



BRIEFING PAPER

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CCTV surveillance by your neighbour

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Summary

Constituents sometimes complain to their MPs that a neighbour's CCTV camera is "intrusive" and ask what the law says.

The use of CCTV in general is regulated by the *Data Protection Act 1998* (which implements a 1995 EU Directive). However, the use of cameras for limited household purposes is exempt from the Act, providing that the field of view is limited to the householder's own property.

If the camera covers areas beyond the boundaries of the property, such as neighbouring gardens or the street, then the camera operator may be unable to rely on the exemption. This point was established by a European Court of Justice ruling in December 2014. Given the interdependence of the UK and EU legislation, the judgment had implications for the United Kingdom, which had previously taken a more relaxed view of domestic CCTV use.

There are other grounds on which the domestic use of CCTV *could* be challenged, for example if its use amounted to harassment under the *Protection from Harassment Act 1997*. The relevance of the legislation would depend on the specific circumstances.

1. The *Data Protection Act*

Constituents sometimes complain to their MPs that a neighbour's CCTV camera is "intrusive" and ask what the law says.

The use of CCTV in general is regulated by the *Data Protection Act 1998*. Photographs or moving images of individuals qualify as "personal data" for the purposes of the legislation. However, section 36 of the Act exempts "personal data processed by an individual only for the purposes of that individual's personal, family or household affairs (including recreational purposes)" from the most important parts of the Act, including the data protection principles.

This means that a householder can reasonably use CCTV to protect their home and family from crime without a need to register under the Act. If someone is using CCTV for *business* purposes, they will need to comply with all the Act's requirements.

The so-called "domestic purposes" exemption only applies if the camera's field of view is restricted to the householder's own property. In earlier years, it was assumed that the exemption applied even if the camera overlooked the street or other areas near the house.¹ However, following a European Court of Justice ruling in 2014 (see below), this assumption no longer holds.

The Information Commissioner's Office (ICO) enforces the 1998 Act. The ICO website contains updated [advice](#) on the domestic use of CCTV, including the following:

What if my camera captures footage of individuals beyond the boundaries of my property?

You must consider whether it is necessary for your camera to operate beyond the boundary of your property.

If your camera covers, even partially, any areas beyond the boundaries of your property, such as neighbouring gardens or the street, then it will no longer be exempt from the Data Protection Act (DPA) under the domestic purposes exemption. This does not mean that you are breaching the DPA but it does mean that you are subject to it.

What can I do to make sure that what I'm doing complies with the DPA?

First, think about the problem you are trying to address and the best solution to it. This will usually be to safeguard you and your property against crime. Check your local police advice about crime prevention. Better locks or security lighting may be a more effective and less expensive way of securing your property.

If you decide to use CCTV cameras, you should:

- consider what areas would need to be covered by it, will the camera capture images you actually need and how you

¹ E.g. Q&A formerly on the Information Commissioner's website, "Q: My neighbour has installed a CCTV camera and it is pointing towards my house/garden. Is this a breach of the Data Protection Act?" - Text archived on the [National Archives website](#) [dated 2 July 2010]

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will safeguard any recorded images so they can be used by the police to investigate crimes affecting you;

- consider whether you can put up signs clearly explaining that recording is taking place and take steps to do so if it is practical;
- have appropriate safeguards in place to ensure that the equipment is only operated in the ways you intend and can't be misused. At its simplest, this means that anyone you share your property with, such as family members who could use the equipment, need to know how important it is not to misuse it;
- ensure you have activated settings to enable the security of footage captured by the CCTV system and that any recordings of individuals are held securely. Make sure that you only allow access to people who need it;
- consider speaking to your neighbours and explain what you are doing and any objections or suggestions they have. (It may be useful to invite your neighbours to view the footage that you capture, this may allay any concerns they may have about your use of a CCTV system.); and
- consider purchasing equipment that enables you to control what you can record. This will enable you to keep privacy intrusion to a minimum.

You should remember that your use of a CCTV system may be appropriate but publicly uploading or streaming footage of individuals will require further justification and in most cases will not be justifiable.

If a householder cannot rely on the domestic purposes exemption, then they are subject to a number of requirements in the *Data Protection Act*. This includes a need to notify the ICO that they are a "data controller", observe the eight [data protection principles](#) and pay an annual fee of £35. Details of the obligations resulting and of how to notify are published on the [ICO website](#).

