

EXPLANATORY MEMORANDUM

THE REGULATION OF INVESTIGATORY POWERS (COVERT HUMAN INTELLIGENCE SOURCES: RELEVANT SOURCES) ORDER 2013

2013 No. 2788

1. This explanatory memorandum has been prepared by the Home Department and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order amends the statutory procedure for the authorisation under the Regulation of Investigatory Powers Act 2000 ('RIPA') of certain types of undercover law enforcement officers by:

- i) raising the internal level of authorisation required to deploy such an officer;
- ii) applying external approval without which internal authorisations of longer than 12 months will not come into force; and
- iii) requiring notification of certain authorisations to be made to the Office of Surveillance Commissioners.

2.2 The amendments are made following the recommendations of an HM Inspectorate of Constabulary report 'A Review of National Police Units which Provide Intelligence on Criminality Associated with Protest' which was published on 2 February 2012.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 RIPA section 26(8) defines a 'covert human intelligence source' ('CHIS') as a person who establishes or maintains a relationship for a covert purpose in order to obtain or provide access to information or to covertly disclose information obtained as a result of the relationship. A CHIS includes both an undercover officer and a member of the public acting as an informant. Under RIPA section 30(1) the persons entitled to grant an authorisation for the use of a CHIS are those individuals holding such offices, ranks or positions with the relevant public authorities prescribed by the Secretary of State by Order. RIPA Section 30(3) enables the Secretary of State to impose restrictions on those authorisations and the circumstances in or purposes for which the authorisations may be granted.

4.2 The Order which lists the individuals holding such offices, ranks or positions with the relevant public authorities able to authorise the use of a CHIS is: SI 2010 No.521 'The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010. The current Order amends SI 2010 No.521

to introduce a higher internal rank for authorisations of relevant sources in the listed law enforcement bodies and to increase the rank to Chief Constable or equivalent for those authorisations that last beyond 12 months. The relevant 12 months is calculated by reference to the periods during which authorisations in relation to the same operation or investigation are extant within the space of three years. These longer running authorisations will also be subject to approval by an independent Surveillance Commissioner.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom. However, the authorisation of CHIS i) to prevent or detect crime or prevent disorder, or ii) in the interests of public safety, or iii) for the purpose of protecting public health in Scotland is governed by the Regulation of Investigatory Powers (Scotland) Act 2000.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Government is introducing the measures in this Order to ensure that certain types of CHIS authorised under RIPA are subject to enhanced scrutiny procedures. The measures apply to sources who hold an office, rank or position in the law enforcement agencies listed and are deployed for particular purposes. They are in line with the recommendations of HM Inspectorate of Constabulary made in 2012 following the examination of the deployment of a particular former police undercover officer but whose findings are applicable to any law enforcement organisation who use undercover officers. They are also in line with the RIPA measures which already apply to law enforcement use of intrusive surveillance (covert surveillance in residential premises and private vehicles) where authorisation is subject to independent, external approval by a Surveillance Commissioner. All Surveillance Commissioners are required by law to hold or have held high judicial office within the meaning of the Constitutional Reform Act 2005.

7.2 The essential tests which must be satisfied before internal authorisation and external approval may be granted are that what is proposed is necessary and proportionate. A key factor is that collateral intrusion is taken fully into account. In addition, all other RIPA requirements will need to be met (for instance, including that a proper risk analysis has been carried out, and that appropriate people have been nominated to have day to day responsibility for the undercover officer and to have overall oversight of his deployment).

8. Consultation outcome

8.1 The Government has consulted HM Inspectorate of Constabulary, the National Policing Lead for undercover work; Association of Chief Police Officers, Office of Surveillance Commissioners and key law enforcement stakeholders over the formulation of the measures contained in this Order.

9. Guidance

9.1 The measures in this Order will be reflected in the statutory guidance provided by the RIPA Code of Practice on covert human intelligence sources at the next suitable opportunity for revision and laying before Parliament.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 Although no formal impact assessment has been conducted, there will be modest resource costs associated with raising the level of internal law enforcement authorisation and additional supervision by the Office of Surveillance Commissioners.

11. Regulating small business

11.1 The legislation applies only to public authorities.

12. Monitoring & review

12.1 The Government will keep under review the operation of this legislation, including:

- a) through the independent inspection and oversight by the Chief Surveillance Commissioner; and
- b) through the Investigatory Powers Tribunal which is made up of senior members of the judiciary, is independent of Government and has full powers to investigate and determine any proceedings or complaints falling within its jurisdiction.

13. Contact

13.1 The RIPA Team at the Home Office, 2 Marsham Street, London SW1P 4DF (telephone 020 7035 1216; e-mail COMMSDATA@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.