

Another RIPA Review

by Ibrahim Hasan (Act Now Training)

The protection of civil liberties and the introduction of safeguards against the "Surveillance State" were major themes of the Conservative and Liberal Democrat election manifestos. Now that we have a Conservative Liberal alliance in government, civil servants are busy working on translating these themes into workable legislation. The end result will have a big impact on local authorities.

Before the election, both coalition parties promised to overhaul Part 2 of the Regulation of Investigatory Powers Act 2000 (RIPA) which regulates local authorities, amongst others, when conducting covert surveillance on citizens. They argued that such surveillance conducted to investigate minor offences and in a disproportionate manner. Incidentally Big Brother Watch published a report last month criticising town hall officials for the routine use of RIPA powers. Examples include "spying on" on parents to check they lived in a school catchment area and on homeowners to ensure they closed the lids on refuse bins.

On 13th July 2010, the Home Secretary Theresa May announced a review "focusing on which security powers could be scaled back in order to restore the balance of civil liberties." The review, to be carried out by Lord McDonald QC (a Liberal Democrat peer and former Director of Public Prosecutions), will cover six key areas including "the use of [RIPA] by local authorities, and access to communications data in general."

This will not be welcome news for local authorities who are still trying to implement the changes to RIPA after the last review conducted by the Labour Government. That review introduced two new codes of practice and a new statutory instrument which came into force on 6th April 2010 (See my previous article in the Local Government Lawyer entitled "Going Undercover" http://localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=1346%3Agoing-undercover&catid=60%3Ahousing-articles&Itemid=1).

The Home Secretary will report back on the findings of the latest review in the autumn. The Labour Party is arguing that the outcome is a forgone conclusion. It may well be right bearing in mind who is carrying out the review (a member of a party that is very much in favour of civil liberties and against state surveillance powers) and the commitment made in page 12 of the document entitled, "The Coalition: Our Programme for Government" (the Coalition Agreement), which states:

"We will ban the use of powers in the Regulation of Investigatory Powers Act (RIPA) by councils, unless they are signed off by a magistrate and required for stopping serious crime."

Furthermore, Security Minister Baroness Pauline Neville-Jones told ZDNet UK recently that some local authority uses of RIPA were not acceptable. "We will reduce the powers of local authorities," she said. "It's a question of how many bodies have powers and what powers they have. We want to create a situation which is less intrusive on the part of local authorities into the lives of ordinary citizens."

Is it really practical for local authorities to make an application to a magistrate's court each time they wish to conduct covert surveillance on a benefit fraudster or a fly tipper? One must also question whether, in the current financial climate, this new

process will be an appropriate use of diminishing local authority resources. Furthermore, if the definition of “serious crime” is to be taken from RIPA then, very few crimes investigated by local authorities will justify covert surveillance. According to section 81(2)(b), one of two tests have to be satisfied:

- “(a) that the offence or one of the offences that is or would be constituted by the conduct is an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more;
- (b) that the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose”

The ability of all public bodies, not just local authorities, to access communications data under Part 1 Chapter 2 of RIPA will also come under scrutiny by Lord McDonald in his review. Often these powers are used by, amongst others, benefit fraud investigators and trading standards officers to carry out mobile phone subscriber checks and to request itemised call records from communications service providers. Again these powers have often been misunderstood by the media and political parties, who feel they are yet another example of “Town Hall Snooping Laws.” It could be that they are withdrawn or made subject to the “serious crime test” discussed above.

Most local authority enforcement officers do not think it is right that they should be restricted in their use of covert tactics to enforce laws for which Parliament has given them a statutory responsibility. Of course RIPA is only a 'shield' and the absence of an authorisation does not prevent the surveillance activity; a point often missed by politicians and the media.

In the Coalition Agreement, under the heading “Civil Liberties”, there are a number of other proposals worth noting. These include the scrapping of the ID Cards scheme, the National Identity Register, the next generation of biometric passports and the ContactPoint database. The Labour Government established the latter as a national children’s database to provide demographic data on every child in the country, plus the name and address of any professional working with them. It was one of the recommendations from Lord Laming’s inquiry into the death of Victoria Climbié but was criticised by civil liberties groups and some children’s campaigners over privacy concerns. The question of what will replace ContactPoint, however, remains unanswered.

The Coalition Agreement also contains a proposal to further regulate CCTV. Over the years, concerns have been raised about the proliferation of CCTV cameras and the often confused justification for them. In June, a surveillance operation in parts of Birmingham with large Muslim populations was halted after it was revealed the move was linked to counter terrorism. Residents claimed they had been misled as the cameras were initially justified on the basis of tackling anti social behaviour. Some of the 218 cameras have now been covered with bags. It is not entirely clear as to how or why CCTV will be regulated further. The Data Protection Act 1998 and its CCTV Code of Practice already regulate overt CCTV. Covert CCTV is regulated by Part 2 of RIPA. So what is left to regulate? It could be that there is a limit placed on the amount of CCTV cameras that local authorities and others can install or that they have to be justified on safety or crime prevention grounds. Interestingly, the media recently discovered that a London CCTV camera is earning almost £1 million a year in fines from local motorists. The camera, located outside Clapham South underground station in south west London, has caught an average of 23 drivers a

day, each of which have been fined £100 for pulling into a bus stop outside the station to drop off passengers. Crime prevention or revenue raising?

This is a challenging time for local authority lawyers. The state of the public finances means that a lot of new legislation will have to be deciphered and explained but without any additional resources.

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