
REGULATION OF INVESTIGATORY POWERS

**Responsible Cabinet Member - Councillor Chris McEwan
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 the Regulation of Investigatory Powers Act 2000 and developments that have taken place since the last report to Cabinet in December 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.
3. The Office of the Surveillance Commissioner (OSC) provides regulatory oversight of the way in which public authorities use RIPA. The Council was inspected by the OSC on 23 November 2010. This was a follow up inspection from the full inspection and audit that was carried out on the 8 April 2010. We have now received positive written feedback.
4. Members are advised about the Governments proposals to limit the use of RIPA by local authorities. These were published by the Government on the 26 January 2011 and are set out in 'The Review of Counter-Terrorism and Security Powers, Review Findings and Recommendations', which can be found on the Home Office website :
<http://www.homeoffice.gov.uk/publications/counter-terrorism/review-of-ct-security-powers/>
5. Essentially the proposals are that the use of RIPA should be limited to investigations involving serious offences (punishable by custodial sentences of 6 months or more) and that the authorisation process should in additionally involve an application to a magistrate for approval.
6. This report gives details of RIPA applications that have been authorised and updates the tabulated information of RIPA applications.

Recommendation

7. It is recommended that Members :
- (a) Note the developments that have taken place since December 2010.
 - (b) Receive further quarterly 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 ensure compliance with the Codes of Practice and Guidance.

Paul Wildsmith
Director of Resources

Background Papers

HM Government, Review of Counter-Terrorism and Security Powers, Review Findings and Recommendations, January 2011
Home Office, Covert Human Intelligence Sources, Code of Practice, 2010

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 proposed legislative changes involving the need to obtain approval from magistrates to undertake surveillance is likely to result in additional work to utilise RIPA powers

MAIN REPORT

Information and Analysis

Inspection

9. As advised in the last report to Cabinet, the Council was inspected by the Office of the Surveillance Commissioner on 22 November 2010. This was a follow up inspection from the full inspection and audit that was carried out on the 8 April 2010. We have now received a letter from the Office of The Surveillance Commissioner, which recognises that the Senior Responsible Officer and other senior officers had responded appropriately to the recommendations made in the April inspection. It was noted that there was good practice in the updates provided to Cabinet and the involvement of Council Members in RIPA oversight. The Inspector felt that the central record of authorisations was well maintained, he was impressed with the standard of the authorisations, the training that had been provided and the amended RIPA policy.

Changes to RIPA

10. On the 26 January 2011 the Government published its long awaited review of counter – terrorism and security powers. The review documentation including, ‘The Review of Counter-Terrorism and Security Powers, Review Findings and Recommendations’, can be found on the Home Office website : <http://www.homeoffice.gov.uk/publications/counter-terrorism/review-of-ct-security-powers/>
11. Much of the media interest following the publication centred on issues concerning the proposed changes to control orders. What got slightly lost in the coverage was the detail relating to proposals to make changes to the Regulation of Investigatory Powers Act 2000.
12. The intention of the Government is set out as to ‘stop local authority use of RIPA (Regulation of Investigatory Powers Act 2000) unless it is for a serious crime and approved by a magistrate: local authorities have been criticised for using covert surveillance in less serious investigations including, for example, dog fouling or checking individuals in a school catchment area¹’.
13. As matters stand at the moment, local authorities can use RIPA for the ‘purposes of preventing or detecting crime or preventing disorder’. There are no limits placed on the types of criminal case for which RIPA techniques can be employed and in some circumstances where the problem being addressed involves the collection of evidence necessary to prevent disorder there need not be any criminal offence (it could potentially relate to a civil rather than criminal wrong, such as nuisance or trespass, as long as the use was necessary and proportionate).
14. The Government has decided that additional limitations need to be placed on the circumstances when directed surveillance operations can be authorised by RIPA. Accordingly it proposes that directed surveillance will only be lawful under RIPA where it applies to circumstances when evidence is gathered in connection with investigations of

¹ Page 25, HM Government, Review of Counter-Terrorism and Security Powers, Review Findings and Recommendations, January 2011

criminal offences that carry a maximum custodial sentence of six months or more. This will exclude any use of RIPA for non criminal matters which could otherwise come within the 'preventing disorder' requirement (see paragraph above). The requirement that offences under investigation must carry a maximum custodial sentence of 6 months or more will effectively limit the use to more serious criminal offences. This will still allow local authorities to continue to use RIPA in a number of more serious criminal investigations, including for example, offences under the Gambling Act, housing benefit fraud, waste dumping cases, licensing offences and product safety offences.

