EXPLANATORY MEMORANDUM

THE REGULATION OF INVESTIGATORY POWERS (DIRECTED SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES) ORDER 2010

2010 No.

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

2. Purpose of the instrument

2.1 The purpose of this Order is to:

a) consolidate four previous Orders relating to directed surveillance and the use or conduct of covert human intelligence sources by public authorities under Part II of the Regulation of Investigatory Powers Act 2000 ('RIPA'); and to

b) reflect the outcome of a public consultation which took place between April and July 2009.

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

3.1 None.

4. Legislative Context

4.1 This Order consolidates four previous Orders (revoked, or partially revoked, by article 10 of this Order) made under the same powers. The Order requires approval by resolution of each House of Parliament and will come into force on 6th April 2010.

4.2 Part II of RIPA ("Surveillance and Covert Human Intelligence Sources") provides a statutory framework regulating the carrying out of covert surveillance and the conduct or use of covert human intelligence sources by "relevant public authorities" consistent with the Human Rights Act 1998. "Relevant public authorities" for these purposes are specified in Schedule 1 of RIPA.

4.3 Designated persons in the public authorities specified in Part I of Schedule 1 of RIPA are entitled to authorise directed surveillance and the conduct or use of covert human intelligence sources. Designated persons in the public authorities specified in Part II of Schedule 1 of RIPA are only entitled to authorise directed surveillance.

4.4 Subject to the restrictions in articles 5 to 7, articles 3 and 4 and columns (2) and (3) of the Schedule to the Order identify the designated persons holding offices, ranks and positions with the relevant public authorities who may authorise the use of directed surveillance and the use or conduct of covert human intelligence sources.

4.5 The substantive changes made by the Order are as follows. Article 2 of the Order amends Schedule 1 of RIPA to remove the Ministry of Defence from Part I of that Schedule so that it will no longer be permitted to authorise directed surveillance or the conduct or use of covert human intelligence sources under RIPA. Article 2 adds the Child Maintenance and Support Commission (which provides services previously exercised by the former Child Support Agency) to Part II of the Schedule. It also moves the Port of Dover Police, Department for Work and Pensions, Postal Services Commission and the Royal Mail (by virtue of being a universal postal service provider within the meaning of the Postal Services Act 2000) from Part I to Part II of the Schedule, thereby removing their entitlement to authorise the use and conduct of covert human intelligence sources. The Health and Safety Executive is moved from Part II to Part I which means it may authorise the use of both investigatory techniques. A minor amendment is also made to Part I of Schedule 1 to replace an out of date reference relating to a fire and rescue authority.

4.6 Other minor amendments have been made to the entries in respect of the Welsh Assembly Government (to add the Fisheries Unit) and to the Driving Standards Agency (so that it may only authorise the use of directed surveillance, not covert human intelligence sources).

4.7 Article 5 and column (4) of the Schedule to the Order impose restrictions on the "grounds" for which directed surveillance or covert human intelligence sources may be authorised by the public authorities identified in column (1). The Order further restricts the grounds for which authorisations may be granted by the Food Standards Agency (by removing "in the interests of public safety") and Her Majesty's Revenue and Customs (by removing "in the interests of the economic well-being of the UK").

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 David Hanson, Minister of State for the Home Department has made the following statement regarding Human Rights:

"In my view the provisions of the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 are compatible with the Convention rights."

7. Policy background

7.1 Directed surveillance authorisations under Part II of RIPA may be granted in relation to covert surveillance undertaken in relation to a specific investigation or operation which is likely to result in the obtaining of private information about a person, and which is other than an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this Part to be sought for the carrying out of the surveillance. Directed surveillance is surveillance which is covert but not intrusive i.e. it excludes surveillance of anything taking place on any residential premises or in any private vehicle and that involves the

presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device which is either on the premises or in the vehicle, or provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle.. This Order does not relate to intrusive surveillance.

