

**Recommendations from 2015 Office of the Surveillance Commissioner (OSC)
Inspection Report**

The D & S FRS Regulation of Investigatory Powers Act 2000 (RIPA) 'Corporate Services Policy Document' should be amended to include the following detail:

- (a). *A pagination issue should be addressed. In addition, paragraphs would benefit from being numbered for each of reference.*

Comment

Pagination has been addressed and an auto-generated Table of Contents inserted. Section paragraphs have been numbered.

- (b). *Section 3 – statutory considerations of necessity and proportionality should be aligned to Notes 72 – 74 of the OSC Procedures and Guidance 2014.*

Comment

This part of Section 3 has been rewritten to reflect Notes 72 – 74 of the OSC Procedures and Guidance 2016 dealing with necessity and proportionality.

- (c). *Section 3 – there is reference to 'collateral intrusion' but nothing in respect of the statutory obligation to minimise it.*

Comment

This part of Section 3 has been expanded to reflect the requirement to avoid or minimise collateral damage and the need to assess the likelihood of collateral intrusion (and the factors the assessment should take into account).

- (d). *Section 4 – makes no reference to grounds for an 'urgent oral' authorisation or the process involved (Paragraphs 5.5, 5.6 and 3.28 [bullet point 3] of the Code of Practice [Surveillance] refers).*

Comment

Section 4 has been amended to include the reasons for and process involved in obtaining an urgent oral authorisation.

- (e). *Section 4 – statutory time limits should read 'less one day at 23:59 hours'.*

Comment

This amendment has been incorporated.

- (f). *Section 4 also states that 'at the expiry of an authorisation it must be formally cancelled'. This is not correct. An authorisation must be cancelled as soon as the need for the surveillance no longer exists. Authorisations should either be cancelled or renewed; not 'expire'.*

Comment

This part of the Section has been amended to reflect that authorisations must be cancelled as soon as the need for surveillance no longer exists.

- (g). *Section 4 in relation to CHIS refers to a ‘handler’. There is no reference to the role of ‘Controller’ (Section 29[5][b] RIPA 2000) or a person responsible for maintaining ‘source records’ as required by SI 2000/2725 documented at Section 29[5][c] RIPA 2000. It may be wise, rather than go into such detail in the policy document, that the issue is flagged for prompt legal advice.*

Comment

This part of the Section has been redrafted to reference the three roles of “handler”, “controller” and “source records” keeper.

- (h). *Section 5 – Record keeping – should state that original documents are to be forwarded to the RIPA Co-ordinator for central filing.*

Comment

This amendment has been made.

- (i). *Section 5 – Records that disclose the true identity of a CHIS should be securely stored separately from other documentation.*

Comment

This amendment has been made.

RIPA should be included as part of the ongoing professional development of staff who may need to use the legislation. There would be clear benefit in some sort of practical exercise that would demonstrate what should be written on the RIPA forms.

Comment

Since drafting the initial Service policy and the subsequent inspection in 2015, organisational changes have resulted in a requirement to amend the lists of both RIPA applicants and authorising officers. This will in turn generate a training requirement for newly-identified applicants and authorising officers. This training is in the process of being sourced and, once arranged, will also be offered by way of a “refresher” for other officers associated with the Authority’s RIPA regime (as indicated at the Appendix to the policy).

It is intended that this training should address the practicalities of completion of RIPA forms. Thereafter, consideration will be given to the provision of annual “light touch” RIPA refresher sessions for those officers associated with the Authority’s RIPA regime.

**Advisory comments from 2015 Office of the Surveillance Commissioner (OSC)
Inspection Report**

It is advised that a “tab” is created on the Central Record to include the detail required at paragraph 7.1 of the Covert Human Intelligence Source (CHIS) Code of Practice and a further “tab” to include details of any non-regulated surveillance conducted for non-core functions of the Service.

Comment

A separate “tab” has been created on the Central Record to include details of any non-regulated surveillance conducted for non-core functions of the Service. Additionally, the opportunity has been taken to amend paragraph 1.5 of the Service policy to indicate that, for non-RIPA surveillance, the Authority has in place a similar process to document consideration of human rights principles in the interests of professional and ethical investigation, fairness and transparency.

In relation to Covert Human Intelligence Source (CHIS) activities, the relevant Code of Practice provides, at paragraph 7.1:

A centrally retrievable record of all authorisations should be held by each public authority. These records need only contain the name, code name, or unique identifying reference of the CHIS, the date the authorisation was granted, renewed or cancelled and an indication as to whether the activities were self-authorised.

A separate “tab” has also been created on the Central Record to detail, in respect of Covert Human Intelligence Sources on which the following data should be entered:

- (a). The unique reference number of the CHIS and any code name that may have been applied;
- (b). The date the authorisation was granted, renewed or cancelled;
- (c). An indication of whether the activities were self-authorised.