GLOUCESTER CITY COUNCIL

REGULATION OF INVESTIGATORY POWERS ACT 2000

PROCEDURAL GUIDE

Adopted by Council: October 2017[1]

[1] **Reviewed by Members 2019**

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1. INTRODUCTION

1.1 This policy document shall be readily available at the offices of Gloucester City Council ("the Council).

1.2 The purpose of this document is to ensure that the Council complies with the Regulation of Investigatory Powers Act 2000 (RIPA) and associated guidance/codes of practice.

1.3 This document provides guidance on the regulation of any covert surveillance that is carried out by Council officers. This includes the use of undercover officers, informants and private investigators and other agents of the Council.

1.4 Any covert surveillance will have to be authorised and conducted in accordance with RIPA, the statutory codes of practice and this Guide and shall only be for one of the purposes set out in this Guide and for a purpose which the Council is legally required or empowered to investigate as part of its functions.

1.5 Covert surveillance will only be used by the Council where it judges such use to be proportionate to the seriousness of the crime or matter being investigated, and the history and character of the individual(s) concerned.

1.6 Before requesting authorisation, Investigating Officers will have regard to this document and the statutory Codes of Practice issued under section 71 of RIPA. The Codes of Practice are available from the RIPA co-ordinator and direct from the Home Office at http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-codes-of-practice/

1.7 Authorising officers will have to consider whether it is necessary and proportionate for Investigating Officers to undertake covert surveillance and whether it is possible to obtain the evidence through other means.

1.8 Authorising Officers must give detailed consideration to the risk of collateral intrusion, i.e. the risk of intruding into the privacy of others while watching someone else. Steps will have to be taken to minimise this risk.

1.9 There should be no situation where an officer engages in covert surveillance without obtaining authorisation in accordance with the procedures set out in this document, the statutory Codes of Practice and from RIPA.

1.10 Any queries concerning the content of the document should be addressed to the RIPA co-ordinator.

2. THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

2.1 The background to RIPA

RIPA provides a legal framework for the control and regulation of surveillance and information techniques which public authorities undertake as part of their duties. As was highlighted in the introduction to the Guide the need for such control arose as a result of the Human Rights Act 1998. Article 8 of the European Convention on Human Rights states that:-

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health and morals or for the protection of the rights and freedoms of others.

The right under Article 8 is a qualified right and public authorities can interfere with this right for the reasons given in paragraph 2 of Article 8. RIPA provides the legal framework for lawful interference.

2.2 The scope of this Guide

This Guide intends to cover the surveillance and information gathering techniques which are most likely to be carried out by the Council.

Neither RIPA nor this Guide covers the use of any overt surveillance, general observation that forms part of the normal day to day duties of officers, the use of equipment to merely reinforce normal sensory perception, such as binoculars, or circumstances where members of the public who volunteer information to the Council.

RIPA does not normally cover the use of overt CCTV surveillance systems since members of the public are aware that such systems are in place.

If an Investigating Officer envisages using any CCTV system for surveillance they should contact the RIPA co-ordinator.

RIPA deals with a wide variety of surveillance types. Some of the other techniques that are covered by RIPA but will not or cannot be used by local authorities are listed below. These include:-

1. The interception of any communication such as postal, telephone or electronic communications without both the sender and receiver's permission;

2. The acquisition and disclosure of information to who has sent or received any postal, telephone or electronic communication; and

3. The covert use of surveillance equipment within any premises or vehicle, including business premises and vehicles with the intention of covertly gathering information about the occupant(s) of such premises or vehicles.

2.3 Consequences of not following RIPA

Section 27 of RIPA provides that surveillance shall be lawful for all purposes if authorised and conducted in accordance with an authorisation granted under RIPA.

Lawful surveillance is exempted from civil liability

Although not obtaining authorisation does not make the authorisation unlawful per se, it does have some consequences:-

(i) evidence that is gathered may be inadmissible in court;

(ii) the subjects of surveillance can bring their own proceedings or defeat proceedings brought by the Council against them on human rights grounds, ie. we have infringed their rights under Article 8;

(iii) if a challenge under Article 8 is successful the Council could face a claim for financial compensation;

(iv) a complaint could be made to The Investigatory Powers Commissioner's Office and

(v) the government has also introduced a system of tribunal. Any person who believes that their rights have been breached can have their complaint dealt with by way of a tribunal.

2.4 The Surveillance Commissioner

IPCO provides independent oversight of the use of investigatory powers by intelligence agencies, police forces and other public authorities. The Investigatory Powers Commissioner, and his Judicial Commissioners are responsible for overseeing the use of investigatory powers by public authorities which include law enforcement, the intelligence agencies, prisons, local authorities and other government agencies (e.g. regulators). In total over 600 public authorities and institutions have investigatory powers.

The IPCO has unfettered access to all locations, documentation and information systems as necessary to carry out full functions and duties and will review the way in which public authorities implement the requirements of RIPA. The Commissioner has a wide range of powers of access and investigation. The Council will receive periodic visits from the IPCO. They will check to see if the Council is complying with RIPA.

It is important that the Council can show that it complies with this Guide and with the provisions of RIPA.

3. COVERT SURVEILLANCE

There are three categories of covert surveillance:-

1. Directed surveillance
2. Covert human intelligence sources; and
3. Intrusive surveillance (but nothing in this procedure permits the authorising of "Intrusive surveillance" as defined in RIPA (ie. in respect of anything taking place on residential premises or in a private vehicle, involving the presence of an investigator on those premises/vehicles or carried out through a surveillance device).