7.2 Part II of RIPA also governs authorisations for the conduct or use of covert human intelligence sources. A public authority may task a person to be a covert human intelligence source to develop a relationship with another person in order covertly to obtain, provide access to or disclose information.

7.3 Parliament has already debated and approved most of the provisions in this Order, providing that the public authorities specified in RIPA may lawfully authorise the use of directed surveillance and covert human intelligence sources on specific grounds where it is necessary and proportionate to do so thereby ensuring full compliance with Convention rights. Following the debate in June 2006 in relation to S.I 2006/1874 the Minister of State, Tony McNulty, gave a commitment to consolidate the RIPA Orders. By consolidating and updating the previous Orders the Department aims to provide clarity on the public authorities able to authorise directed surveillance or the conduct or use of covert human intelligence sources. The consolidated Order reflects the results of a public consultation outlined at 8.1 below.

7.4 The public authorities currently specified in Schedule 1 of RIPA (amended as explained at paragraph 4 above) are as follows:

Directed surveillance and covert human intelligence sources (Part I of Schedule 1 of RIPA)

Armed Services

The Royal Navy, Royal Air Force and the Army play a key role in promoting the security and interests of the UK and its Overseas Territories. Access to directed surveillance and covert human intelligence sources enables them to provide life-saving intelligence in support of military operations, including information on an enemy's intentions, capabilities and modus operandi, immediate threat warning to the lives of armed forces personnel and information aiding commanders' decision-making.

Armed Service Police

The Royal Navy Police, Royal Air Force Police and Royal Military Police provide support for the Armed Services, operating in the UK and overseas, as well as policing the Services themselves. They use directed surveillance and covert human intelligence sources to prevent and detect crime against or on Armed Service property, establishments and personnel (such as countering hostile surveillance) and any crime committed by Service officers.

Care Quality Commission

Formerly known as the Commission for Healthcare Audit and Inspection, the Care Quality Commission is responsible under the Heath and Social Care Act 2008 for registering and inspecting the NHS, private and voluntary healthcare sectors in order to ensure that statutory standards of healthcare are maintained. It uses directed surveillance and covert human intelligence sources to investigate unregistered or sub-standard premises and inspect for poor or dangerous practices that put the public at risk, for instance preventing or addressing

hospital acquired infections such as MRSA and clostridium difficile outbreaks. Where necessary, the Commission prosecutes breaches.

Charity Commission

The Charity Commission is the statutory regulator of charities in England and Wales. It investigates charity misconduct or mismanagement such as fraud, money laundering, links to terrorist organisations, sham charities set up for improper or illegal purposes or for private advantage or the abuse of vulnerable beneficiaries. This allows the public to be confident that the money given to charities actually does go to the good causes represented.

Civil Nuclear Constabulary

The Civil Nuclear Constabulary uses directed surveillance and covert human intelligence sources to protect designated civil nuclear sites by preventing or responding effectively to security breaches in segregated nuclear areas. It also provides secure, armed escorts for the storage and movement of civil nuclear materials in the UK and abroad, and ensures an effective armed response in the event of terrorist targeting.

Department for Business, Innovation and Skills

The competition regulator is able to use RIPA to prevent or detect crime or disorder relating to a range of anti-competitive business offences. This includes investigating and prosecuting offences under the Companies Act, Insolvency Act, Fraud Act and Theft Acts such as insolvency fraud, unscrupulous trading practices and breaches in employment legislation. Effective regulation of commercial practices boosts UK productivity, protects the consumer, expands choice and provides better value.

Department for Environment, Food and Rural Affairs

DEFRA Investigation Services enforce legislation relating to animal welfare (eg foot and mouth disease) and investigate crime and compensation and subsidy fraud covering a wide range of subjects (such as cattle identification, tree felling, veterinary medicines, use of pesticides and plant health). They use directed surveillance and covert human intelligence sources mainly to investigate and obtain evidence of the sale of illegal veterinary medicines or of offences contrary to the Dairy Produce Quota Regulations (the supply of milk outside the quota system).

