

GWENT POLICE AUTHORITY  
Equality and Human Resources Committee

**Date:** 8 February 2010 **Item No: 5e**  
**Heading:** Human Rights Impact on Operational Policing  
**Report Author:** Chief Constable

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**SUMMARY**

This report provides an update on issues surrounding the impact of Human Rights in the context of key policing activities, namely Custody, Public Order and Covert Operations .

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**RECOMMENDATION(S)**

That members note the content of this report.

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**1. BACKGROUND**

The Human Rights Act (HRA) 1998 is one of the most significant pieces of constitutional legislation to be enacted in the United Kingdom. It incorporates into national law those parts of the European Convention on Human Rights (ECHR) that concern individual rights and responsibilities. It is a provision of the HRA that all public authorities (which includes the Armed Forces) must act compatibly with the Articles of the ECHR. As a result of the Armed Forces Act 1996, that introduced reforms to the Court Martial system, and the Armed Forces Discipline 2000, that introduced reforms to the Arrest and Summary Dealing system, the Armed Forces discipline procedures are compliant with the HRA.

**What is the European Convention on Human Rights?**

This is one of the earliest and most important treaties passed by the Council of Europe, a group of nations invited by Sir Winston Churchill to come together after the Second World War to stop such atrocities and acts of cruelty happening again.

The Council of Europe is quite separate from the European Union (EU). It has its own Court of Human Rights in Strasbourg. You are already able to go to the Strasbourg court to claim your rights under the ECHR. However, the ECHR has not, until now, been part of the UK's domestic law so our courts have not normally been able to deal with claims.

## Convention Rights

There are sixteen basic rights in the Human Rights Act, all taken from the European Convention on Human Rights. Not only do they affect matters of life and death, like freedom from torture and killing; they also affect your rights in every day life: what you can say and do, your beliefs, your right to a fair trial and many other similar basic entitlements.

**Article 1** – This Article is Introductory.

**Article 2 – Right to Life.** You have the absolute right to have your life protected by law. There are only certain very limited circumstances where it is acceptable for the State to take away someone's life, eg. if a police officer acts justifiably in self defence.

**Article 3 – Prohibition of Torture.** You have the absolute right not to be tortured or subjected to treatment or punishment which is inhuman or degrading.

**Article 4 – Prohibition of Slavery and Forced Labour.** You have the absolute right not to be treated as a slave or forced to perform certain kinds of labour.

**Article 5 – Right to Liberty and Security.** You have the right not to be deprived of your liberty – 'arrested or detained' – except in limited cases specified in the Article (eg. where you are suspected or convicted of committing a crime) and where this is justified by a clear legal procedure.

**Article 6 – Right to a Fair Trial.** You have the right to a fair and public hearing within a reasonable period of time. This applies to both criminal charges against you, or in sorting out cases concerning your civil rights and obligations. Hearings must be by an independent and impartial tribunal established by law. It is possible to exclude the public from the hearing (though not the judgement) if it is necessary to protect things like national security or public order. If it is a criminal charge you are presumed innocent until proved guilty according to law and have certain guaranteed rights to defend yourself.

**Article 7 – No Punishment Without Law.** You normally have the right not to be found guilty of an offence arising out of actions which at the time you committed them were not criminal. You are also protected against later increases in the possible sentence for an offence.

The rights in Articles 8 to 11 may be limited where it is necessary to achieve an important objective. The precise objectives in each Article which allow limitations vary, but they include things like protecting public health or safety, preventing crime, and protecting the rights of others.

**Article 8 – Right to Respect for Private and Family Life.** You have the right to respect for your private and family life, your home and your correspondence. This right can only be restricted in specified circumstances.

**Article 9 – Freedom of Thought, Conscience and Religion.** You are free to hold a broad range of views, beliefs and thoughts, as well as religious faith. Limitations are permitted only in specified circumstances.

