

Protection of Freedoms Act 2012 – changes to provisions under the Regulation of Investigatory Powers Act 2000 (RIPA)

Home Office guidance to local
authorities in England and Wales
on the judicial approval process for
RIPA and the crime threshold for
directed surveillance



Home Office

October 2012

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1. INTRODUCTION: HOW THE LAW HAS CHANGED

1. On 1 November 2012 two significant changes will take effect governing how local authorities use RIPA.
 - **Approval of Local Authority Authorisations under RIPA by a Justice of the Peace:** The amendments in the Protection of Freedoms Act 2012¹ will mean that local authority authorisations and notices under RIPA for the use of particular covert techniques can only be given effect once an order approving the authorisation or notice has been granted by a Justice of the Peace (JP).
 - **Directed surveillance crime threshold:** Amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (“the 2010 Order”)² 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.
2. This guidance is non-statutory but provides advice on how local authorities can best approach these changes in law and the new arrangements that need to be put in place to implement them effectively. It is supplementary to the legislation and to the statutory Codes of Practice. If a local authority has any doubts about the new regime they should consult their legal advisers. This guidance is intended for local authority investigation teams that may use covert techniques, including Trading Standards, Environmental Health and Benefit Fraud Officers. However, it will also be of use to authorising officers and designated persons and to those who oversee the use of investigatory techniques in local authorities including elected members.
3. Separate guidance is available for Magistrates’ Courts in England and Wales and local authorities in Scotland.

¹ Sections 37 and 38 of the Protection of Freedoms Act 2012 amend RIPA and will come into force on 1 November 2012.

² The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 [SI 2010/521] will be amended by the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 [SI 2012/1500] on 1 November 2012. See Section 5 for links.

2. LOCAL AUTHORITY USE OF RIPA

THE EXISTING REGULATORY FRAMEWORK

4. RIPA sets out a regulatory framework for the use of covert investigatory techniques by public authorities. RIPA does not provide any powers to carry out covert activities. If such activities are conducted by council officers, then RIPA regulates them in a manner that is compatible with the European Convention on Human Rights (ECHR), particularly Article 8, the right to respect for private and family life.
5. RIPA limits local authorities to using three covert techniques (details set out below) for the purpose of preventing or detecting crime or preventing disorder.
6. Use of these techniques has to be authorised internally by an authorising officer or a designated person. They can only be used where it is considered necessary (e.g. to investigate a suspected crime or disorder) and proportionate (e.g. balancing the seriousness of the intrusion into privacy against the seriousness of the offence and whether the information can be obtained by other means). The relevant Codes of Practice should be referred to for further information on the scope of powers, necessity and proportionality.³

THE TECHNIQUES WHICH LOCAL AUTHORITIES MAY USE

7. **Directed surveillance** is essentially covert surveillance in places other than residential premises or private vehicles⁴.
8. Local authorities cannot conduct 'intrusive' surveillance (i.e. covert surveillance carried out in residential premises or private vehicles⁵) under the RIPA framework.
9. A **covert human intelligence source (CHIS) includes** undercover officers, public informants and people who make test purchases.
10. **Communications data (CD)** is the 'who', 'when' and 'where' of a communication, but not the 'what' (i.e. the content of what was said or written). RIPA groups CD into three types:
 - 'traffic data' (which includes information about where the communications are made or received);
 - 'service use information' (such as the type of communication, time sent and its duration); and
 - 'subscriber information' (which includes billing information such as the name, address and bank details of the subscriber of telephone or internet services).
11. Under RIPA a local authority can only authorise the acquisition of the less intrusive types of CD: service use and subscriber information. Under **no circumstances** can local authorities be authorised to obtain traffic data under RIPA.
12. Local authorities are **not** permitted to intercept the content of any person's communications and it is an offence to do so without lawful authority.

3 See section 5 for links to the relevant legislation and codes of practice.

4 Further information on directed surveillance can be found in the Covert Surveillance and Property Interference Code of Practice.