DEFRA's Marine and Fisheries Agency enforces legislation governing fishing at sea, including catch-quotas, fish and mesh sizes, foreign fishing rights and the fish's journey to first sale. The benefit of offending is worth millions of pounds to individuals and disrupts the fish economy for the majority.

DEFRA's Centre for Environment, Fisheries and Aquaculture Science enforces regulations to prevent the spread of serious disease in England and Wales freshwater fish and shellfish stocks. This applies both to stocks kept for farming and sport. Directed surveillance and covert human intelligence sources can be used to tackle the illegal importation of fish by gathering evidence of illegal importation and sale. Circumventing these controls would have potentially serious effect in terms of the spread of any fatal disease introduced to the country.

Department of Health – Medicines and Healthcare Products Regulatory Agency

The MHRA is the statutory enforcement agency responsible for ensuring that medicines and medical devices are tested, work and are acceptably safe. It uses directed surveillance and covert human intelligence sources to investigate and prosecutes breaches in the control of

licensed medicines, including unlicensed or counterfeit medicines supplied on the internet, stored in warehouses or sold in retailers. It also investigates and prosecutes suppliers of counterfeit medical devices. Unfit supplies that are known to have reached consumers in the UK include condoms and dental material for use in fillings. Incidents of counterfeits stopped before reaching consumers include glucose test strips for use in conjunction with insulin, and corrective contact lenses. If not prevented or taken out of circulation, unlicensed, unlawful or counterfeit medicines and medical devices can lead directly to reduced quality or even loss of life.

Department for Transport – Maritime and Coastguard Agency

The Maritime and Coastguard Agency is an on-call emergency organisation responsible for the initiation and co-ordination of all search and rescue operations within the waters for which the UK has responsibility. It is also the UK regulatory authority for ships and shipping in respect of safety and pollution matters. Directed surveillance and covert human intelligence sources are used to investigate and prosecute breaches of the Maritime Shipping Act (relating to the safe construction and operation of both cargo and passenger craft) and anti-pollution legislation (including tracing responsibility for and taking action against those responsible for oil or chemical spills).

Department of Transport – Vehicle Operator Services Agency

VOSA provides a range of licensing, testing and enforcement services to improve the roadworthiness standards of both private and commercial vehicles. Covert activity protects the public from serious injury or death on the roads by:

- Investigating garages fraudulently issuing private vehicle MOT certificates for roadworthiness. This includes assembling evidence where necessary to remove garages' authorisation to conduct MOT examinations as well as pressing for the prosecution of individuals.
- Investigating the illegal operation of goods and passenger vehicles, such as operating without licence, overloading vehicles and abusing drivers' hours legislation.

Environment Agency

The Environment Agency is the leading public body for environmental regulation and advice in England and Wales. It is responsible for combating pollution and protecting and improving the environment. It also tackles organised criminals perpetrating large-scale, geographically dispersed environmental crimes, including international illegal exports of waste. In addition to helping business and industry understand their environmental responsibilities, it enforces against illegal activity, including tackling large-scale illegal waste dumping, the running of unregulated landfill sites and unauthorised discharges of polluting substances to the environment. Fly-tipping on agricultural land alone costs society £60 million a year, as well as damaging the local environment and potentially harming those who live there.

Financial Services Authority

The UK's financial regulator has statutory responsibilities for investigating and prosecuting particular criminal offences to maintain market confidence. Directed surveillance and covert human intelligence sources are used mainly in the investigation and prosecution of insider dealing under the Criminal Justice Act 1993. Other investigations in which covert techniques have been used include unauthorised collective investment schemes under the Financial Services and Markets Act 2000. The FSA is increasingly involved in detecting criminal activity on the internet. Unless these kinds of professional financial collaboration are

addressed effectively they would operate against the consumer's interests and could damage the integrity of UK financial markets.

