

Email dated 30/01/18

[redacted]

Before I put this to [redacted], grateful for your views.

[redacted]

Email dated 2/2/18

[redacted]

As requested, I've attached material for the Cabinet Secretary to look at over the weekend. Subject to any views that Cabinet Secretary has, these are more or less complete. I will arrange for a 'proper' briefing pack to be sent on Monday, incorporating any changes or additions required.

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BRIEFING NOTE ON INVESTIGATORY POWERS

Introduction

The use of covert techniques is an important weapon in the fight against crime, including the trafficking of drugs firearms and humans, and child abuse. These powers - intrusive surveillance, directed surveillance and covert human intelligence sources (CHIS) - are stringently regulated the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A). Additionally, the Police Act 1997 provides for property interference to be undertaken by Police Scotland where necessary and proportionate, in accordance with the strict criteria set out in those Acts.

The use of these powers is subject to independent oversight by the Investigatory Powers Commissioner's Office (prior to September 2017, oversight was carried out by the Office of Surveillance Commissioners).

Further investigatory powers – interception of communications and access to communications data – are provided for in the Regulation of Investigatory Powers Act 2000 (RIPA) (these will be replaced by powers in the Investigatory Powers Act 2016 at some point later this year). The use of these powers is also subject to independent oversight by the Investigatory Powers Commissioner's Office (prior to 2017, oversight was carried out by the Interception of Communications Commissioner's Office).

The table below summarises the different types of investigatory powers.

Type	What it is	Act
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Directed Surveillance	Covert surveillance that takes place outside of residential premises and vehicles and results in private information about an individual	RIP(S)A
Intrusive Surveillance	Surveillance that takes place within residential premises and vehicles. It is considered that this type of surveillance will always result in private information being obtained	RIP(S)A
Covert Human Intelligence Source	The establishment and maintaining of a relationship for a covert purpose. This can include informants and undercover operatives.	RIP(S)A
Property Interference	Entering or interfering with property, or wireless telegraphy, for the purpose of preventing or detecting serious crime.	The Police Act 1997
Interception of Communications	The interception of mail, telephony and internet communications in order to provide access to the contents of a communication	RIPA
Communications Data	The who, where and when information attached to a communication, but not including the content	RIPA

Covert Human Intelligence Sources (CHIS)

A CHIS is anyone who is asked by a public authority to start or maintain a relationship for a covert purpose. This includes undercover officers employed by the public authority or members of the public acting as informants.

Provisions in RIP(S)A ensure that the use of a CHIS may only be authorised where necessary and proportionate for a statutory purpose. In addition there are additional safeguards regarding the use of a CHIS, including the requirement that a qualifying person in the relevant public authority must have day to day responsibility for dealing with the source, and for the source's security and welfare.

With regard to undercover police officers, there are three types of undercover activity:

Undercover foundation officer: this is an officer who has passed the foundation undercover training and assessment course and is the entry point for all undercover officers. Deployments may include buying drugs on the street from a suspected dealer or engaging in low level conduct with a member of a criminal gang.

Undercover online officer: this is a nationally accredited officer who is deployed to establish and maintain relationships with an individual, network or organisation through the use of the internet with the covert purpose of obtaining information and evidence in relation to, for example, online child sexual

exploitation. These officers will have passed the nationally accredited College of Policing undercover officer online course.

Undercover advanced officer: this is an officer who has passed both the foundation training and the national undercover training and assessment course. These officers undertake the more complex and long-term deployments involving the investigation of serious crime and counter-terrorism.

The Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014 increases the authorisation levels required for the use of undercover officers and enhanced oversight by the Office of Surveillance Commissioners. Specifically, any deployment of an undercover law enforcement officer will require to be authorised by an Assistant Chief Constable, or equivalent, and notified to the Office of Surveillance Commissioners. Any deployment lasting more than 12 months will require to be authorised directly by a Deputy Chief Constable, or equivalent, and approved by an independent Surveillance Commissioner. This level of authorisation and approval must be obtained for any authorisation lasting more than three months, in circumstances where the authorisation involves matters subject to legal privilege.

Oversight

All use of RIP(S)A is overseen by the IPCO. IPCO is headed by the Investigatory Powers Commissioner, the Right Honourable Sir Adrian Fulford. The IPC is appointed by the Prime Minister under the terms of the Investigatory Powers Act, but only following consultation with the Lord President (and his equivalents in England and Northern Ireland) and the Scottish Ministers. The IPC is supported by a number of Judicial Commissioners – both the IPC and the Judicial Commissioner will hold, or have held, high judicial office.

The IPC is required to make a report (or reports) in relation to the full range of his duties and for these to be laid in both the Scottish and UK Parliaments (subject to the Prime Minister's approval).

Safer Communities – Defence, Security and Cyber Resilience Division