

# SUBMISSION TO THE HOME OFFICE'S CONSULTATION FROM APPG ON DRONES

## ON THE COVERT SURVEILLANCE CODE OF PRACTICE

### INTRODUCTION

*'The problem is not that unmanned aerial vehicles are unlawful in themselves, but that their numbers, sophistication, relative cheapness and adaptability offer unparalleled opportunities for secrecy'*<sup>1</sup>

1. This submission is concerned with the proposed amendments to the existing Covert Surveillance Code of Practice ('the Code'), implemented through the introduction of The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013. (RIPO). The submission focuses on three questions:
  - (a) is the Code, and its proposed amendments, relevant to the use of unmanned aerial systems ('drones')<sup>2</sup> by Government departments, agents and other state bodies?;
  - (b) does the Code, and its proposed amendments, adequately address issues raised by the use of drones? In particular, how might the Code be clarified and strengthened?; and
  - (c) does the Code, and proposed amendments, adequately cover the collection, storage and use of any data obtained as a result of covert surveillance, via drones operated by or on behalf of Government departments or other state bodies?
2. The APPG on Drones ('the APPG') has limited its submission to the application of Code to drones. No representations are made on the Covert Human Intelligence Sources Code of Practice which,

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<sup>1</sup> Defence Committee (2014), Remote Control: Remotely Piloted Air Systems , (paragraph 147, The Association of Military Advocates).

<sup>2</sup> See paragraph 11 for discussion on nomenclature

although part of this consultation, falls outside the remit of the APPG.

3. The APPG welcomes the opportunity to engage with the Home Office on this important topic. However, the Code has been written on the assumption that that the overarching regulatory framework is adequate and lawful. The APPG has been advised that by senior counsel that RIPA itself is flawed.<sup>3</sup> Further, the statutory requirement (s. 71 of RIPA) that the Secretary of State for the Home Department consider representations made on the draft Code is not an adequate substitute for a full review of: 2000 (RIPA)
  - (a) Home Office policy on the use of ‘surveillance’ drones by state bodies and others as relevant technologies emerge and current research projects completed; and
  - (b) existing domestic legislation as it applies to innovative use of ‘surveillance’ drones by state bodies, including the use and storage of data acquired by means of such drones as well as integration into civil airspace.
4. The APPG considers that a comprehensive review of the use and broader implications of drones with surveillance capabilities is overdue. The APPG notes that the Defence Committee’s report, published 25 March 2014, calls on the Ministry of Defence (MOD) to formulate and set out its policy on the military use of remotely piloted aircraft systems (RPAS) no later than September 2014.<sup>4</sup> Many points made in the Defence Committee Report on the need for transparency, accountability and a clear policy apply equally to civilian use of drones in the United Kingdom. Adopting this model, the APPG hopes that the Home Office will also publish a policy on civilian use of drones, including for those used for surveillance, within the same time frame. This would significantly increase public confidence in Government use and oversight of this new technology.

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<sup>3</sup> Advice of Jemima Stratford QC and Tim Johnston January 2014: <http://www.brickcourt.co.uk/news/detail/opinion-by-jemima-stratford-qc-and-tim-johnston-makes-front-page-of-the-guardian>

<sup>4</sup> <http://www.parliament.uk/business/committees/committees-a-z/commons-select/defence-committee/news/remote-control-rpas-substantive/>.

## BACKGROUND

5. The APPG was established in October 2012.<sup>5</sup> The APPG currently has five Officers, 20 official members, 10 civil society partners and a range of non-registered MPs and Lords members. The aim of the group is to examine the use of drones by governments for domestic and international, military and civilian purposes. The group uses Parliamentary processes to facilitate greater transparency and accountability on the development, deployment and use of drones. Parliamentarians in all parties have a key role to play in shaping and developing the policy on the use of drones, domestically, internationally and in the application of relevant scrutiny.
6. The level of Parliamentary interest in drones is increasing. To date, Parliamentarians have asked approximately 445 Parliamentary Questions on drones. There have been four debates in Parliament on the subject: two Westminster Hall debates on 6 November 2012 and 11 December 2012 (at the latter, the Minister for Defence Equipment, Support and Technology acknowledged that the debate demonstrated “the increasing interest among not only Members of the House but the public at large about the use of unmanned aerial vehicles”); a House of Commons Adjournment debate on 17 June 2013; and a House of Lords question for Short Debate on 25 June 2013. 2 Early Day Motions have been tabled by members of the APPG including one on 13 March 2014.
7. Questions relating to drone use and the need for updated regulation have been raised in a diverse range of topics, from defence procurement to privacy. Four APPG peers, for example, recently tabled amendments to the Defence Reform Bill which included a proposed definition of ‘drones’: no legal definition currently exists<sup>6</sup>. Others have tabled amendments to the Immigration Bill which derived in part from concern that two

