



Office of Surveillance
Commissioners

ANNUAL REPORT

of the Chief Surveillance Commissioner
to the Prime Minister and
to Scottish Ministers for **2003-2004**

ANNUAL REPORT

of the Chief Surveillance Commissioner

to the Prime Minister and

to Scottish Ministers for **2003-2004**

Chief Commissioner:

The Rt. Hon. Sir Andrew Leggatt

Presented to Parliament by the Prime Minister
pursuant to section 107(3) of the Police Act 1997

28th June 2004

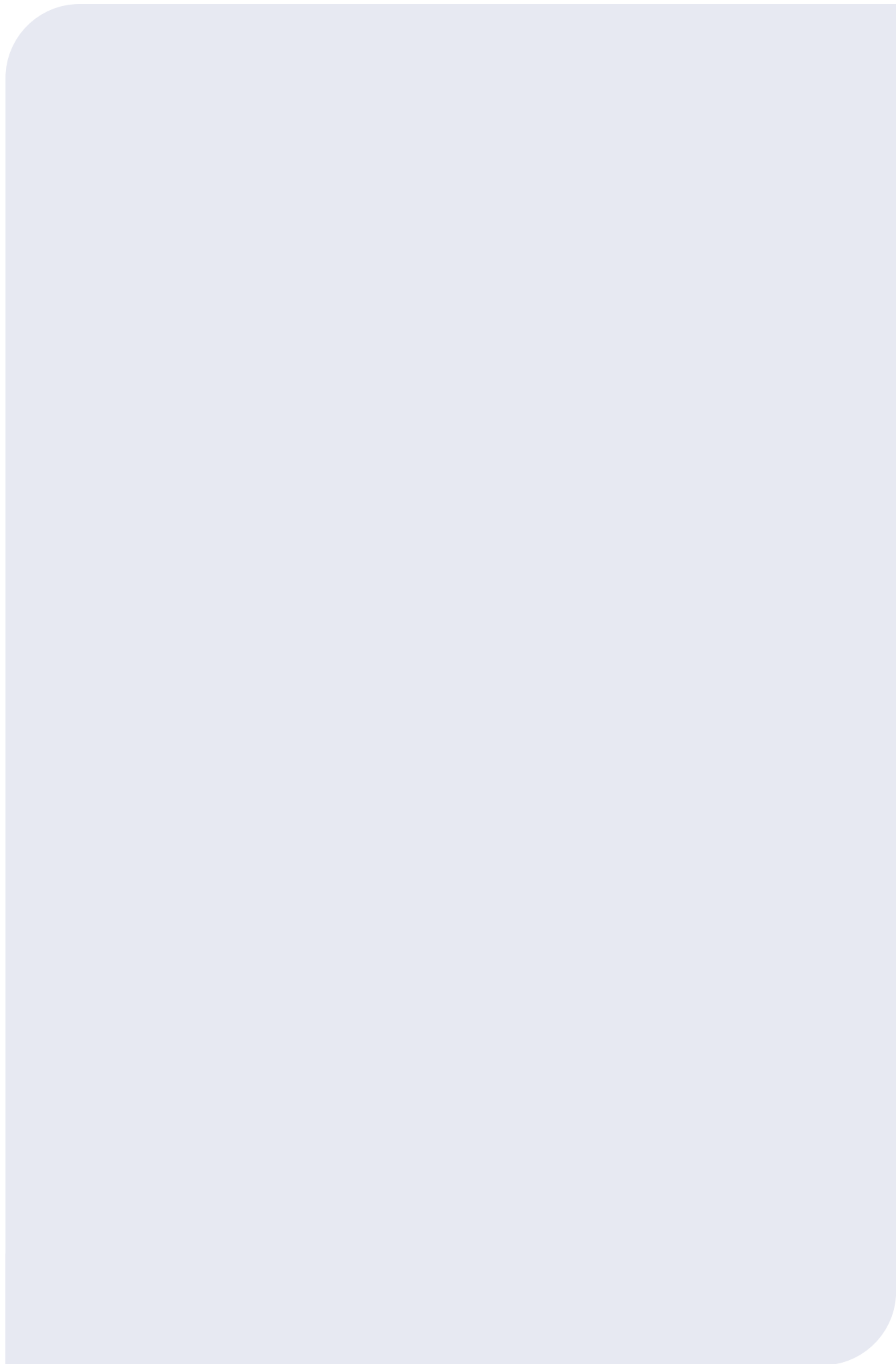
Ordered by the House of Commons
to be published 29th June 2004

Laid before the Scottish Parliament
by the Scottish Ministers

28th June 2004

HC 668

SE/2004/109



Contents

	<i>Page</i>
Introduction	2
Overview of the year	2
The Statutory provisions	3
Discharge of my functions	4
<i>Oversight</i>	
<i>Appeals by authorising officers</i>	
<i>Irregularities</i>	
<i>Reporting to the Prime Minister and to Scottish Ministers</i>	
<i>Relationship with other Commissioners</i>	
Organisation of OSC business	6
Property interference and intrusive surveillance	6
<i>Statistics</i>	
<i>Property interference</i>	
<i>Intrusive surveillance</i>	
Dealing with law enforcement agencies	7
Directed surveillance and CHIS	9
<i>Statistics</i>	
<i>Directed surveillance CHIS</i>	
Inspections generally	10
Inspections of law enforcement agencies	11
<i>Good and bad practice</i>	
<i>Recurring themes</i>	
Inspections of Government Departments and related bodies	12
Inspections of local authorities	13
<i>England and Wales</i>	
<i>Scotland</i>	
Inspections of National Health Service	15
Inspections of other public bodies	16
Inspection priorities	16
The year ahead	17
Annexes	
Annex A Authorisations given under Part III of the Police Act 1997 since implementation	18
Annex B Analysis by offence of authorisations given under Part III of the Police Act 1997	19
Annex C Intrusive surveillance authorisations given under Part II of the Regulation of Investigatory Powers Act 2000 and the Regulation of Investigatory Powers (Scotland) Act 2000 since implementation	20
Annex D Analysis by offence of authorisations given under Part II of RIPA and RIP(S)A (2000)	21
Annex E Inspection priorities	22
Annex F Members of the Office of Surveillance Commissioners	24



The Rt. Hon. Sir Andrew Leggatt,
Chief Surveillance Commissioner

Introduction

This report covers the period from 1 April 2003 to 31 March 2004.

It is my duty to keep under review:

- (a) the performance of functions under Part III of the Police Act 1997 ('the 1997 Act');
- (b) (except in relation to the Interception of Communications and the Intelligence Services) the exercise and performance of the powers and duties conferred or imposed by or under Part II of the Regulation of Investigatory Powers Act 2000 ('RIPA'); and
- (c) the exercise and performance of the powers and duties conferred or imposed by or under the Regulation of Investigatory Powers (Scotland) Act 2000 ('RIP(S)A').

