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RIPA 2000 and the Protection of Freedom of Information Act 2012

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Cyfawyddwraig yng Nghymru,

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Origins



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European Convention on Human Rights (*Convention for the Protection of Human Rights and Fundamental Freedoms*) 1953

- Human Rights Act 1998
- Regulation of Investigatory Powers Act 2000
- RIPA(Directed Surveillance and Covert Human Intelligence Sources) Order 2003
-Protection of Freedoms Act 2012

Aims of the ECHR/HRA 1998



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- To protect individuals from the excesses of the state.

Contains

- **Absolute** rights – which no state can derogate
- **Qualified rights** – can derogate when the interests conflict between rights

Qualified rights



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Article 6 – Right to a fair hearing

Article 8 – Right to respect for private and family life, the home and correspondence

Article 10 – Right to freedom of expression

Art. 1 of Protocol 1 – Right to quiet enjoyment of property

Rights and consequences



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Some practises used for investigation of crimes would be a breach of Human Rights

- Property searches
- Seizure of property
- Surveillance
- Interception of communications

Solution? – RIPA 2000



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Purpose of RIPA – to authorise breaches of **QUALIFIED** rights that are necessary and proportionate for the purposes of prevention and detection of crime or disorder (*to prevent acts of terrorism or serious crime*)

- National security
- Preventing or detecting crime, preventing disorder
- For economic wellbeing of UK
- In interests of public safety
- In interests of public health
- Assessing or collecting tax, duty ley or other charge payable to government department.

Remit



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- Intrusive Surveillance

-
- Directed Surveillance
 - Running of CHISs
 - Accessing Communications Data

Drawing Back



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RIPA(Directed Surveillance and Covert
Human Intelligence Sources) Order 2003 –

Limited the reasons for which local
government could use Directed Surveillance
and CHIS'S to

- The purpose of detecting crime and
preventing disorder

Further drawing back



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The Protection of Freedoms Act 2012

Concerns that LAs using RIPA when investigating crimes that were not acts of terrorism or 'serious'.

Impact of PoFA 2012



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- Introduces the 'Serious Offences Test'
- Requires approval from a Magistrate before a RIPA authorisation (or renewal of) for DS, CHIS or ACD can be actioned, and
- Stops LAs using RIPA authorised activities to 'prevent disorder'

Serious Offences Test



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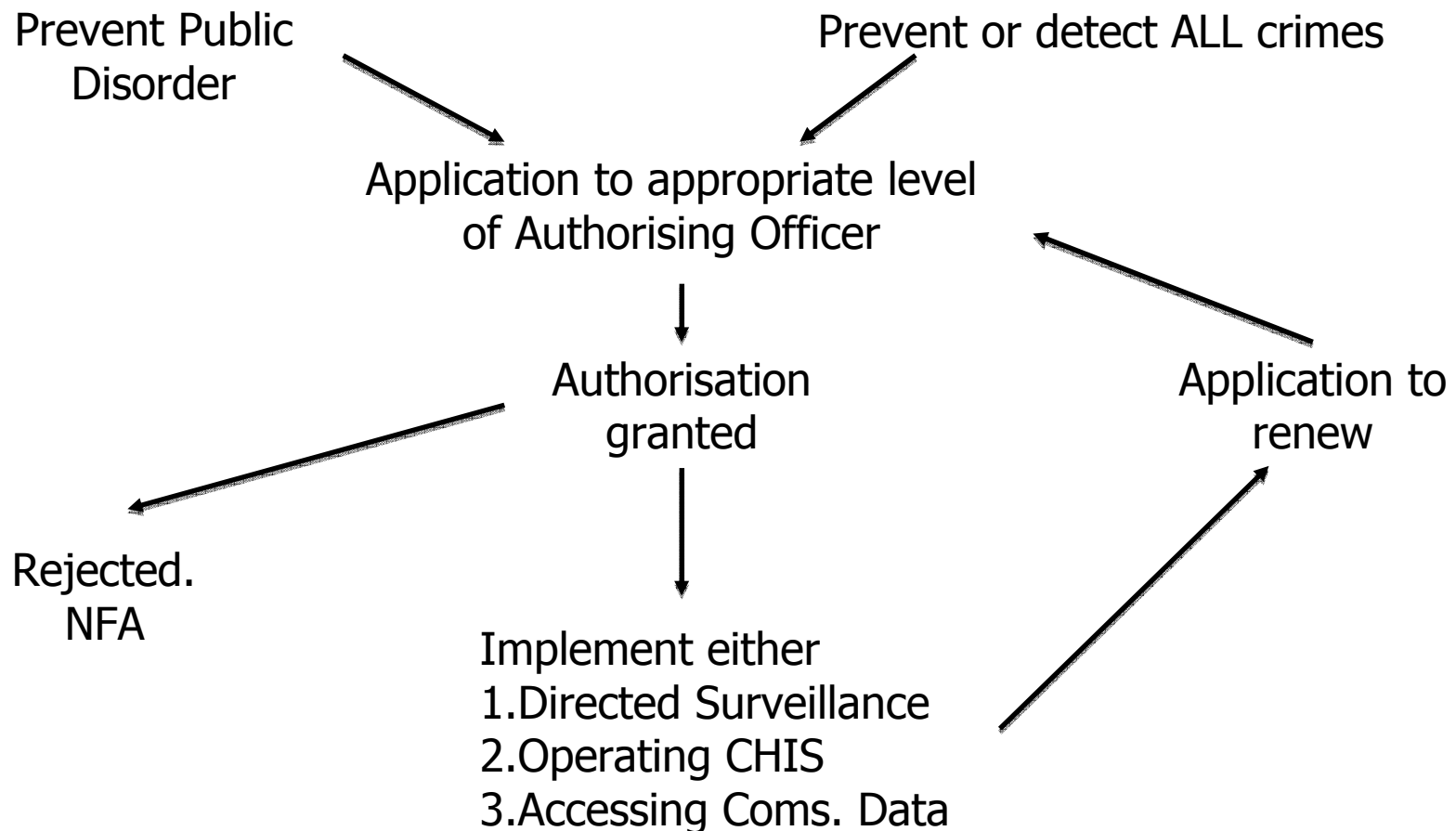
Definition – Any offence that carries a period of **at least 6 months imprisonment** is defined as being a serious offence.



