1.0 Summary of Change

1.1 This is a new joint policy for Essex Police and Kent Police. The policies of Essex Police and Kent Police have been fully reviewed so that they complement each other and reflect the joint Serious Crime Directorate - Covert Support (SCD CS) and the department’s position within the wider structures of Essex Police and Kent Police.

2.0 What this Policy is About

2.1 This policy applies to all members of staff involved in the delivery of or accessing covert policing tactics from the SCD CS. Compliance with this policy and any linked procedures/SOPs is mandatory.

*Compliance with this policy and any linked procedures is mandatory.*

3.0 Statement of Policy

3.1 The purpose of this policy is to ensure compliance with the legislation that directs covert policing. Essex Police and Kent Police will ensure the lawful and effective use of covert policing techniques by complying with relevant legislation, Home Office Codes of Practice and the Office of Surveillance Commissioners procedures and guidance. It is intended to be compliant to the Authorised Professional Practise (APP) issued by The College of Policing.

4.0 Implications of the Policy

4.1 Finance / Staffing / Training / Other

4.1.1 SCD CS have appropriately trained and accredited managers and operatives, posted into specialist roles to ensure appropriate advice is provided to all staff considering the deployment or use of any covert policing tactics. Covert Support managers provide expert advice regarding all covert tactics, including an out of hours, on-call capability accessed via the Force Control Room (FCR).

4.1.2 Should authorisation be obtained for such a deployment, SCD Covert Support will ensure that sufficient appropriately trained operatives are available to undertake the safe deployment of any tactic in compliance to legislation and to the appropriate APP standard.

4.1.3 All training in relation to the deployment of covert operatives will be undertaken in compliance with the relevant APP for that tactic. Only approved providers will be used and any operative deployed will have to maintain their operational competence as defined in APP for the tactic in which they have been trained.
4.1.4 Access to training requirements, APP approved providers and attendance on courses will only be accessed via the relevant external training budget holder with the prior approval of the DI SCD CS.

4.2 Risk Assessment(s)

4.2.1 Generic risk assessments have been conducted for operatives engaged in the application of covert tactics covered by this policy. These assessments are maintained and reviewed by the Detective Inspector SCD CS. Any change in risk is dealt with by the application of dynamic risk assessment. Each operative has a duty to monitor their individual risk and to raise any concern through line management.

4.3 Equality Impact Assessment

4.3.1 EIA form.

5.0 Consultation

5.1 Relevant external statutory agencies and partners have been consulted through formal and informal process to ensure compliance with APP.

5.2 Relevant internal business partners and policing commands have been consulted through formal and informal process to promulgate best practise and compliance to APP.

6.0 Monitoring and Review

6.1 This policy and linked procedures/SOPs will be monitored and reviewed every 2 years by the DI SCD CS who will ensure it can be dynamically changed to respond to legislative, APP and Essex Police and Kent Police changes to ensure this policy remains accurate and compliant to these requirements.

7.0 Related force policies or related procedures (Essex) / linked standard operating procedures (Kent)

7.1 None
8.0 Other source documents, e.g. Legislation, APP, partnership agreements (if applicable)

8.1 The deployment of covert tactics will be consistent with Authorised Professional Practice for the following tactics:

- Static, foot and mobile surveillance;
- Undercover policing;
- Technical surveillance;
- Retention of surveillance product.

8.2 The above Authorised Professional Practice documents are restricted and are available to staff within Covert Support, SCD and other staff within Essex Police and Kent Police force areas who are trained and accredited to deploy the tactics.

8.3 Regulation of Investigatory Powers Act 2000 (RIPA)
RIPA ensures that the relevant investigatory powers utilised by law enforcement agencies are used in accordance with the European Convention on Human Rights and any conduct is lawful, necessary and proportionate. These powers relate to:

- The Interception of Communications (in the course of its transmission by means of a public postal service or public communication system);
- Intrusive surveillance;
- Directed surveillance;
- The use of Covert Human Intelligence Sources (CHIS);
- The investigation of electronic data protected by encryption.

8.4 The Human Rights Act 1998
The Human Rights Act incorporates the European Convention for the Protection of Human Rights and fundamental freedoms, into domestic UK law. The rights and freedoms of the individual are protected from unjustified interference by the state. The police are a public authority and as such are required to both act in a way and apply legislation so that it is consistent with the convention.

8.5 The Police Act 1997
The Police Act ensures that the relevant investigatory powers utilised by law enforcement agencies are used in accordance with legislation. These powers include covert entry on property and interference with property.

