

The Regulation of Investigatory Powers (Scotland) Act 2002

**A GUIDE TO COMPLETING THE RIP(S)A FORMS
FOR COVERT SURVEILLANCE AND CHIS**



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ABOUT THIS DOCUMENT

The Regulation of Investigatory Powers (Scotland) Act 2002 (RIPSA) received Royal Assent on 28th September 2000. It provides a statutory framework regulating the carrying out of covert surveillance and the deployment of covert human intelligence sources (CHIS) by “relevant public authorities” in Scotland. This includes, amongst others, local authorities, the emergency services and law enforcement agencies. These bodies are also subject to a regular inspection conducted by the Office of Surveillance Commissioners (OSC).

The lawful conduct of covert surveillance under RIPSA requires standard forms (produced by the Scottish Executive) to be completed and authorised by relevant officers within public authorities. Poor form filling is a common concern expressed in OSC inspection reports. Correct completion of the forms is also essential if officers wish to take advantage of the RIPSA Shield (section 5 defence). Up to now there has been no published guidance on this important topic for local authorities in Scotland.

The purpose of this document is to assist local authority Investigating Officers and Authorising Officers to complete the standard forms when undertaking Directed Surveillance and deploying a CHIS under RIPSA. It consists of each form reproduced with detailed notes on how to complete each section. All the forms are included from application, through to review, renewal and cancellation.

This document takes into account the Regulation of Investigatory Powers (Prescription of Officers, etc. and Specification of Public Authorities) (Scotland) Order 2010, SSI 2010/350 which came into force on 29th November 2010. This made changes to the prescribed offices, ranks and positions within the relevant public authorities who may grant authorisations under sections 6 and 7 of RIPSA. It is also a consolidated order which takes account of previous amendments made since RIPSA came into force.

How to Use This Document

In the following pages each standard RIPSAs form is reproduced with guidance notes in dark blue 12 point Calibri font. These forms are the latest versions downloaded from the Scottish Government RIPSAs website on 10th February 2011:

<http://www.scotland.gov.uk/Topics/Justice/public-safety/Police/17206/11509>

The website states that the forms are suggested standard forms and are an indication of the information required before a surveillance authorisation can be granted and are consistent with the requirements in the RIPSAs codes of practice. It recommends that all users of the forms should add any information that is relevant to their organisation but should avoid taking information out of the forms. Furthermore the OSC has stated that, on no account, should the forms be pre completed with standard wording, as each application should be made with the specific circumstances of the case in mind.

The only amendment we have made to the standard forms in this document is that references to old statutory instruments have been replaced with references to the latest versions.

Procedure for Completing the RIPSAs Forms

1. Decide what types of surveillance you are doing by reference to the flowcharts in Appendix 1.
2. Check the Scottish Government RIPSAs website for any updates to the forms before completing them:

<http://www.scotland.gov.uk/Topics/Justice/public-safety/Police/17206/11509>

3. Use this guidance to complete the appropriate forms. The following documents will also assist in this task:
 - a) The RIPSAs Covert Surveillance Code of Practice
 - b) The RIPSAs Covert Human Intelligence Sources (CHIS) Code of Practice

Both codes are available from the above website.

- c) The OSC Procedures and Guidance Document (2010 version) - This is only available directly from the OSC (email: oscmalbox@osc.gsi.gov.uk).
 - d) Your organisation's Surveillance Policy and Procedure Manual
4. Remember only conduct set out in the forms and which is authorised can be the subject of a defence under section 5 ("the RIPSAs Shield") if the surveillance activity is challenged in court.
 5. Once completed, the forms should be sent to your organisation's Authorising Officer for approval. A list of Authorising Officers should be available from your organisation's RIPSAs Co ordinator.
 6. A copy of each completed form should be sent to the person maintaining your organisation's Central Record of Authorisations.

LEGAL ADVICE

Surveillance law and related legislation is a very complex area. The contents of this document are meant for you to consider as general guidance. It is not advice or opinion (legal or otherwise) on any specific surveillance operation. You should obtain legal advice on your specific issues from a qualified solicitor in your legal department.

Any liability (in negligence or otherwise) arising from you acting or refraining to act as a result of anything in this document is excluded.

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COMMON MISTAKES IN RIPSA FORMS

(Highlighted by the OSC)

Investigating Officer Mistakes

- Use of out of date forms
- Not quoting a unique reference number (URN)
- Copying wording from old authorisation forms
- Failing to give a detailed explanation of what the surveillance will involve
- Not fully considering/explaining the proportionality factors
- Not fully considering/explaining Collateral Intrusion
- Not fully considering the likelihood of obtaining Confidential Information
- Failing to send copies of forms to the RIPSAs Co ordinator

Authorising Officer Mistakes

- Repetitive narrative and rubber stamping without proper consideration of all the facts set out in the authorisation form
- Not knowing the capability of the surveillance equipment which is being authorised. (For instance, there are differences between video cameras that record continuously and those activated by motion; and between thermal image and infrared capability. These differences may have an important bearing on how a surveillance operation is conducted and the breadth of the authorisation being granted. Therefore, a simple authorisation for 'cameras' is usually insufficient.)
- Failing to demonstrate that less intrusive methods have been considered and why they have been discounted in favour of the tactic selected
- Failing, when cancelling authorisations, to give directions for the management and storage of the product of the surveillance
- Not having robust management and quality assurance procedures in place
- Not arranging regular audits of authorisation forms

Unique Reference
Number* (*Filing Ref)

REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 (RIP(S) A

APPLICATION FOR AUTHORISATION TO CARRY OUT DIRECTED SURVEILLANCE

[Sample Form with Notes to Assist Completion](#)

This form is to be completed by an officer of the public authority seeking authorisation to carry out Directed Surveillance. Before completing it please consult the flowchart in Appendix 1 and read the Covert Surveillance Code of Practice. Once completed the form should be forwarded to the Authorising Officer for approval and to complete box 13. Once granted, the authorisation will last for three months.