5 Places where legal consultations are likely to take place will also be treated as intrusive surveillance.

RANK OF LOCAL AUTHORITY AUTHORISING OFFICERS/DESIGNATED PERSONS

13. Local authority authorising officers/designated persons will remain as designated by RIPA consolidating orders SI 2010 Nos.480 and 521:
 - Director, Head of Service, Service Manager⁶ or equivalent.
14. The authorisation of directed surveillance or use of a CHIS likely to obtain confidential information or the deployment of a juvenile or vulnerable person (by virtue of mental or other condition) as a CHIS requires authorisation by the most senior local authority officer – Head of Paid Service or, in his/her absence, the acting Head of Paid Service.
15. If there is any doubt regarding sufficiency of rank you should contact your Local Authority Monitoring Officer who will be able to advise you.

TIME LIMITS

16. The current time limits for an authorisation or notice will continue⁷. That is: 3 months for directed surveillance and 12 months for a CHIS (1 month if the CHIS is 18). Authorisations and notices for CD will be valid for a maximum of one month from the date the JP has approved the grant. This means that the conduct authorised should have been commenced or the notice served within that month.
17. A renewal must be authorised prior to the expiry of the original authorisation, but it runs from the expiry date and time of that original authorisation. Authorisations may be renewed more than once if still considered necessary and proportionate and approved by the JP.
18. Applications for renewals should not be made until shortly before the original authorisation period is due to expire but local authorities must take account of factors which may delay the renewal process (e.g. intervening weekends or the availability of the relevant local authority authorising officer and a JP to consider the application).

⁶ For CD RIPA applications, the Local Government Group and the Interception of Communications Commissioner's Office have advised that a Principal Trading Standards Officer is not considered to be of sufficient seniority to act as the Designated Person.

⁷ See section 43 RIPA.

3. DIRECTED SURVEILLANCE CRIME THRESHOLD

19. The crime threshold applies only to the authorisation of **directed surveillance** by local authorities under RIPA, not to the authorisation of local authority use of CHIS or their acquisition of CD. The threshold will come into effect on 1 November 2012.
20. The amendments to the 2010 Order have the following effect:
 - Local authorities can only authorise use of directed surveillance under RIPA to prevent or detect criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months' imprisonment **or** are related to the underage sale of alcohol and tobacco. The offences relating to the latter are in article 7A of the 2010 Order⁸.
 - Local authorities **cannot** authorise directed surveillance for the purpose of preventing disorder unless this involves a criminal offence(s) punishable (whether on summary conviction or indictment) by a maximum term of at least 6 months' imprisonment.
 - Local authorities may therefore continue to authorise use of directed surveillance in more serious cases as long as the other tests are met – i.e. that it is necessary and proportionate and where prior approval from a JP has been granted. Examples of cases where the offence being investigated attracts a maximum custodial sentence of six months or more could include more serious criminal damage, dangerous waste dumping and serious or serial benefit fraud.
 - Local authorities may also continue to authorise the use of directed surveillance for the purpose of preventing or detecting specified criminal offences relating to the underage sale of alcohol and tobacco where the necessity and proportionality test is met and prior approval from a JP has been granted.
 - A local authority **may not authorise** the use of directed surveillance under RIPA to investigate disorder that does not involve criminal offences or to investigate low-level offences which may include, for example, littering, dog control and fly-posting.
21. The change will affect authorisations or renewals which are granted on or after 1 November. It will not affect authorisations or renewals granted before that date.

IMPACT ON INVESTIGATIONS

22. At the start of an investigation, council officers will need to satisfy themselves that what they are investigating is a criminal offence. Directed surveillance is an invasive technique and at the point it is decided whether or not to authorise its use it must be clear that the threshold is met and that it is necessary and proportionate to use it.
23. During the course of an investigation the type and seriousness of offences may change. The option of authorising directed surveillance is dependent on the offence under investigation attracting a sentence of a maximum six months imprisonment or more or being related to the underage sale of alcohol and tobacco. Providing the offence under investigation is one which appears on the statute book with at least a maximum six months term of imprisonment or is related to the specific offences listed in the order concerning the underage sale of alcohol and tobacco an application can be made. However, if during the investigation it becomes clear that the activity being investigated does not amount to a criminal offence or that it would be a less serious offence that does not meet the threshold the use of directed surveillance should cease. If a directed surveillance authorisation is already in force it should be cancelled.