**Article 10 – Freedom of Expression.** You have the right to hold opinions and express your views on your own or in a group. This applies even if they are unpopular or disturbing. This right can only be restricted in specified circumstances.

**Article 11 – Freedom of Assembly and Association.** You have the right to assemble with other people in a peaceful way. You also have the right to associate with other people, which can include the right to form a trade union. These rights may be restricted only in specified circumstances.

**Article 12 – Right to Marry.** Men and women have the right to marry and start a family. The national law will still govern how and at what age this can take place.

**Article 13** – This is not included in the Human Rights Act.

**Article 14 – Prohibition of Discrimination.** In the application of the Convention rights, you have the right not to be treated differently because of your race, religion, sex political views or any other status, unless this can be justified objectively. Everybody must have equal access to Convention Rights, whatever their status.

**Article 1 of Protocol 1 (a ‘Protocol’ is a later addition to the Convention) – Protection of Property.** You have the right to the peaceful enjoyment of your possessions. Public authorities cannot usually interfere with things you own or the way you use them except in specified limited circumstances.

**Article 2 of Protocol 1 – Right to Education.** You have the right not to be denied access to the educational system.

**Article 3 of Protocol 1 – Right to Free Elections.** Elections for members of the legislative body (eg. Parliament) must be free and fair and take place by secret ballot. Some qualifications may be imposed on those who are eligible to vote (eg a minimum age).

**Article 1 of Protocol 6/Article 2 of Protocol 6 – Abolition of the Death Penalty.** These provisions abolish the death penalty. These can be limited exceptions in times of war but only in accordance with clearly specified laws.

All of Gwent Polices policies and procedures are assessed against human rights criteria, although responsibility for the implementation of these practices will lie with the relevant departments, workstreams and individuals.

## GWENT POLICE'S CONFLICT MANAGEMENT PROCESS

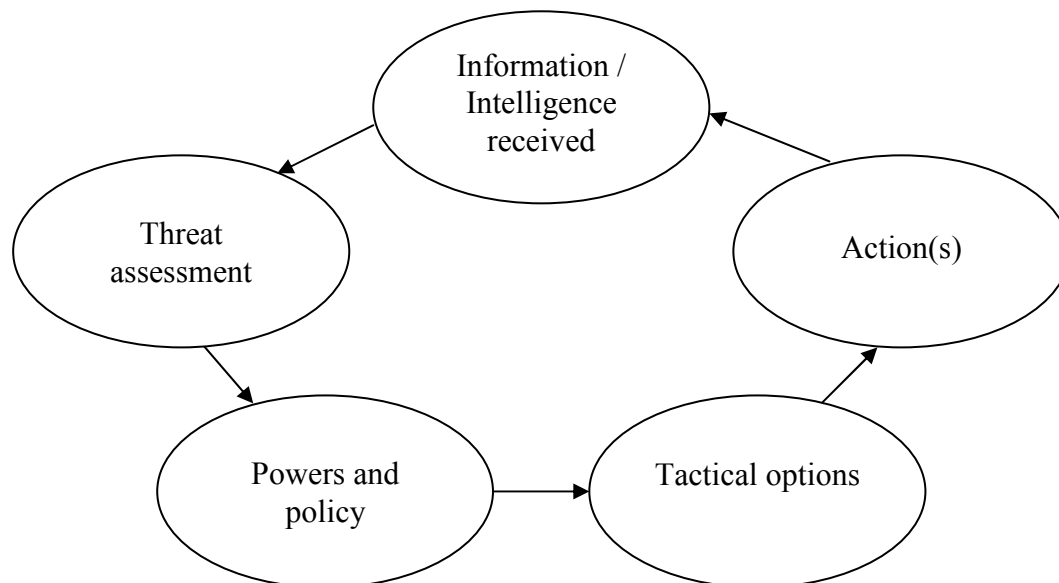
### Conflict Management Model

This model offers guidance on the management of events and incidents with a risk to public safety or potential for disorder. It also assists in the decision making process and provides a structure for the documentation of decisions and their rationale.