3.1 Directed Surveillance (DS)

3.1.1 The majority of covert surveillance that will be undertaken by the Council will fall under the heading of Directed Surveillance (DS).

3.1.2 DS is defined as surveillance which is covert, but not intrusive, and is undertaken:-

(a) for the purpose of a specific investigation or operation;

(b) in such a manner as it is likely to result in obtaining private information about a person (whether or not that person is the target of the investigation or operation); and

(c) in a planned manner and not by way of an immediate response whereby it would not be reasonably practicable to obtain an authorisation prior to the surveillance being carried out.

3.1.3 It is irrelevant where the subject of the DS is being observed.

3.1.4 If you intend to instruct an agent to carry out the DS the agent must complete and sign the form marked "agent's agreement form" contained in **Appendix C**. The agent will be subject to RIPA in the same way as any employee of the Council would be.

3.1.5 The flow chart in **Appendix C** gives guidance on when authorisation might be needed.

3.2 Covert Human Intelligence Sources (CHIS)

3.2.1 This involves the establishment or maintenance of a personal or other relationship with a person for the covert purpose of obtaining or disclosing private information. A CHIS is a person who:-

(a) s/he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c);

(b) s/he covertly uses such a relationship to obtain information or to provide access to any information to another person; or

(c) s/he covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

3.2.2 A relationship is established or maintained for a covert purpose if and only if it is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose.

3.2.3 A relationship is used covertly and information obtained is disclosed covertly, if and only if the relationship if used or the information is disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

3.2.4 Covert Human Intelligence Sources may only be authorised if the following arrangements are in place:

- that there will at all times be an officer within the local authority who will have day to day responsibility for dealing with the source on behalf of the authority, and for the source's security and welfare;

- that there will at all times be another officer within the local authority who will have general oversight of the use made of the source;

- that there will at all times be an officer within the local authority who has responsibility for maintaining a record of the use made of the source; and

- that the records relating to the source maintained by the local authority will always contain particulars of all matters specified by the Secretary of State in Regulations.

3.2.5 Legal advice should always be sought where any matters for investigation may involve the use of other enforcement agencies, including the police.

3.2.6 Special consideration must be given to the use of vulnerable individuals for CHIS. A 'vulnerable individual' is a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself, or unable to protect himself against significant harm or exploitation. Any individual of this description, or a juvenile as defined below, should only be authorised to act as a source in the most exceptional circumstances and only then when authorised by the Chief Executive (Head of Paid Service) (or, in his absence, by the person acting as Head of Paid Service).

3.2.7 Before an Investigating Officer undertakes any surveillance involving a vulnerable individual they **must obtain legal advice** and consult the RIPA co-ordinator concerning any clarification on the administrative process. Also in these cases, the Head of Paid Service (or in his absence, by the person acting as Head of Paid Service) must authorise the use of a vulnerable individual as a CHIS.

3.2.8 Special safeguards also apply to the use or conduct of juvenile sources; that is sources under the age of 18 years. On no occasion should the use or conduct of a source under 16 years of age be authorised to give information against his parents or any person who has parental responsibility for him.

3.2.9 In other cases, authorisations should not be granted unless the special provisions contained within The Regulation of Investigatory Powers (Juveniles) Order 2000; SI No. 2793 are satisfied. Authorisations for juvenile sources should be granted by the Head of Paid Service (or in his absence, by the person acting as Head of Paid Service). Before an Investigating Officer undertakes any surveillance involving a juvenile they must consult the RIPA co-ordinator.

3.2.10 The flow chart in **Appendix D** gives guidance on when authorisation might be needed.

3.2.11 Any Investigating Officer considering the use of a CHIS must seek advice from the RIPA Co-ordinator before taking any steps in relation to a CHIS.

3.3 Intrusive surveillance

3.3.1 Intrusive surveillance is defined as covert surveillance that:-

(a) is carried out in relation to anything taking place on any residential premises or in any private vehicle; and

(b) involves the presence of any individual on the premises or in the vehicle or is carried out by means of a surveillance device.

(c) if the device is not located on the premises or in the vehicle, it is not intrusive surveillance unless the device consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle.

3.3.2 Local authorities are not authorised to conduct intrusive surveillance.

4. Procedure for Obtaining Authorisations

4.1 The Senior Responsible Officer:-

Role:

4.1.1 The Head of Paid Service is designated the Council's Senior Responsible Officer (SRO) with responsibilities for:-

(a) ensuring the integrity of the Council's RIPA processes;

(b) ensuring compliance with RIPA legislation and the Home Office Codes of Practice;

(c) engaging with the IPCO when its inspector conducts an inspection;

(d) overseeing the implementation of any post-inspection plans;

(e) ensuring that all Authorising Officers are of an appropriate standard in light of any recommendations made by the IPCO inspection reports;

(f) ensuring that concerns are addressed, where IPCO inspection reports highlight concerns about the standards of Authorising Officers.

4.2 Authorising Officers

Role:

Authorising Officers can authorise, review and cancel directed surveillance, and can authorise, review and cancel the employment of a juvenile or vulnerable CHIS, or the acquisition of confidential information.

4.2.1 The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 prescribes that for local authorities the Authorising Officer shall be a Director, Head of Service, Service Manager or equivalent as distinct from the officer responsible for the conduct of an investigation.

4.2.2 Officers of a lower rank **cannot** grant authorisations.

4.2.3 A designated Authorising Officer must qualify **both** by rank and by competence. Officers who wish to be designated must have been trained to an appropriate level

so as to have an understanding of the Act and the requirements that must be satisfied before an authorisation can be granted.