In practice, this covers all covert activities (except telephone and mail interception) carried out by all public authorities, except the intelligence services. Although Part III of RIPA, relating to encryption, is also within my statutory responsibility, it is still not in force.

In performance of my duty under all three Acts to report annually, I have once again prepared a combined report.

Overview of the year

Part III of the 1997 Act has been in force for over five years now and Part II of RIPA and the relevant parts of RIP(S)A for almost four years.

The numbers of property interference and intrusive surveillance authorisations (2,483 and 447 respectively) are much the same as last year. I continue to be satisfied that these authorisations are given a high level of attention by authorities. This is only to be expected, observing that every authorisation is signed by a Chief Officer, and routed through OSC before being approved or scrutinised by a Commissioner.

The numbers of authorisations for directed surveillance and Covert Human Intelligence Sources (CHIS) current at the end of the year, 5,830 and 5,000 respectively, show a slight increase in the use of directed surveillance (by law enforcement agencies)

compared with last year, whilst the use of CHIS remains comparable. In my 2002-2003 report, I stated that the use of these powers continued to cause difficulties. Though matters are improving, the management of directed surveillance is still uneven and there is still a tendency not to recognise as CHIS sources who should be so recognised.

The Assistant Commissioners and Inspectors are achieving considerable success through the programme of inspections, both in terms of quality and in increased productivity as compared with last year. This success is due not only to the dedication and expertise of those who carry out the inspections but also to their bearing in mind that their function is to assist and not merely to criticise. I have now drawn up a protocol for prioritising the inspection of local authorities, found under the 'Inspection Priorities' section of this report.

I am pleased to report that since these inspections began in May 2001, all 442 local authorities have now been inspected. Law enforcement agencies continue to be inspected annually.

It is to be noted that the introduction of Part III of RIPA (relating to encryption) continues to be deferred by the Home Office. That Part provides for the acquisition of the means to access or decrypt protected electronic data. The use of information security and encryption products by terrorist and criminal suspects is, however, not yet as widespread as had been expected when the legislation was approved by Parliament four years ago. Meanwhile the National Technical Assistance Centre (a facility managed by the Home Office to undertake complex data processing) is enabling law enforcement agencies to understand protected electronic data, so far as necessary. I am assured that the need to implement Part III of RIPA is being kept under review.

The Home Office undertook a public consultation exercise in March 2003 on Part I Chapter II of RIPA 2000, inviting views on 'Respecting Privacy and Protecting the Public from Crime'. Disappointingly, the response to this consultation published January 2004, was extremely limited. I have considered the suggestions which might be thought to affect OSC and have concluded that they do not necessitate a change of practice. I shall continue to promote public confidence in the conduct and oversight of surveillance activities undertaken by public authorities by ensuring that the OSC website is kept up to date.

The Statutory Provisions

The purposes and main provisions of Part III of the 1997 Act, Part II of RIPA and RIP(S)A that are relevant to oversight of covert surveillance, together with an account of the statutory functions of the Commissioners, are set out in my Annual Report for 2000-2001 and on our website www.surveillancecommissioners.gov.uk.

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003 came into force on 5 January 2004. Articles 2 and 3

of the Order amend Schedule 1 to RIPA 2000 by adding to it a number of new public authorities including the Information Commissioner, the Northern Ireland Prison Service, the Office of Fair Trading, the Office of the Police Ombudsman for Northern Ireland and the Postal Services Commission. My office hosted a useful meeting of the bodies concerned before the Order came into force. No such Order has yet been made in Scotland under RIP(S)A.

Apart from adding public authorities, the important feature of the statutory instrument was that it prevented all local authorities (and many other authorities) from carrying out directed surveillance and from using or conducting CHIS, except on the ground that an authorisation is necessary for the purpose of preventing or directing crime or of preventing disorder. Because they are no longer allowed to authorise covert activities in the interests of public safety or for the purpose of protecting public health, these public authorities can no longer conduct some operations which formerly were usefully and properly within their compass. The scope of their revised powers may merit review.

The Independent Police Complaints Commission (Investigatory Powers) Order 2004 came into force on 1 April 2004. Part II of the Police Reform Act 2002 provides for a new system for handling complaints from the public against the police in England and Wales. Within that system the new Commission can carry out its own investigations, independently of the police, and will have its own investigators for that purpose. The Order enables Commission investigators to exercise the full range of powers in relation to covert surveillance and covert human intelligence sources, and unusually their covert operations can be authorised by any of their 18 Commissioners.

The Explanatory Note which was published with the Order was unfortunately defective, because it asserted that the Order gave a deputy chairman of the IPPC the power to appeal against a decision of mine “to refuse or quash an authorisation.” The Order does no such thing: I do not refuse or quash authorisations and by statute there is no appeal against a decision of mine. If the Order had been shown to OSC while it was still in draft, the mistake would have been avoided.

The Crime (International Co-operation) Act 2003 also came into force on 1 April 2004. The Act amends RIPA 2000 to provide for foreign surveillance operations in the United Kingdom. The Act permits foreign police and customs officers in hot pursuit to conduct intrusive and directed surveillance in the United Kingdom for up to five hours before domestic police forces or HM Customs & Excise decide whether to take over the operation.

Discharge of my functions

Oversight

The main functions of the Office of Surveillance Commissioners (OSC) are delivered through Commissioners’ oversight of authorisations, inspections by Inspectors and

Assistant Commissioners, and follow-up visits by Commissioners to law enforcement agencies. Meetings of the Commissioners, Assistant Commissioners and Inspectors are usually held three times a year. Members of the OSC also participate in meetings with other bodies and attend conferences in order to assist public authorities to improve their understanding of the legislation and compliance with it.

I communicate with the Secretary and Chief Surveillance Inspector when necessary by fax, telephone or encrypted e-mail. Every week when we meet, they report to me and we discuss all aspects of OSC business; I personally review property interference and intrusive surveillance authorisations; and I send to Chief Officers with a covering letter the reports that I receive of inspections of their authorities.

In the course of the year all police forces in the United Kingdom have been visited either by one of the Commissioners or by myself. Visits have also been made to the other law enforcement agencies, including the National Crime Squad (NCS), HM Customs and Excise (HMCE), the National Criminal Intelligence Service (NCIS) and the Scottish Drugs Enforcement Agency (SDEA), as well as to the Inland Revenue, the Department of Works and Pensions (DWP) and HM Prison Service.

These visits enable Commissioners to establish what progress has been made in the implementation of recommendations made by Inspectors. They also provide an opportunity for discussion of relevant issues that I believe is helpful to Chief Officers as well as to Commissioners.