Fire and Rescue Services

Fire and rescue services across the UK attend fire incidents at domestic and commercial premises (including oil and gas terminals, power stations, airports, docks etc) and serious road accidents. They are also responsible for enforcing regulations concerning fire safety. This work enables them to save lives and protect property and the environment. Directed surveillance and covert human intelligence sources are used in connection with taking enforcement action in support of explosive and petroleum regulations or in investigations against deliberate fire setting.

Food Standards Agency

The Food Standards Agency was created under the Food Standards Act 1999 to protect the public by enforcing statutory food safety standards. It inspects meat at slaughterhouses and processing plants to ensure that the standards required by the law for hygienic production and animal welfare at slaughter are maintained. Its enforcement team considers the use of directed surveillance and covert human intelligence sources to prevent unfit meat from entering the market for human consumption. If it does not have covert techniques to use when it needs to, there could be serious public health consequences and the consequences for some consumers could be fatal.

Gambling Commission

The Commission was set up under the Gambling Act 2005 to regulate the gambling industry in Great Britain. It licenses the operation of casinos, bingo, gaming machines and lotteries (on site, telephone and internet gambling) and is a supervising authority under the Money Laundering Regulations 2007. Where necessary it revokes licences and prosecutes illegal activity. An example of the use of covert techniques is to investigate and close down unregulated poker clubs (which do not afford adequate protection against the involvement of children, intimidation, extortion and cheating.

Gangmasters Licensing Authority

The Gangmasters Licensing Authority was established under the Gangmasters (Licensing) Act 2004 following public concern at the lack of action to prevent the deaths of migrant cockle pickers in Morecambe Bay. It issues licenses only to approved gangmasters and investigates/prosecutes those without a license. Directed surveillance and covert human intelligence sources can be used to obtain evidence in circumstances where a certain gangmaster is operating without a licence. It is important that the problem is addressed by taking effective action against both labour providers and labour users that exploit illegal migrant workers.

Health and Safety Executive

The HSE is the enforcement authority for most work-related health and safety legislation. It uses directed surveillance and will use covert human intelligence sources to investigate and prosecute offences which involve the creation of serious risks to people's health and safety such as poisonings, explosions from faulty domestic gas installations, major chemical incidents (such as the December 2005 Buncefield oil depot explosions), movement of dangerous goods and construction site injuries etc.

HM Revenue and Customs

HMRC uses directed surveillance and covert human intelligence sources in connection with policing/assuring a wide range of UK revenues, taxes and duties as well as protecting the public at the border by combating the smuggling of prohibited, restricted and duty payable items. This is necessary to tackle the avoidance of millions of pounds of duties and taxes on goods and attacks on the self-assessment and tax credit systems, where organised crime gangs with false identities use multiple claims to obtain large repayments. HMRC also carries out investigations in the interests of national security (for instance enforcing trade sanctions and embargoes, countering the trafficking of weapons of mass destruction and in support of Project Cyclamen – a cross-Departmental initiative to screen for the illicit importation of radioactive materials).

Home Office - UK Border Agency

The Home Office UK Border Agency (UKBA) uses directed surveillance and covert human intelligence sources to tackle organised immigration crime and attempts to undermine the integrity of border control. In addition, the merger of the former Border & Immigration Agency with UK Visas and HMRC detection work at the borders to create UKBA has resulted in a broader remit of responsibility for the Agency that now includes customs offences. UKBA has a lead role in investigating border related crimes, including trafficking and the smuggling of people, drugs and criminal cash, as well as illegal working cartels, asylum abuse, fraud, deception and other immigration offences. The Agency also now plays a vital role in the prevention and detection of prohibited or restricted goods such as firearms or paedophile material. The UK Border Agency has also used directed surveillance in anti-corruption investigations against Border Agency staff suspected of conducting or colluding in immigration crime.

