



HM INSPECTORATE OF CONSTABULARY IN SCOTLAND

Strategic Review of Undercover Policing in Scotland

November 2017



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This strategic review of undercover policing in Scotland was directed by Scottish Ministers under Section 74(1) of the Police and Fire Reform (Scotland) Act 2012 and published in terms of Section 78(1) and (2) of that Act.

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HM Inspectorate of Constabulary in Scotland

HM Inspectorate for Constabulary in Scotland (HMICS) is established under the Police and Fire Reform (Scotland) Act 2012 and has wide ranging powers to look into the 'state, effectiveness and efficiency' of both the Police Service of Scotland (Police Scotland) and the Scottish Police Authority (SPA).¹

We have a statutory duty to inquire into the arrangements made by the Chief Constable and the SPA to meet their obligations in terms of best value and continuous improvement. If necessary, we can be directed by Scottish Ministers to look into anything relating to the SPA or Police Scotland as they consider appropriate. We also have an established role in providing professional advice and guidance on policing in Scotland.

- Our powers allow us to do anything we consider necessary or expedient for the purposes of, or in connection with, the carrying out of our functions.
- The SPA and the Chief Constable must provide us with such assistance and co-operation as we may require to enable us to carry out our functions.
- When we publish a report, the SPA and the Chief Constable must also consider what we have found and take such measures, if any, as they think fit.
- Where our report identifies that the SPA or Police Scotland is not efficient or effective (or best value not secured), or will, unless remedial measures are taken, cease to be efficient or effective, Scottish Ministers may direct the SPA to take such measures as may be required. The SPA must comply with any direction given.
- Where we make recommendations, we will follow them up and report publicly on progress.
- We will identify good practice that can be applied across Scotland.
- We work with other inspectorates and agencies across the public sector and co-ordinate our activities to reduce the burden of inspection and avoid unnecessary duplication.
- We aim to add value and strengthen public confidence in Scottish policing and will do this through independent scrutiny and objective, evidence-led reporting about what we find.

Our approach is to support Police Scotland and the SPA to deliver services that are high quality, continually improving, effective and responsive to local needs.

This strategic review of undercover policing in Scotland was directed by Scottish Ministers under Section 74(1) of the Police and Fire Reform (Scotland) Act 2012 and published in terms of Section 78(1) and (2) of that Act.

¹ Chapter 11, Police and Fire Reform (Scotland) Act 2012.



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Aim of our review

This strategic review of undercover policing in Scotland has been directed by the Cabinet Secretary for Justice and was undertaken by HMICS in terms of Section 74(1) of the Police and Fire Reform (Scotland) Act 2012.

The Cabinet Secretary for Justice wrote to HMICS on 22 September 2016 and set out the following expectations of this review:

- to provide an independent view of the operation, procedures and safeguards in place by Police Scotland in relation to undercover policing, with the objective of providing assurance to Scottish Ministers, the Scottish Parliament and the public. Where relevant, this should include recommendations to address any gaps in the current operation, processes and safeguards or where opportunities to drive improvement are identified.
- to examine the extent and scale of undercover policing in Scotland by Scottish policing since introduction of the Regulation of Investigatory Powers (Scotland) Act 2000 (referred to as 'RIP(S)A')² and the Regulation of Investigatory Powers Act 2000 (referred to as 'RIPA').³
- to examine the extent and scale of undercover policing operations carried out in Scotland by the Special Demonstration Squad (SDS)⁴ and the National Public Order Intelligence Unit (NPOIU)⁵ in the same period.
- to comment on the contribution made by undercover policing operations towards public safety in Scotland.

Using our HMICS Inspection Framework⁶ we conducted an assurance review of the wider operating practices of the Special Operations Unit (SOU), which sits within the Specialist Crime Division (SCD), and has responsibility for the undercover policing portfolio in Police Scotland. We objectively assessed the systems and procedures in place and checked compliance with relevant codes of practice, guidance and recognised best practice. Our fieldwork included a review of all undercover authorisations since the establishment of Police Scotland in 2013 and we conducted interviews with all of Police Scotland's qualified undercover officers.

We have provided an independent analysis of the extent and scale of undercover policing operations carried out in Scotland (i) by Scottish policing including legacy Scottish police forces⁷ and, (ii) by the SDS and the NPOIU. Our analysis covered the sixteen years since the introduction of both RIP(S)A and RIPA. In practical terms, this represents the period from 1 October 2000 until 31 December 2016.

² The RIP(S)A Bill was passed by the Scottish Parliament on 7 September 2000, received Royal Assent on 28 September 2000 and came into effect on 1 October 2000.

³ RIPA 2000 was passed by the UK Parliament on 28 July 2000 and Part II of the Act (surveillance and covert human intelligence sources) came into effect on 25 September 2000.

⁴ The Special Demonstration Squad (SDS). See page 47.

⁵ The National Public Order Intelligence Unit (NPOIU). See page 47.

⁶ HMICS, [Inspection Framework](#).

⁷ Police Scotland was formally established on 1 April 2013 under the Police and Fire Reform (Scotland) Act 2012, merging Central Scotland Police; Dumfries and Galloway Constabulary; Fife Constabulary; Grampian Police; Lothian and Borders Police; Northern Constabulary; Tayside Police; Strathclyde Police, the Scottish Police Services Authority and the Scottish Crime and Drug Enforcement Agency (SCDEA).



During our review we had access to sensitive operational information and put measures in place to avoid any unintentional compromise to previous or current operational security⁸ and ongoing criminal justice proceedings. We have also respected the anonymity and confidentiality of those individuals who provided information to us during the review. Where appropriate, and in the wider interest of public safety, we have protected the identity of sources including those of undercover officers and others associated with the role.

Further detail on our inspection methodology is provided at *Appendix 4 - Review methodology*.

Having completed this review we have, for the first time, been able to quantify the extent and scale of undercover policing in Scotland by Scottish policing since the introduction of RIPA and RIP(S)A. In the last sixteen years there has been a total of 423 undercover operations in Scotland where undercover officers were deployed. In the thirteen year period 2000-2013, 373 undercover operations were conducted by legacy Scottish police forces and the Scottish Crime and Drug Enforcement Agency (SCDEA).⁹

Since, 2013, Police Scotland has carried out 50 undercover operations. Operational activity has primarily focused on drug related offences,¹⁰ child sexual abuse and exploitation, human trafficking and exploitation and serious organised crime. Our analysis revealed that most of the operational activity involved undercover foundation officers (UCF)¹¹ being used to support the investigation of drug related offences.

Since the establishment of Police Scotland, there has been concerted effort to consolidate the varied approaches previously taken by legacy forces and to strengthen the specialist back office functions needed to support undercover policing. This has resulted in a limited use of the tactic by Police Scotland and leads us to the conclusion that the use of undercover policing in Scotland cannot be considered to be widespread.

Importantly, we established that there was no evidence that undercover advanced officers (UCA)¹² from Police Scotland had infiltrated social justice campaigns or that officers had operated outwith the parameters of the authorisation.

Our examination of the extent and scale of undercover policing operations carried out in Scotland by the SDS revealed that in a ten year period between 1997 and 2007,¹³ the SDS deployed eleven (11) undercover officers to Scotland. This included six (6) SDS undercover officers deployed in support of the Scottish policing operation for the G8 Summit during July 2005. Our conclusions in relation to SDS deployments are based on the examination of SDS records held by Operation Herne, which is an active investigation by the Metropolitan Police Service into the disbanded SDS, which stretches back some forty years.

⁸ Operational security maybe defined as protecting individual pieces of information which includes operational methodology which when aggregated together provides a mosaic effect of tradecraft that can be exploited by criminal groups and individuals.

⁹ Scottish Crime and Drug Enforcement Agency (SCDEA). See Appendix 2 glossary of terms.

¹⁰ Drug related offences. See Appendix 2 glossary of terms.

¹¹ Undercover foundation officer (UCF). See Appendix 2 glossary of terms.

¹² Undercover advanced officer (UCA). See Appendix 2 glossary of terms.

¹³ Notwithstanding that the scope of our review covered a sixteen year period since the introduction of RIPA/RIP(S)A 2000. In respect of the SDS we accessed data from 1997 and have included this information in our report.



Our examination of the extent and scale of undercover policing operations carried out in Scotland by the NPOIU revealed that nine (9) undercover officers were deployed to Scotland in the period 2003 and 2010, which included the policing of the G8 Summit. We are satisfied that all undercover deployments in support of the G8 policing operation were authorised under RIP(S)A by legacy Tayside Police. In addition, the SDS and NPOIU undercover officers were also subject of dual authorisation under RIPA. We are satisfied that the deployment of undercover officers to support the police security operation at the G8 Summit was undertaken with the full knowledge, co-operation and the authorisation of Tayside Police. Outwith the G8 policing operation all other undercover operations conducted by the SDS and NPOIU in Scotland was the responsibility of the SDS and NPOIU.

Examining the extent and scale of undercover policing operations carried out by the NPOIU in Scotland required the co-operation of the National Police Chiefs' Council (NPCC), National Co-ordination Team who are co-ordinating the response from forces in England and Wales to the Undercover Policing Inquiry (UCPI).¹⁴ Operation Elter, working on behalf of the NPCC is actively investigating the activities of the NPOIU and work is in progress to record, index and analyse several million documents. It is our assessment that the information provided in this report, in respect of the NPOIU deployments in Scotland, should be considered as provisional and not conclusive.

Police Scotland has co-operated fully throughout our review and its leadership is committed to ensuring that the use of investigatory powers, including the deployment of undercover officers, where necessary is undertaken in a proportionate manner and in full compliance with the law. Police Scotland is also committed to both learning from and contributing to best professional practice across the United Kingdom (UK) and acting on any recommendations identified from the annual inspections by the Investigatory Powers Commissioner's Office (IPCO).¹⁵

We have made 19 recommendations, which are intended to drive improvement in the specialist area of undercover policing. Police Scotland will be asked to create an action plan to take these forward and we will monitor progress and publish our findings as part of our annual reporting process.

On 12 March 2015, the Undercover Policing Inquiry (UCPI)¹⁶ was established. The Inquiry's purpose is to investigate and report on the full scope of undercover policing work including the operations conducted by the SDS the NPOIU and police forces across England and Wales since 1968. As the UCPI will ultimately address legitimate concerns raised over the supervision, conduct and use of undercover police operations in England and Wales, it would seem reasonable to accept that any findings and recommendations from the UCPI would apply equally to similar concerns which might arise from the historic deployment of SDS and NPOIU officers in Scotland. Our findings should therefore be considered in conjunction with the outcomes of the UCPI in terms of continuous improvement and how undercover policing should be conducted in the future.

Given the political and public interest that exists around undercover policing, I have personally led this review. I have drawn on the experience and expertise of a number of people during the process including staff from within HMICS and also outwith who are independent of policing in Scotland.¹⁷ I also put measures in place to protect the overall integrity of our process and remain satisfied that the review was undertaken in line with the values of HMICS.¹⁸

¹⁴ The purpose of the UCPI is to investigate and report on the full scope of undercover policing work carried out by the SDS the NPOIU and police forces across England and Wales.

¹⁵ The Investigatory Powers Commissioner's Office (IPCO) previously known as the Office of Surveillance Commissioners (OSC). See Appendix 2 glossary of terms.

¹⁶ [Undercover Policing Inquiry \(UCPI\)](#)

¹⁷ HMICS personally led this strategic review supported by Stephen Whitelock, Lead Inspector, HMICS, Steven Mackay, Associate Inspector, HMICS and Brian Quinn, Associate Inspector, HMICFRS.

¹⁸ HMICS, [Our Values](#).



In conclusion, I recognise that the use of undercover officers is a legitimate approach in tackling the threats from serious organised crime and terrorism and that the officers who undertake this function voluntarily put themselves forward for the role, often placing themselves in challenging and at times dangerous circumstances. We have a duty to those officers by ensuring that undercover policing has the organisational structures, processes and resources to support them and that robust ethical management and oversight of the risks to the public, the impact of collateral intrusion¹⁹ and the risks to the individual undercover officers are firmly in place.

Derek Penman QPM

HM Chief Inspector of Constabulary in Scotland

November 2017

Acknowledgements

HMICS wishes to thank officers from the Special Operations Unit (SOU) and undercover officers at Police Scotland for their support and co-operation during this review. We would also wish to thank key stakeholders, partner agencies including the Metropolitan Police Service and the National Police Chiefs' Council, for their support in our strategic review of undercover policing in Scotland.

¹⁹ Collateral intrusion. See Appendix 2 glossary of terms.



Key facts – Undercover policing in Scotland

Since establishment of Police Scotland in 2013 there have been 50 operations involving the authorised use and conduct of undercover police officers

Operational deployment was focused primarily on drug related offences and child sexual abuse and exploitation

The Regulation of Investigatory Powers (Scotland) Act 2000 provides the legislative framework for the use and conduct of undercover policing

Less than 0.2 per cent of police officers in Police Scotland are trained as undercover officers

Many police officers operate out of uniform including those on surveillance, public protection teams, detective duties and those involved in the management of covert human intelligence sources (CHIS). They are not undercover police officers

RIP(S)A 2000 was one of the earlier pieces of legislation introduced by the devolved Scottish Parliament

Where the use and conduct of an undercover officer must be renewed as a long term deployment beyond 12 months the authorisation should be carried out by a deputy chief constable or above and pre-approved by a commissioner

Undercover police officers are volunteers who have been appropriately trained to undertake a range of activities under direction in an authorised operation in which the officer's identity is concealed from third parties

RIP(S)A 2000 works in conjunction with existing legislation, in particular the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000 which regulates the use of investigatory powers across the United Kingdom

All undercover authorisations are notified to the Investigatory Powers Commissioner's Office

Authorisations for the use and conduct of an undercover police officer is undertaken by an assistant chief constable, or above

Key findings

The contribution made by undercover policing operations towards public safety in Scotland

- The use of undercover officers is a legitimate policing tactic and has been used effectively in Scotland. Operational activity has primarily focused on drug related offences, child sexual abuse and exploitation, human trafficking and exploitation and serious organised crime.
- Our analysis revealed that most of the operational activity involved undercover foundation officers being used in support of drug related offences.
- We found that all the authorisations we examined complied fully with the requirements of RIP(S)A and the associated codes of practice.
- There was no evidence that undercover advanced officers from Police Scotland had infiltrated social justice campaigns or that officers had operated outwith the parameters of the authorisation.
- The extent and scale of undercover deployments in Scotland between 2000 and 2016 demonstrate that the use of undercover policing in Scotland cannot be considered to be widespread.
- Two of the key elements within the Policing 2026 strategy²⁰ relate to online safety and the response to serious organised crime. The capacity and capability within Police Scotland to conduct undercover policing in support of these is currently limited and needs to be further developed.
- At the time of our review the total number of trained undercover officers accounts for only 0.2% of the overall police officer establishment.
- Senior officers are committed to building capacity and capability to meet the threats outlined in the Policing 2026 strategy.

The operation, procedures and safeguards in place by Police Scotland in relation to undercover policing

- The statutory framework for the use and conduct of undercover police operations in Scotland is provided by RIP(S)A 2000. Scottish Government has issued codes of practice to ensure that the use of covert investigatory powers is proportionate and that officers carrying out such activity are required by law to consider necessity, proportionality and the impact of collateral intrusion.
- The Scottish Government introduced the Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014.²¹ This came into effect in February 2015 and increased the statutory supervisory level for the authorisation of an undercover officer to the rank of assistant chief constable or above and, for long-term authorisations, to deputy chief constable or above. Police Scotland has complied fully with this legislation.

²⁰ Police Scotland, [2026 Serving a changing Scotland](#), June 2017.

²¹ The Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014. Scottish Statutory Instrument 2014/339.

- Within Police Scotland the practice is that the authorising officer (an assistant chief constable) meets each undercover officer on a face to face basis, prior to the commencement of an operational deployment, to ensure that the individual officer is aware of the code of ethics, the values of Police Scotland and the support arrangements that are in place.
- The establishment of a single police service has brought a consistency of approach to undercover policing and improved engagement with partners.
- Police Scotland engages fully with the external bodies that contribute to the scrutiny and oversight of undercover policing in Scotland including the Investigatory Powers Commissioner's Office; Crown Office and Procurator Fiscal Service; the College of Policing and HMICS.
- Police Scotland is fully compliant with Section 7(6) RIP(S)A, which requires that there are arrangements in place for the day to day supervision of deployed undercover officers.
- We interviewed all undercover officers within Police Scotland and confirmed that they understood the requirements of RIP(S)A, the associated codes of practice²² and Police Scotland's code of ethics and values.
- The Special Operations Unit internal governance arrangements are structured and team meetings are conducted professionally. We found that officers are self-motivated, experienced and had a range of specialist skills.
- The Special Operations Unit have a performance plan that identifies a range of improvement activities. Although a number of activities had been progressed, we found that there was a need for a more structured approach to implementation.
- We consider that financial management of undercover operations required more analysis and oversight.
- All undercover foundation officers are closely monitored, supported and supervised by cover officers²³ on a daily basis.
- Undercover officers are not deployed in the advanced capacity unless they had successfully completed the advanced training programme and are assessed as both operationally and occupationally competent.
- We are satisfied that Police Scotland is complying with all the national guidelines for the selection, recruitment and training of undercover officers.
- We reviewed all authorisations for the use and conduct of undercover officers since 2013 and found that the authorising officers considerations were clearly articulated and, where required by law, the authorisations had been notified to the Office of Surveillance Commissioners.²⁴
- There is no recognised cross border provision for advising Police Scotland when undercover officers from England and Wales are deployed to Scotland. There are also no reciprocal arrangements for advising when Police Scotland officers are deployed in England and Wales.
- Police Scotland has adopted the College of Policing, Authorised Professional Practice for undercover policing. This has enabled the service to develop its approach to compliance with national standards and will support greater interoperability for undercover policing across the UK.

²² Covert Human Intelligence Sources (CHIS) code of practice, issued pursuant to Section 24 of RIP(S)A 2000.

