

2005 - 2006 Annual Report

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2005-06 Annual Report

1. INTRODUCTION

- 1.1 This report covers the period from 1st April 2005 to 31st March 2006.
- 1.2 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').
- 1.3 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.
- 1.4 It is the duty of the Surveillance Commissioners ('the Commissioners') to appraise all authorisations for property interference and intrusive surveillance either before or immediately after they have been given. There is a right of appeal against their decisions to me as Chief Surveillance Commissioner.
- 1.5 In performance of my duty under all three Acts ('the Acts') to report annually, I continue to prepare a combined report.

2. OVERVIEW OF THE YEAR

- 2.1 Part III of the 1997 Act has been in force for over seven years now and Part II of RIPA and the relevant sections of RIP(S)A for almost six years.
- 2.2 The statistics relating to property interference and intrusive surveillance authorisations are set out in paragraph 6 below. I continue to be satisfied that these authorisations are given a high level of attention by public authorities.
- 2.3 The statistics relating to authorisations by all public authorities for directed surveillance and Covert Human Intelligence Sources ('CHIS') are set out in paragraph 7 below. Last year, I stated that the management of directed surveillance is uneven, and that there is a tendency not to recognise as CHIS sources who should be so recognised. These problems still exist, and will continue to do so, so long as those who manage these activities have insufficient training or experience.
- 2.4 Previous concerns about repeat and artifice burglaries, hotspots and executive authority have now dissipated as forces become more experienced in using the legislation. Issues that are now of concern are those linked to the increasing use and improved nature of technology. Particular uses of technology, which Parliament may not have envisaged, include tracking devices attached to objects that are intended to be delivered or removed from premises, Automatic Number Plate Recognition ('ANPR') and other covert camera systems, and special identification dyes for use on footwear.

- 2.5 The Home Office continues to defer the introduction of Part III of RIPA, which provides for the acquisition of the means to access or decrypt protected electronic data. I am advised that the use by terrorist and criminal suspects of information security and encryption has been kept under review and that, before Part III is brought into force, there will be a public consultation on a draft Code of Practice, which will have to be laid before both Houses of Parliament.
- 2.6 During 2005 the Association of Police Officers (ACPO) undertook on behalf of the Home Office a review of RIPA, of the 1997 Act, and of associated legislation and Codes of Practice. The review team was asked to consider issues of process, governance and bureaucracy, and to recommend changes to current legislation, guidance and Codes. Although the final report was submitted to the Home Office in May 2005, consultation is still awaited before the report is submitted to Ministers.

3. THE STATUTORY PROVISIONS

- 3.1 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 the OSC website.
- 3.2 I continue to have some concern about the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order S.I. 2003 No. 3171 which 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 detecting crime or of preventing disorder. Discussion with local authorities during inspections has suggested that because they are no longer allowed to authorise covert activities in the interests of public safety or for the purpose of protecting public health, some of them can no longer conduct some operations which formerly were usefully and properly within their compass. But the Home Office is not convinced that local authorities cannot manage without these powers.
- 3.3 As reported in my Annual Report last year, I decided to defer inspection of the newly created HM Revenue and Customs ('HMRC'), in order to allow them time to settle into their new role following the formation of the new Directorate of Criminal Investigations, which brought together (from HM Customs and Excise ('HMCE')) Law Enforcement Investigation and (from the Inland Revenue) the Special Compliance Office. At present, former powers of HMCE cannot be used for former Revenue purposes, and vice versa. A Review of Powers is currently being undertaken by HMRC with the intention of extending RIPA and the 1997 Act across the range of HMRC's responsibilities. The review hopes to address this matter and, until new arrangements are made, all operations for property interference and intrusive surveillance will continue to be authorised only by former HMCE officers.
- 3.4 The Serious Organised Crime Agency ('SOCA') became operational on 1st April 2006. It was established under the Serious Organised Crime Act 2005 to replace the National Criminal Intelligence Service, National Crime Squad, and the remaining parts of HMCE and the Inland Revenue which tackle drug trafficking and money laundering. The first inspection of SOCA has been scheduled for September 2006.

3.5 The Police Public Order and Criminal Justice (Scotland) Bill is due to receive its final hearing in May 2006. It will amend Part III of the 1997 Act and RIP(S)A in order to put the Scottish Drugs and Enforcement Agency ('SDEA') on a statutory footing, and will give the Director power to grant authorisations for carrying out intrusive surveillance and property interference. The Bill, which is due to be enacted on 1st April 2007, will also change the Agency's name to the Scottish Crime and Drugs Enforcement Agency.

