



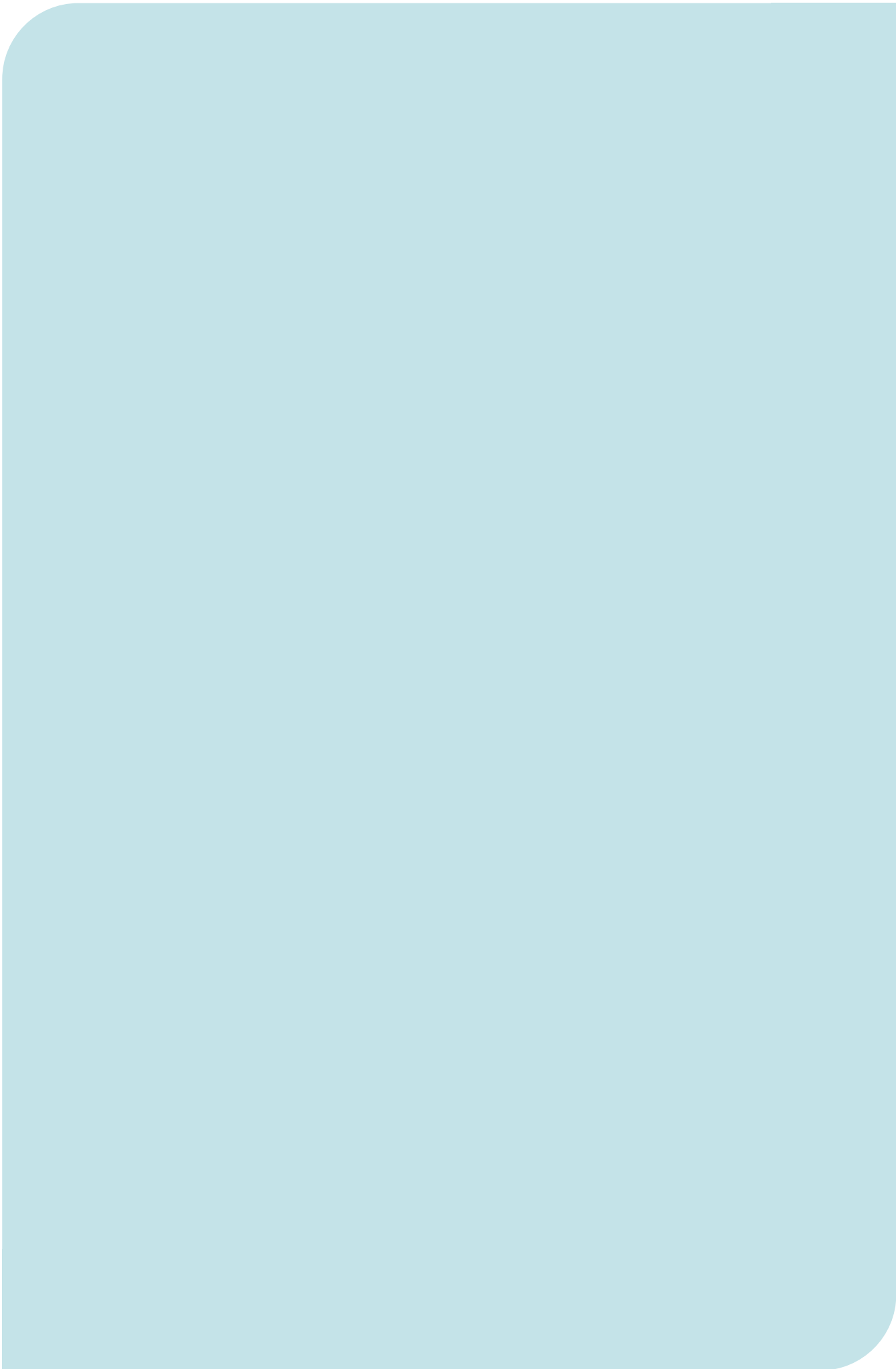
Office of Surveillance
Commissioners

ANNUAL REPORT

of the Chief Surveillance Commissioner
to the Prime Minister and
to Scottish Ministers
for **2010-2011**

HC 1111

SG/2011/99



ANNUAL REPORT

of the Chief Surveillance Commissioner
to the Prime Minister and
to Scottish Ministers
for **2010-2011**

Chief Commissioner:

The Rt. Hon. Sir Christopher Rose

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

Ordered by the House of Commons
to be printed on 30th June 2011

Laid before the Scottish Parliament
by the Scottish Ministers
June 2011

HC 1111

SG/2011/99

London: The Stationery Office

£8.50

© Crown Copyright 2011

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this document/publication should be sent to us at oscmalbox@osc.gsi.gov.uk

This publication is also available for download at www.official-documents.gov.uk

ISBN: 9780102971484

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

ID P002425461 07/11

Printed on Paper containing 75% recycled fibre content minimum.

With thanks to Brightside Print & Design Ltd for assisting with the report design.