The cyclical nature of the model indicates the necessity for a process of continual assessment of a situation and for appropriate action to be taken on the basis of the most up to date information and intelligence available at that time.

None of the stages should be seen as the sole responsibility of the police. Indeed, restoration of normality in the community is a truly multi-agency strategy. Although the five stages have titles which fit comfortably with police procedures, they clearly map onto activities which are the responsibility of other agencies or can be achieved by groups within the community.

### DIAGRAM: The Conflict Management Model



**Information/Intelligence should:**

- be gathered from all available internal and external sources
- include criminal and community information/intelligence
- inform the planning and decision making process

**Threat assessment identifies:**

- threats to individuals, the organisation and partners
- threats to the success of any operation
- the level of any threat
- the situation in relation to the Disorder Model

**Powers and policy will:**

- be used appropriately and lawfully in compliance with, national, regional and local legislation and guidance

**Tactical options include:**

- the range of suitable responses which reflect the current level of threat and are not restricted to those included in this manual of guidance.

**Action(s) taken must be:**

- ECHR compliant
- regularly reviewed
- audited

The Conflict Management Model can be applied equally to spontaneous or pre-planned events. It is designed to assist with the resolution of conflict, whether by individual officers or through to the deployment of large numbers of personnel and resources. This model is also adopted by the ACPO Personal Safety Manual and the ACPO Manual of Guidance on the Police Use of Firearms.

## **2. PROPOSAL FOR CONSIDERATION BY COMMITTEE AND CURRENT POSITION**

### **HUMAN RIGHTS IN POLICING PUBLIC ORDER**

The following information is taken from the National Police Improvement Agency (NPIA)'s draft Guidance on Public Order and Public Safety (2009). The principles outlined here were adopted by Gwent Police in preparation for Operation Acer, whereby a large protest was planned for the Newport area and the risk of public disorder was high. As a result, the protest was concluded peacefully and its policing since cited by the NPIA as best practice.

## **LEGAL CONTEXT**

Public order policing is a high profile duty which will attract widespread attention. Force strategies, operational plans and tactical options should at all times consider the necessary legislation and the extent of policing powers that are justified under applicable legislation. Planners and commanders should understand from where specific police powers are derived. Work in progress

## **HUMAN RIGHTS**

Respect for the human rights of individuals should be a central focus of the policing process. There is an expectation that all policing will be conducted reasonably and within the bounds of the law. This is particularly important in any situation involving the use of force.

The European Convention of Human Rights (ECHR) was incorporated into UK domestic law with the enactment of the Human Rights Act 1998. Under ECHR, all public authorities have a positive obligation to ensure that the rights and freedoms guaranteed by the European Convention are protected. Additionally, Section 6 of the Human Rights Act 1998 makes it unlawful for a public authority to act in a way which is incompatible with the ECHR rights. The term 'public authority' extends to police for the purposes of the Act.

The following rights and freedoms are relevant to public order policing:

### **ABSOLUTE RIGHTS (ARTICLES 2, 3 AND 7)**

Absolute rights are neither conditional nor limited and can not be interfered with by the State. Specific public safety considerations apply to Article 2, see below.

#### **Article 2 (Right to Life):**

Details on Article 2 of the ECHR should be read in conjunction with ACPO (2009) Guidance on the Management and Deployment of Armed Officers. Article 2 of the ECHR states:

“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: in defence of any person from unlawful violence; in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; in action lawfully taken for the purpose of quelling a riot or insurrection.”

Under human rights legislation any police use of force must be reasonable and proportionate to the circumstances. In addition to reasonability and proportionality, Article 2 requires that the deprivation of life can only be justified if it is absolutely necessary for the protection of another person’s life. Article 2 also places a positive obligation on the State to take action to uphold the right to life.