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<sup>5</sup> The Group is chaired by Tom Watson MP (Lab); the Vice Chairs are Zac Goldsmith MP (Con) and Baroness Stern (CB); the Treasurer is John Hemming MP (LD); and the Secretary is Dave Anderson MP (Lab). The Group is staffed by a human rights researcher, which is currently funded, primarily by the Joseph Rowntree Foundation. Please see entry on Parliamentary register.

<sup>6</sup> <http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0060/amend/ml060-l.htm>

former British citizens had been targeted by lethal drone<sup>7</sup>. Several parliamentarians have raised the question of domestic use of unmanned systems in the context of the broader debate on privacy and surveillance in the United Kingdom<sup>8</sup>.

8. In this context, the Chair of the APPG, Tom Watson MP, sought the expert Advice of barristers Jemima Stratford QC and Tim Johnston 'In the Matter of State Surveillance' in January 2014<sup>9</sup>. The front page Guardian article<sup>10</sup> on the Advice indicates a high level of public interest on the overlap between the surveillance debate and that concerning drone use<sup>11</sup>.
9. The same team of experts have provided the APPG with a further Advice on use of surveillance drones in the United Kingdom which is submitted in Annex 1 as part of the consultation document. The Home Office may benefit from the independent legal advice obtained by the APPG on the fundamental question of whether the existing legal framework within which this consultation is taking place is fit for purpose. The APPG notes, in particular, that:
  - (a) RIPA contains no limitation or guidance whatsoever on use or storage of data obtained by surveillance drones;
  - (b) the definitions in RIPA which underpin covert surveillance were not designed for surveillance drones and do not readily apply;
  - (c) it is strongly arguable that the use of surveillance drones to obtain data is unlawful, as the existing legal framework stands. It is strongly arguable that such use constitutes a disproportionate

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<sup>7</sup> Bureau of Investigative Journalism (<http://www.thebureauinvestigates.com/2013/02/27/former-british-citizens-killed-by-drone-strikes-after-passports-revoked/>). Amendments tabled to cl 60:

<http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0084/amend/ml084-v.htm>

<sup>8</sup> Roger Godsiff MP (Hansard, 10 September 2013 Column 650W), Nicholas Soames MP (16 May 2013 Column 343W), Lord Stoddart of Swindon (Hansard 6 Feb 2013 : Column WA62), Jim Shannon MP (Hansard 21 Jan 2013 : Column 65W), Caroline Lucas (Hansard 3 Sep 2013 : Column 339W)

<sup>9</sup> Annex 1

<sup>10</sup> <http://www.theguardian.com/uk-news/2014/jan/28/gchq-mass-surveillance-spying-law-lawyer>

<sup>11</sup> although the focus of the Advice was surveillance through intercepted material which may be available for the purposes of extra territorial lethal targeting by the United States

interference with Article 8 of the European Convention on Human Rights (right to privacy);

- (d) that unlawfulness could be resolved if the Home Office formulates a new Code (or comprehensively amends the existing Code) providing restrictions on the use, analysis and retention of data obtained via surveillance drones.

10. It should be made clear that the APPG is not opposed to civil use of drones by Government departments and state bodies. The Group recognises the value offered by drone technology, when used in compliance with domestic and international law<sup>12</sup>. A recent example of this appears to be imagery captured by a drone capture of the flooding in the Somerset Levels<sup>13</sup>. However, the Group is concerned that developments in drone technology have now outpaced the existing legal frameworks, which were not drafted with innovative technology or the current use of drones in mind. The APPG considers that the Code under consideration is an example of this recurring problem. This new and diverse generation of technology presents a number of challenges to the current statutory framework. With the exception of authorisations from the Civil Aviation Authority, which focuses on safety requirements<sup>14</sup>, drone use appears to be taking place in a largely non-regulated framework.

