
REGULATION OF INVESTIGATORY POWERS

**Responsible Cabinet Member - Councillor Stephen Harker
Efficiency and Resources Portfolio**

Responsible Director – Paul Wildsmith, Director of Resources

SUMMARY REPORT

Purpose of the Report

1. The purpose of this report is to inform and update Members about issues relevant to the use of the Regulation of Investigatory Powers Act 2000 and developments that have taken place since the last report to Cabinet in June 2012.

Summary

2. The Regulation of Investigatory Powers Act 2000 (RIPA) enables local authorities to carry out certain types of surveillance activity, as long as specified procedures are followed. The information obtained as a result of surveillance operations can be relied upon in court proceedings providing RIPA is complied with.
3. On 1 May 2012 the Protection of Freedoms Act 2012 received Royal Assent. This legislation will require local authorities to obtain judicial approval before using RIPA. Secondary legislation has now been laid before Parliament which brings this new requirement into law on 1 November 2012. In addition the secondary legislation limits the use of RIPA to offences that have a custodial sentence of 6 months or more (with some exceptions relating to sales of alcohol and tobacco to children). The Council's RIPA Policy has been revised to take account of the forthcoming changes; a copy of the revised Policy is attached at **Appendix 1**. Further details are set out in the report.
4. In August 2012 the Office of Surveillance Commissioners circulated to local authorities an amended version of the 2011 guidance document entitled 'Procedures and Guidance'. This guidance was written to help Authorising Officers and the Senior Responsible Officer in their roles. This has been forwarded on to all Authorising Officers in this Council together with a brief summary of the main changes.
5. The report gives outline details of the draft Communications Data Bill which was published on 14 June 2012. The draft Bill proposes to take communications data outside of the RIPA framework and create a new framework dealing with communications data. It is anticipated that local authorities will still be able to access communications data when it is considered vital to tackling crime and protecting the public. The draft Bill is currently being considered

by a pre legislative scrutiny committee of Parliament. Cabinet will be updated when further information becomes available on the progress of this legislation.

6. This report gives details of RIPA directed surveillance applications that have been authorised and updates the tabulated information as appropriate.

Recommendation

7. It is recommended that Members :
 - (a) Note the developments that have taken place since June 2012.
 - (b) Approve the adoption of the updated and amended RIPA Policy
 - (c) Receive further reports on the use of RIPA and associated issues.

Reasons

8. The recommendations are supported by the following reasons:
 - (a) To ensure appropriate use of powers contained within relevant legislation.
 - (b) To raise awareness and to ensure compliance when RIPA powers are used.

Paul Wildsmith
Director of Resources

Background Papers

The Protection of Freedoms Act 2012
The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 No.1500
Draft Communications Data Bill

Luke Swinhoe: Extension 2055

S17 Crime and Disorder	The appropriate use of and oversight of RIPA powers will enable the Council to provide evidence to support appropriate prosecutions and tackle crime.
Health and Well Being	There are no specific implications for Health and Well Being
Carbon Impact	There are no issues which this report needs to address
Diversity	The policy treats all groups equally.
Wards Affected	All wards
Groups Affected	All groups equally
Budget and Policy Framework	This does not represent a change to the Council's budget and policy framework.
Key Decision	This is not a key decision
Urgent Decision	This is not an urgent decision
One Darlington: Perfectly Placed	The appropriate use of powers is a legislative requirement.
Efficiency	The Protection of Freedoms Act which requires judicial approval before surveillance can start is likely to result in additional work to utilise RIPA powers.

MAIN REPORT

Information and Analysis

Protection of Freedoms Act 2012

9. The report to the June Cabinet gave details the impact of the Protection of Freedoms Act so far as it relates to RIPA. In this report the focus is more on the preparations needed in order to comply with the new legislation.
10. The Act received Royal Assent on the 1 May 2012 but the provisions of the Act relating to RIPA only come into force by statutory instrument. The relevant statutory instrument has now been laid before Parliament and the commencement date for the RIPA aspects of the Act is 1 November 2012.
11. Members will recall that the Protection of Freedoms Act includes a provision that will require all applications for RIPA authorisations to be approved by a judicial authority. This applies to all local authority RIPA usage and includes communications data, directed surveillance and covert human intelligence sources.
12. The same internal authorisation process will be followed (in the case of communications data applications, with the help of the National Anti Fraud Network – NAFN). This is essentially an application form and then approval by a designated person. In addition from 1 November an application will also need to be made for judicial approval by a Magistrate.