2. The ECJ ruling

2.1 Summary

The UK's data protection law implements earlier EU legislation. There is an exemption to the relevant European Directive protecting the processing of individuals' personal data where the processing is carried out "by a natural person in the course of a purely personal or household activity".² On 11 December 2014 the European Court of Justice (ECJ) [ruled](#) that the exemption would not always apply if a camera is recording images of a public space:

The second indent of Article 3(2) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data must be interpreted as meaning that the operation of a camera system, as a result of which a video recording of people is stored on a continuous recording device such as a hard disk drive, installed by an individual on his family home for the purposes of protecting the property, health and life of the home owners, but which also monitors a public space, does not amount to the processing of data in the course of a purely personal or household activity, for the purposes of that provision.³

Following the judgment, a spokesperson for the UK Information Commissioner's Office said that the ICO was "considering the ruling and what implications [it] might have."⁴ As stated above, the ICO's [advice](#) to the public has now been revised in the light of the ruling. It concludes with this comment:

...we recognise that individuals need time to adjust to these developments in the law. We do not propose to take action during the coming year against an individual for failing to register their use of domestic CCTV cameras following this judgement, except in exceptional cases. If the position changes we will update this guidance.⁵

2.2 Background

The ECJ ruling related to the case of a Czech man, František Ryneš, who installed a surveillance camera on his property after his family had been attacked on a number of occasions. The camera was placed under the eaves of his house; was installed in a fixed position and could not turn; and recorded the entrance to his house, the public footpath and the entrance to the house opposite. The system allowed only a visual recording which was stored on recording equipment in the form of a continuous loop (i.e. on a hard disk drive). As soon as it reached full capacity, the device recorded over the existing recording, erasing the old material. No monitor was installed on the recording equipment, so the

² Article 3(2) of Directive 95/46/EC

³ ECJ (Fourth Chamber), [Case C-212/13, request for a preliminary ruling](#), 11 December 2014, para 36

⁴ ["Home surveillance CCTV images may breach data protection laws, ECJ rules"](#), *Guardian*, 11 December 2014

⁵ The guidance is undated, but was presumably revised in early 2015.

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images could not be studied in real time. Only Mr Ryneš had direct access to the system and the data.

Mr Ryneš gave recordings to the Czech police, who identified and prosecuted two individuals. One of these challenged the legality of the CCTV recording and retention of the images. The Czech Office for Personal Data Protection fined Mr Ryneš for infringing data protection rules. Mr Ryneš appealed against the ruling. The Czech courts referred the case to the ECJ, asking whether European rules on the processing of personal data applied:

'Can the operation of a camera system installed on a family home for the purposes of the protection of the property, health and life of the owners of the home be classified as the processing of personal data "by a natural person in the course of a purely personal or household activity" for the purposes of Article 3(2) of Directive 95/46 ..., even though such a system also monitors a public space?'⁶

The ECJ ruled:

To the extent that video surveillance such as that at issue in the main proceedings covers, even partially, a public space and is accordingly directed outwards from the private setting of the person processing the data in that manner, it cannot be regarded as an activity which is a purely 'personal or household' activity for the purposes of the second indent of Article 3(2) of Directive 95/46.⁷

However the ECJ also noted that Directive 95/46 "makes it possible, where appropriate, to take into account...legitimate interests pursued by the controller, such as the protection of the property, health and life of his family and himself, as in the case in the main proceedings".⁸

⁶ Para 18

⁷ Para 33

⁸ Para 34

3. Protection from harassment

A menacing use of CCTV cameras by a neighbour could fall under other legislation.

Under section 1 of the *Protection from Harassment Act 1997*, a person must not pursue a course of conduct which amounts to harassment of another and which he knows or ought to know amounts to harassment. Conduct in breach of section 1 is a criminal offence [s2]. The question of when someone “ought to know” what amounts to harassment is addressed as follows:

...the person whose course of conduct is in question ought to know that it amounts to [or involves] harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to [or involved] harassment of the other.⁹

However, the prohibition on the type of conduct defined above does not apply if the person who pursued it can show that it was pursued for the purpose of preventing or detecting crime [s(3)]. One case, albeit involving a single aerial photograph, prompted the judge to make observations which might conceivably have some bearing on security cameras. In *Bernstein v Skyviews & General Ltd* [1978] 1 QB 479, the Court ruled that taking a single photograph could not be regarded as an actionable nuisance, though Mr Justice Griffiths said at page 489 that:

If the circumstances were such that a plaintiff was subjected to the harassment of constant surveillance of his house from the air, accompanied by the photographing of his every activity, I am far from saying that the court would not regard such a monstrous invasion of his privacy as an actionable nuisance for which they would give relief.

In December 2008 the Home Office published the following advice:

Whilst it is lawful for you to monitor your own property for security purposes, the manner in which CCTV is used, in particular where the field of view covers areas outside your property, may have legal consequences.

Cameras being deliberately trained on areas outside an individual's property, could amount to harassment and potentially give rise to prosecution under the Public Order Act or Protection from Harassment Act.¹⁰

If a neighbour is concerned that CCTV is being used for harassment, anti-social behaviour or other matters dealt with under the criminal law, then these are matters for the police.

⁹ Section 1(2). Words in square brackets added by *Serious Organised Crime and Police Act 2005*, s 125(1), (2)(b)

¹⁰ [Using your CCTV in a Responsible & Proper Manner](#) (available from the archived [Respect website](#), accessed 8 January 2016)

4. Dispute resolution

The relevance of the above legislation would depend on the specific circumstances. If a constituent wishes to obtain legal advice, the Library Briefing Paper [Legal help: where to go and how to pay](#) may be useful. A further Library Paper describes [Mediation and other alternatives to court](#). The ICO has a [helpline](#) for the general public to provide data protection advice.

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