²³ Cover officers. See Appendix 2 glossary of terms.

²⁴ Now known as the Investigatory Powers Commissioner's Office (IPCO). See Appendix 2 glossary of terms.



Analysis of undercover police operations in Scotland

- During the 13 year period between 2000 and 2013, legacy Scottish police forces carried out 373 undercover operations supported by the authorised use and conduct of undercover foundation officers, undercover online officers²⁵ and undercover advanced officers.
- Since 2013, there have been fifty (50) authorised undercover operations in Scotland involving the use of undercover foundation officers on forty-three (43) occasions, undercover online officers on eleven (11) occasions and undercover advanced officers on (3) three occasions.
- We believe that between 1997 and 2007 the SDS deployed eleven (11) undercover officers to Scotland.
- We believe that between 2003 and 2010 the NPOIU deployed nine (9) undercover officers to Scotland.
- Mark Kennedy²⁶ accounts for the majority of NPOIU deployments to Scotland and between 2004 and 2010 visited Scotland on at least seventeen (17) occasions with multiple activities during each visit.
- In 2005, in support of the police security operation for the G8 Summit,²⁷ the legacy Tayside Police authorised the deployment of eighteen (18) undercover officers. Six (6) undercover officers were provided by the SDS and six (6) undercover officers provided by the NPOIU.
- The SDS, the NPOIU and other deployments of undercover officers at the G8 Summit were undertaken with the full knowledge, co-operation and authorisation of Tayside Police. Outwith the policing of the G8 summit, the undercover deployments by the SDS and the NPOIU to Scotland were the responsibility of the SDS and NPOIU.

²⁵ Undercover online officer (UCOL). See Appendix 2 glossary of terms.

²⁶ Mark Kennedy. See Appendix 2 glossary of terms.

²⁷ G8 Summit. See Appendix 2 glossary of terms.

Recommendations

The following recommendations have been identified from our strategic review and are designed to strengthen the future delivery of undercover policing by Police Scotland. We are confident that Police Scotland has the capacity and capability to take the recommendations forward.

Recommendation 1

Police Scotland, in partnership with key stakeholders, should develop a strategy and supporting implementation plan for covert policing, which provides for a sustainable model of undercover policing and contributes towards the delivery of Policing 2026.

Recommendation 2

Police Scotland should ensure that a dedicated and trained covert operations manager-undercover (COM-UC)²⁸ who has day to day responsibility for the Special Operations Unit (SOU) is maintained.

Recommendation 3

Police Scotland should demonstrate a process to ensure that undercover officers comply with and uphold the principles and standards of professional behaviour set out in Police Scotland's code of ethics.

Recommendation 4

Police Scotland should introduce an effective tasking and co-ordination process that supports the release of trained undercover officers from local police divisions and departments.

Recommendation 5

Police Scotland should enhance the training for senior investigating officers to include the management of proactive intelligence-led operations. This should include the use and conduct of undercover officers and the requirements under RIP(S)A, codes of practice, disclosure, the management of intelligence and reference to the Authorised Professional Practice (APP) for undercover policing.

Recommendation 6

Police Scotland should introduce effective processes to ensure that the COM-UC in conjunction with the senior investigating officer is actively involved in the risk assessment of material collected by the undercover officer.

Recommendation 7

Police Scotland should introduce an independent audit regime for the management of productions held by the Special Operations Unit.

Recommendation 8

Police Scotland should introduce a register of all covert assets and technical equipment held by the Special Operations Unit. This should be subject of independent audit and review.

Recommendation 9

Police Scotland should introduce a process to undertake a results analysis that demonstrates the impact of the undercover policing deployment in achieving operational objectives.

²⁸ Covert operations manager - undercover (COM-UC). See Appendix 2 glossary of terms.



Recommendation 10

Police Scotland should engage with the College of Policing and progress a self-assessment of the authorisation, governance and tactical management arrangements in place for undercover policing as part of a formal process of national accreditation.

Recommendation 11

Police Scotland should use the covert compliance group to take forward recommendations and those areas of improvement identified by the Investigatory Powers Commissioner's Office (IPCO).

Recommendation 12

Police Scotland should identify a human resource professional to provide advice for officers and staff who operate in specialist covert policing roles and who are subject of psychological support and counselling. This should include undercover officers.

Recommendation 13

Police Scotland should introduce a welfare-based policy for substance misuse testing of active undercover officers. This should provide additional guidance and support to undercover officers to self-disclose alcohol or drug related problems or issues.

Recommendation 14

Police Scotland should introduce a secure ICT solution for maintaining cover officers' welfare and policy records.

Recommendation 15

Police Scotland should establish effective backroom support and office manager roles within the Special Operations Unit.

Recommendation 16

Police Scotland should introduce an integrated record management solution for the management and supervision of undercover policing.

Recommendation 17

Police Scotland should strengthen the financial management of covert accounts and introduce an independent financial audit regime with improved reporting.

Recommendation 18

Police Scotland should strengthen its engagement process with the Crown Office and Procurator Fiscal Service (COPFS) around undercover operations, including notification, operational parameters, special measures and disclosure requirements.

Recommendation 19

Police Scotland, in partnership with the national undercover working group (NUWG), should establish a formal process for the reciprocal notification of cross border undercover operations which includes legend building.

Background to undercover policing

1. The Police and Fire Reform (Scotland) Act 2012 changed the policing landscape in Scotland, replacing the previous eight legacy police forces, the Scottish Police Services Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA) with a single service. From 1 April 2013, the Police Service of Scotland (referred to throughout this report as 'Police Scotland') became responsible for operational policing in Scotland and is held to account by the Scottish Police Authority (SPA).
2. The Police Scotland Annual Police Plan 2017-18²⁹ outlines the operational priorities for policing based on analysis of threat, risk and harm. They are:
 - violence, disorder and antisocial behaviour
 - serious organised crime
 - counter terrorism and domestic extremism
 - protecting people at risk of harm
 - road safety and road crime
 - acquisitive crime
3. The plan highlights the continued threat to Scottish communities from serious organised crime groups primarily involved in drugs, violence, money laundering and the criminal use of firearms. Cybercrime is also recognised as a significant threat to the economic and national security of Scotland. In response to the threat, Scotland's serious organised crime strategy³⁰ was published. This is aimed at reducing the harm caused by such crime and contributing to a number of national outcomes.
4. The use of covert investigatory measures including the authorised use and conduct of an undercover officer is legitimate in tackling serious organised crime and keeping people safe, provided such activity is proportionate, necessary, lawful and appropriately authorised. The term 'undercover officer' may be considered vague as there are many police officers who operate out of uniform including those on surveillance, public protection, detective duties and those involved in the management of covert human intelligence sources (CHIS). They are often mistakenly referred to as undercover officers by the general public.
5. An undercover officer is clearly defined under Section 7 (1) of RIP(S) A 2000 and the Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014 as a;

'relevant source' who holds an office, rank or position within law enforcement agencies (including Police Scotland) and as a 'relevant source' establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraphs (b) or (c);

(b) covertly uses such a relationship to obtain information or to provide access to any information to another person; or

(c) covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

²⁹ Police Scotland, [Annual Police Plan 2017/18](#).

³⁰ Scottish Government, [Scotland's Serious Organised Crime Strategy](#), June 2015.

6. In essence, a 'relevant source' may be described as a police officer who is deployed covertly (undercover) in circumstances designed to conceal his or her true identity and role as a police officer. A key element is the undercover officer establishes or maintains a personal or other relationship with another person for a covert purpose. For ease of reference, a 'relevant source' will be referred to throughout this report as an undercover officer irrespective of which law enforcement agency they are employed by.³¹
7. Police officers voluntarily put themselves forward to be considered for the role of an undercover officer. Following a selection process and training, an officer may undertake a range of activities, under direction, in an authorised operation in which the officer's identity is concealed from third parties. Officers may be deployed across three types of undercover activity:
 - **Undercover foundation officer (UCF)**, previously known as a test purchase officer, is an officer who has passed the foundation undercover training and assessment course. This is the entry point for all undercover officers and allows them to be deployed in specific operations. These deployments may include buying drugs on the street from a suspected drug dealer, or engaging in low-level contact with an individual or a criminal gang. However, this activity does not include physically residing for extended periods within a community. A foundation officer is distinct from an undercover advanced officer and does not need the skills and experience to withstand detailed scrutiny and challenge over a sustained period of time by those who are the subjects of the operation.
 - **Undercover online officer (UCOL)**, is a nationally accredited officer who is deployed to establish and maintain relationships with an individual, network or organisation through the use of the internet with the covert purpose of obtaining information and evidence as part of an authorised operation such as online child sexual abuse and exploitation. An undercover online officer must attend and pass the nationally accredited College of Policing undercover online officer course.
 - **Undercover advanced officer (UCA)**, is an officer who has passed both the foundation undercover training and assessment course and the national undercover training and assessment course. Such officers are able to undertake more complex and long-term undercover deployments including the investigation of major crime, serious organised crime and counter terrorism. Undercover advanced officers are trained to undertake higher-level activity in which they must be able to withstand intense scrutiny by individuals subject of the operation.
8. The use of this specialist policing tactic, specifically undercover advanced officers, has generated widespread public concern that the activities, supervision and governance of undercover officers have been ineffective and public trust has been damaged. In response to public concerns, several reviews examining undercover policing have been undertaken. We have included these for reference at *Appendix 1 - Timeline of key events*.
9. On 12 March 2015, the Home Secretary established the Undercover Policing Inquiry (UCPI) in response to public concerns about the conduct of undercover officers operating within the NPOIU and the SDS of the Metropolitan Police Service. The purpose of the UCPI is to investigate and report on the full scope of undercover policing work carried out by the SDS the NPOIU and police forces across England and Wales.³²

³¹ Other Law Enforcement Agencies may refer to a 'relevant source' as an undercover operative.

³² UCPI, [Undercover Policing Inquiry Terms of Reference](#).

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10. Concerns around undercover policing in Scotland have been raised by the media and within the Scottish Parliament where members have debated the need to extend the terms of reference of the UCPI to include Scotland or establish a separate public inquiry into undercover policing in Scotland.³³
 11. The Scottish Government had requested the Home Secretary to extend the terms of reference of the UCPI to consider activity conducted by Metropolitan Police undercover officers deployed in Scotland, however this request was declined by the then Home Secretary.
 12. On 22 September 2016, the Cabinet Secretary for Justice directed HMICS to undertake this strategic review. This was the first time that HMICS had scrutinised undercover policing in Scotland and from the outset HMICS made it clear that this review, as outlined in the published terms of reference, was a strategic review of undercover policing in Scotland and not a public inquiry under the Inquiries Act 2005. The findings from this review may inform discussions as to the requirements for an independent public inquiry in Scotland. *We are now aware that on 14 September 2017, at the Court of Session, Edinburgh, permission was granted for a judicial review of the decision of the UK Government to refuse to extend the terms of reference of the Pitchford Inquiry into undercover policing to cover Scotland; and the decision of the Scottish Ministers to refuse to set up a Scottish Inquiry under and in terms of the Inquiries Act 2005 with terms of reference equivalent to those of the Pitchford Inquiry but covering Scotland.*
 13. There is no doubt that undercover policing raises complex ethical questions. The fact that the authorised activity may encompass the possession of controlled drugs, consumption of alcohol whilst on duty and covert activity, which will involve pretence, is at odds with the ethical behaviour expected from police officers. This is why the use of undercover policing must be tightly controlled with effective safeguards and robust supervision of undercover officers and those providing welfare and support.
 14. During the course of our review, we spoke with all of Police Scotland's qualified undercover officers who were available for deployment. We found them to be professional and dedicated police officers with a clear understanding of their ethical responsibilities. They were acutely aware of the concerns around the use of undercover policing that have been legitimately highlighted by the media, social justice campaigns, reviews and the UCPI. They fully supported the need for safeguards and welcomed intrusive supervision of their use and conduct whilst deployed on undercover policing operations.
 15. There is always a risk that an individual officer could choose to act outwith the parameters of an authorisation, or behave in a way that breaches their training and the code of ethics. However, we are reassured that the current internal supervision and oversight measures in place by Police Scotland reduce this risk and are likely to identify unacceptable behaviour. These measures are further strengthened by external scrutiny arrangements.

³³ Scottish Parliament Members' Business motions in the name of Neil Findlay MSP on the 'Pitchford Inquiry and undercover policing in Scotland' dated 06 January 2016 and 30 June 2016.

The contribution made by undercover policing operations towards public safety in Scotland

16. The Scottish Parliament recognises the need for policing to use a range of tactics to keep communities safe and through RIP(S)A and the associated statutory codes of practice provided a regulatory framework within which certain activities could be undertaken lawfully with the full consideration to the potential infringement of an individual's human rights.
17. We acknowledge that public confidence in the use of undercover policing has been damaged by the revelations of the activities of both the SDS and the NPOIU. In order to maintain public confidence in policing, it is important that the public understand that the covert investigatory measures used by police are subject to the rule of law, effective governance and oversight.
18. As part of the scope of our review we were asked to comment on the contribution made by undercover policing operations towards public safety in Scotland. It is not the intention of HMICS to set a precedent for the routine publication of such information, however we have balanced the need for transparency against the need to maintain the operational security of sensitive policing tactics and selected the following examples where the specialism has been disclosed during criminal justice proceedings:
 - Undercover officers deployed into a local community to purchase illicit drugs resulting in the identification and arrest of 70 street dealers and the seizure of £300,000 worth of controlled drugs.³⁴
 - A 29-year-old male was sentenced to a 3 year community order with a sex offender treatment programme and placed on the sex offender register for 5 years. A sexual offences harm order was also imposed, restricting his unsupervised contact with children and use of the internet. The 29-year-old man had asked a 'young girl' to buy a web cam and to strip for him. The victim was in fact an undercover police officer posing as a 13-year-old female on a social website aimed at young people.³⁵
 - A 32-year-old male was sentenced to over 2 years' imprisonment for directing a UK wide prostitution criminal enterprise. An undercover police officer was authorised to gather evidence of criminality.³⁶
 - A 51-year-old male was sentenced to 4 years' imprisonment for sending sexually explicit messages online to a victim who was in fact an undercover police officer posing as a 12-year-old female.³⁷
 - A 49-year-old male sentenced to 7 years' imprisonment for inciting another to commit murder. The accused hired a contract killer and was unaware that the person he was negotiating with was an undercover police officer.³⁸
 - A 44-year-old male sentenced to 5 years' imprisonment for attempting to hire a hit man to seriously assault another person. The hit man was, in fact, an undercover police officer.³⁹
19. We consider that the continued development by Police Scotland of the use and conduct of undercover policing, in conjunction with other investigatory measures, and in a manner that is necessary, proportionate and in compliance with the law and codes of practice is an essential element in tackling serious and organised crime and keeping communities across Scotland safe.

³⁴ The Scotsman, [How the dealers were run out of town](#), 11 May 2003.

³⁵ Wales Online, <http://www.walesonline.co.uk/news/wales-news/former-companies-house-worker-asked-9164437>, 1 May 2015.

³⁶ BBC, [Carer who ran prostitution business jailed](#), 17 May 2017.

³⁷ Daily Post, [Convicted sex offender caught by undercover cops sending sex messages to child](#), 13 March 2017.

³⁸ The Scotsman, [Father plotted to kill son-in-law](#), 5 December 2003 and BBC News, ['Honour killing' appeal refused](#), 28 July 2006.

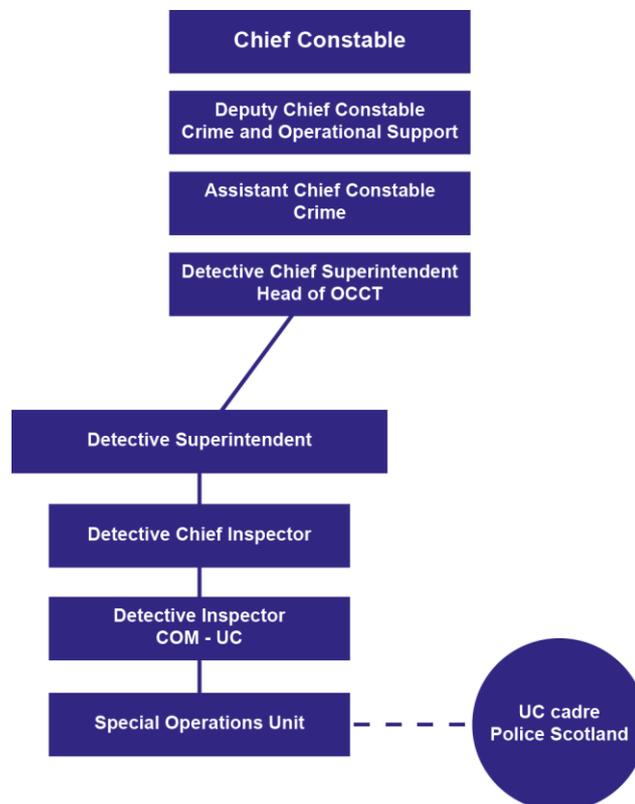
³⁹ The Scotsman, [Jail for trying to get cousin 'kneecapped'](#), 23 December 2009.

The operation, procedures and safeguards in place by Police Scotland in relation to undercover policing

Leadership and governance

20. Specialist Crime Division (SCD), Police Scotland provides specialist investigative and intelligence functions including major crime, public protection, organised crime and counter terrorism (OCCT). The Special Operations Unit (SOU) forms part of the OCCT and is the business area responsible for the management, administration, welfare and support of undercover officers.

Exhibit 1 - Special Operations Unit governance structure 2017



21. In June 2017, Police Scotland published its ten-year strategy (Policing 2026)⁴⁰ which outlines the future direction of policing in Scotland. HMICS considers it essential that the service should take the opportunity to review the organisational structure and operational benefits provided by SCD. This should include the SOU and the cadre of undercover officers in Scotland to ensure that they are configured to meet the needs of the service in the short to medium and long-term. This internal analysis should also consider the current and future capacity of the authorising officer to comply with the legislative requirements as outlined in RIP(S)A.

