



Home Office

Surveillance Camera Code of Practice

Protection of Freedoms Act 2012 –
Government response to statutory
consultation over the Surveillance Camera
Code of Practice

June 2013

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Introduction

This consultation sought views on the scope, clarity, and likely impact of a draft surveillance camera code of practice prepared under the Protection of Freedoms Act 2012.

Surveillance camera systems, including CCTV and automatic number plate recognition (ANPR) systems, are widely used in England and Wales, and these systems form part of a complex landscape of ownership and operation. Where used appropriately, these systems are valuable tools which contribute to public safety and security, protecting both people and property.

The government fully supports the use of overt surveillance camera systems in a public place when it is in pursuit of a legitimate aim; necessary to meet a pressing need; and proportionate, effective, and compliant with any relevant legal obligations.

The government also recognises that any surveillance camera system has the potential to interfere with an individual's civil liberties, particularly their right to respect for private and family life.

The purpose of the code is to ensure that individuals and wider communities have confidence that where surveillance camera systems are deployed those systems are in place to protect and support them, with appropriate measures to safeguard against disproportionate interference with privacy, rather than to spy on them.

The government considers that wherever overt surveillance in public places is in pursuit of a legitimate aim and meets a pressing need, it should be conducted in a way that constitutes surveillance by consent. Surveillance by consent should be regarded as analogous to policing by consent. In the British model of policing, police officers are citizens in uniform. They exercise their powers to police their fellow citizens with the implicit consent of their fellow citizens. 'Policing by consent' is the phrase used to describe this. It denotes that the legitimacy of policing in the eyes of the public is based upon a general consensus of support that follows from the transparency of police powers, demonstrating confidence in the integrity they display in exercising those powers and in their accountability for doing so.

We want to ensure that where any overt use of surveillance camera systems in public places is undertaken, it is done with a consensus of public support and trust, which can be characterised as surveillance by consent.

The consultation ran from 7 February until 21 March 2013 and also sought views on the position of the non-territorial police forces and the Serious Organised Crime Agency (SOCA) in relation to the code.

This document provides a summary of the responses and outlines the Government's proposed next steps.

Overview of responses

We received 134 responses to the consultation. The profile of respondents to the questionnaire or who sent responses to the consultation is as follows.

| | | Response Percent | Response Total |
|----|--|------------------|----------------|
| 1 | Local authority | 40% | 46 |
| 2 | Police force | 13% | 15 |
| 3 | Police and crime commissioner | 4% | 5 |
| 4 | Surveillance camera system operator (public authority) | 3% | 4 |
| 5 | Surveillance camera system operator (non-public authority) | 2% | 2 |
| 6 | Surveillance camera system designer, supplier, installer or maintainer | 2% | 2 |
| 7 | Security supplier | 1% | 1 |
| 8 | Regulatory body, standards body or inspectorate | 4% | 5 |
| 9 | Civil liberties charity/organisation/pressure group | 2% | 3 |
| 10 | Representative body | 2% | 4 |
| 11 | Member of the public | 15% | 20 |
| 12 | Prefer not to say | 2% | 2 |
| 13 | Other | 16% | 18 |

A total of 127 answered and 7 skipped this question

Summary of responses

The consultation document invited views on specific issues and gave the opportunity to comment more generally on the proposals. We are grateful to all those who took time to consider the consultation document and respond with their comments, views and suggestions, in the spirit of ensuring that further regulation is able to make a positive difference from the outset of what is intended as an incremental process over a three- to five-year period.

The key points from the consultation responses and the government's response to them is set out below.

5 (i) I would support implementation of this code of practice

81% agreed –18% disagreed

- The draft code was generally welcomed as clarifying and consolidating the existing requirements into a single bespoke document of specific relevance to the regulation of CCTV and other surveillance camera systems. There was general agreement that public confidence and trust in CCTV and ANPR should also be improved through clear explanation of how they are used and why the monitoring of public space is legitimate and necessary. There was consensus that the draft code is clear in its main objectives.
- There was agreement that this was an important first stage in better engaging with civil liberties concerns and a step forward in achieving greater transparency.
- Respondents thought that the code reinforces and complements the requirements of the Human Rights Act 1998 (HRA) and the Data Protection Act 1998 (DPA), in respect of information about individuals and that the introduction of annual system reviews under the code would increase the effectiveness of CCTV systems and ensure that relevant authorities audit their camera systems.
- Respondents expressed concern about the limited list of relevant authorities who would be placed under a duty to have regard, and about whether other system operators in both the public and private sector would adopt the code on a voluntary basis as anticipated by the government. Some also expressed concern that there is a greater risk of non-compliance by system operators in the private sector than there is with system operators who are public authorities.
- There were also concerns about whether justification for the use of CCTV is being set at too high a threshold, i.e. that it would only be justified when there is an obvious or substantive problem to be addressed. Respondents suggested that CCTV can be immensely effective even where there is not a pressing substantive problem in existence, for example, e.g. to prevent anti-social behaviour, to enforce parking regulations and to help locate missing persons, none of which might be the initial reason for which it was installed. It was suggested that there should be a broader, more meaningful debate on whether CCTV should be in use at all.

