



Office of Surveillance  
Commissioners

# ANNUAL REPORT

of the Chief Surveillance Commissioner

to the Prime Minister and

to Scottish Ministers

for **2006-2007**

HC 713

SE/2007/126



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Chief Commissioner:

**The Rt. Hon. Sir Christopher Rose**

Presented to Parliament by the Prime Minister  
pursuant to section 107(3)  
of the Police Act 1997

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# Contents

	<i>Page</i>
1. Introduction	2
2. Overview of the year	3
3. The statutory provisions	4
4. Organisation of OSC business	5
5. Particular matters relating to the OSC	6
6. Property interference and intrusive surveillance	8
7. Directed surveillance and CHIS	9
8. Inspections of law enforcement agencies	10
9. Inspections of Government Departments and related bodies	13
10. Local authorities	14
11. Technological developments	16
12. RIPA Review	17
13. Strategic alliances	17
14. The year ahead	18
<b>Annexes</b>	
<b>Annex A</b> Authorisations given under Part III of the Police Act 1997 since implementation	19
<b>Annex B</b> Analysis by offence of authorisations given under Part III of the Police Act 1997	20
<b>Annex C</b> Intrusive surveillance authorisations given under Part II of the Regulation of Investigatory Powers Act 2000 and under the Regulation of Investigatory Powers (Scotland) Act 2000 since implementation	21
<b>Annex D</b> Analysis by offence of authorisations given under Part II of the Regulation of Investigatory Powers Act 2000 and under the Regulation of Investigatory Powers (Scotland) Act	22
<b>Annex E</b> Inspection priorities	23
<b>Annex F</b> OSC Expenditure	25
<b>Annex G</b> Members of the Office of Surveillance Commissioners	26



## 1. Introduction

- 1.1 This is my first report since taking up my appointment as the Chief Surveillance Commissioner in July 2006 and relates to the period from 1st April 2006 to 31st March 2007.
- 1.2 It is my duty to keep under review:
  - (a) the performance of functions under Part III of the Police Act 1997 ('the 1997 Act');
  - (b) (except in relation to the Interception of Communications and the Intelligence Services) the exercise and performance of the powers and duties conferred or imposed by or under Part II of the Regulation of Investigatory Powers Act 2000 ('RIPA'); and
  - (c) the exercise and performance of the powers and duties conferred or imposed by or under the Regulation of Investigatory Powers (Scotland) Act 2000 ('RIP(S)A').
- 1.3 This covers all covert activities (except telephone and mail interception) carried out by all public authorities, except the intelligence services. Although Part III of RIPA, relating to protected electronic information, is also within my statutory responsibility, it is still not in force. I discuss this further under my overview of the year.
- 1.4 It is the duty of the Surveillance Commissioners ('the Commissioners') to appraise all authorisations for property interference and intrusive surveillance either before or immediately after they have been given. There is a right of appeal against their decisions to me as Chief Surveillance Commissioner.
- 1.5 In performance of my duty under all three Acts ('the Acts') to report annually, I continue to prepare a combined report.

## 2. Overview of the year

- 2.1** Part III of the 1997 Act and Part II of RIPA and the relevant sections of RIP(S)A have all been in force for seven or eight years.
- 2.2** The statistics relating to property interference and intrusive surveillance authorisations are set out in paragraph 6 below. I continue to be satisfied that these authorisations are given a high level of attention by public authorities.
- 2.3** The numbers of authorisations for directed surveillance and Covert Human Intelligence Sources ('CHIS') are set out on paragraph 7 below. I particularly note the increased number of directed surveillance authorisations granted by public authorities other than law enforcement agencies where almost double the number of authorisations were granted compared with the previous year. My predecessor reported last year that there was a tendency not to recognise as CHIS sources who should be so recognised. These problems still exist. Other terms, such as "tasked witness", continue to be used by law enforcement agencies who seek an alternative, perhaps less resource-intensive, way of managing what is likely to be a CHIS.
- 2.4** Issues that continue to be of concern to me are those which Parliament may not have envisaged: developing technology in Automatic Number Plate Recognition ('ANPR') continues to raise issues not envisaged by current legislation; and strategic alliances between more than one authority, formed to combine operating capacity, expertise and effectiveness, were not contemplated by the legislation as being a single authority.
- 2.5** During the year, the Home Office undertook a public consultation on a draft Code of Practice for the investigation of protected electronic information, which concerns the exercise of powers and duties under Part III of RIPA. I am advised that the feedback received has been taken into account in a revised Code of Practice which the Secretary of State will lay before both Houses of Parliament by Order. Subject to Parliament's approval of that Order and the Code, a further Order will be made bringing into effect the provisions of Part III. It is anticipated that the provisions of Part III and the Code will come into force on 1 October 2007.
- 2.6** I deal with the RIPA Review in paragraph 12 below.