⁴⁰ Police Scotland, [2026 Serving a changing Scotland](#), June 2017.

22. Additionally, a strategy should be determined for all aspects of covert policing and include a costed implementation plan which aligns to wider organisational objectives, builds both capacity and capability, improves current processes and identifies clear timescales to enable effective progress towards 2026.

Recommendation 1

Police Scotland, in partnership with key stakeholders, should develop a strategy and supporting implementation plan for covert policing, which provides for a sustainable model of undercover policing and contributes towards the delivery of Policing 2026.

Scrutiny and oversight arrangements

23. In order to maintain public confidence in policing, the use and conduct of undercover officers must not only be lawful, proportionate and necessary it must also be subject to effective scrutiny and oversight arrangements. There are a number of external bodies that contribute to the scrutiny and oversight of undercover policing in Scotland. These are:

- **Office of Surveillance Commissioners (OSC)**⁴¹ - Now known as the Investigatory Powers Commissioner's Office (IPCO). The OSC was responsible for the independent oversight of the use of covert surveillance by designated public authorities, including Police Scotland. Since 2013, the OSC has carried out annual inspections of Police Scotland examining policies, procedures and operations in respect of the use of investigatory powers including undercover policing. Prior to this, the OSC carried out annual inspections of all legacy police forces and the SCDEA. During our review we examined the OSC reports for the period 2000-2016 with specific focus on undercover policing and organisational learning and development.
- **Investigatory Powers Tribunal (IPT)**⁴² - The IPT has jurisdiction to investigate and determine complaints against public authority use of investigatory powers. The IPT is entirely independent from the Scottish and UK Governments and all public authorities who use investigatory powers.
- **Crown Office and Procurator Fiscal Service (COPFS)**⁴³ - COPFS provide independent scrutiny over on-going investigations and effective working arrangements are currently in place in relation to the use of covert policing across Scotland.
- **College of Policing**⁴⁴ - In the HM Inspectorate of Constabulary (England and Wales) 2014 report, 'An inspection of undercover policing in England and Wales',⁴⁵ HMIC recommended that the College of Policing should appoint a registrar to have national responsibility for the accreditation of all undercover policing units. The College of Policing has developed an accreditation process and Police Scotland is engaged with the registrar to discuss accreditation. We make further comment on the accreditation process at page 30. The College of Policing is also responsible for a range of Authorised Professional Practice, including undercover policing.

⁴¹ In November 2016, the Investigatory Powers Act 2016 (Part 8 Chapter 1) established a single new Commissioner, the Investigatory Powers Commissioner (IPC), a senior judge, supported by a number of Judicial Commissioners undertaking either authorisation or oversight and inspection functions. The OSC is now known as the Investigatory Powers Commissioner's Office (IPCO).

⁴² [The Investigatory Powers Tribunal](#).

⁴³ [Crown Office & Procurator Fiscal Service \(COPFS\)](#).

⁴⁴ [College of Policing](#).

⁴⁵ An inspection of undercover policing in England and Wales, HMIC, 2014.

- **National Undercover Working Group (NUWG)** - The NUWG is a multi-agency group of law enforcement professionals, which works with the College of Policing to set national standards for undercover policing. Police Scotland is an active participant at the NUWG, both contributing to and adopting the best professional practice in this highly technical area of policing.
- **Police Investigations and Review Commissioner (PIRC)**⁴⁶ - Although not routinely involved in the scrutiny of undercover policing, the Commissioner may be directed by the appropriate prosecutor to investigate any circumstances in which there is an indication that a person serving with the police may have committed an offence. This would extend to officers involved in undercover policing.

Supervision and management

24. During our review we examined the internal structures, processes and safeguards that are in place at Police Scotland. Section 7(6) RIP(S)A provides the legal framework for the management of undercover officers and defines the roles, responsibilities and the arrangements that must exist. This includes the following requirements:

- a) there will at all times be a person holding an office, rank or position with the relevant investigating authority (Police Scotland) who will have day-to-day responsibility for dealing with the undercover officer on behalf of that authority, and for the officer's security and welfare;
- b) there will at all times be another person holding an office, rank or position with the relevant investigating authority who will have general oversight of the use made of the undercover officer;
- c) there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have responsibility for maintaining a record of the use made of the undercover officer;
- d) the records relating to the officer that are maintained by the relevant investigating authority will always contain particulars of all such matters (if any) as may be specified for the purposes of this paragraph in regulations made by the Scottish Ministers; and
- e) that records maintained by the relevant investigating authority that disclose the identity of the officer will not be available to persons except to the extent that there is a need for access to them to be made available to those persons.

25. There are two key statutory roles for the management and supervision of undercover policing, namely:

- covert operations manager – undercover (COM-UC)
- cover officers

Section 7(6)(b) RIP(S)A placed a statutory duty on the COM-UC for the management and supervision of cover officers and general oversight of the use of undercover officers.

26. We found that the current Police Scotland COM-UC was an experienced officer, but had a range of additional responsibilities unconnected with the primary COM-UC role. There was limited resilience within the management and supervision of undercover policing, with the COM-UC managing two separate roles and relatively few cover officers providing welfare, support and overseeing the day to day management of undercover operations.

⁴⁶ PIRC <http://pirc.scotland.gov.uk/about>

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27. Cover officers are required to successfully complete the UK cover officer's course. We found that the cover officers were appropriately trained and understood their responsibility in relation to risk assessments and the safe use and conduct of the undercover officers. The cover officers highlighted to us that due to capacity and workload by the COM-UC they had often deputised for the COM-UC and as there was no administrative support this placed additional demand on them to manage their cover role, stand in for the COM-UC whilst ensuring that there was appropriate separation and independence between both functions.
 28. During our interviews, officers were candid that although there was sufficient capacity within the COM-UC and cover officers' roles to support the limited use of undercover policing, there was insufficient capacity to support effectively multiple undercover operations across Scotland.
 29. We highlighted our initial findings with senior officers and they responded positively and implemented measures that have enabled the COM-UC and cover officers to focus on their primary roles. Police Scotland also recognised that, as it develops its capability in line with the Policing 2026 strategy, there is an expectation that there will be an increase in cover officer capacity commensurate with any growth in the cadre of undercover officers. Although HMICS welcomes this commitment, we have made the following recommendation and will follow up on the progress needed by the service.

Recommendation 2

Police Scotland should ensure that a dedicated and trained covert operations manager-undercover (COM-UC) who has day to day responsibility for the Special Operations Unit (SOU) is maintained.

30. In addition to the COM-UC and cover officers, a further level of supervision is provided by a detective chief inspector who is responsible for the strategic direction of undercover policing and senior management oversight of the COM-UC and officers within the SOU. We established that the detective chief inspector had an extensive portfolio across a number of specialist units that included the SOU and, on average, only about 20% of management time was devoted to the SOU.
31. Although an experienced police manager, the detective chief inspector had not received training in the regulation of investigatory powers legislation and had limited experience of undercover policing. HMICS recognises that there are organisational benefits in exposing officers to specialist areas of policing provided there are sufficient safeguards in place to ensure the twin approach of supervision and scrutiny exist.
32. At the time of our review, we were satisfied that there were sufficient arrangements in place to support the detective chief inspector in overseeing the governance of the SOU. However, Police Scotland must recognise that there is an element of risk when managers are asked to carry out leadership roles that include the provision of scrutiny and oversight of specialist areas of policing but may lack the necessary expertise and experience to examine the operational detail.
33. HMICS found that the SOU internal governance arrangements are structured and team meetings are conducted professionally. SOU officers are experienced, self-motivated with a range of specialist skills. We found that in addition to daily meetings, where specific operations and actions were discussed, there was evidence of regular contact between the COM-UC and first line managers. Officers commented that there was a positive team environment where they felt trusted and supported.

34. We reviewed all of Police Scotland's authorisations for the use and conduct of undercover officers and, in our view, the records demonstrated compliance with RIP(S)A and the codes of practice recording details of the cover officer, COM-UC and authorising officer. We were satisfied that the cover officers and COM-UC were focused both on the operational deployment and the welfare of the undercover officer.
35. In particular, we found evidence that undercover foundation officers were closely monitored, supported and supervised by cover officers. Various methods were used to support the officers including daily briefing and debriefing sessions and a continual process of risk assessment. We found that undercover foundation officers were rarely out of contact with their cover officer during deployments. This provides assurance that these officers are closely supervised at all times and reduces the risk of them acting outwith the parameters of the authorisation, their training or ethical standards.
36. We found a mature approach by the COM-UC and cover officers who ensured that operations were not developed to the point of deployment without the necessary backroom support. In our view, this was an important safeguard balancing operational demands with sufficient governance, security, welfare and oversight of operations. However, it also placed significant responsibility on first line and middle ranking officers within the SOU.
37. This professional awareness of the limited capacity within the SOU has undoubtedly resulted in the number of undercover authorisations remaining relatively low when compared with elsewhere in the UK. We examine the extent and scale of undercover policing in Scotland in more detail at pages 40-49 of this report.

Planning and process

Authorisation and conduct

38. Policing is governed by domestic and European legislation, including human rights. The European Convention on Human Rights (ECHR) contains a number of Articles which are followed by all UK police forces, including Police Scotland. The significant Articles that relate to covert policing are:
 - Article 2 The right to life
 - Article 6 The right to a fair trial
 - Article 8 The right to respect for private and family life.
39. The Human Rights Act 1998 implements the rights and freedoms granted under ECHR in UK law and Section 6(1) of the Act makes it unlawful for any UK public authority to act in a manner which is incompatible with a Convention right.⁴⁷
40. Article 8 ECHR provides that everyone has the right to respect for his or her privacy and family life, home and correspondence. This is a qualified right and interference by public authorities, including the police, is permitted only in accordance with the law and where it is necessary in a democratic society in the interests of national security; public safety; the economic well-being of the country; the prevention of disorder and crime; the protection of health, or for the protection of the rights and freedom of others.
41. The statutory framework for the use and conduct of undercover police operations in Scotland is provided by RIP(S)A and where all the undercover activity is likely to take place in Scotland then the authorisation should be granted under RIP(S)A.

⁴⁷ Legislation.gov.uk, [Human Rights Act 1998](#).

42. Where the authorisation is for use or conduct of an undercover officer that will take place mainly outwith Scotland; will start outwith Scotland; or is for reserved purposes such as national security or the economic well-being of the UK, then RIPA is the appropriate legislation. Where the conduct authorised is likely to take place in Scotland by those public authorities listed in Section 46 of RIPA⁴⁸ and the Regulation of Investigatory Powers (Authorisations Extending to Scotland) Order 2009,⁴⁹ then authorisations should also be granted under RIPA.
43. RIPA also contains provisions to allow cross border operations, whereas an authorisation under RIP(S)A allows Police Scotland to use an undercover officer anywhere in the UK for a period of up to three weeks at a time.
44. In 2014, the Scottish Government issued revised codes of practice⁵⁰ designed to ensure that the use of all covert investigatory powers is proportionate to its aims and that officers carrying out such activity are required by law to consider necessity, proportionality and impact of collateral intrusion. The covert human intelligence sources code provided guidance on the authorisation of the use or conduct of a covert human intelligence source (including undercover officers) under RIP(S)A. At the time of our review, a revised draft of the covert human intelligence sources code of practice⁵¹ was subject to consultation and it is intended that this will replace the current version of the code.
45. Between 2000 to 2013, authorisation for the use of an undercover officer was given by an officer of the rank of superintendent or above,⁵² or by an inspector level in urgent cases.⁵³ All written authorisations for undercover officers should be of 12 months' duration, and reviews may be conducted at whatever frequency the authorising officer deems appropriate. The authorisation makes it clear the parameters of the use and conduct of an undercover officer. Authorisations should be cancelled as soon as they are assessed to be no longer necessary and or proportionate.
46. The law was amended in 2014 as a direct result of political and public concern that the governance of undercover policing was ineffective. The Scottish Government introduced the Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014, which came into effect in February 2015.
47. This increased the statutory supervisory level for the authorisation of an undercover officer to the rank of assistant chief constable or above and, for long-term authorisations, to deputy chief constable or above (see *Appendix 3 - Authorisation levels*). In addition, the order introduced a new level of external scrutiny by the OSC. In effect, the authorising officer must give notice to a commissioner of the intention to authorise an individual undercover officer beyond 12 months' and the continued use of an undercover officer cannot progress without the approval of a commissioner.

⁴⁸ Legislation, Section 46: [Restrictions on authorisations extending to Scotland](#). Includes, the Intelligence Services, HM Forces, Ministry of Defence, Civil Nuclear Constabulary, National Crime Agency and the UK Border Agency.

⁴⁹ [The Regulation of Investigatory Powers \(Authorisations Extending to Scotland\) Order 2009](#);

⁵⁰ The first RIP(S)A codes of practice were issued in 2002.

⁵¹ Scottish Government, [Covert Human Intelligence Sources - DRAFT Code of Practice](#), July 2017.

⁵² Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000/2417, Article 2, Schedule, Part I.

⁵³ Ibid.

48. The use and conduct of an undercover officer must be authorised under the terms of RIP(S)A or RIPA and the authorising officer must believe that an authorisation is proportionate to the aims and necessary in the circumstances of the particular case for one or more of the statutory grounds listed in Section 7(3) of RIP(S)A namely:

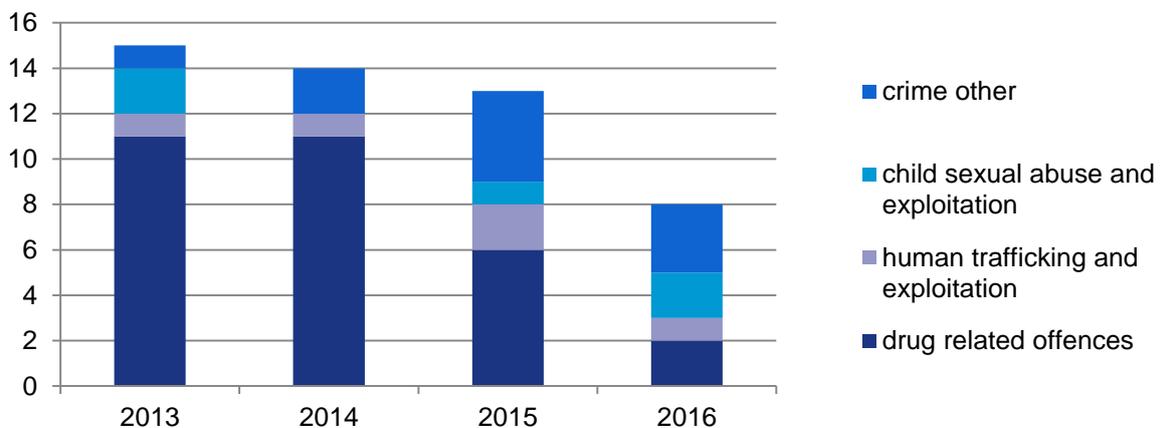
- for the purpose of preventing or detecting crime⁵⁴ or of preventing disorder;
- in the interests of public safety; or,
- for the purpose of protecting public health.

49. A key consideration by the authorising officer is that no activity should be considered proportionate if the information required could be reasonably obtained by less intrusive means. During our fieldwork we interviewed the authorising officer (an assistant chief constable) who had completed the appropriate training. We found that the authorising officer routinely sought evidence that less intrusive means had been considered and that the scope of the proposed activity was measured against the seriousness and impact of public harm.

50. The authorising officer also considered and documented the impact of collateral intrusion on others as a result of the planned deployment. The authorising officer made it clear that it is never acceptable for an undercover officer to form an intimate sexual relationship with the subject(s) of an operation and that such conduct would not be authorised as an operational tactic.

51. Since the establishment of Police Scotland there have been 50 authorised undercover operations in Scotland involving a range of undercover deployments.

Exhibit 2 - Extent and scale of Police Scotland undercover police operations 2013-2016



52. We reviewed all authorisations and found that the authorising officer's considerations were clearly articulated and that the authorisations, where required by law, were notified to the OSC. We found that the internal process for the authorisation of an undercover officer was well established and understood by those responsible and, in our view, complied with the requirements of RIP(S)A and the codes of practice.

53. We found that the level of internal scrutiny by Police Scotland over current operations was good. For example, officers told us that it was routine for the authorising officer to meet with each undercover officer on a face to face basis, prior to the commencement of an operational deployment ensuring that the individual officer was aware of the code of ethics, the values of Police Scotland and the support arrangements that were in place.

⁵⁴ Section 31(8) RIP(S)A 2000.

54. Whilst it may be interpreted that this level of engagement with an undercover officer is the responsibility of the cover officer and the COM-UC, staff welcomed the interaction with a chief officer. As both the cover officer and COM-UC are present at meetings with the undercover officer and the authorising officer we consider that this approach complemented the statutory responsibilities of their respective roles under RIP(S)A and the codes of practice.

Adherence to national guidance

55. The OSC has published procedures and guidance which included the use and conduct of undercover officers.⁵⁵ We found that Police Scotland had access to this guidance and referred to it as required.

56. Authorised Professional Practice (APP) is developed and authorised by the College of Policing and is the official source of professional practice for UK policing. The APP for undercover policing⁵⁶ is produced on behalf of the National Police Chiefs' Council (NPCC) and the national undercover working group (NUWG) and establishes a professional framework within which undercover units (including Police Scotland) should operate.

57. We established that Police Scotland had fully adopted the APP for undercover policing and SOU officers had access to it. The adoption of APP is essential for Police Scotland to develop its approach towards compliance with national standards and supporting interoperability of undercover policing across the UK.

58. We believe that in terms of interoperability, undercover units across the UK should operate within an agreed set of common standards. In maintenance of effective joint working and delivery of the APP, the NUWG had developed a series of standard operating procedures (SOPs). We found that Police Scotland had accepted the national SOPs and were in the process of modifying them to reflect policing in Scotland. There is a SOU action plan in place with agreed owners and a timeframe which is managed by the COM-UC and overseen by the detective chief inspector on a monthly basis. Whilst we acknowledge there may be occasions where it is necessary to amend a national SOP for legal and operational reasons, we consider this should only be done on an exceptional basis. Where possible, Police Scotland should accept the NUWG operating practices as they stand and ensure that the contents are shared and understood by practitioners. Where there are operational distinctions relating to Scotland they should be addressed by the SOU management team.