There have been four meetings of Commissioners, Assistant Commissioners and Inspectors in the year under review. These are valuable meetings that allow Commissioners to consider matters of interpretation and make collective decisions. The meeting also enables them to discuss issues arising from the inspections undertaken by the Assistant Commissioners and Inspectors and ensure a consistent approach. Guidelines are issued periodically to assist public authorities on points of interpretation and practice.

Appeals by authorising officers

There have been no appeals by authorising officers during this reporting period.

Irregularities

Although some law enforcement agencies are quick to report to me any serious irregularities in Police Act or RIPA processes, I intend calling upon all public authorities to report such occurrences without delay so that the implications can be quickly assessed and, where appropriate, further enquiries made.

Reporting to the Prime Minister and to the Scottish Ministers

I have had no occasion to report to the Prime Minister or to the Scottish Ministers during the year on anything relating to any of the matters with which I am concerned.

Relationship with other Commissioners

In November 2003 I explored with those Commissioners who are concerned respectively with Intelligence, Interception of Communications, and Information, and with the President of the Investigatory Powers Tribunal the possibility of identifying and discussing matters of common interest. We did not identify any matters which warranted discussion for the time being. But we regard ourselves as having established a channel of communication of which we shall not hesitate to take advantage whenever the need arises.

Organisation of OSC business

The work of Commissioners continues to be set out as in my 2001-2002 report. Following a review of work allocated, the Assistant Commissioners have now assumed responsibility for the inspection of most Government departments and agencies as well as of local authorities. Inspectors continue to inspect law enforcement agencies and other local authorities. Some of the more important public authorities (other than law enforcement agencies) are inspected jointly by Assistant Commissioners and Inspectors.

I am grateful to them all, and to the Secretariat, for their support. Once again I express special gratitude for the exceptional achievement of the Assistant Commissioners and the Inspectors. They have undertaken a considerable number of inspections. But it is not just a matter of numbers. They have gone about their business not only with thoroughness, but also in a spirit of helpfulness which I believe has been appreciated by those inspected.

Minor changes have been made to the membership of the OSC. Following a decision by two of the five Inspectors to work for half as much time as before, one additional full-time Inspector has been recruited. A new Secretary to OSC joined us at the end of 2003. I am confident that she will continue to improve the support for the inspection process and to assist public authorities, while maintaining an effective and efficient Secretariat.

Property interference and intrusive surveillance

The powers and duties of the Commissioners in scrutinising, and deciding whether to approve, authorisations under the 1997 Act and under RIPA or RIP(S)A, are explained in my Annual Report for 2000-2001 and they are available from the OSC website.

Statistics

Statistics for property interference and intrusive surveillance authorisations for the past and previous years are set out in the tables at Annexes A and B. As before, I have

not identified separately the number of authorisations given by each agency since this could give a misleading impression of their operating practices. Drugs offences continue to be the major target of authorisations.

Property interference

Excluding renewals, there were 2,483 property interference authorisations during 2003-2004, showing little change from previous years (2,511 last year).

There were 522 renewals of authorisations made during 2003-2004, compared with 543 in the previous year. These figures are to be treated as no more than an indicator of the workload undertaken by the OSC, as some renewals refer to the same operation.

There were 279 cases where urgency provisions allowed for in the legislation were used. There were also three cases where authorisations were properly given in the absence of the Chief Officer. In the previous year these figures were 244 and two respectively. The increase in the number of urgent cases appears to be largely due to Chief Constables being away from the force dealing with heightened state of security matters.

Five authorisations were quashed, as compared with one last year. Two cases did not meet the serious crime criteria and the other three failed to meet the test of necessity. There were also three cases, in which, because they did not fall within the Act, there was no power to quash or cancel the authorisation.

Intrusive surveillance

There were 447 intrusive surveillance authorisations during 2003-2004, which represents a slight fall compared with 479 in the previous year. Renewals of authorisations appear to be increasing: 92 renewals were granted this year, compared with 80 in the previous year.

Urgency provisions were used in 30 authorisations, of which three were signed in the absence of the Chief Officer. This is comparable with last year.

Dealing with law enforcement agencies

In accordance with the practice of the Intelligence Commissioner and the Interception of Communications Commissioner I shall be asking Chief Officers to report to me all covert operations in which statutory requirements have not been observed and also any cases which fail in Court on account of defects in covert surveillance. A good example of default emerged from the cautionary case of *R v Sutherland*, in which a murder trial collapsed because an authorisation for directed surveillance had been exceeded. The best law enforcement agencies already adopt voluntarily the practice of

reporting. It ensures that errors and transgressions are brought to my attention as soon as they occur, and can, if necessary, be investigated by one of my Inspectors either at once or during the next inspection of the agency concerned.

Several topics continue to cause aggravation to some police forces. Foremost amongst them are those known as repeat burglaries, crime hotspots and executive authority. 'Repeat burglaries' refers to cases where surveillance is conducted in the homes of vulnerable, often elderly, people who have been repeatedly targeted by burglars; 'crime hotspots' refers to cases where in the light of experience police officers maintain special surveillance over all that occurs in particular public places; and 'executive authority' refers to the powers purportedly invoked for disciplinary reasons to conduct surveillance over officers of the public authority concerned. Although the Commissioners, when construing the relevant statutory provisions, attempt so far as possible to take account of practical difficulties experienced by police forces, there is a tendency to blame the Commissioners if the result is unsatisfactory.

I have found it necessary to update guidance about repeat burglaries. While the consent of the occupier to the installation of a surveillance device on the premises avoids the need for a property interference authorisation, authorising officers have to consider whether it is likely that the privacy of another person lawfully on the premises may be invaded. Any visitor who is not made aware of it is subject to covert surveillance. This is a technical breach of the visitor's Article 8 rights, although any complaint may usually be regarded as unlikely.

In law, the surveillance is intrusive because it is carried out in relation to things taking place on residential premises. But if the crime apprehended is not likely to result in a sentence of at least three years' imprisonment for a first offence, intrusive surveillance cannot be authorised, unless a series of offences amount to conduct resulting in a substantial financial gain. On the other hand, the surveillance is not directed, because it is intrusive. So no form of authorisation for covert surveillance is available. In such circumstances it is a matter for the force concerned whether to proceed without it. But it has to be recognised that these difficulties can only be resolved by legislation.

CCTV cameras are now very widespread. Facial recognition systems are increasingly deployed. When they are used at a crime hotspot for the prevention or detection of crime, an authorisation for directed surveillance should be sought, if there is any likelihood that "private information" will be obtained. The European Court is giving a wide interpretation to that expression. So it will usually be sensible to apply for an authorisation, especially since it is often easier to perceive likelihood after the event than it was to foresee it. Conscientious completion of the application form will incline the judge, if the authorisation is called into question, to uphold it, if he can. But for routine policing this is a tiresome exercise, because, instead of being able to apply a rule-of-thumb solution, each case must be separately assessed on its own facts.

