
REGULATION OF INVESTIGATORY POWERS ARRANGEMENTS

**Responsible Cabinet Member - Councillor Chris McEwan
Efficiency and Resources Portfolio**

Responsible Director - Paul Wildsmith, Director of Corporate Services

SUMMARY REPORT

Purpose of the Report

1. The purpose of this report is to inform Members about the new Code of Conduct for the use of powers under the Regulation of Investigatory Powers Act 2000 and review the Council's current arrangements in the light of the Code and in anticipation of an inspection from the Office of the Surveillance Commissioner on 8 April 2010.

Summary

2. The Regulation of Investigatory Powers Act 2000 (RIPA) enables Local Authorities to carry out certain types of surveillance activity provided that specified procedures are followed. The Local Authority is able to rely upon the information obtained from those surveillance activities within Court proceedings. The Home Office has carried out consultation and a review of RIPA during 2009 following publicity suggesting that the powers were being used disproportionately. As a result of the review the Home Office has published new Orders and Codes of Practice that will come into force on 6 April 2010.
3. The Codes of Practice require amongst other things that the Council's RIPA policies are reviewed; that the Council appoint a suitable Senior Responsible Officer and that Cabinet receive regular reports reviewing the policy and the Council's practice.

Recommendation

4. It is recommended that:
 - (a) Members note the changes being brought about in relation to the use of the powers under the Regulation of Investigatory Powers Act.
 - (b) Members approve the appointment of the Director of Corporate Services as the Council's Senior Responsible Officer.
 - (c) The Borough Solicitor be authorised to revise the policy for the use of the legislation in accordance with the proposals set out in paragraphs 11 and 12 of this report.

(d) Cabinet receive further quarterly reports on the policy and the use of RIPA.

Reasons

5. The recommendations are supported by the following reasons:

- (a) To ensure appropriate use of powers contained within relevant legislation.
- (b) To ensure compliance with the new Codes of Practice.

Paul Wildsmith
Director of Corporate Services

Background Papers

Codes of Practice

D.Whitehead : Extension 2331

S17 Crime and Disorder	The appropriate use 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
Sustainability	There are no specific implications for Sustainability
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 additional legislative requirements will be met within existing resources but will create additional pressures within the People Team of Legal Services and for officers using RIPA powers across the authority.

MAIN REPORT

Information and Analysis

6. The new Orders, made under the Regulation of Investigatory Powers Act 2000 and come into effect on 6 April 2010, maintain Local Authority powers to carry out directed covert surveillance that may lead to the obtaining of private information about an individual provided the actions are:
 - (a) Necessary for the purpose of preventing or detecting crime or preventing disorder.
 - (b) Proportionate to what is sought to be achieved by carrying out the surveillance. This involves balancing the extent of the intrusion upon a persons human right to respect for their private life against the benefit of the investigation being undertaken.
 - (c) Non-discriminatory.
 - (d) Lawful.
7. The Orders continue to enable Local Authorities to use Covert Human Intelligence Sources (CHIS) provided the conditions above are satisfied. These are individuals who establish or maintain a relationship with a person for the covert purpose of obtaining and passing on information.
8. The Orders do make a number of changes to current practice. These changes will be reflected by amendments to the Darlington Borough Council's RIPA policy.
9. There has been a change in the officers able to authorise the use of RIPA. The previous grade was Assistant Chief Officer, Assistant Head of Service, Service Manager or equivalent. This has now changed to Director, Head of Service, Service Manager or equivalent. In Darlington we currently do not use anyone who is not a Head of Service/Assistant Director/Service Manager so it will not be necessary to change the list of persons authorised as a consequence of this amendment. However, a review of the current responsibilities of those officers currently listed in the policy, as Authorising Officers, reveals that it is out of date with a number of changes to responsibilities.
10. Pauline Mitchell, recently appointed Assistant Director of Adult Social Care, will be replaced on the list by Hazel Neasham, Housing Estates Manager to ensure Housing Services has a named Authorising Officer. Steve Thompson, Assistant Director Culture, who has not been required to Authorise the use of RIPA to date, will be replaced with Ian Thompson, Assistant Director Environmental Services to ensure that in the absence of Cliff Brown, Environmental Services has an Authorising Officer with sufficient knowledge of the operations requiring authorisation. Additionally Catherine Whitehead, Borough Solicitor, and Luke Swinhoe, Head of Legal Services, will be added to the list of Authorising Officers to ensure that sufficient provision is available.
11. The Codes of Practice additionally provide that Authorising Officers should not normally be responsible for authorising operations in which they are directly involved unless it is unavoidable. The current Policy will need to be amended to reflect this position.
12. The Policy will also need to be altered to reflect the following:

- (a) The Codes have provided further guidance on the definitions of ‘Surveillance’ ‘Private Information’ and ‘Residential Premises’ (surveillance of which is expressly prohibited). These definitions will be expanded upon to reflect that guidance.
- (b) The ‘Monitoring and Review’ section of the Policy will be amended to reflect the restructure of the Legal Section and staff turnover.
- (c) Following the recommendations from the last inspection there have been alterations made to the procedure for making applications and authorisations. These alterations need to be reflected by amendments to the current Policy. In particular the applicant will refer to the People Team within the Legal Section which holds the centrally retrievable record of Authorisations, to obtain a unique reference number for the operation and will on completion of the authorisation send a copy of it to the People Team to be maintained on the record along with any Reviews and Cancellations of the Authorisation.
- (d) In order to reflect the requirements in the Codes relating to the information to be maintained in the Centrally Retrievable Records of Authorisation, amendments will be made to the Policy.
- (e) Urgent authorisation section of the Policy will be amended to reflect current guidance in the Codes regarding a requirement to record the actions authorised and reasons for urgency but that no full written application need to be submitted subsequently.

13. The Codes of Practice place the following additional responsibilities on public authorities:

- (a) Appointment of a Senior Responsible Officer (SRO) who is responsible for
 - (i) the integrity of the process in place within the public authority to authorise directed surveillance and use of CHIS.
 - (ii) Compliance with the RIPA and the Codes.
 - (iii) Engagement with the Commissioners and Inspectors when conducting their inspections.
 - (iv) Where necessary, overseeing the implementation of any post-inspection action plans recommended or approved by a Commissioner.

The SRO should be a member of the Corporate Leadership Team and should be responsible for ensuring that all Authorising Officers are of an appropriate standard in the light of any recommendations in the inspection reports. If concerns are highlighted about the standards of authorising officers, the SRO will be responsible for ensuring those concerns are addressed. The current person with responsibility for RIPA and who is also the Senior Responsible Officer for the purposes of other investigatory law is the Borough Solicitor, however, as the role is not part of the Corporate Management Team the responsibility will be the Director of Corporate Services. Members are requested to make that appointment.

- (b) Councillors should review the use of RIPA and set the policy at least once per year. They should also consider internal reports on use of RIPA at least quarterly to ensure it is being used consistently with the policy and that the policy remains fit for purpose. The Code is clear, however, that Councillors should not be involved in making decisions on specific authorisations. Cabinet will therefore need to receive regular reports. This report has been prepared to ensure that the Council are ready for 6 April

2010.

14. The Office of the Surveillance Commissioners has written to inform the Council that we will have our regular RIPA inspection on 8 April 2010. The inspection will include a meeting with the Chief Executive or Director of Corporate Services to discuss RIPA issues in general, OSC notifications under the RIPA Codes of Practice and progress in response to previous OSC recommendations. There will also be an examination of the central record of authorisation, policy and procedures documents, training material and RIPA applications and authorisations. Other departments will become involved through the group meeting with practitioners from relevant departments, to include Authorising Officer(s) and Training Officer(s). The visit will also include site visits to relevant offices such as the CCTV centre. Feedback will be provided at the end of the day.
15. A further report to Cabinet will be required later in the year to review the policy in the light of any findings from the inspection and further regular reports will need to be presented to ensure that Members have the opportunity to review the policy and the way it is operated here in Darlington. It is suggested that reports should be presented a minimum of quarterly to Cabinet.
16. Training will be provided to applicants and authorising officers on the amendments to RIPA as a consequence of the implementation of the new Orders and Codes of Practice.

Outcome of Consultation

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