## **NOMENCLATURE**

11. The language and terminology that should be, applied to drone technology has become highly politicised. For simplicity, ease of reference and to enable the inclusion of both unmanned aerial and maritime vehicles, the APPG uses the term 'drone' notwithstanding this is not the preferred military or industry term 'remotely piloted air systems', the focus of which is to convey a message that there is a 'man in the loop'. The APPG does not use

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<sup>12</sup> The key human right here is the right to privacy enshrined in international human rights law and incorporated into the domestic legal framework under the Human Rights Act 1998: Article 8 European Convention on Human Rights.

<sup>13</sup> 'UK flooding: special drone captures 360 image of Somerset under water', The Telegraph, 03 February 2014

<sup>14</sup> In January 2010 the CAA introduced a system of permits for those seeking to operate drones in UK controlled airspace based on aircraft mass. The focus is airworthiness and pilot qualification. See CAP 722: <http://www.caa.co.uk/application.aspx?appid=11&mode=detail&id=415>

the term 'drone' in a pejorative sense. It is not right that the word 'drone' implies autonomy, or lethal use. The Group notes that the Government itself, in its responses to Parliamentary Questions, uses a variety of terms to describe this technology including 'remotely piloted aircraft system', 'remotely piloted air systems', 'unmanned aerial vehicles' and 'drones'<sup>15</sup>.

12. The APPG welcomes the identification of four types of drone by the Royal United Services Institute (RUSI) also used by the Defence Committee<sup>16</sup>. The Home Office is invited to adopt this model and consider the surveillance capabilities of each type of drone distinctly. They are:

- (a) 'nano' with low resolution image capture such as the Black Hornet;
- (b) 'miniature' offering short range surveillance using small basic sensors such as Desert Hawk;
- (c) 'tactical' a long range endurance drone with medium quality imaging such as the Watchkeeper; and
- (d) 'strategic' large surveillance drone with high resolution synthetic aperture radar and long range electro optical infrared sensors that can cover 100,000km<sup>2</sup> per day.

13. It would be helpful if the Home Office could enter into dialogue with other Departments with a view to agreeing suggested descriptive terminology for drones and drone types. Ultimately the Air Navigation Order 2005 will need to be updated to ensure that drones, and the extensive support systems required to support operation, are properly defined. This may help ensure 'drones' are clearly covered in existing regimes which regulate drone use, pending comprehensive review. This step will ensure that the unique features of unmanned systems are not ignored by treating them as if they are traditional manned aircraft. In turn

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<sup>15</sup> For example PM used term 'drone' in Ministerial Statement on European Council 6 January 2014: <http://www.theyworkforyou.com/wms/?id=2014-01-06a.6WS.1&s=Cameron+drone#g6WS.2>

<sup>16</sup> From evidence provided by RUSI to the Defence Committee on 25 October 2013 on Remotely Piloted Air Systems; see Defence Committee report at paragraph 11

this may also facilitate the Home Office and other Governmental departments when they attempt to give proper and distinct consideration to the novel issues that arise in relation to drone technology, particularly as the technology develops and is used in increasingly diverse ways.

14. Notwithstanding these observations, the APPG is keen to ensure that the debate on nomenclature does not distract from the substantive issues set out below.

## **THE EVIDENCE CONCERNING COVERT DRONE SURVEILLANCE**

15. The APPG has been hampered by the notable paucity of facts in the public domain on state use of surveillance drones in the United Kingdom. This has driven the APPG submission towards a hypothetical critique of the Code focused on the law. It is unfortunate that meaningful consultation on the Code, as it applies to surveillance of drones, is not possible without disclosure from Government Departments and other state bodies on past and existing trials, use and proposed use for drones. Lack of relevant information inhibits oversight and by parliamentarians and prevents informed public debate.