The UK Border Agency Detention Services serves the public by escorting and holding people detained under immigration law and by assisting in the removal of those not entitled to stay in the UK. Directed surveillance and covert human intelligence sources are necessary and proportionate investigatory techniques to tackle crime and disorder in immigration removal centres and maintain safe and secure environments. Activities to be addressed include drug movements, escapes, terrorist associations and grooming of minors by paedophiles.

Independent Police Complaints Commission

The IPCC took over in 2004 from the Police Complaints Authority to oversee the handling of public complaints of misconduct by the police and other law enforcement bodies. Its independence from law enforcement agencies means it needs its own investigatory powers. Where someone dies as a result of contact with a law enforcement agency the agency itself is required to notify the IPCC which conducts the investigation on behalf of the coroner. It is in these cases where the use of directed surveillance and covert human intelligence sources can help obtain the evidence the IPCC requires to further its investigations or prosecute if appropriate.

Intelligence Agencies (GCHQ, the Security Service and the Secret Intelligence Service)

The intelligence agencies use directed surveillance and covert human intelligence sources in their operations involving national security (for example identifying persons within the UK and elsewhere who conspire to harm the public), in support of the prevention and detection of serious crime and in the interest of the economic well-being of the UK.

The Security Service protects UK from threats to national security (including terrorism and espionage) and helps counter proliferation of weapons of mass destruction. Its covert intelligence investigations enable it to identify, assess and counter these threats.

SIS collects foreign intelligence on behalf of the UK and has a global covert capability to promote and defend the UK's national security and economic well-being. It supports the Security Service's responsibilities and represents its interests with co-operating foreign intelligence agencies.

GCHQ collects intelligence from communications and related sources and provides information assurance advice to help keep Government communications and information systems safe from hackers and other threats.

Local Authorities

353 local authorities in England and 22 in Wales are able to use directed surveillance and covert human intelligence sources in order to prevent or detect crime or disorder in connection with their statutory functions. Many of these functions are their sole responsibility.

Examples of investigations where covert techniques enable local authorities to gather evidence and offer evidence in legal proceedings include:

- trading standards (eg action against loan sharks and rogue traders, car fraud, consumer scams, deceptive advertising, counterfeit goods, unsafe toys and electrical goods);
- enforcement of anti-social behaviour orders and legislation relating to unlawful child labour;
- housing/planning (eg intervening to stop and take remedial action against unregulated and unsafe building, breaches of preservation orders, cases of landlord harassment);
- benefits fraud (eg housing benefits, investigating 'living together' and 'working whilst in receipt of benefit' allegations, council tax evasion); and
- environment protection (eg action to stop large-scale waste dumping, the sale of unfit food and illegal 'raves').

Local authorities in Scotland authorise the use of directed surveillance and covert human intelligence sources under the separate Regulation of Investigatory Powers (Scotland) Act 2000. Local authorities in Northern Ireland are separately listed under NI Statutory Rule No.292 of 2002.

Ministry of Defence Police

The Ministry of Defence Police provide a nationwide, armed guarding role at defence sites requiring a high level of security, protecting against the sabotage of assets. This includes guarding Britain's nuclear deterrent. The ability to authorise the use of directed surveillance and covert human intelligence sources assists them in carrying out their duties, which includes the prevention and investigation of defence crime, fraud and corruption.

Ministry of Justice

The Ministry of Justice National Offender Management Service is responsible for holding prisoners securely, reducing the risk of prisoners re-offending and providing safe and well-ordered detention establishments. It uses directed surveillance and covert human intelligence

sources to investigate offences involving staff corruption and to prevent and detect crime and disorder, in particular the supply of illegal drugs and mobile phones in prison establishments.