- Respondents were concerned that 'technical' challenges during legal proceedings, based on relevant authorities not acting with regard to the code, could undermine the effectiveness of CCTV systems for crime prevention and detection.
- It was suggested by some respondents that as the role of the Surveillance Camera Commissioner is one of encouraging and advising, rather than inspecting and enforcing, the impact of the Code may not be as significant as it otherwise would be.

Government response

The government welcomes the wide support for implementation of the draft code as a single source of advice and guidance on the overt use of surveillance camera systems in public places. Given that the code sets out existing legal obligations arising from the DPA, the HRA and elsewhere, there is inevitably some duplication between this code and the Information Commissioner's CCTV Code of Practice. This code is intended to make it easier for system operators and the public to understand the full range of issues associated with the use of surveillance camera systems, and will complement the work of the Information Commissioner's Office (ICO). The ICO fully supports this code, and has confirmed it will be reviewing its own code of practice to ensure it aligns as far as possible with this one.

The code is intended to be an important step in an incremental approach to regulation that will help reassure the public that their civil liberties are being respected and enable them to challenge a system operator wherever they have concerns. It should also encourage the wider adoption of good practice where surveillance is necessary and proportionate.

The government appreciates that any regulatory system which is based upon voluntary adoption by the majority could be viewed as lacking the necessary force to meet its purpose. The Home Office will show visible leadership in the voluntary adoption of the code and will encourage other departments and through them their arms length bodies to do so. This will help demonstrate to those who are not relevant authorities under S33 of the Protection of Freedoms Act 2012 and to the public what voluntary adoption could entail and the benefits it could bring about.

Furthermore, the Protection of Freedoms Act 2012 requires the government and the Surveillance Camera Commissioner to keep the code and its operation under review. In recognition of the responses to this consultation, in 2015 the government will review the extent of the list of relevant authorities under S33 as relevant authorities and undertake statutory consultation as necessary on placing others under a duty to have regard to the code. This review will be informed by advice from the Surveillance Camera Commissioner.

5 (ii) The code of practice clearly outlines the scope of surveillance camera use which will be subject to regulation

77% agreed – 20% disagreed

- Respondents sought clarification on how the code applied to local authorities exercising both their licensing functions and the civil enforcement of parking and moving traffic contraventions. Respondents believed the consideration of surveillance camera use in exercising both these functions should be explicitly within the scope of the code.

- In the context of civil enforcement, some respondents expressed concern that CCTV was being used in some instances to prosecute the public and to generate revenue. They recognised that where CCTV is used as an appropriate safeguard it has a valid purpose but considered it unacceptable to employ CCTV solely to prosecute and generate revenue. It was suggested that the public regarded this as an abuse of authority.
- Some respondents sought greater detail on the definition of surveillance camera systems, asking whether body-worn camera systems were included. Others asked whether the use of ANPR systems for enforcing speed limits would be subject to this code of practice.
- Respondents saw a need to ensure clarity of responsibility and consistently good practice across all partners. It was suggested that the draft code should make very clear that relevant authorities will need to make sure that any partnership or service provider arrangements they enter into must be consistent with exercising their duty to have regard to the code.

Government response

The government accepts that there are always likely to be calls for a more detailed definition of a surveillance camera system. This challenge of defining surveillance camera systems has been approached both from the perspective of the technology to be included and the purpose for which the deployment of a system is considered. Technological advance will continue, and is expected to move rapidly. As a consequence, there is the risk that new technology, which may have a greater potential to interfere with the right to privacy, could fall outside the scope of a detailed definition. Furthermore, there are many legitimate purposes for which a surveillance camera system may be considered appropriate: ranging from the prevention and detection of crime, through civil parking enforcement, the search for missing persons, to monitoring flood levels and protecting property. Preparing and maintaining an exhaustive list is unlikely to be helpful to the public or system operators. The broad definition is, however, intended to include automatic number plate recognition systems, including those used to enforce speed limits, and any body-worn video cameras. Where there is any doubt whether a specific technology or purpose is within the scope of this code, we will look to the Surveillance Camera Commissioner to provide advice and we encourage system operators to do the same.

An increasing number of local authorities in England and Wales are either using or considering the use of surveillance camera systems as part of the civil enforcement of parking and moving traffic contraventions. The draft code has been amended to make clear that it does cover these functions, and it therefore provides an additional reassurance to the public that, as a relevant authority under the Protection of Freedoms Act 2012, a local authority can be held to account under this draft code for its decisions about parking and moving traffic contraventions. If there are public concerns that surveillance cameras are being used for revenue generation, then this code provides a further avenue through which a local authority can be held to account.

