

The Royal Pharmaceutical Society
of Great Britain

**Regulation of Investigatory
Powers Act 2000**

Policy Statement

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1 Introduction

The Royal Pharmaceutical Society of Great Britain is a Charter body and is the regulatory and professional body for pharmacists in England, Scotland and Wales. The primary objective of the Society is to lead, regulate and develop the pharmacy profession.

The Society has responsibility for a wide range of functions, which combine to assure competence and fitness to practise. These include controlled entry into the profession, education, registration, setting and enforcing professional standards, providing support for improvement, dealing with poor performance, dealing with misconduct and removal from the register.

2 Inspection and Enforcement

The Society maintains the Inspectorate under Section 9 of the Poisons Act 1972, which places a duty on the Society to enforce the provisions of the Poisons and Pharmacy Acts, and to do so by inspection of registered retail pharmacy premises. The rationale for this is twofold, for law enforcement and the driving up of quality. This has a considerable benefit to both the public and to the profession.

The Inspectorate has been in existence for nearly 70 years and ensures that the Society fulfils its statutory enforcement duties and ensures that professional standards of practice are maintained. In addition to enforcement duties under the Poisons and Pharmacy Acts, the Society has been given the duty by the Secretary of State for the enforcement of many provisions of the Medicines Act 1968 concerning the sale and supply of medicines.

There are currently 27 pharmacy inspectors in Great Britain (all of whom are pharmacists with substantial experience). They have responsibility for an average of 550 registered retail pharmacies, the large majority of which are community pharmacies, although some hospitals and manufacturers have chosen to register pharmacies.

The inspectors visit pharmacies regularly to ensure that legal requirements and the relevant standards of practice are observed. The Inspectorate's functions encompass investigation, enforcement, education and advice. Whilst the inspectors act as advisers and enforcers of the Code of Ethics they do not have statutory powers of enforcement in this area. Similarly, the inspectors do not have enforcement authority in relation to the Misuse of Drugs Act 1971, but are able to provide valuable advice to assist pharmacists with compliance.

The Society employs 2 non-pharmacist inspectors who undertake investigations of a non-clinical nature and assist the pharmacy Inspectors.

3 Regulation of Investigatory Powers Act 2000 (RIPA)

The right to respect for one's private and family life is enshrined in Article 8 of the Human Rights Act 1998 which came into force on 2 October 2000. The Act renders it unlawful for a public authority to act in a way which is incompatible with any of the Convention rights. As with many of the rights in the Act, the right to privacy is not an absolute right and is subject to certain exemptions.

FITNESS TO PRACTISE AND LEGAL AFFAIRS – INSPECTORATE

The Regulation of Investigatory Powers Act 2000 (RIPA) and regulations provide an exemption from the right to privacy in certain circumstances, and allow public bodies to interfere with the individual's right to privacy in circumstances which amount to covert surveillance.

The Royal Pharmaceutical Society of Great Britain is listed in Part II of Schedule 1 of RIPA as a public authority that can authorise directed covert surveillance under section 28 of RIPA.

The Act is in force in England and Wales, but by virtue of the Regulation of Investigatory Powers (Authorisations Extending to Scotland) Order SI 2007/934 (as amended), the Society's authority extends to Scotland.

The Society is committed to implementing the provisions of RIPA to ensure that any covert surveillance carried out during the course of investigations is undertaken properly and that the surveillance is necessary and proportionate to the alleged offence/s. The Society seeks to ensure that the policy remains consistent with the Society's Charter objectives.

The purpose of the Society's policy is to ensure:

- that proper procedures are in place in order to carry out covert surveillance;
- that an individual's right to privacy is not breached without justification and unless a breach is necessary;
- that proper authorisation is obtained for covert surveillance;
- that proper procedures are followed;
- and that covert surveillance is considered as a last resort having exhausted all other avenues.

(Surveillance includes monitoring, observing or listening to persons, their movements, their conversations, or other activities or communication.)

4 Training

All investigators and authorising officers are adequately trained on the provisions of RIPA to ensure that the requirements of the Act are complied with. Regular up-date training will be provided to ensure that all personnel involved with the operation of the Act are aware its requirements and training records will be maintained.

5 Directed covert surveillance

Covert surveillance enables public bodies to detect and/or prevent a crime and/or a breach of professional standards that has been, or is about to be, committed and also to obtain information about an individual's or organisation's activities.

