

TAMESIDE METROPOLITAN BOROUGH COUNCIL

POLICY AND PROCEDURAL GUIDE

Reviewed 25 October 2017

**FOR THE USE OF COVERT SURVEILLANCE
AND
COVERT HUMAN INTELLIGENCE SOURCES ("CHIS")**

To comply with the Regulation of Investigatory Powers Act 2000, all its Regulations, the Human Rights Act 1998 and having regard to the Codes of Practice published by the Secretary of State under S71(3)(a) of the Regulation of Investigatory Powers Act 2000

INDEX

Heading	Page No.
A <u>GENERAL INTRODUCTION</u>	1
B <u>DEFINITIONS</u>	
1. <u>Authorisation</u>	3
2. <u>Authorising Officer</u>	3
3. <u>Covert</u>	3
4. <u>Confidential Material</u>	4
5. <u>Covert Human Intelligence Source (CHIS)</u>	5
6. <u>Directed Surveillance</u>	5
7. <u>Intrusive Surveillance</u>	5
8. <u>Necessary</u>	6
9. <u>Private Information</u>	6
10. <u>Private Vehicle</u>	6
11. <u>Proportionate</u>	7
12. <u>Residential Premises</u>	7
13. <u>Subjects</u>	8
14. <u>Surveillance</u>	8
15. <u>Surveillance Device</u>	8
16. <u>Urgent authorisations</u>	8
C <u>AUTHORISATIONS</u>	
1. <u>Application</u>	9
2. <u>Authorisations</u>	9
3. <u>Requirements</u>	9
4. <u>Urgent Authorisations</u>	9
5. <u>Time Limits</u>	10
6. <u>Authorising Officer</u>	10
7. <u>Reviews</u>	10
8. <u>Renewals</u>	10
9. <u>Cancellation</u>	11
10. <u>Information to be Included in Authorisation</u>	11
11. <u>Additional Subjects/Targets</u>	12
12. <u>CHISs</u>	12
13. <u>Records Relating to CHISs</u>	13
D <u>RECORDS</u>	14
E <u>EQUIPMENT</u>	16
F <u>CIVIL LIBERTY</u>	16
G. <u>COMPLAINTS</u>	16

<u>H</u> <u>FORMS</u>	16
<u>I</u> <u>THE APPLICATION AND AUTHORISATION (INCLUDING REFUSALS)</u>	17
<u>J</u> <u>PRACTICAL EXAMPLES, GUIDANCE AND ADVICE IN SPECIFICIED CIRCUMSTANCES</u>	20
<u>K</u> <u>PROCESS MAP</u>	24

A. GENERAL INTRODUCTION

This Policy along with the statutory Codes of Practice published by the Secretary of State, and the Office of Surveillance Commissioners Procedures and Guidance must be readily available at Tameside Metropolitan Borough Council, Civic Centre (hereinafter referred to as the Council) for consultation and reference by Investigating Officers, Members of the Council and the public and/or their representatives.

The Policy may be amended from time to time by the Executive Director Governance and Resources, to reflect the most up to date and relevant guidance, and will be kept under review by the Council's Enforcement Co-ordination Panel and as directed by the Executive Director Governance and Resources.

These documents can be obtained from and as directed by the Executive Director – Governance and Resources Dukinfield Town Hall, King Street Dukinfield Tameside SK16 4L sandra.stewart@tameside.gov.uk.

1. This Policy applies to **any** covert surveillance or use of CHISs by Council employees whose duties include investigation under properly delegated powers and by private investigators engaged to act as agents by those employees. It should be emphasised that RIPA will only apply if the surveillance or use of CHIS is '**covert**'; quite often such activities will be done overtly and so will fall outside RIPA 2000 so it is advisable to be familiar with the definition of 'covert' under RIPA as a starting point.
2. This Policy has been drafted specifically for Tameside Council and has regard to the provisions of the Codes of Practice issued by the Secretary of State under S71 RIPA 2000. It should be noted that S72(1) RIPA states that a person exercising or performing any power or duty in relation to which provision may be made by a code of practice under Section 71 shall, in doing so, have regard to the provisions (so far as they are applicable) of every code of practice for the time being in force under that section. This Policy has been compiled especially for the Council only omitting elements which are not applicable to the Council. For example, there is no power of authorisation for '**intrusive surveillance**' (see definition B6 in the Code) so references to such authorisations have been omitted.
3. **All** covert surveillance or use of CHISs should be authorised in writing and in accordance with this Policy and should only be authorised if it is necessary for the purpose of preventing or detecting crime or of preventing disorder. It should then be carried out in accordance with the authorisation.
4. In addition covert surveillance and the use of CHISs should only be used by the Council where the Authorising Officer believes it is "**proportionate**" (see definitions section below).