In exercising its licensing functions, a local authority may consider it appropriate to require the deployment of CCTV when granting a licence or a certificate for a licensable activity. This will normally be considered following discussion with the police, and it must reflect a proportionate response to a pressing need. As relevant authorities, the local authority and the police are already expected to comply with the Human Rights Act 1998 when taking any action which might potentially interfere with the right to respect for private life and family life under Article 8 of the European Convention on Human Rights. The draft code has been amended to reflect that obligation.

There may be circumstances in which a licensing authority considers imposing a blanket requirement for CCTV is attached to all licences or certificates, though this is likely to require an appropriately strong justification and must be kept under regular review. For example, in the light of serious violent and sexual offences taking place in or around taxis and the consequent need to protect vulnerable users of taxis, it may be proportionate for a local authority to require the compulsory installation of CCTV in licensed taxis as an essential tool to deter perpetrators and help with the investigation of such incidents. It would not, however, appear appropriate to take such a blanket approach for trouble-free rural or community pubs, where there is unlikely to be a pressing need that would justify a CCTV condition being attached to the licence.

Where a licence or certificate is granted subject to a CCTV condition, a licensee (or their agent) who is the system operator but not a relevant authority might reasonably be encouraged by the licensing authority to adopt the code on a voluntary basis. This could help reassure the public that its use of surveillance camera systems complies with legislative requirements, and is proportionate and effective in meeting its stated purpose.

5 (iii) The code of practice clearly outlines what is meant by surveillance by consent

77% agreed – 18% disagreed

- Respondents generally believed that the idea of surveillance by consent is clearly defined in the code and that it underpins how public space CCTV systems are already being used and developed. They also recognised that establishing surveillance by consent may mean different things to different people and the concept might benefit from further consideration. Some thought that there are situations where surveillance without consent may be appropriate. For example, when surveillance is used to manage car parking, both on and off street, the express consent of those being surveyed is not always obtainable, or indeed appropriate. Others thought it is important that camera surveillance should not be intrusive and should remain proportionate to the purpose for the surveillance in the first instance.
- Respondents thought that the concept of surveillance by consent makes assumptions about wider perception of the phrase by society as a whole. It was suggested that more explanation should be included.
- It was also suggested that the term ‘surveillance by consent’ may cause confusion by introducing a notion of consent beyond that exercised directly by individuals themselves on their own behalf. Respondents pointed out that in law, for consent to be valid, it has to be specific, freely given and informed, so it was difficult to see how this legally defined individual consent could operate in the context of widespread camera surveillance or how a form of societal consent could be achieved and then respected in practice. Although there is a parallel drawn with policing by consent, respondents thought this concept was different, as it does not represent the purposeful and systematic acquisition of information about individuals irrespective of concern about them, and that any such unwarranted activities by law enforcement bodies would strain notions of policing by consent. There was a suggestion that an alternative formulation of words could be chosen that reflects that camera surveillance should be transparent and enjoy general public support in this context.

Government response

The government is encouraged that the majority of respondents recognised the concept of surveillance by consent as one which is valid and relevant to the use of surveillance cameras. This concept is intended to be interpreted as a general consensus of public support based upon transparency about the legitimate aim for any overt surveillance in a public place, proportionality of its deployment in meetings its stated purpose, and clear accountability for its use. In many cases, system operators are already informing local awareness of, and debate about, the use of surveillance camera systems and creating the conditions for surveillance to be undertaken with a general consensus of support on behalf of, and with the support of, those affected.

This consensual approach can, however, be interpreted as going beyond the consent that is exercised directly by an individual on their own behalf. However, greater transparency is intended both to inform the individual and to support them in engaging with a system operator and ensuring their views about surveillance in a public place are taken into account.

5 (iv) The code of practice will ensure greater transparency on the part of system operators

65% agreed – 24% disagreed

Respondents highlighted that the code of practice would ensure greater transparency on the part of system operators, and particularly those who will be relevant authorities, and that the draft code's provisions would help ensure greater transparency by systems operators through guiding principle 3.

The reference to proactive publication of information about the purpose and use of a system was welcomed and it was considered that the reference to 'open data' requirements was particularly timely and relevant. Respondents suggested that the objective of appropriate transparency could be given greater prominence earlier on in the draft code to reinforce its importance.

Those respondents who disagreed tended to do so based on an expectation that voluntary adoption of the code by non-relevant authorities would be limited.

Government response

The government expects the code to bring greater transparency on the part of local authorities and the police, who will be under a duty to have regard to the code. This is consistent with the wider transparency agenda for public authorities. It acknowledges that it is open to other surveillance camera operators to choose to adopt the code voluntarily, and therefore those who choose not to do so are unlikely to be more transparent at this early stage of implementation. Those who do adopt the code voluntarily will be encouraged to be transparent in making a public commitment to following its 12 guiding principles. The public will be able to challenge those who do not make such a public commitment, and those system operators may experience reputational damage.

The government will review the operation and impact of the code in 2015 including the extent to which system operators are adopting the code voluntarily and demonstrating greater transparency. This review will be informed by advice from the Surveillance Camera Commissioner, and will be followed by statutory consultation on the extent of those listed under S33 as relevant authorities. It will place others under a duty to have regard to the code if necessary.