Northern Ireland Office – Prison Service

The Northern Ireland Prison Service is responsible for holding prisoners securely, reducing the risk of prisoners re-offending and providing safe and well-ordered detention establishments. It requires directed surveillance and covert human intelligence sources to investigate offences involving staff corruption and to prevent and detect crime and disorder, in particular the supply of illegal drugs and mobile phones in prison establishments. Access to these tools will bring prisons in Northern Ireland into line with the rest of the UK.

Office of Communications

The Office of Communications is the independent regulator and competition authority for all the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services. It uses directed surveillance and covert human intelligence sources to investigate the operation of illegal radio broadcasters under the Wireless Telegraphy Act 2006. This essentially means people who buy equipment from the internet and set up hidden studios to broadcast at any frequency in the radio spectrum regardless of whether that frequency is already licensed to a legitimate station. These unlicensed operators pay no taxes, provide unfair competition, interfere with legitimate broadcasters and their audiences, and disrupt vital safety of life emergency services.

Office of the Police Ombudsman for Northern Ireland

The Office of the Police Ombudsman for Northern Ireland uses directed surveillance and covert human intelligence sources to help discharge its responsibility to investigate complaints of criminality and serious misconduct made against law enforcement agencies. These include the Police Service of Northern Ireland, Belfast Airport Police, Harbour Police and MOD Police operating in Northern Ireland. It is important that it retains its own investigative powers so that its investigations are independent of the police services it is investigating.

Office of Fair Trading

The Office of Fair Trading is the UK's consumer and competition authority. It uses directed surveillance and covert human intelligence sources in the course of investigating breaches of competition law under the Competition Act 1998 and the Enterprise Act 2002, and misleading or aggressive business practices under the Consumer Protection from Unfair Trading Regulations 2008. This includes tackling cartels, which are among the most serious forms of anti-competitive behaviour and which could result in significant detriment to UK business and consumers. It also includes investigating serious breaches of consumer law, for example rogue traders, and scams which exploit low-cost, mass-marketing techniques to target recipients. It is estimated that UK consumers lose up to £3.5 billion a year to these, including bogus lotteries, pyramid schemes and deceptive premium-rate prize promotions.

Police forces

The police use directed surveillance and covert human intelligence sources for the purpose of preventing and detection of crime across a broad range of policing areas, for example to establish the facts of a case before an arrest can be made. The police also rely on other statutory purposes under RIPA to acquire data to assist them in general policing activities and lending operational support to the intelligence agencies to help secure convictions for terrorist offences.

Port of Liverpool Police

The Port of Liverpool Police are responsible for law enforcement and the security of passengers and staff in the port. Directed surveillance and covert human intelligence sources enable them to secure evidence necessary to prevent and detect criminal offences in the docks' area and to undertake their public safety functions. They provide round the clock policing, investigative and prosecuting services to the owners, tenants and users of shipping premises, ferry and cruise terminals. Specialist support and assistance is provided from other police forces when required.

Scottish Crime and Drug Enforcement Agency

The SCDEA prevents and detects serious and organised crime as it affects Scotland at a national and international level. It uses directed surveillance and covert human intelligence sources to identify, strip away assets, seize money and help imprison those involved in serious and organised crime, particularly drug trafficking.

Serious Fraud Office

The SFO was set up by the Criminal Justice Act 1987 to investigate and prosecute serious or complex fraud in cases where monies at risk are at least £1m, where there is a national concern or a significant international dimension or where the investigation requires highly specialist skills. The SFO operates mainly in the fields of market manipulation, fraudulent share dealing and 'dial through', concealed frauds. Sums 'at risk' in the 60 cases it investigated in 2007/08 were estimated at £4.8 billion. 65% of SFO investigations have international dimensions, and a further £30 billion of 'at risk' sums were investigated in 2007/08 responding to overseas requests for mutual legal assistance. The SFO's work reduces fraud and the cost of fraud. This enables confidence in the UK's business and financial institutions to be maintained.