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5. **Before** authorising covert surveillance properly appointed **Authorising Officers** should also take into account the risk of intrusion into the privacy of persons other than the specified subject of the surveillance (collateral intrusion) and take measures wherever practicable to avoid it. Similarly they should also be aware of the possibility (though rare) of obtaining confidential information and take measures to avoid it.
 6. As far as surveillance is concerned this Policy is only concerned with '**directed**' surveillance (see definitions below). This authority must not carry out 'intrusive surveillance' unless the Police are involved and the surveillance is conducted by them in accordance with their authorisation procedure. In cases of joint investigations with the Police, SOCA or CTU no covert activities should take place **unless** the Council is satisfied that the Police, SOCA or CTU have obtained their own authorisation under RIPA. In order to be 'satisfied' one of the Council's **Senior Authorising Officers** should be allowed to have sight of the particular RIPA authorisation and ensure that a written record has been made on the the Council's file that such authorisation has been checked. The purpose of this procedure is to safeguard the Council against potential claims by persons who allege their actions are unlawful or without authorisation. Should such authorisation not be available for inspection the Council shall not continue with any covert activities without its own RIPA authorisation.
 7. There should be no situation in which an **Investigating Officer** has to engage in covert surveillance or using aCHIS without obtaining authorisation. **However**, it should be noted that Section 80 of the Act provides that without an authorisation the actions of the public authority would **not** be made unlawful by RIPA. Nonetheless, such unauthorised covert surveillance or use of a CHIS could contravene **Article 8** European Convention of Human Rights (the right to respect for one's private and family life) brought into force in the UK by the Human Rights Act 1998. Evidence obtained by covert means could also be challenged in court for a breach of **Article 6** of the European Convention on Human Rights (right to a fair trial) on the grounds that it was unlawfully obtained, thus jeopardising a criminal prosecution with potentially expensive and reputationally damaging consequences., Having an authorisation therefore makes it less likely that the covert surveillance or use of CHIS could be held to breach the Human Rights Act 1998, or be challenged in the Courts because it then becomes "**lawful for all purposes**" (Section 27(1) RIPA 2000).
 8. For the avoidance of doubt, surveillance notified to the subject is **not** covert and so does not fall within the provisions of RIPA. The same applies if information is obtained in an **overt** way, for example, when an officer behaves as an ordinary member of the public making test purchases or when checks are made on labelling etc which can only be made when overtly looking or asking questions. Such actions are often already authorised specifically by other legislation in any event.

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9. In addition common-sense of course dictates that no surveillance will be undertaken from a property eg one situated next door or nearby the subject's property, **unless** the person who occupies the premises from which the surveillance is to take place has been notified and their consent obtained.
 10. Where an Authorising Officer receives an application for covert surveillance or CHIS which he considers should not be granted, he should strike the form through with two black lines and send it to the Surveillance Monitoring Officer with a note giving reasons for refusal. This will then be logged and a record kept. It will prove useful when inspected by the office of Surveillance Commissioners to show that the quality assurance system is operating at the source.
 11. It has been made clear in the Covert Surveillance and Property Interference (Revised Code of Practice) pursuant to Section 71 of RIPA that Members should not, be involved in making decisions and specific authorisations. The Surveillance Monitoring Officer may want to keep members informed of the processes followed under RIPA through for example the Enforcement Co-ordination Panel, as and when they arise, and in any event, Elected Members of a local authority should review their authority's use of the 2000 Act and its policy at least once a year.

B. DEFINITIONS

1. Authorisation

An authorisation is the final part of a completed R1/DS or R1/CHIS form authorising covert surveillance or use of a covert human intelligence source. It is the part of the form headed 'Authorising Officer's Section'.

Critically it must contain the Authorising Officer's view of **why** the activity is necessary for the prevention or detection of crime or disorder and why it is proportionate. It also contains the details of what the Authorising Officer actually wants to authorise, namely how many Officers, type of activity, how they will carry it out, what equipment eg cameras, cctv, vehicles they will use, where it is to take place and strategy such as positioning so as to avoid unnecessary intrusion.

It contains the time and date it is to commence and the time and date 3 months later (unless it is a CHIS – then it is 12 months) when it is to finish. It contains review dates, usually monthly. S/He will sign their name, rank and date.

There is also provision for the Head of Paid Service/Chief Executive to authorise if there is a risk of obtaining confidential information, and an explanation of how it will assist the investigation.

The Protection of Freedoms Act 2012 introduced an additional stage in the process. **After** the form has been countersigned the local authority must seek judicial approval for the RIPA Authority.

A Justice of the Peace will decide whether a local authority grant or renewal of an authority or notice to use RIPA should be approved and it will not come into effect unless and **until** it is approved by a JP.

The officer must complete forms for judicial approval which can be found at RIPA Home Office Guidance for Magistrates Court. Copies of the forms are also kept within the Central Record retained in Legal Services.

The forms must be submitted with the authorisation to the Head of Legal Services and a suitable date and time for an application for judicial approval will be made. Authorisations are also subject to judicial approval.

2. **Authorising Officer**

2.1 This can be 'a Director, Head of Service, Service Manager or Equivalent' (see Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 SI No 521 in force on 06/04/10). Therefore for the purposes of this Policy the authorising Officer shall be an officer of one of those ranks who may be appointed by the Council's Monitoring Officer (the Executive Director of Governance and Resources) to hold the position of 'Authorising Officer'. At the moment only the Monitoring Officer and the Assistant Executive Director of Place (Ian Saxon) hold this rank.

2.2 Even the Chief Executive requires approval by the Council's Monitoring Officer before he can undertake an authorisation. The Surveillance Monitoring Officer (also the Executive Director of Governance and Resources) and the other Authorising Officer are named as Regular Users.

3. **Covert**

This is **defined** in Section 26(9)(a) of the RIPA as follows:

'Surveillance is covert if and only if it is carried out in a manner that is calculated to ensure that the persons who are subject to the surveillance are unaware that it is or may be taking place'.

Therefore, if you notify a person that they are to be monitored in a particular way, or if you put up CCTV cameras and erect public notices it is not covert and, therefore, RIPA is not engaged.

4. **Confidential Material**

This has the same meaning as is given to it in sections 98-100 of the Police Act 1997.