5(v) The code of practice will help protect the right to respect for private and family life.

65% agree and 23% disagreed

- The majority of respondents considered that the code of practice would help protect the right to respect for private and family life, suggesting that following the draft code and its guiding principles would help ensure respect for private and family life by placing that obligation at the forefront of decision making by public authorities.
- Some respondents did not think this code would protect the right to private and family life, as this falls under the HRA, which is already in force. They believed that this code signposts the reader to it, but would not enhance compliance. There were also concerns that it will do nothing to help protect people's privacy where privately-owned CCTV is concerned, because non-public authorities do not have to comply with human rights legislation.
- Some also recognised that the undertaking of privacy impact assessments as an essential component of this process, and saw the code's promotion of using doing so as a positive step. Others expressed concerns that private impact assessment processes may be seen as a undue burden and discourage the wider voluntary adoption of the code.

Government response

The government agrees that protection for the right to respect for private and family life is already enshrined in the HRA by which all public authorities are bound. Following the guiding principles in the draft code will, however, help ensure that a public authority, whether or not it is a relevant authority, gives due consideration to the risks of unnecessary interference with this right. Whilst a system operator who is not a public authority is not bound by the HRA, voluntary adoption of this code should nevertheless enable them to satisfy themselves and the public that any surveillance is necessary and proportionate.

Privacy impact assessments are not a statutory requirement for any organisation. They do, however, form part of good practice in assessing privacy risks and identifying appropriate solutions to mitigate those risks. The process is scalable to suit the proposals or system under consideration and of itself should not create an unnecessary burden. Transparency over the use of a privacy impact assessment can help enhance public confidence that a system operator has taken into account the potential to interfere with privacy.

5 (vi) The code of practice will help to increase the effectiveness of a surveillance camera system in meeting its stated purpose.

68% agreed and 23% disagreed

- The promotion of good practice and approved standards was generally welcomed, as was the role of the Surveillance Camera Commissioner in providing information and advice about recommended standards and the bodies that are able to accredit or certify performance against those standards.

- However, some respondents believed there is no clear understanding and definition of what constitutes an effective system, and that unless there is clear and agreed guidance on this point system operators would be unable to identify how best to improve the effectiveness of their systems.
- Others were of the opinion that most surveillance camera systems are almost certainly operating effectively anyway.

Government response

The government accepts that given the wide range of purposes for which a surveillance camera might be appropriately used there is an inherent difficulty in defining effectiveness in general terms. It does, however, share the expectation of the public that surveillance camera systems should be capable of meeting their stated purpose, and, in particular, of delivering images and information of evidential value. The draft code sets out guiding principles to promote good practice, leading to increased likelihood of a surveillance camera system meeting its stated purpose.

The Surveillance Camera Commissioner will provide advice and guidance on the effectiveness of surveillance camera systems and how to assess them against standards relevant to certification. The Commissioner is also developing a self-assessment tool for system operators.

6) To what extent do you agree or disagree that the code of practice makes the obligations and implications for different groups of operators [relevant authorities and others] clear?

62% agreed – 28% disagreed

- The majority of respondents thought the code of practice does outline with sufficient clarity the obligations and implications for the relevant authorities, and understood that other system operators would be encouraged to adopt the code voluntarily. Some, however, thought there was still uncertainty about who exactly will be obliged to follow the code. They also suggested the code needs to target privately-owned and operated CCTV cameras to standardise the quality and control of these cameras, and asked what sanctions would apply to those outside the relevant authority category.
- It was suggested that with an apparently growing number of private organisations operating surveillance camera systems, and business cases for remote monitoring being developed to reduce costs, there is a need to be clear that anyone commissioned to undertake monitoring should be fully compliant with guidance.
- Some respondents thought the code was too long and lacking in clarity and believed that in the context of budget cuts additional responsibilities under the code would be keenly debated and might not be followed.
- It was suggested that the draft code could provide a clearer statement of the bodies that are currently required to have regard to it and those that are not.
- Respondents also suggested that the government should consider the immediate voluntary adoption of the code when approved by Parliament for any surveillance camera systems that it operates itself, such as on the road network.

Government response

The government's position has always been that further regulation of CCTV and other surveillance cameras will be an incremental process which is largely self-regulatory, builds on the foundation of existing legislation, and starts with getting the basics right. A system operator considering introducing overt surveillance in a public place needs to decide which of the following three categories they belong to, to establish how the code applies to them.