Contents

Page

1. Introduction	3
2. Overview of the year	4
3. Particular matters relating to the OSC	5
Reporting irregularities	5
Reporting to the Prime Minister and Scottish Ministers	5
OSC guidance	5
Inspection Programme	6
Commissioners' Meetings	7
Presentations and conferences	7
Liaison	8
OSC website	8
Changes in personnel	8
Recognition	8
Expenditure	9
4. Statistics relating to the use of property interference and covert surveillance	10
General	10
Property interference	10
Intrusive surveillance	11
Urgency provisions	11
Directed surveillance	11
Covert Human Intelligence Sources	11
Section 49 – encryption	12
5. Key issues arising from my inspections	13
Overview	13
Legislation	13
Common causes of criticism or error	14
Collaboration agreements	15
Availability of powers	16
Access to relevant information	16
The use of temporary rank, grade or office	17
6. The year ahead	18

Appendices

Appendix A	Authorisations given under Part III of the Police Act 1997 (as amended) during the last three years	19
Appendix B	Analysis by offence of authorisations given under Part III of the Police Act 1997 (as amended) during the last three years	20
Appendix C	Authorisations given under Part II of the Regulation of Investigatory Powers Act 2000 and the Regulation of Investigatory Powers (Scotland) Act 2000 during the last three years	21
Appendix D	Analysis by offence of authorisations given under Part II of the Regulation of Investigatory Powers Act 2000 and under the Regulation of Investigatory Powers (Scotland) Act during the last three years	22
Appendix E	Inspection Priorities	23
Appendix F	OSC Expenditure	25
Appendix G	Members of the Office of Surveillance Commissioners	26



1. Introduction

- 1.1** This is my fifth report since taking up my appointment as the Chief Surveillance Commissioner in July 2006 and relates to the period 1st April 2010 to 31st March 2011.
- 1.2** It is my duty to keep under review:
 - 1.2.1** The performance of functions under Part III of the Police Act 1997 ('PA 97');
 - 1.2.2** (except in relation to the interception of communications and intelligence services) the exercise and performance of the powers and duties conferred or imposed by or under Parts II and III of the Regulation of Investigatory Powers Act 2000 ('RIPA'); and
 - 1.2.3** 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').
- 1.3** The powers and duties of the surveillance Commissioners in scrutinising and deciding whether to approve authorisations under PA 97 (property interference) and under RIPA and RIP(S)A (intrusive surveillance) have been explained in earlier reports and are publicly available on our website. There is a right of appeal against their decisions to me. There have been no appeals lodged during this reporting period.
- 1.4** In performance of my duty under all three Acts to report annually, I continue to prepare a combined report.

2. Overview of the year

- 2.1** The statistics relating to property interference and intrusive surveillance are set out in section 4.
- 2.2** The number of authorisations for directed surveillance and the use of covert human intelligence sources ('CHIS') are set out in section 4.
- 2.3** The year has been dominated by the Coalition Government setting out its aspirations for the protection of freedoms and the proposal to revise RIPA, particularly in relation to the powers conferred on local authorities in England and Wales.
- 2.4** I was invited to oversee the removal of 'covert' cameras around specific areas of Birmingham. I have confirmed in writing that no cameras installed specifically for covert use were capable of use before the decision to remove them. All camera equipment has been removed and, by the time this report is published, I will have confirmed that all related 'street furniture' has been removed.
- 2.5** Towards the end of the year, significant media reporting relating to the activity of an undercover officer authorised to conduct activity against domestic extremism resulted in a number of investigations by Her Majesty's Chief Inspector of Constabulary, SOCA and the IPCC. At the time of this report's preparation these investigations continue. I am monitoring all investigations to ensure consistent and accurate interpretation of legislation. I am reassured by the involvement and publication of the terms of reference of an objective External Reference Group in relation to HMCIC's investigation.



3. Particular matters relating to the OSC

Reporting irregularities

- 3.1** I continue to require Chief Officers personally to report to me all covert operations in which statutory requirements have not been observed and also cases in which trial judges exclude the product of covert surveillance because of the way in which it is obtained.
- 3.2** 129 irregularities were reported to me during the reporting period. These irregularities remain a tiny percentage of the total number of authorisations granted.

Reporting to the Prime Minister and Scottish Ministers

- 3.3** During the reporting period I have not made a report to the Prime Minister or Scottish Ministers about matters relating to the performance of the powers conferred by the Acts. I have written to the Home Secretary regarding the reduction to my budget.

OSC guidance

- 3.4** I explained in paragraphs 3.6 to 3.8 of my last report that my Commissioners from time to time publish guidance; the latest was published in September 2010. If I continue to find that this document is not readily available to those who need it, or is not promoted by national associations, I may make it publicly available on my website. I have resisted this temptation so far because:
- 3.4.1** my small office does not have the capacity to answer the inevitable influx of requests for clarification that this would invite;
 - 3.4.2** law enforcement agencies in particular are concerned that tactics might be unnecessarily revealed;
 - 3.4.3** it is not a comprehensive document which covers every eventuality and it might be misconstrued or misused; and

3.4.4 it is not my remit to provide free legal advice, though I proffer guidance to public authorities which I have a responsibility to review, in order to raise standards and promote consistency.

3.5 Trial judges are the ultimate arbiters of fairness and reach their own decisions about the admissibility of covertly obtained evidence in the light of all the facts and the competing arguments addressed to them. Only a small proportion of covert activity results in material which is tendered in evidence in court. OSC guidance is intended to promote human rights compliance in covert activity, whether or not that activity results in a product which is, or might be, relied on as evidence. If any public authority chooses to ignore published OSC guidance, it does so at the twin perils of having potential evidence excluded at trial and its conduct criticised by me and reported to the Prime Minister.

3.6 I encourage public authorities to obtain independent legal advice. If the published guidance of my Commissioners is supplied to legal advisors for this purpose, it should be provided in the full context of the relevant paragraphs; the use of selected extracts is likely to be misleading.

Inspection Programme

3.7 The public authorities which I currently inspect are at Appendix E. The task of completing inspections with a frequency conducive to effective oversight is increasingly difficult.