Directed covert surveillance is defined under s26 (2) of RIPA, as being covert, but not intrusive and is undertaken:

- for the purposes of a specific investigation or specific operation,
- in such a manner that is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
- otherwise than by way of an immediate response to events, in circumstances the nature of which it would not be reasonably practicable for an authorisation under Part II of the 2000 Act to be sought for the carrying out of the surveillance.

Directed covert surveillance (s28 of the Act) may ONLY be authorised by the Society for 1 (or more) of 3 reasons listed below:

- i) **for the purpose of preventing or detecting crime or for preventing disorder**
- ii) **in the interests of public safety**
- iii) **for the purpose of protecting public health**

Material obtained through covert surveillance will be logged and recorded and may be used as evidence at criminal and/or civil proceedings (subject to rules relating to admissibility of evidence).

6 Covert Human Intelligence Sources (CHIS)

The Society is not permitted to authorise the use of a CHIS i.e. person who establishes or maintains a personal or other relationship for the purpose of

- i. covertly using the relationship to obtain information or provide access to information about another person or
- ii. covertly disclosing information obtained by the use of such a relationship.

See test purchases below.

7 Intrusive Surveillance

The Society is not permitted to authorise 'intrusive surveillance'. This is defined in the Act as covert surveillance carried out in relation to anything taking place on any residential premises or in any private vehicle AND involves the presence of an individual ON the premises or IN the vehicle or is carried out by means of a surveillance device.

This does not preclude Society inspectors carrying out directed covert surveillance on a person and noting vehicle registration plates and movements in and out of residential properties.

8 Test purchases

These are usually undertaken when the Society has received allegations that sales of restricted medicines (e.g. pharmacy only and prescription only medicines) are being made in the absence of a pharmacist. Test purchases involve a member of the inspectorate entering a pharmacy in an area where they are unknown in order to purchase a restricted medicine and make a request to speak to the pharmacist on duty. Test purchases may also be used as a means to test a pharmacist's competence.

Test purchases do not require authorisation under RIPA.

9 Application for authorisation

All applications for authorisation of directed covert surveillance will be made in writing using standard template proformas which comply with RIPA. Inspectors will complete the proformas, identifying the following information:

- Describe the conduct to be authorised and the purpose of the investigation or operation.

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- Identify on which grounds the directed surveillance is necessary under Section 28(3) of RIPA.
- Explain why directed surveillance is necessary in this particular case.
- Explain why the directed surveillance is proportionate to what it seeks to achieve
- The nature of the surveillance to be authorised, including any premises or vehicles involved.
- Investigation or operation to be carried out.
- The identities, where known, of those to be subject of the directed surveillance.
- Explanation of the information which it is desired to obtain as a result of the directed surveillance.
- Details of any potential collateral intrusion and why the intrusion is justified and include a plan to minimise collateral intrusion.
- Details of confidential information likely to be obtained and indicate the likelihood of acquiring any confidential information.
- Applicant's details.
- A subsequent record of whether authorisation was given or refused, by who and the date and time this happened.

10 Authorising Officers

A Director (Grade 7) is named in secondary legislation (SI 2010/521) as an officer of the Society who can authorise covert surveillance. No other member of staff is permitted to provide authorisation. The Authorising Officer **must not** be involved in any investigation that he authorises and will be suitably trained to undertake the task.

Authorising officers will not authorise any covert surveillance other than directed covert surveillance and will decide whether the surveillance is necessary and proportionate to the alleged offences. The authorising officer's comments explaining why in his/her view the directed surveillance is necessary and proportionate will be entered onto the authorisation form. The risk of collateral intrusion will also be taken into account when considering authorisation of surveillance. (See below for further details).

11 Written authorisation

Authorisation should be in writing and will cease to have effect at the end of the 3-month period from when it was obtained.

A date for a review of the authorisation will be set by the authorising officer to ensure that continuing surveillance is necessary. This will usually be at 14 days intervals.

12 Oral authorisation

In urgent cases an authorisation may be given orally. The reason why, under the circumstances, it is not possible to obtain written authorisation should be stated on the application form. Oral authorisation of directed covert surveillance should be the exception rather than the norm and records should always be kept as soon as reasonably practicable. A review of the oral urgent authorisation should take place 24 hours after the authorisation was obtained.

