

REGULATION OF INVESTIGATORY POWERS ACT 2000 - POLICY

<u>Report of the:</u>	Head of Legal and Democratic Services
<u>Contact:</u>	Simon Young
<u>Urgent Decision?(yes/no)</u>	No
<u>If yes, reason urgent decision required:</u>	N/A
<u>Annexes/Appendices (attached):</u>	Annexe 1 – Current Policy Annexe 2 – Draft Policy for Approval
<u>Other available papers (not attached):</u>	None stated

REPORT SUMMARY

This report summarises the current position in relation to the Regulation of Investigatory Powers Act 2000, considers how the Act has been used in recent years by the Council, seeks approval to the Council's Policy in relation to the use of investigatory powers, and reconfirms authority for the Head of Legal & Democratic Services to make such changes to the policy as he thinks fit.

RECOMMENDATION (S)

That

- (1) The Council's use of RIPA be noted.
- (2) The Draft Policy set out in Annexe 2 be approved, and
- (3) The Head of Legal & Democratic Services be authorised to make such changes to the Policy as he thinks fit from time to time.

Notes

1 Implications for the Council's Key Priorities, Service Plans and Sustainable Community Strategy

- 1.1 The proper and proportionate implementation and use of the Regulation of Investigatory Powers Act 2000 can assist the Council to further its key priorities.

2 Background

- 2.1 The Regulation of Investigatory Powers Act 2000 (RIPA) arose following the implementation of the Human Rights Act 1998. It was recognised that there is a potential for conflict between an individual's human rights, set against the rights of the State to investigate matters in relation to crime, national security, public safety, public health and the economic well-being of the country.
- 2.2 RIPA seeks to provide a mechanism for authorising certain methods of investigation in a manner which seeks to ensure that the evidence gained during properly authorised activities will not be inadmissible on grounds relating to the interference with the human rights of the person subject to the investigation.
- 2.3 RIPA, as its name suggests, is concerned with the "regulation" of investigatory powers, it does not itself give authorities powers to investigate matters. Such powers are either expressly given in other legislation or are necessary and ancillary to the exercise of other powers or compliance with some other statutory duty.
- 2.4 A number of activities are covered by RIPA, including the use of surveillance, the use of "covert human intelligence sources" and the interception of communications.
- 2.5 The Council takes its responsibilities under RIPA seriously and seeks at all times to act in accordance with the law. RIPA is particularly relevant to the Council's role in connection with the detection of crime, including historically, benefit fraud as well as breaches of environmental and licensing laws.
- 2.6 A few years ago, there was a significant amount of publicity given to councils' use of RIPA, and the reputation of all authorities suffered a little due to inappropriate use of RIPA by some authorities, for minor matters.
- 2.7 The above issues led, to a reform of the legislation implemented by the Protection of Freedoms Act 2012. This fundamentally altered the way in which local authorities authorised investigatory activities under RIPA. Following the reforms, the Council is now required to seek the approval of a Justice of the Peace before any authorisation can take effect. Additionally, authorisation can only be given for investigations of more serious offences.
- 2.8 Oversight for covert surveillance and property interference lies with the Office of Surveillance Commissioners; there is also an Interception of Communications Commissioner. The Council is required to provide returns to both, and is periodically inspected by the OSC; the most recent inspection took place in July 2014, by His Honour Judge Hodson, and another is to take place on 13 July 2017.

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- 2.9 The Council has an approved RIPA Policy and Guidance, which has been updated as necessary. Further updates will be made as necessary to keep it up to date, to implement the recommendations of any inspection, and also to help make the policy easier to use.
- 2.10 Several codes of practice have been issued by the Government, and procedures and guidance have been issued by the Chief Surveillance Commissioner.
- 2.11 Between July 2008 and the end of November 2010 there were 16 authorisations: two by the Licensing team and fourteen by Benefit fraud investigators. The most recent authorisation was on 25 November 2010. After that date, most benefit fraud cases which involved regulated investigatory techniques were conducted in partnership with the Department for Work & Pensions (DWP) and/or the police; all necessary authorisations were therefore processed by those other organisations. Members may be aware that the benefit fraud team transferred to the DWP as part of the changes made to the benefits system. Most investigations conducted by the Council are “overt”, and do not require RIPA authorisation.
- 2.12 It is good practice for members to monitor the operation of RIPA within the Council. On 31 January 2012 the Scrutiny Committee received a report on the Regulation of Investigatory Powers Act 2000. The Committee agreed that a standing item be included on future agendas in relation to monitoring use of RIPA (reports were to be received whenever authorisations had been made in the intervening months between meetings). As there had been no authorisations, no reports were taken to the Committee. Given the length of time since previous reports to members, it was considered appropriate for members to consider RIPA, and a report was taken to the Audit Crime & Disorder and Scrutiny Committee in February.
- 2.13 In the absence of authorisations, a concern could be that the Council is engaging in regulated activities but not seeking the correct authorisations. It is not believed that this is the case, and the legal team would take action if there was any evidence of this occurring, particularly in any cases brought forward for prosecution.
- 2.14 Whilst we are not actively using the provisions, systems are kept up to date, and relevant officers are offered information and training as appropriate. Authorising officers are due to attend a training session on 30 March 2017.

3 Proposals

- 3.1 It is proposed that the committee considers the report and makes any recommendations which are considered appropriate.

- 3.2 It is further proposed that the amended policy be considered for approval and that the committee reconfirm the authority previously delegated to the Head of Legal & Democratic Services to make such changes to the Policy as he thinks fit. Changes will usually be made to reflect changes to the law and Codes of Practice.
- 3.3 The changes include some minor corrections and administrative changes, as well as adding a specific section in relation to social media, and “Non-RIPA surveillance”. It is conceivable that the Council may consider it appropriate to undertake surveillance in circumstances where a RIPA authorisation would not be appropriate. This could happen now, but the changes to the policy seek to ensure that the same test is applied to decide whether such activity is necessary and proportionate.

4 Financial and Manpower Implications

- 4.1 There are no financial or manpower implications arising from this report.
- 4.2 ***Chief Finance Officer’s comments:*** Any costs for developing policies of this type or for training officers are contained within existing Council budgets.

5 Legal Implications (including implications for matters relating to equality)

- 5.1 ***Monitoring Officer’s comments:*** There are no legal implications arising directly from this report. The body of the report contains all relevant information about RIPA

6 Sustainability Policy and Community Safety Implications

- 6.1 There are no direct implications arising from this report. Proper use of RIPA is important when investigating offences. Failure to comply with RIPA could put at risk the prospects of successfully mounting a prosecution.

7 Partnerships

- 7.1 There are no implications arising from this report.

8 Risk Assessment

- 8.1 The main risks are to the reputation of the Council if it could be said either to be over-zealous in use of RIPA (which is clearly not the case), or that it was undertaking investigations without complying with the legislation (there is no evidence that this is the case).

9 Conclusion and Recommendations

- 9.1 It is not considered that there are any issues in respect of the Council's use of RIPA, and our non-use of the legislation in recent years is not uncommon amongst similar borough and district Councils. It is appropriate for members to consider what we are doing, to ask any questions, and/or request any further action.
- 9.2 It is also appropriate for our policy to be reviewed and approved by members. If we continue not to make use of the powers, it is considered that the Policy could come before members once every four years, with any necessary updates being undertaken by the Head of Legal & Democratic Services in the intervening period. Should our usage of the Act increase, or if there are further substantial changes required, then the Policy may be brought to committee sooner than proposed.

WARD(S) AFFECTED: (All Wards);