#### **Article 3 (Prohibition of torture, inhuman treatment or punishment):**

There is no justification for engaging in behaviour prohibited by Article 3, even in times of war or other public emergency. The activities prohibited by Article 3 are:

- Torture (deliberate inhuman treatment causing very serious and cruel suffering)
- Inhuman treatment (treatment that causes intense physical and mental suffering)

Absolute Necessity - for lethal or potentially lethal use of force (eg, firearms), individual officers and commanders must be able to justify the use of force as absolutely necessary in the circumstances. The question of whether a use of force is absolutely necessary in the circumstances is one that depends to a large degree on the facts of the individual case. Key issues to consider and record as part of a decision making audit trail include:

- The nature of the aim pursued and whether it is in the protection of a person from unlawful violence
- The necessity of using a level of force that has the potential to result in death, bearing in mind the dangers to the lives of all persons involved
- The risks to others, including the subject of the force and all persons in the vicinity
- Other options that could be considered prior to resorting to the use of force
- The weapons or equipment that was available to police at the time and the reasons why available alternatives are being discounted
- Degrading treatment (treatment that arouses in the victim a feeling of fear, anguish and inferiority capable of humiliating and debasing the victim and possibly breaking their physical or moral resistance)

Article 3 is particularly relevant to any excessive or inappropriate use of force by police, whether for the purpose of intervention, arrest or restraint. Force must not be used by police officers, for the sole purpose of inflicting severe pain or suffering on another person in the performance or purported performance of official duties. Any such action may result in criminal charges, is a violation of human rights provisions and contrary to section 134 of the Criminal Justice Act 1988 and section 3 of the Criminal Law Act 1967.

**Article 7 (No punishment without Law):**

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed and this article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

Article 7 provides effective safeguards against arbitrary prosecution, conviction and punishment. It guards against retrospective application of criminal laws and therefore, an individual cannot be guilty of an offence that was not a crime at the time it was committed. The Article also prohibits the imposing of a sentence that is not proportionate to the offence.

Article 7 may have implications, for example, where an individual is present at the site of unlawful disorder, but is not personally engaged in unlawful activities. The act of being present at such an event may not be a crime and subsequently protected by Article 7. Similarly, Article 7 may apply if the individual acted unlawfully, was arrested

on the basis of unlawful behaviour, but given a sentence that is disproportionate to the offence.

### **LIMITED RIGHTS (ARTICLES 5 AND 6)**

ECHR provides explicit and finite circumstances in which limited rights can be interfered with.

#### **Article 5 (Right to liberty and security of person):**

Article 5's underlying aim is to ensure that no one should be dispossessed of his or her liberty in an arbitrary fashion. The right to liberty and security of person is not absolute, and may be interfered with in certain circumstances, for example in order to:

- Affect the lawful arrest or detention of a person for non-compliance with the lawful order of a court
- Secure the fulfilment of any obligation prescribed by law
- Affect the lawful arrest or detention of a person effected for the purposes of bringing him before the competent legal authority on reasonable suspicion of having committed an offence, or when it is reasonably considered to be necessary to prevent his committing an offence, or fleeing having done so
- Additional circumstances apply, as defined in ECHR

In *Austin and another v Commissioner of Police of the Metropolis* (2009)

UKHL 5, it was held that while the detention of protestors amounted to a breach of Article 5(1), it was justified as the police had intended to arrest those in the crowd whom they were able to arrest. Necessity is therefore a factor which may allow interference with Article 5 rights, so long as justification can be provided that the police action will be reasonable, proportionate, lawful and accountable.

#### **Article 6 (Right to a fair trial):**

Article 6 focuses on the administration of justice. It provides that every individual charged with a criminal offence shall be presumed innocent until proved guilty according to law, and has the right to a fair and timely trial.

The article also provides for the right, to be informed promptly, in a language which they understand and in detail, of the nature and cause of the accusation against him, and to seek appropriate legal advice.

Although there may be exceptional circumstances in which interference with Article 6 rights may be lawful, there has been limited case law to support this, and in practice Article 6 is likely to be upheld.