59. We found that a code of conduct for undercover officers is signed by each officer on an annual basis confirming that the officer is personally responsible for his or her own actions and will adhere to the law, rules and regulations. This includes professional and personal standards expected of a police officer whilst engaged in undercover policing. During our interviews with undercover officers they were all aware that any breach of an authorisation may constitute a criminal offence leaving an officer liable to investigation and prosecution.

60. In our assurance review of Police Scotland's counter corruption unit (2016),⁵⁷ we reported that although there was a general awareness of Police Scotland's values across the service the detail within the code of ethics was less understood. We recommended that Police Scotland should develop a refreshed communications plan to increase the awareness of the code of ethics and promote a positive culture where police officers and members of police staff at all levels were familiar with each of the behaviours and were conscious of applying them. Since then Police Scotland has created a communications plan where input on ethics is delivered across all levels, including leadership training.

⁵⁵ Office of Surveillance Commissioners, [Procedures and Guidance](#), July 2016.

⁵⁶ College of Policing, [APP content](#).

⁵⁷ HMICS, [Independent Assurance Review Police Scotland - Counter Corruption Unit](#), 27 June 2016, recommendation

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61. The Scottish Government code of practice for covert human intelligence sources (2014) stipulates that a police officer, deployed as an undercover officer in Scotland, will be required to comply with the Police Scotland's code of ethics. In our fieldwork we found that at the foundation undercover training and assessment course, officers received input on the values of Police Scotland and the code of ethics.⁵⁸ We also attended unannounced at an open day for officers interested in pursuing a career as an undercover officer and found that throughout the session there were clear messages given by SOU staff of the importance of ethics and values in undercover policing.
 62. When we engaged with all undercover officers, they displayed a good understanding of ethical standards and were conversant with the organisation's values and the code of ethics for policing. Officers had strong views that there were a number of safeguards in place to ensure that ethical standards were maintained when they were deployed. This was evidenced by the dynamic process of risk assessment, the role of the cover officer, the COM-UC and the intrusive level of supervision and support provided.
 63. In order to assess its compliance with the code of ethics across all aspects of policing, Police Scotland intends to collect information through consultation with staff associations, trade unions, staff questionnaires and feedback from training events. The SPA has a number of functions including promoting and supporting continuous improvement in the policing of Scotland. Compliance with the principles and standards set out in Police Scotland's code of ethics is a requirement of the statutory code of practice for covert human intelligence sources. To ensure that undercover officers observe these principles Police Scotland should develop a process that demonstrates effective governance and oversight of compliance with the code. This may provide an opportunity for Police Scotland to explore with the SPA how to improve governance of covert policing practices in general.

Recommendation 3

Police Scotland should demonstrate a process to ensure that undercover officers comply with and uphold the principles and standards of professional behaviour set out in Police Scotland's code of ethics.

Risk management planning and deployment

64. At the outset of any proposed undercover activity consideration is given to the requirements of i) necessity and ii) proportionality and whether or not the operational objectives could be achieved by less intrusive means which would negate the requirement for the deployment of an undercover officer. We found that major investigations advisory groups, introduced by Police Scotland, were being used to good effect providing a structured opportunity to consider the range and legitimacy of investigatory measures including undercover deployments.
65. The senior investigating officer conducts and manages the investigation, supported where necessary by an undercover officer. The management and welfare of the undercover officer is undertaken by the COM-UC and cover officers and we found that there is a clear delineation between the roles of the senior investigating officer and the SOU.

⁵⁸ Police Scotland, [Code of Ethics for policing in Scotland](#).

66. Applications for the authorisation of an undercover officer are prepared and submitted through the SOU to the assistant chief constable who, as we have previously explained, has statutory responsibility for deciding whether the proposed deployment of an undercover officer is both necessary and proportionate. The involvement of the SOU provides consistency in the application process. A gatekeeper function is also in place where an experienced authorising officer, at superintendent level, provides an additional level of quality assurance on the application. We found that there was clarity in terms of the roles and responsibilities of those involved in the preparation of the application and risk assessments. The authorisation structure and process for the use and conduct of an undercover officer is shown at exhibit 3.

Exhibit 3 - Authorisation and process for undercover operations



67. Police Scotland use the '3P-LEM' model of risk assessment, the purpose of which is to assess risk to the undercover officer, the operation and the community. The risk assessment is reviewed by the cover officers and the COM-UC. It remains incumbent upon the COM-UC to raise issues of compromise, risks and welfare with the authorising officer. The 3P-LEM risk assessment model comprises the following key elements:

- Police and community risks
- Physical risks
- Psychological risks
- Legal risks
- Economic risks and considerations
- Moral risks and issues

68. We reviewed all 2013-2016 authorisations for undercover officers and, in each case, we found that a risk assessment had been completed. During our interviews with staff we were reassured that the 3P-LEM model is used dynamically during an operational deployment.

69. Legend building⁵⁹ is a process used by undercover advanced officers to maintain and develop their covert identities. The HMIC (2014) report recognised that this activity lacked proper scrutiny and oversight across England and Wales. Since publication of that report there has been fundamental change to the process and legend building in all formats now requires comment and a decision from an assistant chief constable as to 'approve' or 'authorise' the legend building.
70. Where the legend building activity does not fall under the requirements of RIP(S)A then the application will be presented for 'approval' to an assistant chief constable. Where legend building requires statutory authorisation it will be presented to a chief officer for authorisation under terms of RIP(S)A. We recognise that this is a significant improvement from the previous UK processes and that Police Scotland is alert to and complies with the requirements. We make further comment on legend building at paragraph 139.
71. Part of the scoping and planning phase for an undercover operation involves the identification of a suitable, skilled and trained undercover officer prior to the submission of the application for authorisation. We evidenced that officers with the right skill set were identified by the SOU, personal and domestic arrangements were considered and a request made to the local policing division or department for release. On a number of occasions, the release of the undercover officer had been rejected due to competing operational demands within the division or department.
72. We found that the approach to the release of officers from the undercover cadre from across Police Scotland was unstructured and relied upon the COM-UC negotiating with different line managers across local policing divisions and departments. This reluctance to release trained undercover officers to support an authorised operation has a detrimental impact on the SOU's capability to operate effectively. This was evidenced when a trained undercover officer had been requested for release on eight separate occasions and had been refused each time by local management. We believe that this is both ineffective and inefficient and there is a need for a more structured process of tasking and co-ordination.

Recommendation 4

Police Scotland should introduce an effective tasking and co-ordination process that supports the release of trained undercover officers from local police divisions and departments.

73. Police Scotland was alert to this issue and is introducing a dedicated cadre of undercover officers within the SOU. This will also include new secondment opportunities to the SOU to improve operational resilience. Whilst HMICS welcomes this approach, it needs to be balanced against the loss of experienced officers from local policing and departments.
74. We believe that in managing undercover operations the senior investigating officer must be conversant with RIP(S)A, RIPA, current legal issues and guidance. When we interviewed a number of senior investigating officers, there was an acceptance that due to the infrequency of such operations there was a potential knowledge gap and an acknowledgement that they would seek specialist advice on an individual basis. There is a wealth of training for senior investigating officers on the management of complex major investigations. However, this training needs to be enhanced to include the management of proactive intelligence-led operations, including the deployment of undercover officers.

⁵⁹ Legend building. See Appendix 2 glossary of terms.

75. We are aware that the SOU is developing a training course for senior investigating officers for future delivery at the Scottish Police College. However, during our fieldwork we found that the SOU had limited understanding of the broader handling and dissemination of sensitive intelligence and any future training must consider RIP(S)A, the codes of practice, disclosure, the requirements of the APP and the management of intelligence. We consider this training will support Police Scotland in developing the capability and capacity of its senior investigating officers to meet the future challenges of Policing 2026.

Recommendation 5

Police Scotland should enhance the training for senior investigating officers to include the management of proactive intelligence-led operations. This should include the use and conduct of undercover officers and the requirements under RIP(S)A, codes of practice, disclosure, the management of intelligence and reference to the Authorised Professional Practice (APP) for undercover policing.

Record keeping

76. There is a statutory requirement for Police Scotland to maintain a centrally retrievable record of all authorisations under RIP(S)A. We found that following the establishment of the single service, a programme of creating a centralised registry bringing together nine separate functions that existed across legacy arrangements was successfully carried out. This task included the merger of various systems, databases and hard copy records.
77. The Regulation of Investigatory Powers (Source Records) (Scotland) Regulations 2002 outlines the particulars that must be recorded. During our fieldwork, we reviewed all of Police Scotland's undercover authorisations from 2013 to 2016 and found that the records including the application, risk assessment and authorisation were recorded on the data system and managed by the central authorities bureau (CAB).
78. To comply with the statutory disclosure requirements outlined by the Criminal Justice and Licensing (Scotland) Act 2010, any material which is obtained in the course of a criminal investigation and which may be relevant to the investigation must be provided to the Crown Office and Procurator Fiscal Service (COPFS).
79. We ascertained that the senior investigating officer had responsibility for the management of evidence and completion of appropriate schedules of all relevant material. We found that in undercover foundation operations the recording of disclosure schedules was a matter of routine. We reviewed a specific undercover advanced operation and found that the information from that operation was provided direct to the intelligence cell, and the senior investigating officer. The unintended consequence of this approach for handling the information meant that the COM-UC was by-passed from the process. Whilst the senior investigating officer had a key role in the management of information and compliance with the requirements of disclosure there is equal responsibility on the COM-UC to safeguard the security and welfare of the undercover officer.
80. We believe that the COM-UC must be actively involved in the management of intelligence product and any decision to disseminate further or defer action. In doing so, the risk to both the public and, undercover officers can be fully considered. As highlighted at paragraphs 26-29, we found that due to other operational demands the COM-UC and the cover officers found it challenging on occasions to meet the requirements of the role as outlined in the APP. This has since been addressed through the commitment by Police Scotland to make the COM-UC a dedicated role and to increase the number of cover officers.

81. We consider that undercover advanced deployments require a sustained level of supervision, governance and oversight which is necessary to ensure that safeguards are in place for the welfare and support of the undercover officer and the handling and dissemination of information. We highlighted our findings at the time with Police Scotland and were satisfied that necessary improvements were actioned.
82. There would be merit in a structured debrief of the specific undercover advanced operation reviewed by HMICS, as this would identify learning around the management of information needed to support this type of operation. We will work with Police Scotland in terms of this structured debrief.

Recommendation 6

Police Scotland should introduce effective processes to ensure that the COM-UC in conjunction with the senior investigating officer is actively involved in the risk assessment of material collected by the undercover officer.

83. We carried out a review of the SOU process to manage productions.⁶⁰ Although the Police Scotland SOP contains general guidance and instruction, there was no internal policy for the handling and management of productions originating from undercover operations. There was however an internal system in place using a spreadsheet to record productions and their storage at a secure site. We tested the process and selected items at random which we found to be accurately logged and securely stored. We highlighted that there is currently no process in place for regular checks and recommend introducing an independent audit regime for the management of productions held by the SOU.

Recommendation 7

Police Scotland should introduce an independent audit regime for the management of productions held by the Special Operations Unit.

Operational security

84. During our review, a Force Operational Security Officer (OPSY) was appointed. Police Scotland intends to establish a network of operational security liaison officers across the service providing an additional level of scrutiny and oversight of the use of covert assets. We welcome the appointment of an OPSY, who will provide the necessary operational independence and continuity around the control and use of covert assets by Police Scotland.
85. It is likely that assets and other specialist technical equipment will be purchased in support of undercover policing deployments. We consider it important that these assets are recorded, audited and subject of review to ensure that they remain fit for purpose and support both current and future policing needs. We recommend that there should be an asset register of all covert equipment held by the SOU, which should be subject of independent audit and review. We are aware that this remains work in progress and is being managed through the SOU monthly performance report.

Recommendation 8

Police Scotland should introduce a register of all covert assets and technical equipment held by the Special Operations Unit. This should be subject of independent audit and review.

⁶⁰ A production is a document or other thing retained by police as part of the collection of evidence.



Performance management and quality assurance

86. The APP and the covert human intelligence sources, code of practice (2014) place a requirement for Police Scotland to have a robust system to effectively record and manage:
- each individual undercover officer in terms of their deployment history to support risk assessment, training and welfare requirements and,
 - for the purpose of performance and management information the number of undercover operations including the number of undercover officers deployed.
87. During our review, we found that there are a number of separate processes and systems used by the SOU to record and manage undercover operations. These are in addition to the primary system used to record the authorisations under RIP(S)A. We consider that this amalgam of separate processes is inefficient and have provided further comment at page 37.
88. We found there was a monthly performance report which outlined a range of activities to support improvement with clear tasks, owners, timescales and updates. The performance report is owned by the COM-UC with monthly meetings held by the detective chief inspector. This is recognised good governance which is recorded and auditable. However, we found that many of these tasks had the same start date and although some tasks had been progressed, there was little evidence of realistic timescales for completion.
89. The performance report contained some evidence of measures to reflect the outcomes from undercover operations. We also observed internal debriefs which we regard as good practice, enabling the identification and sharing of learning to improve operational practices. We consider that this process should be formalised with the introduction of results analysis to evaluate the effectiveness and impact of the undercover deployments. For results analysis to be successful, each undercover policing operation must have specific objectives and a process to measure them by, which are agreed at the outset. This analysis should promote learning and inform an assessment of best value.

Recommendation 9

Police Scotland should introduce a process to undertake a results analysis that demonstrates the impact of the undercover policing deployment in achieving operational objectives.

90. The HMIC 2014 report recommended that the College of Policing should appoint a registrar to develop an accreditation process for undercover policing, underpinned by individual self-assessment by each UK police force. We met with the registrar who confirmed that Police Scotland had been in dialogue to develop both self-assessment and accreditation. Whilst there was no defined roadmap as to how Police Scotland would progress towards national accreditation, we believe that our review will have assisted in identifying a portfolio of evidence to support the process. We endorse the approach of self-assessment and independent accreditation of undercover policing units and would recommend that this is progressed promptly by Police Scotland.

Recommendation 10

Police Scotland should engage with the College of Policing and progress a self-assessment of the authorisation, governance and tactical management arrangements in place for undercover policing as part of a formal process of national accreditation.

Organisational learning and development

91. We found that the annual inspection reports of Police Scotland by the OSC were held centrally by the CAB with extracts from the reports circulated across relevant business areas. We believe that this approach limits opportunities for senior officers to examine the inspection report holistically and to capture not only the recommendations but the wider findings and suggested areas of improvement.
92. As reported in our assurance review of the counter corruption unit (2016), we recommended that Police Scotland should introduce a more structured approach to communicating changes in legislation, practice and process to police officers and members of police staff involved in applications under RIP(S)A and RIPA. In response to our recommendation, Police Scotland established a covert compliance group in March 2017, chaired by the assistant chief constable (authorising officer). We support the formation of this group and consider that it should receive and assess all future IPCO inspection reports to identify areas for improvement and oversee the discharge of any recommendations.

Recommendation 11

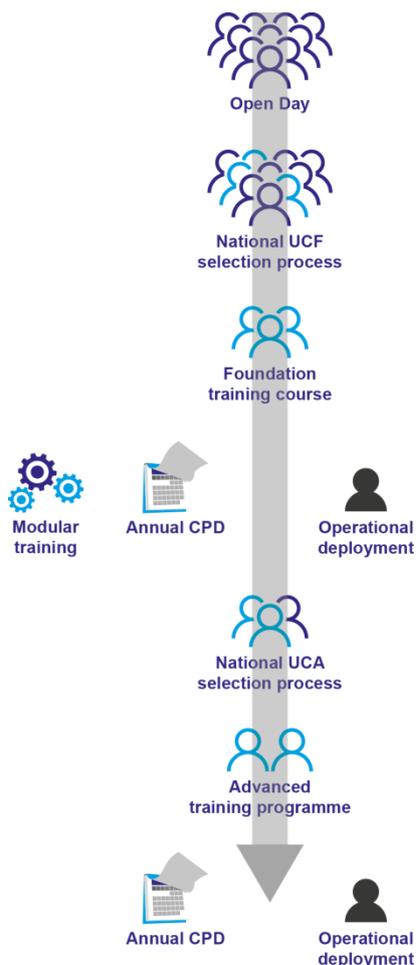
Police Scotland should use the covert compliance group to take forward recommendations and those areas of improvement identified by the Investigatory Powers Commissioner's Office (IPCO).

People and resources

Selection, staff skills, recruitment, training, development and knowledge

93. All undercover training is licensed and accredited by the College of Policing. Police Scotland contributes to the national undercover training programme through the secondment of experienced officers to support delivery of training courses. There is regular engagement with the NUWG training sub-group, which informs national policy on training requirements.
94. We found that Police Scotland is licensed to deliver accredited training courses including:
 - foundation undercover training and assessment course
 - covert online awareness training and
 - drugs module.
95. During our interviews, officers told us that the level of training was effective and equipped them for the role. During deployments officers were supported by a cover officer and in many cases they were mentored by an experienced undercover officer. We are satisfied that Police Scotland is complying with all the national guidelines for the selection, recruitment and training of undercover officers.
96. National training is further enhanced by continuous professional development (CPD) where updates on current practice and policy are shared with the wider cadre of undercover officers. We found evidence of annual CPD events being delivered by Police Scotland for undercover officers and established that 71% of officers who attended the 2016 CPD event believed this was beneficial in sharing current knowledge and learning.
97. The recruitment and selection process for an undercover officer starts with an open day and after initial selection, officers are required to successfully complete the foundation undercover training and assessment course. This is the entry point for all undercover officers. Depending on experience gained from operational deployments, training and individual performance an officer may progress to the national undercover training and assessment course. Undercover advanced officers must successfully complete this course before they are considered ready for deployment in an advanced capacity.