16. The APPG considers that one primary obstacle to parliamentarians accessing reliable and comprehensive information on drone use by the state is that neither the Home Office, nor any other Government Department, collates the information centrally<sup>17</sup>. The Rt Honourable Damian Green MP explained the position of the Home Office to APPG Chair Tom Watson MP<sup>18</sup>: there is no central collation of information on civilian use of drones. Use of drones is regarded as an operational matter for each chief constable or, presumably, other governmental bodies, with any covert use being subject to RIPA. According to the Minister, any covert use of drones would have to be necessary, proportionate, subject to independent review and individual right to redress. The APPG notes that this answer is only correct insofar as RIPA, the

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<sup>17</sup> There is no requirement on police forces to report the trialling, acquisition or use of drones: hansard 6 Feb 2013, c62WA

<sup>18</sup> Hansard December 31 October c540W

Protection of Freedom Act 2012 and the Data Protection Act 1998 apply to the use of surveillance drones by the state.

17. The absence of any system by which information on drone use is maintained centrally - and made available for scrutiny by members of parliament - is perhaps especially pertinent given the absence of specific Guidance from the Home Office addressing current and planned use of drones by state bodies, officials and others carrying out work for or on behalf of the Department. For the same reason, there is no clarity, at the current moment, concerning the use of data obtained by surveillance drones. The APPG considers that guidance on both aspects (operation and use of data), must incorporate analysis of the emerging technical capabilities of surveillance drones. The use of camera, radar, interception or any other surveillance equipment on the drones will define, to some extent, how drones will be used once authorised.
18. When the APPG Chair asked the Secretary of State for the Home Office whether she would introduce a Code or other Guidance to regulate the collection, storage and use of data obtained by Governmental departments using drones<sup>19</sup>, the Minister replied that there was 'no plan for further regulation' of surveillance drones. The APPG Chair was informed that existing regulation and guidance includes the Surveillance Camera Code of Practice issued under the Protection of Freedom Act 2012. He was told that this provides a framework of good practice for surveillance by 'camera operators', which applies to drones. The APPG notes this is not correct. The Surveillance Camera Code, which applies to the public and storage of data, would only apply to *overt* surveillance by drones carrying *cameras*. The logistics of how government bodies comply with the 'public warning' requirements for a camera-carrying drone is, in any event, not at all clear.
19. The APPG notes that none of the police forces subject to FOIAs served by the APPG Researcher, which include express request for details of the laws and policies pursuant to which drones were operated, made mention of any of the domestic legislation or any

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<sup>19</sup> House of Commons Debate 5 Feb 2014 column 236

human rights considerations referred to by the Home Office in response to Parliamentary Questions.<sup>20</sup>

20. The APPG draws the Home Office's attention to the fact that the Department for Environment and Rural Affairs ('DEFRA') has just introduced guidance for staff on the data protection aspects of drone use.<sup>21</sup> Specific guidance has been issued even though DEFRA is not acquiring or using drones directly, or receiving video imagery from drones. The answer helpfully identifies which bodies operate drones and pass data to DEFRA, as well as the types of drone used: two fixed wing Quest 200 vehicles, Flysense Ebee fixed wing, Trimble Gatewing, DJI S800 Spreading Wings, Swinglet and Albotix X6 Hexacopter. The APPG welcomes the lead taken by DEFRA.

21. The APPG has frequently highlighted the lack of transparency and accountability about drone use by the Government both in and outside the United Kingdom. The examples raised above are merely case studies of this problem. The APPG invites the Home Office to note, in particular:

- (i) limited responses to Parliamentary Questions<sup>22</sup>;
- (ii) delays and inconsistent or evasive responses to Freedom of Information requests<sup>23</sup>;
- (iii) emphasis within responses to Freedom of Information requests to lack of records kept<sup>24</sup>;

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<sup>20</sup> FOIAs sent 2012-2013 so the APPG acknowledges FOIAs sent now may elicit an updated response

<sup>21</sup> House of Commons Debate 20 March column 697W

<sup>22</sup> When asked whether the Metropolitan Police Service has ever trialled or used any unmanned aerial surveillance system. The response received was that it was an operational matter for individual police forces, within the regulations set by the Civil Aviation Authority (Hansard 03 February 2013 Column 35W).

<sup>23</sup> The APPG submitted FOIAs to each UK police force asking them to provide details on the procurement, testing and use of drones; policies and guidance for use; the number of times drones had been used, and under what legislation. The common responses were that 'no information is held' or 'these searches failed to locate documents.' Essex police revealed a drone was purchased in 2008 but apparently not used and future plans were not clear. Staffordshire Police confirmed they owned an AR 100B, AirRobot purchased in 1998 which had been used in a variety of situations including crime scene investigations and road collisions.