Appendix A sets out the officers within the Council who can grant authorisations.

4.2.4 Authorisations must be given in writing by the Authorising Officer. .

4.2.5 Authorising Officers are also responsible for carrying out regular reviews of applications which they have authorised and also for the cancellation of authorisations.

4.3 Investigating Officers - What they need to do before applying for authorisation

4.3.1 Investigating Officers should think about the need to undertake DS or CHIS before they seek authorisation. Investigating Officers need to consider whether they can obtain the information by using techniques other than covert surveillance. There is nothing that prevents an Investigating Officer discussing the issue of surveillance beforehand. Any comments by a supervisor should be entered into the application for authorisation.

4.3.2 The Codes of Practice do however advise that Authorising Officers should not be directly responsible for authorising investigations or operations in which they are directly involved although it is recognised that this may sometimes be unavoidable.

4.3.3 If an Investigating Officer intends to carry out DS or use CHIS they should complete and submit an Application for Directed Surveillance form which is marked Application for Directed Surveillance or an Application for the use of CHIS which is marked Application for CHIS to an Authorising Officer. An electronic version of the most up-to-date forms and Codes of Practice are available online downloaded from the Home Office in **Appendix B**. The Investigating Officer should also consider including an assessment of the risk of collateral intrusion and detail any measures taken to limit this.

4.3.4 **Appendix C** shows the steps which are required as part of the authorisation process and the Covert Surveillance and Property Interference Revised Code of Practice (August 2018) contains best practice guidelines with regard to applications for Directed Surveillance including the need for information to be presented in a fair and balanced way.

4.3.5 The person seeking the authorisation should obtain a Unique Reference Number from the RIPA Co-ordinator and complete parts 1 and 2 of the form having regard to the guidance given in this Guide and the statutory Codes of Practice.

4.3.6 The form should then be submitted to the Authorising Officer for authorisation.

4.4 Authorising Officers - What they need to do before authorising surveillance

4.4.1 Before giving authorisation an Authorising Officer **must** be satisfied that the reason for the request is the permitted reason under the Act and permitted under the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010, i.e.

in the case of directed surveillance, for the purpose of the prevention and detection of conduct which constitutes one or more criminal offences that are:

(i) punishable by a maximum term of at least 6 months imprisonment; or

(ii) are offences under:

a. Section 146 of the Licensing Act 2003 (sale of alcohol to children)
b. Section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children)
c. Section 147A of the Licensing Act 2003 (persistently selling alcohol to children); or
d. Section 7 of the Children and Young Persons Act 2003 (sale of tobacco etc. to persons under eighteen); and

or

in the case of CHIS, for the purpose of the prevention and detection of crime or for the preventing of disorder;

and

- the desired result of the covert surveillance cannot reasonably be achieved by other means; and

- the risks of collateral intrusion (the risk of obtaining private information about persons who are not the subject of investigation) have been properly considered, and the reason for the surveillance is balanced proportionately against the risk of collateral intrusion with particular consideration given to cases where religious, medical, journalistic or legally privileged material may be inferred or where communications between a Member of Parliament and another person on constituent business may be involved. ; and

- there must also be consideration given to the possibility of collecting confidential personal information. If there is a possibility of collecting personal information the matter should be passed to the Senior Responsible Officer for consideration.

4.4.2 An Authorising Officer **must** also be satisfied that the surveillance in each case is **necessary** and **proportionate**.

This is defined as:-

Necessity

- Obtaining an authorisation under the 2000 Act will only ensure that there is a justifiable interference with an individual's Article 8 rights if it is necessary and proportionate for these activities to take place. The 2000 Act first requires that the person granting an authorisation for directed surveillance believe that the authorisation is necessary in the circumstances of the particular case for the statutory ground in section 28(3)(b) of the 2000 Act being *"for the purpose of preventing or detecting crime or of preventing disorder"* .

Proportionality

- The following elements of proportionality should be considered:

  i) balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or harm;

  ii) explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;

  iii) considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the information sought;

  iv) evidencing as far as reasonably practicable, what other methods have been considered and why they were not implemented, or have been implemented unsuccessfully.

When the Authorising Officer has considered if the surveillance is necessary and proportionate they must complete the relevant section of the form explaining why in his/her opinion the surveillance is necessary and proportionate.

4.5 Judicial Approval

4.5.1 From 1 November 2012, any DS or CHIS authorisation granted by an Authorising Officer **does not** take effect until an order has been made by a Justice of the Peace ("Magistrate") approving the grant of the authorisation.

4.5.2 When an authorisation has been granted by an Authorising Officer, an Officer authorised by the Council to appear on its behalf in Magistrates' Court proceedings (the "Applicant") needs to make an application to the Magistrates' Court for judicial approval of the authorisation before the authorisation can take effect (i.e. before lawful surveillance can begin).

4.5.3 Under the Criminal Procedure Rules 2012, the Applicant must:

(i) apply in writing and serve the application on the court officer;

(ii) attach the authorisation which the Applicant wants the court to approve (NB the original authorisation should be shown to and a copy provided to, the Magistrate. The original authorisation should be retained by the Investigating Officer) ;

(iii) attach such other material (if any) on which the Applicant is relying to satisfy the court that the authorisation was necessary for the purposes of the prevention and detection of crime and was proportionate (as set out in paragraph 4.4.1) and that the authorisation was granted by a person designated for the purposes of RIPA .

The Applicant should also provide the Magistrate with two copies of a partially completed judicial application/order to assist the process.