4. ORGANISATION OF OSC BUSINESS

- 4.1 The scheme of the Acts is to confer on the Commissioners responsibility for oversight of authorisations, and to confer on me responsibility for keeping under review most of the covert activities conducted by most public authorities. My duty of review is in practice fulfilled by means of inspections of law enforcement agencies by Inspectors, together with follow-up visits by Commissioners or by me, and by inspections of other public authorities by Assistant Commissioners or Inspectors (or both).
- 4.2 These visits enable Commissioners to establish what progress is being made in the implementation of recommendations made by Inspectors and endorsed by me. They also provide an opportunity for discussion of relevant issues that I believe is helpful to Chief Officers as well as to Commissioners.
- 4.3 The Assistant Commissioners continue to take responsibility for the inspection of most Government departments and agencies as well as most local authorities. Some of the more important public authorities (including, occasionally, law enforcement agencies) are inspected jointly by Assistant Commissioners and Inspectors.
- 4.4 Again this year my inspectors have inspected all police forces in the United Kingdom. In addition, they have inspected other major law enforcement agencies, including the SDEA, National Criminal Intelligence Service, National Crime Squad, and major Government Departments including the Departments for Transport, Trade and Industry, and Work and Pensions. I am satisfied that the inspection priorities, which are updated each year and are set out again as Appendix E of this report, continue to ensure proper oversight of these important users of covert activity.
- 4.5 Meetings of the Commissioners, usually held three times a year, are also attended by Assistant Commissioners, Inspectors, and managers from my Secretariat. In the year under review there happen to have been four such meetings. They continue to be valuable because they enable the Commissioners to make collective decisions about matters of interpretation. Issues arising from the inspections and from meetings with public authorities are also discussed, in the interests of achieving a consistent approach. Guidelines are issued periodically to inform public authorities of the views of the Commissioners on points of interpretation and practice.
- 4.6 Members of the OSC continue to participate in meetings with other bodies in order to help them to improve their understanding of the legislation and compliance with it. Inspectors have continued to address many national training events and are regular presenters at law enforcement authorising officers' courses, including that run by NSLEC. Inspectors and the Secretary have also addressed appropriate seminars and conferences.

- 4.7 Three law enforcement consultation group meetings and two local authority consultation group meetings have been arranged by the Secretary to OSC and held during the year. These continue to be constructive meetings, which are attended by regional representatives from the relevant public authorities. Issues of interpretation and practice are regularly passed to the Commissioners for consideration. Feedback received from public authorities about these meetings is extremely positive.
- 4.8 The OSC website continues to promote public awareness and assist local authorities and other public bodies. It is updated regularly and now includes a section on judgments, in which covert activities have been considered, and which may be of interest to public authorities. A new section has also recently been developed which will list relevant case law associated with Part II of RIPA, RIP(S)A and Part III of the 1997 Act. A Welsh version of the website has been produced which includes translated copies of my annual reports.
- 4.9 There have been 19,571 visits to the site during the year, 17,684 of which were made by different visitors. The most popular web pages continue to be the Home page and the Advice and Guidance section, which in [October and November 2005, and January and March 2006] received the largest numbers of visitors. Feedback from local authorities and other visitors continues to be appreciative. The main referrer to the OSC website still is the 'Google' search engine.
- 4.10 The expenditure of the OSC for the reporting year is summarised at Annex F. The members of OSC as at the end of the year are shown at Annex G. No Scottish Executive personnel are listed because they only support the Commissioners in relation to financial transactions applicable to the Scottish Executive, and are not dedicated to the OSC.

5. PARTICULAR MATTERS RELATING TO THE OSC

Appeals by authorising officers

- 5.1 There was only one appeal lodged by an authorising officer during this reporting period. Authorisation was given by a Chief Constable to apply covertly a unique invisible marking dye to the soles of a prisoner's shoes, so that, if he committed an offence of burglary within seven weeks, and was wearing the same shoes, he would leave traces of the dye at the scene. A Commissioner quashed the authorisation on the ground that it was speculative whether the subject would commit a "serious offence", and if so, whether it would result in "substantial financial gain". I dismissed the appeal. Future offences cannot be aggregated with past offences in order to establish "substantial financial gain", because the only offences that are relevant for that purpose are those constituting the "serious crime" which is to be detected.

Reporting irregularities

- 5.2 This is the second year in which I have asked 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. The requirement to notify me ensures that errors and transgressions are brought to my attention as soon as they occur, so that they can, if necessary, be investigated by one of my Inspectors either at once or during the next inspection of the agency concerned.

- 5.3 Most of the instances of unauthorised surveillance reported to me continue to occur because those carrying out the covert procedures have not been told by their managers the terms of the authorisations. This can lead to unlawful property interference and intrusive surveillance, and represents a fundamental failure of management. Law enforcement agencies should also report to me all breaches in relation to CHIS and directed surveillance. But they do not always do so. Unreported breaches found by the Inspectors are likely to be the subject of adverse comment in future Annual Reports.

Reporting to the Prime Minister and to the Scottish Ministers

- 5.4 I have had no occasion during the year to make a report either to the Prime Minister or to the Scottish Ministers about any of the matters with which I am concerned.

Relationship with other Commissioners

- 5.5 The Interception of Communications Commissioner has now embarked on inspections of the same public authorities that I am charged to keep under review. Details of the OSC's inspection schedule have therefore been made known to his Office. Agreement has been reached between the two inspection teams that they will try to leave at least a month between visits to the same public authority. I understand that this may not always be possible, but the OSC will do all it can to mitigate the burden on those inspected.