3.8 The procedural changes proposed in the Protection of Freedoms Bill involving magistrates in the authorisation process for local authorities and a higher threshold for authorised covert activity will not reduce the frequency or nature of my inspections even if the number of authorisations is reduced. My inspections will continue to focus on the training, knowledge and competence of local authority officials involved in the identification of activity which may be covert and which, if it is, should be authorised under the legislation in a clear and principled way.

3.9 Many public authorities are collaborating for sensible cost saving or operational reasons and it is difficult to avoid duplication of inspections where joint investigative units serve more than a single authority. As many authorities are discovering, covert surveillance can be compliant in different ways and some are struggling to agree a single *modus operandi* with collaborating partners. It is not my role to dictate, but I will provide guidance on principles if my inspections find inaccurate interpretation of the legislation.

3.10 I have commented in previous reports that there appears to be an over-reliance on the capacity of the OSC to examine authorisations. I remain concerned that my limited capacity is misappreciated. Public authorities, particularly law enforcement agencies, should not be lulled into a false sense of confidence if at trial lawyers do not scrutinise relevant documents. Lack of challenge does not imply compliant authorisation. I mentioned last year (paragraph 5.19) that there

is an expectation of authorisation. I add this year that authorisations should be of a quality to withstand examination at trial however rarely such scrutiny may occur.

- 3.11** I have considered carefully, but resisted, a few requests to increase the duration between inspections. My inspection capability is limited. The sample of documents which can be examined is small and the inspection can only be regarded as a ‘snapshot in time’; it is not an indicator of trends. Often key personnel change in the period between inspections. I recognise the inconvenience of an inspection (especially for law enforcement agencies) but less frequent inspections would not provide the effective oversight which Parliament requires of me.
- 3.12** I have still not been given the power to inspect local authorities in Northern Ireland. I am concerned that these authorities have never been inspected.

Commissioners’ Meetings

- 3.13** The Commissioners met on three occasions during this reporting period. The meetings were attended by the Assistant Commissioners, Inspectors, Secretary to the OSC and manager from my Secretariat. Matters of interpretation of the legislation and codes of practice for which I am responsible, its amendments, other legislation which affects covert surveillance and problems frequently encountered on inspection are discussed: new, amended, published guidance sometimes follows.
- 3.14** I invited representation from the Association of Chief Police Officers Automated Number Plate Reading Working Group to one of the meetings in order better to understand its concerns regarding specific guidance on that topic. It is my intention to provide further guidance, if necessary, before this report is published.

Presentations and conferences

- 3.15** Presentations and conferences continue to provide an opportunity to describe the work of the OSC and to address issues of common interest. It is not possible to honour the increasing number of requests which I receive and I am forced to confine attendance primarily to gatherings with non-commercial interests.
- 3.16** My Chief Inspector presented to eight authorising officer or RIPA specific courses and 11 conferences. I was pleased to note that some police forces resisted the National Police Improvement Agency’s (NPIA) apparent proposal to reduce OSC input to its authorising officer course. Guidance from my Commissioners may not always be welcomed, but it is vital that an authorising officer is aware of it, and the reasoning which underpins it, so that he can reach an informed decision when deciding whether to grant covert activity.

Liaison

3.17 My Chief Inspector continues to attend joint meetings with the National Coordinator of Special Branches and the Security Service. He has not been able to attend two meetings of the RIPA Strategic Liaison Group but did meet with the Chair of the ACPO RIPA Peer Review Group to discuss issues emanating from those meetings. These meetings inform policy makers and I regard them as very useful forums for monitoring perceptions and issues of concern to key stakeholders.

OSC website

3.18 I have not had the capacity to improve my website. The Cabinet Office has recently decided that all government related websites, including those of Non Departmental Public Bodies such as mine, will migrate to a corporate process. It is essential that I remain independent and be seen to be independent.

Changes in personnel

3.19 Since my last report, Lord Sutherland, Lord Coulsfield and Sir Liam McCollum have retired as Surveillance Commissioners. Each provided outstanding service to the OSC over periods of nine, six and six years respectively. They have been succeeded respectively by Lord MacLean (from October 2010), Lord Bonomy (from July 2010) and Sir John Sheil (from September 2010).

3.20 Last year I reported the untimely deaths of Sir Charles Mantell (Commissioner) and Viscount Colville of Culross (Assistant Commissioner). Their successors are Sir Scott Baker (from July 2010) and Sir David Clarke (from September 2010).

3.21 At the end of the period to which this report relates, Mr. Irwin Nettleship reluctantly retired under the terms of the Home Office Voluntary Early Release Scheme (VERS) after 10 years as a Surveillance Inspector. He was an original member of the OSC and his contribution was exemplary.

3.22 Shortly after the period to which this report relates, the Secretary to the OSC Ms Linda Ward, the office manager Mr Graham Scott and inspection coordinator Mr Jeremy Dixon, all departed under the VERS. They had served the OSC for four, six and eight years respectively. Due to budgetary constraints Ms Ward will not be replaced. I thank all of them for the outstanding service that they provided to all members of the OSC and the very many years that they have worked for the Home Office (38, 14 and 33 years respectively).

Recognition

3.23 I wish to record, once again, my thanks to the Commissioners, Assistant Commissioners, Inspectors and all other members of the OSC for the indispensable support which they have given me in performing my statutory role. My thanks go, likewise, to Andrew Burke, Protective Services Division, Northern

Ireland and to Graeme Waugh and the staff within the Police Division of the Scottish Government Justice Department for the invaluable administrative support they provide to the Commissioners based in Northern Ireland and Scotland respectively.

