

Two recent Orders change the way in which access to communications data and the use of surveillance are regulated. They will have a significant impact on investigations using these techniques.

Both changes came into force on 5th January 2004.

Access to Communications data

The Regulation of Investigatory Powers (Communications Data) Order 2003 Statutory Instrument 3172 deals with access to communications data and applies to many organisations including local authorities in England, Wales, Scotland and Northern Ireland;

This order, together with the accompanying codes of practice, allows local authorities to access communications data but only for the purpose of prevention or detection of crime and preventing disorder. A full article appeared in the last issue of Act Now newsletter. If you missed it please go to www.actnow.org.uk and click on "Articles".

One of the key concepts in this regime is that of a 'Single Point of Contact', or SPOC. The idea is that one individual in each local authority becomes a single point to whom investigators and authorising officers can go to for advice about the appropriateness of a request and who will liaise with communications service providers. All local authorities need to nominate their SPOC.

The Interception of Communications Commissioner will undertake independent oversight on the use of these new powers by conducting an inspection regime just like the Office of Surveillance Commissioners. Local authorities should consider the following:

- a) Have you considered how/if you will make use of these new powers?
- b) Have you decided who your SPOC is going to be?
- c) Has your SPOC been trained?
- d) Have you adapted the standard authorisation/notice forms produced by the Home Office?
- e) Have you liaised with your local communication service providers and ISP's?

Directed Surveillance and CHIS

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003 Statutory Instrument 3171 deals with covert surveillance (i.e. Directed and CHIS). It applies to authorities in England and Wales only. It makes two changes to the current regime:

a) Authorisation Criteria

The Order restricts the grounds on which local authorities can authorise use of directed surveillance or CHIS. From now on such activities can only be authorised 'for the purpose of preventing or detecting crime or of preventing disorder' (see sections 22(2)(b), 28(3)(b) and 29(3)(b) RIPA). Gone are the other grounds such as public safety, health matters, economic wellbeing of the UK and assessment or collection of tax. This change leads to the question of how to deal with investigations where no crime has yet been committed but surveillance is being carried out e.g. suspected noise nuisance/planning contravention before a statutory notice is served?

b) Authorising Officers

The ranks of authorising officers have been revised by the Order:

In England, Wales and Scotland it is now an 'Assistant Chief Officer, Assistant Head of Service, Service Manager or equivalent' together with all more senior officers, ranks or positions.

In Northern Ireland it is now an 'Assistant Chief Officer' together with all more senior officers, ranks or positions.

Scotland and Northern Ireland: We do not yet know whether any new orders will be made in Scotland or Northern Ireland to revise the ranks of officers able to authorise covert surveillance and/or to limit the grounds under which authorisations can be granted.

Office of Surveillance Commissioner's Annual Report

Chief Executives of Local Authorities, NHS Trusts, and Police Forces are now receiving letters from the Chief Surveillance Commissioner requesting statistical data for reports to the Prime Minister and Scottish Ministers. This is the beginning of a regular annual process. Are your systems robust enough to cope with this? Do you know your obligations in relation to record keeping, authorisations and training?

The Home Office, at a meeting on the new powers in December 2003, emphasised the importance of training to ensure that those dealing with the new RIPA powers know the duties placed upon them and to ensure that the legislation works properly and public confidence is upheld.

Act Now Training has been running training courses on **Surveillance Law and RIPA** for a number of years. These cover all aspects of RIPA, the changes outlined above, as well as a detailed discussion on the new Access to Communications Data regime. We also cover associated legislation such as the Data Protection Act 1998. Forthcoming RIPA and Surveillance Law courses include

28th April in Belfast

13th May in London

19th May in Glasgow

All our courses are accredited by the Law Society for CPD points. We are also in the process of obtaining Home Office approval for our surveillance law training. Full details of these and other courses in the law relating to information handling can be found at **www.actnowtraining.co.uk**. We also offer in house training if required. Email us at info@actnowtraining.co.uk.

In House Training Act Now has considerable experience of providing in house training sessions on this as well as other areas such as data protection, freedom of information and human rights. Please see www.actnow.org.uk for details of previous clients and testimonials. More information available on request.

Act Now is a trading name of Act Now Training Ltd
Registered Office, Selbourne House, 26 Selbourne Avenue, Dewsbury, West Yorks, WF12 9PA
Fax 01924-520242, Email info@actnowtraining.co.uk

Disclaimer The contents of this web newsletter are meant for you to consider on the basis of general discussion and not as advice or expert opinion (legal or otherwise). The views expressed do not reflect those of our respective employers. You should obtain professional legal advice on any specific issues. Any liability (in negligence or otherwise) arising from you acting, or refraining from acting, on any information contained in this newsletter is excluded.

Copyright belongs to ActNow and we ask that anyone who wishes to subscribe or unsubscribe to our newsletter does so via our website form. Your information will be used only for the purposes of this newsletter and in accordance with the Data Protection Act 1998. Public Sector organisations can re-use material within their own organisation if they acknowledge our contribution by linking to our website.