Serious Organised Crime Agency

SOCA, which includes the Child Exploitation and Online Protection Centre, uses directed surveillance and covert human intelligence sources to assist investigations into serious and organised crime. This covers a wide range of activities and individuals and includes trafficking of class A drugs, organised immigration crime and fraud, hi-tech crime, counterfeiting currencies and serious robberies involving firearms. In the internet environment, it includes protecting children by identifying sex offenders undertaking grooming activities and tracking down convicted sex offenders who have failed to notify the authorities of their abode. SOCA also has responsibility to assist investigations and operations spanning international borders, which are co-ordinated by Interpol.

Welsh Assembly Government

The Welsh Assembly Government has overall responsibility for investigations in such areas as breach of regulations or registration in health and social care (including inspection of care and children's homes, day care and childminders, hospitals and clinics) and whether farmers are complying with EC and domestic legislation which regulates the subsidies they have claimed. The Fisheries Unit now undertakes responsibilities for the Welsh Assembly Government previously undertaken in Wales by Defra. This includes enforcing legislation governing fishing at sea (including catch quotas, fish and gear sizes and the journey to the first sale of the fish) and the prevention of the spread of serious fish disease.

Directed surveillance only (Part II of Schedule 1of RIPA)

Child Maintenance and Enforcement Commission

The Child Maintenance and Enforcement Commission will use directed surveillance in connection with criminal investigations involving non-resident parents who disappear after failing to co-operate with requests for information by the Commission or to prosecute where false financial information is knowingly provided. The aim is to ensure that non-resident parents are assessed to pay the right amount of child maintenance and that prosecution action is taken where they do not provide the right level of information to allow that to happen.

Department of Transport – Driving Standards Agency

The DSA is responsible for setting and maintaining the standard of all driving tests in the UK, ensuring that the public is protected from untested and unqualified drivers and therefore helping to reduce road fatalities. It uses directed surveillance to help investigate, prevent and prosecute people using bogus identities to take (multiple) driving tests on behalf of other people and to investigate untested and unqualified people posing as driving instructors.

Department for Work and Pensions

National statistics estimate that £1.1 billion of benefits were overpaid due to fraud in 2007/08. The DWP Fraud Investigation Service in Jobcentre Plus uses directed surveillance in connection with investigations into allegations of benefit fraud. This includes income support, jobseeker's allowance, pension credit, employment and support allowance, incapacity benefit and disability living allowance. It also works with local authority benefit fraud investigators on housing and council tax benefit fraud. The DWP Risk Assurance Division uses directed surveillance in connection with investigations into fraud or other criminal activity by staff working for or on behalf of DWP, and by organisations which work with DWP to deliver services.

HM Chief Inspector of Education, Children's Services and Skills

Ofsted regulates and inspects registered childcare (such as childminders and nurseries) and children's social care (such as children's homes and adoption and fostering services). Directed surveillance assists in the investigation and prosecution of criminal offences under the Children Act 1989, Care Standards Act 2000 and the Childcare Act 2006 to ensure all children in regulated care are safe. For example, Ofsted investigates unregistered or suspended childminders operating childcare or children's social care services or services which exceed permissible numbers of children, where there is no other way of ensuring that statutory regulations are being observed.

Information Commissioner

The Information Commissioner is the independent supervisory authority responsible for enforcing the provisions of the Data Protection Act 1998, the Freedom of Information Act 2000 and the Privacy & Electronic Communications Regulations 2003. Personal information has a financial value and can be traded for criminal purposes to the detriment of the individual whose data is stolen and misused, and for society at large. It is a criminal offence under the 1998 Act to unlawfully obtain, disclose, sell or offer to sell personal information. The Commissioner's Office uses directed surveillance where necessary to gather evidence against offenders attempting unlawfully to obtain, disclose, sell or offer to sell personal data in contravention of the above legislation.