### 3. The statutory provisions

- 3.1** The purposes and main provisions of Part III of the 1997 Act, Part II of RIPA and RIP(S)A that are relevant to oversight of covert surveillance, together with an account of the statutory functions of the Commissioners, are available on the OSC website at [www.surveillancecommissioners.gov.uk](http://www.surveillancecommissioners.gov.uk) and are also set out in the 2000-2001 Annual Report to the Prime Minister and Scottish Ministers.
- 3.2** Having deferred the inspection of the newly created HM Revenue and Customs ('HMRC') and the Serious Organised Crime Agency ('SOCA') last year in order to allow them time to settle into their new roles, the first inspections of each public authority took place in October 2006.
- 3.3** The Police, Public Order and Criminal Justice (Scotland) Act 2006, Statutory Instrument 2007/1098, placed the Scottish Drug Enforcement Agency on a statutory footing which amended Part III of the 1997 Act and RIP(S)A to give to the Director General power to grant authorisations for carrying out intrusive surveillance and property interference. The Bill also changed the Agency's name to the Scottish Crime and Drug Enforcement Agency, whilst Scottish Statutory Instrument 2006/466, which came into force on 5 October 2006, provided for the appointment of a civilian Authorising Officer at grade "PO7" in addition to a police superintendent level.
- 3.4** Statutory Instrument 2007/934 came into force on 16 April 2007 which extended to Scotland directed surveillance and CHIS authorising powers for the UK public authorities listed within the Schedule, including the Gambling Commission, Gangmasters Licensing Authority and the Office of Communications. This means that effectively those public authorities listed should seek authorisation under RIPA 2000 even where the activity is to take place in Scotland.





## 4. Organisation of OSC business

- 4.1** My statutory duty to review continues to be fulfilled through Commissioners' responsibility for oversight of authorisations, inspections by Assistant Commissioners and Inspectors, and follow up inspection visits by Commissioners to law enforcement agencies. Chief Officers respond favourably to the inspection process and particularly those visits made by my Commissioners where the opportunity for discussion of relevant legislative and practical issues continues to be seen as helpful.
- 4.2** Responsibility for the inspection of most Government departments, agencies and local authorities lies with the Assistant Commissioners, sometimes assisted by my inspectors.
- 4.3** My inspectors have inspected all police forces in the United Kingdom, as well as other major law enforcement agencies and major Government Departments including HM Prison Service, the Departments for Transport, Trade and Industry, and Work and Pensions. I have reviewed our inspection priorities again this year and I am satisfied that they continue to ensure proper oversight of these significant users of covert activity.
- 4.4** Commissioners' meetings were held three times this year, and were also attended by Assistant Commissioners, Inspectors, Secretary to OSC, and managers from my Secretariat. They continue to be valuable because they enable the Commissioners to make collective decisions about matters of interpretation. Issues arising from the inspections and from meetings with public authorities are also discussed, in the interests of achieving a consistent approach. Guidelines are issued periodically to inform public authorities of the views of the Commissioners on points of interpretation and practice.
- 4.5** The Chief Inspector and Secretary to OSC continue to participate in meetings with other public bodies and national training events in order to help them to improve their understanding of the legislation and compliance with it. The Chief Inspector and Secretary have also represented my Office at appropriate seminars and conferences.

- 4.6 In the course of the year three law enforcement consultation group meetings and two local authority consultation group meetings were organised and chaired by the Secretary to OSC. These are attended by regional representatives from the relevant public authorities across the UK and still continue to be received positively. Issues of interpretation and practice are regularly discussed and, where felt necessary, sometimes passed to the Commissioners for consideration.
- 4.7 The OSC website is regularly updated in order to help promote public awareness and assist local authorities and other public bodies carry out their statutory responsibilities under RIPA and associated legislation as well as provide an understanding into how OSC work as an oversight body.
- 4.8 There have been 22,782 visits to the site during the year, an increase on last year of over 3,200, with 20,815 made by different visitors. Feedback from local authorities and other visitors on our new webpage listing case law relevant to RIPA is very positive and continues to be welcomed. The most popular web pages after visits to our Home page have been the Advice and Guidance, About Us and Useful Links pages. It seems that the “Google” search engine is still the favourite route to our website, with referral via the “Home Office” and “Investigatory Powers Tribunal” websites coming a distant second and third respectively.
- 4.9 For the third year I have summarised the expenditure of the OSC for the reporting year which can be found at Annex F. I am pleased to report that our expenditure has once again come in on budget thanks to the close scrutiny of my Secretary. Our organisation chart can be found at Annex G with personnel costs accounting for most of our costs.

## 5. Particular matters relating to the OSC

### *Appeals by authorising officers*

- 5.1 There have not been any appeals lodged by an authorising officer during this reporting period.

### *Reporting irregularities*

- 5.2 This is the third year in which Chief Officers have been asked to report to me all covert operations in which statutory requirements have not been observed and also any cases which fail in Court on account of defects in covert surveillance. This requirement continues to ensure that errors are brought to my attention as soon as they occur, and, if necessary, investigated by one of my Inspectors either at once or during the next inspection of the agency concerned.

- 5.3 Out of the 67 unauthorised surveillance activities reported to me by law enforcement agencies this reporting year, I am concerned that most continue to occur because those carrying out the covert procedures have not been told by their managers the terms of the authorisations. I am also concerned that not all agencies report to me all breaches in relation to CHIS and directed surveillance, where some unreported activity has been found by my Inspectors.

### *Reporting to the Prime Minister and to the Scottish Ministers*

- 5.4 I have had no occasion during the year to make a report either to the Prime Minister or to the Scottish Ministers about any of the matters with which I am concerned.
- 5.5 It is apparent that my inspection reports are sometimes viewed out of context. It is appropriate to remind all public authorities that reports do not present an in-depth analysis. My resources do not permit my inspections to be more than a snap shot in time and represent the findings of my Assistant Surveillance Commissioners and Inspectors during inspections, which last, commonly, no more than a day and rarely more than five days. At inspections all aspects of covert activity are examined and the findings reflect the evidence from a small random sample of documentation and interviews of management and practitioners. They are essentially a review of the authority's covert activity since its last inspection but I cannot certify future compliance.
- 5.6 Furthermore, views expressed by my inspectors during inspections should not be given undue weight. Although they are better informed than most and have unrivalled experience in comparing how covert activity is carried out by many hundreds of different authorities, they do not possess legal qualifications. Accordingly it would be unwise for any authority to rely on views expressed by my inspectors unless and until their reports are endorsed by me. I have now placed a disclaimer to this effect on all reports.

