiers above submitting officers or to relevant salary scales.

By far the most common response was to reject the proposal, and respondents who did so cited a number of interlinked reasons:

- 16% (36, including the Chief Surveillance Commissioner) commented that seniority was not the key factor in authorisation; rather, the key was appropriate training, expertise, experience and time – which, as many respondents suggested, the most senior executives would lack, even if they were able to attend lengthy training courses;
- 21% (46) commented that authorisation was already at a level that combined seniority with operational competence and that a higher level would be too remote from operations;
- 8.5% (19) commented that this operational understanding meant that without significant – and, in the circumstances, impractical – training, senior executives would effectively simply rubber stamp investigations, causing delays by adding to bureaucracy;
- 2.5% (6 respondents) felt that raising the rank of authorisers could lead to a decline in RIPA authorisation standards for these reasons; and
- 15% (33) considered that consistency in decision making would be achieved not by designating higher rank authorisation, but by a system of accredited training to existing officers such as was currently being developed for single points of contact acquiring communications data.

Ranged against this response were 7% (16) in favour of the proposal and 5 which were more ambivalent. These latter commented that authorisation was already at a fairly senior level, higher officers would require appropriate training and the key would necessarily remain the question of proportionality.

GOVERNMENT'S POSITION

The Home Office understands that, unlike police authorities, investigative functions form only a small part of local authorities' functions. Because of this, there is no guarantee that the more senior the officers the more competent they will be in terms of understanding investigative matters.

Nevertheless, we also believe that the current descriptors of ranks have resulted in a degree of inconsistency between local authorities. Following further discussion with the Local Authorities Co-ordinators of Regulatory Services (LACORs), the Local Government Association (LGA) and the Department for Communities and Local Government (CLG), we therefore propose to raise the rank of authorising officers in local authorities to senior executive, specifically 'Director, Head of Service, Service Manager or equivalent'. This proposal would prevent any junior officers authorising RIPA techniques.

The Home Office welcomes the LGA's suggestion that each local authority should have a single officer to ensure that all authorising officers meet the standards required by the Office of Surveillance Commissioners (OSC). We will therefore propose that each local authority should have a single member of the corporate management team whose responsibilities include ensuring that designated authorising officers meet these standards.

5. Should elected councillors be given a role in overseeing the way local authorities use covert investigatory techniques?

4% (9 responses) agreed wholly with the proposal, commenting variously that elected members should be involved in all RIPA decisions, or that scrutiny would be likely to moderate RIPA use in line with public tolerance.

There was a much greater level of qualified support for the proposal, characterised by an acknowledgement that elected members had a role in setting policy and holding departments to account, but should not be involved in case by case decision making. These comments break down as follows:

- 22.5% (56) respondents believed that the councillor role should be strategic, not operational, due to constraints caused by their lack of time, training, knowledge and expertise, and the risk of added bureaucracy, delay to cases, possible conflicts of interest and political bias;
- 25% (55) considered that elected members might best discharge their overview function by scrutiny of regular reports on what activities have been authorised under RIPA on at least an annual basis. Others elaborated that the reports should be suitably anonymised and/or published, or that the councillors would need appropriate training in RIPA-related subjects;
- 6.5% (14) commented that local authorities themselves should be involved in deciding the exact nature and frequency of councillor involvement;
- 3% (7) commented that elected members were already able to exercise oversight under section 21 of the Local Government Act 2000 if they chose, so there was no need to be any more prescriptive; and
- one commented it would be difficult to decide which councillors should have the oversight role. Another said that the extension of RIPA oversight by police authority members would be a step too far.

18.5% (41 respondents) were opposed to involving councillors in RIPA oversight, whether at a strategic or operational level, in light of the possibility that councillors' lack of operational understanding would hamper investigations, possible duplication with existing in-house monitoring and auditing arrangements, and problems of political involvement and possible use for party political purposes.

GOVERNMENT'S POSITION

Working from the premise that the way that public authorities discharge their duties should be understood by and command the confidence and support of the local community, the Home Office agrees that the involvement of elected members in local authorities can be helpful in terms of transparency and accountability. The overwhelming consensus of this consultation is that councillors should have oversight of councils' use of covert investigative techniques authorised under RIPA, that this oversight should be strategic not operational, and that individual local authorities should have some degree of local flexibility to determine the exact form and frequency of that oversight.