I have some sympathy with this dilemma. But because the purpose of section 26(2) of RIPA is to apply Article 8 of the European Convention of Human Rights in the context of covert surveillance by safeguarding 'private information', it is difficult to envisage

an acceptable amendment that would materially ease operational difficulties, while continuing to afford that protection.

‘Executive authority’, is invoked by some law enforcement and other agencies when they would like to have power to investigate internal disciplinary matters by covert means. In the absence of crime, investigation by such means cannot be authorised. Where the prevention or detection of crime is not involved, it would be necessary to amend sections 28(3) and 29(3) of RIPA by adding ‘the investigation of disciplinary matters’ as a ground for authorising directed surveillance and CHIS. It is for the Secretary of State to decide whether that addition is necessary or desirable.

Directed surveillance and CHIS

Statistics for the use of directed surveillance and CHIS have been provided by all law enforcement agencies and the majority of other public authorities (with the exception of those authorities added to the Schedule under Statutory Instrument 2003 No. 3171 which came into effect in January 2004).

Law enforcement agencies granted some 26,986 directed surveillance authorisations during the period 1 April 2003 to 31 March 2004, with 4,713 still in place at the end of that period. This compares with 26,400 and 4,300 respectively in the previous year.

In relation to other public authorities, from which for the first time this year this type of statistical information has been requested, some 6,398 directed surveillance authorisations were granted during the same period of which 1,110 were still in place at the end of the reporting year. I shall refer separately to NHS bodies under the ‘Inspections of National Health Service’ section of this report.

It is unfortunate that only two of the 22 Welsh Health Authorities responded to our request for statistical data on directed surveillance. They had granted no authorisations.

There were 5,907 CHIS recruited by law enforcement agencies during the reporting year, of whom 5,544 were cancelled during the year and 4,865 remained in place at the end of March 2004. The figures for the previous year were 5,900, 5,400 and 5,000 respectively, indicating a fairly consistent use of such resources.

For the same period, 273 CHIS were recruited by local authorities, of whom 215 were cancelled during the year and 134 remained in place at the end of March 2004.

Matters relating to directed surveillance and CHIS are examined in detail during inspections of public authorities. They are also discussed with these agencies when they meet the Secretary and the Chief Surveillance Inspector. Interpretational and other significant problems are presented to the Commissioners for guidance.

The National Crime Squad is co-ordinating a major review of dedicated source units, properly trained and highly specialised teams of source handlers and managers. The

introduction of these units, which are now to be found in most UK police forces, has resulted in much tighter control of covert human intelligence sources, a proper focus on quality rather than quantity, and much improved applications, authorisations and risk assessments. While the creation of these units is to be welcomed, it is obvious that they need to be properly resourced.

Inspections – generally

There have been 263 inspections this year, compared with 276 last year. Priority continues to be given to law enforcement agencies over other public authorities as they are the most prolific users of the powers, the implications of misuse of the powers are potentially more serious, and only they have power to grant authorisations for property interference and intrusive surveillance.

It may be helpful to describe the principal way in which my duty is fulfilled to keep the covert activities of law enforcement agencies under review. Each of them is inspected by an Inspector over a period of 4 or 5 days. The purpose of the inspection is to examine the policies and procedures for covert surveillance authorised by statute. In course of a typical inspection of a police force the Inspector will interview key personnel at headquarters and divisions, including visits to relevant units, will assess progress by reference to the recommendations made in the previous year, and will identify significant issues. All these matters, together with his conclusions about the performance of the force concerned and his recommendations, are set out in a report.

In consonance with section 62(4)(b) of RIPA after every inspection the Inspector sends his report to me. After considering it I send it to the Chief Officer concerned with a covering letter, in which I highlight the recommendations that I consider critical. I now ask each Chief Officer for an action plan so that it can be appraised by a Commissioner or by me before visiting the authority concerned. During such visits we discuss the action plan and the Chief Officer responds to the report.

In my letters to Chief Officers I often emphasise the importance I attach to their personal role in ensuring that proper standards are set and maintained. It is not enough simply to agree an action plan. Steps must be taken to ensure that senior officers are briefed on the implementation of such plans and any obstacles to its fulfilment and that chief officers take whatever steps they consider necessary to ensure proper compliance with the legislation.

I am pleased to report that all 442 local authorities in Great Britain have now been inspected at least once. Although there have been considerable improvements in overall compliance with the provisions of the Police Act and RIPA since the Acts were introduced, there are indications that some public authorities are failing to maintain the required standards. The inspection process over the past year has revealed many examples of bad practice and quite basic errors.

From the analyses of performance given below it will be seen that quite a large proportion of local authorities had policies, procedures or training arrangements that were below the required standard. But this was ascertained on first inspection. In consequence of that inspection considerable improvement is to be expected, which, having been achieved, is likely in most cases to be sustained.

Where particular concerns have arisen, special additional inspections are conducted. In this period I have called for five such further inspections of police forces (four of these related to CHIS) and a further five of local authorities.

Inspections of law enforcement agencies

Law enforcement agencies may be defined as those bodies authorised to use intrusive surveillance. The Scottish Drug Enforcement Agency is included because of its close involvement with forces in Scotland although it is not yet empowered to authorise such surveillance. The 62 inspections of law enforcement agencies in the course of the year comprised 44 police forces in England and Wales, seven Scottish forces, the Police Service of Northern Ireland, the National Crime Squad, the National Criminal Intelligence Service, HM Customs and Excise, the Scottish Drugs Enforcement Agency, HM Forces in Northern Ireland, the Ministry of Defence Police, the Royal Navy Regulating Branch, the Royal Military Police, the Royal Air Force Police and the British Transport Police.

I reiterate the point made in last year's report that although I may recommend to chief officers what should be done, it is for them to decide how best to do it, especially when the resources available to them are very limited.

Good and bad practice

A further detailed list of good and bad practice points noted in the course of inspections of law enforcement agencies has been issued. Notable good practices included the development of central authorities bureaux staffed by subject-matter experts, the creation of effective quality assurance regimes, officers who are tasked to undertake covert operations acknowledging that they have seen and understood the terms of the authorisation (arising from *R v Sutherland*), erring on the side of caution when there is any doubt about whether an authorisation should be sought, and imaginative RIPA websites and newsletters.

Bad practice points included insufficiently specific applications and authorisations, exceeding the terms of the authorisation, delegation of reviews by authorising officers, codes of practice not readily available to practitioners and inadequate RIPA training and education.