A case will be considered urgent if the time before the authorising officer was able to grant the authorisation would, in the judgment of the person giving the authorisation, be likely to endanger life or to jeopardise the investigation or operation for which the authorisation is being

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given. Authorisations will not be regarded as urgent in situations where the need for authorisation has been neglected, or the urgency is of the authorising officer's or applicant's own making.

13 Proportionate

The concept of proportionality runs throughout human rights legislation. The authorising officer will seek to ensure that the intended action is both proportional **and** necessary to the outcome it seeks to achieve. This will involve balancing the intrusiveness of the activity on the target and others who might be affected by it against the need for the activity in operational terms. The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other, less intrusive, means. All such activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair.

Where directed surveillance is carried out in order to detect criminal offences or to protect patients from exposure to harm through dangerous or incompetent practice it is likely to be considered proportional to the desired objective.

For example, where Prescription Only Medicines are allegedly being supplied in the absence of a pharmacist, there will be a danger that a patient may be given incorrect medicines or advice, which could lead to public harm. In these circumstances covert surveillance in order to detect the crime is likely to be considered proportionate.

However, where an alternative equally effective method of investigation exists which does not infringe an individual's privacy rights or, where the aim of the covert surveillance is a trivial matter, then the proportionality concept may not be satisfied.

14 Necessary

The authorising officers will only grant an authority if covert surveillance is necessary in the circumstances of the particular case and on one or more of the three grounds set out in s28 (3) (See above).

The authorising officers will give consideration to alternative means of obtaining the information required e.g. by obtaining statements from witnesses (if available).

15 Collateral intrusion

Authorising officers will take into account the risk of collateral intrusion into the privacy of persons other than those who are the direct subjects of the operational investigation, such as innocent bystanders.

Measures will be taken wherever practical to avoid unnecessary intrusion into the lives of those not directly involved in the operation.

For example, an Inspector may undertake an investigation into alleged unsupervised supplies of Prescription Only Medicines from a pharmacy and obtain authorisation to carry out covert surveillance of a pharmacy to identify when a pharmacist arrives at or leaves a pharmacy. If the Inspector suspects that offences under the Medicines Act 1968 are being committed in relation to the supply of Prescription Only Medicines in the absence of a pharmacist, then they will enter the pharmacy and identify themselves. However, the Inspector will restrict their

investigations to prescriptions that had been dispensed that day only in the absence of the pharmacist.

Before granting an authorisation, the authorising officer will take into account the possibility that similar surveillance activities are being undertaken by other public authorities.

16 Confidential information

Special consideration will be given to authorisations that are likely to uncover confidential personal information, confidential constituent information or confidential journalistic material. Confidential personal information is information held in confidence relating to the physical or mental health or spiritual counselling concerning an individual (living or dead) who can be identified from it. In addition special consideration will be given to authorisations that are likely to uncover matters subject to legal privilege such as communications between an individual and his legal advisers. Inspectors acquiring confidential material concerning the object of the surveillance are likely to be a rare occurrence.

If confidential information is uncovered, it will not be retained or copied unless necessary for a specific purpose and will not be disseminated outside the Society unless expressly authorised by the authorising officer, in accordance with necessary legal advice. All confidential information will be destroyed as soon as it is no longer necessary to retain it for the specified purpose.

17 Review

Regular reviews will take place once authorisation has been granted. The frequency of reviews will depend on each case and will be considered at the outset. However, it is anticipated that, a review will usually take place 14 days after a written authorisation has been granted and 24 hours after an urgent authorisation has been granted. More frequent reviews by the authorising officer may be necessary where there are any proposed or unforeseen changes to the nature or extent of the surveillance that could result in further intrusion into the private life of any person or where surveillance provides access to confidential information or involves collateral damage. Records of reviews will be maintained in the Central Record for three years and reviews will be in writing on standard review proformas.

18 Renewals

It will be rare that renewals of authorisations will be required in order to continue surveillance. However, if they are required, applications for renewals of authorisation will be made in writing using a standard renewal proforma. Any person who would be entitled to grant a new authorisation can renew an authorisation.