| Operator | Obligations and implications |
|--|---|
| 1. Public Authority specified as a Relevant Authority under S33 of Protection of Freedoms Act 2012 | <p>Already subject to legal obligations including the DPA 1998 and HRA 1998. This code will help ensure that a system operator gives due consideration to these obligations and makes decisions about the legitimacy and proportionality of surveillance accordingly.</p> <p>The code also promotes good practice in the use and processing of CCTV images and other information obtained through surveillance camera systems and greater transparency, with the objective of creating a climate of surveillance by consent when there is a pressing need to be met.</p> <p>A relevant authority will be subject to a duty to have regard to the code, which means it must be able to demonstrate in a court of law that it has considered the guidance within the code.</p> <p>A failure by a relevant authority to have regard to the code can be taken into account by a court or tribunal in determining any question in criminal or civil proceedings.</p> |
| 2. Public Authority not specified as a Relevant Authority under S33 of Protection of Freedoms Act 2012 | <p>Already subject to legal obligations including the DPA and the HRA. This code will help ensure that a system operator gives due consideration to these obligations and makes decisions about the legitimacy and proportionality of surveillance accordingly.</p> <p>The code also promotes good practice in the use and processing of CCTV images and other information obtained through surveillance camera systems and greater transparency, with the objective of creating a climate of surveillance by consent when there is a pressing need to be met.</p> <p>Not subject to a duty to have regard to the code, yet still fully regulated by DPA and HRA.</p> <p>Will be encouraged to adopt the code on a voluntary basis as good practice that goes beyond its existing legal obligations, and to make public its commitment to follow the guiding principles within it.</p> |
| Non Public Authority | <p>Already subject to legal obligations including the DPA 1998. This code will help ensure that a system operator gives due consideration to these obligations and makes transparent decisions about the legitimacy and proportionality of surveillance accordingly.</p> <p>No obligations under the HRA 1998.</p> <p>Will be encouraged to adopt the code on a voluntary basis as good practice that goes beyond its existing legal obligations, and to make public its commitment to follow the guiding principles within it.</p> |

In general terms, relevant authorities will be local authorities, police forces and Police and Crime Commissioners in England and Wales, along with the three non-territorial police forces and the Serious Organised Crime Agency (SOCA). The code does not include a list of the relevant authorities, because the extent of relevant authorities is subject to review by the government and may be amended. Any such amendment would be subject to statutory consultation under section 33 (8) and an Order subject to the affirmative resolution in Parliamentary procedure. If the code did

include a list, any change to that list would also have to be reflected within it and before preparing an alteration or replacement code, the Home Secretary would have to consult the persons mentioned in section 29 (5). This could create an additional and unnecessary bureaucracy.

7) To what extent do you agree or disagree that the 12 guiding principles set out in the draft code are relevant in the regulation of surveillance camera systems?

81% agreed –12% disagreed

- Some respondents believed that the guiding principles are a good way of drilling down into the obligations of each authority, giving clear, concise explanations of the principles and why they are necessary. They felt the guiding principles would ensure that there is consistency and fairness across the board, especially in terms of official maintenance through contractors. They also thought of the principles set out clearly the criteria for images to be considered fit for purpose and the legal responsibilities of any agency intending to use surveillance in their core business.
- It was thought that 'pressing need', in guiding principle 1, requires further clarification or, alternatively, the word 'pressing' should be omitted from this principle.
- Respondents also noted that CCTV systems not only provide evidence but also constitute have a deterrent. There could be areas where it appears that the 'pressing need' has passed, when in fact it is the presence of the cameras at that location that has reduced the occurrence of the anti-social behaviour which was identified as a pressing need. They suggested that there might still be a pressing need to retain the cameras to deter future incidents, but it could be difficult to justify retention.
- Respondents also agreed that the 12 guiding principles would provide a strong foundation for the regulation of surveillance. However, they had concerns about how they would be applied and enforced across the industry: the code referred to standards and training overseen by the Security Industries Authority, which they understood would cease to exist as a body in the near future. It was suggested that the code does not appear to make any reference to the use of CCTV for purposes such as finding missing persons and investigating road traffic collisions, which might fall outside the remit of crime prevention and detection.
- In relation to guiding principle 2, some respondents felt there should be clarification around the need for privacy impact assessments, either at the initial consideration of any deployment or as part of an annual review. In relation to guiding principle 3, there was general support for the necessity and proportionality of each surveillance system to be subject to greater transparency, and agreement that the views of those affected should be sought through consultation. However, further guidance was requested on the nature and scale of such consultation, particularly where a system includes rapid deployment of CCTV cameras (temporary deployment), which is usually in response to specific identified threats or local issues.
- There was also a concern that the introduction of the Code of Practice could increase the number of complaints received by system operators who are not specified as a relevant authority, and do not adopt the code voluntarily.

Government response

The government has developed these 12 guiding principles to be relevant to any consideration of the overt use of surveillance cameras in a public place. They have been informed by a review of the use of automatic number plate recognition systems by the police, and draw together existing legal obligations and good practice to form a single source of guidance for system operators and the public.

There have been some minor changes in the wording of some of the guiding principles. These are intended to increase their precision rather than alter their intent.