4.5.4 The relevant Magistrate may approve the granting of a DS authorisation if, and only if, they are satisfied that:

(i) at the time of the grant (i.e. when approval was given by the Authorising Officer):

a. there were reasonable grounds for believing that the authorisation was necessary for the purposes of the prevention and detection of crime and was proportionate (as set out in paragraph 4.4.1); and

b. that the authorisation was granted by a person designated for the purposes of authorising DS; and

(ii) at the time when the relevant Magistrate is considering the matter, there remain reasonable grounds for believing that the authorisation is necessary and proportionate (as set out in paragraph 4.4.1)

4.5.5 The relevant Magistrate may approve the granting of a CHIS authorisation if, and only if, they are satisfied that:

(i) at the time of the grant (i.e. when approval was given by the Head of Paid Service):

a. there were reasonable grounds for believing that the authorisation was necessary for the purposes of the prevention and detection of crime or disorder and was proportionate (as set out in paragraph 4.4.1) and that the arrangements set out in paragraph 3.2.3, together with any other prescribed requirements, were in place; and

b. that the authorisation was granted by a person designated for the purposes of authorising CHIS, and

(ii) at the time when the relevant Justice of the Peace is considering the matter, there remain reasonable grounds for believing that the authorisation is necessary and proportionate (as set out in paragraph 4.4.1)

4.5.6 Where an application is approved by a Magistrate, the Investigating Officer should:

(i) retain a copy of the judicial application/order that has been signed by the Magistrate;

(ii) retain the original authorisation; and

(iii) notify the RIPA Co-Ordinator of the JP approval for the authorisation and provide a copy of the authorisation, application and Order for the RIPA records.

4.5.7 Where an application is not approved by a Magistrate, the authorisation does not take effect and the surveillance proposed in the authorisation should not be carried out.

4.5.8 Where an application is refused by a Magistrate, the Magistrate may make an order quashing the authorisation.

5. Record Keeping, Duration, Review, Errors, Renewal and Cancellation of Authorisations and Errors

5.1 Record Keeping

5.1.1 A record of all authorisations should be centrally retrievable within the Council for a period of at least three years and should be regularly updated and made available to the Investigatory Powers Commissioner and inspectors upon request. This record should contain the information outlined within the Covert Surveillance and Property Interference Revised Code of Practice (August 2018).

5.2 Duration

5.2.1 DS authorisations will cease to have effect after three months from the date of judicial approval unless renewed (also subject to judicial approval) or cancelled.

5.2.2 Authorisations should be given for the maximum duration (i.e. three months) but reviewed on a regular basis and formally cancelled when no longer needed.

5.2.3 CHIS authorisations will cease to have effect after twelve months from the date of approval.

5.2.4 Investigating Officers should indicate within the application the period of time that they estimate is required to carry out the surveillance, this will be proportionate to the objectives of the investigation and give due consideration to collateral intrusion.

5.2.5 From 1 November 2012, urgent verbal authorisations are no longer available.

5.2.6 For CHIS authorisations, legal advice must be sought, particularly those that involve the use of juveniles (for which the duration of such an authorisation is one month instead of twelve months).

5.27 It is the responsibility of the Investigating Officer to make sure that the authorisation is still valid when they undertake surveillance.

5.3 Review

5.3.1 An Investigating Officer must carry out a regular review of authorisations. If an authorisation is no longer required it **must** be cancelled.

5.3.2 The results of any review must be included on the review form (see forms Review of Directed Surveillance" and "Review of CHIS" available from the RIPA Co-ordinator, or the Home Office website address given in **Appendix B**).

5.3.3 The Authorising Officer also has a duty to review authorisations that have been granted when it is necessary or practicable to do so. Particular attention should be given to authorisations involving collateral intrusion or confidential material.

5.3.4 The Authorising Officer should keep a copy of the review form for at least 3 years and a copy should e given to the Investigating Officer. A copy of the review form must also be sent to the RIPA Co-ordinator.

5.4 Renewals

5.4.1 An Investigating Officer can ask for and an Authorising Officer can grant, subject to judicial approval, a renewal of an authorisation before it would cease to have effect.

5.4.2 An application for a renewal must not be made more than seven days before the authorisation is due to expire.

5.4.3 A renewal can last for up to three months, effective from the date that the previous authorisation would cease to have effect.

5.4.4 An Authorising Officer can grant more than one renewal, subject to judicial approval, as long as the request for authorisation still meets the requirements for authorisation. An Authorising Officer must still consider all of the issues that are required for a first application before a renewal can be granted.

5.4.5 If the reason for requiring authorisation has changed from its original purpose it will not be appropriate to treat the application as a renewal. The original authorisation should be cancelled and a new authorisation should be sought, granted by an Authorising Officer and approved by a Magistrate.

5.4.6 An application for a renewal must be completed on the appropriate form (see forms "Renewal of Directed Surveillance" and "Renewal of CHIS" available from the RIPA Co-ordinator, or the Home Office website address given in **Appendix B**).

5.4.7 The Authorising Officer should keep a copy of the renewal and a copy should be given to the Investigating Officer. A copy of the renewal form, judicial application and order must also be sent to the RIPA Co-ordinator.

5.5 Cancellations

5.5.1 If the reason for requiring the authorisation no longer exists, the authorisation must be cancelled and in any event as soon as the operation for which an authorisation was sought ceases to be necessary or proportionate. This applies to both original applications and renewals (see forms "Cancellation of Directed Surveillance" and "Cancellation of CHIS" available from the RIPA Co-ordinator, or the Home Office website address given in **Appendix B**).