Expenditure

- 3.24** I summarise the expenditure of the OSC at Appendix F. My budget for the year was revised to £1.73M in the light of forecast expenditure. My staff costs this year have been lower than anticipated because of a delay in filling vacant Surveillance Commissioner and Assistant Surveillance Commissioner posts. Now that I have a full complement of Commissioners I expect my staff costs to increase in 2011-12. During this year we have made savings on travel and subsistence and there have also been savings in stationery, telephony and the cost of meetings. My expenditure for the reporting period was significantly within the budget allocated.
- 3.25** In order to achieve a reduced budget for the financial year 2011 - 2012 I have reluctantly reduced my capacity by one Inspector and the Secretary post and downgraded a further post. My capacity has always been limited and I wrote to the Home Secretary to explain the impact of reducing my budget by £140K. I recognise the severity of the country's financial situation but a reduction of nine percent has serious operational repercussions in a tiny organisation. I am only able to work within this tight limit by reducing inspectorate and secretarial staff.

4. Statistics relating to the use of property interference and covert surveillance

General

- 4.1** Statistics for property interference and each type of covert surveillance authorisation for the past year are set out in tables at Appendices A – D. My statistics can only provide a general record and I will not rehearse the explanation, provided in earlier reports, of how they are obtained. Offences relating to drug trafficking, kidnap, murder and firearms continue to be major reasons for authorisation. The increase in Part III PA97 authorisations for burglary/robbery offences noted last year has not been maintained with numbers falling by about twenty per cent. Similarly, the increase in these authorisations for firearms offences noted last year has not continued with numbers falling by about ten per cent. Authorisations under Part III PA97 for offences of assault have again increased significantly.
- 4.2** Statistics for directed surveillance and the use of CHIS have been supplied by all law enforcement agencies. I am pleased to report that all other public authorities have responded to my request for this statistical information, so this year's figures are again based on a one hundred per cent return.
- 4.3** It is important that these statistics are not misconstrued. Reports relating to local authority use of covert surveillance have been misleading and often inaccurate. I have identified no systemic attempts to misuse legislation. There are, occasionally and inevitably, misjudgments but these are rarely the result of abuse of power. An authorising officer's judgment regarding necessity and proportionality is necessarily subjective. An authorising officer is required to address necessity and proportionality prospectively (based only on the evidence or intelligence then available) but his judgment is liable to review by a court retrospectively (when the full facts of a case are known). In order to assist retrospective review, whether by a court or by me, it is better that a public authority authorises activity which it believes meets statutory definitions than to risk proceeding without one. Only by providing a verifiable audit can lessons be learned and training improved.

Property interference

- 4.4** Excluding renewals there were 2,701 property interference authorisations during 2010-2011, which is very slightly down on the previous year. There were 666 renewals of authorisations compared to 717 in the previous year. Eleven authorisations were quashed, where insufficient information was provided compared to 13 in the previous year.

Intrusive surveillance

4.5 The number of authorisations for this type of covert surveillance remains stable. There were 398 intrusive surveillance authorisations granted in 2010-2011 compared to 384 in the previous year. There were 71 renewals compared to 63 in the previous year. Five authorisations were quashed.

Urgency provisions

4.6 There were 323 cases where the urgency provisions allowed for the legislation to be used compared to 348 in the previous year. A large number of these cases relate to investigations into offences involving drugs or violence. A small number of forces account for the majority of these authorisations. I remain satisfied that there is no systemic misuse of these special provisions.

Directed surveillance

4.7 Law enforcement agencies granted 13,780 authorisations to conduct directed surveillance during 2010-2011 with 2,413 still extant at 31 March 2011. This compares to 15,285 and 2,343 respectively for the preceding year.

4.8 In relation to other public authorities, 8,477 directed surveillance authorisations were granted during the year of which 1,190 remained in force at the end of this reporting period. The one hundred per cent response provides a complete picture of the use of RIPA/RIP(S)A powers and shows a decrease in excess of 1,400 authorisations on the previous year. Of the 8,477 authorisations, over fifty per cent were by government departments. Generally speaking, local authorities use their powers sparingly with over half of them granting five or fewer authorisations for directed surveillance. Some sixteen per cent granted none at all.

Covert Human Intelligence Sources

4.9 There were 4,176 CHIS recruited by law enforcement agencies during the year; 3,857 were cancelled (including some who were recruited prior to the period to which this report relates); and 3,527 remain authorised on 31st March 2011. The figures for the previous year were 5,320, 4,495 and 3,767 respectively.

4.10 In the period to which this report relates, other public authorities recruited 234 CHIS of whom 153 were cancelled during the year with 106 extant authorisations at the end of the year. During the previous year 229 CHIS were recruited, 182 cancelled and 90 remained authorised at the end of that reporting year. Just over half of these authorisations were granted by government departments. Over ninety seven per cent of local authorities recruited less than five CHIS and eighty six per cent none at all.

Section 49 – encryption

- 4.11** During the period to which this report relates, NTAC granted 26 approvals from 30 applications. Permission was not sought in eight cases after NTAC approval. From the remainder, 17 had permission granted by a Circuit Judge, of which 12 have so far been served. Four were complied with and two were not; the remainder were still being processed. Five people were charged with an offence, of whom it was decided not to prosecute two. So far there has been one conviction with other cases still to be decided.
- 4.12** The conviction related to the possession of indecent images of children. Other offences include: domestic extremism, insider dealing, fraud, evasion of excise duty, drug trafficking and drug possession with intent to supply.
- 4.13** These statistics are provided by NTAC which is able to be accurate regarding the number of approvals it has granted. But it is reliant on those processing notices to keep it informed regarding progress. It appears that there has been delay in serving some notices after approval has been granted (hence the difference between the number approved and the number served). Notices, once approved, should be served without delay.

