

SUMMARY OF LEGAL PROVISIONS

Human Rights

It is unlawful for a public authority to act in a way which is incompatible with certain rights set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms - Section 6 Human Rights Act 1998.

There are exceptions if the authority could not have acted differently because of legislation, which cannot be interpreted or given effect in a way which is compatible with the Convention.

Everyone has the right to respect for his private and family life, his home and his correspondence. A public authority may not interfere with this right except in accordance with the law and as is necessary in a democratic society in the interest of:

- ▶ public safety, or
- ▶ the economic well-being of the country, or
- ▶ the prevention of disorder or crime, or
- ▶ the protection of health or morals, or
- ▶ the protection of the rights and freedoms of others

- Article 8 of the Convention

Regulation of Investigations

"Directed Surveillance" and the use of "Covert Human Intelligence Sources" and "Acquisition of Communications Data" shall be lawful if properly authorised and granted Judicial Approval under the Regulation of Investigatory Powers Act 2000 and the conduct is in accordance with the authorisation and Approval.

RIPA does not require an authorisation procedure to be used in any particular circumstances, but provides the protection that properly using the RIPA Procedure will defeat claims that the authorised actions were in breach of the Human Rights legislation.

"Directed Surveillance is covert surveillance undertaken:

- ▶ for the purposes of a specific investigation of operation, and
- ▶ in a way likely to obtain private information about any person

[it does not catch an immediate response to circumstances where it would not be reasonably practicable for the authorisation procedure to be used.]

"Covert Surveillance" means surveillance carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware it may be taking place.

"Private information" includes information relating to a person's private or family life.

A person is a "Covert Human Intelligence Source" if he establishes or maintains a personal or other relationship with a person for the covert purpose of:

- ▶ using the relationship to obtain information or provide access to any information to another person

The legal meaning of "Communications Data" is complex but can include details identifying a person or location, to or from which the communication was transmitted or information about the use made of a telecommunications service. However, "communications data" excludes the actual content of a communication, e.g. it could include a mobile phone bill but not the content of telephone calls or text messages.

Authorisations

A local authority officer must not grant a RIPA authorisation unless he believes the authorisation is necessary on the single statutory ground **for the purpose of preventing or detecting crime or of preventing disorder** and it is proportionate to what is to be achieved. However, it must be noted that local authorities can only use RIPA where the offence carries a minimum custodial sentence of 6 months, or the offence relates to the underage sale of either alcohol or cigarettes.

Local authorities are required to gain Judicial Approval from a Magistrates' Court before any conduct under RIPA is lawful. Judicial Approval is in addition to the requirement to have all appropriate internal authorisations.

The County Council has established a procedure dealing with covert surveillance issues and the acquisition of communications data which can be dealt with in accordance with this procedure. Only authorised officers specified in the procedure may grant RIPA authorisations, renewals, cancellations etc. Offices involved should comply with the Council's procedure and have regard to the relevant Code of Practice, copies of which can be found within the Guidance Manual.