We shall be amending the relevant codes of practice to include the requirement for local authorities to involve elected members in strategic oversight, including setting the policy and reviewing use at least once a year, and considering reports on use on at least a quarterly basis – but shall not recommend that this engagement extend to operational decision making or stipulate in detail how individual authorities discharge the engagement. Although it is elected members who are accountable to the public for council actions, it is essential that there should be no possibility of political interference in law enforcement operations.

6. Are the Government's other proposed changes in the Consolidating Orders appropriate?

29% (64 respondents) supported the changes the Home Office is proposing to make to public authorities listed under RIPA, and which are summarised in the tables at section 7 of the consultation document. Of these responses, 20 also wanted to increase local authority use of RIPA through some or all of the following suggestions:

- adding techniques such as traffic (location) data or intrusive surveillance (covert surveillance in private residences and vehicles) - neither of which they are currently permitted to use under RIPA;
- adding purposes such as public health and public safety (reverting to the position prior to the limitation applied in 2004 by Parliament in Statutory Instruments 2003 Nos. 3171 and 3172); or
- lowering the higher authorisation levels required to obtain sensitive material subject to legal and professional privilege.

One respondent, the Financial Services Authority, suggested inserting into the Act a new purpose to cover civil offences in cases of market abuse.

A further 2% (4 respondents) wanted to see RIPA broadened to include registered social landlords so that housing associations could authorise covert techniques under RIPA where this might help to curb anti-social behaviour in the housing sector.

7% (15 responses) indicated they were not happy with particular aspects of what was being proposed. Their suggestions – many of which went much wider than the scope of the Consolidating Orders – included:

- the use of covert human intelligence sources should be confined to a much smaller group of authorities (for instance limited to those intelligence and law enforcement bodies able to use intrusive surveillance);
- inspection reports by the oversight Commissioners* should be published in a redacted form;
- better RIPA training should be provided for authorising officers;
- training should be overseen by the Commissioners*;
- juvenile or otherwise vulnerable covert human intelligence sources (such as people in need of community care) and community volunteers (working under local authority schemes to report the results of anti-social behaviour so remedial action can be taken) should never be used;
- local authorities should have their own code of practice on RIPA;
- people should be informed within a year that they have been under surveillance;
- there should be a mandatory requirement for all RIPA applications, authorisations and material obtained to be encrypted; and
- the changes to RIPA should apply also to RIP(S)A.

GOVERNMENT'S POSITION

Several of the suggestions raised in response to this question cannot be addressed by the Government of the UK alone. RIP(S)A applies to covert surveillance and covert human intelligence sources used by Scottish public authorities. This is a devolved matter for the Scottish Parliament and is not the subject of this consultation. Likewise, decisions about publishing the statutory independent inspection reports are matters for the relevant independent oversight Commissioner.

* for communications data the Interception of Communications Commissioner; for directed surveillance and covert human intelligence sources the Chief Surveillance Commissioner; and for the activities of the intelligence agencies the Intelligence Services Commissioner

We do not believe it is proper for the Commissioners to preside over training when they would then have to inspect and judge the effectiveness of that training. But we are convinced that a better surveillance training regime is required, including the development of specific advice for local authorities, and are working with others to develop it. These will include the Office of Surveillance Commissioners.

The Home Office is not proposing to include registered social landlords or to make traffic data available to local authorities. Nor does it propose to reverse the 2004 limitation to local authority authorisations for crime/disorder (set out in Statutory Instruments 2003 Nos. 3171 and 3172), or to create new purposes for which RIPA may be used.

The Home Office agrees that extra protections are required in the case of juvenile or vulnerable covert human intelligence sources, but does not propose to change the higher level of scrutiny and authorisation that must be made in these cases and is set out in Statutory Instrument 2000 No.2793 (the Regulation of Investigatory Powers (Juveniles) Order 2000) and in the Code of Practice on Covert Human Intelligence Sources.

The Home Office does not propose to adopt the suggestion that individuals be told when they have been the subject of covert surveillance as this would undermine the efficacy of covert techniques. We are satisfied that the comprehensive system of independent oversight with an independent complaints mechanism is sufficient without informing individuals that they have been subject to any techniques regulated in RIPA.

