



Home Office

Protection of Freedoms Act 2012 – Statutory Consultation over the Surveillance Camera Code of Practice

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Ministerial foreword

Since the first town centre Closed Circuit Television (CCTV) system was installed in King's Lynn in 1987, there has been a proliferation in the use of CCTV and Automatic Number Plate Recognition (ANPR) systems operated in public places in England and Wales by both public and private bodies.

These systems are deployed for a range of purposes, and are generally welcomed as a reassuring presence and for keeping the public safe. Technological developments have increased the capability of surveillance camera systems. This has in turn increased the capability of system operators, the police and the criminal justice system to protect people and property, investigate incidents and bring crimes to justice. It has also increased the risk of interference with a citizen's right to privacy.

The government favours the use of CCTV and ANPR as a crime fighting and public protection tool. It supports the use of overt surveillance in a public place wherever its deployment is in pursuit of a legitimate aim, necessary to meet a pressing need, proportionate and compliant with any relevant legislation. Like the public, the government expects that where CCTV is deployed it is as effective as it can be in meeting its stated purpose and has appropriate privacy safeguards.

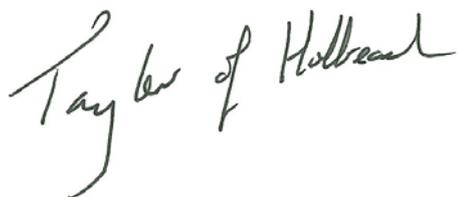
The public must have confidence that surveillance is appropriate and proportionate, and that those who operate the camera systems, or use the images and information they capture, demonstrate integrity in so doing and can be held to account.

This is why the coalition agreement for government includes a commitment to the further regulation of CCTV, which has now been enacted in legislation through the Protection of Freedoms Act 2012. This legislation provides a regulatory framework which is intended to complement and be coherent with existing legislation, such as the Data Protection Act 1998, the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000. Technological and professional innovation does not stand still, so we must ensure that any new regulation is appropriate both now and in the future.

Our approach to further regulation is, therefore, incremental, with an initial focus on state surveillance and a model of self regulation with no inspection or enforcement. There is to be a code of practice which provides guidance to system operators, and a Surveillance Camera Commissioner has been appointed to encourage adoption and compliance of the code, review its operation and provide advice about it.

Following engagement and consultation with a wide range of interested parties and the public, a draft code of practice has now prepared for publication alongside this consultation document. The draft code is built upon 12 guiding principles, and for the first time introduces a philosophy of surveillance by consent. The government sees an important parallel with the well-established concept of policing by consent, which is based upon a presumption of transparency and accountability to assure the integrity of police officers and staff in exercising their powers on behalf of their fellow citizens. This government will ensure that, for the first time, there is a robust framework in place to protect the public from any excessive or irresponsible use of CCTV or ANPR.

This consultation seeks your views on the scope and clarity of the draft code and its likely impact assessment, and also seeks to ensure that proper consideration is given to the position of the three non territorial police forces and the Serious Organised Crime Agency in relation to the code. This is an important moment in the regulation of CCTV and ANPR, so the government really values your contribution in response to this consultation so we can modify as necessary and move forward with confidence.

A handwritten signature in black ink that reads "Taylor of Holbeach". The signature is written in a cursive, flowing style.

Lord Taylor of Holbeach

About this consultation

Scope of consultation

Topic of this consultation:	The preparation of a surveillance camera code of practice as required under Section 29 of the Protection of Freedoms Act 2012, and whether any of three non territorial police forces and the Serious Organised Crime Agency should be placed under a duty to have regard to the code of practice when it comes into effect.
Scope of this consultation:	This consultation seeks views of those who have an interest in the use of surveillance cameras about a draft code of practice prepared by the Home Office as guidance to which relevant authorities will be placed under a duty to have regard, and other surveillance camera system operators will be encouraged to adopt voluntarily. These parties include those that the Home Secretary is placed under a statutory duty to consult under Sections 29(5) and 33(8) of the Protection of Freedoms Act 2012. The draft code of practice is available on the Home Office website alongside this consultation document.
Geographical Scope:	England and Wales. This reflects the extent of the relevant provisions of the Protection of Freedoms Act 2012 as set out in Section 119.
Impact Assessment:	An Impact Assessment covering England and Wales is available on the Home Office website alongside this consultation document.