Changes in personnel

- 5.6 Sir Michael Hutchison retires as a Surveillance Commissioner on 30th June 2006. A special debt of gratitude is owed to him. His judgement, his common sense, his moderation, his friendliness, and his concern for people have combined to make a vital contribution both to the establishment and to the progress of the OSC. I am confident that the standards of the OSC will continue to be upheld by the appointment of Sir Charles Mantell to succeed him.
- 5.7 I am very grateful to Stephen James for the service he has rendered to the OSC. Before and after his retirement as a Commander in the Metropolitan Police Service, he filled the gap between the death of the Chief Surveillance Inspector, Tony Williams, and the appointment of his successor, Sam Lincoln, who joined the OSC in March 2006.

Recognition

- 5.8 Once again, my review of the year would be incomplete without my public recognition of the parts played, not only by the Inspectors, but also by the Commissioners and Assistant Commissioners and the staff of OSC in their thorough and conscientious discharge of duties that are sometimes onerous, always helpful, and often not appreciated as they deserve to be.

6. PROPERTY INTERFERENCE AND INTRUSIVE SURVEILLANCE

6.1 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 are available from the OSC website.

Statistics

6.2 Statistics for property interference and intrusive surveillance authorisations for past 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 would give an impression of their operating practices which might be misleading. Offences relating to drug trafficking, murder and terrorism continue to be the major targets of authorisations.

Property interference

6.3 Excluding renewals, there were 2304 property interference authorisations during 2005-2006, showing a very slight increase from previous years (2,210 last year). There were 475 renewals of authorisations made during 2005-2006, compared with 493 in the previous year.

6.5 There were 195 cases where urgency provisions allowed for in the legislation were used. There was also one case where authorisations were properly given in the absence of the Chief Officer. In the previous year these figures were 212 and three respectively. The slight reduction in the number of urgent cases appears to be largely due to a better understanding by police forces of when the urgency provisions should be used.

6.6 Four authorisations were quashed, which is comparable with last year (six). All these cases failed to meet the test of necessity. There were also six cases in which, because they did not fall within the relevant Act, there was no power to quash or cancel the authorisations: they were merely invalid.

Intrusive surveillance

6.7 There were 435 intrusive surveillance authorisations during 2005 - 2006, which represents a slight fall when compared with 461 in the previous year. Some Chief Constables have informed Commissioners that they are low users of intrusive surveillance due to lack of resources. Renewals of authorisations, however, appear to be constant: 94 renewals were granted this year, compared with 87 in the previous year.

6.8 Urgency provisions were used in 25 authorisations, without any needing to be signed in the absence of the Chief Officer. This is comparable with last year (39 & nil respectively).

7. DIRECTED SURVEILLANCE AND CHIS

Statistics

7.1 Statistics for the use of directed surveillance and CHIS have been provided by all law enforcement agencies and the majority of other public authorities.

Directed Surveillance

- 7.2 Law enforcement agencies granted some 23,628 directed surveillance authorisations during the period 1 April 2005 to 31 March 2006, and 3,073 were still in place at the end of that period. This compares with 25,518 and 3,653 respectively in the previous year, indicating an increase in the use of these powers.
- 7.3 In relation to other public authorities some 6,924 directed surveillance authorisations were granted during the year, of which 1,340 were still in place at the end of the reporting year. This also indicates an increase in use of such powers, the figures for last year being 6,110 and 1,060 respectively.

CHIS

- 7.4 There were 4,559 CHIS recruited by law enforcement agencies during the year; 5,211 were cancelled during the year (including some who were recruited in the previous year); and 4,075 were in place at the end of March 2006. The figures for the previous year were 4,980, 4,952 and 4,452 respectively, indicating a reduction in the use of sources. Although there has been a shift towards more overt methods of policing, I am still surprised to learn from some Borough Crime Units that they do not see intelligence gathering as one of their key priorities, despite the fact that law enforcement agencies have recently been moving to intelligence-led policing. It is also of concern that some forces are only making limited budgets available to fund CHIS, with the result that fewer CHIS being recruited.
- 7.5 For the same period, 437 CHIS were recruited by local authorities, of whom 269 were cancelled during the year and 151 were in place at the end of March 2006. This compares with 308, 204 and 53 respectively last year, and shows a significant increase in use of these powers, as local authorities become more familiar with them.
- 7.6 Matters relating to directed surveillance and CHIS are examined in detail during inspections of public authorities. They are also discussed when these agencies meet the Secretary and the Chief Surveillance Inspector; and interpretational and other significant problems are submitted to the Commissioners for guidance.

8. INSPECTIONS OF LAW ENFORCEMENT AGENCIES

- 8.1 I continue to use the term 'law enforcement agencies' to refer to those bodies which are authorised to use intrusive surveillance. These major users of covert activity continue to be inspected on an annual basis. The 60 inspections of law enforcement agencies in the course of the year comprised 44 police forces in England and Wales, eight Scottish forces, the Police Service of Northern Ireland, the National Crime Squad, the National Criminal Intelligence Service, the Scottish Drug Enforcement Agency, HM Forces in Northern Ireland, the Ministry of Defence Police, the Scottish Drug Enforcement Agency and the British Transport Police.
- 8.2 I have generally been satisfied with the standards that have been found within all the law enforcement agencies. I am particularly pleased that most have now created a Covert Authorities Bureau (CAB) to manage and oversee authorisations. An effective CAB is essential if their management is to be compliant with statute. It is also now obvious that, when a CAB does not have oversight of directed surveillance applications and authorisations, the standard is lower and may place the agency at risk of conducting covert activities

unlawfully. The use of a networked IT application and authorisation system, and policy arrangements that provide for the CAB staff to supervise applications and authorisations critically, also contribute significantly to effective management of the process.