### *Changes in personnel*

- 5.7 HH Jeremy Fordham retired as an Assistant Surveillance Commissioner on 30th April 2007. I am very grateful to him for the efficient and good-humoured way in which he has carried out his duties for six years. He will be succeeded from 1st July 2007 by HH Norman Jones QC, the former Recorder of Leeds.
- 5.8 Upon my instruction, the management structure of my Secretariat was reviewed by the Secretary in the course of the year and modest changes to the grading structure agreed with the Home Office, aimed at recognising the significant change in workload and job weighting in recent years. These changes had not yet become effective at the end of this reporting year and the present incumbents have coped admirably.

### *Recognition*

- 5.9** I would like to place on record my thanks to all members of the OSC and, in particular, my Chief Surveillance Inspector, Sam Lincoln, and the Secretary to OSC, Jennifer Riach, for their effective support during my first year as Chief Surveillance Commissioner. My thanks also go to Joanne Breen, Protective Security Division, Northern Ireland Office and to those staff within Police Division 1 of the Scottish Executive's Justice Department who have provided invaluable administrative support to the Commissioners based in Northern Ireland and Scotland respectively.
- 5.10** It was my good fortune to inherit from my predecessor, Sir Andrew Leggatt, excellent structures, of his devising, for carrying out my statutory duty of review. I shall continue to use those structures, with such minor amendments as may, from time to time, be necessary.

## **6. Property interference and intrusive surveillance**

- 6.1** The powers and duties of the Commissioners in scrutinising, and deciding whether to approve, authorisations under the 1997 Act and under RIPA or RIP(S)A, are explained in my predecessor's Annual Report for 2000-2001 and are available from the OSC website.

### *Statistics*

- 6.2** Statistics for property interference and intrusive surveillance authorisations for past years are set out in the tables at Annexes A and B. Having regard to the operating practices of law enforcement agencies I purposely do not report the number of authorisations per agency as this could be misleading. Offences relating to drug trafficking, murder and firearms offences are the major targets of authorisations this year. There has been a significant increase in law enforcement agencies requiring a property interference authorisation for investigation into kidnapping, up 52% on last year.

### *Property interference*

- 6.3** Excluding renewals, there were 2,311 property interference authorisations during 2006-2007, which is comparable with the previous year (2,310). There were 481 renewals of authorisations made during 2006-2007, compared with 475 in the previous year.
- 6.4** There were 216 cases where the urgency provisions allowed for in the legislation were used. There were also four cases where an authorisation was properly given in the absence of the Chief Officer. In the previous year these figures were 195 and one respectively. The slight increase in the number of urgent cases appears

to be largely due to an increased number of investigations into kidnapping already referred to.

- 6.5** Three law enforcement agencies in England and Wales used the urgency provisions more than any other Force in the UK: between 13-18% of their total number of property authorisations were granted orally as urgent cases this year. We shall closely monitor each of these forces to ensure that the urgency provisions are not being misused.
- 6.6** Four authorisations were quashed, where the test of necessity was not met. This is comparable with last year (four). This year there were also two invalid cases where there was no power to quash or cancel the authorisations because they did not fall within the relevant Act.

### *Intrusive surveillance*

- 6.7** There were 350 intrusive surveillance authorisations during 2006-2007, which represents another fall in comparison with previous years: 435 during 2005-06 and 461 in 2004-05. Some law enforcement agencies continue to voice concerns over the lack of available resources to train and use personnel: this leads to a low use of intrusive surveillance and the use instead of less resource-intensive methods. Renewals of authorisations remain constant, with 88 renewals granted this year, compared with 94 in 2005-06.
- 6.8** Urgency provisions were used in only 11 authorisations this year, without any needing to be signed in the absence of the Chief Officer. This is a significant reduction on last year where the numbers were 25 and nil respectively: this is consistent with the reduced number of intrusive surveillance authorisations approved overall.



## **7. Directed surveillance and CHIS**

### *Statistics*

- 7.1** Statistics for the use of directed surveillance and CHIS have been provided by all law enforcement agencies and the majority of other public authorities.

### *Directed Surveillance*

- 7.2** Law enforcement agencies granted some 19,651 directed surveillance authorisations during the period 1 April 2006 to 31 March 2007, and 2,526 were still in place at the end of that period. This compares with 23,628 and 3,073 respectively in the previous year, indicating a significant decrease in the use of these powers. I am concerned to learn that the reduction in use of these powers is due, in part, to a lack of investment by some law enforcement agencies in training their officers in RIPA awareness and, in part, to the use of alternative policing methods where a directed surveillance authorisation is not deemed necessary.
- 7.3** In relation to other public authorities some 12,494 directed surveillance authorisations were granted during the year, of which 1,800 were still in place at the end of the reporting year. This also indicates a significant increase in use of such powers, the figures for last year being 6,924 and 1,340 respectively. This increase is undoubtedly due to a better understanding by local authorities and other Government departments of the relevant legislation and they can no longer be regarded as low users, as was the case hitherto.