Basic Information

To:	This consultation is open to the public.
Body responsible for this consultation:	The Home Office
Duration:	Six weeks
Enquiries and responses:	You can respond to any or all of the sections in the consultation. The closing date for the consultation is 21st March 2013.
You can complete the online form at:	www.homeofficesurveys.homeoffice.gov.uk/v.asp?i=69377oduov
Or send your response by post to:	Home Office Police Transparency Unit 6th Floor Fry, 2 Marsham Street, London, SW1P 4DF

Additional ways to become involved: This is an online consultation. Please contact the Home Office, Police Transparency Unit, 6th Floor Fry, 2 Marsham Street, London, SW1P 4DF, if you require information in any other format, such as Braille, large font or audio. The Department is obliged to both offer, and provide on request, these formats under the Equality Act 2010. A Welsh language version of the consultation document is being made available.

After the consultation: A summary of responses will be placed on the Home Office website.

Compliance with the government's consultation principles: This consultation is compliant with the principles.

Background

Getting to this stage: The Home Office has developed these proposals in consultation with the following government departments: Communities and Local government, Department for Transport, Wales Office, Ministry of Justice, and Department for Education. The Home Office has also engaged with the Welsh government, the Scottish government and the Northern Ireland Executive.

Previous engagement: The public and a wide range of interested parties were consulted over the nature of regulation and the development of a code of practice in a twelve week consultation exercise which ended in May 2011. The government response to that consultation was published in December 2011¹ and listed the respondents.

Since then, there has been further informal consultation with key interested parties², including the circulation of an early draft of the code of practice. Ongoing engagement and consultation both formal and informal has helped to shape both the nature of the regulatory framework and the code of practice, and to inform the detail of the code of practice. For example, feedback on an early draft helped to determine the structure of the draft code, to ensure there was greater clarity over the demarcation with regulation under the Data Protection Act 1998, and how best to approach the inclusion of technical and occupational standards.

¹ The consultation document and the government response can be found at: <http://www.homeoffice.gov.uk/publications/consultations/cons-2011-cctv/>

² Key interests engaged include relevant regulators (the Interim CCTV Regulator before 13 September 2012, the Surveillance Camera Commissioner thereafter, the Information Commissioner's Office and the Chief Surveillance Commissioner), representatives of surveillance camera operators, the security industry and civil liberties organisations.

Executive summary

The Coalition Agreement sets out a commitment to the further regulation of CCTV.

The government wants to ensure that wherever overt surveillance is undertaken in a public place using a surveillance camera system, such as Closed Circuit Television (CCTV) or Automatic Number Plate Recognition (ANPR), the public can be confident the cameras are there to support them, and not spy on them.

This is being realised through provisions in the Protection of Freedoms Act 2012 (PoFA). These provisions enable the government to issue a code of practice as guidance which will further regulate surveillance camera systems, complementing existing relevant legislation and regulation under the Data Protection Act 1998, the Human Rights 1998 and the Regulation of Investigatory Powers Act 2000. They also create a new statutory appointment of a Surveillance Camera Commissioner.

A draft of the code of practice is published alongside this consultation document. This consultation is intended to fulfil the requirements of Section 29(5) of PoFA for statutory consultation, and enable the government to consider any amendment necessary to the draft before seeking Parliamentary approval to issue the code under Section 30 of PoFA.

Public confidence that a surveillance camera system is being used appropriately, without disproportionate interference with the right to private and family life, is seen as being largely dependent upon the transparency, integrity and accountability of the system operator. In the draft code of practice, the government has drawn a parallel with the well-established concept of policing by consent and described the purpose of the code as helping to establish surveillance by consent.

The draft code is built upon 12 guiding principles that system operators might be encouraged to adopt and follow. It has been prepared to complement, and bring coherence to existing legislation and regulation without introducing unnecessary new burdens and bureaucracy.