### **3.1.3 QUALIFIED RIGHTS (ARTICLES 8, 9, 10, 11 AND 14)**

Qualified rights require a balance between the rights of the subject individual and the wider community or state interest. Specifically, interference of a qualified right is only permissible when the police action is in accordance with the law, is necessary in a democratic society, and is in pursuit of a legitimate aim as specifically set out in the article.

In order to be considered lawful, the police interference with a qualified right must be demonstrated as having satisfied all three of the below requirements.

- In accordance with the law – The requirement that there must be a legal basis in national law for the interference
- In pursuance of a legitimate aim - The legitimate aims are specified in each of the articles. The legitimate aims that apply to public order policing will include the interests of public safety, the prevention of disorder or crime, the interests of national security (except in respect of Article 9, where it does not apply) and the protection of the rights of others
- Necessary in a democratic society – Requires that interference with the right concerned must be necessary to address the social need concerned (e.g. preventing crime) and must be proportionate to that aim

### **Article 8 (Right to Respect for Private and Family Life)**

Article 8 of the ECHR guarantees the right to respect for private and family life and home and correspondence. The term 'private life' is defined broadly within the Human Rights Act. Within the public order context it may be engaged in the following circumstances:

- Police photographing or filming subject individual(s), and the storing, examination and disclosure of such images
- Where local businesses, residents or other members of the public are unable to access their homes or go about their usual lawful business as a result of a protest or other public event

### **Article 9 (Freedom of Religion and/or Belief)**

Article 9 of the ECHR guarantees the right to freedom of thought, conscience and religion. It extends to manifestation (eg, public expression) of a person's religion or beliefs. There can be no interference with a person's ownership of a religious belief (or their lack of belief). The manifestation of such belief however, can be limited in certain circumstances.

### **Article 10 (Freedom of Expression)**

Article 10 of the ECHR guarantees the right to freedom of expression. It is an essential element of a democratic society and Article 10 equally applies to the expression of views considered favourable, and views that may offend, shock or disturb public authorities or any sector of the population. Freedoms of expression which include a degree of disruption to local businesses, residents or other members of the public are also protected under Article 10.

Expressions of viewpoint that are not protected by Article 10 include hate speeches, violent acts, or incitements to violence. A significant overlap between Articles 10 and 11 occurs when groups of persons assemble in order to express their views on a particular issue.

### **Article 11 (Freedom of Assembly and Association)**

Article 11 of the ECHR guarantees the right of peaceful assembly and association. This covers protests, marches, open-air meetings and any other method by which groups of people meet with a common purpose. Articles 10 and 11 will often be exercised at the same time. Protection by Article 11 does not extend to violent

assemblies. It is important to note that an otherwise peaceful assembly that contains a small number of persons engaged in acts of violence is not an unlawful or violent assembly. Police must make the distinction between the lawful greater assembly, and the small number of individuals acting unlawfully violent, and should direct the police action against those who are responsible for the disorder.

#### **Article 14 (Prohibition of Discrimination)**

Article 14 the ECHR requires that there must be no discrimination in the protection of Convention rights, and makes the principle of equality central to the obligations to protect life and physical integrity under Articles 2, 3 and 8. It is relevant to the use of force by police officers, including the use of restraint against detained persons.

Where any of these rights are engaged a difference in treatment which cannot be objectively and reasonably justified in the circumstances will breach Article 14, which states:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The full text of the articles can be found in Schedule 1 of the Human Rights Act 1998. One or more articles under ECHR may be relevant in the public order context. For example, a protest event may involve a group of individuals expressing their views (thereby engaging Articles 10 and 11) about a particular religion (protected under Article 9). The protest may impact the ability of local residents and other member of the public to go about their normal daily lives (thereby potentially engaging Article 8). The role of the police is to uphold and vindicate the rights of all persons involved in or impacted by the protest. The proper conduct of this role may pose difficult challenges for police, in particular where it is necessary to balance competing rights.