- 8.3 It is a matter of concern that the Authorising Officer course run by National Specialist Law Enforcement Centre (NSLEC) is still the only national course available to law enforcement officers. Within most forces either there is no provision or current training does not adequately prepare authorising officers and applicants for their roles. Inadequately trained and ignorant staff often rely on templates to compile applications or authorisations. This leads to a lack of proper consideration, and nearly always produces an unsatisfactory result.
- 8.4 As the following public law enforcement agencies were subject to amalgamation, structural reform, or review during the last inspection year I decided to delay their inspection:
- HM Revenue and Customs (formerly the separate bodies of HM Customs and Excise and Inland Revenue);
 - Civil Nuclear Police (formerly the UK Atomic Energy Authority Constabulary);
 - Royal Navy Regulating Branch, Royal Military Police, and Royal Air Force Police.

They will all be inspected during the 2006/7 inspection year.

- 8.5 I have decided that the investigation units of the Royal Navy Regulating Branch, Royal Military Police, and Royal Air Force Police no longer require inspection annually. They will, therefore, be inspected in every other year.
- 8.6 I am concerned that most law enforcement agencies have yet to introduce effective arrangements for the handling, storage and destruction of material obtained through the use of covert surveillance. This is the responsibility of all those who manage covert activities.
- 8.7 There has been some improvement by law enforcement agencies in the drafting of applications and of notifications to Commissioners. Often, however, intelligence cases are much too long. Their purpose is to justify the use of covert activity. Repetition adds nothing; but it wastes the time of applicants, authorising officers and Commissioners. It reflects badly on training. It betokens a lack of effective oversight. It also results in misguided complaints of bureaucracy.
- 8.8 The announced intention to merge forces in England and Wales over the next two years will provide an exceptional opportunity for RIPA systems and processes to be reviewed and installed in the new forces in the light of the knowledge gained during the past five years.
- 8.9 In relation to law enforcement agencies the OSC will try to vary the scope and length of inspections so as to take account of good performance.
- 8.10 I have decided that there is no longer any need to issue annually a detailed list of good and bad practice points noted in the course of inspections of law enforcement agencies. What is required now is for those concerned to take account of and apply the points already noted. Good practices include the development of central authorities bureaux staffed by experts, sound training and policies, the use of gatekeepers to vet authorisations before submission to authorising officers, effective quality assurance, acknowledgment by officers tasked to undertake covert operations that they have seen and understood the terms of the authorisations, consistency about whether authorisations should be sought, and imaginative RIPA websites and newsletters.

- 8.11 During the year authorisations for directed surveillance have failed to achieve the improvements which were needed. In many instances applications continue to confuse necessity, proportionality and collateral intrusion. Inexperienced authorising officers compound the problem by providing unintelligent authorisations that sometimes do not authorise the particular activity applied for. This leads to unauthorised covert activity, and may render any product obtained inadmissible in criminal proceedings. In the coming year authorisations for directed surveillance will be scrutinised closely.
- 8.12 As further support for law enforcement agencies, an updated *OSC Procedures and Guidance* document is due to be issued shortly. The guidance represents the views which the Commissioners would be likely to take, should the issues arise for their decision. I continue to invite law enforcement agencies to send to the OSC Secretary details of any matter about which they are unclear.

9. INSPECTIONS OF GOVERNMENT DEPARTMENTS AND RELATED BODIES

9.1 Fourteen inspections have been made of Government Departments and related bodies. These were:

- Department of Work and Pensions
- Department Trade and Industry
- Environment Agency
- Financial Services Authority
- HM Prison Service (England & Wales)
- Home Office - UK Immigration Service
- Maritime and Coastguard Agency
- National Assembly for Wales
- Northern Ireland Prison Service
- Royal Mail plc
- Scottish NHS Common Services Agency
- Scottish Prison Service
- Serious Fraud Office
- Vehicle Operator Services Agency

9.2 Some of this heterogeneous group make significant use of directed surveillance and CHIS. Many of them are now creating investigation bodies that will work on a national basis under a single management structure. This will enable better support to be provided to those who need to use covert activities, and will incidentally facilitate the inspection of them.

9.3 All Government Departments and Agencies have now been inspected for the second time. It is clear that most of them continue to use covert activities as a last resort. As a consequence most have still not gained the experience necessary to manage and oversee a compliant application and authorisation process. I have had occasion this year to warn two Government Departments that unless significant improvements were made I would exercise my statutory power of report to the Prime Minister. In both cases I was later satisfied that the necessary improvements were being made.