Exhibit 4 - Undercover officer career pathway from foundation to advanced



98. As part of the 2017 selection process for undercover officers, Police Scotland held an 'open day' which attracted interest from a number of police officers from across Police Scotland. We attended, unannounced, at the event and found that SOU officers emphasised the importance of ethics and values in the delivery of covert policing including undercover operations. We consider this emphasis on ethical policing is particularly important at the recruitment stage and highlights the conduct and behaviours expected from potential undercover officers.
99. Out of the officers who attended at the open day, 25.6% submitted applications and following initial assessment 11.25% were successful for progression to the competency based foundation undercover training and assessment course. This is a pass or fail course. We found that the selection process was robust with good governance and oversight and are satisfied that only trained officers are considered and selected for operational deployment as an undercover officer.
100. During our interviews, undercover foundation officers expressed views that with the range and availability of social media and social networking sites there was a need to ensure that professional practice, training and support was subject of continuous review. We are aware that this is an area that the NUWG is monitoring in terms of future training needs.
101. We found that operational and occupational competence is maintained through live deployment and attendance at training events. An officer is likely to be categorised as 'dormant' where he or she has not been deployed in the past 24 months' nor undertaken related continuous professional development.

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102. We established that about 50% of trained officers had not been operationally deployed in 2016 and notwithstanding the evidence of effective annual continuous professional development events to maintain knowledge, we consider that the principle of being deployed in a live operational environment, working with other undercover officers is key to maintaining and developing tradecraft skills.
 103. We found that there was a positive team spirit within the SOU where the team supported the wider cadre of undercover officers who were based in divisions and departments across Police Scotland. However, we found that a gap existed where cadre members had not been deployed in over 12 months' and were unable to participate at annual continuous professional development events. We consider that there is a requirement for the SOU to maintain contact with the wider cadre of officers, throughout their tenure, irrespective of deployment status. In particular, where an officer has not been deployed in 12 months', managers within the SOU should intervene and provide support. This will enable the maintenance of an individual's portfolio of evidence and, subject to the officer's career plan, allow him or her to be considered for active deployment.
 104. We consider that having an individual career plan where welfare, skills and operational deployment history, including training needs, is recorded, should provide sufficient background information for an individual risk assessment that is available for consideration by the COM-UC and the authorising officer. This approach will aid long-term succession planning, identifying emerging risks in terms of skill or expertise deficits and support the reintegration of an officer to mainstream policing.
 105. We consider that once an officer is categorised as no longer available for operational deployment and removed from the undercover cadre, that all supporting documents for that officer should be centrally recorded and available for independent audit and scrutiny.

Welfare, support, trust and confidence of staff

106. We recognise that undercover policing presents additional risks from mainstream policing. Undercover officers are expected to operate in situations which covertly place them in close proximity to habitual drug users, potentially being exposed to infectious disease, alcohol consumption and the passive inhalation of tobacco and controlled substances. Long-term deployments into child sexual abuse and exploitation and human trafficking operations may also impact on the mental wellbeing of an officer.
107. It is incumbent upon an individual officer to take personal responsibility for his or her mental wellbeing and to disclose any physical, psychological or operational issues which could adversely impact upon the relevant deployment. In addition, Section 7(6)(a) and (b) RIP(S)A places a statutory requirement for Police Scotland to have arrangements in place for the proper oversight and management of an undercover officer. Cover officers have a statutory duty for the security and welfare of the undercover officer and have responsibility to provide updates on the welfare and operational deployment to the COM-UC and authorising officer.
108. A group of clinical and forensic psychologists has been established to support psychological and personality assessments for individuals engaged in undercover policing and those who provide welfare and support. Personality assessments are conducted at undercover foundation level and clinical psychological assessments are included in the selection process for advanced training. Counselling support is also provided to undercover online and cover officers.
109. During our engagement with undercover officers, 76% of officers provided feedback to us that they received good support from the cover officers and 71% believed that they had received the appropriate counselling support. We found that where issues of wellbeing and or safety of an undercover officer are identified, arrangements are in place for the psychologist to advise the COM-UC.

110. We consider that the provision of welfare support could be further enhanced by introducing a human resource professional, appropriately vetted, to support the COM-UC and the individual undercover officer. This would assist in establishing a culture where seeking support is seen as a positive and normal element of such activity and not a barrier to accessing care services. This service could extend to those officers and staff who operate in specialist covert policing roles that are currently subject of psychological support and counselling.

Recommendation 12

Police Scotland should identify a human resource professional to provide advice for officers and staff who operate in specialist covert policing roles and who are subject of psychological support and counselling. This should include undercover officers.

111. The Health and Safety at Work etc. Act 1974, places a duty on the employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all employees. This legal duty applies to policing and includes undercover officers who may be authorised during the course of an operational deployment to consume alcohol and seize controlled drugs as evidence.
112. During our interview with the authorising officer (see paragraph 49), the chief officer made it clear that the taking of controlled drugs by an undercover officer would not be authorised as an operational tactic. Where an officer takes a controlled drug to mitigate against a perceived threat then this matter would be reported to the cover officers and the COM-UC for action.
113. The HMIC (2014) report recommended that all accredited undercover units should introduce random drug testing. The NUWG are currently developing a national approach to substance misuse and testing, although there are significant practical challenges to standardising a process across various UK police forces and law enforcement agencies. These challenges are lessened in a single service and opportunities exist for Police Scotland to lead the way by building on current welfare based guidance. Police Scotland should develop a specific policy for substance misuse testing that is welfare-based and protects officers from prolonged exposure to controlled drugs and other potentially hazardous materials during undercover deployments. This policy should support undercover officers to self-disclose alcohol or drug related problems or issues.
114. When an officer embarks on a career in undercover policing there should be an expectation that throughout the period of being 'active' he or she will be subject to welfare-based testing. The policy should explicitly allow for such testing to be included within the undercover policing terms and conditions and agreed in advanced by undercover officers. This policy should be developed in consultation with relevant stakeholders, including the Scottish Police Federation.
115. During our interviews with undercover officers there was common agreement that having a drug testing policy would be beneficial for both welfare and professional integrity. We recognise the key role of the NUWG in developing a UK policy and suggest that there may be value in them supporting Police Scotland in the early development of welfare-based testing and any subsequent evaluation to inform the wider discussion of substance misuse testing across law enforcement partners.

Recommendation 13

Police Scotland should introduce a welfare-based policy for substance misuse testing of active undercover officers. This should provide additional guidance and support to undercover officers to self-disclose alcohol or drug related problems or issues.

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116. We found that contact between the cover officer and the individual undercover officer is recorded in writing within two separate hardbound books: a welfare book and a cover officer policy book. We found that there was no efficient method of searching across the books to identify welfare and support issues affecting an individual officer. We consider this approach to be both ineffective and inefficient.
117. We recommend that Police Scotland should review this aspect of the cover officer's role and explore costed options to introduce a secure ICT solution that provides a search capability across both policy and welfare records. This should improve operational security, facilitate analysis across the information and support accurate risk assessments, welfare requirements and training needs.

Recommendation 14

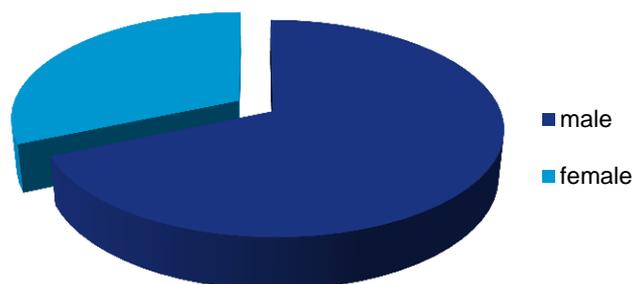
Police Scotland should introduce a secure ICT solution for maintaining cover officers' welfare and policy records.

118. We interviewed all undercover officers and found that they were self-motivated, experienced and held a range of competencies and skills. However, officers commented that due to the nature of the role and the potential for compromise there were limited opportunities for their contribution to policing operations to be formally recognised. We were made aware that the assistant chief constable used face to face meetings with undercover officers to individually recognise their efforts. Whilst this has been particularly well received by officers, we believe that Police Scotland should introduce more formal processes to recognise those officers who perform well in challenging circumstances.

Capacity and capability and management of resources

119. At the time of our inspection, Police Scotland had a police officer establishment of 17256. Undercover policing had a dedicated COM-UC at inspector rank and a SOU comprising of nine police officers, six of whom are cover officers. There is also a national cadre of qualified officers located in divisions and departments across Police Scotland. The total number of trained undercover officers, including the SOU, accounts for only 0.22% of the overall police officer establishment.
120. During our review, we found that the existing cover officers were operating at capacity serving a single undercover advanced operation. We consider that there is currently limited resilience across cover officers depending on the quantity and complexity of operations authorised. Although they can meet the existing demand, there is risk of insufficient supervision and oversight should this demand increase. There is also the potential for a negative impact on the welfare of current cover officers and the COM-UC through increased workloads.
121. We also found there is currently limited capacity and capability within Police Scotland for undercover advanced and online operations. Although arrangements exist to access officers from other undercover units from the wider UK cadre, there was equally a reciprocal expectation that Police Scotland would have sufficiently trained undercover officers to meet its own needs and also support other law enforcement agency operations elsewhere. We consider that the current level of undercover advanced and online officers lacks the necessary capacity and capability to deliver either.
122. We reviewed the profile of all current undercover officers and established that 68.5% of the undercover cadre were male and 31.5% female (see exhibit 5). As the recruitment and selection of undercover foundation officers is progressed, there will be opportunities to improve this balance and greater flexibility of deployment.

Exhibit 5 - Gender profile of undercover officers



123. The scale of serious organised crime in Scotland presents a risk of compromise should the same undercover officers be deployed on a regular basis. The number of officers trained and active for deployment across Scotland is currently 0.22% of the police officer establishment, whilst the number of officers trained and available for deployment as undercover advanced is 0.01 %.
124. We recognised that Police Scotland is progressing the recruitment and selection of undercover foundation officers as an initial step towards developing a cadre of trained officers across all types of deployment. However, we consider that growth in advanced and undercover online officers must be commensurate with proportionate increases in cover officers and COM-UC as they are essential for effective management, welfare, scrutiny and oversight.
125. We found that there was a lack of awareness amongst divisional commanders and senior managers about operational benefits of using undercover officers. There were also common misconceptions in terms of undercover policing being an expensive long-term deployment. There is a need to provide accurate information in which operational planning decisions may be made. We therefore welcome the publication by the SOU of a 'Divisional Guidance Document', which helpfully outlines the types of undercover officer available and the processes required to access support.

Organisational structures

126. The SOU has the lead for the development of a working model of undercover policing in Scotland. There is a requirement for the SOU to operate in compliance with the APP and the standards set by the College of Policing. This includes sufficient backroom support which at the time of the review was absent. This has been recognised by Police Scotland as crucial and forms part of the SOU monthly performance plan for continuous improvement.
127. During our review, the SOU successfully relocated to discrete premises that provide a secure place for the officers to operate. We acknowledge that effective foundations have been laid to support growth in undercover policing and having additional satellite accommodation in other parts of Scotland would support future recruitment, flexibility of deployment and contingency planning. We consider that as Police Scotland grows its capability and capacity, it should establish effective backroom support and office manager roles within the SOU to meet the requirements of the APP for undercover policing.

Recommendation 15

Police Scotland should establish effective backroom support and office manager roles within the Special Operations Unit.



Information systems and data management

128. Police Scotland does not have a specific software solution for the management of undercover police operations and instead has adopted an ICT system, which meets basic requirements and compliance with RIP(S)A. We found that in the majority of cases only the application, risk assessment and authorisation (including reviews, renewals and cancellations) were recorded. This means that critical information such as contact, welfare support, intelligence and tasking records are being separately maintained often in inaccessible hard copy format. We found that other workarounds are being used to record and manage information, including spreadsheets, word documents and hardbound books.
129. During our fieldwork, we accessed a range of individual source documents and found that the information contained therein was inconsistent. There was also no simple means to read across the various systems to establish an accurate picture of activity. Police Scotland has recognised that the current processes are neither efficient nor effective and have produced a business case to update the existing source management ICT system to include undercover operations. We acknowledge that this remains work in progress and have therefore recommended that Police Scotland should introduce an integrated record management solution for undercover policing, supported by clear operating procedures, guidance and training for officers.
130. Police Scotland is also exploring the use of nationally agreed forms and templates, which include deployment management records. We believe that the adoption of national forms supports interoperability and a consistent approach to records management of undercover deployments across the UK. This should be considered in developing the specification for any integrated record management solution for undercover policing.

Recommendation 16

Police Scotland should introduce an integrated record management solution for the management and supervision of undercover policing.

Internal financial management

131. We found that high-level finance reports were presented monthly to the Head of the OCCT. Whilst we did not find any anomalies in the accounts we examined, we established that the detective chief inspector had no role in monitoring the integrity of the financial spend across the SOU and that the management of the covert accounts were undertaken internally by SOU officers. We consider that these arrangements are inadequate and that the financial management of undercover operations required more analysis and oversight.
132. We consider that having a suitably vetted financial auditor to oversee the integrity of the SOU accounts will provide greater scrutiny. This should include the audit and sampling of the use of covert bank accounts, credit cards and include all expenditure relating to travel, accommodation, subsistence and costs associated with legend building. In addition to improving internal financial controls, these audits would identify inappropriate expenditure and potentially highlight operational risks and ethical concerns. We recommend that the financial auditor should be independent of the SOU and conduct regular audits of the SOU accounts. A more detailed analysis of SOU expenditure should also be provided to the Head of the OCCT.

Recommendation 17

Police Scotland should strengthen the financial management of covert accounts and introduce an independent financial audit regime with improved reporting.

Partnerships

Partnerships and collaborative working

133. HMICS has found that the establishment of a single police service has improved standards and brought a consistency of approach to undercover policing. It has also improved engagement with partners.
134. There is joint training between COPFS and the SOU on undercover policing, which provides opportunities to share knowledge and understanding of the type of undercover operations available.
135. There are also effective arrangements in place for Police Scotland to notify COPFS of serious and complex criminal investigations. In relation to undercover operations, we found that Police Scotland had taken positive action to introduce a consistent approach to advising COPFS of the use of undercover officers. However, we consider that further work is required to strengthen these arrangements and provide greater consistency across Scotland. We believe that the process currently used to advise COPFS of serious organised crime enquiries should be used as the model for undercover operations, including notification, operational parameters, witness anonymity, special measures and disclosure requirements.

Recommendation 18

Police Scotland should strengthen its engagement process with the Crown Office and Procurator Fiscal Service (COPFS) around undercover operations, including notification, operational parameters, special measures and disclosure requirements.

136. A key element of the Policing 2026 strategy is a focus on tackling cybercrime which would include child sexual abuse and exploitation including online child grooming. We found that there is a need to develop a policy that covers professional practice for undercover online activity. This policy requires to be developed in partnership with COPFS. We found that the relationship with COPFS was positive and development of such a policy to support online activity remains work in progress.
137. The NUWG meets on a regular basis and comprises subject matter experts who represent the interests of law enforcement across the UK. It supports the provision of an effective, efficient, ethical and lawful approach to undercover policing. During our review we attended at the NUWG and found that Police Scotland is a core member of the group and contributes to the future development of policy and practice. As previously highlighted in our armed policing report,⁶¹ it is important for Police Scotland, as the second largest force in the UK, to participate fully across the range of NPCC and College of Policing working groups. Significantly, this allows Police Scotland to contribute to the development of APP, ensuring greater interoperability and reducing the overhead of developing specialist training, accreditation and standards in isolation.
138. Undercover policing is a UK-wide tactic and we found that Police Scotland collaborates with other law enforcement agencies by donating undercover officers to support investigations and on a reciprocal basis seeks support from other forces.

⁶¹ HMICS, [Review of Standing Firearms Authority for Armed Response Vehicle Crews within Police Scotland](#), 27 October 2014.

139. We also found that there was no recognised procedure for notifying Police Scotland where undercover officers from England and Wales were deployed to Scotland either as part of an authorised operation under RIPA or legend building. This is necessary to prevent undercover officers being inadvertently deployed to areas where there are particular sensitivities in a local community or where there exists a risk that such a deployment could impact on other covert activity in the area. Whilst the COM-UC would be the anticipated single point of contact, we believe that the current arrangements are ad-hoc and should be strengthened by a standard operating procedure. We recommend that in such cases, contact should be made by the force authorising the undercover deployment with the Police Scotland COM-UC. This should take place when planning such an operational deployment (including legend building) in Scotland. Given the need to establish these notification arrangements across the UK, it would be sensible for Police Scotland to progress these through the NUWG. This should also include reciprocal arrangements for Police Scotland to notify other police forces where it plans undercover policing operations which may extend beyond Scotland.

Recommendation 19

Police Scotland, in partnership with the national undercover working group (NUWG), should establish a formal process for the reciprocal notification of cross border undercover operations which includes legend building.

140. The HMIC (2014) report of undercover policing in England and Wales was a catalyst for change, triggering a national review of policy, procedure, process and systems across undercover units. While the inspection did not extend to Scotland, HMICS provided an assessment of the recommendations and potential impact on Scottish policing to the Chief Constable, Police Scotland. This was followed by a meeting with chief officers at Police Scotland to discuss the relevance of the recommendations and strategic impact. A commitment was given by chief officers that the SOU would progress those recommendations that had immediate relevance to policing in Scotland and that the SOU would engage with the NUWG in the delivery of the wider national recommendations.
141. In England and Wales the NPCC formulated an action plan to address the recommendations, with delivery led by the NUWG and the College of Policing. In January 2016, the chair of the NUWG invited Police Scotland to independently review progress against the HMIC (2014) recommendations. This review was carried out by Police Scotland with a report on progress submitted to the NUWG. We consider this to be evidence of the positive partnership arrangements that exist between Police Scotland and the NUWG in developing common standards that are recognised across law enforcement agencies for the effective and ethical delivery of undercover policing across the UK.