<sup>24</sup> The most common response received by Police Authorities, on request of details of unmanned aerial vehicle procurement was 'I can confirm that no information is held by Avon and Somerset Constabulary which is relevant to your request. In addition, the Avon and Somerset Constabulary can neither confirm nor deny that it holds any other information relevant to your request by virtue of the following exemptions: Section 23 (5) - information relating to the security bodies. Section 23 is an absolute class-based exemption and therefore there is no requirement to conduct a harm or public interest test.'

- (iv) absence of publicly accessible reports, publications and briefings on the development, deployment and use or potential for use of drones<sup>25</sup>;
- (v) limitation of debate concerning domestic drone use to inside the Government's cross department Working Group on Remotely Piloted Systems<sup>26</sup> ('the Working Group') the remit, briefings and work of which is not accessible to other parliamentarians.

22. The APPG acknowledges that the present dearth of information on civil drone use for surveillance may be, to some extent, because state bodies are carrying out ongoing trials concerning how civil drone capabilities may best be used. However there is no reason why the public and parliamentarians cannot know which trials are being carried out and why, how the trials are funded and the outcome of each trial as it is completed. The current practice of withholding relevant information impedes scrutiny and the role of Parliament in developing and assessing policy on civil drone use, including the Code and other relevant Guidance. APPG members would welcome the opportunity for further dialogue and informed debate on the formulation of Home Office policy, in addition to parliamentary questions, freedom of information (FOIA) requests and ad hoc consultations.

23. Notwithstanding these limitations, the APPG is aware of the following key facts relevant to this consultation:

- (i) at least 11 state bodies have been authorised to use drones in the United Kingdom according to an APPG FOIA;<sup>27</sup>
- (ii) at least two Government Departments appear to have used drones to gather data (either directly or indirectly). The Department of Transport revealed

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<sup>26</sup> The APPG notes that the Group only knows about the existence of the Working Group because the Researcher attended an Arms Fair at which an attendee mentioned this in passing: an example of unnecessary secrecy.

<sup>27</sup> According to an APPG FOIA to the Civil Aviation Authority dated 3 September 2013: Hampshire Fire and Rescue; West Midlands Fire Service; Staffordshire Police; Health and Safety Laboratory; Scottish Environment Protection Agency; Merseyside Police; Essex Police; National Policing Improvement Agency; Police Service of Northern Ireland; BBC (Natural History Unit) and BBC (Research/Development).<sup>27</sup> Note bodies not susceptible to FOIA which may not be listed.

that the Home and Environment Departments had made presentations to the Working Group on the use they have made of drones<sup>28</sup>;

- (iii) there have been a number of ad hoc reports of police and fire services using or trialling drones for surveillance operations, which have been confirmed in APPG FOIAs. FOIAs have revealed police use includes 'crime scene investigations'<sup>29</sup>;
- (iv) one police force, Staffordshire, uses a drone for occasional security sweeps and search and rescue;<sup>30</sup>
- (v) one police force, Sussex, is currently running a trial<sup>31</sup> to 'monitor a wide area from the sky' funded by the Association of Chief Police Officers ('ACPO')<sup>32</sup>. The drone used, Aeryon Skyranger, includes high resolution cameras, an integrated imaging payload and software to enable field and office image processing including an integrated tool for 3D visualisation. It can produce real-time digital imagery to any device<sup>33</sup>;
- (vi) another police force, Kent, has hosted some trial drone flights as part of the 2 Seas project to assess system performance<sup>34</sup>
- (vii) the Northern Ireland Policing Board ('PSNI') have approved purchase of '3 types' of drone to 'support policing' in Northern Ireland. This appears to have started on 13 June 2013<sup>35</sup>;

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<sup>28</sup> House of Commons Debate 11 Feb 2014 column 525, PQ by APPG Chair. Note Home Office have subsequently made guarded denials that (a) it employs drones: House of Commons Debate 25 Feb 2013 column 292 and (b) it uses data collected from drones to monitor or develop policies: House of Commons Debate 19 March 2013 column 607W

<sup>29</sup> See FOIA from Staffordshire Police which also mentions road collisions and V music festival; Wiltshire Police made use of a drone (UAV) during the Summer Solstice at Stonehenge in 2009; Derbyshire Police used a drone to Red, White and Blue Festival at Codnor.

