



Home Office

# Regulation of Investigatory Powers Act 2000

## Consultation: Revised Codes of Practice

November 2017

## Ministerial Foreword

The Regulation of Investigatory Powers Act 2000 (RIPA) introduced a regulatory framework to govern the use of a number of investigatory covert techniques, to ensure that the techniques are used by public authorities in a way that is compliant with the right to privacy under Article 8 of the ECHR. This involves ensuring that the use of the powers is always closely supervised and constantly reassessed to ensure that what is being done is justified. The act incorporated a number of important safeguards against the arbitrary or excessive use of the powers, including a strict authorisation framework and provision for independent oversight and review of the use of the powers.

The powers themselves remain as important today as they were when RIPA was introduced, in that they are a vital tool to investigators seeking to prevent and detect crimes and to protect national security, public safety and public health. The Act was supplemented by a number of codes of practice intended to provide more detailed guidance to public authorities on the use of the powers, as well as to reinforce the safeguards in the Act. Both the Act itself and the codes have been updated on a number of occasions since their introduction, both to clarify and where necessary tighten up on operational practice.

Most recently, the Investigatory Powers Act 2016, which received Royal Assent on 29 November 2016, will replace the powers in RIPA concerned with obtaining communications and data about communications with a new unified and coherent framework building on the structure already set out in RIPA and the Data Retention and Investigatory Powers Act 2014. The 2016 Act will radically overhaul the way these powers are authorised and overseen. It will introduce a 'double-lock' for the most intrusive powers, including interception and all of the bulk capabilities, so that warrants cannot be issued until the decision to do so has been approved by a Judicial Commissioner. And it creates a powerful new Investigatory Powers Commissioner to oversee how these powers are used.

We are now taking this opportunity to update the codes that deal with the powers remaining under RIPA, which relate to covert surveillance, property interference, the use of covert human intelligence sources, and the investigation of electronic information. The updates are needed to reflect the changes in the 2016 Act, as well as to make a number of minor updates and clarifications intended to ensure that public authorities apply best practice in the use of the powers.

All responses will be welcomed and carefully considered.

Rt Honourable Ben Wallace MP

Minister of State for Security

# Contents

Scope of the consultation	4
Basic Information	4
Background	4
What are codes of practice?	6
Why are we consulting?	6
Codes under the Investigatory Powers Act 2016	6

## Scope of the consultation

Topic of this consultation:	This consultation is on three draft revised codes of practice under the Regulation of Investigatory Powers Act 2000 (RIPA): <ul style="list-style-type: none"><li>• Covert surveillance and property interference</li><li>• Covert human intelligence sources (CHIS)</li><li>• Investigation of protected electronic information</li></ul>
Scope of this consultation:	This consultation seeks representations on the draft revised codes of practice.
Geographical scope:	UK wide

## Basic Information

To:	Representations are welcomed from public authorities that have powers under RIPA, as well as professional bodies, interest groups and the wider public.
Duration:	6 weeks, closing on 28 December 2017
Enquiries and responses:	<i>RIPA@homeoffice.x.gsi.gov.uk</i>  Please indicate in your response whether you are content for it to be published, with or without attributing it to you/your organisation.
After the consultation:	Following the consultation period, responses will be analysed and the draft codes revised as necessary. They will then be laid before Parliament for approval.

## Background

Getting to this stage:	In preparing these drafts we have engaged with public bodies that authorise and use covert techniques under RIPA including
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the law enforcement community. We have also sought opinion from the Office of Surveillance Commissioners which oversees and monitors the operation of the legislation.

## What are codes of practice?

These codes set out the processes and safeguards governing the use of investigatory powers by public authorities, including the police and security and intelligence agencies. They give detail on how the relevant powers should be used, including examples of best practice. They are intended to provide additional clarity and to ensure the highest standards of professionalism and compliance with this important legislation.

These codes are primarily intended to guide those public authorities which are able to exercise powers under the Regulation of Investigatory Powers Act 2000.

Once issued, the codes of practice have statutory force and individuals exercising functions to which the codes relate must have regard to them. They are admissible in evidence in criminal and civil proceedings and may be taken into account by any court, tribunal or supervisory authority when determining a question arising in connection with those functions.

Each code includes an introductory chapter to explain its individual scope and the powers it relates to.

## Why are we consulting?

Under the Regulation of Investigatory Powers Act 2000, the Secretary of State is required to issue codes of practice about the exercise of functions under the Act.

Prior to issuing any codes, the Secretary of State must prepare and publish draft codes. This consultation fulfils that requirement.

Following the consultation, the Secretary of State must consider any representations made about the drafts and Parliament must approve the final codes before they can come into effect.

## Codes under the Regulation of Investigatory Powers Act 2000

The revised Codes of Practice included in this consultation, on which we are seeking views, cover:

- **Covert surveillance and property interference** (covert monitoring of specifically targeted individuals and interference with property);
- **Covert human intelligence sources** (people who at the direction of a public authority establish or maintain a relationship with someone else for the covert purpose of obtaining and disclosing information); and
- **Investigation of protected electronic information** (the power to require notified individuals to provide, in intelligible form, a copy of encrypted ('protected')

information which is in the possession of a public authority. This is usually in pursuance of a criminal investigation).

## Proposed changes

The codes have been updated to reflect the changes made by the Investigatory Powers Act 2016. In particular:

- replacement of the existing oversight bodies by the Investigatory Powers Commissioner;
- new statutory error reporting requirements;
- changes made to the authorisation of equipment interference (i.e. the covert interference with equipment for the purpose of obtaining communications, equipment data or other information) and the interaction of this power with existing property interference powers;
- enhanced safeguards, such as requirements for authorising activity that may lead to the acquisition of material subject to legal privilege, communications of a member of a legislature, confidential journalistic material or other confidential material, and for the handling, retention or destruction of material obtained through use of the powers.

In addition we have made some changes which reflect developments since the codes were last revised. These are mainly technical changes which reflect best practice. They include in particular:

- expanded guidance on the use of surveillance and CHIS powers in online investigations;
- amendments intended to reinforce the protection of those acting as CHIS.

The main changes made to the draft codes, on which we are seeking views, are highlighted throughout the documents attached.



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