5. Key issues arising from my inspections

Overview

- 5.1** My inspections this year have identified two concerns: the effect of reduced budgets on operational capability and the impact – for local authorities primarily – of the proposals in the Protection of Freedoms Bill. The former encourages the use of novel collaborations and greater use of technology or covert options that result because overt options are less available. The latter seems to have caused some concern that lower-level crime and misbehaviour will not be dealt with effectively.
- 5.2** It is not my role to promote more or less covert surveillance. My responsibility is to oversee the processes that lead to decisions and the ability of designated public authorities to maintain compliance standards. Inevitably there are occasional lapses, but I remain satisfied that the criticisms that I make in the reports to public authorities do not, save in very rare instances, result from deliberate malpractice.
- 5.3** I do not have the capacity immediately to address each case highlighted by the press or by special interest groups. However, I am broadly satisfied, from the inspections that my organisation is able to conduct, that public authorities are generally acting in a manner compliant with the legislation.

Legislation

- 5.4** At the time of writing, the Protection of Freedoms Bill is at the Committee stage. I was invited to present my thoughts to the Committee and I did so in writing. I expressed particular concern regarding the proposal to require local authorities to seek approval for their covert surveillance from magistrates. Leaving aside the cost of training and reimbursing many more magistrates than there are authorising officers, it is not apparent why local authorities should be treated differently from other public authorities and, as is apparent from this and my previous Annual Reports, local authorities are, generally speaking, exercising their powers properly. The higher threshold in the proposed legislation will reduce the number of cases in which local authorities have the protection of RIPA when conducting covert surveillance; it will not prevent the use of those tactics in cases where the threshold is not reached but where it may be necessary and proportionate to obtain evidence covertly and there will be no RIPA audit trail. Part I of RIPA makes unauthorised interception unlawful. In contrast, Part II makes authorised surveillance lawful but does not make unauthorised surveillance unlawful. In consequence, the introduction of a threshold may reduce my ability to assure Parliament that covert surveillance is managed appropriately, because my role relates only to the review of powers and duties under RIPA and RIP(S)A.

- 5.5** RIPA and RIP(S)A were intended to protect the privacy of members of the public from any unjustified or disproportionate intrusion by public authorities. Their scope is not limited to the gathering of evidence or, as is sometimes asserted, to counter terrorism or serious crime. If Parliament wishes to constrain the use of covert surveillance to these or other purposes it seems to me that the existing primary legislation should be amended. It does not help public understanding if ‘serious crime’ in the Police Act means something very different from ‘serious crime’ in the Protection of Freedoms Bill.
- 5.6** My inspections have revealed pressure on some authorising officers to grant covert surveillance to meet Government targets for incognito inspections (commonly termed ‘test purchases’). This activity is often directed surveillance by definition but cannot always be justified because there is a lack of specific intelligence that a crime has or is likely to be committed and which may not, in future, meet proposed thresholds. So, on the one hand the Government requires targets to be met and on the other takes away any protection for those conducting directed surveillance to meet those targets. This anomaly concerns me.

Common causes of criticism or error

- 5.7** In paragraph 5.13 of my last report, I repeated my criticism of the use of template wording. I understand the desire to keep options open to enable an investigation to develop but an authorising officer must be able to assess proportionality; he can only do so if the methods to be deployed and the proposed plan of action are clear. I shall shortly issue guidance which enables the development of an authorisation over time but which places emphasis on the professional conduct of reviews. I will focus inspections on review procedures.
- 5.8** My inspections reveal a tendency to confuse the role of the applicant and the role of the authorising officer. The former is required to provide the intelligence underpinning the investigation, to outline the plan of action and to request specific methods and equipment. The latter is the person who decides whether the application meets the tests of necessity and proportionality and considers whether sufficient attention has been paid to minimising collateral intrusion. Too often applicants (or other gatekeepers in the case of law enforcement agencies) are presenting applications which assert that the activity is necessary and proportionate. Some authorising officers then simply repeat or endorse the application instead of applying their minds to the relevant criteria in the circumstances of the specific case.
- 5.9** Template wording and confusion regarding roles results in part from the current design of forms which encourages authors to complete blank boxes in their own words with very few prompts. The process in consequence becomes a test of written expression rather than a demonstration of thought processes. I am pleased that ACPO has decided to take the lead in re-designing forms.

- 5.10** Reviews should be conducted more rigorously, especially if subjects, previously unidentified, are named. It is inevitable that changes to the situation necessitate a review of necessity, proportionality and collateral intrusion. It is not necessary to repeat the wording of the extant authorisation but what has happened since the authorisation was granted, reviewed or renewed should be fully covered.
- 5.11** We have evidence that some public authorities are purchasing highly intrusive technical capability without properly considering the legislative implications of its use. For instance, a single digital camera is capable of coverage equivalent to or greater than a larger number of analogue cameras; but the reduction in the number of cameras does not reduce privacy concerns. We have seen noise monitoring equipment that is capable of 'permanent' monitoring even though it has not been activated to store a recording in an easily interpreted form and I am not convinced that data is irretrievable. For this reason, my Commissioners have provided guidance that authorising officers should avoid accepting loose terminology and understand the capability of the equipment. Corporately, public authorities should ensure that equipment which is more capable than can be justified should not easily be procured.