Some respondents sought clarification of the term 'pressing need' in guiding principle 1, and questioned its application where a system operator is not a public authority and therefore not bound by the HRA 1998. Wherever a public authority is considering interference with the qualified right under Article 8 to respect for private and family life, the government would expect, in the light of relevant case law, that authority to establish a pressing need. For ease of reference, the code restates Article 8. This guiding principle is intended to assist all public authorities, regardless of whether they are a relevant authority under the Protection of Freedoms Act 2012, to take a proportionate approach whenever they consider the use of a surveillance camera system. Examples of a pressing need under Article 8 are set out in paragraph 3.1.1 of the code. The code is also clear in paragraph 1.4 that system operators who are not public authorities and not therefore bound by the HRA should nevertheless satisfy themselves that any surveillance is necessary and proportionate. Elsewhere in the code they are encouraged to be transparent to the public about their use of a surveillance camera system. This will also help them discharge their obligations under the DPA.

Guiding principle 3, which promotes transparency on the part of a system operator, encourages consultation as an important part of assessing whether there is a legitimate aim and a pressing need for deployment of a surveillance camera system, and whether the system itself is a proportionate response. The government recognises that where consultation over the use of surveillance camera systems does not already happen as part of good practice, this may require system operators to reconsider how and when they engage with the public and partners within their existing communications. Individual circumstances will, however, vary, so prescription about consultation in this code would not be helpful. The key consideration will be the proportionality of any consultation. For example, if a local authority is moving a single redeployable camera that is part of their CCTV system, it might be appropriate to consult local people and partners through its existing arrangements for such consultation. The government considers it appropriate that the public should have the opportunity to raise any concerns they might have with the system operator. This forms part of the accountability that underpins the concept of surveillance by consent.

8) To what extent do you agree or disagree with the following statements on how the code of practice sits alongside existing roles and regulations? (i) the relationship with DPA and RIPA is clearly outlined and (ii) the role, function and ways of working of the Surveillance Camera Commissioner are clearly set out and differentiated from those of the Information Commissioner and the Chief Surveillance Commissioner

- (i) 75% agreed – 16% disagreed.
- (ii) 66% agreed – 22% disagreed

- In general, respondents stated that the relationship between this code and existing regulatory requirements is clear. They recognised that the code will apply to overt surveillance and that the role of the Surveillance Camera Commissioner (SCC) is quite different and separate from that of the Chief Surveillance Commissioner (CSC), who is concerned with covert surveillance.
- Others commented that there is an unnecessary amount of duplication between this code and the CCTV code of practice already published by the Information Commissioner's Office (ICO), and they saw considerable scope for overlap between the functions of the SCC and the ICO. They also sought clarity over the status of the ICO's CCTV code of practice. Indeed, some respondents were of the opinion that the code would not introduce anything new into local authority-managed public space CCTV.
- Other respondents noted the role of the SCC in developing and maintaining a raft of technical standards for use by operators, welcoming this approach and indicating a willingness to contribute to that work. They did, however, call for a consistent audit framework to be developed to review whether system operators are achieving agreed minimum levels of compliance.
- Some respondents suggested that the relationships could be made clearer in the code by also setting out the statutory roles and functions of the ICO and the CSC, and that this might be done through a table.
- Some respondents questioned the need for another regulator in the SCC when the ICO and the CSC already exist.

Government response

The government has prepared this code of practice to align with the existing requirements of the DPA 1998 and the Regulation of Investigatory Powers Act 2000, and has worked with both the Information Commissioner's Office and the Office of the Surveillance Commissioners to ensure there are no gaps or duplication in responsibilities.

The code is intended to increase understanding of existing legal obligations for overt use of surveillance camera systems in public places as a single source of guidance and promote good practice. The content of the guidance builds on the remit of the Information Commissioner, particularly in encouraging regular review of overt surveillance camera systems, greater transparency over their use, and the effective use of a system in meeting its stated purpose through working to relevant standards.

The code also establishes a framework within which the Surveillance Camera Commissioner can fulfil his statutory functions alongside other commissioners, determine how best to work together with them, and publicise how this will be done, whilst retaining some flexibility to enable him to respond to developments in the use of surveillance cameras.

The ICO's CCTV Code of Practice provides advice and guidance to CCTV users throughout the United Kingdom on how to comply with the DPA. As a single source of guidance for the use of surveillance camera systems including CCTV, this code will need to include some detail about the DPA obligations that must be followed. It goes beyond the scope of the ICO's remit in promoting greater transparency in England and Wales than might be necessary under the DPA and the Freedom of Information Act 2000, and in encouraging certification against approved operational, technical and competency standards recommended by the Surveillance Camera Commissioner. The ICO has stated its intention to update its own guidance to complement the new code of practice.

The Protection of Freedoms Act 2012 does not provide any enforcement powers for the Surveillance Camera Commissioner, and given that the code is prepared as guidance this is entirely appropriate. Furthermore, the ICO has existing enforcement powers under the DPA 1998 and the government does not wish to create further regulation which either places unnecessary burdens on the public purse or on system operators. Nor does it intend to create confusion or uncertainty over where any potential breach of the DPA would be investigated; that will remain a matter for the ICO.