During the year one of the national newspapers published an article in which it attributed to one particular law enforcement agency all or most of the items of bad

practice that OSC had identified. It cannot be too strongly emphasised that this represents a misunderstanding. The items of good and bad practice that we list are culled from reports of inspections of about 60 law enforcement agencies. They are intended to provide a checklist by reference to which the relevant department of each authority can consider its own practices. No individual agency is likely to be guilty of more than a few bad practices.

Various opportunities have been taken to underline the benefits of good practice and the perils of bad practice. Where commitments have permitted, Inspectors have addressed a wide range of national training events. These include courses for assistant chief constables, authorising officers, covert law enforcement managers and surveillance and source managers. Assistant Commissioners and Inspectors have also addressed appropriate seminars and conferences.

Recurring themes

On their visits to law enforcement agencies following inspections Commissioners have found that several topics often recur: training, the management of CHIS, the classification of confidential contacts, internal oversight by a central bureau, the quality and adequacy of applications and authorisations for directed surveillance, and crime hotspots (and the associated topic of private information) to which I refer later in this report. Matters of general discussion were the lack of co-ordination of training programmes in England and Wales, the limited use of covert activities in Scotland, and the sufficiency of 10.1 the Police Informant Management System (PIMS), although I understand that Police Act and RIPA training is now included in police probationer training in England and Wales, where I expect future inspections may be expected to recognise the benefit of that investment.

At paragraph 9.2.10 of my Annual Report last year I referred to the obvious importance of the Director of the SDEA being entitled to authorise the agency's covert operations. This recommendation has been ignored. I accordingly repeat it, with no less respect but with more force. I am satisfied that, unless the Director has this right, covert operations that have to be conducted by SDEA as agents for other forces are liable to be compromised.

Inspections of Government Departments and related bodies

Twelve inspections have been made of Government Departments and related bodies:

Department of Environment, Food & Rural Affairs

Department for Transport (TRANSEC & Vehicle & Operator Services Organisation)

Home Office (Immigration Service & Prison Service)

Financial Services Agency

Food Safety Agency
 Northern Ireland Office (Prison Service)
 Scottish Executive (The Common Services Agency, The Accountant in Bankruptcy,
 Scottish Prison Service)
 Welsh Executive (National Assembly for Wales).

A major reallocation of non-police authorities has resulted in the Assistant Commissioners assuming responsibility for the inspection of the majority of Government departments and agencies. The more complex will be examined jointly with Inspectors.

The twelve inspections to date represent a mixed variety of Government Departments who use covert surveillance for their areas of enforcement work. Some continue to make significant use of covert surveillance and CHIS powers. Most improved significantly as a result of implementing recommendations made from previous OSC inspections. It is unfortunate that a few remain consistently poor, with the same recommendations repeated after further visits. I intend to keep under review the question of whether those which make limited or no use of covert activities should continue to be entitled to authorise them.

Inspections of local authorities

England and Wales

The recommendation in my last Annual Report that parish councils should be removed from Schedule 1 of RIPA was accepted, and they have been duly omitted from the 2003 RIPA Order.

In view of the use made by police forces of local authorities' CCTV systems Assistant Commissioners and Inspectors in the course of their inspections routinely examine any arrangements made for this purpose. I regard it as good practice for a short protocol to be drawn up, preferably on the initiative of the police force, to formalise the procedures to be followed.

The OSC website was initially developed in June 2002 in order to promote public awareness and assist local authorities and other public bodies. It was updated in June 2003, with further amendments due at the end of April 2004. There have been 15,074 visits to the site during the year, almost 13,500 of which were made by different visitors. Our most popular web pages are our 'Home' page and our 'Advice and Guidance' section. A Welsh version of our website has also been produced. Overall, feedback from local authorities and other visitors continues to be very positive.

We have inspected 184 local authorities in England and Wales during the reporting year.

Whilst it is no part of the duty of OSC to instruct public authorities in the exercise of their powers and responsibilities under RIPA, Assistant Commissioners have tried to help them by addressing seminars when they could.

I have also agreed that the Secretary to OSC should set up, with local authorities, a group, much like that established for law enforcement agencies, to consider matters of practice and interpretation.

Metropolitan and Unitary Authorities

During 2003-2004 we inspected 34 Metropolitan and Unitary authorities, compared with 101 last year. This reduction is mainly due to the fact that most of the Unitary authorities were inspected last year.

There were 12 inspections of Metropolitan Councils. About two-thirds of all the 36 Metropolitan Councils now inspected had policies, procedures and training arrangements in place that were assessed as satisfactory or better, and two-thirds of the directed surveillance authorisations were rated satisfactory or above. Nearly half did not use CHIS.

There were nine inspections of Unitary Councils. Less than half of the 47 Unitary Councils now inspected had policies assessed as satisfactory or better, only a quarter had procedures in place that were assessed as satisfactory or better and nearly half had satisfactory or better training arrangements. Only half of the directed surveillance authorisations examined were rated as satisfactory or above. Nearly two-thirds did not use CHIS at all.

County Councils

The remaining five County Councils were inspected this year.

Over half of all the 34 County Councils now inspected had policies assessed as satisfactory to excellent, over two-thirds had procedures that were similarly rated and over half had training arrangements considered satisfactory or better. One-third did not use CHIS. Over two-thirds of directed surveillance authorisations were considered satisfactory or better.

District Councils

There were 138 inspections of District Councils during 2003-2004, compared with 63 last year. This is a significant increase largely due to our focus on Unitary authorities last year, whereas fewer inspections took place of other local authorities.

All 238 District Councils have now been inspected. The use of directed surveillance is better understood and the quality of authorisations has improved. Although the use of CHIS too is better understood, it is seldom authorised. By the time they were inspected over half the District Councils had drawn up policies and procedures together with suitable corporate training programmes. So compliance with RIPA has improved.

The use that is made of covert activities remains sparse and the standard of performance low. Effective leadership of a chief executive or senior lawyer continues to promote better results.

Scotland

The remaining five local authorities in Scotland were inspected together with one other Scottish council which was re-inspected on my instructions. Although a quarter of all 32 Scottish councils did not use directed surveillance at all and nearly three-quarters did not use CHIS, the majority had adequate RIP(S)A policies and procedures in place and nearly half had satisfactory training programmes.

Inspections of National Health Service

England and Wales

We have not inspected any NHS Trusts or Special Health Authorities during this reporting period, although the Counter Fraud and Security Management Services (CFSMS) was inspected in March 2003.

In my annual Report for 2001-2002, I recommended "(a) that all covert surveillance (and not only such as involves fraud or corruption) should be undertaken on behalf of all NHS bodies in England and Wales (the NHS Counter Fraud Service, as CFSMS was formerly known), and (b) that all NHS bodies should be removed from Part II of Schedule 1 of RIPA". In my Annual Report for 2002-2003, I recognised that the National Health Service was in a state of flux, and I decided to wait and see how the NHS was reorganised and whether covert surveillance powers were redispensed, before deciding how to keep under review the covert surveillance conducted by NHS bodies.