Code of Practice/Code: This is the RIPSA Covert Surveillance Code of Practice.

OSC Document: This is the Office of Surveillance Commissioners Procedures and Guidance Document. It can be obtained directly from oscmailbox@osc.gsi.gov.uk

Unique Reference Number (URN): This is a reference number to each individual form but which also allows the form to be matched to other forms in the same investigation or which are issued by the same department. Some organisations use a URN which comprises of the year, department initials, applicant initials and a unique number. In some cases the investigating department allocates the URN whilst in other cases it is allocated by the RIPSA Co ordinator. There are no hard and fast rules.

Public Authority
(including full address)

Name of Applicant

Unit/Branch /

Employment

Details

Investigative

Number

This section is for the Investigator. Where a third party (e.g. private detective agency or the police) is used to carry out Directed Surveillance on behalf of the authority or to give operational support, details of the third party and their involvement should also be recorded on this form.

Details of application:

1. Give rank or position of authorising officer in accordance with Regulation 10 of Investigatory Powers (Prescription of Officers, etc. and Section 6(3) of the Investigatory Powers (Scotland) Order 2010, SSI 2010/350 which came into force on 29th November 2010.¹

Insert the name and position of the Authorising Officer. This is the person who, whether or not Directed Surveillance should be authorised and will countersign this form. It must be a rank in accordance with the above order (e.g. for local authorities, Assistant Head of Investigation Manager). Each department, which makes use of Directed Surveillance, must have officers appointed as such. Care should be taken not to appoint junior officers to authorise surveillance. If in doubt consult the RIPSAs Co-ordinator.

2. Describe the conduct to be authorised and the nature of the information sought.

Explain the matter which is being investigated. For example:

- "To investigate alleged acts of anti-social behaviour..."
- "To investigate and gather evidence of possible fraud by the target."
- "To investigate instances of..."

If possible, include the relevant legislation which may be used to prosecute offenders and/or which gives you the power/duty to investigate.

3. Identify which grounds the Director of RIPSAs considers necessary under Section 6(3) of RIPSAs. *delete as inapplicable*

- For the purpose of preventing or detecting crime or maintaining disorder;
- In the interests of national security;
- for the purpose of preventing or detecting terrorism.

If you believe that your surveillance does not come under any of these grounds then stop and seek advice from the Co-ordinator.

4. Explain why the Director of RIPSAs considers it necessary in this particular case.

Read Paragraph 10 of the OSC Document. The Authorising Officer must be satisfied that there is a necessity to authorise the proposed operation. In order to be satisfied, there must be an identifiable offence (or offences) to prevent or detect before an authorisation can be granted on any of the grounds set out in Section 6(3) of RIPSAs.

Give the following details of:

- Why Directed Surveillance is needed to obtain the information that is sought
- What other means you have tried to obtain the same information or why they are not

¹ For local authorities: The exact position of the authorising officer should be given. For example, Head of Trading Standards rather than officer responsible for the management of an investigation

- The offence or disorder you are investigating
- How will doing the Directed Surveillance assist in fulfilling the purpose identified in box 3?
- Any other evidence you have to link the target with the offence which requires corroboration through surveillance

5. Explain why the directed surveillance is proportionate to what you are seeking to achieve

Read paragraph 3.5 of the Code.

Proportionality involves balancing the seriousness of the intrusion into the privacy of the target of the operation (or any other person who might be affected) against the need to investigate the offence in investigative and operational terms.

The authorisation will not be proportionate if it is excessive in the overall circumstances of the case. Each action authorised should bring an expected benefit to the investigation or operation and should not be disproportionate or arbitrary. The seriousness of the offence alone will not alone render intrusive actions proportionate. On the other hand, an offence so serious that any deployment of covert techniques would be proportionate to the activity. It will be considered proportionate if the information which is sought could not reasonably be obtained by other less intrusive means.

You must demonstrate that you have:

- balanced the size and scope of the activity against the gravity and extent of the perceived crime or offence;
- explained how and why the method used will cause the least possible intrusion on the target and others;
- considered whether there are any other appropriate means of the legislation and a reasonable way, having considered the alternatives, of obtaining the necessary result;
- evidenced, as far as possible, that other methods had been considered and why they were not implemented.

In order to demonstrate that you have addressed the following questions:

- Can you demonstrate that you have tried less intrusive means/ overt methods?
- What other methods have you tried to obtain the same information/evidence?
- What have you done to try and lessen the impact on the target? Factors to address include:

- Amount of information to be gathered during surveillance
- Method of surveillance e.g. using still cameras rather than video to capture less intrusive images
- Minimising the impact of the surveillance on the subject
- Time of the surveillance

At the same time, the above must be balanced with the need for the activity in operational terms. To demonstrate this balance you should address:

- What you are seeking to achieve?