The Surveillance Camera Commissioner will be expected to provide advice and information about good practice and appropriate standards and to bring forward proposals to encourage wider voluntary adoption in due course. This will be informed by a non-statutory advisory council and specialist sub-groups to bring together key partners with relevant experience and expertise.

The Commissioners already work closely together and have been co-operating on the production of a 'roadmap' to clarify the roles and responsibilities of the bodies involved in overseeing legislation concerning surveillance in the United Kingdom. The roadmap is a work in progress, and it will be updated in the light of regulatory developments and published in due course. We do not propose to include greater detail in this code about the roles and functions of commissioners with functions which relate to other legislation. This is because to do so could create an unintended and unnecessary requirement to conduct statutory consultation and seek Parliamentary approval for any minor changes to this code as a result of revisions made elsewhere that had already been the subject of consultation and Parliamentary consideration.

Each Commissioner and their staff work in specialist technical areas that require extensive knowledge of relevant legislation and procedures. They also have different geographical remits within the United Kingdom. The work they do can often intersect and it is important that the Commissioners work closely together to ensure that overlapping issues are dealt with in the right way. However, the functions are quite distinct and do not duplicate one another.

9. A set of success criteria for surveillance camera regulation under the Protection of Freedoms Act 2012 appears on page 11 of the consultation document. To what extent do you agree or disagree that the introduction of the code of practice and the Surveillance Camera Commissioner will ensure these success criteria for regulation are met?

61% agreed – 25% disagreed

- There was some agreement that measurement of success against published criteria can provide an assessment of the extent to which the code of practice is achieving its purpose. Although this was in the context of the qualitative nature of the draft success criteria, the absence of relevant baselines may make it difficult to measure against them. Furthermore, there were comments that the impact of the code may not be immediate and therefore not measured easily in the short term.
- Others claimed that the impact of regulation under the Protection of Freedoms Act 2012 be assessed on how well it protected freedoms, rights and privacy, rather than on how well it secured compliance with a code which could be perceived as drafted to increase and improve surveillance and generate public support for it.
- Some respondents were concerned that as the majority of system operators would be free to choose whether to adopt the code on a voluntary basis, the success criteria were not likely to be met. Furthermore, they thought it unrealistic to expect the code to achieve its intended purpose in isolation. They pointed to a need for significant promotional activity to support the Surveillance Camera Commissioner in encouraging adoption and compliance.
- The draft code was, however, seen as having an essential role to play as part of the necessary regulatory mix of guidance, incentives and sanctions to strike the appropriate balance between protecting the public and safeguarding the privacy of the citizen.

Government response

The government acknowledges concerns that the largely voluntary basis of the code may not achieve immediate success. The code and the Surveillance Camera Commissioner will form an important part of the regulatory environment, and its impact will depend on effective partnership working and engagement with other regulators, with system operators, and with the public who will be empowered through greater transparency to hold system operators to account.

The Commissioner will review the operation and impact of the code using the success criteria set out in the consultation document, and his assessment will help inform a review by the government in 2015. These success criteria include ensuring there is transparency and proportionality on the part of system operators in balancing privacy and security considerations, and helping to ensure compliance with Article 8 obligations.

10) About the status of non-territorial police and SOCA- for each of the bodies, please state whether you think they should, or should not be made a relevant authority under Section 33 (5)

| | Yes | No |
|---------------------------------------|-----|-----|
| British Transport Police (BTP) | 71% | 11% |
| Civil Nuclear Constabulary (CNC) | 52% | 16% |
| Ministry of Defence Police (MoD) | 58% | 15% |
| Serious Organised Crime Agency (SOCA) | 55% | 14% |

- Some respondents suggested that all law enforcement agencies should be compliant including all three non-territorial police forces and SOCA. Others recognised that any decision to make these bodies a relevant authority should take account of whether they undertake overt surveillance in public places, on the clear expectation that any covert surveillance would be subject to authorisation under the Regulation of Investigatory Powers Act (RIPA).
- The BTP agreed in principle to being placed under a duty to have regard. It commented that the application of the code to the railways could be more consistent if transport operators and passenger transport executives, who are significant operators of surveillance camera systems, were treated similarly.
- Both the CNC and MoD Police indicated that they were content to be placed under a duty to have regard to the code.
- SOCA reported that its current use of surveillance camera systems is largely undertaken covertly, with appropriate authorisation secured under RIPA. It was, however, content to be placed under a duty to have regard to the code and thus provide reassurance to the public about its current operation of surveillance cameras, and that of the National Crime Agency in the future.

Government response

The government has considered responses about these four bodies in the context of wider concerns over the largely voluntary nature of the code. The Protection of Freedoms Act 2012 gives the Home Secretary the discretion to amend by Order the list of relevant authorities, subject to consultation and the agreement of Parliament.

The government is grateful to the three non-territorial police forces and SOCA for their responses to the consultation and will proceed on the basis that each of them will be made a relevant authority when the code comes into force.

The discretion to amend the list of relevant authorities is ongoing. The government will keep the position under review, and is committed to reviewing the extent of relevant authorities in 2015.

