



Home Office

## **Regulation of Investigatory Powers Act 2000:**

Response to Home Office Consultation on Revised Regulation of Investigatory Powers Act Codes of Practice

June 2018



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# Introduction

The Regulation of Investigatory Powers Act 2000 (RIPA) provides the regulatory framework to govern the use and authorisation of a number of investigatory covert techniques, ensuring they are used by public authorities in a way that is compliant with the right to privacy under Article 8 of the ECHR. Codes of practice issued under RIPA provide more detailed guidance to public authorities on the use and authorisation of the powers, as well as to reinforce the safeguards already provided for in RIPA. Both RIPA and the codes have been updated on a number of occasions since their introduction (the codes having last been updated in 2014), to provide additional clarity and, where necessary, tighten up on operational practice.

Codes of practice relating to covert human intelligence sources (CHIS), covert surveillance and property interference (surveillance under Part II of RIPA, and property interference under the Intelligence Services Act 1994 and the Police Act 1997), and the investigation of electronic information under Part III of RIPA, have been updated to reflect the changes introduced by the Investigatory Powers Act 2016. Whilst the 2016 Act will replace powers in RIPA concerned with obtaining communications and data about communications, and overhauls the way these powers are authorised and overseen, the powers provided for in Parts II and III of RIPA remain functional and operationally important. The 2016 Act also creates a powerful new Investigatory Powers Commissioner to oversee how these powers, as well as those powers now provided for in the 2016 Act, are used.

The revised codes also contain a number of updates and clarifications intended to ensure that public authorities apply best practice in the use of these powers.

# The Codes

The codes of practice issued under RIPA set out processes and safeguards governing the use of investigatory powers by public authorities, giving detail on how the relevant powers should be used, including examples of best practice. They are primarily intended for use by public authorities able to exercise these powers under the Act, providing additional clarity to ensure the highest standards of professionalism and compliance with the legislation.

RIPA provides that all codes of practice issued under the Act are admissible as evidence in criminal and civil proceedings in any court or tribunal considering any such proceedings, such as the Investigatory Powers Tribunal. The Investigatory Powers Commissioner is responsible for overseeing the relevant powers and functions and may also be required to justify, with regard to the relevant code, the use or granting of authorisations in general or the failure to use or grant authorisations where appropriate.

The three codes of practice included in this consultation relate to powers described below.

## Covert surveillance and property interference

Covert surveillance may be authorised under Part II of the Act if it is either directed or intrusive. Intrusive surveillance is covert surveillance carried out in relation to anything taking place on residential premises or in any private vehicle. Directed surveillance is defined in the Act as covert surveillance that is not intrusive and is carried out in relation to a specific investigation or operation in such a manner as is likely to result in the obtaining of private information about any person.

Property interference to which this code applies is entry on, or interference with, property or with wireless telegraphy, and is provided for by Section 5 of the Intelligence Services Act 1994 (for intelligence services' warrants) and Part III of the Police Act 1997 (for authorisations by specified law enforcement bodies). However, once the equipment interference provisions in the Investigatory Powers Act 2016 are commenced, they will regulate the interference with equipment for the purpose of obtaining communications, equipment data or any other information, as defined in the 2016 Act. This has the effect of limiting the use of property interference powers.

## Covert human intelligence sources

Under Part II of the Act, a covert human intelligence source (CHIS) is a person who establishes or maintains a personal or other relationship with a person, where the purpose of the relationship is to covertly obtain and disclose information obtained as a result of such a relationship, or provide access to any information to another person, and one of the

persons in that relationship is not aware of the purpose of the relationship and the use of the information.

## **Investigation of protected electronic information**

Part III of RIPA provides a statutory framework that enables public authorities to require disclosure of protected electronic information (electronic data) in an intelligible form, or to acquire the means by which protected electronic information may be accessed or put in an intelligible form. At its simplest, the protection of electronic data is undertaken using a password which, if correct, gives access to the data in an intelligible form. More complex applications use cryptography both to protect access to the data and to put the data itself into a form that is unintelligible without the correct password. The exercise of these provisions allows public authorities to lawfully acquire protected information in an intelligible form, or to seek or require assistance to do so where it is necessary and proportionate to do so.

# Consultation

On 16 November 2017, the Home Office launched a public consultation on these three revised codes of practice. The consultation closed on 28 December 2017, and the Home Office has now considered the representations made regarding the revised codes of practice.