There are now 19 Special Health Authorities, 270 NHS Trusts in England and 22 Local Health Boards in Wales all of which are each entitled to conduct directed surveillance for the purpose of preventing or detecting crime or of preventing disorder and for the purpose of protecting public health. Directed surveillance and the use of CHIS for the 24 NHS Trusts and the 15 Area Health Boards in Scotland is carried out on their behalf by the Common Services Agency.

The 189 NHS Trusts in England which responded to a recent enquiry from my Office granted between them a total of 37 directed surveillance authorisations. Of these, two Trusts granted a total of 11 authorisations and the remaining 26 were granted by 17 Trusts. The 16 Special Health Authorities granted 27 authorisations, of which 20 were granted by CFSMS, which is and will continue to be, inspected by my Office. Five of the 20 CFSMS authorisations were referrals from NHS Trusts in matters of fraud and corruption in which CFSMS authorised and carried out the operations.

In the light of these statistics I must repeat my earlier recommendations but with more force. The use made of directed surveillance by these bodies (except for CFSMS) is

minimal, and their interest in it is correspondingly slight. Because they lack knowledge, resources, training and motivation, most of them are in the thoroughly undesirable position of being empowered to conduct directed surveillance without, however, being competent to do so. The risk that any covert activities that they do conduct will be unlawful is therefore considerable. That is why the only satisfactory solution is, as in Scotland, to vest in one central body such as CFSMS, the power to conduct covert activities on behalf of individual NHS Trusts and other Special Health Authorities. All of those bodies should then be removed from Schedule 1 of RIPA by the Secretary of State.

Inspections of other public bodies

Royal Mail (previously Consignia) and the Serious Fraud Office (SFO) have been inspected this year. The SFO reported a policy decision that it would be an unjustifiable use of resources to train and maintain its own personnel to conduct directed surveillance and to manage any potential informant. I regard it as contrary to principle that any public authority should enjoy a statutory power which its officers are not trained and equipped to exercise properly, because so long as the power is enjoyed its officers cannot be prevented from using it, whatever their level of proficiency or lack of it. The SFO has not suggested that there are any covert activities for the conduct of which they cannot call upon the police. In these circumstances it is for the Secretary of State to decide whether to exercise his power under section 30(5) of RIPA to amend Schedule 1 by removing the SFO from that Schedule.

Inspection priorities

Now that all local authorities have been inspected, prioritisation must be attempted. It is a difficult subject. The purpose of it is to decide how best to prioritise the inspections so that different types of authorities (other than law enforcement agencies) are inspected as often as necessary, while making efficient use of available resources.

No local authority conducts directed surveillance on a large scale and very few use or conduct CHIS. So frequent inspection would not be justified. On the other hand, lack of use militates against improvement resulting from practice, and a change of staff may immediately impair performance.

I have come to the conclusion that, for the second round of inspections of local authorities, Unitary, Metropolitan, London Borough, Scottish and Welsh Councils should be inspected in every other year, and County and District Councils once in every three years. This is set out in Annex E. Notably poor performers will need more frequent inspection, while those which are consistently good can be inspected less often. So far as possible, inspections by Assistant Commissioners and by Inspectors will be alternated.

The year ahead

In those public authorities where standards are beginning to slip I shall be looking for greater personal involvement and direction by Chief Officers. In order to facilitate comparison of the performance of public authorities, I am also considering the introduction of a system of assessment of their management of covert activities.

As I have earlier indicated, I shall be asking all Chief Officers to report to me all covert operations in which statutory requirements have not been observed and also any cases which fail in Court on account of defects in covert surveillance.

I shall continue to monitor technological developments closely, such as body scanners, facial recognition and Automatic Number Plate Recognition to ensure that their use does not transgress legislation for the protection of privacy.

We continue to await the introduction of Part III of RIPA (dealing with encryption matters) under which the Commissioners and I have responsibilities.

AUTHORISATIONS GIVEN UNDER PART III OF THE POLICE ACT 1997 (AS AMENDED) SINCE IMPLEMENTATION

	1999-2000			2000-2001			2001-2002			2002-2003			2003-2004		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
Total number of authorisations (not including renewals)	2,401	58	2,459	2,509	58	2,567	2,437	82	2,519	2,424	87	2,511	2,340	143	2,483

PRIOR APPROVALS

	1999-2000			2000-2001			2001-2002			2002-2003			2003-2004		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
Number of cases requiring approval *	311	12	323	367	8	375	299	7	306	281	18	299	269	21	290
Cases requiring prior approval by category:															
• Dwelling	198	7	205	238	7	245	204	3	207	190	13	203	174	7	181
• Office premises	60	1	61	45	0	45	37	2	39	38	2	40	29	10	39
• Hotel bedroom	50	4	54	77	1	78	56	2	58	49	3	52	63	4	67
• Matters subject to legal privilege	1	0	1	4	0	4	1	0	1	2	0	2	2	0	2
• Confidential journalistic material	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
• Confidential personal information	4	0	4	3	0	3	1	0	1	2	0	2	1	0	1

Annex B

**ANALYSIS OF AUTHORISATIONS GIVEN UNDER PART III OF THE POLICE ACT 1997
(AS AMENDED) SINCE IMPLEMENTATION BY OFFENCE**

	1999-2000			2000-2001			2001-2002			2002-2003			2003-2004		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
Assault	7	0	7	15	0	15	11	0	11	10	0	10	7	3	10
Burglary/Robbery	170	0	170	140	0	140	150	1	151	96	3	99	110	1	111
Conspiracy	34	9	43	37	1	38	33	1	34	47	0	47	35	0	35
Drug trafficking	1664	54	1718	1458	50	1508	1428	67	1495	1325	70	1395	1275	116	1391
Firearms offences (including armed robbery)	191	0	191	152	0	152	123	1	124	131	1	132	116	3	119
Kidnap/extortion	28	0	28	36	1	37	32	0	32	46	0	46	20	1	21
Money laundering	28	0	28	35	0	35	30	0	30	30	0	30	37	0	37
Murder/loss of life	199	9	208	198	6	204	156	8	164	168	3	171	170	2	172
Tax evasion	54	0	54	194	0	194	242	0	242	130	0	130	116	0	116
Terrorism	224	0	224	136	0	136	116	0	116	169	1	170	171	6	177
Other *	282	4	286	108	0	108	110	3	113	127	5	132	108	10	118

NB: Top 10 categories of offences. Will not add up to total authorisations since more than one offence can be included in an authorisation.

