

Compliance with proportionality, necessity and participation rules

All police officers will be familiar with the rules of necessity and proportionality surrounding the use of covert techniques, as required by section 71 of the Regulation of Investigatory Powers Act 2000 and Article 8 of the European Convention on Human Rights. Specifically, the person granting an authorisation must believe that the authorisation is necessary for the particular case or one or more of the grounds outlined in section 28 (subsection 3) of RIPA/RIP(S)A 2000. If the covert activity is necessary, the person granting authorisation must also believe that it is proportionate to what is sought to be achieved, including consideration of collateral intrusion. Part III of the Police Act 1997 also requires consideration of necessity by the authorising officer prior to interference with property or wireless telegraphy.

abmpegasus improves compliance with necessity and proportionality rules by guiding officers through the application and authorisation process. This helps to ensure that elements surrounding necessity and proportionality are not overlooked.

Necessity

RIPA/RIP(S)A requires that the person granting an authorisation for covert activity (including surveillance, interception of communications, acquisition of communications data, and the use of Covert Human Intelligence Sources (CHIS)) must believe that the authorisation is necessary in the circumstances of the particular case. It is important that all pertinent issues are considered and that a full justification for any decision is recorded. abmpegasus helps Authorising Officers by providing relevant fields for recording the consideration of necessity prior to authorisation. If the officer believes that less intrusive action could yield satisfactory intelligence or results, he/she can record the reasons for refusing to authorise the operation.

continued...



Proportionality

Proportionality laws require the authorising officer to consider the proportionality of any covert activity prior to approval. The intrusiveness and inherent risk of the covert activity must equate to the severity of the crime which it is seeking to investigate. The assessment of proportionality must also include an assessment of any other people who might be affected (collateral intrusion). abmpegasus provides dedicated fields for recording the assessment of proportionality to support the decisions made.

Participation

If the covert unit is requesting to use a CHIS in a situation where the Source may have to engage in illegal activity, the authorising officer must approve his/her participation. Again, it is important that the officer considers the wider implications of participation. abmpegasus provides a reliable and secure location to record the whole decision-making timeline with justification for each decision made. This makes it easier to check the scope and extent of any authorisation and to refer back to in the case of misconduct.

References

Regulation of Investigatory Powers Act 2000 (c.23) London:HMSO.

Available at http://www.opsi.gov.uk/acts/acts2000/pdf/ukpga_20000023_en.pdf [Accessed 30 September 2009].

Regulation of Investigatory Powers (Scotland) Act 2000 (asp 11) London: HMSO.

Available at http://www.opsi.gov.uk/legislation/scotland/acts2000/pdf/asp_20000011_en.pdf [Accessed 30 September 2009].

Police Act 1997 (c.50) London: HMSO.

Available at http://www.opsi.gov.uk/acts/acts1997/pdf/ukpga_19970050_en.pdf [Accessed 30 September 2009].

