APPENDIX 5

The New Magistrates Approval Process

1. The first stage will be to apply for an internal authorisation in the usual way. Once it has been granted, the Local Authority will need to contact the local Magistrates Court 1-2 days before, to arrange a hearing.
2. The hearing is a 'legal proceeding' and therefore local authority officers need to be formally designated to appear, be sworn in and present evidence or provide information as required by the Justice of Peace (JP).
3. The delegate will need to obtain two copies from Internal Audit which must be partially completed. *For help on completing the form, please contact Internal Audit.*
4. The delegate will attend the court and present themselves to the enquiries desk. Prior to the hearing the delegate will be seen by a legally qualified person who will go over the application in detail to seek out any obvious issues, this is known as the gateway check.
5. The local authority will provide the JP with a copy of the original RIPA authorisation. This forms the basis of the application to the JP and should contain all information that is relied upon. In addition, the local authority will provide the JP with <u>two copies of a partially completed judicial application/order form</u>,
6. The hearing will be in private and heard by a single JP who will read and consider the RIPA authorisation or notice and the judicial application/order form. He/she may have questions to clarify points or require additional reassurance on particular matters. The forms and supporting papers must by themselves make the case. It is not sufficient for the local authority to provide oral evidence where this is not reflected or supported in the papers provided.
7. The JP will consider whether he or she is satisfied that at the time the authorisation was granted or renewed or the notice was given or renewed, there were reasonable grounds for believing that the authorisation or notice was necessary and proportionate. He/She will also consider whether there continues to be reasonable grounds. In addition they must be satisfied that the person who granted the authorisation or gave the notice was an appropriate designated person within the local authority and the authorisation was made in accordance with any applicable legal restrictions, for example that the crime threshold for directed surveillance has been met (see below).
8. The order section of the above mentioned form will be completed by the JP and will be the official record of his/her decision. The local authority will need to retain a copy of the form after it has been signed by the JP.

The New Magistrates Approval Process

Local authority investigator wants to use a RIPA technique (directed surveillance or covert human intelligence sources).

Does investigator intend to use directed surveillance?

Y

N

Is the local authority investigating an offence and does that offence attract a maximum custodial sentence of 6 month or more?

N

Y

Is the offence being investigated either:
- Section 146/147/147A of the Licensing Act 2003, or
- Section 7 of the Children and Young Persons Act 1993.

N

Y

Investigator may **not** conduct directed surveillance. The case should be investigated by other means. Continue to assess if threshold is met **if** further offences come to light as the case progresses.

- Complete RIPA authorisation form, and seek approval of authorising officer as per current arrangements.
- Complete application part of the judicial application/order form for JP.

Within Office Hours
Local authority investigator to contact Her Majesty's Courts & Tribunals Service (HMCTS) administration at the magistrates' court to arrange a hearing.

Attend court with:
- counter-signed RIPA authorisation;
- the accompanying judicial application form;
- any other relevant reference or supporting material.

Outcome

Refuse to approve the grant or renewal and quash the authorisation.

This may be appropriate if the JP considers that an application is fundamentally flawed. The local authority must be given at least 2 business days in which to make representations before the authorisation is quashed. In these circumstances a local authority cannot use the technique and will need to seek further authorisation internally before reapplying.

Refuse to approve the grant renewal of an authorisation.

The grant or renewal of the RIPA authorisation will not take effect and the local authority may **not** use the cover t technique. Local authority may wish to address, for example, a technical error and reapply.

Approve the grant or renewal of an authorisation.

Technique may be used in this case. Investigator to resubmit to the JP any renewal or authorisation for the use of a different technique in this case.

Outside usual office hours:

A JP may consider an authorisation out of hours in **exceptional** circumstances. If the authorisation is urgent and cannot be handled the next working day then you should:
- Phone the court's out of hours HMCTS legal staff contact. You will be asked about the basic facts and urgency of the authorisation. If the police are involved in the investigation you will need to address why they cannot make a RIPA authorisation.
- If urgency is agreed, then arrangements will be made for a suitable JP to consider the application. You will be told where to attend and give evidence.
- Attend hearing as directed with two copies of both countersigned RIPA authorisation form and the accompanying judicial application form.

Obtain signed order and retain original RIPA authorisation.

Steve deBruin (ext: 4283)
Internal Audit
Castlewood | Clevedon

For further information, please refer to the Home Office Guidance to local authorities in England and Wales on the judicial approval process for RIPA and the crime threshold for directed surveillance.