5.5.2 Authorisations must also be cancelled if the surveillance has been carried out and the original aim has been achieved. Authorising Officers will ensure that authorisations are set to expire at the end of the appropriate statutory period.

5.5.3 It is the responsibility of the Investigating Officer to monitor their authorisations and seek cancellation of them where appropriate.

5.5.4 The Authorising Officer should keep a copy of the cancellation form and a copy should be given to the Investigating Officer. A copy of the cancellation form must also be sent to the RIPA Co-ordinator.

5.6 Errors in applications

5.6.1 An error must be reported if it is a "relevant error" to the Investigatory Powers Commissioner as soon as reasonably practicable. If the error is of a serious nature then the Commissioner may require that the person concerned is informed of the error. Legal advice should be sought as soon as possible if errors are identified

5.7 Review of Policy and Procedure

(i) The Cabinet will receive annual reports on the use of RIPA.

(ii) The Cabinet will review the use of RIPA and report any recommendations to the Overview and Scrutiny Committee and Council on an annual basis.

6. The RIPA Co-ordinator

6.1 Role

The RIPA Co-ordinator will:-

(i) provide a Unique Reference Number for each authorisation sought;

(ii) keep copies of the forms for a period of at least three years;

(iii) keep a register of all of the authorisations, reviews, renewals and cancellations, including authorisations granted by other public authorities relating to joint surveillance by the Council and that other public authority;

(iv) provide administrative support and guidance on the processes involved;

(v) monitor the authorisations, reviews, renewals and cancellations so as to ensure consistency throughout the Council;

(vi) monitor each department's compliance and act on any cases of non-compliance;

(vii) provide training and further guidance on and awareness of RIPA and the provisions of this Guide; and

(viii) review the contents of the Guide, in consultation with Investigating Officers, Authorising Officers and the Senior Responsible Officer.

All original applications for authorisations and renewals including those that have been refused must be passed to the RIPA Co-ordinator as soon as possible after their completion with copies retained by the Authorising Officer and the Investigating Officer.

The RIPA Co-ordinator shall be the Head of Finance

All cancellations must also be passed to the RIPA Co-ordinator.

6.2 It is however the responsibility of the Investigating Officer, the Authorising Officers and the Senior Responsible Officer to ensure that:-

(i) authorisations are only sought and given where appropriate;

(ii) authorisations are only sought and renewed where appropriate;

(iii) authorisations are reviewed regularly;

(iv) authorisations are cancelled where appropriate; and

(v) they act in accordance with the provisions of RIPA.

7. **Legal Advice**

Legal Services will provide legal advice to staff making, renewing or cancelling authorisations, including making applications for judicial approval.

8. **Joint Investigations/Collaborative working**

Where joint investigations are carried out with other agencies, such as the Department of Work and Pensions (DWP) or the Police, the RIPA Co-ordinator should be notified of the joint investigation and provided with a copy of any RIPA authorisation granted by another agency in respect of a joint investigation involving Council officers.

Any person granting or applying for an authorisation will need to be aware of the particular sensitivities in the local community where the surveillance is taking place. Where possible public authorities should seek to avoid duplication of authorisations as part of a single investigation or operation. Where two agencies are conducting directive or intrusive surveillance as part of a joint operation, only one authorisation is required.

9. National Anti-Fraud Network (NAFN)

9.1 Since September 2014, Local Authorities can only access communications data via the National Anti-Fraud Network (NAFN). 'NAFN is a not-for-profit, non-incorporated body formed by its members to provide services which support their work in the protection of the public purse. Established in 1997, NAFN was created as a centre of excellence to provide data and intelligence to its members. This includes assisting members in the provision of effective corporate and financial governance. NAFN works with its members and other stakeholders to enhance and expand its range of services. It maintains all data in a secure and confidential environment conforming to Government legislation and national best practice

9.2 Whilst it is not compulsory to join NAFN per se, a Local Authority must be a paid up member in order to make use of its single point of contact (SPoC) service in relation to communications data. The Council is a member, primarily to make use of other services provided by NAFN (credit referencing, DVLA checks, debtor tracing etc.) but given that Officers could now utilise the RIPA SPoC service and obtain communications data, guidance needs to be in place to govern the process.

9.3 This procedural guide is based on the requirements of The Regulation of Investigatory Powers Act 2000 (RIPA) and the Home Office Code of Practice on the Acquisition and Disclosure of Communication Data. The Council takes responsibility for ensuring its RIPA procedures are continuously improved and asks that any Officers with suggestions contact the RIPA Coordinator in the first instance. If any of the Home Office Codes of Practice change, the appropriate guide will be updated, and the amended version placed on the internet / published accordingly. Regular training sessions will also be provided to ensure that staff members are fully conversant with the Act

10. Complaints

The Investigatory Powers Tribunal (IPT) has jurisdiction to investigate and determine complaints against a public authority use of investigatory powers, and is

the only appropriate tribunal for human rights claims against the intelligence services. All complaints for the use of powers should be directed to the IPT.

APPENDIX A

OFFICERS

The following officers are the Senior Authorising Officer and the Authorising Officers for the purposes of RIPA.

Senior Responsible Officer Managing Director - Head of Paid Service – Jon McGinty
Authorising Officers – Directed Surveillance
Head of Finance - S151 OFFICER – JON TOPPING Head of Communities – Ruth Saunders Head of Place – Ian Edwards
Authorising Officer – CHIS Managing Director - Head of Paid Service – Jon McGinty
RIPA Co-Ordinator – Jon Topping

APPENDIX B

AUTHORISATION FORMS

All of the forms necessary for RIPA are available from the Home Office website these forms are
a mandatory part of the process and must be used in line with the guidance.