⁸ See section 5 for links to the relevant legislation

24. Directed surveillance will be authorised against a specific offence which meets the threshold, and the type and the timing of the deployment of the surveillance will always reflect this. There may be cases where it is possible, with the same evidence obtained by the same deployment, to substantiate a variety of different charges, some of which fall below the threshold, it will be for the courts to decide whether to admit – and what weight to attach to – the evidence obtained in the lesser charges.
25. Local authorities will no longer be able to use directed surveillance in some cases where it was previously authorised. But this does not mean that it will not be possible to investigate these areas with a view to stopping offending behaviour. The statutory RIPA Code of Practice on covert surveillance makes it clear that routine patrols, observation at trouble ‘hotspots’, immediate response to events and overt use of CCTV are all techniques which do not require RIPA authorisation.⁹

⁹ See paragraphs 2.21-2.29 of the Covert Surveillance and Property Interference Code of Practice.

4. JUDICIAL APPROVAL

WHAT THE CHANGES MEAN FOR LOCAL AUTHORITIES

26. From 1 November 2012, sections 37 and 38 of the Protection of Freedoms Act 2012 will commence. This will mean that a local authority who wishes to authorise the use of directed surveillance, acquisition of CD and use of a CHIS under RIPA will need to obtain an order approving the grant or renewal of an authorisation or notice from a JP (a District Judge or lay magistrate) before it can take effect. If the JP is satisfied that the statutory tests have been met and that the use of the technique is necessary and proportionate he/she will issue an order approving the grant or renewal for the use of the technique as described in the application.
27. The new judicial approval mechanism is in addition to the existing authorisation process under the relevant parts of RIPA as outlined in the Codes of Practice. The current local authority process of assessing necessity and proportionality, completing the RIPA authorisation/application form and seeking approval from an authorising officer/designated person will remain the same.
28. The inspection regimes of the independent RIPA oversight Commissioners will continue to apply to local authorities and the frequency and nature of their independent inspections of local authorities is not expected to change.
29. The judiciary is independent and it is not the role of the Commissioners to inspect the decision of the JP.¹⁰ However the Commissioners will continue to have an important oversight role and will continue to inspect local authority use of RIPA. If the Commissioners identify an error in the authorisation process they will, as now, need to consider the best course of action. This may include asking the local authority to cancel the authorisation in question and, if appropriate, complete a new authorisation addressing their concerns which will need to be approved by the JP in the usual way. When an error is brought to the attention of a local authority they should cease the activity authorised.
30. The Commissioners will continue to advise local authorities of the procedures and training to adopt, on what is best practice and will continue to report to Parliament on relevant trends and findings.

PROCEDURE FOR APPLYING FOR JUDICIAL APPROVAL

Making the Application

31. The flowchart at Annex A outlines the procedure for applying for judicial approval. The application must be made by the public authority that has granted the authorisation¹¹. Following approval by the authorising officer/designated person the first stage of the process is for the local authority to contact Her Majesty's Courts and Tribunals Service (HMCTS) administration team at the magistrates' court to arrange a hearing.

¹⁰ See section 62(2A) RIPA.

¹¹ Some local authorities may enter into arrangements to form a regional group with other local authorities but the group cannot itself make the application. Only local authority officers in local authorities described in SIs 2010 Nos.480 and 521 are able to authorise under RIPA.

32. The local authority will provide the JP with a copy of the original RIPA authorisation or notice and the supporting documents setting out the case. This forms the basis of the application to the JP and **should contain all information that is relied upon**. For communications data requests the RIPA authorisation or notice may seek to acquire consequential acquisition of specific subscriber information. The necessity and proportionality of acquiring consequential acquisition will be assessed by the JP as part of his consideration (see Annex C for considerations relating to CD authorisations and notices).
33. The original RIPA authorisation or notice should be shown to the JP but will be retained by the local authority so that it is available for inspection by the Commissioners' offices and in the event of any legal challenge or investigations by the Investigatory Powers Tribunal (IPT). The court may wish to take a copy.
34. In addition, the local authority will provide the JP with a partially completed judicial application/order form (at Annex B).
35. Although the local authority is required to provide a brief summary of the circumstances of the case on the judicial application form, this is supplementary to and does not replace the need to supply the original RIPA authorisation as well.
36. The order section of this form will be completed by the JP and will be the official record of the JP's decision. The local authority will need to obtain judicial approval for all initial RIPA authorisations/ applications **and renewals** and the local authority will need to retain a copy of the judicial application/ order form after it has been signed by the JP. There is no requirement for the JP to consider either cancellations or internal reviews.