### *CHIS*

- 7.4** There were 4,373 CHIS recruited by law enforcement agencies during the year; 4,800 were cancelled during the year (including some who were recruited in the previous year); and 3,705 were in place at the end of March 2007. The figures for the previous year were 4,559, 5,211 and 4,075 respectively, indicating a slight reduction in the use of sources.
- 7.5** For the same period, 429 CHIS were recruited by local authorities and other Government Departments, of whom 345 were cancelled during the year and 143 were in place at the end of March 2007. This compares with 437, 269 and 151 respectively last year, and shows a fairly constant use of these powers with which local authorities in particular are less familiar.
- 7.6** Investigations and policy relating to directed surveillance and CHIS continue to be examined and discussed as part of the inspection process. Interpretational and practice matters are also discussed when these agencies meet or write to the Secretary to OSC with matters of significance being submitted to the Commissioners for a collective view or guidance.

## **8. Inspections of law enforcement agencies**

- 8.1** Like my predecessor, I use the term 'law enforcement agencies' to refer to those bodies which are authorised to use intrusive surveillance (shown at Annex E). These major users of covert activity continue to be inspected on an annual

basis. Due to the process of 'normalisation' in Northern Ireland, I no longer inspect any military units there.

- 8.2** I have generally been satisfied with the improving standards that have been found within all the law enforcement agencies. The improvements that my predecessor reported on last year, resulting from the wide establishment of Covert Authorities Bureaux (CAB) to manage and oversee authorisations, has continued. I am satisfied that this need not always be a single entity because it is not wise, in a minority of cases, for very sensitive activity to be vulnerable to compromise. Where oversight is dispersed, I have insisted on very tight monitoring at senior executive level through the auspices of a single centrally retrievable record.
- 8.3** I have been encouraged by the increase in Authorising Officer courses run by the National Policing Improvement Agency, either at Wyboston or within force locations. I have also witnessed some very high quality training provided by some of the larger police forces. The effect of this training is an increasing number of Authorising Officers who are considering the applications presented to them properly. But this increased effectiveness also makes the poor performance of untrained Authorising Officers more obvious and underlines the continued emphasis that needs to be placed on this aspect of capability. Reviewing training will continue to be a prominent part of my inspections and I expect senior officers to take a lead in ensuring that current and prospective Authorising Officers are appropriately trained.
- 8.4** The selection of Authorising Officers is also an area that requires more careful consideration. I have reminded senior officers that the rank and grade of officer prescribed by Statute is the minimum requirement. Care must be taken to ensure that this does not encourage the employment of officers who lack the requisite experience to make proper judgments or who are committed to other competing tasks. This appointment is pivotal to covert oversight and management and the responsibility should not be underestimated. Some forces are experimenting with officers whose primary responsibility is the role of Authorising Officer and I will be monitoring the effectiveness of this solution. For other forces, I encourage the early identification and training of future Authorising Officers in order to provide the necessary maintenance of standards.
- 8.5** Although not universally resolved, I am confident that effective arrangements for the handling, storage and destruction of material obtained through the use of covert surveillance have improved in most forces. I will continue to monitor closely this aspect of management.
- 8.6** Like my predecessor, I note the continued improvement by law enforcement agencies in the drafting of applications and of notifications to Commissioners. But unnecessary repetition and verbose intelligence cases continue to reflect poorly on oversight arrangements. There remains a generally poor understanding of the concept of proportionality, particularly by applicants. I have reminded

those responsible for conducting and monitoring covert activity that the documentation is designed to withstand judicial scrutiny. Whilst this may be inconvenient, many complaints about bureaucracy are misguided; and unnecessary repetition and verbosity produce self-induced bureaucracy.

- 8.7** The announcement that forces in England and Wales would no longer be merged caught many forces unawares. Those that had delayed decisions to resolve outstanding recommendations from previous inspections, or whose leadership had used the impending mergers to postpone adopting more compliant regimes have been forced to reconsider. I understand the pressures that changes in policy cause and will be sympathetic to reasonable delays, but I will monitor the situation closely to ensure that there is no unacceptable non-compliance.
- 8.8** Although I will continue to respond positively to requests for guidance relating to specific issues, I reiterate my predecessor's decision to discontinue the annual production of a detailed list of good and bad practice points noted in the course of inspections of law enforcement agencies. However, in light of an apparent increase in the provision of inaccurate guidance from elsewhere in presentations and articles, I shall, when appropriate, challenge advice which would lead, if followed, to criticism from me. I continue to urge law enforcement agencies to seek the advice of their own legal advisors in the first instance.
- 8.9** I have been disturbed by the introduction, in some forces, of the term 'tasked witness' as an apparent alternative to the correct, legally-recognised, term 'covert human intelligence source'. These individuals have been engaged in a manner that establishes or maintains a covert relationship and I have not been satisfied that the arrangements for their welfare, security and management have been of the standard required by law. The reasons for the introduction of this term are not clear, but it appears to me that the explanation may be a lack of trained handlers or the ignorance of senior investigating officers. I will continue to criticise the term and, when appropriate, the impropriety of the activity which it may embrace.
- 8.10** The use of software applications to process RIPA documentation has always been encouraged by this Office and I am generally pleased with the improvements that this provides. However, the accredited software packages sometimes inhibit innovation and often prevent the inclusion of activity deemed to be too sensitive because of the fear of compromise. In one case, a successful experiment to reduce the number of forms could not be fully implemented because the software could not be upgraded. In other cases the software compels details which are not compliant (for example dates). The Surveillance Commissioners have declared that the use of electronic signatures is acceptable, providing that the system has been accredited and that the identity and rank of the signatory is explicit. I publicly endorse that opinion, but there must be agreement on who holds the authority to accredit software packages. It is not my responsibility to do so and the legislation does not insist on the use of information technology. However, I will criticise the use of solutions which I believe are noncompliant with the law.



