

Surveillance Commissioner's **Annual Report 2007**

The 2007 report of the Surveillance Commissioner has been drafted to comply with Section 28(3) of the Regulation of Surveillance Act 2006.

1. This report covers the first full year of the operation of the Regulation of Surveillance etc Act. 2006 (2007/08).
2. Following public advertisement and the usual interview procedures, Advocate Paul Beckett was appointed Deputy Commissioner, taking up his duties in September 2007. The Deputy Commissioner provides cover for the absences of the Commissioner and also allows an alternative person for scrutiny and authorisation if a conflict of interest arises for the Commissioner in any particular case. The Deputy Commissioner and I have occasional meetings to ensure that common standards are applied and practice is improved.
3. As this was the first full year of operation of the Regulation of Surveillance etc Act, in the early part of the year I contacted all the authorities who had the power to authorise directed surveillance to ensure they were aware of the process to be followed. During the year I had a number of meetings with some of the authorities employing surveillance to discuss best practice and the details of procedures.
4. I authorised one intrusive surveillance episode during the year.
5. My Deputy and I scrutinised 96 authorisations for directed surveillance. On a number of occasions I discussed individual directed surveillance authorisations with the authority concerned, usually to request further information. This was hardly surprising given that everyone had something to learn about the most effective way of operating the new legislation. Additional information requested was provided and the standard of documentation improved during the year. The co-operation from the authorities authorising directed surveillance was satisfactory. I did not have to deploy my power to quash any authorisations.
6. Given that the Tynwald Scrutiny Committee in its First Report considered the level of official empowered to authorise surveillance, I am able to report that no concerns about this issue were encountered during the year.
7. Not all the 96 authorisations resulted in surveillance being applied. Changed circumstances – for example if the subject of the authorised surveillance was

taken into custody or left the Island before surveillance commenced – means that the number of surveillance episodes actually implemented was less than the total number authorised. There were also occasions when conflicting priorities meant there were insufficient resources to carry out authorised surveillance.

8. Authorised surveillance plays a valuable part in allowing public authorities to properly investigate matters authorised under the Regulation of Surveillance Act.

A significant proportion of the authorised surveillance episodes resulted in further action by the Public Authority concerned.

9. Twelve Public Authorities were eligible to authorise surveillance during 2007. Five Public Authorities used their powers. The overwhelming proportion of authorisations came from the Isle of Man Constabulary and the Department of Health and Social Security.
10. For Public Authorities who make only very occasional use of the power to authorise surveillance, one challenge will be to ensure authorising staff are fully familiar with procedures. A further challenge may be to ensure that those authorised to carry out surveillance are trained to perform to a satisfactory standard. These challenges are factors which should be taken account of whenever consideration is given to extending the powers to authorise surveillance to other public authorities.
11. With the benefit of a year's experience of the workings in practice of the Regulation of Surveillance Act, the question arises whether there should be a unified surveillance system under Manx law. At present surveillance is split between the Regulation of Surveillance Act and the Interception of Communications Act 1988 (as amended) ("the 1988 Act"). Under the 1988 Act, warrants are to be issued by the Chief Minister. One option might be to consider transferring his functions to the Chief Constable under supervision of the Surveillance Commissioner pursuant to the Regulation of Surveillance Act.
12. The 1988 Act may now be deficient in certain respects. The opinion of HM Attorney General should be sought as to whether the 1988 Act covers communications in forms which have evolved since the 1988 Act was introduced – for example emails or other internet communications. Tynwald may wish to consider in the light of such advice whether the 1988 Act should be repealed and its terms incorporated into a further revised Regulation of Surveillance Act.

13. If the provision of the Regulation of Surveillance Act were to be unified with the 1988 Act, Tynwald may also wish to review whether it would be appropriate to reconstitute the Interception of Communications Tribunal as the Regulation of Surveillance Tribunal.
14. I can confirm that under section 28(4) of the Regulation of Surveillance Act 2006 that no matter has been excluded from my report at the request of the Department of Home Affairs under Section 28(5)

Brendan O’Friel
Surveillance Commissioner
31st January 2008