11) To what extent do you agree or disagree with the costs and benefits outlined in the impact assessment?

42% agreed – 20% disagreed.

- Some respondents commented that as the impact assessment was based on assumptions, it might not be an accurate representation of the actual costs of implementation by relevant authorities. They felt that the level of compliance will vary and therefore costs are almost impossible to estimate, and they believed that the costs incurred would be dependent on the resources available to an authority.
- Others noted that additional requirements were being placed upon relevant authorities at a time when resources are being squeezed. While the impact assessment may underestimate costs for some local authorities, it was not thought that this would make the assessment invalid.
- Respondents expressed concern that the costs were estimated on the assumption that only unitary and two-tier local authorities operate CCTV systems, pointing out that some parish councils also operate CCTV systems. There was a concern that as relevant authorities they might also incur additional costs.
- Detailed comments suggested that unit costs for police and local appeared to be understated; that although the impact assessment correctly reflects that certain compliance costs will already be incurred as result of existing requirements to comply with the 1998 Act and the HRA; that the existing requirement under the Freedom of Information Act 2000 to make information proactively available under a publication scheme is not reflected in guiding principles 3 and 10; that potential additional costs incurred by the Information Commissioner are also likely to arise as a result of communicating these changes to those affected and explaining the relationship with the Surveillance Camera Commissioner; and that guiding principle 12 costs should reflect that any reference databases containing personal data will already have to comply with the provisions of the 1998 Act on data quality and retention. The assumption about the number of local authorities was challenged on the basis that it ought be 424 rather than 350.

Government response

Government impact assessments are prepared using assumptions based upon the best information available. We recognise that in the area of surveillance camera systems regulation there are significant limitations on the information and data available at a national level. We are therefore grateful for the comments and suggestions from respondent. These have helped to inform an updated version of the impact assessment, setting out all its assumptions, which is being published alongside this response to the consultation.

The key changes reflect:

- updated unit costs for local authority and police;
- costs associated with separate local authority deployment of enforcement of CCTV systems for civil parking and moving traffic contravention;
- extension of relevant authority status to non territorial police forces.

Next steps

The draft code has been amended to reflect the comments made in response to the consultation. It will now be laid before Parliament along with the draft Order necessary to bring it into force. Subject to the affirmative resolution procedure, the government is committed to bringing the code into force in summer 2013.

The Surveillance Camera Commissioner is preparing for implementation of the code at that time, and for providing relevant authorities and other system operators with the necessary information and advice to enable them to follow the 12 guiding principles in the code. In doing so, he continues to work with the Information Commissioner's Office and the Chief Surveillance Commissioner, and a wide range of other partners.

The Home Office will provide visible leadership in the voluntary adoption of the code and, along with the Surveillance Camera Commissioner, encourage others who are not relevant authorities to do the same.

List of contributors

Below is a combined list of key organisations/groups that responded to the consultation.

Responses were received online, via email and post from the following organisations. This list does not name those who submitted a response in a personal capacity. Those who did so included members of the general public, serving and retired officers.

Local authorities

Bath and North East Somerset Council
Bristol City Council
Burnley Council
Canterbury Council
Cherwell District Council
Chesterfield Borough Council
Chorley Council
Colchester Borough Council
Conwy County Borough Council
Dorset County Council
East Lindsey District Council
Enfield Council
Essex County Council
Hertfordshire Constabulary
Horsham District Council
Islington Council
Lambeth Council
Leicester Council
London Borough of Camden
London Borough of Redbridge
London Borough of Sutton
Mansfield District Council
Merton Council
North Yorkshire
Norwich City Council
Peterborough City Council
Reigate and Banstead Borough Council
Royal Borough of Windsor and Maidenhead
South Derbyshire Council
Tameside Borough Council
Tonbridge and Malling Borough Council
Warminster Town Council
West Berkshire Council
West Lancashire Borough Council
Wirral Council

Police forces

Civil Nuclear Constabulary
Dyfed Powys Police
Durham Police
Essex Police
Gwent Police
Hertfordshire Police
Humberside Police
Kent Police
Ministry of Defence Police
Northamptonshire Police
Thames Valley Police
Welsh Police Forces
Police and Crime Commissioners
Cheshire
Derbyshire
Dorset
Durham
Greater Manchester

Others

Association of Train Operating Companies
BCS, The Chartered Institute for IT
Bevan Brittan
Birmingham Against Spy Cameras
British Security Industry Association
Camera Watch
CCTV Advisor- CCTVcrew
CCTV Data Compliance Inspectorate
CCTV National Standards Forum (CNSF)
CCTV training, Security Institute
Civil liberties charity/organisation/pressure group
Den Jackson Solutions Ltd
Dorset Community Safety Partnership
Eclipse Research
Harrods
Insight Certification Ltd t/a National Security Inspectorate
The Information Commissioner
Information & Records Management Society (IRMS)
Local Government Association
Safer Stockton Partnership
Serious Organised Crime Agency

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