All decisions about using regulated investigatory powers must be recorded as they are taken on the required form.

This is the case for applicants seeking authority to undertake regulated conduct and for Authorising Officers and designated persons who consider and decide whether to grant authority or give notice for that conduct. Select the form that you require from the hyperlinked lists below:-

https://www.gov.uk/government/collections/ripa-forms--2

Directed Surveillance
https://www.gov.uk/government/publications/application-for-use-of-directed-surveillance
https://www.gov.uk/government/publications/renewal-form-for-directed-surveillance
https://www.gov.uk/government/publications/review-of-use-of-directed-surveillance
https://www.gov.uk/government/publications/renewal-form-for-directed-surveillance

Covert Human Intelligence Sources
https://www.gov.uk/government/publications/application-for-the-use-of-covert-human-intelligence-sources-chis
https://www.gov.uk/government/publications/reviewing-the-use-of-covert-human-intelligence-sources-chis
https://www.gov.uk/government/publications/reviewing-the-use-of-covert-human-intelligence-sources-chis
https://www.gov.uk/government/publications/cancellation-of-covert-human-intelligence-sources-chis

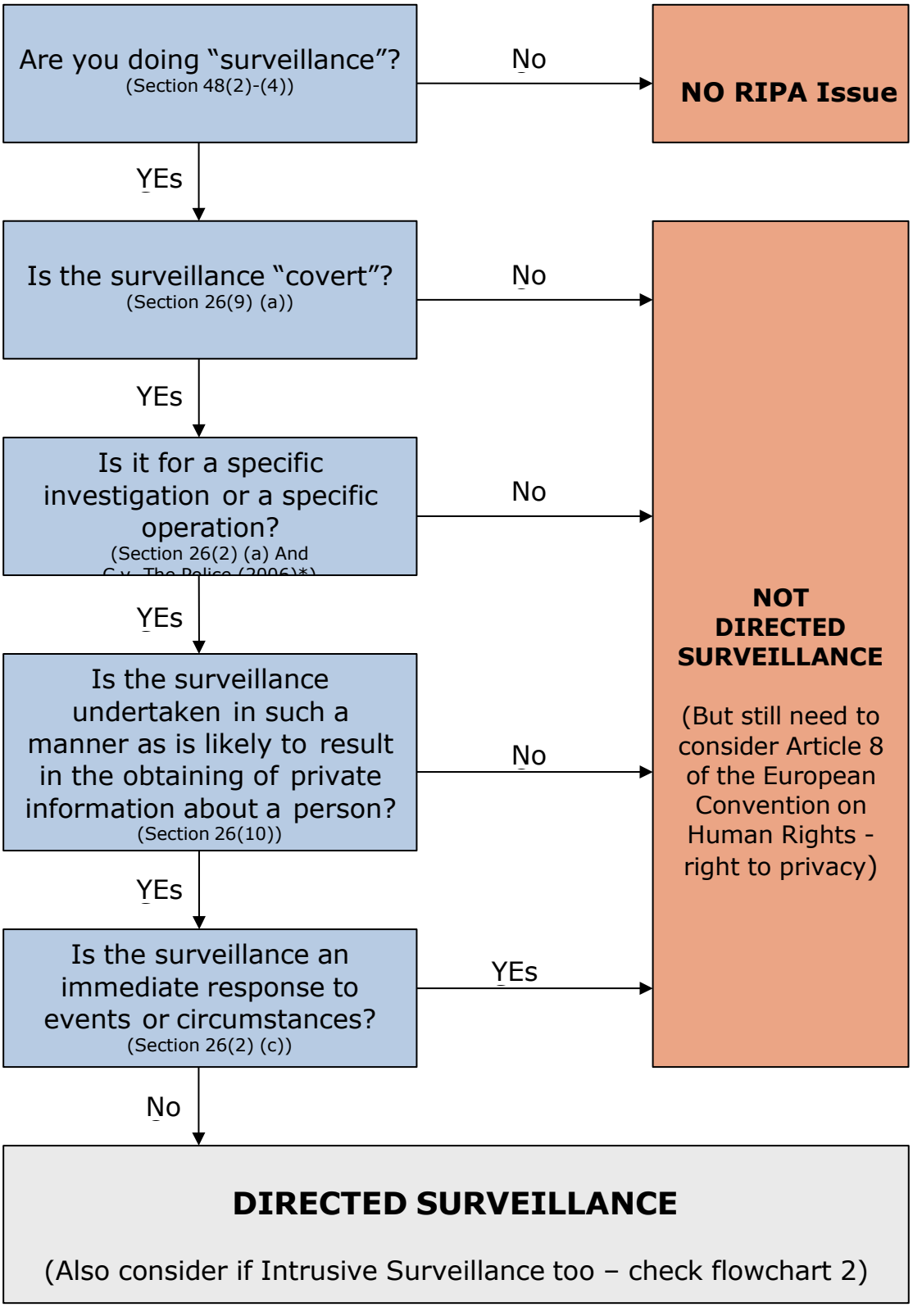
Reporting errors to the IOCCO
https://www.gov.uk/government/publications/reporting-an-error-by-a-csp-to-the-iocco
https://www.gov.uk/government/publications/reporting-an-error-by-a-public-authority-to-the-iocco