Collaboration agreements

- 5.12** The Policing and Crime Act 2010 enables up to six police force chief constables and each chair of the respective police authorities to sign agreements to collaborate. For operational and budgetary reasons such agreements are flourishing. Because a force may collaborate in more than one agreement with different forces, if I am to avoid inspecting joint entities more than once a year, it is important that agreements make clear the management of covert surveillance; mere agreement to share resources is insufficient. The position is complicated further because the Schedules to the relevant Acts refer to individual police forces; it takes no account of joint operating enterprises. Unless the legislation is amended, joint units may not authorise their own activity and there must be clarity regarding who is authorising what. Many forces are discovering, as they consider collaboration, that there is often more than one way to achieve compliance. My role is to give guidance as to whether the solutions adopted are likely to achieve compliance, particularly in regard to the ability of nominated individuals to fulfil their statutory functions.
- 5.13** Many local authorities, similarly, are engaging in joint ventures. There is some disparity between covert surveillance legislation and other local government legislation which enables one authority to delegate its powers to another. I believe that there is a difference between shared services and joint investigations. Primary legislation requires each designated public authority to maintain its own central record of authorisations and to be responsible for the covert surveillance conducted on its behalf. The situation is increasingly opaque and I await a satisfactory response from the Home Office to my request for clarification.

5.14 To complicate matters further, it appears that local authorities may legitimately delegate some powers to private companies (for example housing authorities and arms-length management organisations) or national organisations (such as the National Anti Fraud Network) which are not designated as a public authority by the legislation for which I am responsible. It is also clear that many public authorities (including law enforcement agencies) are using private entities in one form or another (for example private investigators and ANPR product). My Commissioners have advised that when private enterprises are used to conduct covert surveillance on behalf of a public authority, this fact should be clear in authorisations and the operators bound by the terms of the authorisation. This means, for example, that a private investigator, acting on behalf of a local authority, has no protection in law if a vehicle tracking device is used because the local authority is not enabled by PA97. It is also important that applicants make it clear to authorising officers when intelligence derived from product collected by private entities is used to make the case for covert surveillance.

Availability of powers

5.15 Many public authorities which are not law enforcement agencies prefer not to use CHIS. Their reasoning usually reflects a laudable desire to use less intrusive methods or a belief that they are ill-prepared to manage them compliantly. The desire is good practice and the belief is often accurate. However, the ease with which statutory criteria are met is often misjudged; a person, irrespective of motive, may be a CHIS if he uses a personal or other relationship to pass information to a public authority in a manner that is covert in relation to the person to whom the information refers. This may not be of significant concern if the reporting is occasional or when the information attracts no action or when it has been volunteered. It should be a concern if the individual reports information on which action is likely to be taken or if the information is likely to be retained for later analysis. Public authorities may not ignore this because they do not wish to use CHIS. In many cases, public authorities wish to retain the power but make no effort to prepare properly for the eventuality. In other cases, the public authority has decided that it no longer requires the capability, without recognising that it is dealing with persons who should be authorised as a CHIS. I have no power to insist on proper training or retention of powers. I can only draw the risk to the attention of the relevant authority. But I take this opportunity to remind public authorities that the threshold set by Parliament is low and that there is significant risk in reliance on a person within the statutory definition of a CHIS who is not authorised.

Access to relevant information

5.16 Within many law enforcement agencies, CHIS records are maintained on information technology systems. Usually this is not a concern but it becomes one when senior authorising officers (and in some cases authorising officers) do not have full access to all of the records pertaining to the CHIS they authorise. It is

important that an authorising officer is able to interrogate records personally and not rely solely on personal briefings.

- 5.17** Similarly, officers who authorise other types of surveillance, when relying on personal briefings, for example to avoid disclosing techniques in the application or authorisation, should ensure that they retain accurate contemporaneous records of briefings. It is important that authorisations provide reference to briefings so that others with a legitimate interest may access the notes. My guidance on this is not meant to impose additional bureaucracy but to ensure that an authorising officer is able to demonstrate that he has considered all of the issues required by the legislation.

The use of temporary rank, grade or office

- 5.18** I have noted an increased tendency to rely on the services of authorising officers who have been granted acting or temporary promotion. I am not always convinced that the reason is other than to relieve hard pressed authorising officers who invariably have other important functions to fulfil. Apart from the fact that some of these officers have not received specific training for this statutory function, they are not always able to demonstrate that they have the experience that Parliament presumably required when stipulating the minimum acceptable rank, grade or office of an authorising officer.
- 5.19** I accept that a police chief inspector is likely to be more experienced and qualified than an authorising officer in a non law enforcement agency who can grant an authorisation for directed surveillance or a CHIS. However, I presume that Parliament took this into consideration when the Act was passed. My Inspectors will continue to scrutinise the competence of temporarily promoted officers and will assess whether their use is injudicious or the result of designated authorising officers lacking the time properly to manage covert surveillance.

6. The year ahead

- 6.1** I anticipate unnecessary complications resulting from the use of magistrates and confusion regarding the threshold for local authority authorisation if the current proposals in the Protection of Freedoms Bill are adopted.
- 6.2** I am contributing to the Home Office consultation on a code of practice relating to surveillance cameras.
- 6.3** I expect preparations for the London Olympics will deflect some law enforcement agencies and local authorities from the investigation of relatively minor crime. This may or may not result in a greater reliance on covert surveillance.
- 6.4** I expect an increase in collaboration and consistency of compliance.
- 6.5** I am concerned that my reduced budget may have an adverse impact on my ability to fulfil properly my statutory oversight responsibility.