- 8.11** I am pleased with the responses of the Directors General of the England and Wales and Scottish prison services. Both have embarked on the reforms that my predecessor had recommended. There is much to be accomplished before I can report a satisfactory level of compliance but I am now confident that the executive boards of each organisation are providing the leadership required. In particular, I have confidence in the processes for monitoring covert activity conducted by other law enforcement agencies on the prisons estate.
- 8.12** I am less satisfied with the arrangements for privately owned prisons for which I have no responsibility. The lack of regulatory oversight (insofar as covert surveillance activity is concerned) of these establishments bears on the capability of the state owned establishments because inmates regularly transfer between state and private prisons. The safety and duty of care issues required by statute for CHIS and other personnel, and the need for proper intelligence-flows between prisons, requires that better oversight arrangements are imposed.
- 8.13** I have had occasion to order re-inspections of two law enforcement agencies this year. I was satisfied with the improvements made.

## 9. Inspections of Government Departments and related bodies

- 9.1** Fifteen inspections have been made of Government Departments and related bodies. These were:
- Department for Environment, Food and Rural Affairs.
  - Scottish Executive Environment and Rural Affairs Department.
  - Office of the Police Ombudsman for Northern Ireland.
  - Office of Fair Trading.
  - NHS Counter Fraud & Security Management Service.
  - Department for Work and Pensions.
  - Health and Safety Executive.
  - Royal Military Police.
  - Royal Naval Regulating Branch.
  - Food Standards Agency.
  - Scottish Accountant in Bankruptcy.
  - Office for Standards in Education.
  - Independent Police Complaints Commission.
  - Royal Pharmaceutical Society.
  - Information Commissioner.

- 9.2** Some of these authorities continue to make significant use of directed surveillance and a smaller number make use of CHIS. I have continued to witness the creation of investigating bodies with national coverage and am generally content with the results of inspections. However, there is considerable variance in the quality of covert activity. Part of this variance can be explained by lower use, some by poorer training but most by lack of engagement by senior executives. I recognise the impact that investment in improved training and dedicated resources has on budgets but investment is necessary if the authorities are to be compliant with the legislation.
- 9.3** There remains a tendency to use covert capability as a last resort. Whilst not advocating greater invasion of individual privacy, I am concerned that some of these authorities lack sufficient experience; this could result in activity which might be considered unlawful. I am particularly concerned at the lack of dedicated CHIS management capability in some authorities which would clearly benefit from a more professional approach.
- 9.4** I have, as far as possible, adjusted the inspection schedule so as to provide for inspection at the same time of all directorates and agencies of the same Government Department.



## 10. Inspections of local authorities

- 10.1** This year 184 inspections of local authorities were carried out, which is another increase over the preceding year (151 local authorities were inspected in 2005/6 inspection year). These authorities do not have power to grant authorisations for property interference or intrusive surveillance and are inspected less often than law enforcement agencies as they use their powers much less (see Annex E).
- 10.2** Although the general standard of compliance with the statutory provisions continues to improve, I have been disappointed with the local authorities that have failed to act on the recommendations of previous inspections.

A fundamental aim of my reviews is to improve standards and assist the authority in protecting its activities from criticism in the courts. If that advice is not heeded then the authority should not be surprised when censured.

- 10.3** In general, the quality of written policies and procedures has improved and the faults reported last year have reduced. But it seems that some authorities did not expect the more in-depth inspections conducted this year. My Assistant Surveillance Commissioners and Inspectors have found that, in a small number of cases, authorities have produced policy – as the result of an earlier inspection – but have failed to implement sufficient oversight to ensure that the policy was followed. Nor have I been reassured by the number of authorities that have failed to note Statutory Instrument 2003 Number 3171 which amends the grounds set out in section 28(3) of the 2000 Act for which an authorisation can be given. I deduce that some local authorities cannot be relied on to remain conversant with amendments to legislation.
- 10.4** Covert activity is still most often used by departments that deal with trading standards and with anti-social behaviour and by those that administer benefits. But there has been an increase in the use of covert activity related to noise monitoring. I have had to contradict advice from others which oversimplifies the relevant considerations and unwisely encourages some forms of activity without appropriate authorisation. In some cases, overt notification that monitoring is likely to take place would be more proportionate and render authorisation unnecessary.
- 10.5** Although pleased with the general improvement in the frequency of training, I remain concerned that much of it comes from a number of well-meaning but inadequately-informed providers. Much of the instruction appears superficial and fails to address adequately key areas of compliance. Private sector initiatives are to be welcomed, but I would prefer some form of accreditation and central coordination to raise and maintain standards.
- 10.6** The authorisation of CHIS by local authorities is inconsistent. Many authorities are reticent to invest in this area of covert activity because of the need for specialist training. The default policy for many authorities is to avoid using CHIS altogether or to rely on the police. My inspections, however, have identified that some authorities are probably conducting CHIS activity without proper authorisation. In the main, this is due to ignorance rather than bad faith. The lawful use of CHIS is a useful tool in an authority's armoury. But care should be taken to ensure that the capability is not lost for want of the necessary investment in the necessary skills. The Surveillance Commissioners have discussed the option of outsourcing this activity but have concluded that this would probably be considered unlawful.
- 10.7** Another concern is the failure of many local authorities to provide a fully compliant Central Record of authorisations as prescribed by the Codes of

Practice. Many simply retain manuscript documents within ring binders, but this fails to provide information which accurately conveys the totality of the covert activity that is being, or has been, undertaken and which can quickly highlight information specifically required by law. A poor Central Record is usually an indicator of ineffective oversight and lack of interest by the local authority executives. I encourage the use of tabular forms whether in manuscript or digitised format.