13. The Magistrate will need to be satisfied that there are reasonable grounds for believing that the requirements of RIPA are met.
14. The Protection of Freedoms Act enables the Secretary of State to introduce further conditions by secondary legislation. As anticipated, the statutory instrument makes it a requirement that the use of RIPA by local authorities is limited to serious crimes (those punishable by a maximum custodial sentence of 6 months or more).
15. Importantly, the statutory instrument does allow for some exceptions to the requirement that the offence must be punishable by a maximum custodial sentence of 6 months or more. These are offences concerning:
 - (a) The sale of alcohol to children (S.146 of the Licensing Act 2003)
 - (b) Allowing the sale of alcohol to children (S.147 of the Licensing Act 2003)
 - (c) Persistently selling alcohol to children (S.147A of the Licensing Act 2003)
 - (d) The sale of tobacco to persons under 18 years of age (S.7 Children and Young Persons Act 1933)
16. To prepare for the Protection of Freedoms Act the RIPA Policy has been amended and updated. A copy of the revised Policy is attached to this report at **Appendix 1**. The changes include provisions details of the restrictions on the offences that RIPA will apply to and the additional requirement to apply for judicial approval before any investigation can be commenced. The updated policy will be available on the intranet and webpage from the 1 November 2012. Ahead of this date, all officers who are approved to authorise RIPA applications and key internal clients will be advised of the changes and the additional legal requirements. The intranet pages that help staff deal with RIPA applications will also be updated to reflect the changes.

OSC Procedure and Guidance

17. The OSC (Office of Surveillance Commissioners) is a non departmental public body established to oversee the use of covert surveillance by local authorities.
18. The OCS has produces a document entitled 'Procedures and Guidance' to help Authorising Officers and the Senior Responsible Officer in their roles. This was last updated in 2011. An amended version was sent out to local authorities in August 2012. This has been forwarded onto all Authorising Officers in this Council together with a brief summary of the main changes.

The Communications Data Bill

19. The Communications Data Bill was published in draft form on 14 June 2012. The draft Bill is currently being considered by the Joint Committee of both Houses of Parliament appointed to conduct pre legislative scrutiny. The Joint Committee is due to report in November.

20. The draft Bill proposes to take communications data outside of the RIPA framework and create a new framework dealing with communications data. It is anticipated that local authorities will still be able to access communications data when doing so is considered vital to tackling crime and protecting the public. Given the daft nature of the Bill it is premature at this stage to go into detail, but it will be important to keep the developments of the draft Bill under review. Future updates on this legislation will be given to Cabinet as it moves through the parliamentary process.

Type of investigation	Year						Total
	2007	2008	2009	2010	2011	2012	
Statutory noise nuisance	17	21	12	0	0	0	50
Trading standards	2	1	1	0	0	0	4
Underage sales	20	4	2	4	0	0	30
Illegal storage/sale of fireworks	0	1	0	0	0	0	1
Trespassing	1	0	0	0	0	0	1
Anti-social behaviour	6	14	6	0	0	0	26
Benefits investigation	1	0	0	0	0	0	1
Theft	2	0	0	0	0	0	2
Failure to educate	1	0	0	0	0	0	1
Criminal damage	0	0	2	4	0	0	6
Illegal waste disposal	0	0	0	1	0	1	2
Duplicate Car Park Passes	0	0	1	0	0	0	1
Totals	50	41	24	9	0	1	125

21. Further details are available from the Home Office website:
<http://www.homeoffice.gov.uk/media-centre/news/communications-data-bill>

Quarterly Report

Directed Surveillance

22. Since the last Cabinet report one new application to use directed surveillance has been made. This concerns the installation of a motion detection camera in a rural part of the Borough where fly tipping has been a problem.
23. The table below provides details of RIPA authorisations that have been made by this Council in the calendar years since 2007.
24. Members will appreciate that there has been a reduction in the usage of RIPA by this Council, year on year and quite significantly since 2010. There are a number of factors that could explain this :
- (a) One of the issues highlighted by the Inspection in April 2010 was the difference of practice in the use of RIPA when noise recording equipment was being installed. When Environmental Health installed surveillance equipment they did not get a RIPA authority because the surveillance was considered overt (the suspect was advised before installation) rather than covert. Housing Services also advised the suspect tenant that they were installing surveillance equipment but also completed a RIPA authorisation. The inspector said that this was not necessary and as a result Housing

Services have stopped using RIPA for this type of surveillance.

- (b) The April 2010 inspection highlighted some issues relating to the sufficiency of details provided in some of the application forms. As a result training was provided of relevant officers and a more rigorous approach has been taken regarding the use of RIPA.
- (c) The national context has some relevance and Members will be aware of media criticism in the past of local authorities' use of RIPA.
- (d) The Protection of Freedoms Act introduces a more restrictive approach to the use of RIPA by local authorities.
- (e) Staff have been dealing with investigations without seeking to deploy surveillance methods

Outcome of Consultation

- 25. There has been no consultation on the contents of this report.