

PROTECTION OF FREEDOMS ACT 2012

EXPLANATORY NOTES

BACKGROUND

Part 2: Regulation of surveillance

Chapter 2 of Part 2: Safeguards for certain surveillance under RIPA

30. The Programme for Government (section 3: communities and local government) states that the Government “*will ban the use of powers in the Regulation of Investigatory Powers Act (RIPA) by councils, unless they are signed off by a magistrate and required for stopping serious crime*”.
31. RIPA was designed to regulate the use of investigatory powers and to satisfy the requirements of the ECHR on its incorporation into UK law by the Human Rights Act 1998. RIPA regulates the use of a number of covert investigatory techniques, not all of which are available to local authorities. The three types of technique available to local authorities are: the acquisition and disclosure of communications data (such as telephone billing information or subscriber details); directed surveillance (covert surveillance of individuals in public places); and covert human intelligence sources (“CHIS”) (such as the deployment of undercover officers). Local authorities sometimes need to use covert techniques in support of their statutory functions. They, not the police, are responsible for enforcing the law in areas such as: environmental crime; consumer scams; loan sharks; taxi cab regulation; underage sales of knives, alcohol, solvents and tobacco; and the employment of minors. The communications data powers are primarily used by local authorities to target rogue traders (where a mobile phone number can be the only intelligence lead). Directed surveillance powers are used in benefit fraud cases and to tackle anti-social behaviour (in partnership with the police), while CHIS and directed surveillance techniques are used in test purchase operations to investigate the sale of tobacco, alcohol and other age-restricted products.
32. Chapter 2 of Part 1 of RIPA sets out the specified grounds for authorising the acquisition and disclosure of communications data and Part 2 specifies the grounds for which authorisations can be granted for carrying out directed surveillance and for the use of CHIS. At present, authorisations for the use of these techniques are granted internally by a member of staff in a local authority (who must be of at least Director, Head of Service, Service Manager or equivalent grade), and are not subject to any independent approval mechanism. The use of these covert techniques under RIPA is subject to codes of practice made by the Home Secretary. The Chief Surveillance Commissioner is responsible for overseeing local authorities’ use of directed surveillance and CHIS, whilst the Interception of Communications Commissioner has similar responsibilities in respect of local authorities’ use of their powers in respect of the acquisition and disclosure of communications data. The Investigatory Powers Tribunal, established under section 65 of RIPA, investigates complaints about anything that a complainant believes has taken place against them, their property or communications which would fall to be regulated under RIPA.

33. The review of counter-terrorism and security powers (see paragraph 38) considered the use of RIPA powers by local authorities following concerns that they have been using directed surveillance techniques in less serious investigations, for example, to tackle dog fouling or checking an individual resides in a school catchment area. The review concluded (see paragraph 13, page 27 of the report¹), that the use of directed surveillance powers by local authorities should be subject to a seriousness threshold and that the use of all three techniques by local authorities should be subject to a Magistrate's approval mechanism. The seriousness threshold will restrict local authority use of directed surveillance to the investigation of offences which attract a maximum custodial sentence of six months or more or which involve underage sales of alcohol and tobacco. The threshold will be introduced, in parallel with the Protection of Freedoms Act, through an order made under section 30(3)(b) of RIPA; Chapter 2 of Part 2 gives effect to the Magistrate's approval mechanism (in Scotland approval will be granted by a sheriff's court).

¹ <http://www.homeoffice.gov.uk/publications/counter-terrorism/review-of-ct-security-powers/review-findings-and-rec?view=Binary>