FLOWCHARTS

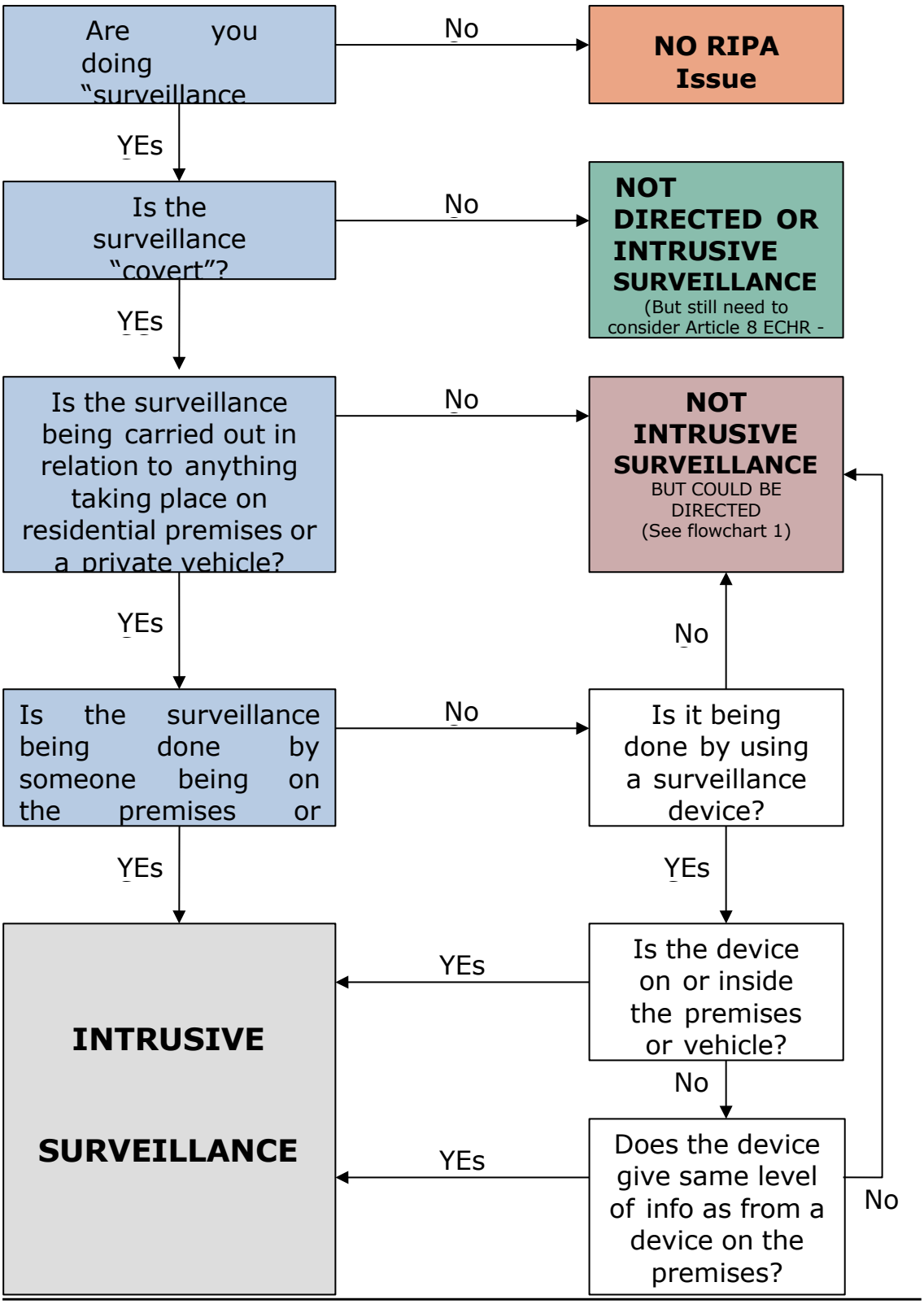
Appendix C

Flowchart 5.1 - Are you doing Directed Surveillance?

