

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**EXECUTIVE MANAGEMENT TEAM'S REPORT TO
AUDIT AND RISK COMMITTEE**

15TH APRIL 2013

**1. REGULATION OF INVESTIGATORY POWERS ACT 2000 -
REVISED POLICY DOCUMENT**

Submitted by: Head of Central Services and Monitoring Officer

Ward(s) affected: All

Purpose of the Report

To inform Members of the revised Council Policy on the Regulation of Investigatory Powers Act 2000 (RIPA). The purpose of the policy and its associated procedures is to ensure compliance with the requirements of RIPA and the Protection of Freedoms Act 2012 following legislative changes which came into force on 1st November 2012.

RECOMMENDATIONS:

- (a) That the Policy be endorsed and adopted.**
- (b) That a report be submitted to this Committee on an annual basis to update Members on any amendments made to the Policy as a result of recommendations from the Office of the Surveillance Commissioners or future legislative changes to ensure the Policy remains fit for purpose.**
- (c) To receive internal reports following any use by the Council of the Regulation of Investigatory Powers Act 2000.**

Reasons

The Office of the Surveillance Commissioners (OSC) recommends that it is best practice to adopt a policy that covers the use of surveillance and stresses the importance of local authorities reviewing and amending their existing policies in the light of changes introduced on 1st November 2012.

1. Background

- 1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) was enacted to provide statutory authority for activities which would otherwise be contrary to Article 8 of the European Convention on Human Rights – the right to respect for private and family life and correspondence.**
- 1.2 The Act provides authority for the interception of correspondence in certain circumstances and also for the carrying out of surveillance.**

- 1.3 Using covert techniques allows a range of public authorities (from the Police and security agencies to local authorities and organisations such as the Office of Fair Trading) to investigate suspected offences without alerting an individual that they are part of that investigation. This can include using hidden cameras to film activity, using telephone records or using people to provide intelligence on others. Such techniques can be a vital way of gathering information. RIPA requires local authorities to use these investigatory techniques only if they are necessary and proportionate.
- 1.4 The changes from 1st November 2012 are the result of a Home Office review of local authorities' access to, and the approvals process for, their use of techniques under RIPA. The Government had concerns around local authority use of covert surveillance in what they viewed to be less serious or trivial investigations, for instance checking whether an individual lives in a school catchment area or dog fouling.
- 1.5 From 1st November 2012 local authorities have been required to obtain judicial approval prior to using covert techniques. Local authority authorisations and notices under RIPA will only be given effect once an order has been granted by a Justice of the Peace in England and Wales, a Sheriff in Scotland and a District Judge (Magistrates' Courts) in Northern Ireland. The Government considered that the benefit of introducing the Magistrate's approval mechanism would ensure that local authority authorisations are subject to independent judicial scrutiny and ensure that local authorities do not use the techniques in trivial cases.
- 1.6 The Borough Council will only carry out covert surveillance where such action is justified and endeavours to keep such surveillance to a minimum. Indeed, no operations have been carried out since 2010. Any officer intending to acquire data covertly will only do so if the evidence or intelligence sought cannot be obtained by any other means.

2. Issues

- 2.1 Before 1st November, a senior officer in an authority could authorise surveillance where necessary 'for the purpose of preventing or detecting crime or preventing disorder'. The element of 'preventing disorder' has now been removed and additionally the grant of authorisation has been made subject to conditions. In summary, directed surveillance covered by RIPA will not now be authorised unless:
 - (a) it is for the purpose of preventing or detecting a criminal offence; and
 - (b) the offence is one punishable by a maximum of at least 6 months imprisonment; or
 - (c) it is one of a number of licensing or similar offences which prevent the sale of tobacco or alcohol to children.
- 2.2 Use of these techniques firstly has to be authorised internally by an authorised officer or a designated person. They can only be used where it is considered **necessary** (e.g. to investigate a suspected crime or disorder) and **proportionate** (e.g. balancing the seriousness of the intrusion into privacy against the seriousness of the offence and whether the information can be obtained by other means).
- 2.3 Local authorities are no longer able to use directed surveillance in some cases where it was previously authorised such as flytipping, taxi plying for hire and dog fouling. But this does not mean that it will not be possible to investigate these areas with a view to stopping offending behaviour. The statutory RIPA Code of Practice on covert surveillance makes it clear that routine patrols, observations at trouble 'hotspots', immediate response to events and overt use of CCTV are all techniques which do not require RIPA authorisation.

2.4 In the light of the changes in legislation, your officers have drawn up a new policy document (Appendix 1 to this report). A training session for all relevant staff on the new legislation was held on 9th November 2012 and a further session was held on 18th March 2013.

2.5 Oversight of the process is carried out by the Office of the Surveillance Commissioners by way of an inspection every couple of years by an Assistant Surveillance Commissioner (a High Court Judge). Such inspections include interviews with key personnel, examination of RIPA applications, authorisations, the central record, policy documents and an evaluation of processes and procedures. Inspection reports are restricted and only seen by the local authorities concerned.

3. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

The revised Policy contributes to the overall ethical wellbeing of the Council, and help to ensure a culture of high ethical standards, which the public and the Council's partners can have confidence in. This will thereby contribute to the Council's priority of transforming our Council to achieve excellence and to demonstrate best practice. Effective enforcement benefits all of the Council's corporate priorities.

4. Legal and Statutory Implications

Any authorisations granted should comply with the requirements of the Human Rights Act, RIPA and the Protection of Freedoms Act 2012 and able to withstand challenge in court.

5. Equality Impact Assessment

The Policy does not have any direct consequences for equality in terms of the protected groups. This applies both to the crime threshold for local authority use of direct surveillance, and the judicial approval for all three covert techniques which may be used by local authorities.

6. Major Risks

There are reputational and legal risks in not implementing the changes properly. The Office of the Surveillance Commissioners (OSC) recommends that it is best practice to adopt a policy that covers the use of surveillance and stresses the importance of reviewing and amending this in the light of the changes introduced on 1st November 2012.

7. Financial Implications

There are none flowing directly from this report although there will be resource required in the light of the new approval mechanism in that a member of the Council's staff will need to present the authorisation to the Magistrate in person. This can be met from existing budgets.

8. Key Decision Information

This is not a key decision.

9. Background documents

The Human Rights Act, RIPA, Protection of Freedoms Act
OSC guidance
Home Office guidance
Codes of Practice