If the authorising officer considers it necessary for the authorisation to continue then it may be renewed as follows:

- For an ordinary authorisation, renewed for a period of up to three months
- Renewals may also be granted orally in urgent cases and last for a period of 72 hours

Applications for renewal will not be made until shortly before the authorisation period is drawing to an end and renewals will take effect at the time at which the authorisation would have ceased to have effect but for the renewal.

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All applications for renewals will contain the following information:

- Renewal numbers and dates of any previous renewals.
- Detail any significant changes to the information as listed in the original authorisation as it applies at the time of the renewal.
- Detail the reasons why it is necessary to continue with the directed surveillance.
- Detail why the directed surveillance is still proportionate to what it seeks to achieve
- Indicate the content and value to the investigation or operation of the information so far obtained by the directed surveillance.
- Give details of the results of the regular reviews of the investigation or operation.

Records of all renewals will be maintained in the Central Record.

19 Cancellation

The authorising officer who granted or last renewed the authorisation will cancel that authorisation, if he is satisfied that the surveillance no longer meets the criteria upon which it is authorised.

Where the authorising officer is not available, another authorising officer will undertake this role. The cancellation of the surveillance must be in writing using the standard proforma for cancellation. As soon as the decision is made to cancel the authority, an instruction will be given to those carrying out the investigation to stop all surveillance. The date and time of the instruction to cease surveillance must be recorded in the Central Record and the notification of cancellation, where relevant

20 Record keeping

A Central Record of all applications, renewals, reviews and cancellations of authorisations for directed covert surveillance will be maintained by the Society. The Chief Inspector will oversee the maintenance of the Central Record. This record will be held for three years along with the original proformas. All information retained by the Society is maintained in accordance with Data Protection Act 1998 principles. RIPA authorisations should be forwarded electronically to the Chief Inspector for the purposes of recording in the Central Record. Trained gatekeepers will ensure that applications and authorisations receive appropriate oversight.

An annual report on RIPA authorised activity will be made to the RPSGB executive.

21 Surveillance equipment

The covert use of technical surveillance equipment (such as cameras) is limited. All surveillance equipment for covert use will be held centrally by the Chief Inspector and a record will be made in the Technical Surveillance Equipment register each time such equipment is deployed. This record will be cross referenced with the unique reference number of the RIPA authorisation. The Technical Surveillance Equipment register will be held with Central Record.

22 Material obtained

Material obtained as a result of an investigation involving covert surveillance will be afforded special protection in relation to handling and storage.

Confidential information will not be retained or copied unless it is necessary for a specific purpose.

All material obtained as a result of having undertaken the directed covert surveillance will be recorded and logged in the inspectors' notebook in accordance with usual procedures for logging of evidence.

Confidential information will only be disseminated outside the Society where this has been expressly authorised by the authorising officer having taken the necessary legal advice.

Reasonable steps will be taken to ensure that confidential information is securely stored and cannot fall into the wrong hands.

All confidential information will be destroyed as soon as it is no longer necessary to retain it for the specified purpose.

Regular review of material obtained as a result of directed surveillance will ensure that material is destroyed when its retention can no longer be justified.

23 Complaints

23.1 Independent Tribunal

RIPA establishes an independent tribunal and this tribunal is made up of Senior Members of the Judiciary and the legal profession and is independent of the government. The tribunal has full powers to investigate and decide any case within its jurisdiction.

If you have any reason to believe that you have been subject to unauthorised covert surveillance by any member of the Society's staff or you wish to complain about any other aspect of the Society's operation under the Act.

The details of the Independent Tribunal are as follows:

The Investigatory Powers Tribunal
PO Box 33220
London
SW1H 9ZQ.

Tel: 0207 035 3711

Website address: www.ipt-uk.com

23.2 Society's complaints procedures

The Society also operates an internal complaints procedure and full details are available on our website, www.rpsgb.org.

Complaints can be e mailed to us at complaintsaboutsociety@rpsgb.org or sent to the Society

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at:

Royal Pharmaceutical Society of Great Britain
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24 Resources

Royal Pharmaceutical Society of Great Britain: www.rpsgb.org

Covert Surveillance and Property Interference Revised Code of practice pursuant to Section 71 if RIPA 200: <http://security.homeoffice.gov.uk/ripa/publication-search/general-publications/ripa-cop/covert-surveil-prop-inter-COP2835.pdf?view=Binary>

Office of Surveillance Commissioner's website: www.surveillancecommissioners.gov.uk