It consists of matters subject to legal privilege, confidential personal information, or confidential journalistic material:

- **matters subject to legal privilege** includes both oral and written communications between a professional legal adviser and his or her client or any person representing his or her client, made in connection with the giving of legal advice to the client or in contemplation of legal proceedings and for the purposes of such proceedings, as well as items enclosed with or referred to in such communications. Communications and items held with the intention of furthering a criminal purpose are not matters subject to legal privilege.
- **confidential personal information** is information held in confidence concerning an individual (whether living or dead) who can be identified from it, and relating:
 - either to his or her physical or mental health; or
 - to spiritual counselling or other assistance given or to be given, andwhich a person has acquired or created in the course of any trade, business, profession or other occupation, or for the purposes of any paid or unpaid office. It includes both oral and written information and also communications as a result of which personal information is acquired or created. Information is held in confidence if:
 - it is held subject to an express or implied undertaking to hold it in confidence; or
 - it is subject to a restriction of disclosure or an obligation of secrecy contained in existing or future legislation.
- **Confidential journalistic material** includes material acquired or created for the purposes of journalism and held subject to an undertaking to hold it in confidence, as well as communications resulting in information being acquired for the purposes of journalism and held subject to such an undertaking.

NOTE: Only the Head of Paid Service has the delegated power to authorise directed surveillance or the use of a CHIS which will result in the obtaining of Confidential Material.

5. **Covert Human Intelligence Source ("CHIS")**

This is defined in S26(8) RIPA as follows:

'...a person is a CHIS if -

- (a) 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) he covertly uses such a relationship to obtain information or to provide access to any information to another person; or
- (c) he covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.'

(The RIPA also says that references to the use of a CHIS include inducing asking or assessing a person to engage in the conduct of a CHIS or to obtain information by means of the conduct of a CHIS

6. **Directed Surveillance**

This is defined in Section 26(2) of the RIPA which says surveillance is directed if it is covert but not intrusive and is undertaken:

- (a) for the purposes of a specific investigation or specific operation;
- (b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
- (c) otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this part to be sought for the carrying out of surveillance'.

Therefore, by way of a summary, it is covert surveillance which is planned in advance to further a particular investigation and which is likely to result in the obtaining of information about a person's private or family life.

7. **Intrusive Surveillance**

Section 26(3) states that intrusive surveillance is covert surveillance that:

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

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

However, Section 26(5) says that surveillance which

- ‘(i) is carried out by means of a surveillance device in relation to anything taking place on any residential premises or in any private vehicle; but
- (ii) is carried out without that device being present on the premises or in the vehicle is NOT intrusive, **unless the device is such that it 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’.**

However the Local Authority have no power to authorise intrusive surveillance.

8. **‘Necessary’**

In order for an Authorising Officer to decide whether an authorisation is necessary it must fall within ground (b) which is set out in Section 28 sub-section 3 of the RIPA namely :-

- (b) for the purpose of preventing or detecting crime or of preventing disorder;
- (c) Amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010. mean that a local authority can **now only grant** an authorisation under RIPA for the use of directed surveillance where the local authority is investigating particular types of criminal offences. These are criminal offences which attract a maximum custodial sentence of six months or more **or** criminal offences relating to the underage sale of alcohol or tobacco.

9. **Private Information**

This is defined in the Act as including, ‘in relation to a person’, any information relating to his or her private or family life.

10. **Private Vehicle**

This is defined in the Act as any vehicle used primarily for the private purposes of the person who owns it or of a person otherwise having the right to use it (from the latter, paying passengers are excluded). From the point of view of a paying passenger therefore, the vehicle is **not** private.

11. 'Proportionate'

There is no statutory definition but in order for covert surveillance or use of CHIS to be proportionate, it **must not be used** in cases where other more open methods of investigation will suffice. This is a very important concept and all relevant officers should be aware of it.

The following points should be considered:

1. Such methods must also only be used in cases where they are likely to result in the gathering of **cogent evidence** and in cases where there is dependable intelligence to support its use.
2. The subject's situation and any known history should also be taken into account and the seriousness of the offence.
3. It is about **balancing** the seriousness of the crime being investigated and the threat to the general public against the interference with the privacy of the individual concerned.
4. Interference with a person's right to privacy will **not** be justifiable if the means used to achieve the aim are excessive in all the circumstances.
5. For example, it could be justified on the ground that there may be no other way of obtaining the evidence or perhaps a short period of surveillance could be justified on the grounds that it would be a quicker and easier way of obtaining evidence.
6. The risk of **collateral intrusion** should also be considered when looking at proportionality as a high risk of this may tip the balance in favour of not using surveillance at all unless the risk can be minimised satisfactorily. One way of reducing the risk of collateral intrusion is to target particular times for the surveillance when the subject is at large and it is good practice to detail on the RI application the times in the day when the surveillance is to be carried out eg "6.30 am to 7.45 am".

12. Residential Premises

Section 48 subsection (1) provides that 'residential premises' mean (subject to subsection (7)(b)) so much of any premises as is for the time being occupied or used by any person, however temporarily, for residential purposes or otherwise as living accommodation (including hotel or prison accommodation that is so occupied or used). RIPA states that the words 'residential premises' do not include a reference to so much of any premises as constitutes any common area to which the resident has access in connection with his use or occupation of any accommodation (Section 48(7)(b) RIPA). Therefore, surveillance from a

common area is technically not intrusive, but there may be a higher risk of obtaining private information about someone so this must be considered when deciding whether or not to authorise the surveillance. For example, the entrance hall, stairs and lift in a block of flats is not counted as residential premises and this is important when assessing whether surveillance is intrusive or not.

13. **Subjects**

A member of the public or group thereof in respect of whom surveillance or the use of a CHIS has been authorised and such observed contacts of that individual or group of individuals as may come to notice during the course of the authorised surveillance or the use of a CHIS.

14. **Surveillance**

This is defined in the Regulation of Investigatory Powers Act 2000 (i.e. the RIPA) as including:

- (a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications;
- (b) recording anything monitored, observed or listened to in the course of surveillance; and
- (c) surveillance by or with the assistance of a surveillance device.