- 10.8** I reiterate my predecessor's caution that local authorities must be alert to the fact that senior managers of departments which only use RIPA sparsely may lack the necessary training to consider the full range of issues necessary before granting authorisations; they will often lack operational experience. Senior executives must ensure that appropriate dialogue takes place to make balanced decisions and that the Authorising Officer is senior enough to challenge as well as listen to operational practitioners. I expect Authorising Officers to be selected on capability and not simply to be assigned the responsibility because they hold a specific appointment.



## 11. Technological developments

- 11.1** I am now satisfied that authorising officers in law enforcement agencies are taking account of technical feasibility reports produced by appropriately qualified personnel before authorising the deployment of technical equipment. I am equally satisfied that the maintenance of high levels of security and oversight of technical equipment has been sustained. I continue to receive a few reports indicating that equipment has not been correctly deployed or recovered but I take this as a positive indicator that management processes are working and that the processes are transparent to regulation.
- 11.2** I have been informed that some authorities have made enquiries with their local police force regarding the acquisition of tracking technology. This is clearly a capability that local authorities are not entitled to use because it would entail property interference and, in some cases, may result in intrusive surveillance.

I will censure any local authority attempting to use the protection of RIPA for such activity.

- 11.3** Improvements in technology continue to enhance the capability of those charged with the responsibility of tackling crime. But, as indicated in last year's report, the speed of change often surpasses the limitations of current legislation. With regard to Automatic Number Plate Recognition, my position is the same as that of my predecessor and I adhere to the view that legislation is necessary to resolve some issues arising from enhanced technological capability.
- 11.4** Other capabilities, such as mobile DNA sampling, should not be used covertly without proper authority and authorising officers must be diligent to ensure that applicants include the concise details of their intended activity and that RIPA documentation accurately records what has been authorised.

## 12. RIPA Review

- 12.1** The Commissioners and I have now been afforded the opportunity to comment on the report and recommendations following the RIPA Review. I made specific mention that the Review focused on law enforcement agencies, where legislative amendments will also affect the many other bodies listed in Schedule 1 of RIPA. I emphasised our view that bureaucracy does not result from the legislation or the Codes. It is largely the making of the law enforcement agencies who often repeat the same statements in different sections of the forms. I subsequently received a briefing from the Chairmen of the ACPO Covert Investigations Steering and Peer Groups who provided the assurances that I was seeking in relation to the recommendations that they were taking forward in relation to the provision of reliable central advice and guidance. My only concern is with who will be giving this advice and, in consequence, the extent to which it can be regarded as reliable. I am also particularly pleased that local authorities are now to be afforded an opportunity to comment on the Review findings and to attend Stakeholder Forums. I will continue to monitor progress.

## 13. Strategic alliances

- 13.1** There has been a move to combine operating capability in an effort to optimise resources and expertise. At the national level there has been the creation of Counter-Terrorist units and at local authority level there have been an increasing number of combined organisations where two or more authorities combine to deliver specific services. In many cases the activity undertaken involves covert surveillance at varying levels of intrusiveness.

**13.2** In principle I have declared my support for these enterprises. But I have also advised that the legislation requires that covert activity may only be undertaken by those authorities specified by the 2000 Act (as amended) if convoluted processes are to be avoided. My visits to some of these alliances have not provided the assurance I require that covert activity is being undertaken with the requisite knowledge of all of the authorities that ought to be informed. None of these combined authorities can currently be regarded as relevant authorities within the meaning of the Act and a satisfactory solution is required before I am able to provide oversight that fulfils my statutory obligations.

## 14. The year ahead

**14.1** Despite the concerns expressed above, my prevailing impression is that the legislation has greatly improved the management and oversight of covert activity by public authorities. There is no room for complacency but it should provide confidence to the general public that the privacy of individuals is not being interfered with without proper regard for the law. Unlawful activity, when it has occurred, is reported promptly to me and I have generally been satisfied with the explanations presented and the remedial action taken. The prompt reporting of incorrect activity is a positive indicator of a transparent oversight regime.

**14.2** The Home Office plans for amalgamation of police forces in England and Wales were a significant distraction for many forces, which anticipated an opportunity to improve standards of compliance and therefore delayed action on the recommendations of earlier OSC inspections. I shall expect forces now to re-focus on those issues which I have brought to their attention.

**14.3** I have asked my Chief Inspector to review the OSC Inspection Strategy to optimise the inspection resources available to me and to ensure that the inspection process not only satisfies my statutory obligations but also provides a useful service to public authorities. All public authorities are now well aware of their statutory responsibilities and the challenge is to ensure that all benefit from the good practice of others. It is clear that my duty of review best serves the public interest because of my statutory independence and my non-participation in policy-making.

**14.4** The following public authorities have been designated as relevant public authorities and have been included in the 2007/2008 programme of inspections:

- Healthcare Commission;
- Gangmasters Licensing Authority.