Arranging a Hearing

37. It will be important for each local authority to establish contact with HMCTS administration at the magistrates' court. HMCTS administration will be the first point of contact for the local authority when seeking a JP approval. The local authority will inform HMCTS administration as soon as possible to request a hearing.
38. On the rare occasions where out of hours access to a JP is required then it will be for the local authority to make local arrangements with the relevant HMCTS legal staff. In these cases the local authority will need to provide two partially completed judicial application/order forms so that one can be retained by the JP. The local authority should provide the court with a copy of the signed judicial application/order form the next working day.
39. In most emergency situations where the police have power to act, then they are able to authorise activity under RIPA without prior JP approval. No RIPA authority is required in immediate response to events or situations where it is not reasonably practicable to obtain it (for instance when criminal activity is observed during routine duties and officers conceal themselves to observe what is happening).
40. Where renewals are timetabled to fall outside of court hours, for example during a holiday period, it is the local authority's responsibility to ensure that the renewal is completed ahead of the deadline. Out of hours procedures are for emergencies and should not be used because a renewal has not been processed in time.

Attending a Hearing

41. The hearing is a 'legal proceeding' and therefore local authority officers need to be formally designated to appear, be sworn in and present evidence or provide information as required by the JP.
42. The hearing will be in private and heard by a single JP who will read and consider the RIPA authorisation or notice and the judicial application/order form. He/she may have questions to clarify points or require additional reassurance on particular matters.
43. Local authorities will want to consider who is best able to answer the JP's questions on the policy and practice of conducting covert operations and detail of the case itself. It is envisaged that the case investigator will be able to fulfil this role. The investigator will know the most about the investigation and will have determined that use of a covert technique is required in order to progress a particular case. The local authority may consider it appropriate for the SPoC (single point of contact) to attend for applications for CD RIPA authorisations or notices (see Annex C for considerations relating to CD authorisations and notices). This does not, however, remove or reduce in any way the duty of the authorising officer to determine whether the tests of necessity and proportionality have been met. Similarly, it does not remove or reduce the need for the forms and supporting papers that the authorising officer has considered and which are provided to the JP to make the case (see paragraphs 47-48).
44. The usual procedure would be for local authority Standing Orders to designate certain officers, including SPoCs, for the purpose of presenting RIPA cases to JPs under section 223 of the Local Government Act 1972. A pool of suitable officers could be designated at the start of the year when the Orders are examined and adjusted as appropriate throughout the year.
45. It is not envisaged that the skills of legally trained personnel will be required to make the case to the JP and this would be likely to, unnecessarily, increase the costs of local authority applications.

Decision

46. The JP will consider whether he or she is satisfied that at the time the authorisation was granted or renewed or the notice was given or renewed, there were reasonable grounds for believing that the authorisation or notice was necessary and proportionate. They will also consider whether there continues to be reasonable grounds. In addition they must be satisfied that the person who granted the authorisation or gave the notice was an appropriate designated person within the local authority and the authorisation was made in accordance with any applicable legal restrictions, for example that the crime threshold for directed surveillance has been met.¹²

¹² Further information on these restrictions can be found in the Regulation of Investigatory Powers Act 2000: Consolidating Orders and Codes of Practice, SI 2012 No.1500 (The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment)), SI 2000 No.2793 (The Regulation of Investigatory Powers (Juveniles) Order 2000) and the OSC Procedures and guidance manual, available to public authorities on request from the Office of Surveillance Commissioners.

47. **The forms and supporting papers must by themselves make the case. It is not sufficient for the local authority to provide oral evidence where this is not reflected or supported in the papers provided.** The JP may note on the form any additional information he or she has received during the course of the hearing but information fundamental to the case should not be submitted in this manner.
48. If more information is required to determine whether the authorisation or notice has met the tests then the JP will refuse the authorisation. If an application is refused the local authority should consider whether they can reapply, for example, if there was information to support the application which was available to the local authority, but not included in the papers provided at the hearing.
49. The JP will record his/her decision on the order section of the judicial application/order form. HMCTS administration will retain a copy of the local authority RIPA authorisation or notice and the judicial application/order form. This information will be retained securely. Magistrates' courts are not public authorities for the purposes of the Freedom of Information Act 2000.
50. The local authority will need to provide a copy of the order to the communications the SPoC (Single Point of Contact) for all CD requests. SPoCs must not acquire the CD requested, either via the CSP or automated systems until the JP has signed the order approving the grant.