<sup>30</sup> HL Deb 25 March 2014 c94W

<sup>31</sup> HL Deb 25 March 2014 c94 : a formal date for the trial is in the near future

<sup>32</sup> <http://www.uasvision.com/2014/03/13/police-deploy-uas-around-londons-gatwick-airport/>

<sup>33</sup> <http://www.aeryon.com/products/avs/aeryon-skyranger.html>

<sup>34</sup> HL Deb 25 March 2014 c94: Kent are planning to host an event about 2 Seas in July

<sup>35</sup> Response to APPG FOIA from PSNI received 29 July 2013. PSNI declined to answer questions on the number and nature of flights undertaken. Note M15 has primacy over PSNI in national security matters, although there is no publically available information on surveillance drones being available for use by the intelligence services Letters from JA Harris

- (viii) there are a number of current research projects and development programs, such as those run by Research Councils UK and the ASTRAEA consortium, on a range of potential civil uses which that include security and surveillance. These have some included flights in shared air space<sup>36</sup>;
- (ix) DEFRA have made use of drones for used unmanned aerial vehicles to support work on flood defence<sup>37</sup>;

## APPLICATION OF CODE TO SURVEILLANCE DRONES

24. The Code provides guidance on the use by public authorities of Part II of RIPA to authorise covert surveillance that is likely to obtain private information about a person. The Code also provides guidance on entry or interference with property or wireless telegraphy by public authorities under section 5 of the Intelligence Services Act 1994 or Part III of the Police Act. The Code is issued under section 71 RIPA. It may be admitted in evidence in criminal and civil proceedings. As indicated, the Code assumes the existing regimes are adequate and lawful, which may not be right.<sup>38</sup> Detailed analysis is provided in the Advice at Annex 1.

25. Surveillance is defined in section 48(2) of RIPA as including *'surveillance by or with the assistance of a surveillance device.'* Although neither RIPA nor the Code makes any specific mention of drones, it is considered that this definition covers surveillance by or with the assistance of a drone.

26. Under section 26(9) RIPA, surveillance is *'covert' 'only if it is carried out in a manner that is calculated to ensure that persons who are to ensure that any persons who are subject to the surveillance are unaware that it is or may be taking place'.*

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dated 5 March and 10 April to APPG give some information on training of pilots and policy to follow the same standards and processes as CCTV such as destruction after 28 days. Exceptionally the PSNI made reference to Article 8 right to privacy and Data Protection Act. Media reports include: <http://www.independent.ie/irish-news/drones-to-work-with-8000-police-at-northern-ireland-g8-summit-29190426.html>

<sup>36</sup> <http://www.rcuk.ac.uk/RCUK-prod/assets/documents/submissions/UAVinquiry.pdf>

<sup>37</sup> Hansard 25 Feb 2013 Column 284W

<sup>38</sup> See Advice Jemima Stratford

Surveillance by drones, with technical characteristics that enable hovering for long periods and the production of detailed imagery, will fall within the existing RIPA definition of ‘covert’ more often than not.

27. The next criterion which establishes the scope of the Code is harder to apply to surveillance drones: RIPA draws a distinction between ‘directed’ and ‘intrusive’ surveillance. Intrusive surveillance is covert surveillance carried out in relation to anything taking place ‘on residential premises’ or in any private vehicle. Directed surveillance is covert surveillance that is not ‘intrusive’ but is carried out in relation to a specific investigation or operation likely to result in obtaining ‘private information about a person.’<sup>39</sup> This distinction is important because the test under section 32 RIPA that must be satisfied for ‘intrusive’ surveillance is harder to make out.

28. The APPG considers that the critical definitions in the Code were formulated before the development and use of modern drone technology. They do not readily apply to drone surveillance. For example, the Aeryon Skylander, trialled by Sussex Police, includes a camera with a thermal imaging payload designed for night time tactical surveillance.<sup>40</sup> Would high resolution imagery obtained by the Skylander over residential premises be ‘directed’ or ‘intrusive’ surveillance in these circumstances? What degree of collateral intrusion is acceptable? It is not clear how the law applies to the emergent technology. The application of the Code, including types of authorisation required, is uncertain.

