
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 update Members about the use of powers under the Regulation of Investigatory Powers Act 2000 and review the Council's current arrangements in the light of the recent inspection by 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 published new Orders and Codes of Practice that came into force on 6 April 2010. The Codes of Practice require amongst other things require that the Council's RIPA policies are reviewed and that Cabinet receive regular reports reviewing the policy and the Council's practice.
3. The council was inspected on 8th April 2010 and the inspection highlighted that recommendations from a previous inspection report had not been addressed and there were still a number of areas for improvement. The inspection will be reviewed after a period of six months. The Council has already taken a number of steps to address the concerns identified within the report. The new coalition government has suggested that RIPA powers will be removed from local authorities and carried out by application to a magistrates' court. however there has been no legislative change as yet, which will be required before this is operational and in the meantime the Council will need to be ready for the inspection in October later this year.

Recommendation

4. It is recommended that Members :
 - (a) Note the progress against the recommendations of the latest inspection report.
 - (b) Approve the revised policy.
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- (c) Receive the first quarterly report 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

C.Whitehead : Extension 2306

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.

The Inspection Report

8. The Council was last inspected on 30th April 2008. There were a number of recommendations in the inspection report, including ones on the use a unique reference number and training for authorising officers which were not properly implemented. The latest inspection report is therefore critical of the failure to address these recommendations but is complimentary about the way the Council has responded more recently to the introduction of the latest Codes of Practice. A further inspection will take place in October to ensure that the latest recommendations have been implemented.
9. A number of steps have already been taken to address the recommendations:

The Policy

10. The Policy has been altered to reflect the recommendations and the new codes:
 - (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 have been expanded upon to reflect that guidance.
 - (b) The 'Monitoring and Review' section of the Policy has been amended to reflect the restructure of the Legal Section and staff turnover.
 - (c) Alterations made to the procedure for making applications and authorisations were recommended by the inspection. These alterations need to be reflected in amendments to the current Policy. In particular the applicant will contact Legal Services 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, within Legal Services 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 have been made to the Policy.
- (e) Urgent authorisation section of the Policy has been 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.

The Training

- 11. On 17th May a training session was held for authorising officers, and applicants. The training was delivered by an external provider and highlighted a number of other areas that the Council could usefully address. The Council should tighten up not just its RIPA practice but also practice in relation to areas of overt surveillance which are not covered by the legislation but which are necessary to enable the Council to carry out investigative functions. In particular those which do not lead to criminal prosecutions but may lead to civil action such as disciplinary cases. These include the requirement for a Monitoring at Work policy.
- 12. The trainer recommended regular meetings of staff involved in RIPA activity to ensure that there is consistent practice and to explore issues on cases. He also highlighted the need to be clear about what equipment is being used for RIPA surveillance. It is important to know what equipment is being used in relation to any particular investigative activity to assess its proportionality. For example if equipment has a broad view and will be located in a place where it will intrude on the privacy of members of the public generally it is less likely to be proportionate than equipment which is focused on an individual suspected of criminal activity. The authorisation therefore needs to consider the range and focal length of equipment used.

Involvement of Councillors and Corporate Management Team

- 13. The new codes require the appointment of a Senior Responsible Officer who is Paul Wildsmith, Director of Corporate Services. 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. Although training has taken place this will need to be repeated if the Council is to continue to have responsibility for RIPA authorisation.
- 14. 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. It was therefore agreed that Cabinet would receive quarterly reports which include details of the authorisations.

Quarterly Report

15. The table below provides details of RIPA authorisations that have been made by this Council in the calendar years since 2007. There have been no new authorisations since 30.3.10 (when the last report was presented to Cabinet). Future reports to Cabinet will provide quarterly updates of authorisations granted during the course of the year.

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	2	28
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	7	122

Outcome of Consultation

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