

REGULATION OF INVESTIGATORY POWERS

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

Responsible Director - Paul Wildsmith, Managing Director

SUMMARY REPORT

Purpose of the Report

1. This report updates 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 July 2018.
2. Members are asked to consider and approve a revised RIPA Policy to take account of recent developments.

Summary

3. 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.
4. The RIPA Policy has been amended to take account of revised Home Office Codes of Practice dealing with RIPA, legislative changes affecting authorisations for Juveniles used as Covert Human Intelligence Sources (CHIS) and to reflect the change of the strategic regulator for RIPA. The revised RIPA Policy is attached at **Appendix 1**.
5. This report also gives details of RIPA directed surveillance applications and communications data applications that have been authorised since the last report to Cabinet.

Recommendation

6. It is recommended that Members:-
 - (a) Note the developments that have taken place since July 2018.
 - (b) Approve the RIPA Policy attached at Appendix 1.
 - (c) Receive further reports on the use of RIPA and associated issues.

Reasons

7. The recommendations are supported by the following reasons :-
- (a) In order to ensure that the Council complies with the legal obligations under RIPA and national guidance.
 - (b) To ensure that the RIPA policy and procedures remain up to date and reflect legislative change and revised Codes of Practice.
 - (c) To help in giving transparency about the use of RIPA in this Council.

Paul Wildsmith
Managing Director

Background Papers

- (i) The Regulation of Investigatory Powers (Juveniles) (Amendment) Order 2018
- (ii) Home Office, Covert Surveillance and Property Interference, Revised Code of Practice, August 2018
- (iii) Home Office, Covert Human Intelligence Sources, Revised Code of Practice, August 2018

Amy Wennington: Extension 5466

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	Clarity about the lawful use of RIPA will help in the efficient use of the powers.
Impact on Looked After Children and Care Leavers	The report does not impact on Looked After Children or Care Leavers

MAIN REPORT

Information and Analysis

Home Office Codes of Practice

8. In the last Cabinet Report reference was made to the fact that a public consultation had closed in relation to 3 new draft Home Office Codes of Practice: The Covert Surveillance and Property Interference Code, The Covert Human Intelligence Sources Code, and the Protected Electronic Information Code. On 15 August 2018 the Investigatory Powers (Codes of Practice and Miscellaneous Amendments) Order 2018 brought these revised codes into force. Further details about the codes can be found from the following link www.gov.uk/government/collections/ripa-codes
9. The codes have been revised to provide consistency and add further clarity. The section regarding online covert activity had already been expanded to provide additional guidance to public authorities on this area. This has been developed further to better assist public authorities in the decisions required when considering whether a directed surveillance authorisation for online activity should be sought, and the examples provided have been reworked to ensure their applicability. This includes providing greater clarity around the steps a public authority takes to inform the public or particular individuals that surveillance is or may be taking place.

RIPA Policy

10. A number of revisions have been made to the RIPA Policy to ensure that it remains up to date. The revised RIPA Policy is attached at **Appendix 1**.
11. As a result of the Regulation of Investigatory Powers (Juveniles) (Amendment) Order 2018 coming into force on 20 July 2018, the authorisation period for Juveniles used as Covert Human Intelligence Sources (CHIS) has been increased from one month to four months. The RIPA Policy has been amended to reflect this change.
12. Note: Members should note that a CHIS is someone employed to establish a relationship with another person for the purpose of covertly gathering evidence. The area of activity where a CHIS has been previously used is for tobacco or alcohol test purchases (to see if sales will be made to under age persons). The Police now act as the lead authority in this type of work. As this is the case, the Council does not currently make use of CHIS, but it remains important that our policy reflects the changes that apply to the use of CHIS.
13. The RIPA Policy has also been updated to reference the revised Home Office Codes of Practice as mentioned in paragraph 8 (above).
14. Changes have also been made to replace references in the policy made about the Office of Surveillance Commissioners to the Investigatory Powers Commissioner's Office (IPCO) which took over strategic oversight of the use of RIPA by public authorities in September 2017.

Serious crime threshold introduced for the acquisition of service use data

15. From 1 November 2018, an amendment to RIPA is in force, adding a serious crime threshold to the acquisition of service use data (that being the data relating to the use made by a person of a communications service, for example, itemised telephone call records detailing the numbers called) where the data is required for the investigation of a criminal offence. Subscriber data (that being information held or obtained by a communications service provider about persons to whom they provide a communications service, such as details of the account holder for a telephone number or email address) can still be acquired for any crime, where necessary and proportionate to do so.
16. In relation to the acquisition of service use data, a crime is classified as serious where the offence being investigated meets one or more of the following definitions:-
 - (a) an offence that is capable of attracting a prison sentence of 12 months or more;
 - (b) an offence by a person who is not an individual i.e. a corporate body;
 - (c) an offence falling within the definition of serious crime in section 81(3)(b) of RIPA i.e. where the conduct involves the use of violence, results in substantial financial gain or is by a large number of persons in pursuit of a common purpose;
 - (d) an offence which involves, as an integral part of it, the sending of a communication; or
 - (e) an offence which involves, as an integral part of it, a breach of a person's privacy

Bi-Annual Report

Directed Surveillance

17. There have been no authorisations granted since the last Cabinet Report.

Communications Data - Update

18. There have been no authorisations granted since the last Cabinet Report.