

## Investigation, the Police Act 1997 and the Regulation of Investigatory Powers Act 2000 (RIPA)

Third parties such as the League Against Cruel Sports (LACS) and other Non-Governmental Organisations (NGOs) often conduct surveillance of hunting meetings and other rural activities. Such surveillance is conducted for their own purposes although they do frequently pass surveillance footage to the police where they believe that a crime has been committed. It has been suggested in some quarters that such surveillance should not be carried unless an authorisation has been obtained by the police under Part II of RIPA 2000 and/or Part III of the Police Act 1997.

Where **covert** surveillance is undertaken by a **public authority** which is likely to result in that authority obtaining **private information**, an authorisation should be sought under Part II of RIPA if the surveillance is to be deemed to be lawful. If the conduct of the surveillance involves entry on or interference with another's property, an authorisation should be sought under Part III of the Police Act 1997.

No authorisation under RIPA or the Police Act needs to be sought where an NGO such as LACS conducts surveillance for its own purposes. RIPA and the Police Act regulate the activities of **public authorities** so that those activities do not offend against Article 8 of ECHR.

Where the police are aware of the intention of the NGO to conduct covert surveillance and intend making use of the surveillance product in the event that it reveals evidence of a crime, it would be appropriate to seek an authorisation. This would undoubtedly be the case where the NGO is tasked to conduct the surveillance, whether explicitly or by necessary implication. However, no authorisation would be required where the police neither initiate nor encourage the surveillance even though they may be aware of it – see **Rosenberg** [2006] EWCA Crim 6.

Where surveillance product is to be relied upon, whether that surveillance was overt or covert and was carried out at the initiation of or with the encouragement of the police in circumstances likely to result in private information being obtained are questions of fact to be determined in each individual case.

Where surveillance has been conducted in circumstances in which the court determines should have been the subject of an authorisation under RIPA or the Police Act, the absence of an authorisation does not mean that the surveillance evidence will be automatically excluded. The fact that the evidence was obtained in breach of a Convention right is a factor which the court will consider when exercising its discretion under section 78 of PACE.