Statutory consultation has played a critical role in the development of these codes of practice, helping to ensure the transparency of investigatory powers, whilst providing public authorities, including the police and security and intelligence agencies, with the powers they need to keep people safe.

We are grateful to those who took the time to consider the amendments we are making to the codes of practice and respond to the consultation.

This document provides a brief summary of, and response to, comments received during the consultation, outlines the changes that the Government will make to these codes in response to the consultation, and the next steps that we will take.

# Responses

We received 12 responses to the public consultation, which came from members of the public, representatives from legal bodies, an oversight body, and public authorities.

The Government is confident that this consultation complied with all aspects of the Cabinet Office consultation principles.

## Table of respondents

The following table lists the responses that were received during the consultation.

<b>Nature of response</b>	<b>Number of responses</b>
Members of public	1
Legal representatives	2
Oversight bodies	1
Public authorities	7
Other bodies	1

# Principal comments and proposed changes

As a consequence of comments received as part of the consultation, a number of amendments have been made to the revised codes to provide consistency across these codes and add further clarity, as well as some minor amendments to correct typographical errors.

We have also sought to strengthen the already robust safeguards provided for in RIPA and previous iterations of these codes, and have replicated some of the safeguards provided for in the Investigatory Powers Act 2016 where applicable.

The sections below show the manner in which the individual codes have been amended as a result of representations received during the consultation.

## Covert surveillance and property interference code

We provided additional clarity in a number of areas on the issue of combined warrants and authorisations. In the paragraphs dealing with making applications for combined authorisations, we have included a requirement that the applicant consider whether to make reference to other related warrants or authorisations within any given application. This will ensure that an authorising officer or Judicial Commissioner will be made aware of the existence of an application or authorisation for one technique when considering whether to approve an application concerning another, where it is appropriate.

Also on the issue of combined warrants, clarity has been added on the use of material derived from a warrant or authorisation which reveals the existence of an interception warrant. As the matter is specifically one about material derived from lawful intercept, and the information required is detailed in full in the interception code of practice, we instead signposted the relevant paragraphs in the interception code, rather than duplicate a large amount of information, some of which would not have been as pertinent in the context of this code.

In drafting the revised codes, the online covert activity section had already been expanded to provide additional guidance to public authorities on this area. As a result of comments received during the consultation, this has been developed further to better assist public authorities in the decisions required when considering whether a directed surveillance authorisation for online activity should be sought, and the examples provided have been reworked to ensure their applicability. This includes providing greater clarity around the steps a public authority takes to inform the public or particular individuals that surveillance is or may be taking place.

We have also added clarification around some of the processes involved during the lifecycle of an authorisation, including the requirement that scheduled reviews are in writing, and that ad-hoc reviews can be conducted orally but should be formally recorded at the next scheduled review. This will ensure standardisation of processes across public authorities.

## **CHIS code**

It is important that the code provides public authorities with the clearest possible guidance to support their decision-making when authorising activity under RIPA, and revisions have been made as a consequence of representations made during the public consultation. We have made clearer the circumstances in which an individual may be considered to be a CHIS under the Act, and therefore require authorisation, and again, have made clarifications around the processes involved, for instance where the use and conduct of multiple CHIS are recorded on a single authorisation.

Guidance already contained in the covert surveillance code of practice on safeguards surrounding the use of covert techniques against the activities of members of trade unions had not been replicated in the CHIS code, despite it being equally relevant. Additional detail has been added, so the section in the CHIS code now better explains the circumstances where such an application may be sought.

Representations received during the public consultation showed that the code was not as clear as it could be in the paragraphs detailing the circumstances where the duration of a CHIS authorisation would be varied. This included paragraphs dealing with the likely acquisition of legally privileged material, and the examples included to demonstrate such circumstances. We have therefore added further detail and links to other relevant sections of the code, and expanded the examples to better demonstrate these interdependencies.

## **Protected electronic information code**

Minimal representations were received in relation to this code of practice and the content was deemed to not require any amendments beyond the changes already set out.

## Next steps

The codes of practice will be laid before Parliament along with an Affirmative Statutory Instrument. They will therefore be subject to the scrutiny of the Joint Committee on Statutory Instruments (JCSI), and then they will be debated in Parliament. They will only come into force once they have been debated in both Houses of Parliament and both Houses have expressly approved them.