9.4 I have reviewed the strategy for inspecting HM Prison Services in England and Wales, Scotland and Northern Ireland. Prisons give rise to exceptional difficulties for the management of covert activities. But following enhanced inspections, I have this year made recommendations for improvement to the Directors General of the England and Wales and Scottish Prison Services. Substantial and sustainable reform is now required in order to ensure better compliance with the statutory requirements. These authorities will be inspected again this year in order to find out with what success the necessary improvements are being made.

9.5 I have, as far as possible, adjusted the inspection schedule so as to provide for inspection of all directorates and agencies of the each Government Department at the same time.

10. INSPECTIONS OF LOCAL AUTHORITIES

10.1 This year 151 inspections of local authorities were carried out, which is considerably more than last year (111). They do not have power to grant authorisations for property interference or intrusive surveillance and are inspected less often than law enforcement agencies due to using their powers much less.

10.2 Out of the 442 local authorities in Great Britain that have been inspected, 266 have now been inspected at least twice. The standard of compliance with the statutory provisions continues to improve, with additional inspections being made to those Councils where particular concerns have arisen. I have had to direct four further inspections of local authorities this year.

10.3 The inspections continue to reveal a growing understanding of RIPA within these public authorities as well as many examples of good practice. Covert activity is still most often used by Departments that deal with trading standards and with anti-social behaviour and by those that administer benefits. The Licensing Act 2005 has made local authorities responsible for a wider range of licensing matters, which may necessitate more use of covert activities.

10.4 Most local authorities inspected have adopted written policies and protocols that provide relevant guidance to their staff, but too many of them are wordy, and this gives rise to complaints of "bureaucracy". These documents should not simply repeat the Codes of Practice or RIPA. Policies and procedures must not be created without proper consideration of where and when the use of covert activities may be needed. The fact that there is a dearth of good training available to local authorities means that managers must devise relevant internal programmes. Those who do so successfully are more likely to be able to develop compliant practices.

10.5 The authorisation of CHIS by local authorities is now becoming more common. Although the creation of robust systems and the provision of appropriate training for those who participate in a CHIS system can be onerous, they should not be discouraged from doing what is needed. In some cases local police forces have offered training and other support.

10.6 Most local authorities still do not use IT to record and retain authorisations. I remain concerned that manuscript records may be lost and the duty to retain them thereby compromised. Although it may be expensive to switch to IT, it is often possible to adopt programs already being used by other public authorities. The lack of IT may lead to a failure

to maintain the Central Record of authorisations properly. The creation of an effective Central Record, as prescribed by the Codes of Practice, provides a more effective resource than the simple storage of authorisations in a binder.

- 10.7 Local authorities must be alert to the fact that senior managers of Departments which only use RIPA sparsely may lack the necessary training to recognise operational requirements. It is a field in which experience often matters more than rank.
- 10.8 For the coming inspection year a programme of visits will be maintained which is based on the principles reproduced for convenience in Annex E. Unitary, Metropolitan, London Borough, Scottish and Welsh authorities are to be inspected in every other year, and County and District Councils once in every three years. Notably poor performers will need more frequent inspection, while those which are consistently good can be inspected less often.
- 10.9 Inspections by Assistant Surveillance Commissioners usually centre on discussion of the issues with senior officers, while Inspectors tend to place more emphasis on the examination of records. This is no doubt due to differences between judges and police officers in training and aptitude. Ideally, inspections by Assistant Surveillance Commissioners and Inspectors would be alternated, but this is often not possible, because Assistant Surveillance Commissioners inspect more local authorities than the Inspectors.
- 10.10 The Secretary to OSC organises a Local Authorities Consultation Group, much like that established for law enforcement agencies. The group considers matters of practice and interpretation. It has met again during the year and has agreed to hold bi-annual meetings in future. It is important that the relevant public authorities should make full use of the group and the matters discussed by it.

11. INSPECTIONS OF NATIONAL HEALTH SERVICE

- 11.1 I continued with my policy of not inspecting any NHS Trusts or Special Health Authorities, and in accordance with my recommendation all Health Authorities established under section 8 of the National Health Service Act 1977 have now been deleted from Part II of Schedule 1 of RIPA.
- 11.2 Because I was informed that within the NHS in England and Wales all covert activities would be conducted by the Counter Fraud and Security Management Services ('CFSMS'), this body was inspected by the OSC in April 2003 and again during this reporting year.
- 11.3 The only NHS bodies that now are relevant public authorities for Part II of RIPA (and only for purposes of section 28) are CFSMS and the special hospitals at Ashworth, Broadmoor and Rampton. CFSMS has become part of a special health authority called the NHS Business Services Authority, and references to CFSMS in the relevant Statutory Instruments have been amended accordingly.

12. INSPECTIONS OF OTHER PUBLIC BODIES

- 12.1 I highlighted in my report last year my concern about the inclusion of the Fire Services within the RIPA legislation as they seldom needed to use covert surveillance. Fourteen fire authorities were inspected during the year. None of them had any reason to use covert

surveillance, except for professional standards purposes when use of the powers is more often than not inappropriate. I therefore suspended further inspection of these authorities.

12.2 I have since been informed by the Office of the Deputy Prime Minister that in place of the Fire Precautions Act 1971 the Regulatory Reform (Fire Safety) Order 2005 will render the use of RIPA by fire authorities unnecessary. The moratorium on inspecting these authorities will therefore be continued.

