The Regulation of Investigatory Powers Act 2000 (RIPA) governs the use of directed and intrusive covert surveillance and covert human intelligence sources. This guide provides a general overview of the legislation for those who are new to the subject.

INTRO

AN INTRODUCTION TO UK LEGISLATION | NOVEMBER 2017

FRAUD ADVISORY PANEL

Regulation of Investigatory Powers Act 2000

2ND EDITION

INTRODUCTION

There are two key pieces of legislation dealing with UK surveillance. These are:

- **Regulation of Investigatory Powers Act 2000** (RIPA or RIPSA in Scotland); and
- **Investigatory Powers Act 2016** (IPA).

WHAT IS RIPA?

RIPA deals with the powers of public bodies to use a range of covert investigatory surveillance powers (other than intercepting and accessing electronic and postal communications which are covered by the IPA) in ways that are compliant with the European Convention on Human Rights.

The Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) covers Scotland.

Both Acts contain safeguards to prevent the abuse of investigatory powers.

USE OF RIPA POWERS

RIPA powers can be authorised for purposes including (but not limited to):

- national security;
- preventing or detecting crime or disorder;
- public safety;
- protecting public health;
- the economic well-being of the UK; and
- assessing or collecting tax, duty, levy or other imposition.

WHAT ACTIVITIES DOES IT COVER?

RIPA covers:

- use of covert surveillance (intrusive and directed);
- use of covert human intelligence sources; and
- investigation of electronic data protected by encryption.

Not all powers are available to all public bodies. For example, local authorities are not allowed to use intrusive surveillance.

WHO DOES IT APPLY TO?

Public bodies authorised to use RIPA powers include (but are not limited to):

- police
- Department for Work and Pensions
- Department of Health
- Financial Conduct Authority
- HM Revenue and Customs (HMRC)
- local authorities
- National Crime Agency (NCA)
- Serious Fraud Office.

A full schedule of authorised public bodies is available in the Act and relevant statutory instruments.

The Act also applies to commercial organisations providing RIPA-prescribed activities (such as covert surveillance) on behalf of public bodies.

OTHER RELEVANT LEGISLATION

Public bodies need to consider other relevant legislation including (but not limited to):

- Data Protection Act 1998
- Freedom of Information Act 2000
- Human Rights Act 1998
- Investigatory Powers Act 2016
- Police Act 1997
- Police and Criminal Evidence Act 1984
- Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.

PRIVATE SECTOR CONSIDERATIONS

Private sector organisations may be affected by the provisions of RIPA in the following ways:

- they are subject to (or fall within the scope of) a RIPA-regulated investigation conducted by a public authority; and/or
- they conduct RIPA-prescribed activities with, or on behalf of, public bodies.

They may also choose to follow the best practice principles and safeguards contained in the Act in any convert investigations they conduct.

SURVEILLANCE

Part II of RIPA regulates the use of covert surveillance (intrusive and directed) and the use of covert human intelligence sources. Surveillance activities that require interference with property also require an authorisation under the Police Act 1997.

Surveillance is 'covert' if it is carried out in a way intended to ensure that the targets of the surveillance are unaware that it is taking place.

Covert human intelligence sources
The term CHIS refers to the use of people to develop or continue relationships with targets to obtain any information that is covertly passed to the source's intelligence handler. For example, police undercover officers infiltrating an organised crime group.

Directed surveillance
Directed surveillance is carried out for a specific investigation or operation in a manner likely to obtain private information about a person and is performed otherwise than by way of immediate response to events. For example, an officer sitting in an observation post watching the home of a suspected drug dealer.

Intrusive surveillance
Intrusive surveillance is surveillance of anything taking place in residential premises or in a private vehicle involving the

presence of a person on the premises or in the vehicle or by using a surveillance device. For example, placing an audio or visual device inside residential premises or a private vehicle, or using long-range audio or visual equipment which provides the same quality as if the device were in the residence or vehicle.

The use of intrusive surveillance is limited to a certain number of specified law enforcement agencies including (but not limited to) the police, NCA, HMRC and the intelligence services.

AUTHORISATION

Public bodies usually need authorisation and/or warrants to use RIPA powers. Different levels of authorisation are needed depending upon the type of power sought. For example, directed surveillance and CHIS are authorised by the organisation itself, whereas intrusive surveillance warrants must be authorised by the Secretary of State and then approved by a Judicial Commissioner working for the Investigatory Powers Commissioner.

Failure to obtain authorisation does not necessarily render the action unlawful, but it may result in any evidence gathered being challenged under the Human Rights Act 1998 and deemed to be inadmissible in court (section 78 of Police and Criminal Evidence Act 1984).

ELECTRONIC DATA PROTECTED BY ENCRYPTION

Part III of RIPA regulates the investigation of electronic data that has been protected by encryption or passwords. It enables specified public bodies (with permission from the National Technical Assistance Centre, a part of GCHQ) to require individuals to disclose the contents of protected (or encrypted) electronic information in an intelligible form. Failure to comply is a criminal offence.

CODES OF PRACTICE

Codes of practice are available to download from the Home Office and Scottish Government websites. These codes are designed to help public bodies to use RIPA powers.

OVERSIGHT

The Investigatory Powers Commissioner (IPC) provides oversight of the use of all surveillance by public bodies under RIPA, RIPSA, IPA and the Police Act 1997.

Judicial Commissioners working for the IPC review and, if appropriate, approve surveillance authorisations. They also conduct inspections of public bodies that use surveillance powers.

THE INVESTIGATORY POWERS TRIBUNAL

The IPT is a court which investigates and determines complaints about the use of surveillance powers by public bodies (including law enforcement). There is a right of appeal to the Court of Appeal.

FURTHER INFORMATION

Available from the **resources** section of our website:

- Investigatory Powers Act 2016

Other resources

- **Gov.uk**
- **Investigatory Powers Tribunal**
- **Legislation.gov.uk**
- **National Technical Assistance Centre**
- **Scottish Government**

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