15. One area of difficulty relates to underage sales of tobacco and alcohol (which is punishable only by fine) would not be lawful as directed surveillance operations. Taking this into account the Government suggests that the requirement that the offence should be punishable by a custodial sentence of 6 months should not apply to operations involving covert human intelligence sources (CHIS) (undercover operations - where a person covertly gathers evidence from a relationship they have established with another person). The reason for suggesting this is because the Governments view is that this will still allow local authorities to use RIPA for underage sales test purchasing as it believes that the under age test purchaser used by a local authority is likely to be a CHIS. This is contrary to advice that we have previously received during inspections undertaken by the Office of Surveillance Commissioners and Home Office Guidance² suggests that in relation to test purchase situations any relationship established between the test purchaser and the seller 'is likely to be so limited in regards to the requirements of the 2000 Act that a CHIS is unnecessary. The problem being that if it is not a CHIS, the alternative is that it will be directed surveillance and such an operation will be unlawful given the requirement that the offence will not be punishable by a custodial sentence of 6 months or more. Even if an under age test purchase was a CHIS, the Code of Conduct requirements for CHIS operations, which are designed to protect undercover staff, impose considerable additional burdens relating to health and safety and the like and will add an unnecessary bureaucratic burden on what should be a simple operation.
16. The other main recommendation that is being made is that on every occasion when a RIPA authorisation is needed (currently only a limited number of trained senior staff within this authority can authorise) as well as obtaining the internal authorisation an application to authorise will additionally need to go before a magistrate for approval.
17. This requirement will import into the authorisation process external approval of each application. This will inevitably lead to additional work for officers in order to gain approval to use RIPA and also potentially could slow down the authorisation process. It will however help in giving public reassurance of the appropriateness of the use of RIPA powers, which has clearly been one of the objectives that the Government has been considering in the recommendations that have been made.
18. It is not yet clear what the legislative timescale will be to enact these changes.

² Page10, Covert Human Intelligence Sources, Code of Practice, 2010

Quarterly Report

19. The table below provides details of RIPA authorisations that have been made by this Council in the calendar years since 2007. Since 7 December 2010 (when the last report was presented to Cabinet) there have been no new authorisations.

Type of investigation	Year				
	2007	2008	2009	2010	Total
Statutory noise nuisance	17	21	12	0	50
Trading standards	2	1	1	0	4
Underage sales	20	4	2	4	30
Illegal storage/sale of fireworks	0	1	0	0	1
Trespassing	1	0	0	0	1
Anti-social behaviour	6	14	6	0	26
Benefits investigation	1	0	0	0	1
Theft	2	0	0	0	2
Failure to educate	1	0	0	0	1
Criminal damage	0	0	2	4	6
Illegal waste disposal	0	0	0	1	1
Duplicate Car Park Passes	0	0	1	0	1
Totals	50	41	24	9	124

20. Members will appreciate that there has been a reduction in the usage of RIPA by this Council, year on year and also in 2010. This can be explained. One of the issues highlighted by the Inspection in April 2010 was that there was a difference of practice in the use of RIPA when noise recording equipment was being installed. Environmental Health advised the target resident that they were installing surveillance equipment, but did not get a RIPA authority because the surveillance was overt rather than covert. Housing Services also advised the target tenant that they were installing surveillance equipment but also completed a RIPA authorisation process. The inspector said that this was not necessary. Accordingly Housing Services no longer use RIPA for this type of surveillance.

Outcome of Consultation

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