12.3 As the following public authorities were subject to structural reform or amalgamation during the last inspection year I decided to delay their inspection:

- The Gambling Commission (formally the Gaming Board);
- Independent Police Complaints Authority.

They are being inspected during the 2006/7 inspection year.

12.4 The Office of Fair Trading is empowered to authorise intrusive surveillance and property interference. So long as it is entitled to do so, it will be treated as if it were a law enforcement agency and subject to annual inspection.

13. TECHNOLOGICAL DEVELOPMENTS

13.1 I have this year begun to inspect Air Support Units within major law enforcement agencies. This is because the equipment carried on both helicopters and fixed wing aircraft is so sophisticated that they can undertake significant covert surveillance. They generally do so in compliance with the legislation. These inspections will continue during the coming year.

13.2 Authorising officers too often fail to take advantage of technical feasibility reports before authorising the deployment of technical equipment. This may lead to inappropriate authorisations through failure to consider the suitability of the proposed equipment when assessing proportionality, necessity and collateral intrusion.

13.3 Most Technical Support Units within law enforcement agencies maintain high levels of security and oversight in relation to technical equipment. These relatively small units are of course responsible for some of the most intrusive deployments of equipment, and they usually exhibit high levels of professionalism.

13.4 Where technical equipment is deployed overseas it is important to give early consideration to the legislative requirements of the country concerned, so that any product of the equipment may be admissible in evidence in the United Kingdom.

13.5 During the year a presentation was given to the Commissioners on the conduct of covert surveillance on the Internet. It explained the difficulties of locating a server, 'web page' or 'chat room' for the purpose of identifying the subject of an application or authorisation. The National Hi-Tech Crime Unit, now part of SOCA and known as 'E-Crime', and liaison investigators based within police forces, have been established as specialists in this field.

13.6 Because Facial Recognition technology is intrusive, public authorities must be careful before deploying it to consider how it is going to be used, and whether it requires any, and

if so what, authorisation. This technology is not the same as an ordinary CCTV system. It is still at the stage of development, and must be kept under review.

14. AUTOMATIC NUMBER PLATE RECOGNITION

- 14.1 ANPR has proved very effective in crime reduction and is a prime example of intelligence-led policing. But the deployment of an ANPR camera constitutes surveillance when an identifiable image is recorded of a person in a vehicle. It probably also amounts to the obtaining of private information about any such person, whether or not that person has been identified for the purposes of the investigation or operation. The procedure will therefore be vulnerable to challenge unless it is authorised.
- 14.2 In the normal case, where a camera is sited in an obvious position and obviously is a camera, the deployment will not be covert. The same will normally apply where adequate notice of the presence of a camera has been given. But ANPR is not a normal case, and it is arguable that, even if the presence of an ANPR camera is apparent, surveillance nevertheless remains covert if occupants of vehicles are unaware that the camera may make and record identifiable images of them. Explaining the true purpose of the equipment briefly is not easy. It is not possible to lay down rules as to what will amount to adequate notice of the presence of the camera and of its function.
- 14.3 If the camera is set up in such a way as to record any of the large number of vehicles which may, for one reason or another, be entered on the computer database, particularly if a link to the Highways Agency's camera records were established, it is unlikely that the deployment could be authorised under RIPA. There may well be human rights issues arising in connection with any use of private information to build up pictures of the movements of particular persons or vehicles. In such a case, the admissibility at trial of evidence obtained in this way would probably depend on whether its admission would have an adverse effect on the fairness of the proceedings.
- 14.4 The unanimous view of the Commissioners is that the RIPA legislation is not apt to deal with the fundamental problems to which the deployment of ANPR cameras gives rise. This is probably because the current technology, or at least its very extensive use, had not been envisaged when the legislation was framed. The Commissioners are of the view that legislation is likely to be required to establish a satisfactory framework to allow for the latest technological advances. The position is complicated by the fact that the current technology can be used in a variety of different ways and at different levels of effectiveness.
- 14.5 I am accordingly urging upon the Home Secretary the desirability of promoting such enabling legislation as may be needed.

15. THE YEAR AHEAD

- 15.1 The Home Office has announced plans for the amalgamation of police forces in England and Wales. The Commissioners will be alert to any diminution within the new structures of the standards of compliance currently achieved by individual forces.
- 15.2 During the year ahead the reformed investigation and intelligence structures that have been established within recently created major law enforcement agencies such as SOCA and

HMRC will be inspected for the first time. Senior managers in these new bodies will be expected to have taken advantage of the significant learning now available about the creation of RIPA systems that are both effective and compliant. But I wish to record at the outset the importance of avoiding a proliferation of authorising officers.