#### **Compliance Checklist:**

Assessing the proportionality of a police action is challenging for officers and must not be decided in isolation of the circumstances in which the action is to be taken. Police decision making is often called into question and commanding and non-commanding officers are often called upon to justify their actions to interfere with the rights and freedoms provided by ECHR and the Human Rights Act.

Following is a suggested checklist of questions as part of a documented audit trail:

- What is my objective?
- Is the proposed action relevant and necessary?
- Is there a reasonable relationship between the aim to be achieved and the means used?
- What are the foreseeable consequences of not acting?
- Is there a less intrusive alternative?
- Can the objective be achieved with less impact on the rights of the subject and any other(s) likely to be affected by the action?

## **POSITIVE OBLIGATIONS**

A threat of violence from others is not sufficient grounds to ban an assembly. For example, if a counter-protest is to be organised, the State is required to take reasonable steps within its power to facilitate the assembly, for example through providing a police presence. In situations where there is a threat of violence against persons taking part in protests, the police are required to take reasonable steps to secure the right of freedom of assembly.

## **POLICE USE OF FORCE**

Police officers are frequently presented with situations that involve conflict. The use of conflict resolution skills, such as negotiation, will often resolve these situations. At other times the application of varying degrees of physical force may be necessary. The use of force as a proportionate response to managing conflict is a well established and sometimes necessary aspect of policing within a democratic society.

## **PRINCIPLES ON THE USE OF FORCE**

HMIC (2009) Adapting to Protest – Nurturing the British Model of Policing, states:

“The proper regulation and use of force by the police is central to maintaining the legitimacy of police action and securing public support for – and public confidence in – public order policing. The principles of necessity and minimum use of force must be properly understood by all officers and fully integrated into all public order operations.”

As outlined, police have the authority to use force in specific circumstances. The overarching principle of ‘policing by consent’ in the UK relies upon there being an essential relationship between the public and the police service. Every police operation must, to some degree, strike a balance between the consensual relationship, and the rights and responsibilities of police to protect themselves and others from imminent harm, and to undertake their policing duties.

## **Principles on the use of force that for application to all areas of policing are as follows:**

- Police officers, in carrying out their duties shall as far as possible apply non-violent methods before resorting to any use of force
- Police officers should use force only when strictly necessary and where other means remain ineffective or have no realistic chance of achieving the lawful objective
- Any use of force by police officers should be the minimum appropriate in the circumstances
- Police officers should use lethal or potentially lethal force only when absolutely necessary to protect life
- Police officers should plan and control operations to minimise, to the greatest extent possible, recourse to lethal force
- Individual officers are accountable and responsible for any use of force and must be able to justify their actions in law

## **UK LEGISLATION**

A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large, see Section 3(1), Criminal Law Act 1967.

Section 117 of the Police and Criminal Evidence (PACE) Act 1984, and Article 88 Police and Criminal Evidence (Northern Ireland) Order 1989 extend the use of force to include necessary and reasonable force required, by a police officer, to exercise a power under PACE. The requirement for police use of force to be necessary and reasonable is determined by the state of mind and intention of the officer at the time that he or she used force. Further, human rights legislation requires that individual officers, and Commanders must be able to demonstrate that the use of force under PACE is also reasonable.

## **COMMON LAW**

The common law right of self defence allows a person to use force to protect themselves or others, to prevent crime and to affect a lawful arrest. The use of force must be necessary and reasonable. Commanders should consider the legal consequences of the use of force in police operations, and must be able to justify, through the documentation of an audit trail, that any decision made to use force is reasonable and proportionate. Individual officers should also fully understand the legal and ethical parameters of their use of necessary and reasonable force, which is proportionate to the specific circumstances during which it occurs. When police use force to achieve a lawful objective, it must be reasonable and proportionate to the circumstances. Failure to justify the use of force may leave police open to criminal, civil or misconduct proceedings, and may have a serious negative impact on public confidence.