**AUTHORISATIONS GIVEN UNDER PART II OF THE REGULATION OF INVESTIGATORY POWERS ACT 2000
AND THE REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 SINCE IMPLEMENTATION**

	2000-2001			2001-2002			2002-2003			2003-2004		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
Total number of Authorisations (not including renewals)	302	10	312	480	13	493	461	14	475	437	10	447
Cases by category:												
• Private vehicle	112	5	117	178	7	185	173	3	176	126	0	126
• Residential premises	190	5	195	302	6	308	288	11	299	311	10	321

Annex D

**ANALYSIS OF AUTHORISATIONS GIVEN UNDER PART II OF THE REGULATION OF INVESTIGATORY POWERS
ACT AND THE REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 SINCE IMPLEMENTATION
BY OFFENCE**

	2000-2001			2001-2002			2002-2003			2003-2004		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
Assault	2	0	2	8	0	8	8	0	8	8	0	8
Burglary/Robbery	8	0	8	11	0	11	13	0	13	15	0	15
Conspiracy	7	0	7	14	1	15	13	0	13	4	0	4
Drug trafficking	131	7	138	226	8	234	175	10	185	162	8	170
Firearms offences (including armed robbery)	17	0	17	18	0	18	39	0	39	18	1	19
Kidnap/extortion	4	0	4	3	0	3	13	0	13	11	0	11
Money laundering	80	3	83	124	4	128	6	0	6	4	0	4
Murder/loss of life	3	0	3	15	0	15	126	2	128	139	1	140
Tax evasion	15	0	15	21	0	21	12	0	12	3	0	3
Terrorism	10	0	10	12	0	12	25	0	25	22	0	22
Other *	24	0	24	27	0	27	23	1	24	36	0	36

*Includes offences such as organised illegal immigration, bribery & corruption and sexual offences

Inspection Priorities

In the Chief Surveillance Commissioner's last annual report he mentioned the need to determine the priority, as well as the frequency, with which authorities should be inspected. Having had a further year's evidence from inspections the following priorities have been agreed:

Subject to annual inspection

Police forces for England and Wales
 Police forces for Scotland
 Police Service of Northern Ireland
 National Crime Squad
 National Criminal Intelligence Service
 HM Customs and Excise
 British Transport Police
 Her Majesty's Forces in Northern Ireland
 Inland Revenue
 Scottish Drugs Enforcement Agency
 HO Immigration Service and Prison Service
 Department for Work and Pensions
 Environment Agency
 Royal Mail

Subject to inspection every other year

British Broadcasting Corporation
 Department for Environment, Food and Rural Affairs
 Department of Health Counter Fraud Service
 Department of Trade and Industry
 Department of Transport
 Local Authorities – Unitary, Metropolitan, London Boroughs, Scottish & Welsh Councils
 Ministry of Defence Police
 Royal Air Force Police
 Royal Navy Regulating Branch
 Royal Military Police
 Scottish NHS Common Services Agency

To be inspected in rotation as quickly as first two categories allow

Financial Services Authority
 Health and Safety Executive
 Information Commissioner
 National Assembly for Wales
 NHS in England and Wales

Annex E

Northern Ireland Prison Service
 Office of Fair Trading
 Office of the Police Ombudsman for Northern Ireland
 Radio Communications Agency
 Royal Pharmaceutical Society
 Rural Payments Agency
 Scottish Accountant in Bankruptcy
 Scottish Environmental Protection Agency
 Scottish Executive Rural Affairs Department, Agricultural Sciences Agency and
 Fisheries Protection Agency
 Scottish Executive Rural Affairs Eggs and Poultry Marketing Offices, Meat and
 Livestock Inspection
 Scottish Executive Welfare Foods
 Scottish Prison Service
 Serious Fraud Office
 Special Health Authority
 UK Atomic Energy Authority
 Vehicle & Operator Services Agency

To be inspected every 3 years

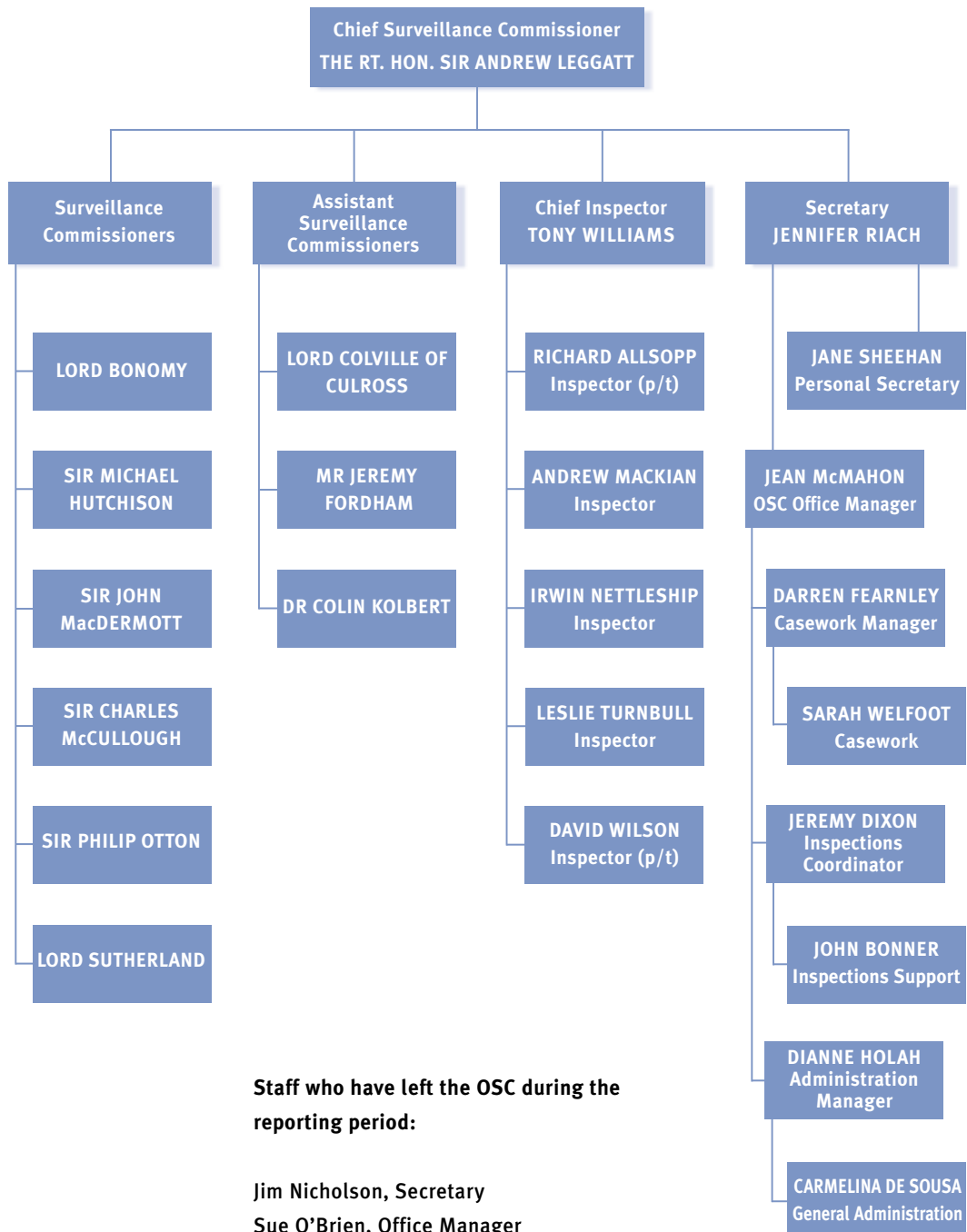
Local Authorities – County & District Councils