- 15.3 In response to consultation, when it occurs, the Commissioners will comment on the main report and recommendations of the RIPA Review, because it is important that in the processes reviewed their role should be properly recognised and understood. Whenever possible, the Commissioners, all seven of whom have held high judicial office, will apply an interpretation of the Acts, upon which they are agreed. They cannot be party to joint reviews, because that might involve drafting documents which they would subsequently be called upon to construe; and they cannot give advice in individual cases, except when commenting on authorisations. But they will help to formulate general principles relevant to the conduct of covert activities.
- 15.4 I am very grateful for having been allowed to direct and develop the OSC since its inception, as I have seen fit. Most law enforcement agencies, and an increasingly large number of other public authorities, now understand and properly apply the provisions of the Acts. So the OSC is succeeding in one of its main objects. It now provides a prime example of how effective oversight can ensure that, when public authorities have to take invasive measures for the protection of the public, due regard is paid to the rights of individuals.
- 15.5 My successor, Sir Christopher Rose, will bring to the role of Chief Surveillance Commissioner unrivalled experience of the criminal law. I am glad to be able to leave the leadership of the OSC in his hands.

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

Total number of authorisations (not including renewals)	2003-2004			2004-2005			2005-2006		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
	2340	143	2483	2072	138	2210	2171	133	2304

PRIOR APPROVALS

Number of cases requiring approval*	2003-2004			2004-2005			2005-2006		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
	269	21	290	232	17	249	220	7	227
Cases requiring prior approval by category:									
• Dwelling	174	7	181	162	11	173	158	5	163
• Office premises	29	10	39	33	5	38	27	1	28
• Hotel bedroom	63	4	67	35	1	36	33	1	34
• Matters subject to legal privilege	2	0	2	0	0	0	2	0	2
• Confidential journalistic material	0	0	0	0	0	0	0	0	0
• Confidential personal information	1	0	1	2	0	2	0	0	0

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

	2003-2004			2004-2005			2005-2006		
	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total
Assault	7	3	10	9	2	11	15	0	15
Burglary/Robbery	110	1	111	96	0	96	109	0	109
Conspiracy	35	0	35	10	0	12	12	0	12
Drug trafficking	1275	116	1391	1157	105	1262	1198	101	1299
Firearms offences (including armed robbery)	116	3	119	108	4	112	119	2	121
Kidnap/extortion	20	1	21	34	0	34	35	0	35
Money laundering	37	0	37	56	5	61	67	0	67
Murder/loss of life	170	2	172	164	8	172	161	8	169
Organised illegal immigration	29	0	29	47	0	47	41	0	41
Tax evasion	116	0	116	48	0	47	56	0	56
Terrorism	171	6	177	212	9	221	215	9	224
Other *	79	10	89	121	5	126	151	11	162

* Only the most common types of offences are listed, including bribery & corruption and sexual offences. As a result, these totals may not reflect the number of authorisations granted.

**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**

	2003-2004			2004-2005			2005-2006		
	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)	437	10	447	434	27	461	418	17	435
Cases by category:									
• Private vehicle	126	0	126	171	10	181	199	8	207
• Residential premises	311	10	321	263	17	280	219	9	228

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

	2003-2004			2004-2005			2005-2006		
	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total
Assault	8	0	8	11	0	11	7	0	7
Burglary/Robbery	15	0	15	13	1	14	18	0	18
Conspiracy	4	0	4	6	0	6	6	0	6
Drug trafficking	162	8	170	156	13	169	166	11	177
Firearms offences (including armed robbery)	18	1	19	17	0	17	23	0	23
Kidnap/extortion	11	0	11	11	0	11	13	1	14
Money laundering	4	0	4	2	0	2	4	0	4
Murder/loss of life	139	1	140	139	8	147	111	3	114
Organised illegal immigration	2	0	2	3	0	3	2	0	2
Tax evasion	3	0	3	3	0	3	6	0	6
Terrorism	22	0	22	15	3	18	14	0	14
Other *	34	0	34	48	2	50	41	2	43

* Only the most common types of offences are listed, including bribery & corruption and sexual offences. As a result, these totals may not reflect the number of authorisations granted.

INSPECTION PRIORITIES

Subject to annual inspection

British Transport Police
Civil Nuclear Constabulary
HM Forces in Northern Ireland
Police forces for England and Wales
Police Service of Northern Ireland
Police forces for Scotland
Port of Dover Police
Port of Liverpool Police
Serious Organised Crime Agency
Scottish Drugs Enforcement Agency

Department for Work and Pensions [including Security & Pensions Agency, Investigations
Liaison Office & Audit Services]

Environment Agency
HM Prison Service
HM Revenue and Customs
Immigration and Nationality Directorate
Northern Ireland Prison Service
Royal Mail Group plc
Scottish Prison Service

Subject to inspection in every other year

Ministry of Defence Police & Guarding Agency
Royal Navy Regulating Branch
Royal Military Police
Royal Air Force Police

British Broadcasting Corporation
Department for Environment, Food and Rural Affairs
Health and Safety Executive
Special Health Authorities (NHS Counter Fraud & Security Management Service)
NHS Scotland (National Services Division)
Department of Trade and Industry
Department for Transport
Local Authorities - Unitary, Metropolitan, London Boroughs, Scottish & Welsh Councils
Maritime and Coastguard Agency
National Assembly for Wales
Office of Fair Trading
Office of the Police Ombudsman for Northern Ireland
Rural Payments Agency
Scottish Environment Protection Agency
Scottish Executive Environment and Rural Affairs Department
Serious Fraud Office
Vehicle & Operator Services Agency