15. **'Surveillance Device'**

This is defined in Section 48(1) of RIPA as meaning 'any apparatus designed or adapted for use in surveillance'.

This therefore includes cameras, video cameras, listening and recording devices etc.

16. **Monitoring Officer**

The Surveillance Monitoring Officer for Tameside Council is also the Council's Executive Director for Governance and Resources Solicitor and Monitoring Officer.

C. AUTHORISATIONS

1. **Application**

The application must be made by the Investigating Officer to the Authorising Officer (see definition B2 above) using the forms downloaded from the intranet site. Search under the words 'Regulation of Investigating Powers' to locate the site.

2. **Authorisations** (See also definition B1 above)

Authorisations or renewals of authorisations must be given by the Authorising Officer (see definition numbered 2 above) in writing. At the time an authorisation is given the Authorising Officer should diary the matter for a review in a month's time. The only Officer officially able to authorise surveillance or CHIS where confidential material is likely to be obtained is the Executive Director of Governance and Resources.

Amendments in the Protection of Freedoms Act 2012 mean that local authority authorisations can only be given effect once an Order approving the authorisation or notice has been granted by a Justice of the Peace (JP).

3. **Requirements**

Before giving authorisation for surveillance or the use of a CHIS the **Authorising Officer** must be satisfied that:

- (a) it is **necessary** for the purpose of preventing or detecting crime or of preventing disorder (see definition 8 above). (You must specify the crime being investigated.)
- (b) it is **necessary** in that particular case, i.e. that particular case merits the use of this method of detection over other less underhand methods eg if it is a case where a person is suspected of having committed a crime like theft, justify why is this covert method of detection is necessary to obtain the evidence over other methods
- (c) it is **proportionate** (see definition 11 above) to the seriousness of the crime or the matter being investigated and the history and character of the subject concerned. Balance the likelihood of obtaining private information against the seriousness of the crime being investigated.
- (d) For (a) (b) and (c) the Authorising Officer must be satisfied that there is sufficient intelligence about the suspect and the alleged offence to justify the authorisation.

4. **Authorising Officer** (See definition B2 above)

- 4.1 In order to appoint an authorising officer an application must be made in writing to the Surveillance Monitoring Officer and the application must be approved in writing by the Council Solicitor as Council Monitoring Officer. Only those who can demonstrate that they have received the appropriate training and/or had operational experience in the use of the procedures during the course of their employment shall be eligible. After proper appointment the name shall be placed upon a Flow Chart on the

Council's intranet site and that shall be evidence of the appointment having taken place. At the moment that is not necessary.

- 4.2 In order to ensure that an Authorising Officer is equipped with the relevant experience and knowledge to enable them to grant authorisations, where an Authorising Officer is newly appointed, the Surveillance Monitoring Officer should be consulted and should approve the authorisation prior to the surveillance commencing.
- 4.3 Every application must be properly scrutinised by the Authorising Officer and any applications he considers must be refused must be notified to the Surveillance Monitoring Officer in the way prescribed in para A11 above and para I 3. 1. 8 below.
- 4.4 Since 1 November 2012 all officer proposals have to be endorsed by the authorising officer and then approved by the Magistrates sitting in the Magistrates' Court. Applications for approval should be made through the legal department.

To obtain this approval the officer requesting the authority must apply to the Magistrates' Court in person for such approval, taking to Court four copies of the officer approved authority for endorsement by the Magistrates Court and which authority should be duly certified as approved on each of the four copies.

No action may be taken in reliance upon the authorisation unless and until the Court has approved the authority and it has been so endorsed.

Any application for an extension of the authority must be approved by the authorising officer and the Court in the same way. No action should be carried out outside of the approved authority.

5. **Reviews**

Reviews of the authorisation shall be carried out within a period of one month from the date of the authorisation or last review. The Authorising Officer shall carry out the reviews and these reviews must not be confused with authorisations for renewal. The purpose of a review is simply to decide whether or not the activity authorised should continue.

6. **Renewals**

An Authorising Officer can renew an existing authorisation using Form R3 at any time up to the expiry date of the original authorisation. On or after the expiry date, the authorisation ceases to exist and a new R1 will have to be completed and a new authorisation given.

It is to be noted that renewal is not just a 'rubber stamping' of what has gone before – the requirements of form R3 ensure that the situation is adequately reviewed prior to renewal. An Authorising Officer must not

renew an authorisation for the use of a CHIS unless the Authorising Officer is satisfied that a review of certain matters has been carried out and considered the result of that review.

The matters to be reviewed are –

the use made of the source, tasks given to the source and information obtained.

One useful way of viewing an Authorisation is to regard it as an insurance policy – in force only during the times authorised and once expired, it cannot be renewed – it has to be a new application and new policy.

7. Cancellation

The Authorising Officer must cancel an authorisation as soon as if he or she believes that the activity is no longer necessary or proportionate. A cancellation should describe the activity undertaken, explain what was achieved by that activity and give details of the evidence actually obtained. The Authorising Officer should also give instructions regarding the retention, or destruction of the evidence obtained (e. g. video recordings and the like).