## Annex A

## AUTHORISATIONS GIVEN UNDER PART III OF THE POLICE ACT 1997 (AS AMENDED) DURING LAST THREE YEARS

	2003-2004			2004-2005			2005-2006		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
<b>Total number of authorisations</b> (not including renewals)	<b>2072</b>	<b>138</b>	<b>2210</b>	<b>2177</b>	<b>133</b>	<b>2310</b>	<b>2195</b>	<b>116</b>	<b>2311</b>

## PRIOR APPROVALS

	2004-2005			2005-2006			2006-2007		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
Number of cases requiring approval	232	17	249	220	7	227	173	15	188
Cases requiring prior approval by category:									
• Dwelling	162	11	173	158	5	163	130	10	140
• Office premises	33	5	38	27	1	28	25	2	27
• Hotel bedroom	35	1	36	33	1	34	16	1	17
• Matters subject to legal privilege	0	0	0	2	0	2	1	0	1
• Confidential journalistic material	0	0	0	0	0	0	0	0	0
• Confidential personal information	2	0	2	0	0	0	1	2	3

**ANALYSIS OF AUTHORISATIONS GIVEN UNDER PART III OF THE POLICE ACT 1997  
(AS AMENDED) FOR THE LAST THREE YEARS BY OFFENCE\***

	2004-2005			2005-2006			2006-2007		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
Assault	9	2	11	15	0	15	6	0	6
Burglary/Robbery	96	0	96	109	0	109	96	0	96
Conspiracy	10	2	12	12	0	12	41	0	41
Drug trafficking	1,157	105	1,262	1,198	101	1,299	1,333	84	1,417
Firearms offences (including armed robbery)	108	4	112	119	2	121	157	3	160
Kidnap/extortion	34	0	34	35	0	35	66	7	73
Money laundering	56	5	61	67	0	67	53	0	53
Murder/loss of life	164	8	172	161	8	169	140	11	151
Organised illegal immigration	47	0	47	41	0	41	34	1	35
Tax evasion	48	0	48	56	0	56	37	0	37
Terrorism	212	9	221	215	9	224	114	2	116
Other *	168	5	173	151	11	162	118	8	126

\* Only the most common type of offences are listed, including bribery and corruption and sexual offences. As a result, these totals may not reflect the number of authorisations granted.



## Annex C

**AUTHORISATIONS GIVEN UNDER PART II OF THE REGULATION OF INVESTIGATORY POWERS ACT 2000  
AND THE REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 DURING THE LAST THREE YEARS**

	2004-2005			2005-2006			2006-2007		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
<b>Total number of authorisations</b> (not including renewals)	434	27	461	418	17	435	329	21	350
Cases by category:									
• Private vehicle	171	10	181	199	8	207	157	10	167
• Residential premises	263	17	280	219	9	228	172	11	183

**ANALYSIS OF AUTHORISATIONS GIVEN UNDER PART II OF THE REGULATION OF INVESTIGATORY POWERS ACT AND THE REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 IN THE LAST THREE YEARS BY OFFENCE\***

	2004-2005			2005-2006			2006-2007		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
Assault	11	0	11	7	0	7	2	0	2
Burglary/Robbery	13	1	14	18	0	18	17	0	17
Conspiracy	6	0	6	6	0	6	9	0	9
Drug trafficking	156	13	169	166	11	177	156	11	167
Firearms offences (including armed robbery)	17	0	17	23	0	23	10	1	11
Kidnap/extortion	11	0	11	13	1	14	8	2	10
Money laundering	2	0	2	4	0	4	3	0	3
Murder/loss of life	139	8	147	111	3	114	83	5	88
Organised illegal immigration	3	0	3	2	0	2	6	0	6
Tax evasion	3	0	3	6	0	6	0	0	0
Terrorism	15	3	18	14	0	14	1	0	1
Other**	51	2	53	41	2	43	34	2	36

\* Only the most common type of offences featuring authorisation are listed. As a result, these totals may not reflect the number of authorisations granted.

\*\*Offences include bribery and corruption and sexual offences.

## Annex E

### Inspection priorities

#### *Subject to annual inspection*

British Transport Police  
Civil Nuclear Constabulary  
Environment Agency  
HM Prison Service  
HM Revenue and Customs  
Borders and Immigration Agency  
Northern Ireland Prison Service  
Office of Fair Trading  
Police forces for England and Wales  
Police Service of Northern Ireland  
Police forces for Scotland  
Port of Dover Police  
Port of Liverpool Police  
Serious Organised Crime Agency  
Scottish Drugs Enforcement Agency  
Royal Mail Group plc  
Scottish Prison Service

#### *Subject to inspection every other year*

Ministry of Defence Police & Guarding Agency  
Royal Navy Regulating Branch  
Royal Military Police  
Royal Air Force Police

British Broadcasting Corporation  
Department for Environment, Food and Rural Affairs  
Department for Work and Pensions  
NHS Scotland (National Services Division)  
Department of Trade and Industry  
Department for Transport (incl. Driving Standards Agency)  
Health and Safety Executive  
Independent Police Complaints Commission  
Local Authorities – Unitary, Metropolitan, London Boroughs, Scottish & Welsh Councils  
Maritime and Coastguard Agency

## Annex E

National Assembly for Wales  
NHS Counter Fraud & Security Management Service  
Office of the Police Ombudsman for Northern Ireland  
Rural Payments Agency  
Scottish Environment Protection Agency  
Scottish Executive Environment and Rural Affairs Department  
Serious Fraud Office  
Vehicle & Operator Services Agency