Analysis of undercover police operations in Scotland

142. In line with our terms of reference, we examined the extent and scale of undercover operations in Scotland by Scottish policing since introduction of RIP(S)A and RIPA. We also examined the extent and scale of undercover operations carried out in Scotland by the Special Demonstration Squad (SDS) and the National Public Order Intelligence Unit (NPOIU) over the same period. Out of scope was the extent and scale of activity by those public authorities listed in Section 46 of RIPA 2000 and the Regulation of Investigatory Powers (Authorisations Extending to Scotland) Order 2009.⁶²

The extent and scale of undercover policing in Scotland by Police Scotland (2013-2016)

143. We reviewed all case files of undercover policing operations conducted by Police Scotland between 2013 and 2016. In doing so we accessed records held by the following departments:

- **Specialist Crime Division (SCD)** - this is the dedicated command within Police Scotland which is responsible for dealing with public protection, major and organised crime, counter terrorism and intelligence.
- **Central Authorities Bureau (CAB)** - a centralised bureau responsible for the management of all records for the use of covert investigatory measures; and
- **Special Operations Unit (SOU)** - this is the business area responsible for the management, welfare and support of undercover officers authorised by Police Scotland.

144. In order to form a judgment as to the extent and scale of the use of undercover policing by Police Scotland we reviewed the number and the type of undercover officers used in each operation. In addition, we also considered the quality of the authorisation and whether it complied with legislation⁶³ and the statutory codes of practice.⁶⁴ The data does not show the number of times an individual undercover officer was deployed. For instance, during an undercover foundation operation an individual undercover officer maybe deployed several times each day to test the availability of an illicit commodity. The information reviewed by HMICS has been subject of careful interpretation and in doing so we tested:

- that the application and associated risk assessments provided sufficient detail for the authorising officer to make an informed judgment;
- that the potential for collateral intrusion was appropriately considered;
- that undercover officers were supported by trained cover officers; and
- that the authorising officer had considered the necessity and proportionality of the proposed use of undercover officers.

⁶² Includes: the Intelligence Services, HM Forces, Ministry of Defence, Civil Nuclear Constabulary, National Crime Agency and the UK Border Agency.

⁶³ Authorisations under terms of the Regulation of Investigatory Powers (Scotland) Act 2000.

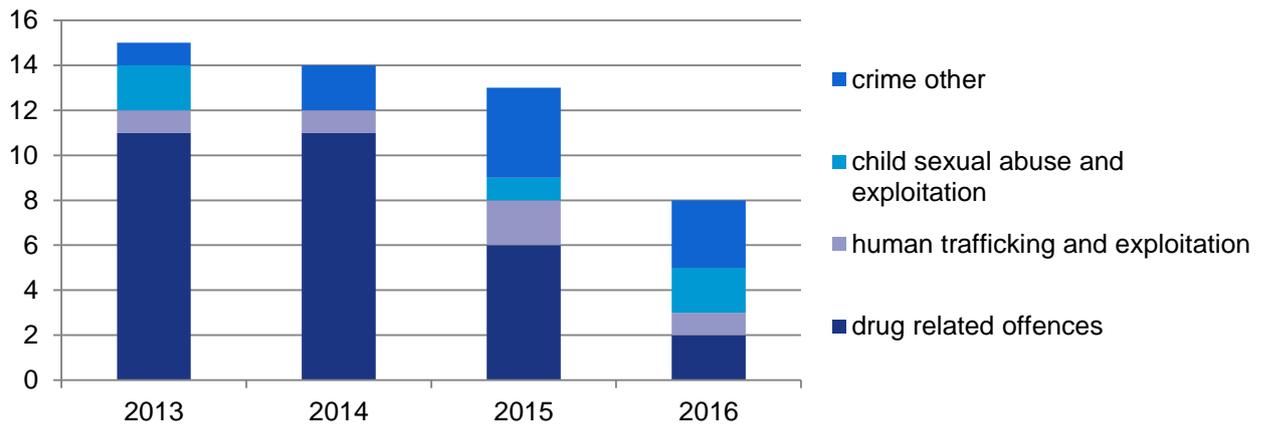
⁶⁴ Covert Human Intelligence Sources code of practice, issued pursuant to Section 24 of RIP(S)A 2000.



Undercover authorities from 2013 to 2016

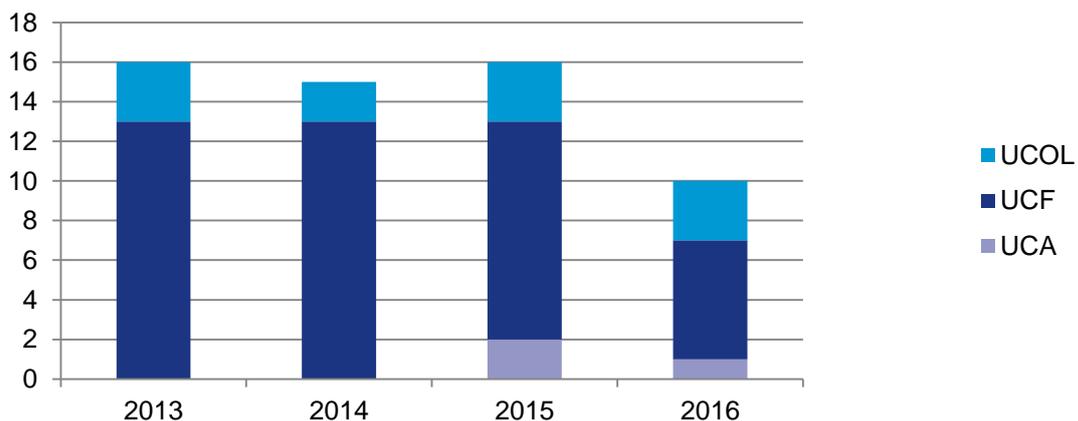
145. Since the establishment of Police Scotland there have been 50 authorised undercover operations in Scotland (see exhibit 6). Whilst each authorisation under RIP(S)A was specific in nature, we have generalised the data for operational security purposes. For instance, **drug related offences** includes the importation, production, manufacture, cultivation, possession and supply of controlled drugs including psychoactive substances. **Crime other** includes homicide investigations, recovery of high value stolen property and the test purchase of illicit alcohol.

Exhibit 6 - Extent and scale of undercover policing (operations and crime type) by Police Scotland 2013-2016



146. The 50 undercover operations involved the deployment of different types of undercover officer including undercover foundation on 43 occasions, undercover online on 11 occasions and undercover advanced on three occasions.

Exhibit 7 - Extent and scale of undercover policing (deployment type) by Police Scotland 2013-2016

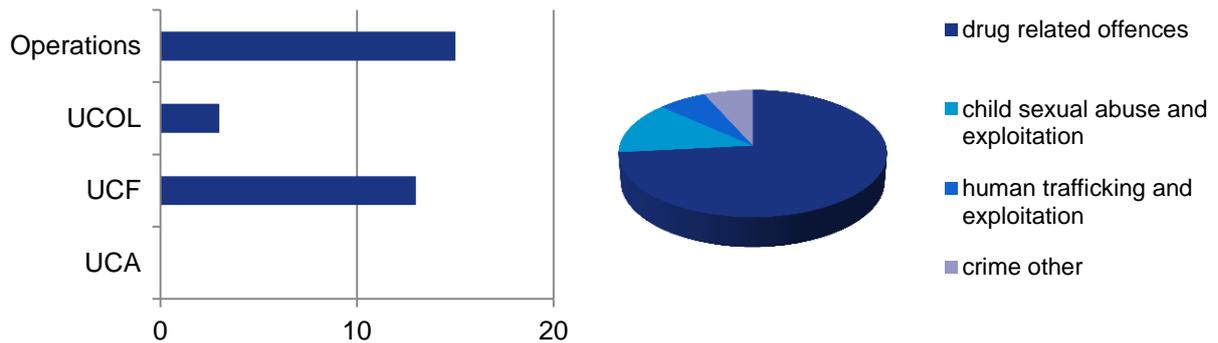




Undercover operations in 2013

147. In 2013, Police Scotland conducted 15 undercover operations supported by the authorised use and conduct of undercover foundation and undercover online officers. During this period no undercover advanced officers were authorised. We reviewed each of the 15 operations and, in our view, found that the authorisations complied with the requirements of RIP(S)A and the associated codes of practice. All operational activity was focused on the prevention and detection of crime with 73% of activity supporting the investigation of drug related offences.

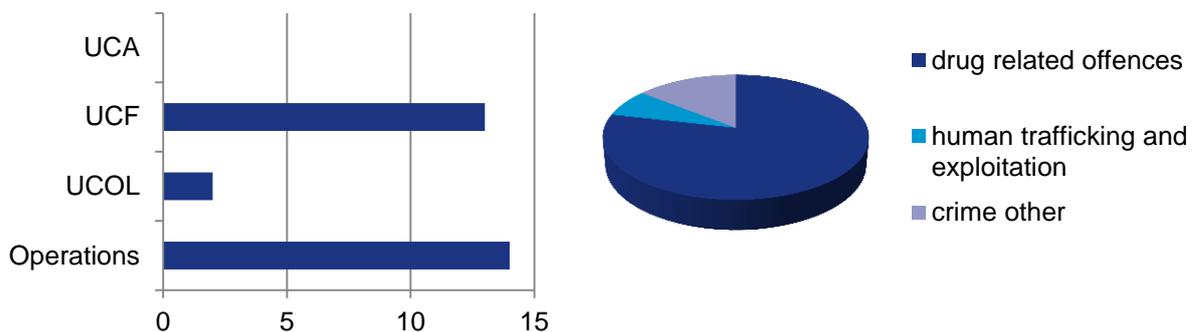
Exhibit 8 - Extent and scale of undercover police activity by Police Scotland 2013



Undercover operations in 2014

148. In 2014, Police Scotland conducted 14 undercover operations supported by the authorised use and conduct of undercover foundation and undercover online officers. During this period no undercover advanced officers were authorised. We reviewed each of the 14 operations and, in our view, found that the authorisations complied with the requirements of RIP(S)A and the associated codes of practice. All operational activity was focused on the prevention and detection of crime with 79% of activity supporting the investigation of drug related offences.

Exhibit 9 - Extent and scale of undercover police activity by Police Scotland 2014



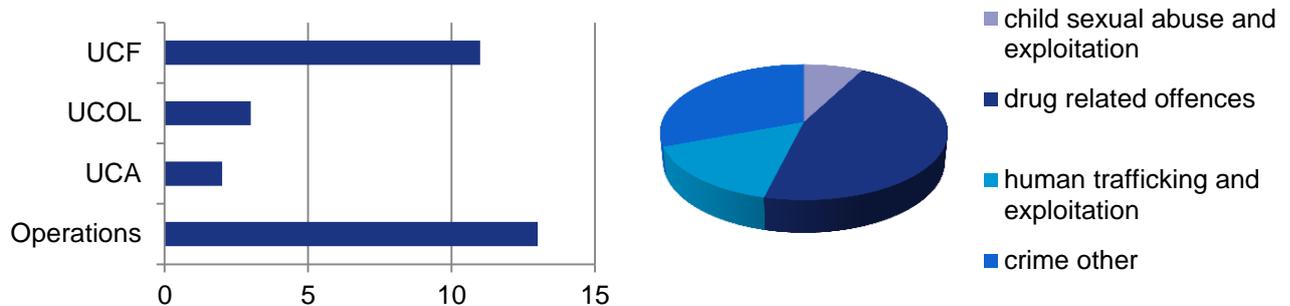
Undercover operations in 2015

149. In 2015, Police Scotland conducted 13 undercover operations supported by the authorised use and conduct of undercover foundation, undercover online and undercover advanced officers. We reviewed each of the 13 operations and, in our view, found that the authorisations complied with the requirements of RIP(S)A and the associated codes of practice. All operational activity was focused on the prevention and detection of crime.



150. All authorisations were undertaken by an assistant chief constable which reflected the requirements of the Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014. Of all the operational activity, 46% was focused on supporting the investigation of drug related offences. The two undercover advanced operations did not involve infiltration of criminal groups or networks and there was no engagement with the subjects of the operation.

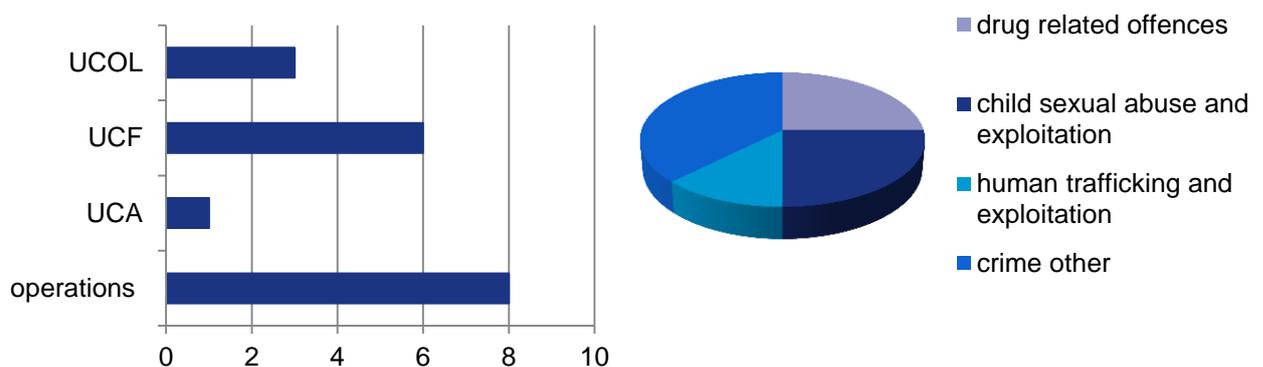
Exhibit 10 - Extent and scale of undercover police activity by Police Scotland 2015



Undercover operations in 2016

151. In 2016, Police Scotland conducted eight undercover operations supported by the authorised use and conduct of undercover foundation, undercover online and undercover advanced officers. We reviewed each of the eight operations and, in our view, found that the authorisations complied with the requirements of RIP(S)A and the associated codes of practice. In all cases, the authorisation was undertaken by an assistant chief constable. The majority of the activity was in support of the investigation of child sexual abuse and exploitation (25%) and drug related offences (25%).

Exhibit 11 - Extent and scale of undercover police activity by Police Scotland 2016



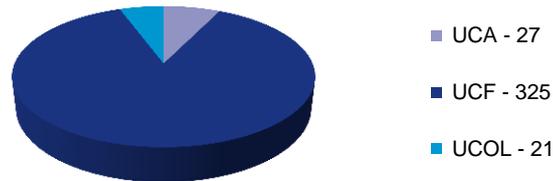
152. These figures show that during the period 2013-2016, the majority of operational activity involved undercover foundation officers being used in support of drug related offences. In our view, we found that the authorisations complied with the requirements of RIP(S)A and the associated codes of practice. There was no evidence that undercover advanced officers from Police Scotland had infiltrated social justice campaigns or that officers had operated outwith the parameters of the authorisation.



The extent and scale of undercover policing in Scotland by legacy Scottish police forces (2000-2013)

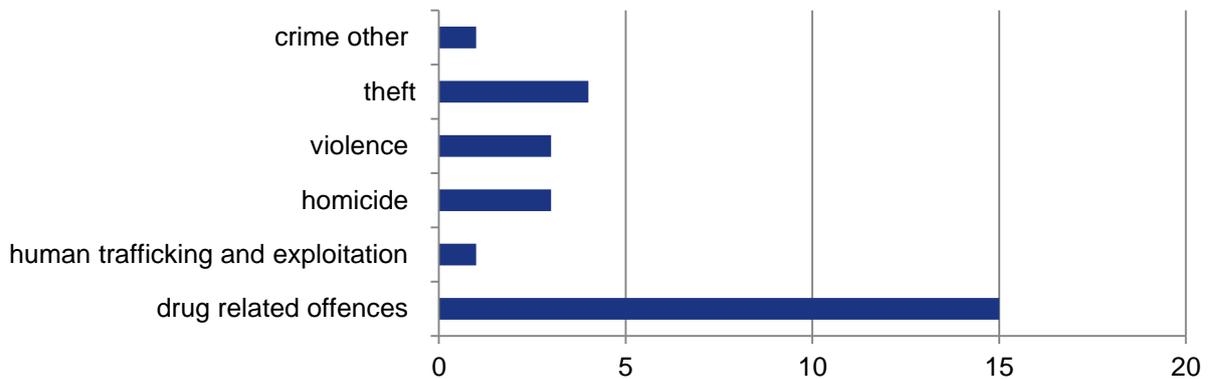
153. During the thirteen year period between 2000 and 2013, legacy Scottish police forces and the SCDEA; carried out 373 undercover operations supported by the authorised use and conduct of undercover advanced, undercover foundation and undercover online officers. The majority of the undercover deployments related to undercover foundation operations comprising 87% of the total.

Exhibit 12 - Extent and scale of undercover police operations (deployment type) in Scotland by legacy Scottish police forces 2000-2013



154. We reviewed each of the 27 undercover advanced operations and in 24 cases the authorisation for the use and conduct was undertaken by a chief officer. In three of the cases (circa 2000 and 2003) the paper documentation of the authorisations are no longer available and whilst there is information to support that an undercover advanced operation took place the specific details of the authorising officer are not known. Each of the advanced authorisations related to the prevention and detection of crime with 55% of activity supporting the investigation of drug related offences. In our view, we found that the authorisations complied with the requirements of RIP(S)A and the associated codes of practice.

Exhibit 13 - Extent and scale of undercover advanced operations (crime type) in Scotland by legacy Scottish police forces 2000-2013



155. The figures show that in a sixteen year period between 2000-2016 there had been 423 undercover operations involving a range of deployments including undercover foundation, undercover online and undercover advanced.

156. Direct comparison with police forces in England and Wales in relation to the authorisation of undercover policing is not currently possible. However, the figures published by the HMIC (2014) report do offer some helpful context. Contained within that report are details of the number of undercover operations that had been authorised by English and Welsh police forces and law enforcement agencies between 1 October 2009 and 30 September 2013.⁶⁵

⁶⁵ HMIC (2014) report page 10.