8. Information to be Included in the Application

The written authorisation should specify

- (1) identities of the subjects eg names (where known) or descriptions of the subjects and any known history and character thereof (including in cases where investigating officers have reason to believe additional subjects are probable but their identities are unknown they must say so but state their identities are as yet unknown.)
- (2) the nature of the surveillance including location of the subject and/or surveillance and (if relevant) the place where CHIS is to be located;
- (3) the type of surveillance device or vehicles/equipment to be used;
- (4) the type of activities, numbers and names of officers who will be the CHISs (if relevant);
- (5) that it is being undertaken for the purpose of preventing or detecting crime or of preventing disorder
- (6) that it is proportionate (see definition No.10 in the Definition Section above) i.e. specifying:

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- (a) the objectives of the surveillance, or the use of a CHIS;
 - (b) the crime or disorder being investigated (indicate the type of breach);
 - (c) the likelihood of obtaining private information about a subject or another person(collateral intrusion) and if the likelihood is high/medium /low, how that can be balance against the seriousness of the crime, so if the crime is not serious and there is a high likelihood of personal information being obtained it may not be proportionate to use this method of detection.
 - (d) the reliability of the intelligence which makes the covert surveillance/CHIS necessary.
- (7) The objectives of the activities;
 - (8) The name and nature of the investigation or operation and what makes the Authorising Officer believe surveillance or the use of a CHIS will achieve the objectives referred to;
 - (9) The risk of information relating to third parties' private and family life being obtained. This is known as 'collateral intrusion'.
 - (10) The likelihood of acquiring any confidential/religious material.
 - (11) **Obtaining Judicial Review**
 - (a) following approval by the Authorising Officer the Council's Legal Services will contact the Magistrates Court to arrange a hearing. At the same time a copy of the RIPA authorisation and supporting documents setting out the case will be supplied to the Court.
 - (b) In addition the Authorising Officer should complete a judicial application/order form. The order section of the form will be completed by the JP and will be the official record of the JPs decision.
 - (c) The Council will need to keep a copy of the judicial application/order form after it has been signed by the JP. The Court will also keep a copy.
 - (d) Renewals also require JP approval.
 - (e) Cancellations do not require JP approval.
 - (f) The hearing is a 'legal proceeding' therefore officers must be sworn in and present evidence as required by the JP. The hearing will be in private.

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- (g) The form for application/order for judicial approval will be kept by the Council's Legal Services.

9. **Additional Subjects/Targets**

In cases where additional subject/targets may need to be observed the Authorising Officer should state why based on the intelligence relied upon, such additional subjects/targets are considered likely to appear (ie the intelligence behind it) and state that there are further subjects of the investigation whose identities are not yet known e.g. There may be intelligence that a number of youths whose identities are unknown are regularly appearing near a shop or other premises and smashing windows etc. If you state this in the RI Authorisation you are covered for a number of subjects. Then at Renewal stage any such additional targets can be added as and when their identities become known, should it be necessary to do so.

This would not apply where on any one occasion one subject is joined by a further person unexpectedly and it is apparent that he too should be observed but for whom authorisation has not been obtained. Oral authorisation must in this case be obtained as soon as reasonably practicable and the new name (or description) added by means of a further application if a longer period is required.

10. **Covert Human Intelligence Sources (CHISs)**

Although it is to be hoped that such methods will be rarely used, in addition to the above it is necessary under S29(5) RIPA that there are in force such arrangements as are necessary for ensuring:

- (a) that there will at all times be a person holding an office, rank or position with the relevant investigatory authority who will have day to day responsibility for dealing with the CHIS on behalf of that authority and for the CHISs' security and welfare;
- (b) that there will at all times be another person holding an office, rank or position with the relevant investigating authority who will have general oversight of the use made of the CHIS;
- (c) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have responsibility for maintaining a record of the use made of the CHIS;
- (d) that the records relating to the CHIS that are maintained by the relevant investigating authority will always contain particulars of all such matters (if any) as may be specified for the purposes of this paragraph in regulations made by the Secretary of State; and

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- (e) that the records maintained by the relevant investigating authority that disclose the identity of the CHIS will not be available to persons except to the extent that there is a need for access to them to be made available to those persons.

In other words there must be an officer given direct day to day management of the CHIS to look after his/her needs and another officer in overall control of the use of the CHIS. A record must be made by a specified person of the use of the CHIS. Regulations have been made giving details of the type of particulars needed to be recorded. (See 12 below for details). The identity of CHISs is not to be disclosed unless there is a need to do so. NB - There is no need for 3 different officers. The person responsible for maintaining a record could be the same person with day-to-day responsibility. All relevant Officers involved in the use of CHIS and their management must have the appropriate level of experience and training as may be necessary to undertake the task.

11. **Records Relating to the CHIS**

Records must be kept containing the following by reason of the Regulation of Investigatory Powers (Source Records) Regulations 2000:

- (a) the identity of the CHIS;
- (b) the identity, where known, used by the CHIS (i.e. his or her 'alias');
- (c) any relevant investigating authority other than the authority maintaining the records;
- (d) the means by which the CHIS is referred to within each relevant investigating authority (i.e. his or her 'code name');
- (e) any other significant information connected with the security and welfare of the CHIS;
- (f) any confirmation made by a person granting or renewing an authorisation for the conduct or use of a CHIS that the information in paragraph (d) has been considered and that any identified risks to the security and welfare of the CHIS(s) have where appropriate been properly explained to and understood by the CHIS(s);
- (g) the date when, and the circumstances in which, the CHIS was recruited; (or if already employed by the Council and allocated this task);
- (h) the identities of the authorising officer and the applicant;

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- (i) the periods during which those persons have discharged those responsibilities;
 - (j) the tasks given to the CHIS and the demands made of him or her in relation to their activities as a CHIS;
 - (k) all contacts or communications between the CHIS and a person acting on behalf of any relevant investigating authority;
 - (l) the information obtained by each relevant investigating authority by the conduct and use of the CHIS;
 - (m) any dissemination by that authority of information obtained in that way; and
 - (n) in the case of a CHIS who is not an under-cover operative, every payment, benefit or reward and every offer of a payment, benefit or reward that is made or provided by or on behalf of any relevant investigating authority in respect of the CHIS activities for the benefit of that or any other investigating authority.