### *To be inspected every 3 years*

Charity Commission  
Child Support Agency  
Financial Services Authority  
Food Standards Agency  
Information Commissioner  
Local Authorities – County & District Councils  
Medicines & Healthcare Products Regulatory Agency (MHRA)  
Office of Communications  
Office for Standards in Education (OFSTED)  
Royal Pharmaceutical Society of Great Britain  
Scottish Accountant in Bankruptcy

### *Inspection priority to be determined once first inspection has been undertaken*

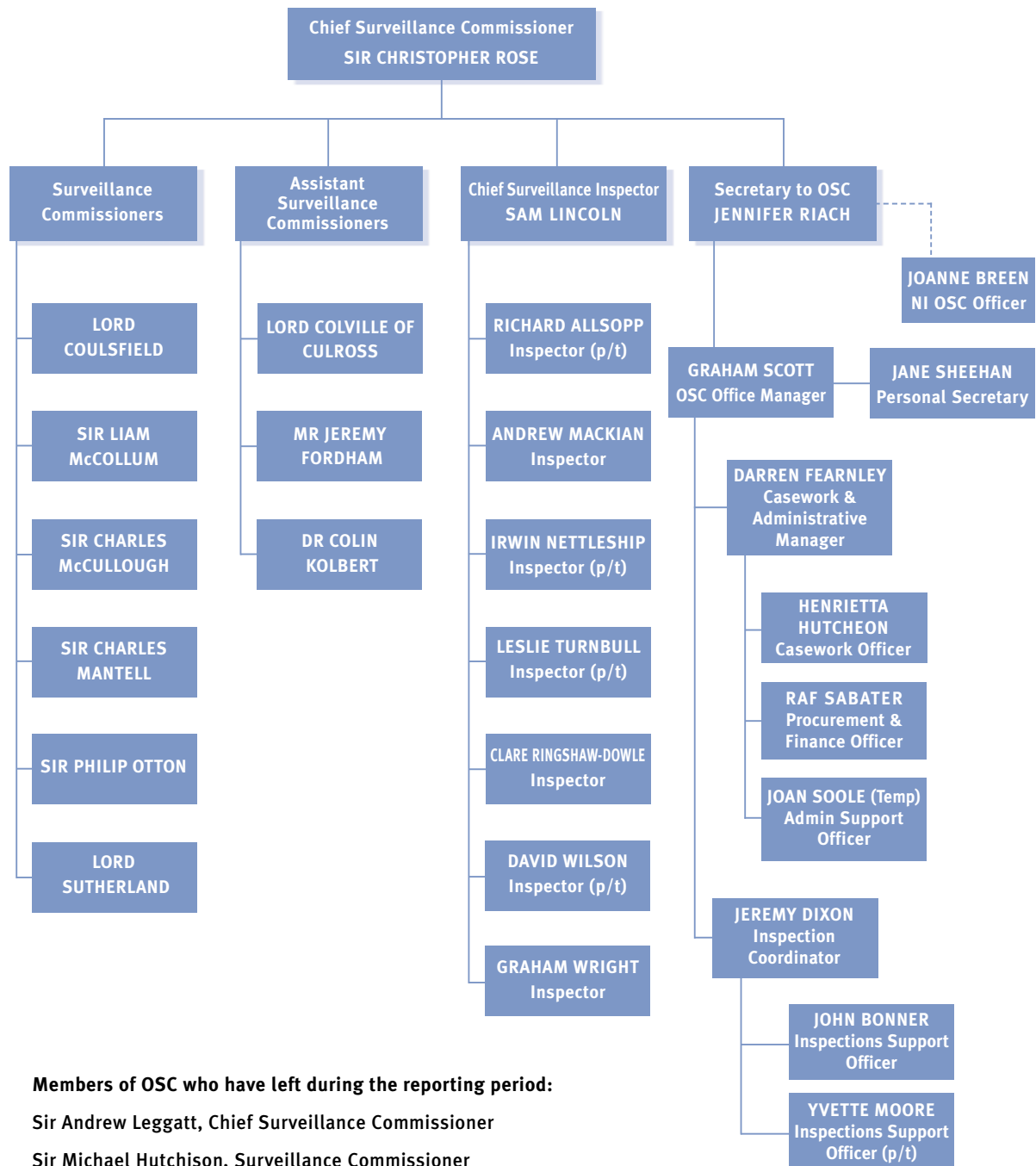
Healthcare Commission  
Gambling Commission  
Gangmasters Licensing Authority  
Special hospitals at Ashworth, Broadmoor and Rampton

## Annex F

## OSC expenditure for April 2006 - March 2007

Description	Total cost £
Staff and recruitment costs	1,294,098
Travel and subsistence	134,170
Training and development	2,445
Conferences and meetings	8,762
IT and telecommunications	57,248
Books, stationery & printing	25,395
Office equipment	3,215
Postage and courier costs	367
Accommodation costs	66,568
<b>Total</b>	<b>1,592,268</b>

MEMBERS OF THE OFFICE OF SURVEILLANCE COMMISSIONERS  
AS AT MARCH 2007



**Members of OSC who have left during the reporting period:**

Sir Andrew Leggatt, Chief Surveillance Commissioner

Sir Michael Hutchison, Surveillance Commissioner

Stephen James, Chief Surveillance Inspector

Fatima Tholley, Casework Officer

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