Appendix A

AUTHORISATIONS GIVEN UNDER PART III OF THE POLICE ACT 1997 (as amended) DURING THE LAST THREE YEARS

	2008-2009			2009-2010			2010-2011		
	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)	2,563	118	2,681	2,542	163	2,705	2,531	170	2,701

PRIOR APPROVALS

	2008-2009			2009-2010			2010-2011		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
Number of cases requiring approval	164	10	174	190	13	203	215	22	237
Cases requiring prior approval by category:									
• Dwelling	117	6	123	118	6	124	155	20	175
• Office premises	28	4	32	45	7	52	34	0	34
• Hotel bedroom	11	0	11	23	0	23	19	2	21
• Matters subject to legal privilege	5	0	5	4	0	4	4	0	4
• Confidential journalistic material	0	0	0	0	0	0	0	0	0
• Confidential personal information	3	0	3	0	0	0	3	0	3

**ANALYSIS BY OFFENCE OF AUTHORISATIONS GIVEN UNDER PART III OF THE POLICE ACT 1997
(as amended) DURING THE LAST THREE YEARS**

	2008-2009			2009-2010			2010-2011		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
Assault	13	1	14	30	0	30	42	1	43
Burglary/Robbery	160	2	162	156	2	158	123	1	124
Conspiracy	71	4	75	24	3	27	12	0	12
Drug trafficking	1,603	92	1,695	1,470	131	1,601	1,424	123	1,547
Firearms offences (including armed robbery)	118	3	121	182	5	187	163	5	168
Kidnap/extortion	91	3	94	116	4	120	107	4	111
Money laundering	55	0	55	56	1	57	121	0	121
Murder/loss of life	155	5	160	176	10	186	220	29	249
Organised illegal immigration	45	0	45	18	0	18	22	1	23
Tax evasion	35	1	36	39	0	39	35	0	3
Terrorism	16	2	18	14	0	14	17	0	17
Other	201	5	206	261	7	268	245	6	251

Appendix C

AUTHORISATIONS GIVEN UNDER PART II OF THE REGULATION OF INVESTIGATORY POWERS ACT 2000 AND THE REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 DURING THE LAST THREE YEARS

	2008-2009			2009-2010			2010-2011		
	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)	366	18	384	359	25	384	358	40	398
Cases by category:									
• Private vehicle	201	8	209	169	10	179	162	17	179
• Residential premises	165	10	175	190	15	205	196	23	219

Appendix D

ANALYSIS BY OFFENCE OF AUTHORISATIONS GIVEN UNDER PART II OF THE REGULATION OF INVESTIGATORY POWERS ACT 2000 AND UNDER THE REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT DURING THE LAST THREE YEARS

	2008-2009			2009-2010			2010-2011		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
Assault	4	1	5	14	0	14	14	1	15
Burglary/Robbery	13	1	14	7	0	7	15	0	15
Conspiracy	17	1	18	2	0	2	3	0	3
Drug trafficking	179	8	187	165	15	180	158	18	176
Firearms offences (including armed robbery)	17	0	17	16	2	18	7	1	8
Kidnap/extortion	11	1	12	11	1	12	1	0	1
Money laundering	3	1	4	10	2	12	13	0	13
Murder/loss of life	79	5	84	79	1	80	104	20	124
Organised illegal immigration	6	0	6	1	0	1	0	0	0
Tax evasion	2	0	2	6	0	6	1	0	1
Terrorism	1	0	1	2	0	2	1	0	1
Other	34	0	34	46	4	50	41	0	41

Appendix E

Inspection priorities

Subject to annual inspection

British Transport Police
 Civil Nuclear Constabulary
 Department for Work and Pensions
 Environment Agency
 HM Revenue and Customs
 Home Office - UK Border Agency
 Ministry of Justice - HM Prison Service
 Northern Ireland Prison Service
 Office of Fair Trading
 Police forces for England and Wales
 Police forces for Scotland
 Police Service of Northern Ireland
 Port of Dover Police
 Port of Liverpool Police
 Royal Mail Group plc
 Serious Organised Crime Agency
 Scottish Crime and Drug Enforcement Agency
 Scottish Prison Service

Subject to inspection every other year

British Broadcasting Corporation
 Care Quality Commission
 Child Maintenance and Enforcement Commission
 Department for Environment and Rural Affairs
 Department for Business, Innovation and Skills
 Department of Transport - Driving Standards Agency
 Department of Transport - Maritime and Coastguard Agency
 Department of Transport - Vehicle and Operator Services Agency
 Gangmasters Licensing Authority
 Health and Safety Executive
 Independent Police Complaints Commission
 Marine Scotland
 MoD Police and Guarding Agency
 NHS Counter Fraud and Security Management Service
 NHS Scotland Counter Fraud Services
 Office of Communications
 Office of the Police Ombudsman for Northern Ireland
 Royal Air Force Police and Security Service
 Royal Military Police

Appendix E

Royal Navy Police
Scottish Accountant in Bankruptcy
Scottish Environmental Protection Agency
Serious Fraud Office
Transport Scotland
Welsh Assembly Government

Subject to inspection every third year

Charity Commission
Department of Health – Medicines and Healthcare Products Regulatory Agency
Financial Services Authority
Fire and Rescue Services in England and Wales
Fire and Rescue Services in Scotland
Food Standards Agency
Gambling Commission
General Pharmaceutical Council
HM Chief Inspector of Education, Children's Services and Skills
Local Authorities (Unitary, Metropolitan, London Boroughs, County, District, Scottish and Welsh)
Office of the Information Commissioner
Postal Services Commission