Therefore, the officer in charge of maintaining a record of the use of each CHIS should record all these details. The way these records are kept is designed to try to keep the CHIS safe from discovery by the subjects and safe from any harm which could result from their disclosure and also to keep in the open any money or other benefits paid to a CHIS who is not an employee officer of an authorising body

D. RECORDS

1. Copies of all written authorities and reviews should be kept for a period of 5 years after the conclusion of any Court proceedings arising for which the surveillance or use of the CHIS was relevant or until the next visit by the Assistant Surveillance Commissioner whichever is the later.
2. Oral authorisations should be recorded as soon as reasonably practicable after being granted and kept in as D1 above.
3. The Council's Surveillance Monitoring Officer (SMO) is the Executive Director Governance and Resources and Monitoring Officer, whose duty is to retain all original application forms and any other RIPA forms securely. The SMO shall keep a central record of the forms and keep all the forms in a central place. The SMO shall keep the procedure of each covert activity being authorised under review to ensure they comply with the legislation and Codes of Practice and shall meet the Assistant Surveillance Commissioner when he visits the Council to inspect. Also this officer shall be prepared to advise train and assist the Council's officers to enable them to comply with RIPA 2000. The records shall

only be kept for 5 years after the date of expiry and cancellation of the activity, save those cases where legal proceedings have commenced.

4. All information obtained during surveillance should be recorded in writing, in a criminal investigation by means of a surveillance log. This is a form which can be filled in which gives an account of the events observed and conversations heard at particular times which are recorded on the form or log. These should be kept for as long as may be necessary to comply with the Criminal Procedure and Investigations Act 1996 (ie the rules of disclosure in criminal proceedings).
5. All reviews of authorisations must be done in writing and kept as in D1 above as must grounds for withdrawal of authorisation or refusal to renew.
6. At no time must any of the recorded information be disclosed or used except for the purposes for which it was gathered at the time and for use in any future civil or criminal proceedings brought by or against the Council, unless required to do so by the Freedom of Information Act 2000.
7. All information obtained by the CHIS and by the officer responsible for recording the use of the CHIS should be recorded by means of a daily log similar to the surveillance log referred to in 4. above.
8. Such records referred to in 7 above which also reveal the name(s) of the CHIS should only be disclosed if legally necessary or if desired by any Court.
9. Authorising Officers must ensure compliance with the appropriate data protection requirements and the relevant codes of practice and security procedures in the handling and storage of material. Such procedures are essential when preserving continuity of evidence and ensuring admissibility of evidence in Court.
10. Where material has been obtained by surveillance or the use of a source, which is wholly unrelated to a criminal or other investigation or to any person who is the subject of the investigation, and there is no reason to believe it will be relevant to future civil or criminal proceedings, **it should be destroyed immediately.**¹ Please remember though it is a legal requirement to keep the RIPA forms for 5 years and they must all be given to the Surveillance Monitoring Officer.

E. EQUIPMENT

¹ Consideration of whether or not unrelated material should be destroyed is the responsibility of the Authorising Officer. Only those Officers involved in the investigation are entitled to see the material. In cases where collateral intrusion has taken place, those third parties involved shall not have an automatic right to see the material. (Please note that if they choose to exercise their rights under the Data Protection Act 1998 s7 such request would normally be refused by virtue of s29(3) of the Data Protection Act 1998 if compliance with such a request is likely to prejudice the investigation of a crime.

All cctv equipment must be kept securely and a Policy should be adopted by all users of this procedure to ensure the equipment is not used for unauthorised purposes. An example of the type of policy required is on the Council's RIPA intranet site under the heading "POLICY FOR THE RETENTION AND STORAGE OF SURVEILLANCE EQUIPMENT"

F. CIVIL LIABILITY

According to s27(2) of RIPA a person shall not be subject to any civil liability in respect of any conduct of his which is incidental to any conduct which is properly authorised provided it is not of itself conduct for which an authorisation or warrant might reasonably be expected to have been obtained under another enactment. An example is where a RIPA authorisation is granted to put a tracking device on a private vehicle. This could give rise to civil liability because a 'property interference authorisation' under the Police Act 1997 is necessary.

Of course if not properly authorised a person could incur personal liability and face disciplinary action.

G. COMPLAINTS

Any complaints about any powers covered by this Procedural Guide can either be made under the Council's existing corporatel complaints system or to the Investigatory Powers Tribunal set up under S65 RIPA 2000.

H. 1 FORMS FOR DIRECTED SURVEILLANCE

NB. All forms are on the Council's intranet site – do not save them as they may be updated and you need to ensure it is the most up-to-date copy. Users must access the forms from the intranet site every time without fail.

R1/DS Application for authorisation, authorisation form and record of grant of oral authorisation

R2/DS Review form

R3/DS Application for renewal of authorisation and renewed authorisation

R4/DS Cancellation form

H 2 FORMS FOR COVERT HUMAN INTELLIGENCE SOURCES

R1/CHIS Application for authorisation, authorisation form and record of grant of oral authorisation

R2/CHIS Review form

R3/CHIS Application for renewal of authorisation and renewed authorisation

R4/DS Cancellation form

H. 3 FORMS FOR DIRECTED SURVEILLANCE AND CHIS

R5/DS/CHIS Authorisation control sheet for both directed surveillance and CHIS's

For ease of reference these are named forms R1-5. If it is for directed surveillance it has the initials DS after the letter R; if for a CHIS, it has CHIS.