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Process – pre PoFA 2012

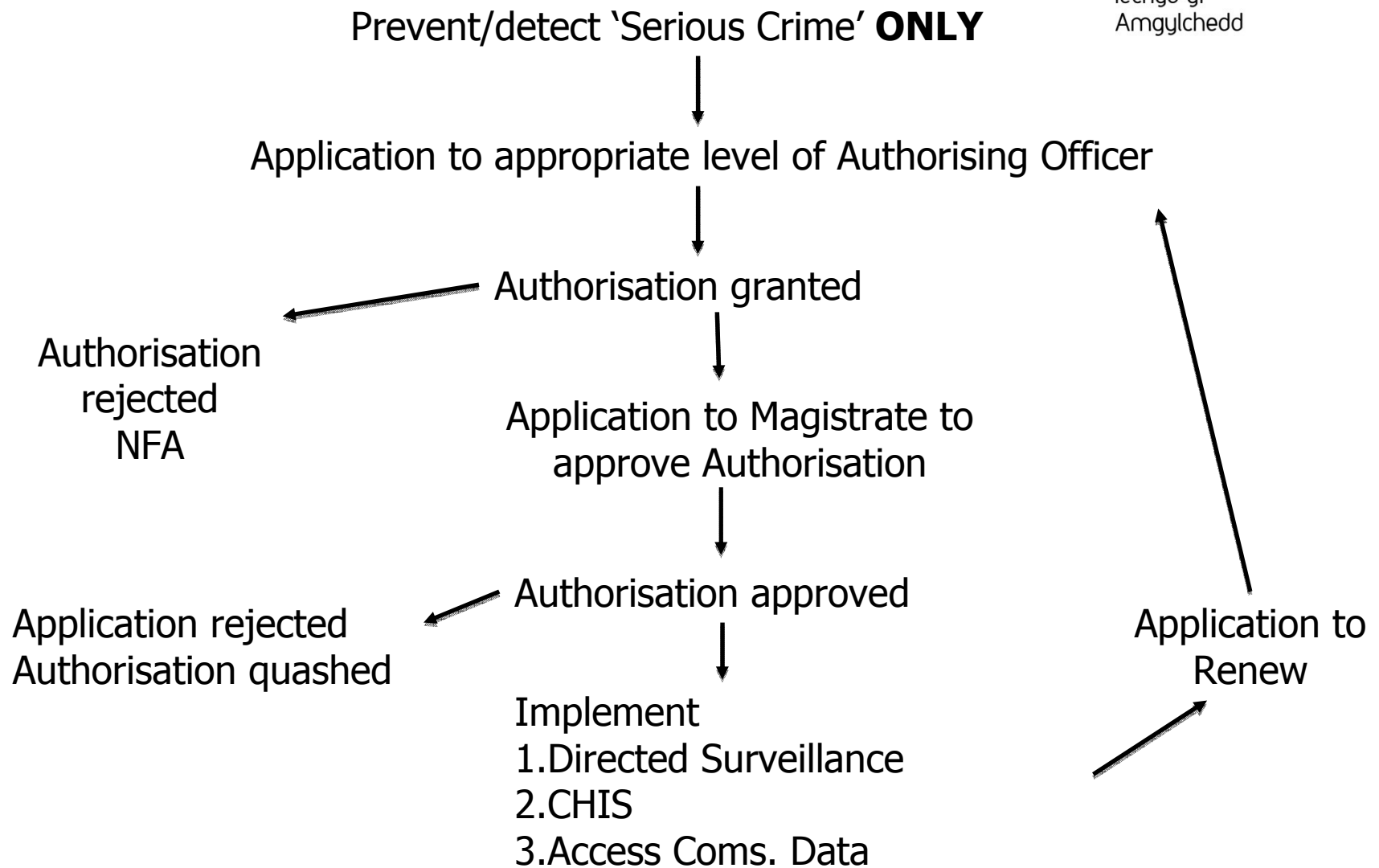




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Process – post PoFA 2012





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Impact of the changes

- i. Additional administrative element introduces element of delay
- ii. Some offences are now excluded – anomalies exist e.g. Statutory Nuisance breaches excluded
- iii. Magistrates are 'risk averse' – may be reluctant to approve authorisations.

BUT – discretion to use RIPA to progress investigations still a matter for Local Authorities



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Top tips (1)

1. Question whether you need to use RIPA,
2. Ensure appropriate level of officer Authorises RIPA applications,
3. Ensure Serious Offences Test is satisfied,
4. Ensure proportionality test has been satisfied
5. Ensure necessity test is satisfied,



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Top tips (2)

6. State explicitly what is being authorised – tactics, techniques and equipment and who will be subject to surveillance (R–v–Sutherland 2002)
7. Explain fully capability of surveillance equipment
8. State explicitly how long the exercise of authorisation is permitted.