Outcomes

51. Following their consideration of the case the JP will complete the order section of the judicial application/order form (see form at Annex B) recording their decision. The various outcomes are detailed below and reflected on the flowchart at Annex A.
52. The JP may decide to¹³ –

- **Approve the Grant or renewal of an authorisation or notice**

The grant or renewal of the RIPA authorisation or notice will then take effect and the local authority may proceed to use the technique in that particular case.

In relation to CD, the local authority will be responsible for providing a copy of the order to the SPoC.

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

The RIPA authorisation or notice will not take effect and the local authority may **not** use the technique in that case.

Where an application has been refused the local authority may wish to consider the reasons for that refusal. For example, a technical error in the form may be remedied without the local authority going through the internal authorisation process again. The local authority may then wish to reapply for judicial approval once those steps have been taken.

¹³ See sections 23B(3) and 32B(3) of the Regulation of Investigatory Powers Act 2000.

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

This applies where a magistrates' court refuses to approve the grant, giving or renewal of an authorisation or notice and decides to quash the original authorisation or notice.

The court must not exercise its power to quash that authorisation or notice unless the applicant has had at least 2 business days from the date of the refusal in which to make representations.

Complaints/Judicial Review

53. There is no complaint route for a judicial decision unless it was made in bad faith. Any complaints should be addressed to the Magistrates' Advisory Committee.
54. A local authority may only appeal a JP decision on a point of law by judicial review. If such a concern arises, the local authority should consult their legal advisers.
55. The IPT will continue to investigate complaints by individuals about the use of RIPA techniques by public bodies, including local authorities. If, following a complaint to them, the IPT does find fault with a RIPA authorisation or notice it has the power to quash the JP's order which approved the grant or renewal of the authorisation or notice.

5. OTHER SOURCES OF REFERENCE

- The Regulation of Investigatory Powers Act 2000
<http://www.legislation.gov.uk/ukpga/2000/23/contents>
- RIPA Explanatory Notes
<http://www.legislation.gov.uk/ukpga/2000/23/notes/contents>
- RIPA statutory codes of practice
 - Covert Surveillance and Property Interference
<http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa/forms/code-of-practice-covert>
 - Covert Human Intelligence Sources
<http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa/forms/code-of-practice-human-intel>
 - Acquisition & Disclosure of Communications Data
<http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa/forms/code-of-practice-acquisition>
- SI 2000 No.2793 (The Regulation of Investigatory Powers (Juveniles) Order 2000)
<http://www.legislation.gov.uk/uksi/2000/2793/made>
- SI 2010 No.480 – Regulation of Investigatory Powers (Communications Data) Order 2010
<http://www.legislation.gov.uk/uksi/2010/480/contents/made>
- SI 2010 N0.521 – Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010
<http://www.legislation.gov.uk/uksi/2010/9780111490365/contents>
- SI 2010 No.461 (The Regulation of Investigatory Powers (Extension of Authorisation Provisions: Legal Consultations) Order 2010)
<http://www.legislation.gov.uk/uksi/2010/461/contents/made>
- SI 2012 No.1500 (The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012)
<http://www.legislation.gov.uk/uksi/1500/contents>