I. 3 THE APPLICATION AND AUTHORISATION

1. The application

1. R1, the **main application form**, should be completed by the Investigating Officer who wants to apply to the Authorising Officer for authorisation in every case and should also be completed in retrospect as soon as reasonably practicable after an oral authorisation is granted as a record of the grant of oral authorisation.
2. R1 must also be read and signed by the Authorising Officer and completed by him and signed when urgent Oral Authorisation has been granted. If he wishes to refuse the application he can do so by striking it through twice in black, notifying the Investigating Officer and sending it to the SMO with a note of reasons.
3. The application for **renewal** of authorisation R3 should be completed by the Officer in cases where written authorisation is about to end should it be necessary and proportionate to carry on the surveillance or use of CHIS beyond the time when it is due to end. R3 should then be completed by the Authorising Officer.
4. The review form R2 should be completed by the Authorising Officer at regular intervals of his own choosing or whenever the surveillance which has been authorised continues longer than one month. This is where the authorisation control sheet R5 is useful as evidence that reviews have been carried out.
5. A cancellation form R4 should be completed in full in all cases where the Authorising Officer considers that the directed surveillance or use of CHIS is no longer necessary or proportionate.
6. The authorisation control sheet R5 is essential as a monitoring tool for the authorising officer.

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7. The Surveillance Monitoring Officer (SMO) has to maintain a central record sheet of all authorisations which needs to be kept up to date. Authorising Officers need to forward all completed forms to the SMO immediately so that they can be recorded immediately or at least no later than 48 hours after the date of the authorisation.
 8. Any applications for authorisation that are refused by the Authorising Officer should be struck out with two black lines through and stamped "REFUSED". All such refusals should be forwarded to the Surveillance Monitoring Officer to be recorded accordingly, with an accompanying note stating reasons for the refusal.

NB Such applications for authorisation are important and must not be taken lightly. Time needs to be set aside for proper consideration of the matter by both Investigating and Authorising Officers and, if in doubt about any of the legal aspects and the applicability of RIPA to a given situation, advice should be sought from the Surveillance Monitoring Officer.

J. PRACTICAL EXAMPLES, GUIDANCE AND ADVICE IN SPECIFIED CIRCUMSTANCES

Detailed guidance is set out in the Home Office Guidance and Office of Surveillance Commissioners (OSC) Procedures and Guidance to which all officers have access, and if unable to locate should contact Legal Services for assistance.

Below are some examples taken from the OSC Procedures and Guidance issued by the Chief Surveillance Commissioner Sir Christopher Rose December 2014. Officers should familiarise themselves with the contents of this guidance, and its applicability to their activities.

1. Use of Social Networking Sites (SNS)

The fact that digital investigation is routine or easy to condone does not reduce the need for authorisation.

Care must be taken to understand how the SNS works. Authorising officers must not be tempted to assume that one service provider is the same as another or that the services provided by a single provider are the same.

Whilst it is the responsibility of an individual to set privacy settings to protect unsolicited access to private information, and even though data may be deemed published and no longer under the control of the author, it is unwise to regard it as 'open source' or publicly available; the author has a reasonable expectation of privacy if access controls are applied.

In some cases data may be deemed private communication still in transmission (instant messages for example). Where privacy settings are available but not applied the data may be considered open source and an authorisation is not usually required.

Directed Surveillance: Providing there is no warrant authorising interception in accordance with section 48(4) of the 2000 Act, if it is necessary and proportionate for a public authority to breach covertly access controls, the minimum requirement is an authorisation for directed surveillance.

CHIS: An authorisation for the use and conduct of a CHIS is necessary if a relationship is established or maintained by a member of a public authority or by a person acting on its behalf (ie the activity is more than mere reading of the site's content).

It is not unlawful for a member of a public authority to set up a false identity but it is inadvisable for a member of a public authority to do so for covert purposes without authorisation. Using photographs of other persons without their permission to support the false identity infringes the law.

A member of a public authority should not adopt the identity of a person known, or likely to be known, to the subject of interest or users of the site without authorisation, and without the consent of the person whose identity is used, and without considering the protection of that person. The consent must be explicit (ie the person from whom consent is sought must agree (preferably in writing) what is and is not to be done)."

2. Updating photographs for intelligence purposes

Covertly taking a photograph for the purpose of updating records is capable of being directed surveillance and should be authorised.

3. Covert surveillance of co-habiting couples

The purpose of surveillance is to investigate a crime and not a criminal. It is usually not possible to be certain of a partner's awareness of a criminal situation and proving awareness of a criminal situation and proving co-habitation is sometimes necessary and proportionate. It is appropriate subject to accurately constructed documents, to authorise surveillance against co-habiting parties. Authorising Officers should confine surveillance of the partner to that which is necessary to prove co-habitation. Surveillance of juveniles or other family members should be avoided.

4. The availability of resources

Whilst there may be a public expectation that public bodies will monitor offenders, an Authorising Officer should not grant an activity when he knows there to be insufficient covert surveillance resource to conduct it.

5. Technical feasibility studies

Feasibility studies should be conducted before the application is submitted to the Authorising Officer. Without it the Authorising Officer is unable to know the objectives can be achieved or to accurately assess proportionality or collateral intrusion. It is unacceptable to deny knowledge of technical capability from the Authorising Officer.

6. Private information

An authorisation for directed surveillance is required whenever it is believed that there is a real possibility that the manner in which it is proposed to carry out particular surveillance will result in the obtaining of private information about any person, whether or not that person is or becomes a subject of the operation.

7. Use of noise monitoring equipment

Measuring levels of noise audible in the complainant's premise is not surveillance because the noise has been inflicted by the perpetrator who has probably forfeited any claim to privacy.

Using sensitive equipment to discern speech or other noisy activity not discernible by the unaided ear is covert, likely to obtain private information and may be intrusive surveillance.

The Authorising Officer should consider whether the surveillance equipment is capable of measuring volume only or whether it can identify the perpetrators, mindful that the more sensitive the equipment the greater the potential for intrusive surveillance.

Where possible, the intention to monitor noise should be notified to the owner and occupier of the premises being monitored.

