EXPLANATORY MEMORANDUM TO

THE REGULATION OF INVESTIGATORY POWERS (COVERT SURVEILLANCE AND PROPERTY INTERFERENCE: CODE OF PRACTICE) ORDER 2014

2014 No. 3103

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 bring into force a revised code of practice relating to covert surveillance and property interference by public authorities under Part II of the Regulation of Investigatory Powers Act 2000 ('RIPA') and to interference with property or wireless telegraphy under section 5 of the Intelligence Services Act 1994 and Part III of the Police Act 1997. The revised code will replace the previous version.

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

3.1 None.

4. Legislative Context

4.1 Section 71 of RIPA requires the Secretary of State to issue codes of practice relating to the exercise and performance of the powers and duties conferred or imposed by or under Part II of RIPA, section 5 of Intelligence Services Act 1994 and Part III of the Police Act 1997. This Order brings into force the code of practice prepared under section 71 relating to the carrying out of covert surveillance and to interference with property or wireless telegraphy under those Acts. The Order is subject to the affirmative resolution procedure and will come into force 21 days after the date on which the Order is made.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom. Some of the guidance set out in the Code of Practice applies only to England and Wales. Where there are limits on application to Scotland or Northern Ireland (or alternative domestic provision), this is clearly stated in the Code of Practice.

6. European Convention on Human Rights

6.1 Rt. Hon Mike Penning MP, 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 (Covert Surveillance and Property Interference: Code of Practice) Order 2014 are compatible with the Convention rights.'

7. Policy Background

7.1 The use of covert surveillance and the interference with property/wireless telegraphy is sometimes necessary to ensure effective investigation and enforcement of the law. RIPA requires that public authorities follow a clear authorisation process prior to using these powers. Authorisations granted under Part II of RIPA, Part III of the Police Act 1997 or section 5 of the Intelligence Services Act 1994, are subject to all the existing safeguards considered necessary by Parliament to ensure that investigatory powers are exercised compatibly with the ECHR. In particular, the substantive protections of Article 8 (right to respect for private and family life) are guaranteed by the express terms of primary legislation which only permit the exercise of these powers if the tests of necessity, proportionality and legitimate aim are satisfied. The revised code of practice will help ensure that the tests of necessity and proportionality are better understood by public authorities and applied lawfully and consistently to all applications to use directed or intrusive surveillance and to enter onto or interfere with property or with wireless telegraphy.

7.2 The revised code provides guidance in relation to the enhanced authorisation procedures that apply to local authorities. The Protection of Freedoms Act 2012 requires that local authorities seek judicial approval for their use of the Regulation of Investigatory Powers Act 2000 and the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources)(Amendment) Order 2012 introduced a serious crime threshold for local authorities to prevent the use of directed surveillance for lower level offences.

7.3 In addition to the above, a number of technical changes have been made throughout the document to reflect issues raised by practitioners and reflect best practice.

8. Consultation outcome

8.1 A public consultation which took place from 13 February to 27 March 2014 invited views on the revised code of practice. A number of organisations and agencies which rely on the powers in the course of their duties suggested amendments to improve the quality, clarity and accuracy of the codes. The Department considered all of the responses to the consultation and many of the suggestions have been adopted into the final draft Code of Practice.

9. Guidance

9.1 The code will be supplemented by guidance provided by the Office of Surveillance Commissioners and the Intelligence Services Commissioner, who have the statutory responsibilities to inspect and oversee the use by relevant public authorities of the covert techniques covered by the code.

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 Chief Surveillance Commissioner; and

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

13. Contact

The RIPA Team at the Home Office, 2 Marsham Street, London SW1P 4DF (telephone 020 7035 1216; e-mail RIPA@homeoffice.x.gsi.gov.uk) can answer any queries regarding the instrument.

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