## **RECOMMENDATIONS ON THE CODE**

29. The APPG recommends that, pending full review and the introduction of guidance specifically dealing with drone surveillance, the Code should at least be amended to include specific examples detailing how the Home Office contends the following definitions apply, with particular regard to the technical capabilities of existing surveillance drones:

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<sup>39</sup> Section 1.11 of the Code.

<sup>40</sup> <http://www.aeryon.com/products/payloads/thermal-imaging-flir.html>

- (i) 'directed' surveillance by drone;
- (ii) 'intrusive' surveillance by drone;
- (iii) whether 'on residential premises' applies to operation of surveillance drones over premises;
- (iv) whether 'on residential premises' applies to operation of surveillance drones in the garden of premises;
- (v) surveillance by drone that is 'overt';
- (vi) surveillance by drone that is considered to be 'general observation' and therefore not subject to the Code;
- (vii) surveillance by drone in any other circumstances that are not considered to be 'covert' surveillance subject to the Code.

30. The APPG notes that the Code suggests that it applies to authorisations for all directed and surveillance operations under RIPA when the operation is in the United Kingdom, even where it takes place from military bases or overseas: 1.23 (see also 5.19). This does not appear to be the case with regard to US military bases in the United Kingdom. The APPG recommends that the Home Office amends RIPA section so that US officers are entitled to apply for authorisations for any covert surveillance carried out within the jurisdiction. Pending full review, this will at least bring US officers acting in the UK, including those within US bases, clearly within the scope of RIPA.

31. The APPG notes that section 42(3) RIPA would in theory enable GCHQ and other intelligence services to carry out intrusive surveillance by drone if authorised by the Secretary of State.

## **LACUNA: DATA OBTAINED BY SURVEILLANCE DRONES**

32.The APPG is concerned that neither RIPA nor the Code (nor any other regime) offers any limitations or guidance on the use or storage of data obtained by means of surveillance drones ('drone data'). This is marked contrast to existing restrictions on (i) intercept data and (ii) the CCTV Code. The Home Office is referred to Annex 1.

33.The effect of this additional lacuna is that the DPA and principles have become the 'default' position. There are two primary difficulties with this, as it relates to use of surveillance drones. First, the DPA principles only apply to 'personal information'. Second, the Secretary of State can issue a section 28 notice exempting material from even the protection of the DPA. If this is done, data obtained by a drone carrying out covert surveillance could be held without any restriction whatsoever on its storage or use. In the view of the APPG, the short section 9.1 of the Code headed 'retention and destruction of material' and general reference to data protection principles is not an adequate redress.

34.The APPG have been advised that this situation is not lawful. This should be remedied as soon as reasonably practicable.

## **CONCLUSION**

35.In the light of the above matters and Advice in Annex 1, the APPG recommends that, as soon a reasonably practicable following receipt of this Submission, the Home Office should:

- (i) disclose information and documentation on all use and trials of surveillance drones by the state bodies and contractors relevant or potentially relevant to any function of the Home Office or Working Group;
- (ii) introduce a system to centrally collate information on the use and trials of surveillance drones by Government departments, non-departmental public bodies and agents;
- (iii) adopt the DEFRA model for answering parliamentary questions in the most transparent and forthcoming way possible;

- (iv) report annually to parliament on use of any drones with surveillance functions by each Government, non-departmental public body or government agency;
- (v) revise and update this Code to explain how the Code applies to drone surveillance and provide specific examples requested at paragraph 26;
- (vi) initiate a consultation on formulating policy and published guidance on domestic drone surveillance which must include provisions governing the use and storage of drone data;
- (vii) adopt the Advice provided by the APPG in Annex 1 and/or take independent legal Advice on adequacy of existing legal regimes to the operation surveillance drones forthwith.

**This submission is made by the following named officers, on behalf of the All Party Parliamentary Group on drones:**

**Chair: Tom Watson MP (Lab);**

**Vice Chairs: Baroness Stern (CB); Zac Goldsmith (Con);**

**Treasurer: John Hemming MP (LD);**

**Secretary: David Anderson MP (Lab).**

**For any further information, please contact the APPG's Researcher Anna Thomas on [anna.thomas@parliament.uk](mailto:anna.thomas@parliament.uk)**