It would be impractical to require all material obtained through the use of RIPA to be encrypted. However, it is perfectly reasonable for members of the public to want reassurance that all appropriate steps are taken to protect material obtained through the use of techniques under RIPA. All relevant public authorities have in place a variety of security measures, including physical security measures, security procedures, staff vetting and training, to ensure that material is protected from improper disclosure.

7. Do the revised Codes of Practice provide sufficient clarity on when it is necessary and proportionate to use techniques regulated in RIPA?

24.5% (54 respondents) replied that the draft revised codes did provide the requisite clarity through better guidance on necessity, proportionality and what constituted private information. Roughly the same proportion (53 further views) supported this approach as far as it went but wanted to see additional examples in specific areas such as noise monitoring, outsourcing, test purchasing, use of CCTV/ANPR, trading standards 'house of horrors' operations and the difference between public authority 'core' (outward-facing) and 'ordinary' (internal) functions. Some respondents commented on the benefits of endorsement by the Office of Surveillance Commissioners, the importance of consistent advice from all relevant bodies and the need for reinforcement by a system of accredited training for RIPA authorising officers.

5% (11 respondents) felt the codes provided better guidance than before but could be improved further. Suggestions included:

- contrasting views on rationalising all the RIPA codes into one and making them shorter and simpler;
- replacing the non-specific concepts of proportionality (as set out in RIPA) or triviality (as set out by Ministers in recent public statements on littering or dog fouling) with simple descriptions of what was acceptable and what was not;
- introducing the concept of financial loss as a factor in authorisations;
- one respondent opposed the consultation proposal to bring the authorisation of covert surveillance between MPs and constituents into line with other Confidential sensitive authorisations; and
- one respondent felt the inclusion of illustrative examples could be misleading.

13% (29 responses) judged that the revised codes were inadequate and needed much clearer definitions of necessity, proportionality and private information, or a greater number of far more specific examples. This included sector-specific illustrations, use against employees, reasons for belief in necessity and proportionality, collateral intrusion and cross-border activity. 8 of the 29 had more fundamental concerns, including:

- the codes of practice were not sufficient to regulate behaviour;
- misuse of RIPA authorisation should be made a criminal offence;
- change to judicial authorisation and improved oversight and reporting;
- the need to take account of local views of what was proportionate use of covert investigation;
- access to legally privileged information should be properly determined by primary legislation, not codes of practice;
- the need to consider the rights of children when authorising RIPA (eg extra care to in relation to material involving children); and
- the need for the establishment of a national advice centre.

GOVERNMENT'S POSITION

It is not the intention that the limited examples given in the revised codes replace the key consideration of necessity and proportionality. The Home Office does not believe that it is helpful or indeed possible to approach this matter by a set of rigid examples. We would refer public authorities to the advice and guidance available from the relevant oversight Commissioners, including the OSC Procedures and Guidance manual, and through their regular inspection visits. We would also refer them to the covert advice services of the National Policing Improvement Agency, as well as to the views of their own legal departments. The examples in the Codes of Practice do, however, illustrate how the principles contained in the Codes might be applied in different situations.

The Home Office will reflect the need for increased clarity that has been expressed in revised drafts of the codes and will bring out distinctions where appropriate, including in the examples. We agree that the most important factor is to provide authorising officers with the key considerations that will need to be taken into account when making the judgement that an action is proportionate and to advise on how this is properly recorded.

As noted under Question 1, however, we accept that more specific advice is required to guide some local authorities, particularly those which do not have occasion to authorise surveillance under RIPA regularly. We shall be working with local government organisations and other key stakeholders to prepare such guidance, together with training in its use.

The proposal that MPs' communications on constituency business should be treated in the same way as other confidential material did not elicit specific comment among the respondents who indicated they supported the Home Office's proposals set out in the consultation paper. Only one respondent registered opposition for the reason given above. We shall therefore put the proposal before Parliament.

8. Additional responses offered

3% (7 responses) did not include points relevant to the consultation. These included observations on overt CCTV use and work-related grievances.

1.5% (3 responses) expressed the view that RIPA authorisations should apply only to the investigation of terrorism or serious crime. Seven stated that they should only be available to the intelligence and law enforcement agencies.

5.5% (12) believed the current system should be changed in favour of some measure of judicial authorisation (two of these for handling access to traffic (location) data, one for surveillance of legally privileged communications). One opposed judicial authorisation.