Accountability with respect to the use of force falls upon the force, commanders and planners, and the individual officers involved.

## **HUMAN RIGHTS IN SPECIALIST POLICING OPERATIONS**

Covert surveillance is, by its very nature, a sensitive yet a vital modern policing tactic. It is employed to gather intelligence and evidence that could not be achieved through more conventional means.

In order to undertake this activity lawfully, then it is imperative that all officers understand the basic principles of the Human Rights Act 1998 and how our activity may infringe the rights of individuals under this legislation.

A carefully prepared and properly considered application for surveillance, that has been lawfully authorised provides protection to the police service, from prosecution when breaching an individual's human rights i.e. Right to Privacy, Article 8.

Conversely, any authority issued without the fullest consideration by the Authorising Officer would certainly be open to challenge at the Criminal Courts and also at the European Court of Human Rights. Important criminal cases may also be lost.

Directed Surveillance is covert surveillance that is carried out for the purposes of a specific investigation or operation in such a manner as is likely to result in the obtaining of private information about a person. An authorisation for Directed

Surveillance is required whenever there is a real possibility that the manner in which it is proposed to carry out particular surveillance is likely to result in the obtaining of private information about any person, whether or not that person is or becomes a subject of the operation.

Gwent Police's Specialist Operations department is audited every 12 months, with a focus on the quality of our monitoring of human rights in terms of necessity, proportionality, justification, and legality.

Any activity that may be judged as risking an infringement of a person's human rights will be subject to authorisation under the Regulation of Investigatory Powers Act 2000 (RIPA). RIPA is a pro-human rights law that, rather than 'giving' powers, controls activities that need to be regulated. It puts in place the proper mechanism to consider the key issues of necessity and proportionality. In fact, it did not create any new powers or techniques at all; nor did it permit any public authority to use powers which it could not have used prior to RIPA.

#### **RIPA regulates the following areas:**

- The interception of communications (for instance, the content of telephone calls, e-mails or postal letters)
- The acquisition and disclosure of communications data (information from communications service providers relating to communications)
- The carrying out of covert surveillance
  - in private premises or vehicles ('intrusive surveillance')
  - in public places but likely to obtain private information about a particular person ('directed surveillance')
- The use of covert human intelligence sources (such as informants or undercover officers)
- Access to electronic data protected by encryption or passwords.

#### **RIPA provides a number of important safeguards:**

- It strictly limits the people who can lawfully use covert techniques, the purposes for and conditions in which they can be used and how the material obtained must be handled
- It reserves the more intrusive techniques for intelligence and law enforcement agencies acting against only the most serious crimes, including in the interests of national security
- It provides for the appointment of independent oversight Commissioners and the establishment of an independent tribunal to hear complaints from individuals who believe the techniques have been used inappropriately.

### **HUMAN RIGHTS AND CUSTODY PROCEDURES**

Custody procedures are governed by the Detention Code of Practice (C) set out in the Police and Criminal Evidence Act. The purpose of the Code of Practice is to ensure that all persons suspected of being involved in crime, and others who are in police custody, are dealt with fairly and properly in accordance with the law. The Code of Practice gives a detailed account of how detainees are to be treated, their entitlements and individual needs met. For further details around the consideration of

human rights in relation to Custody procedures, a full copy of the Code of Practice should be consulted.

### **HUMAN RIGHTS AND STOP/SEARCH**

Similarly, stop and search procedures are governed by Code of Practice A which covers the statutory powers of police officers to stop and search, as well as the requirements to record public encounters. Code A was amended with effect from 1 January 2009 to reduce the recording requirements for stop and encounter. Police are now required to record only the ethnicity of a person who is subject to stop and account.

Powers to stop and search must be used fairly, responsibly, with respect for people being searched and without unlawful discrimination. The Race Relations Amendment) Act 2000 makes it unlawful for police officers to discriminate on the grounds of race, colour, ethnic origin, nationality or national origins when using their powers.