This consultation is intended to seek views on the preparation of that code of practice, and particularly upon the scope and clarity and impact of a draft code.

The government also wants to seek views on whether any of three non territorial police forces and the Serious Organised Crime Agency should be added to the list of relevant authorities under Section 33(5) of PoFA, and thus under a duty to have regard to it, from the date that the code of practice comes into force. In seeking these views it intends to fulfil requirements under Section 33(8) of PoFA for statutory consultation.

Scope of consultation

The Protection of Freedoms Act 2012 includes provisions³ for the regulation of surveillance camera systems in England and Wales, which require the Home Secretary to publish a code of practice as guidance and appoint a Surveillance Camera Commissioner.

The purpose of this consultation is to seek views on the draft code of practice, and particularly upon the scope and clarity and impact of a draft code which is published on the Home Office website alongside this consultation document. In doing so, the government wants to ensure that the preparation of the code of practice has led to a document which will provide a sound basis from which the policy objectives to regulate surveillance cameras can be delivered. This is intended to fulfil the requirements of Section 29(5) for statutory consultation in the course of preparing such a code, and enable the government to consider any amendment necessary to the draft before seeking Parliamentary approval to issue the code under Section 30.

The government also wants to seek views on whether any of three non territorial police forces and the Serious Organised Crime Agency should be added to the list of relevant authorities under Section 33(5), and thus under a duty to have regard to it, from the date that the code of practice comes into force. In seeking these views it intends to fulfil the requirements of Section 33(8) for statutory consultation.

³ Sections 29 to 36.

The draft code of practice

Purpose

The government wants to ensure that wherever overt surveillance is undertaken in a public place using a surveillance camera system, such as Closed Circuit Television (CCTV) or Automatic Number Plate Recognition (ANPR), the public can be confident the cameras are there to support them, and not spy on them. Advances in digital technology have led to concerns about the proportionality of such systems, and the potential interference with civil liberties. The public also holds legitimate expectations that any surveillance camera system which is in place is effective in meeting its stated purpose.

The provisions of the Protection of Freedoms Act 2012 enable the government to issue a code of practice as guidance which will further regulate surveillance camera systems, complementing existing relevant legislation and regulation under the Data Protection Act 1998, the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000. A draft of the code of practice is published alongside this consultation document. The further regulation introduced in this code of practice aims to increase transparency and proportionality on the part of a system operator, the effectiveness of the system, and help ensure compliance with other legal duties.

Public confidence that a surveillance camera system is being used appropriately, without disproportionate interference with the right to private and family life, is seen as being largely dependent upon the transparency, integrity and accountability of the system operator. In the draft code of practice, the government has drawn a parallel with the well-established concept of policing by consent and described the purpose of the code as helping to establish surveillance by consent.

Scope

Surveillance camera systems are operated by a wide range of bodies within the public, private and not for profit sector for a wide range of purposes. As a result, the regulatory environment is complex. In recognition of that complexity, the government is taking an incremental approach to regulation, starting with getting the basics right and then keeping the operation of the code of practice under review.

The code applies to the use of surveillance camera systems that operate in public places in England and Wales, regardless of whether or not there is any live viewing, or recording of images or information or associated data. It does not, however, extend to covert surveillance, and nor does it apply to the domestic use of CCTV. Covert surveillance by a public authority falls under the Regulation of Investigatory Powers Act 2000. The government recognises that individuals may experience difficulties and distress as a result of a neighbour's domestic CCTV, which is not subject to regulation under the Data Protection Act 1998. The position in relation to domestic CCTV will, however, be kept under review.

Effect

In recognition of the government's incremental approach to regulation in this area, and a desire to keep new burdens and bureaucracy to a minimum, Section 33(1) of the Protection of Freedoms Act 2012 places a duty to have regard to the code upon relevant authorities designated under Section 33(5). To address particular concerns about state surveillance, an initial duty to have regard has been placed upon local authorities⁴, chief officers of police forces, and Police and Crime Commissioners. Other system operators will be encouraged to adopt the code on a voluntary basis. There is a power under Section 33(5) to amend the list of relevant authorities, and this may be considered by the Home Secretary once the code beds down and in the light of its impact.