Exhibit 14 - Extent and scale of undercover operations in England and Wales 2009-2013

| Authorised undercover operations England and Wales 1 October 2009 – 30 September 2013 (4 year period) | | | |
|--|----------------------------------|------------------------------|-------|
| Undercover advanced operations | Undercover foundation operations | Undercover online operations | Total |
| 845 | 2039 | 582 | 3466 |
| Authorised undercover operations in Scotland 2000-2013 (13 year period) | | | |
| 27 | 325 | 21 | 373 |

- In the 4 years between October 2009 and September 2013 the use of undercover officers at all levels in England and Wales was authorised on 3466 occasions. In the 13 years between 2000 and 2013 Scottish police forces authorised 373 operations. In the 3 years, 2013 to 2016, Police Scotland authorised 50 undercover operations (see paragraphs 145 - 146).
- In the 4 years between October 2009 and September 2013 the use of undercover advanced officers in England and Wales was authorised on 845 occasions. In the 13 years between 2000 and 2013 Scottish police forces authorised the use and conduct of undercover advanced officers on 27 occasions. In the 3 years, 2013 to 2016, Police Scotland authorised three undercover advanced operations.
- In the 4 years between October 2009 and September 2013 the use of undercover foundation officers in England and Wales was authorised on 2039 occasions. In the 13 years between 2000 and 2013 Scottish police forces authorised the use and conduct of undercover foundation officers on 325 occasions. In the 3 years, 2013 to 2016, Police Scotland authorised 43 undercover foundation operations.
- In the 4 years between October 2009 and September 2013 the use of undercover online officers in England and Wales was authorised on 582 occasions. In the 13 years between 2000 and 2013 Scottish police forces authorised the use and conduct of undercover online officers on 21 occasions. In the 3 years, 2013 to 2016, Police Scotland authorised 11 undercover online operations.

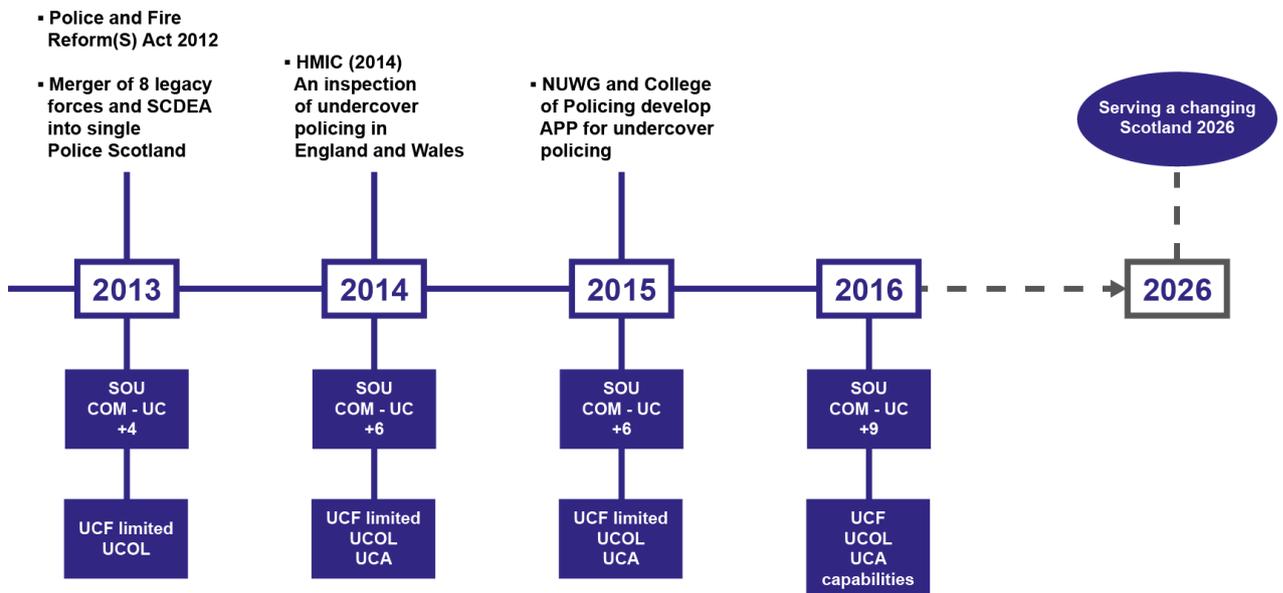
157. We reviewed every individual authorisation for the use and conduct of undercover officers by Police Scotland since 2013 and every undercover advanced operation by legacy Scottish policing since 2000. In a sixteen year period (2000-2016) an assessment of the number of undercover deployments by Scottish policing lead us to the conclusion that the use of undercover policing in Scotland cannot be considered to be widespread. Indeed, we believe that undercover advanced officers and undercover online officers has been underutilised. This is a position that has been accepted by Police Scotland.

158. There are a few possible reasons why there has been a more cautious approach to the use of the tactic in Scotland. Following the merger of legacy police forces in 2013, Police Scotland set about centralising its approach to the use of undercover policing in Scotland. This included rationalisation of various legacy systems and processes and the selection and training of undercover foundation officers.



159. In addition, the HMIC (2014) report on undercover policing in England and Wales had significant impact on undercover policing across the UK. The overall responsibility for the implementation of the recommendations outlined within that report was given to the NUWG and the College of Policing. We acknowledge that the 2014 report generated a review of internal process and a requirement to establish a more robust SOU to support the full range of undercover deployments.

Exhibit 15 - Evolution of the Special Operations Unit, Police Scotland 2013-2016



160. As we have highlighted in our report, managers within the SOU consciously restricted the number of developed operations to a controllable number. In practice, this meant that whilst the use of the undercover tactic had been considered, and where appropriate authorised, the primary focus had been on building capacity and capability underpinned by an effective management and oversight structure. We fully understand this approach, however we would make the following observation. Two of the key elements within the Policing 2026 strategy relate to online safety and the response to serious organised crime. It is our assessment that Police Scotland's current capacity and capability to conduct the full range of undercover policing in support of the two objectives is limited and needs to be developed (see paragraphs 120 – 124).

161. Whilst there is expertise in the management of undercover foundation deployments, there is limited experience of the management of undercover advanced operations. This has a practical implication for all those involved in the planning and implementation of such deployments. Operational experience is a vital element in the development of individual undercover officers and the current rate of deployment limits the opportunities to obtain such experience. This is an important point. Experience gained on a live deployment may make the difference between the success and failure of an operation. Experience is often the main factor in preventing officers from coming to physical harm. It is not just those officers who are deployed that are affected. The lack of operational experience also acts as an inhibitor to the development of those that provide support and, importantly, the scrutiny provided through effective supervision and oversight.

162. We have been reassured by senior officers that they recognise the challenges and are committed to building capacity and capability to meet the requirements outlined in the Policing 2026 strategy. As described at recommendation 1, we have asked for the development of a covert policing strategy and a supporting implementation plan which we will continue to monitor progress against its delivery.

The extent and scale of undercover policing operations carried out by the Special Demonstration Squad (SDS) and the National Public Order Intelligence Unit (NPOIU) in Scotland

163. In order to establish the extent and scale of undercover policing operations carried out by the Special Demonstration Squad (SDS) and the National Public Order Intelligence Unit (NPOIU) in Scotland, HMICS consulted with Operation Herne, which is an active investigation into the disbanded SDS and Operation Elter which is an active investigation into the NPOIU.
164. HMICS is grateful to the officers and staff of Operations Herne and Elter who have co-operated fully with our review and enabled us to establish the extent and scale of SDS and the NPOIU undercover deployments in Scotland.

Special Demonstration Squad undercover deployments in Scotland

165. The SDS of the Metropolitan Police Service (MPS) Special Branch was operational between 1968 to 2008. Its purpose was to gather intelligence on groups considered to pose threats to public order via direct action. Its methods were to deploy undercover officers tasked with infiltrating identified groups for extended periods. The SDS was unveiled as a secret unit within the MPS following revelations in the Guardian newspaper. *See Appendix 1 - Timeline of key events.* The SDS operated primarily within London however, during the course of Operation Herne it has been established that SDS undercover officers were deployed to Scotland.
166. Our conclusions in relation to SDS deployments were based on the examination of SDS records by Operation Herne, which stretch back some forty years. Unfortunately, it is not possible to establish if the material obtained by Operation Herne is entirely accurate or comprehensive and it is probable that, given the passage of time and the likelihood of human error, that some records are missing or inaccurate.
167. HMICS believe that in a ten year period between 1997⁶⁶ and 2007 the SDS deployed 11 undercover officers to Scotland. Deployments were aligned to a range of groups including terrorist, anarchist and anti-capitalist activity and were time limited to a few days as opposed to long-term community infiltration. The purpose of these visits was connected with activities elsewhere in the UK and often in regard to legend building and maintaining their covert status within the target group. Excluding G8 (which we comment at page 48) we established that in a ten year period between 1997 and 2007, there were six SDS officers who visited Scotland on 11 occasions comprising a total of 28 days. From the records held by Operation Herne it does not appear that Scottish police forces were sighted on these deployments.

National Public Order Intelligence Unit undercover deployments in Scotland

168. The NPOIU was established in 1999 within the Metropolitan Police Service as part of the police response to campaigns and public protest that generated violence and disruption. The remit of the NPOIU was to gather and co-ordinate intelligence to reduce criminality and disorder from domestic extremism and to provide national support to police forces managing strategic public order issues. The NPOIU covered England and Wales and also supported Scottish policing. In 2011 the NPOIU merged with other units to form the National Domestic Extremism Unit.⁶⁷

⁶⁶ Notwithstanding that the scope of our review covered a sixteen year period since the introduction of RIPA /RIP(S)A in 2000. In respect of the SDS we accessed data from 1997 and have included this information in our report.

⁶⁷ NPCC, [National Domestic Extremism and Disorder Intelligence Unit.](#)

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169. The secondment of Scottish police officers to national agencies has long been recognised as an important element of an individual's career and professional development. HMICS considers that such secondments are valuable to the service and the receiving agency in the provision of additional resource. In our fieldwork, we established that a small number of Scottish police officers were seconded to the NPOIU carrying out a variety of different functions including the cover officer role. We understand that the UCPI are aware of the details of the Scottish police officers seconded at the NPOIU.
170. Operation Elter remains a live investigation into the activities of the NPOIU and work is in progress to record, index and analyse several million documents. It is our assessment that the information provided in our report as it relates to the NPOIU deployments to Scotland should be considered as provisional and not conclusive.
171. From our fieldwork, and in conjunction with Operation Elter, HMICS believes that in the seven year period between 2003 and 2010 the NPOIU deployed nine undercover officers to Scotland. One of these officers is known to be Mark Kennedy.⁶⁸
172. In the HM Inspectorate of Constabulary (England and Wales) 2012 report it was documented that Kennedy had been deployed to Scotland on 14 occasions.⁶⁹ As a result of the enquiries undertaken by Operation Herne and Operation Elter, it is now assessed that Kennedy accounts for the majority of the NPOIU deployments to Scotland and between 2004 and 2010, which includes the policing of the G8 Summit, visited Scotland on at least 17 occasions with multiple activities during each visit.
173. Most of his visits to Scotland were recorded as legend building and his activities included, hill walking, cycling and mountain climbing. These were not long-term deployments, generally amounting to no more than a few days and over the course of his confirmed visits to Scotland his average stay was about a week. Apart from the G8 Summit, which was the main focus of his activity, we consider that there was no routine engagement with Scottish police forces and that the service would have been unsuspected on his visits.

G8 Summit 2005

174. Between 6 - 8 July 2005, the 31st G8 Summit was held at the Gleneagles Hotel in Auchterarder, Perthshire and comprised the Heads of State from the eight main industrialised countries: Canada, France, Germany, Italy, Japan, Russia, the United States of America and the UK. The summit was the largest policing operation of its kind in Scotland.
175. We found that records relating to the deployment of undercover officers in support of the G8 policing operation are held by Police Scotland and that eighteen undercover officers were authorised for deployment in support of the legacy Tayside Police security operation.
176. From our review, we determined that the SDS deployed six undercover officers and the NPOIU deployed six undercover officers. In addition to the SDS and NPOIU deployments a further six undercover officers were provided from the wider cadre.

⁶⁸ Mark Kennedy. See Appendix 2 glossary of terms.

⁶⁹ A review of national police units which provide intelligence on criminality associated with protest. HMIC (England and Wales) 2012.



177. We reviewed each of the authorisations for the use and conduct of undercover officers in support of the G8 policing operation and found that they had been authorised under RIP(S)A by legacy Tayside Police, the purpose of which was the prevention and detection of crime and public safety in Scotland. In addition, the SDS and NPOIU undercover operations had also been dual authorised under RIPA. We are satisfied that the deployment of undercover officers to support the police security operation at the G8 Summit was undertaken with the full knowledge, co-operation and the authorisation of Tayside Police. Outwith the G8 policing operation all other undercover operations conducted by the SDS and NPOIU in Scotland was the responsibility of the SDS and NPOIU.

178. To ensure that lessons learned from the past contribute to continuous improvement we have recommended (see recommendation 19) that Police Scotland, in partnership with the NUWG, should establish a formal process around the reciprocal notification of cross border undercover operations conducted in Scotland by other UK law enforcement agencies which includes legend building.

Appendix 1 – Timeline of key events

The following timeline provides visibility of the key events

| Date | Event |
|---------------|--|
| 1968 | The Special Operations Squad (SOS) was formed by the Metropolitan Police Service in response to mass anti-Vietnam-war demonstrations in Grosvenor Square, London |
| 1972 | The SOS was renamed the Special Demonstration Squad (SDS) between November 1972 and January 1973. The SDS changed its name to the Special Duties Section in 1997 |
| 1998 | The Human Rights Act 1998, received Royal Assent on 9 November 1998, and mostly came into force on 2 October 2000. Its aim was to incorporate into UK domestic law the rights contained in the European Convention on Human Rights (ECHR) |
| 1998 | The Scotland Act 1998, received Royal Assent on 19 November 1998. The Act made provision for a Scottish Parliament and Scottish Ministers |
| 1999-2011 | The National Public Order Intelligence Unit (NPOIU) was created as part of the police response to campaigns and public protest that generated violence and disruption |
| 1999 | The Scottish Parliament (which was dissolved following the Act of Union 1707) reconvenes on 1 July 1999 |
| 2000 | The Regulation of Investigatory Powers Act (RIPA) 2000 was passed by the UK Parliament on 28 July 2000 and Part II of the Act (surveillance and covert human intelligence sources) came into effect on 25 September 2000 The Bill for the Regulation of Investigatory Powers (Scotland) Act (RIP(S)A) 2000 was passed by the Scottish Parliament on 7 September 2000, received Royal Assent on 28 September 2000 and came into effect on 1 October 2000. RIP(S)A and RIPA provide the statutory framework for the use and conduct of undercover police operations in the UK |
| 2002 | The first RIP(S)A codes of practice were issued by Scottish Government |
| 2002 | In October 2002, the BBC broadcast a three-part series called 'True Spies.' The documentary examined how the State spied on political groups. This was the first time that the existence of the Special Demonstration Squad was referred to publicly |
| 6-8 July 2005 | G8 Summit, Gleneagles Hotel, Auchterarder, Perthshire |
| 2008 | The Special Demonstration Squad was disbanded |
| 14 March 2010 | The Observer newspaper published an article regarding the alleged role of 'Officer A' in the SDS |
| 6 August 2010 | The Criminal Justice and Licensing (Scotland) Act 2010 was passed by the Scottish Parliament on 30 June 2010, received Royal Assent on 6 August 2010 and introduced disclosure of evidence in criminal proceedings |



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| 21 October 2010 | Mark Kennedy exposed by political activists, via the internet, as an undercover officer |
| 11 January 2011 | Jenkins, S ' <i>The state's pedlars of fear must be brought to account</i> ' the Guardian newspaper article reported on Mark Kennedy's infiltration of a number of protest groups |
| October 2011 | In response to the allegations made by the Guardian newspaper, the Metropolitan Police Service ordered a review and investigation of the alleged misconduct and criminality by members of the SDS. Known as Operation Soisson, this was later to become Operation Herne (August 2012) http://www.derbyshire.police.uk/About-us/Operation-Herne/Operation-Herne.aspx |
| 19-26 October 2011 | The Guardian newspaper published further articles of alleged misconduct during SDS undercover operations |
| 2012 | The scope of Operation Soisson (Operation Herne) was expanded to include further allegations of misconduct |
| 02 February 2012 | HM Inspectorate of Constabulary (England and Wales) published ' <i>A review of national police units which provide intelligence on criminality associated with protest</i> ' |
| July 2012 | The Home Secretary commissioned Mark Ellison QC to conduct a review examining allegations of corruption surrounding the initial, flawed, investigation of the murder of Stephen Lawrence and to examine whether the Metropolitan Police Service had evidence of corruption that it did not disclose to the Macpherson Inquiry |
| 03 February 2013 | Lewis, P and Evans, R ' <i>Police spies stole identities of dead children</i> ' the Guardian newspaper published an article about undercover officers creating aliases based on details found in birth and death records |
| 09 February 2013 | The Chief Constable of Derbyshire Constabulary announced as the lead for Operation Herne (formerly Operation Soisson) |
| 01 April 2013 | Police Scotland established |
| 24 June 2013 | Channel 4 Dispatches programme ' <i>The Police's Dirty Secret</i> ' |
| 25 June 2013 | Lewis, P and Evans, R (2013) ' <i>Undercover: The True Story of Britain's Secret Police</i> ', London, Guardian Books |
| 27 June 2013 | HM Inspectorate of Constabulary (England and Wales) published ' <i>A review of progress made against the recommendations in HMIC's 2012 report on the national police units which provide intelligence on criminality associated with protest</i> ' |
| July 2013 | Operation Herne report 1 published - ' <i>Use of covert identities</i> ' |
| January 2014 | The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013 is introduced |
| March 2014 | Operation Herne report 2 published - ' <i>Operation Trinity</i> ' |
| 06 March 2014 | Mark Ellison QC published his report ' <i>Possible corruption and the role of undercover policing in the Stephen Lawrence case</i> ' |
| 06 March 2014 | The Home Secretary makes a statement in the House of Commons summarising the findings made by Mark Ellison QC and Operation Herne |