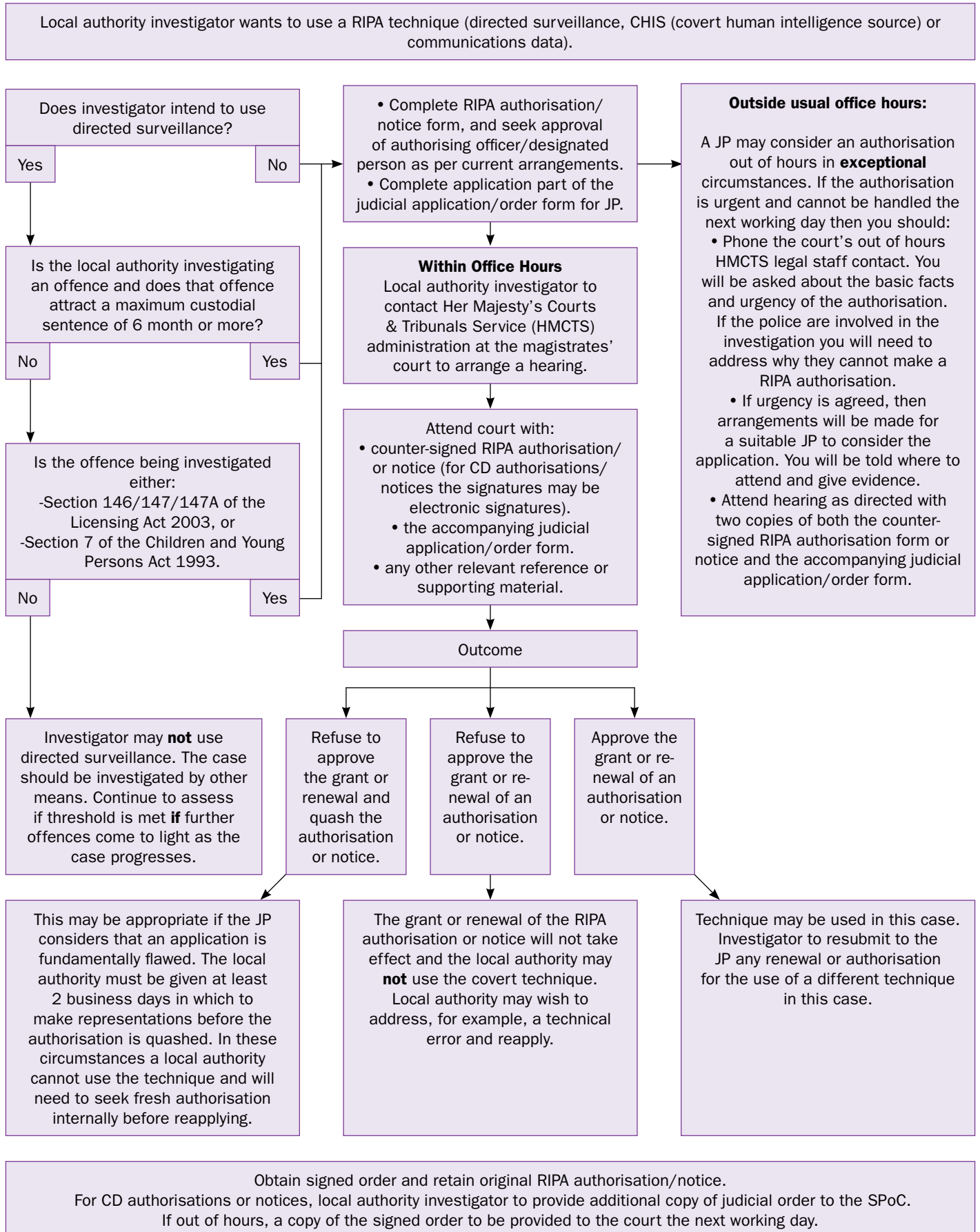
6. HOME OFFICE POINT OF CONTACT

Further information is available on request from:

RIPA Team
Home Office
5th Floor Peel Building
2 Marsham Street
London SW1P 4DF
Email: commsdata@homeoffice.x.gsi.gov.uk

ANNEX A

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



ANNEX B

Application for judicial approval for authorisation to obtain or disclose communications data, to use a covert human intelligence source or to conduct directed surveillance. Regulation of Investigatory Powers Act 2000 sections 23A, 23B, 32A, 32B.

Local authority:.....

Local authority department:

Offence under investigation:.....

Address of premises or identity of subject:

.....

.....

Covert technique requested: (tick one and specify details)

Communications Data

Covert Human Intelligence Source

Directed Surveillance

Summary of details

.....

.....

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.....

Note: this application should be read in conjunction with the attached RIPA authorisation/RIPA application or notice.

Investigating Officer:.....