Inspection priority to be determined once first inspection has been undertaken

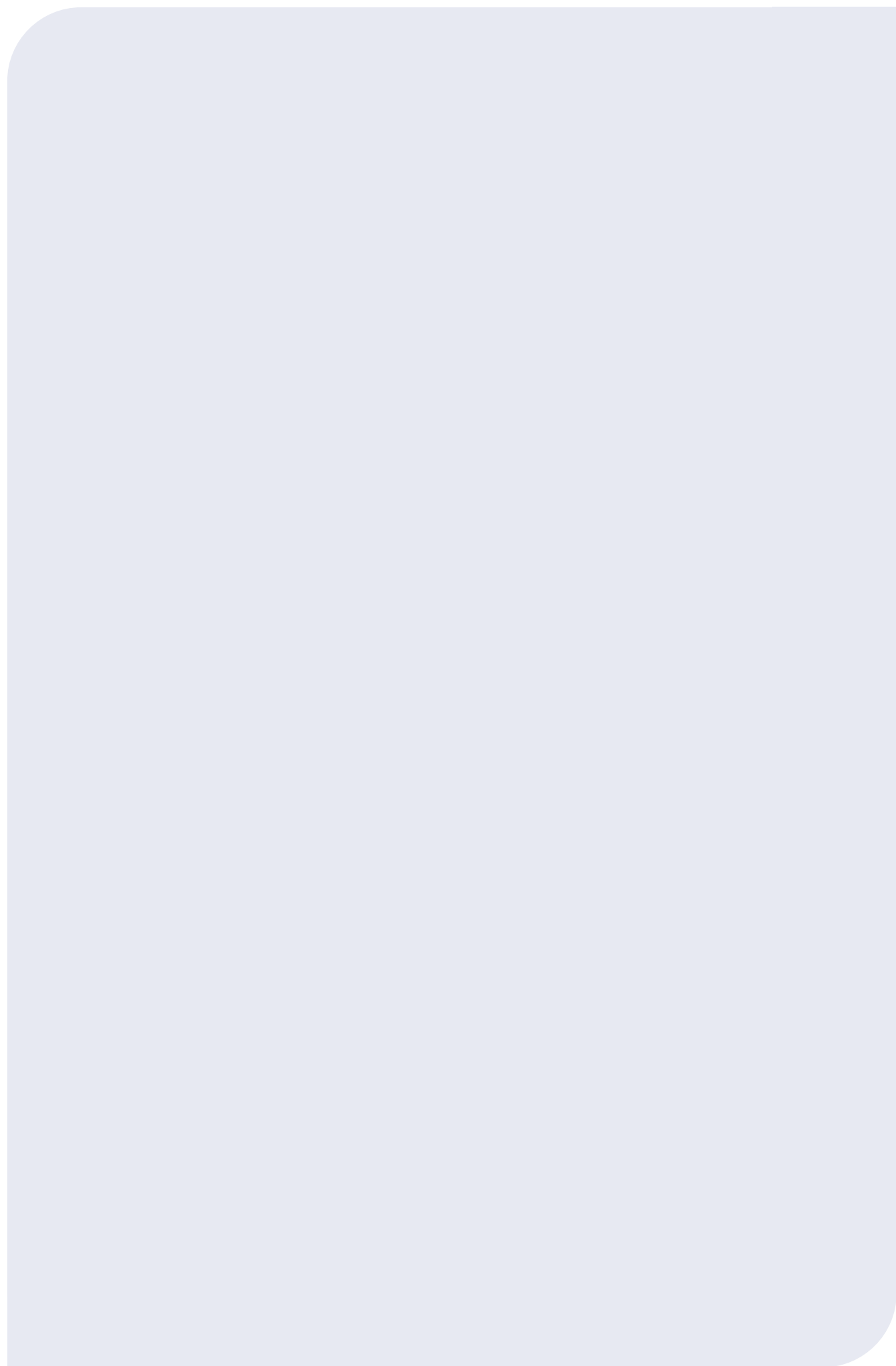
Charity Commission
 Child Support Agency
 Department for Transport Maritime Section and Channel Tunnel and Railways section
 Department of Health Medicines Control Agency
 Departmental Security, Pensions Agency, Investigations Liaison Office
 Department for Work and Pensions Audit Services
 Fire Authorities
 Food Standards Agency
 Gaming Board for Great Britain
 Health Boards in Wales
 Her Majesty's Chief Inspector of Schools in England
 Royal Parks Constabulary

Such other authorities as Parliament may from time to time approve as additions to the Schedule 1 of RIPA.

Annex F

MEMBERS OF THE OFFICE OF SURVEILLANCE COMMISSIONERS
AT MARCH 2004

Printed in the UK for The Stationery Office Limited
on the behalf of the Controller of Her Majesty's Stationery Office
ID xxxxxxxxxxx





Office of Surveillance
Commissioners

PO Box 29105
London SW1V 1ZU

Telephone: 020 7828 3421

Facsimile: 020 7592 1788

www.surveillancecommissioners.gov.uk

Published by TSO (The Stationery Office) and available from:

Online

www.tso.co.uk/bookshop

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich NR3 1GN

Telephone orders/General enquiries 0870 600 5522

Fax orders 0870 600 5533

Order through the Parliamentary Hotline Lo-call 0845 7 023474

E-mail book.orders@tso.co.uk

Textphone 0870 240 3701

TSO Shops

123 Kingsway, London WC2B 6PQ

020 7242 6393 Fax 020 7242 6394

68-69 Bull Street, Birmingham B4 6AD

0121 236 9696 Fax 0121 236 9699

9-21 Princess Street, Manchester M60 8AS

0161 834 7201 Fax 0161 833 0634

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

18-19 High Street, Cardiff CF10 1PT

029 2039 5548 Fax 029 2038 4347

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 5566 Fax 0870 606 5588

TSO Accredited Agents

(see Yellow Pages)

and through good booksellers