NHS Services

The three NHS counter fraud services (England/Wales, Scotland and Northern Ireland) use directed surveillance to tackle fraud and corruption within the NHS - either by practitioners, patients, staff or contractors - which cheats taxpayers and takes valuable resources away from patient care. The England/Wales body - the Counter Fraud and Security Management Services Division of the NHS Business Services Authority - also investigates breaches in security which put patients and NHS assets at risk. NHS fraud can be committed by practitioners, patients, staff and contractors. Since 1999, NHS counter fraud work has brought 482 successful prosecutions and recovered over £57m from fraud and unlawful action in the NHS.

Port of Dover Police

The Port of Dover Police are responsible for law enforcement and the security of passengers and staff in the port. Conducting directed surveillance enable them to secure evidence necessary to prevent and detect criminal offences in the docks' area and to undertake their public safety functions. They provide round the clock policing, investigative and prosecuting services to the owners, tenants and users of shipping premises, ferry and cruise terminals. Specialist support and assistance is provided from other police forces when required.

Royal Mail

The Royal Mail Group Ltd uses directed surveillance in its capacity as universal postal service provider. This enables it to fulfil its long standing role of investigating criminal offences such as theft of and/or conspiracy to steal mail in course of transmission by post, including mail containing passports and identity information as well as financial items and valuables, postage evasion fraud and people selling stolen goods on the internet. Directed surveillance can help provide evidence of theft or other crime.

Royal Pharmaceutical Society of Great Britain

The RPSGB is the regulatory body for pharmacists in England, Scotland and Wales. It uses directed surveillance to ensure pharmacies comply with statutory standards of the conduct, performance and fitness to practise. This includes enforcing legislation applying to the people and premises involved in the sale/supply of medicines and handling of controlled drugs and hazardous chemicals. It also ensures that controlled drugs, poisons and prescription medicines are managed and traded in accordance with relevant legislation and by correctly authorised individuals. Where necessary, it prosecutes breaches.

8. Consultation outcome

8.1 A public consultation which took place from 17 April to 10 July 2009 invited views on, amongst other things, all relevant public authorities listed under RIPA, the ranks of officers able to authorise RIPA techniques, and the statutory purposes for which techniques can be used. Of the 222 responses received, most were broadly supportive of the Government's view that the public authorities listed in the Schedule to the draft Order had a continuing well-founded need to authorise the carrying out of directed surveillance or the conduct or use of covert human intelligence sources under RIPA when necessary and proportionate to do so. Only a handful of responses suggested greatly reducing the number of public authorities able to authorise these techniques under RIPA, but there was no consistency in which should be removed and none provided convincing reasons for removing them.

9. Guidance

9.1 Home Office statutory codes of practice under RIPA on covert surveillance and covert human intelligence sources are currently being revised in line with views expressed in the consultation. Additional guidance is provided by the Office of Surveillance Commissioners and (where appropriate) by the Intelligence Services Commissioner, who have the statutory responsibility to oversee the proper authorisation of these techniques under RIPA. The Home Office plans to make available a bespoke guidance manual and accredited training for local authorities authorising directed surveillance or covert human intelligence sources.

10. Impact

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

10.2 An Impact Assessment has not been prepared for this instrument

11. Regulating small business

11.1 The legislation applies only to public authorities.

12. Monitoring & review

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

a) through the independent inspection and oversight by the Office of Surveillance Commissioners and (where appropriate) by the Intelligence Services Commissioner, who have statutory oversight responsibility for keeping under review the use by public authorities of covert techniques under Part II of RIPA); and

b) through the Investigatory Powers Tribunal which is made up of senior members of the judiciary and is independent of Government and has full powers to investigate and determine any proceedings or complaints falling within its jurisdiction.

13. Contact

13.1 Tony Cooper of the Covert Investigation Policy Team at the Home Office, 2 Marsham Street, London SW1P 4DF (telephone 020 7035 1218; e-mail tony.cooper3@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.