Earlier consultation over the nature of regulation and the code of practice did see calls for statutory inspection, investigation and enforcement powers. Such powers have not been included in the Protection of Freedoms Act 2012 because the government wants to allow the opportunity for mechanisms of voluntary compliance to develop and to minimise any new burdens on businesses or the public purse.

Guiding Principles

The code of practice sets out 12 guiding principles which are considered to underpin the establishment and maintenance of surveillance by consent. These guiding principles have been informed by a review of the police's use of ANPR led by the Independent Police Complaints Commission and to be published by the Association of Chief Police Officers in the near future. Not every aspect of the 14 golden rules for ANPR identified by that review could be readily applied to surveillance cameras in general. The resultant set of guiding principles is, however, intended to draw together good practice and existing legal obligations to create a clear and comprehensive statutory regulatory framework which can be understood by system operators and the public alike.

The code is not prescriptive about the detail of how the guiding principles must be followed in practice, or about any specific operational, technical or competency standards a system operator should follow. Given the wider range of circumstance a system operator may have to consider, the government does not want to develop a level of regulatory detail which may not be appropriate in every case (and thus require further specific guidance), or stifle innovation, duplicate existing guidance, or fail to retain currency in an arena where technology and professional practice is expected to continue evolving. in every case (and thus require further specific guidance), or stifle innovation, duplicate existing guidance, or fail to retain currency in an arena where technology and professional practice is expected to continue evolving.

⁴ See S29(5) for full list of public bodies designated as relevant authorities

Surveillance Camera Commissioner

The code sets out the role and functions of the Surveillance Camera Commissioner, which include the provision of advice about the code. The code is clear that the Commissioner will be expected to provide advice about relevant operational, technical and competency standards. As a first step towards doing so, the Commissioner is setting up a Standards Group with wide representation to undertake a landscape review of the relevant standards which are currently available and identify any significant gaps which may need to be filled.

The code also sets out expectations about how the Commissioner will work with other regulators, including the Information Commissioner and the Chief Surveillance Commissioner.

Success criteria

The Home Office has developed a set of draft success criteria against which the operation and impact of regulation, including the code of practice, might be reviewed after it comes into force. In an area of regulation where there is little in the way of comprehensive national data about practice and effectiveness, it has proved difficult to produce criteria against which a quantitative assessment can be made against an existing baseline. The draft success criteria are, therefore, qualitative in nature. Once agreed, they will be made available to the Surveillance Camera Commissioner to consider as part of his review of the operation of the code.

These are set out below:

Regulation of surveillance camera systems under the Protection of Freedoms Act 2012 should:

- 1) Provide clarity over purpose and scope, particularly in defining surveillance camera systems, public place, overt use and privacy.
- 2) Be easily understood by both the public and system operators alike.
- 3) Ensure system operators are transparent and proportionate in balancing privacy and security considerations in any systems deployment, and they regularly review if the system meets its stated purpose.
- 4) Improve effectiveness of surveillance camera systems in providing better quality and more accessible images for use in the criminal justice system.
- 5) Enable the management of public safety (including the investigation and detection of crime).
- 6) Further help ensure compliance with other legislation affecting the use of surveillance cameras systems, such as the Human Rights Act 1998, the Data Protection Act 1998 and the Regulation of Investigatory Powers Act 2000, with no contradictions or inconsistencies and minimal gaps or overlaps.
- 7) Follow better regulation principles, introducing minimal bureaucracy and regulatory burdens.
- 8) Include sufficient flexibility to respond to developments in technology and occupational standards.
- 9) Be capable of differentiating between different purposes of surveillance camera system.
- 10) Secure widespread voluntary adoption by system operators.

The status of non territorial police forces and the Serious Organised Crime Agency

The government wants to approach the regulation of surveillance camera systems incrementally with minimal bureaucracy and burdens. Therefore, the starting point under the Protection of Freedoms Act 2012 is a code of practice which provides guidance to which relevant authorities must have regard, and other system operators will be encouraged to adopt on a largely voluntary basis.

