

---

**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 October 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. The relevant sections of Protection of Freedoms Act 2012, which require local authorities to obtain judicial approval before using RIPA, came into force on 1 November 2012. The Council's RIPA Policy was revised last year to take account of the changes and internal arrangements are in place. The report gives more detailed information.
4. The report updates Members about the draft Communications Data Bill which was published last June. The draft Bill proposed to take communications data outside of the RIPA and create a new framework dealing with communications data. However, because of the lack of consensus concerning other aspects of draft Bill (internet and social media surveillance by national security and enforcement agencies) it seems unlikely that the draft legislation will move forward.
5. The Council has been advised by the Office of the Surveillance Commissioner that a periodic inspection to consider the use of RIPA by the Council will take place on the 31 October 2013.
6. This report also gives details of RIPA directed surveillance applications that have been authorised and updates the tabulated information as appropriate.

## Recommendation

7. It is recommended that :-
- (a) Note the developments that have taken place since October 2012.
  - (b) Receive further reports on the use of RIPA and associated issues.

## Reasons

8. The recommendations are supported by the following reasons :-
- (a) Note the developments that have taken place since October 2012.
  - (b) Receive further reports on the use of RIPA and associated issues.

**Paul Wildsmith**  
**Director of Resources**

## Background Papers

No background papers were used in the preparation of this report.

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 will result in additional work to utilise RIPA powers.

## MAIN REPORT

### Information and Analysis

#### Protection of Freedoms Act 2012 - update

9. The provisions of the Protection of Freedoms Act, which requires all local authority applications for RIPA authorisations to be approved by a judicial authority, came into force on 1 November 2012. The use of RIPA has also been limited to serious crimes (those punishable by a custodial sentence of 6 months or more) with the exception of underage sales of tobacco and alcohol.
10. The process is essentially an application form approved by an internal designated person and then attendance a short hearing before a magistrate to obtain judicial approval. This applies to all local authority RIPA usage and includes communications data, directed surveillance and covert human intelligence sources.
11. Members will recall that the RIPA policy was revised last year to take account of the changes. Officers and designated persons were advised of the changes and the relevant pages on the Council intranet have been updated with relevant guidance. The magistrates court has been contacted to ensure that relevant arrangements for dealing with any application by the Council are in place locally.
12. Members may also want to note that guidance has been issued by the Home Office concerning the judicial approval process.  
<https://www.gov.uk/government/publications/changes-to-local-authority-use-of-ripa>
13. At the time of writing, while there have been a number of enquiries about the possible use of RIPA, no applications under the new procedure have yet been made.

#### The Communications Data Bill

14. Members will recall from the last Cabinet report that information was given about the publication in June 2012 of the Draft Communications Data Bill. Since then the draft Bill has been subject to pre legislative scrutiny by the Joint Committee of both Houses of Parliament. The Joint Committee published a report in December 2012 [www.parliament.uk/draft-communications-bill/](http://www.parliament.uk/draft-communications-bill/)
15. In relation to RIPA the draft Bill had proposed to take communications data outside of RIPA and create a new framework dealing with communications data. It has been anticipated that local authorities could still access communications data when doing so is considered vital to tackling crime and protecting the public.
16. The draft Bill and the wider issues raised, in particular the proposals to increase the access by law enforcement and national security bodies of internet and social media usage, have been the subject of much debate and comment. As matters currently stand, the progress of the draft Bill into legislation appears to have stalled because of difference of view within the coalition government

## RIPA Inspection

17. The Council has been advised by the Office of the Surveillance Commissioner that a periodic inspection to consider the use of RIPA by the Council will take place on the 31 October 2013.

## Quarterly Report -Directed Surveillance

18. Members will be aware that in recent years the Council has significantly reduced the number of operations that rely on surveillance activity. Since the last Cabinet report no new application to use directed surveillance has been made.

19. The table below provides details of RIPA authorisations that have been made by this Council in the calendar years since 2007.

Type of investigation	2007	2008	2009	2010	2011	2012	2013	Total
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
<b>Totals</b>	<b>50</b>	<b>41</b>	<b>24</b>	<b>9</b>	<b>0</b>	<b>1</b>	<b>-</b>	<b>125</b>

20. Members will recognise 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 imposes limitations to the use of RIPA by local authorities.
- (e) Staff have been dealing with investigations without seeking to deploy surveillance methods

### **Legal Implications**

21.

There are no specific legal implications other than those raised in the report.

### **Outcome of Consultation**

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