6.5% (14 responses) expressed disappointment that Government views on RIPA use seemed to have been based on inaccurate or inflammatory media reporting rather than how it was actually being used.

3.5% (8 replies) said that if the Government wanted to prevent RIPA from being used for 'trivial' offences then the proper way of doing this was to legislate accordingly. The cornerstone of RIPA was that action had to be 'proportionate' within the meaning of human rights legislation and that meant that it was the independent oversight process and ultimately the courts, not Ministers, who would decide whether public authorities had used the legislation correctly.

18.5% (41 respondents) actively supported local authority use of RIPA to tackle one or more areas such as dog fouling, littering or schools enrolment fraud where this was judged by the local authorities, taking into account all local factors concerned, to be proportionate. By contrast, 5 respondents stated they opposed local authority action under RIPA in these areas.

3% (7 respondents) considered that the RIPA consultation simply did not go far enough: what was needed, they said, was repeal and fundamental reform to protect privacy. Their positions included arguments that the definition of public authorities was too narrow, self-authorisation was legally unsafe, subjects should be informed of surveillance, intercept as evidence should be introduced and a much tighter scrutiny and overview regime should be implemented.

GOVERNMENT'S POSITION

The Home Office agrees that, as the law sets out, necessity and proportionality are the key tests in determining whether RIPA authorisations are appropriate. We are not saying that local concerns such as dog fouling or littering are not important at the local level and even harmful in extreme cases, or that local authorities should not be tackling these areas. Nevertheless, we are satisfied that RIPA authorisations in these areas are unnecessary because:

- there is a variety of overt or non-RIPA remedies available to local authorities, including public information campaigns, signposting, unscheduled visits and overt CCTV. Recourse to covert techniques under RIPA should be considered only when it has reasonably been concluded that these other tactics would not be appropriate; but it is clear that, in some instances, these other tactics have been ruled out too quickly and RIPA has been a first, rather than a last, resort;
- RIPA authorisations are not required to authorise local authority patrols or to monitor particular 'hot-spots' when these activities are not part of specific investigations or likely to yield private information.

More generally, the Home Office is satisfied that there is no need for fundamental reform of the RIPA framework. It sets out a comprehensive system to regulate the use of a range of investigatory techniques by a range of public authorities, all of which have a demonstrable need to use these techniques. It puts in place a rigorous and independent system of oversight. It ensures that there is an effective complaints mechanism. In short, far from creating or expanding the use of these investigatory techniques, it ensures that they are used compatibly with our human rights, including the right to private and family life, under the European Convention on Human Rights.

C. CONCLUSIONS

The Home Office would like to thank all those who took the trouble to respond to this consultation. RIPA is key to protecting individuals from unwarranted interference by public authorities and it is important that it is used proportionately and in a way that commands the confidence of the public at large.

The consultation indicates that, despite some instances of inappropriate use of RIPA, there is no broad support for removing public authorities from the RIPA framework. Instead, there is support for greater oversight of local authority use of RIPA and better guidance to help ensure there are no further instances of inappropriate use. That includes revised arrangements for local authority authorisation and an oversight role for elected members. It also includes revised covert surveillance and covert human intelligence sources codes of practice to provide better clarity on necessity and proportionality, and what constitutes private information.

The next step is for the Government to bring forward:

- Consolidating Orders to list the public authorities able to use communications data, directed surveillance and covert human intelligence sources, the ranks of authorising officers and the purposes for which these techniques can be used;
- Orders to ensure that legally privileged communications are subject to adequate safeguards; and
- Orders to bring the revised codes of practice into effect.

These Orders will be debated in both Houses of Parliament before becoming law.