8.6 The Serious Organised Crime and Police Act 2005 (SOCPA)
In relation to covert policing SOCPA makes provision for and places on a statutory footing the arrangements for the protection of witnesses and other persons.
8.7 Home Office codes of Practice
The following codes of practice published by the Home Office give guidance to the Police and other public authorities on powers used under the above legislation. Copies of the codes can be obtained via the links.

8.8 Code of Practice for Covert Surveillance
The Code of Practice for surveillance provides guidance on the use of covert surveillance by public authorities under part 2 RIPA 2000 and on entry on, or interference with property (or with wireless telegraphy) under section 5 of the 1994 Act or part 3 Police Act 1997.

8.9 Code of Practice for Covert Human Intelligence Sources
The Code of Practice for CHIS provides guidance on the authorisation for conduct and/or use of Covert Human Intelligence Sources under part 2 RIPA 2000.

8.10 Code of Practice for Interception of Communications
The Code of Practice for interception of communications relates to the powers and duties conferred or imposed under Chapter 1, part 1 of RIPA 2000. The Code of Practice for the investigation of electronic data protected by encryption relates to the powers and duties imposed under RIPA 2000.

8.11 Authorised Professional Practise
College of Policing sponsored national working groups (e.g. CHIS, Surveillance, Undercover, TSU etc) produce best practice and guidance with minimum levels of standards contained in the authorised professional practise documents. Access to such documents is strictly controlled by the Detective inspectors within SCD Covert Support within the various disciplines.

8.12 Stated Cases
Details of stated cases can be obtained via the Police National Legal Database (PNLND) on the Essex Police and Kent Police Intranet sites. Alternatively, advice on case law relevant to covert techniques can be obtained via SCD Covert Support and Essex Police and Kent Police College crime training.

8.13 External Governance

8.13.1 Office of Surveillance Commissioners (OSC)
The OSC is a non-departmental public body which was established to oversee covert surveillance and property interference operations carried out by public authorities. The work of the OSC is led by the Chief Surveillance Commissioner. He reports directly to the Prime Minister and is supported by surveillance commissioners, assistant surveillance commissioners, inspectors and a secretariat based in London and Belfast.

8.13.2 The commissioners are appointed under part 3 of The Police Act 1997 and parts 2 and 3 of RIPA to oversee operations carried out under those Acts.
8.13.3 The work of the commissioners is divided into three main parts; firstly considering notifications of authorisations for Property Interference when they are granted, renewed or cancelled, secondly deciding whether to give or withhold approval for certain operations under Police Act 1997 and under RIPA 2000 before they take place and thirdly, oversight of the use of powers conferred by the Acts relating to encryption keys.

8.13.4 OSC inspectors conduct annual inspections of authorisations granted within Essex Police and Kent Police areas.

8.14 Internal Governance

8.14.1 Senior Authorising Officer
In accordance with relevant legislation, Chief Constables are responsible for the authorisation of intrusive surveillance, property interference, long term relevant sources and juvenile CHIS. All requests for such tactics must be made via the relevant Covert Support manager.

8.14.2 Senior Responsible Officer
In accordance with legislation, the ACC Serious Crime Directorate has the force lead for RIPA compliance.

8.14.3 Force Authorising Officers
The professional leads for the delivery of covert techniques are the Detective Superintendent, SCD Covert Support, and the Detective Superintendent – Central Authorities Bureau, SCD. These officers perform the role of FAO and are responsible for oversight of all RIPA and Police Act authorisations within Essex and Kent. The Authorising officers are supported by a Central Authority Bureau, who provide expert advice to quality assure and retain RIPA and Police Act submissions and provide the interface with the Office of Surveillance Commissioners. The Authority Bureau provides an out of hours, on-call capability accessed via the Force Control Room (FCR).

8.14.3.1 RIPA Gatekeepers
Each LPA/Division has trained professional applicants within the intelligence units who can offer local advice to officers and staff for directed surveillance. Requests for covert tactics are then submitted to planning teams within Covert Support for tactical assessment and prioritisation before RIPA applications are submitted to the Central Authority Bureau and the Force Authorising Officers.

8.14.3.2 Operational Security Officer (OPSY)
The purpose of the OPSY is to identify and encourage best practice in relation to intelligence handling and operational security, providing advice and guidance to support operational managers and undertaking the independent review and audit of the operational use of intelligence and operational security arrangements.
8.14.3.3 The OPSY will arrange the annual inspection of the force by the OSC and deals with any complaints made to the Investigatory Powers Tribunal concerning covert activity by Essex Police and Kent Police. The websites of these organisations contain useful information for those involved in covert activity and provide links to related organisations and essential documents including the statutory codes of practice for covert surveillance and CHIS.