The intrusion on the liberty of the person stopped or searched must be brief and detention for the purposes of a search must take place at or near the location of the stop.

If these fundamental principles are not observed the use of powers to stop and search may be drawn into question. Failure to use the powers in the proper manner reduces their effectiveness. Stop and search can play an important role in the detection and prevention of crime, and using the powers fairly makes them more effective.

The primary purpose of stop and search powers is to enable officers to allay or confirm suspicions about individuals without exercising their power of arrest. Officers may be required to justify the use or authorisation of such powers, in relation both to individual searches and the overall pattern of their activity in this regard, to their supervisory officers or in court. Any misuse of the powers is likely to be harmful to policing and lead to mistrust of the police. Officers must also be able to explain their actions to the member of the public searched. The misuse of these powers can lead to disciplinary action.

An officer must not search a person, even with his or her consent, where no power to search is applicable. Even where a person is prepared to submit to a search voluntarily, the person must not be searched unless the necessary legal power exists, and the search must be in accordance with the relevant power and the provisions of the Code. The only exception, where an officer does not require a specific power, applies to searches of persons entering sports grounds or other premises carried out with their consent given as a condition of entry.

Section 44 of the Terrorism Act 2000 allows the police to stop and search anyone in a specific area. The power to stop and search under anti-terrorism powers should only be used when there is evidence of a specific terrorist threat. It should not be simply an addition to the day to day powers of officers policing protests. On 12 January 2010 Liberty won a landmark stop and search legal case.

For further details around the consideration of human rights in relation to stop and search, a full copy of the Code of Practice should be consulted.

### **3. STAFFING / PERSONNEL IMPLICATIONS**

- 3.1 There are no specific staffing / personnel implications associated with this report

### **4. FINANCIAL IMPLICATIONS**

- 4.1 There are no financial implications associated with this report

### **5. CONSULTATION**

- 5.1 This report has been considered by members of the Chief Officer team

### **6. PROJECT ASSESSMENT FOR EQUALITY AND DIVERSITY MATTERS**

- 6.1 This project/proposal has been considered against the general duty to promote equality, as stipulated under the Force's Equality Schemes, and has been assessed not to discriminate against any particular group.

### **7. RISK ASSESSMENT**

- 7.1 Provided all national and local guidelines, procedures and governance are complied with, the risk to the force is low, and will be dynamically managed.

### **8. STAYING AHEAD (2011 REVIEW)**

- 8.1 Matters arising in this report do not have any implications or outcomes contrary to the objectives and principles of the Staying Ahead 2011 review.

### **9. CONCLUSION**

- 9.1 The recent ACPO Equality, diversity and human rights strategy for the police service gives guidance to forces on building equality, diversity and human rights into policing practices and highlights the key benefits as :

- Stronger and more trusting relationships with communities
- Greater co-operation from all communities
- Improved public confidence and more satisfied victims of crime
- More offenders brought to justice
- Reduced crime and fear of crime

With strategic priorities set as :

- Identifying services and strategies that may have a disproportionate effect on diverse communities (those groups and communities – including minority communities – which contribute to the rich diversity of our society) and take action to tackle any negative effects or results
- Build equality, diversity and human rights into policing services which focus on citizens
- Make sure that police operations to prevent terrorism promote community cohesion and have the confidence of diverse communities

**10. CONTACT OFFICER**

10.1 Inspector Alison Hitchen

**11. BACKGROUND PAPERS**

11.1 NPIA Draft Guidance on Public Order and Public Safety (2009); currently out for consultation

11.2 Covert Surveillance ; Code of Practice (Home Office)

11.3 Police and Criminal Evidence Act 1984 (s.60(1)(a), s.60A(1) and s.66(1)) ;CODES OF PRACTICE A-G ; Home Office 2005

11.4 Equality, diversity and human rights strategy for the police service (2008)

**12. APPENDICES**

12.1 None.