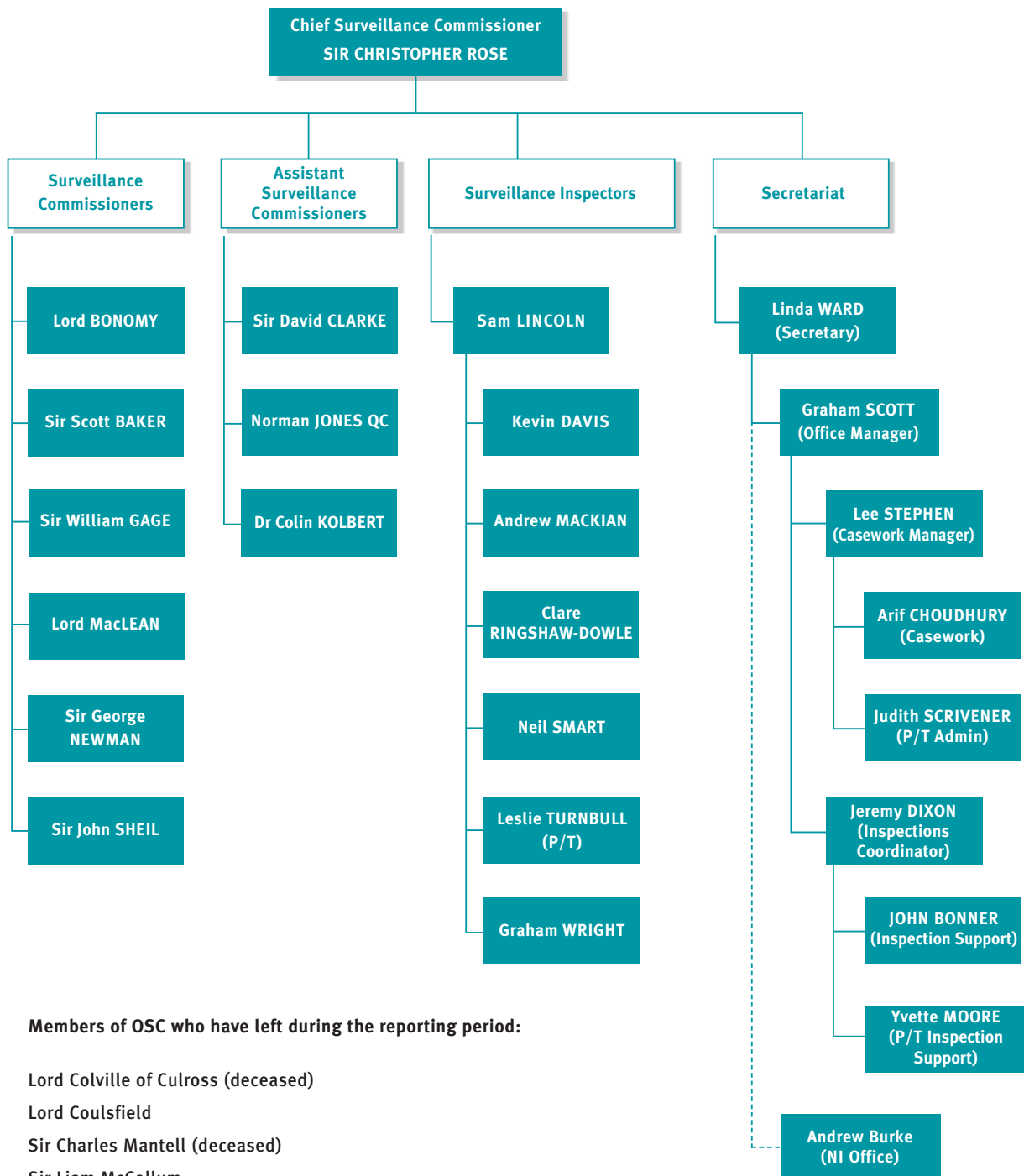
Appendix F

OSC expenditure for April 2010-March 2011

Description	Total cost £
Staff costs, including recruitment and training	1,307,626
Travel and subsistence	106,360
Conferences and meetings	2,777
IT and telecommunications	58,691
Stationery, including printing, postage and publications	11,810
Office equipment, including security equipment	1,658
Accommodation, including costs associated with moving	145,000
Total	1,633,922

Appendix G

MEMBERS OF THE OFFICE OF SURVEILLANCE COMMISSIONERS AS AT 31 MARCH 2011





Office of Surveillance
Commissioners

PO Box 29105
London SW1V 1ZU

Telephone: 020 7035 0074

Facsimile: 020 7035 3114

www.surveillancecommissioners.gov.uk



www.tso.co.uk

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

Online

www.tsoshop.co.uk

Mail, Telephone Fax & E-Mail

TSO

PO Box 29, Norwich NR3 1GN

Telephone orders/General enquiries 0870 600 5522

Order through the Parliamentary Hotline Lo-Call 0845 7 023474

Fax orders: 0870 600 5533

E-mail: customer.services@tso.co.uk

Textphone: 0870 240 3701

The Parliamentary Bookshop

12 Bridge Street, Parliament Square,

London SW1A 2JX

Telephone orders/General enquiries: 020 7219 3890

Fax orders: 020 7219 3866

Email: bookshop@parliament.uk

Internet: <http://www.bookshop.parliament.uk>

TSO@Blackwell and other Accredited Agents

Customers can also order publications from

TSO Ireland

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

ISBN 978-0-10-297148-4



9 780102 971484