D. LIST OF RESPONDENTS

In addition to the 68 responses from members of the public we received responses from the following organisations:

Association of Chief Police Officers - National Co-ordinator for Serious Organised Crime

Association of Chief Police Officers - National Co-ordinator Special Branch

Association of Chief Police Officers in Scotland

Association of Chief Trading Standards Officers

Association of Council Secretaries and Solicitors

Aylesbury Vale District Council

Basingstoke and Deane Borough Council

Barnsley Metropolitan Borough Council

Basildon District Council

Birmingham City Council

Blackburn with Darwen Borough Council

Blaenau Gwent County Borough Council

Borough of Poole

Bristol City Council

British Broadcasting Corporation

British Computer Society

British Irish Rights Watch

Broxtowe, Gedling, Newark & Sherwood, Mansfield and Erewash (joint response from five East Midlands councils)

BSkyB Ltd

Bury Metropolitan Borough Council

Cambridge City Council

Cambridgeshire County Council

Cardiff County Council

Central Bedfordshire Council

Chartered Institute of Environmental Health

Chartered Institution of Wastes Management

Chelmsford Borough Council

Cherwell District Council

Cheshire East Council

Cheshire West and Chester Council

Chief Surveillance Commissioner

Child Maintenance and Enforcement Commission

Children's Rights Alliance for England

City of Bradford Metropolitan District Council

City of Wakefield Metropolitan District Council

City of York Council

Communities and Local Government (Fire and Rescue Services in England)

Core Cities Heads of Internal Audit Group

Crown Prosecution Service

Dartford Borough Council

Department for Work and Pensions, Fraud and Security Delivery

Derby City Council

Devon County Council Trading Standards Service

Dorset County Council

Dudley Metropolitan Borough Council

East of England Trading Standards Association

East Lindsey District Council

East Riding of Yorkshire Council

Environment Agency

Equality and Human Rights Commission

Essex County Council

Fareham Borough Council

Financial Services Authority

Foundation for Information Policy Research and the Open Rights Group

Gateshead Council

Gloucester City Council

Gloucestershire County Council

Government Communications Headquarters

Guildford Borough Council

Hampshire County Council

Harrogate Borough Council

Hertfordshire Constabulary

Hertfordshire County Council

Hertsmere Borough Council

Horsham District Council

Interception of Communications Commissioner

Islington Borough Council

Islington Council

Justice

Kent County Council

Kingston upon Hull City Council

Kirklees Council

Lancashire County Council

Law Reform Committee of the Bar Council

Leeds City Council

Leicestershire County Council

Liberty

Lincolnshire County Council

Liverpool City Council

Local Govt Association and Local Authorities Co-ordinators of Regulatory Services

London Borough of Bexley

London Borough of Camden

London Borough of Hackney

London Borough of Haringey

London Borough of Merton

London Borough of Newham

London Borough of Redbridge

London Borough of Richmond upon Thames

London Fire and Emergency Planning Authority

Lothian and Borders Fire and Rescue Service

Luton Borough Council

Manchester City Council

Mid and West Wales Fire and Rescue Service

Middlesbrough Council

Milton Keynes Council

National Anti-Fraud Network

National Undercover Working Group Legal Group

Newcastle City Council

New Forest District Council

Newport City Council

Norfolk County Council

Northampton Borough Council

North East Derbyshire District Council

Northern Ireland Environment Agency

North Norfolk District Council

Northumberland County Council

North Warwickshire Borough Council

North Yorkshire County Council

Nottingham City Council

Nottinghamshire County Council

Nottinghamshire Environmental Health Strategic Managers Group

O2

Oldham Council

Orange

Oxfordshire County Council

Pendle Borough Council

Perth and Kinross Council

Police Federation of England and Wales

Rhonda Cynon Taf County Borough Council

Royal Borough of Kensington and Chelsea

Safety Net Associates Ltd

St Albans City and District Council

Scottish Crime and Drug Enforcement Agency

Scottish Highlands and Islands Fire Service

Sefton Metropolitan Borough Council

Serious Organised Crime Agency

Slough Borough Council Trading Standards Service

Social Landlords Crime and Nuisance Group

Somerset County Council

Southampton City Council

South Gloucestershire Council

South Norfolk Council

Stockton-on-Tees Borough Council

Suffolk County Council

Superintendents Association of England and Wales

Surrey County Council Trading Standards Service

Teignbridge District Council

T-Mobile

Torbay Council

Torfaen County Borough Council

Trading Standards Institute

Tunbridge Wells Borough Council

Tyne and Wear Fire and Rescue Authority

Walsall Council

Warwickshire County Council

Waverley Borough Council

Welsh Local Government Association

West Lancashire Borough Council

West Yorkshire Trading Standards Service

Weymouth and Portland Borough Council

Wirral Council Regeneration Department

Wolverhampton City Council

Wychavon District Council

Wyre Borough Council

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