To address concerns about state surveillance, the duty to have regard has initially been placed upon local authorities⁵, chief officers of police forces and Police and Crime Commissioners.

Technical drafting issues in the legislation mean that, whilst the chief officers of the 43 territorial police forces in England and Wales will be placed under a duty to have regard, the three non territorial police forces and the Serious Organised Crime Agency fall outside this duty. These four bodies are:

- British Transport Police
- Civil Nuclear Constabulary
- Ministry of Defence Police
- Serious Organised Crime Agency (which subject to enactment of the Crime and Courts Bill will become part of the National Crime Agency)⁶

To ensure there is no less public confidence in the use of overt surveillance by these four forces than in its use by the territorial forces, the government has decided to seek views on whether each of these police forces should also be placed under a duty to have regard to the code immediately it is brought into force.

The key considerations would appear to be whether a force undertakes overt surveillance camera systems in public places or uses the product of such systems, and the proportionality of placing this duty upon a force with an operation remit that differs distinctly from that of a territorial force.

Section 33(5) gives the Home Secretary the discretion to amend the list of relevant authorities, subject to statutory consultation and the agreement of Parliament.

So we are seeking your views on whether the Home Secretary should seek Parliament's approval to amend Section 33(5) by including any of these four bodies at the same time as bringing the code into effect.

⁵ See S29(5) for full list of public bodies designated as relevant authorities

⁶ The Serious Organised Crime Agency (SOCA) is a national law enforcement agency rather than a police force. It is established as a body corporate under Section 1 of the Serious Organised Crime and Police Act 2005 and members of its staff can be designated with the powers of a constable. The Crime and Courts Bill seeks to confer a similar status upon the National Crime Agency.

The impact assessment

An impact assessment is prepared to provide information about the analysis and evidence for a policy option. The impact assessment for the code of practice is published on the Home Office website alongside this consultation document.

The impact assessment includes a best estimate of net present value costs over ten years for relevant authorities would be £12.9m, with average annual costs of £1.5m. It also sets out the assumptions on which the costs and benefits of proceeding are based.

The impact assessment will not be finalised until after responses to this consultation exercise have been analysed.

About you

These details are voluntary and will be treated as personal data by the Home Office in compliance with government guidance on holding personal information.

1) Which of the following best describes you or the organisation that you represent: (please select one option)

- Local authority;
- Police force;
- Police and crime commissioner;
- Surveillance camera system operator (public authority);
- Surveillance camera system operator (non-public authority);
- Surveillance camera system designer, supplier, installer or maintainer;
- Security supplier;
- Regulatory body, standards body or inspectorate;
- Civil liberties charity / organisation / pressure group;
- Representative body;
- Member of the public;
- Other (please specify).
- Prefer not to say

2) Which organisation do you represent? (optional)

3) Does your organisation operate in: (select all that apply)

- England;
- Wales;
- Elsewhere (please specify)
- Prefer not to say
- Not applicable

4) Is your interest in the regulation of surveillance cameras: (select all that apply)

- In CCTV;
- In ANPR;
- Other (please specify)
- Prefer not to say
- Not applicable

Questions

About the draft code of practice:

5) To what extent do you agree or disagree with the following statements on the scope and clarity of the draft code of practice? (Please select one option for each statement).

- I would support the implementation of this code of practice
- The code of practice clearly outlines the scope of surveillance camera use which will be subject to regulation:
- The code of practice clearly outlines what it means by surveillance by consent
- The code of practice will ensure greater transparency on the part of system operators
- The code of practice will help protect the right to respect for private and family life.
- The code of practice will help to increase the effectiveness of a surveillance camera system in meeting its stated purpose
 - a) Strongly agree
 - b) Tend to agree
 - c) Tend to disagree
 - d) Strongly disagree
 - e) Not sure

Please give reasons for your answers above:

6) The code of practice outlines how the obligations and implications that will be placed upon relevant authorities (which will be bound by a duty to have regard to the code) differ from those placed other system operators (who would be encouraged to adopt the code on a voluntary basis).