Where notice is not possible or has not been effective, covert monitoring may be considered necessary and proportionate. If monitoring equipment is used as a means also to assess whether a claim is vexatious, any consent provided by the complainant to use monitoring equipment on his premises is vitiated if the capability of the equipment is not explained.

[See Covert Surveillance and Property Interference Code of Practice 2.30]

8. CCTV systems – the need for a unified protocol for use

It is recommended that a law enforcement agency should obtain a written protocol with a local authority if the latter's CCTV system is to be used for directed surveillance. Any such protocol should be drawn up centrally in order to ensure a unified approach.

The protocol should include a requirement that the local authority should see the authorisation (redacted if necessary to prevent the disclosure of sensitive information) and only allow its equipment to be used in accordance with it.

9. Test purchases of sales to juveniles

When a young person pursuant to an arrangement with an officer of a public authority, carries out a test purchase at a shop, he is unlikely to be construed as a CHIS on a single transaction but this would change if the juvenile revisits the same establishment in a way that encourages familiarity.

If covert recording equipment is worn by the test purchaser or an adult is observing the test purchase, it will be desirable to obtain an authorisation for directed surveillance because the ECHR has construed the manner in which a

business is run as private information [see also Covert Surveillance and Property Interference Code of Practice paragraphs 2.5 and 2.6] and such authorisation must identify the premises involved.

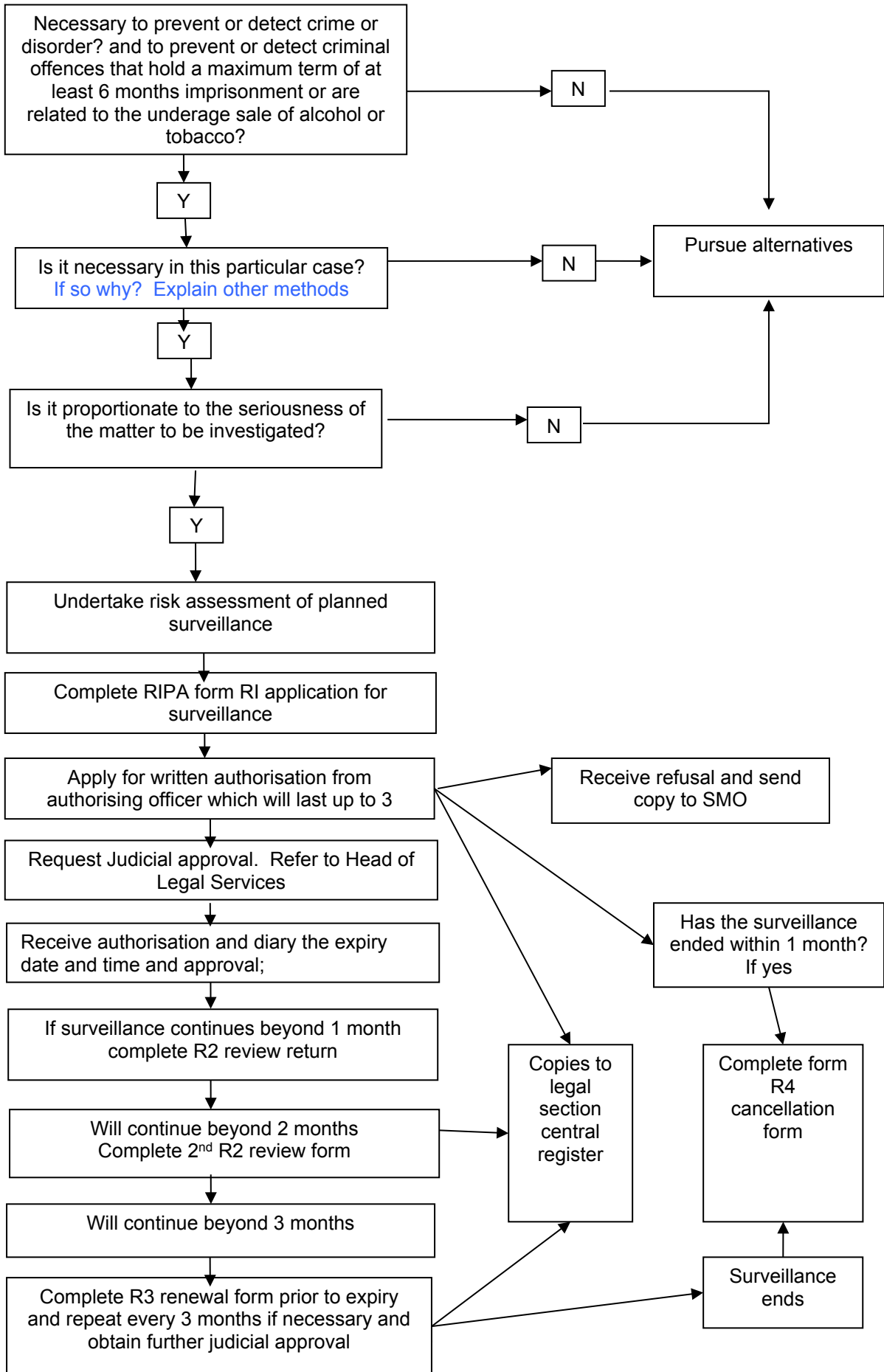
In all cases a prior risk assessment is essential in relation to the young person.

When conducting covert test purchase operations at more than one establishment it is not necessary to construct an authorisation for each premise to be visited but the intelligence must be sufficient to prevent 'fishing trips'.

Premises may be combined without a single authorisation provided that each is identified at the outset.

Necessity, proportionality and collateral intrusion must be carefully addressed in relation to each of the premises.

It is unlikely that authorisations will be considered proportionate without demonstration that overt methods have been considered or attempted and failed.



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