Authorising Officer/Designated Person:

Officer(s) appearing before JP:

Address of applicant department:.....

.....

Contact telephone number:.....

Contact email address (optional):

Local authority reference:

Number of pages:.....

Order made on an application for judicial approval for authorisation to obtain or disclose communications data, to use a covert human intelligence source or to conduct directed surveillance. Regulation of Investigatory Powers Act 2000 sections 23A, 23B, 32A, 32B.

Magistrates' court:.....

Having considered the application, I (tick one):

- am satisfied that there are reasonable grounds for believing that the requirements of the Act were satisfied and remain satisfied, and that the relevant conditions are satisfied and I therefore approve the grant or renewal of the authorisation/notice.
- refuse to approve the grant or renewal of the authorisation/notice.
- refuse to approve the grant or renewal and quash the authorisation/notice.

Notes

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Reasons

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.....
.....

Signed:

Date:

Time:

Full name:

Address of magistrates' court:

ANNEX C

COMMUNICATIONS DATA (CD) RIPA AUTHORISATIONS OR NOTICES

Single Point of Contact (SPoC)

1. For CD requests, a Single Point of Contact (SPoC) undertakes the practical facilitation with the communications service provider (CSP) in order to obtain the CD requested. They will have received training specifically to facilitate lawful acquisition of CD and effective co-operation between the local authority and communications service providers.
2. Local authorities unable to call upon the services of an accredited SPoC should not undertake the acquisition of CD.
3. For CD requests the Home Office envisages that the local authority may also choose to authorise, under section 223 of the Local Government Act, their SPoC in order that they may appear in front of the JP. In cases where the type of CD or its retrieval is technically complex and the JP wants to satisfy him/herself that the CD sought meets the test, then the SPoC may be best placed to explain the technical aspects.
4. Following the hearing the SPoC may acquire the data. SPoCs must not acquire the data via a CSP or using automated systems until after the JP has signed the order approving the grant. The one month time limit will commence from the date of the JPs signature giving approval.

The National Anti Fraud Network (NAFN)

5. The National Anti-Fraud Network provides a SPoC service to local authorities, precluding each authority from the requirement to maintain their own trained staff and allowing NAFN to act as a source of expertise. Local authorities using the NAFN SPoC service will still be responsible for submitting any applications to the JP and a designated person in the local authority is still required to scrutinise and approve any applications. The accredited SPoCs at NAFN will examine the applications independently and provide advice to applicants and designated persons to ensure the local authority acts in an informed and lawful manner.
6. The local authority investigator (i.e. the applicant) will then submit the relevant judicial application/order form, the RIPA application (authorisation or notice) and any supporting material to the JP. As above, following a private hearing, the JP will complete the order section of the judicial application/order form, reflecting their decision. The local authority investigator will then upload a copy of this order to the NAFN SPOC.
7. The NAFN SPoC will then acquire the CD on behalf of the local authority in an efficient and effective manner.

Consequential Acquisition

8. Section 3.31 of the Code of Practice for the Acquisition and Disclosure of CD outlines that a designated person may, at the time of granting an authorisation or notice for service usage data, also authorise the consequential acquisition of specific subscriber information. The designated person may only do so to the extent where it is necessary and proportionate. The consequential acquisition may only be for subscriber data, not traffic data, which local authorities may not acquire nor service usage data. Where a SPoC has been authorised to engage in conduct to obtain details of a person to whom a service has been provided and concludes that data is held by a CSP from which it cannot be acquired directly, the SPoC may provide the CSP with details of the authorisation granted by the designated person in order to seek disclosure of the required data¹⁴.
9. In cases where an authorisation or notice seeks to acquire consequential acquisition of specific subscriber information the JP will assess this as part of his/her consideration. The local authority investigator should be prepared to explain to the JP the reasoning behind the request for consequential acquisition and be able to show how it meets the necessity and proportionality tests.
10. In cases where consequential acquisition is approved, but where a notice is required (which must specify the name of the CSP to whom it is given, and be signed by the designated person), a further grant of a notice will be required. This is a new legal instrument and therefore will require further approval to the designated person and the JP, despite authority for the human rights interference having already been given.

¹⁴ Acquisition and Disclosure of Communications Data Code of Practice, Paragraph 3.30.



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