To be inspected every 3 years

Charity Commission
Child Support Agency
Financial Services Authority
Food Standards Agency
Information Commissioner
Local Authorities - County & District Councils
Medicines & Healthcare products Regulatory Agency (MHRA)
Office of Communications
Royal Pharmaceutical Society of Great Britain
Scottish Accountant in Bankruptcy

Inspection priority to be determined once first inspection has been undertaken

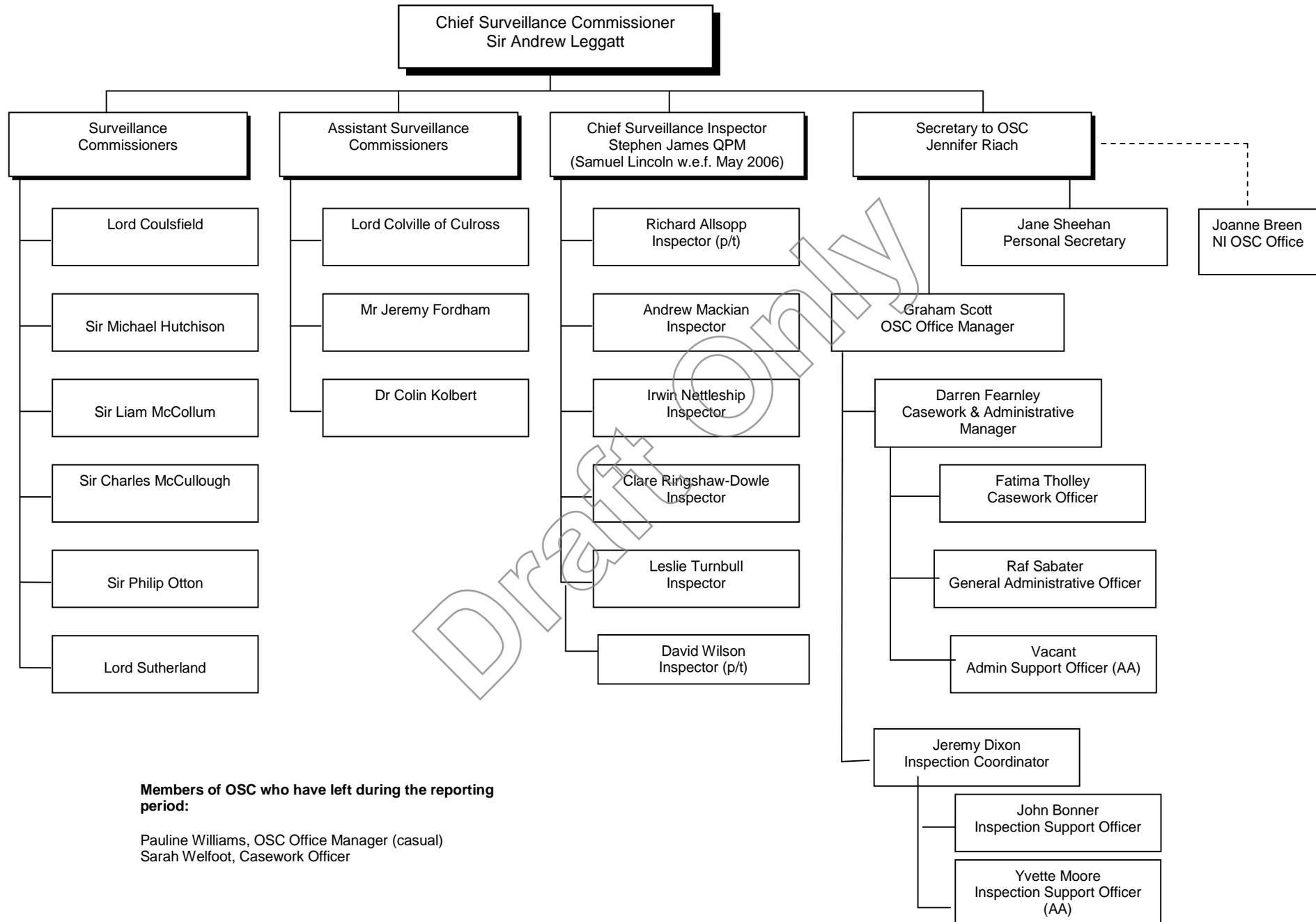
Gaming Commission
Special hospitals at Ashworth, Broadmoor and Rampton
OFSTED

Draft Only

OSC EXPENDITURE FOR APRIL 2005 - MARCH 2006

Description	Total cost £
Staff and recruitment costs	1,207,471
Travel and subsistence	128,076
Training and development	1,487
Conferences and meetings	13,849
IT and telecommunications	31,269
Books, stationery & printing	28,202
Office equipment	3,265
Postage and courier costs	278
Accommodation costs	<u>92,498</u>
Total	<u>£1,506,395</u>

MEMBERS OF THE OFFICE OF SURVEILLANCE COMMISSIONERS AS AT MARCH 2006



Members of OSC who have left during the reporting period:

Pauline Williams, OSC Office Manager (casual)
Sarah Welfoot, Casework Officer