To what extent do you agree or disagree that the code of practice makes the obligations and implications for these different groups of system operators clear? (select one)

- a) Strongly agree
- b) Tend to agree
- c) Tend to disagree
- d) Strongly disagree
- e) Not sure

Please give reasons for your answer above:

7) To what extent do you agree or disagree that the 12 guiding principles set out in the draft code are relevant in the regulation of surveillance camera systems? (select one)

- a) Strongly agree
- b) Tend to agree
- c) Tend to disagree
- d) Strongly disagree
- e) Not sure

Please give reasons for your answer above, and outline any specific concerns you have about the regulation of surveillance cameras which are not likely to be addressed by the 12 guiding principles:

8) To what extent do you agree or disagree with the following statements on how the code of practice sits alongside existing roles and regulations? (select one for each statement)

- The relationship between this code of practice and existing regulatory requirements (under the Data Protection Act 1998 and the Regulation of Investigatory Powers Act 2000) is clearly outlined.
 - The role, functions and ways of working of the Surveillance Camera Commissioner are clearly set out and differentiated from those of the Information Commissioner and Chief Surveillance Commissioner.
- a) Strongly agree
 - b) Tend to agree
 - c) Tend to disagree
 - d) Strongly disagree
 - e) Not sure

Please give reasons for your answers above:

9) A set of success criteria for surveillance camera regulation under the Protection of Freedoms Act 2012 appears on page 11. To what extent do you agree or disagree that the introduction of the code of practice and the Surveillance Camera Commissioner will ensure these success criteria for regulation are met? (select one)

- a) Strongly agree
- b) Tend to agree
- c) Tend to disagree
- d) Strongly disagree
- e) Not sure

Please give reasons for your answer above:

About the status of non territorial police and the Serious Organised Crime Agency

10) For each of the following bodies, please state whether you think they should, or should not be made a relevant authority under Section 33(5):

- a) Yes
- b) No
- c) Not sure

- British Transport Police (please give reasons for your answer)
- Civil Nuclear Constabulary (please give reasons for your answer)
- Ministry of Defence Police (please give reasons for your answer)
- Serious Organised Crime Agency (please give reasons for your answer)

About the Impact Assessment

11) To what extent do you agree or disagree with the costs and benefits outlined in the impact assessment? (select one)

- a) Strongly agree
- b) Tend to agree
- c) Tend to disagree
- d) Strongly disagree
- e) Not sure

Please give reasons for your answer above:

About any other aspect of the code of practice

12) Finally, if you have any other comments you would like us to take into consideration, on any element of the draft code of practice that you have not already mentioned, please outline them below:

13) If you are happy to be contacted should we have queries about any of your responses, please provide your email address. This is optional.

If you provide your email address we may use it to ask you for further information about your response.

Timescales/next steps

The Home Office will analyse the responses and after this consultation has closed and the analysis is complete it will inform decisions about further development work necessary before the draft code of practice can be laid before Parliament for approval.

A government response to the consultation will be published on the Home Office website. Subject to those decisions, and progress elsewhere, the Home Office anticipates laying the draft code of practice and the draft Order providing for it to come into force before Parliament by the end of April 2013.

Subject to the consideration and approval of that Order by both Houses of Parliament, the code of practice could come into effect around the end of June 2013.

In the interim, the Home Office understands that the Surveillance Camera Commissioner will be taking forward a review of relevant operational, technical and competency standards with a view to providing advice to system operators later this year.

Responses: Confidentiality & Disclaimer

The information you send us may be passed to colleagues within the Home Office, the government or related agencies. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004. If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, among other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Consultation information

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

government's consultation principles

This is a targeted consultation but as far as possible the Consultation follows the government's consultation principles – which are set out below:

- Departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- Departments will need to give more thought to how they engage with and consult with those who are affected;
- Consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- The principles of the Compact between government and the voluntary and community sector will continue to be respected.

The full guidance is available at:

<http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