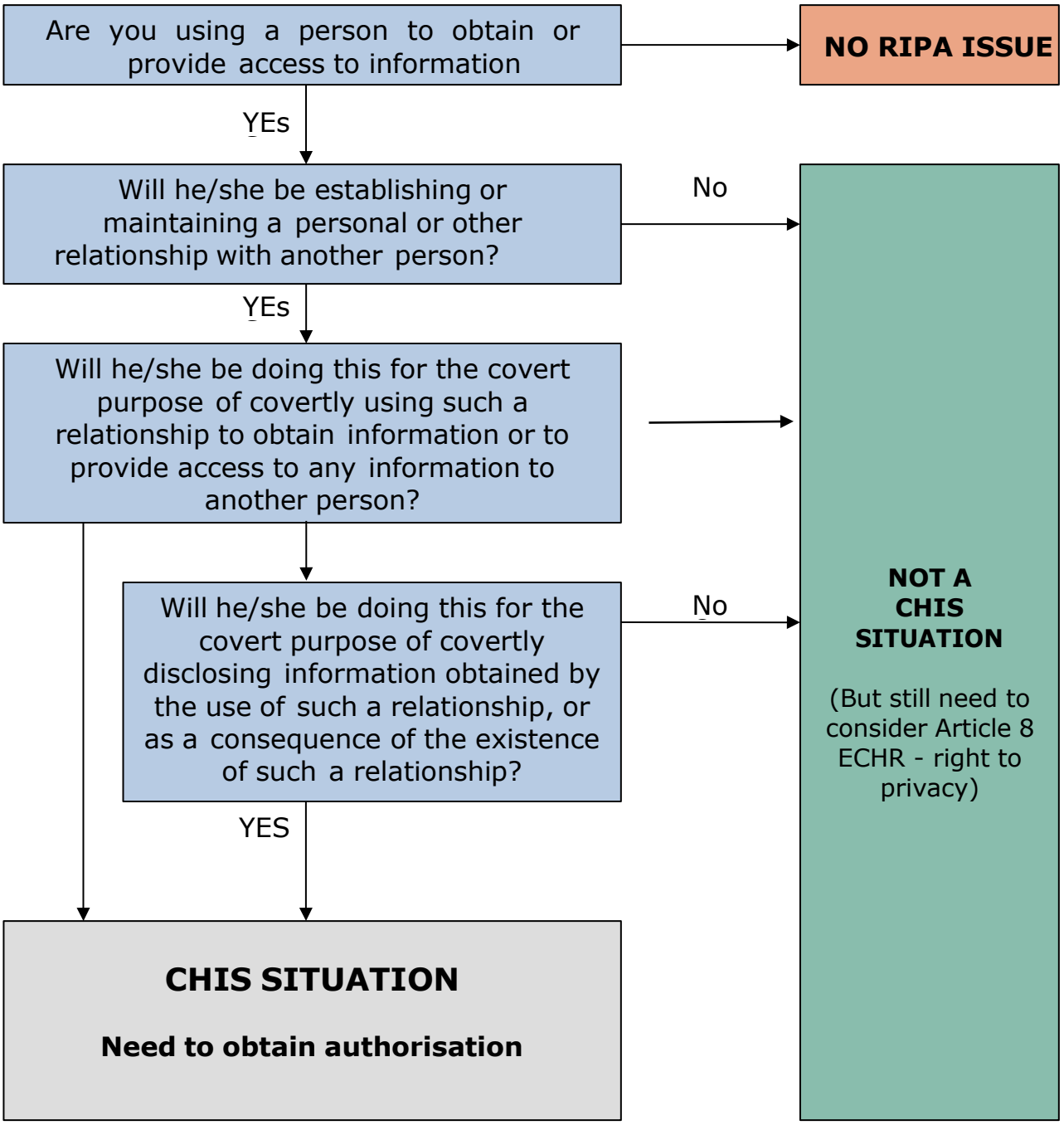
All references are to sections of the Regulation of Investigatory Powers Act 2000



Flowchart 5.2 -Are you doing Intrusive Surveillance?



Flowchart 5.3 - Are you using CHIS? (Section 26(8)



Appendix D

LOCAL AUTHORITY PROCEDURE: APPLICATION TO A JUSTICE OF THE PEACE SEEKING AN ORDER TO APPROVE THE GRANT OF A RIPA AUTHORISATION OR NOTICE

Local Authority investigator wants to use a RIPA technique (directed surveillance, CHIS (covert human intelligence source) or communications data).

Does investigator intend to use directed surveillance?

Yes

No

Is the Local Authority investigating an offence and does that offence attract a maximum custodial sentence of 6 months or more?

No

Yes

Is the offence being investigated either:
Section 146/147/147A of the Licensing Act 2003, or Section 7 of the Children and Young Persons Act 1993?

No

Yes

Investigator may **not** use directed surveillance. The case should be investigated by other means. Continue to assess **if** threshold is met if further offences come to light as the case progresses.

- Complete RIPA authorisation / notice form, and seek approval of authorising officer / designated person as per current arrangements
- Complete application part of the judicial application / order form for JP

Within office hours

Local Authority investigator to contact Her Majesty's Courts & Tribunals Service (HMCTS) administration at the magistrates' court to arrange a hearing

Attend court with:

- Counter-signed RIPA authorisation / or notice)for CD authorisations / notices the signatures may be electronic signatures)
- The accompanying judicial application / order form
- Any other relevant reference or supporting material

Outcome

Refuse to approve the grant or renewal and quash the authorisation or notice

This may be appropriate if the JP considers that an application is fundamentally flawed. The Local Authority must be given at least 2 business days in which to make representations before the authorisation is quashed. In these circumstances, a Local Authority cannot use the technique and will need to seek fresh authorisation internally before reapplying

Refuse to approve the grant or renewal of an authorisation or notice

The grant or renewal of the RIPA authorisation or notice will **not** take effect and the Local Authority may not use the covert technique. Local Authority may wish to address, for example, a technical error and reapply

Approve the grant or renewal of an authorisation or notice

Technique may be used in this case. Investigator to resubmit to the JP any renewal or authorisation for the use of a different technique in this case

Outside usual office hours:

A JP may consider a written authorisation out of hours in **exceptional** circumstances. If the authorisation is urgent and cannot be handled the next working day then you should:

- Phone the court's out of hours HMCTS legal staff contact. You will be asked about the basic facts and urgency of the authorisation. If the police are involved in the investigation, you will need to address why they cannot make a RIPA authorisation
- If urgency is agreed, then arrangements will be made for a suitable JP to consider the application. You will be told where to attend and give evidence
- Attend hearing as directed with two copies of both the counter-signed RIPA authorisation form or notice and the accompanying judicial application / order form

Obtain signed order and retain original RIPA authorisation / notice.
For CD authorisations or notices, Local Authority investigator provide additional copy of judicial order to the SPoC. If out of hours, a copy of the signed order to be provided to the court the next working day.

CODES OF PRACTICE

https://www.gov.uk/government/publications/interception-of-communications-code-of-practice-2016

https://www.gov.uk/government/publications/equipment-interference-code-of-practice

https://www.gov.uk/government/publications/code-of-practice-for-the-acquisition-and-disclosure-of-communications-data

https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice

https://www.gov.uk/government/publications/code-of-practice-for-investigation-of-protected-electronic-information