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|-------------------|--|
| | Parliament is informed that there will be an external review into the role of the Home Office in the commissioning and work of the SDS |
| 26 June 2014 | The Home Secretary announced that Mark Ellison QC will co-ordinate a multi-agency review ' <i>Assessing the possible impact upon the safety of convictions in England and Wales where relevant undercover police activity was not properly revealed to the prosecutor and considered at the time of trial</i> ' |
| July 2014 | Operation Herne report 3 published – ' <i>Special Demonstration Squad Reporting: Mentions of Sensitive Campaigns</i> ' |
| October 2014 | HM Inspectorate of Constabulary (England and Wales) published ' <i>An inspection of undercover policing in England and Wales</i> ' |
| November 2014 | The Scottish Government published a revised Covert Human Intelligence Sources, code of practice |
| December 2014 | The Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014 is laid before the Scottish Parliament |
| December 2014 | HMICS meets with chief officers at Police Scotland to discuss the relevance and potential impact of the recommendations from the HM Inspectorate of Constabulary (England and Wales) 2014 report ' <i>An inspection of undercover policing in England and Wales</i> ' |
| 02 February 2015 | The Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014 comes into force |
| 12 March 2015 | The Undercover Policing Inquiry (UCPI) is established. The Inquiry's purpose is to investigate and report on undercover police operations conducted by English and Welsh police forces in England and Wales since 1968. The Inquiry will ' <i>examine the contribution undercover policing has made to tackling crime, how it was and is supervised and regulated, and its effect on individuals involved – both police officers and others who came into contact with them</i> ' The Inquiry will not consider undercover policing in Scotland or Northern Ireland |
| 16 July 2015 | Mark Ellison QC and Alison Morgan publish their (interim) report on the results of their review of the safety of convictions |
| 06 January 2016 | Neil Findlay MSP initiated a debate in the Scottish Parliament on the need for an inquiry into undercover policing in Scotland |
| 30 June 2016 | Neil Findlay MSP initiated a further debate in the Scottish Parliament on the need for an inquiry into undercover policing in Scotland |
| July 2016 | The UK Government confirms that the UCPI will not consider undercover policing in Scotland |
| 22 September 2016 | The Cabinet Secretary for Justice directed HMICS to undertake a strategic review of undercover policing in Scotland. This was the first time that HMICS had scrutinised undercover policing in Scotland |
| 11 January 2017 | HMICS Terms of reference for the strategic review of undercover policing in Scotland published |
| 14 September 2017 | At the Court of Session, Edinburgh, permission was granted for a judicial review of the decision of the UK Government to refuse to extend the terms of reference of the Pitchford Inquiry into undercover policing to cover Scotland; and the decision of the Scottish Ministers to refuse to set up a Scottish Inquiry under and in terms of the Inquiries Act 2005 with terms of reference equivalent to those of the Pitchford Inquiry but covering Scotland |

Appendix 2 – Glossary of terms

| | |
|--------------------------|---|
| ACC | Assistant Chief Constable |
| AO (Authorising Officer) | <p>The Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014 came into force 2 February 2015. Scottish Statutory Instrument 2014/339 describes the authorisation level for a 'relevant source' as an assistant chief constable or above</p> <p>All authorised 'relevant sources' must be notified to a commissioner. In the case of a 'relevant source,' renewals for deployment beyond 12 months' should be carried out by a deputy chief constable or above and pre-approved by a commissioner</p> <p>Prior to the Scottish Statutory Instrument 2014/339, the deployment of undercover officers could be authorised by an officer of the rank of superintendent</p> |
| APP | Authorised Professional Practice is developed and owned by the College of Policing and is a recognised source of professional practice on policing |
| CHIS – 'relevant source' | <p>An undercover officer is defined under Section 7(1) of RIP(S)A and the Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014 as a; 'relevant source' who holds an office, rank or position within law enforcement agencies (including Police Scotland) and as a 'relevant source' establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraphs (b) or (c);</p> <p>(b) covertly uses such a relationship to obtain information or to provide access to any information to another person; or</p> <p>(c) covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship</p> |
| Collateral intrusion | The authorising officer should take into account the risk of intrusion into the privacy of persons other than those who are directly the subjects of the operation or investigation (collateral intrusion). Measures should be taken, wherever practicable, to avoid unnecessary intrusion into the lives of those not directly connected with the operation or investigation |
| COM-UC | Section 7(6) RIP(S)A provides the legal framework for the management of undercover officers and defines the roles, responsibilities and the arrangements that must be in place. A covert operations manager -undercover (COM-UC) is an officer of at least inspector rank or equivalent who has responsibility for an undercover unit. The COM-UC manages the deployment of undercover officers and provides tactical advice on all aspects of undercover operations |
| COP | The code of practice provides guidance on the authorisation of the use or conduct of a CHIS by public authorities under RIP(S)A. The code is issued pursuant to Section 24 of |



| | |
|-----------------------|--|
| | RIP(S)A, which stipulates that the Scottish Ministers shall issue one or more codes of practice in relation to the powers and duties in RIP(S)A |
| CoP | The College of Policing was established in 2012 as the professional body for the police service in England and Wales. The purpose of the College is to provide those working in policing with the skills and knowledge necessary to prevent crime, protect the public and secure public trust |
| COPFS | The Crown Office and Procurator Fiscal Service is responsible for the prosecution of crime in Scotland |
| Cover officer | Section 7(6) RIP(S)A provides the legal framework for the management of undercover officers and defines the roles, responsibilities and the arrangements that must be in place. A cover officer is responsible for ensuring arrangements exist for the proper oversight and management of the undercover officer |
| Crime other | Crime other includes homicide investigations, recovery of high value stolen property and the test purchase of illicit alcohol |
| Drug related offences | Drug related offences includes the importation, production, manufacture, cultivation, possession and supply of controlled drugs including psychoactive substances |
| ECHR | The Human Rights Act (HRA) 1998 is an Act of the UK Parliament which received Royal Assent on 9 November 1998, and mostly came into force on 2 October 2000. Its aim was to incorporate into UK domestic law the rights contained in the European Convention on Human Rights |
| G8 | The 31st G8 Summit was held on 6-8 July 2005 at the Gleneagles Hotel, Auchterarder, Scotland. G8 comprised the heads of government of Canada, France, Germany, Italy, Japan, Russia, the UK and the United States of America |
| HMICFRS | As of July 2017, HM Inspectorate of Constabulary (England and Wales) changed its name to HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) |
| HMICS | HM Inspectorate of Constabulary in Scotland |
| IPA | The Investigatory Powers Act (IPA) 2016 received Royal Assent on 26 November 2016. See Investigatory Powers Commissioner's Office (IPCO) |
| IPCO | Investigatory Powers Commissioner's Office. The IPCO remit includes providing comprehensive oversight of the use investigatory powers including the authorisation for the use and conduct of a 'relevant source' (undercover officer). The IPCO ensures compliance with the law and the codes of practice through inspection |
| IPT | Investigatory Powers Tribunal |
| Legend building | A process whereby an undercover advanced officer visits an area to develop or maintain his or her covert identity and where there is no intention to engage with the subjects of an investigation or operation |
| Mark Kennedy | Mark Kennedy was a police officer working undercover for the NPOIU. In 2010, revelations about his activities led to the collapse of a trial of six people accused of planning to shut down a power station in Ratcliffe-on-Soar, Nottinghamshire. The Court of Appeal named him on 19 July 2011 ⁷⁰ |

⁷⁰ Court of Appeal (Criminal Division) *Barkshire and Others v R* 19 July 2011 or *R v Barkshire* [2011] EWCA Crim1885,



| | |
|-----------------|--|
| MIAG | Major Investigations Advisory Group |
| MPS | Metropolitan Police Service |
| Necessity | <p>The statutory grounds for necessity are set out within the legislation under terms of RIP(S)A or RIPA. The authorising officer must believe that an authorisation is necessary in the circumstances of the particular case for one or more of the statutory grounds listed in Section 7(3) of RIP(S)A namely:</p> <ul style="list-style-type: none"> ■ for the purpose of preventing or detecting crime or of preventing disorder; ■ in the interests of public safety; or, ■ for the purpose of protecting public health <p>RIPA contains additional grounds to RIP(S)A</p> |
| NPOIU | <p>The National Public Order Intelligence Unit (NPOIU) was formed within the MPS in 1999 to gather and co-ordinate intelligence. In 2006 the governance responsibility for the NPOIU was moved to the Association of Chief Police Officers (ACPO), after a decision was taken that the forces where the majority of activity was taking place should be responsible for authorising future deployments. In January 2011 the NPOIU merged with other units to form the National Domestic Extremism Unit within the Metropolitan Police Service</p> |
| NUWG | <p>The national undercover working group is a multi-agency group which works with the College of Policing to set national standards in the area of undercover policing</p> |
| OCCT | Organised Crime and Counter Terrorism, Specialist Crime Division, Police Scotland |
| OPSY | <p>An operational security advisor is an officer who manages issues of legality, integrity, ethical conduct and standards of covert operations</p> |
| OSC | <p>The Office of Surveillance Commissioners is a non departmental public body (NDPB) which was established to oversee the authorisation and use of covert tactics by statutorily empowered public authorities. Now known as the Investigatory Powers Commissioner's Office (IPCO)</p> |
| PF | Procurator Fiscal |
| Proportionality | <p>The person granting the authorisation must believe that the activity is proportionate to what is sought to be achieved by carrying it out. This involves balancing the seriousness of the intrusion into the private or family life of the subject of the operation (or any other person who may be affected) against the need for the activity in operational terms</p> |
| Relevant source | <p>A 'relevant source' is an officer who holds an office, rank, or position within law enforcement agencies, including Police Scotland, who has been authorised under Section 7 of RIP(S)A and or Section 29 of RIPA</p> |
| RIPA/RIPSA | <p>'RIPA' means the Regulation of Investigatory Powers Act 2000</p> <p>'RIP(S)A' means the Regulation of Investigatory Powers (Scotland) Act 2000</p> <p>RIPA and RIP(S)A work in conjunction with existing legislation, in particular the Human Rights Act 1998. The</p> |



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| | main purpose of the legislation is to ensure that the relevant investigatory powers are used in accordance with human rights. RIP(S)A provides the statutory framework for the use and conduct of a 'relevant source' (undercover officer) in Scotland |
| SCD | Specialist Crime Division, Police Scotland |
| SCDEA | The Scottish Drug Enforcement Agency (SDEA) was established on 1 April 2001. The Police, Public Order and Criminal Justice (Scotland) Act 2006 placed the SDEA on a statutory footing and, in 2006, it was renamed as the Scottish Crime and Drug Enforcement Agency. The SCDEA did not have an operational remit for Counter Terrorism / Domestic Extremism |
| SDS | The Special Demonstration Squad (SDS) was an undercover unit formed by the Metropolitan Police's Special Branch. It operated between 1968 and 2008, during which time it infiltrated and reported on groups concerned in violent protest |
| SIO | Senior Investigating Officer |
| SOP | A Standard Operating Procedure is a set of written instructions that document how activities should be carried out to minimise risk |
| SOU | Special Operations Unit |
| UCA | An undercover advanced officer (UCA), is one who has passed both the foundation undercover training and assessment course and the national undercover training and assessment course. Such officers are able to undertake more complex and long-term undercover deployments including the investigation of major crime, serious organised crime and counter terrorism |
| UCF | An undercover foundation officer (UCF), previously known as a test purchase officer, is one who has passed the foundation undercover training and assessment course (which is the entry point for all undercover officers) and is able to be deployed in specific operations |
| UCO | For the purpose of this report we have used undercover officer as the term to encompass all those who are deployed in undercover activities, irrespective of their police force or law enforcement agency |
| UCOL | An undercover online officer (UCOL), is a nationally accredited officer who is deployed to establish and maintain relationships with an individual, network or organisation through the use of the internet with the covert purpose of obtaining information and evidence as part of an authorised operation. An undercover online officer must attend and pass the nationally accredited College of Policing undercover online officer course |
| UCPI | Undercover Policing Inquiry |

Appendix 3 – Authorisation levels

| Undercover policing authorisation levels | | | |
|--|---|---|--|
| Activity | Meaning | Authorisation Level | Legislation |
| Relevant source (Undercover officer) | <p>A 'relevant source' is defined by Scottish Statutory Instrument (SSI) 2014/339 as an officer who holds an office, rank, or position within law enforcement agencies; including Police Scotland, and as a 'relevant source' establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within Section 7(1) of RIP(S)A paragraphs (b) or (c). See below;</p> <p>(b) covertly uses such a relationship to obtain information or to provide access to any information to another person; or</p> <p>(c) covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship</p> | <p>The authorisation level for a 'relevant source' is assistant chief constable or above</p> <p>All authorised 'relevant sources' must be notified to a commissioner</p> <p>In the case of a 'relevant source,' renewals for deployment beyond 12 months' should be carried out by a deputy chief constable or above and pre-approved by a commissioner</p> | <p>Section 7(1) of the Regulation of Investigatory Powers(Scotland) Act 2000 (referred to as 'RIP(S)A')</p> <p>The Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014 which came into force on the 2 February 2015. Scottish Statutory Instrument 2014/339, Schedule 1A</p> <p>Regulation of Investigatory Powers Act 2000 (referred to as 'RIPA')</p> <p>The Regulation of Investigatory Powers (Covert Human Intelligence Sources; Relevant Sources) Order 2013 which came into force on the 1 January 2014. Statutory Instrument 2013/2788</p> |

Appendix 4 – Review methodology

We used the HMICS Inspection Framework in conducting our review. This provided a structure that is risk-based, proportionate and focused on improving policing in Scotland. Our findings and recommendations for improvement are founded on evidence.

Our review was delivered over four stages with distinct workstreams, a number of which were undertaken concurrently.

Stage One – Design, planning and initial scoping

This stage included the development of our inspection framework and the design of review tools and scrutiny processes. This provided a focus for the collection and assessment of evidence by the review team and informed the terms of reference which were published on 11 January 2017.

In accordance with our duty of user focus,⁷¹ we actively engaged with a range of stakeholders to gather their views throughout the review process. Key stakeholders included:

- Police Scotland
- Scottish Police Authority
- Scottish Government
- Staff associations
- Crown Office and Procurator Fiscal Service (COPFS)
- Police Investigations and Review Commissioner (PIRC)
- Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service (HMICFRS)
- College of Policing in relation to Authorised Professional Practice
- National Police Chiefs' Council – National Undercover Working Group (NUWG) Secretariat
- National Police Chiefs' Council – National Co-ordination Team – Undercover Policing Inquiry (UCPI)
- Office of Surveillance Commissioners (OSC)
- Secretariat to the Undercover Policing Inquiry (UCPI)

Stage Two – Fieldwork – Current operational delivery

This stage focused on testing the operational delivery of undercover policing in Scotland since the establishment of Police Scotland on 1 April 2013. Specific topics and questions for interviews and focus groups were structured around our inspection framework. During this stage we reviewed:

- the current leadership, governance, supervision, management and oversight arrangements including risk management, welfare and performance reporting
- the end-to-end undercover policing operation, procedures, processes and safeguards
- the current resource levels, structures, experience and training
- In addition, we conducted a range of interviews with senior police officers and held focus groups with undercover officers
- we engaged with partners and stakeholders to establish the effectiveness of collaborative and co-ordinated working
- we compared Police Scotland's approach to undercover policing with national guidance and recognised best practice provided by the NUWG
- we examined relevant strategies, policies, guidance, policing plans and analytical products that are designed specifically in relation to undercover policing

⁷¹ Section 112, Public Services Reform (Scotland) Act 2010.

- we examined all OSC reports for the period 2000-2016 with specific focus on undercover policing and organisational learning and development and
- we commissioned analysis of previous reviews and key findings

On 19 March 2017, the Herald⁷² reported that following a Freedom of Information request, Police Scotland held a number of G8 related files which included 'Intelligence Briefings on the NPOIU.' We reviewed the files and found that the information contained therein did not relate to any specific undercover officer or deployment. The files related to operational briefing documents, produced from an amalgam of sources, which related to G8 activities.

Stage Two – Fieldwork – Scottish policing operations

This stage examined the extent and scale of undercover policing in Scotland by Scottish policing since the introduction of RIP(S)A and RIPA. This activity involved a qualitative and quantitative analysis of undercover police authorisations to ensure that the process reflected national standards including compliance with statutory duties and codes of practice.

Stage Two – Fieldwork – SDS / NPOIU operations in Scotland

This stage examined the extent and scale of undercover policing operations carried out in Scotland by the NPOIU and the SDS. As outlined in our terms of reference, the statutory powers of HMICS do not extend to the scrutiny of police forces across England and Wales. This aspect of our fieldwork had a critical dependency with (i) the work of the Metropolitan Police Service in respect of the SDS and (ii) the National Police Chiefs' Council (NPCC), National Co-ordination Team, in respect of the NPOIU in relation to the UCPI.

Stage Three – Review and analysis of evidence

We reviewed and assessed the information and evidence collected during our fieldwork stages.

Stage Four – Reporting, quality assurance and publication

Following conclusion of our fieldwork and analysis, we prepared a report in line with HMICS reporting guidelines. Quality assurance was provided through internal review and factual accuracy and operational security considerations by relevant stakeholders who contributed to the evidence base of our report.

⁷² Herald, [Police Scotland confirms secret G8 file on notorious undercover police unit](#), 19 March 2017.



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About Her Majesty's Inspectorate of Constabulary in Scotland

HMICS operates independently of Police Scotland, the Scottish Police Authority and the Scottish Government. Under the Police and Fire Reform (Scotland) Act 2012, our role is to review the state, effectiveness and efficiency of Police Scotland and the Scottish Police Authority. We support improvement in policing by carrying out inspections, making recommendations and highlighting effective practice.

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