

Report title	Update on use of RIPA powers and review and adoption of revised RIPA policy
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Department	Law and Governance
Exempt?	No
Exemption type	Not applicable
Reasons for exemption	Not applicable

Purpose of report:

- **To recommend to full Council**

Synopsis of report:

The purpose of this report is to advise Members on the use by the Council of powers available to it under the provisions of the Regulation of Investigatory Powers Act 2000 (RIPA) during the last twelve months and adoption of a revised policy to govern the use of such powers.

Recommendation(s):

That the Corporate Management Committee recommend to the Council that it:

- 1. Note that the Council has not used its RIPA powers during the period 01/01/2023 to 31/12/2023 and further note that such powers have not been used since 2011.**
- 2. Adopt a revised Policy to govern the use of RIPA powers for the period 09/02/2024 to 07/02/2025.**

1. Context and background of report

- 1.1 The Regulation of Investigatory Powers Act 2000 (“the 2000 Act”) authorises public authorities to undertake covert surveillance that is likely to result in the obtaining of private information about a person and to use a covert human intelligence source (CHIS).
- 1.2 Section 71 of the 2000 Act provides that the Secretary of State shall issue one or more codes of practice in relation to the powers and duties in Part 2 of the 2000 Act (which deals with the use of such covert surveillance powers).
- 1.3 Paragraph 4.47 of the Covert Surveillance and Property Interference Revised Code of Practice August 2018 edition requires elected members of a local authority to review the authority’s use of the 2000 Act and set the policy at least once a year.

Paragraph 3.46 of the Covert Human Intelligence Sources Revised Code of Practice December 2022 edition imposes a similar requirement in the context of a policy regulating the use of a Covert Human Intelligence Source (CHIS).

2. Report and, where applicable, options considered and recommended

- 2.1 Part II of the 2000 Act provides for the authorisation of covert surveillance by public authorities where that surveillance is likely to result in the obtaining of private information about a person.
- 2.2 Surveillance, for the purpose of the 2000 Act, includes monitoring, observing or listening to persons, their movements, conversations, or other activities and communications. It may be conducted with or without the assistance of a surveillance device and includes the recording of any information obtained.
- 2.3 Surveillance is covert if, and only if, it is carried out in a manner calculated to ensure that any persons who are subject to the surveillance are unaware that it is or may be taking place.
- 2.4 Specifically, covert surveillance may be authorised under the 2000 Act if it is directed:
 - Directed surveillance is covert surveillance that is not intrusive and is carried out in relation to a specific investigation or operation in such a manner as is likely to result in the obtaining of private information about any person (other than by way of an immediate response to events or circumstances such that it is not reasonably practicable to seek authorisation under the 2000 Act).
- 2.5 The Human Rights Act 1998 gave effect in UK law to the rights set out in the European Convention on Human Rights (ECHR). Some of these rights are absolute, such as the prohibition on torture, while others are qualified, meaning that it is permissible for the state to interfere with those rights if certain conditions are satisfied.
- 2.6 Amongst the qualified rights is a person's right to respect for their private and family life, home, and correspondence, as provided for by Article 8 of the ECHR. It is Article 8 that is most likely to be engaged when public authorities seek to obtain private information about a person by means of covert surveillance. Property interference activity may also engage Article 1 of the First Protocol, the right to peaceful enjoyment of possessions, which could include any property subject to interference by public authorities. Article 6 of the ECHR, the right to a fair trial, is also relevant where a prosecution follows the use of covert techniques, particularly where the prosecution seek to protect the use of those techniques through public interest immunity procedures.
- 2.7 Part II of the 2000 Act provides a statutory framework under which covert surveillance or property interference activity can be authorised and conducted compatibly with the ECHR.
- 2.8 Surveillance is directed surveillance if the following are all true:
 - it is covert, but not intrusive surveillance;
 - it is conducted for the purposes of a specific investigation or operation;
 - it is likely to result in the obtaining of private information about a person (whether

- or not one specifically identified for the purposes of the investigation or operation);
 - it is conducted otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under Part II of the 2000 Act to be sought.
- 2.9 Thus, the planned covert surveillance of a specific person, where not intrusive, would constitute directed surveillance if such surveillance is likely to result in the obtaining of private information about that, or any other person.
- 2.10 The Protection of Freedoms Act 2012 amended the 2000 Act to make local authority authorisations subject to judicial approval. The change means that local authorities need to obtain an order approving the grant or renewal of an authorisation from a judicial authority, before it can take effect. In England and Wales an application for such an order must be made to a Justice of the Peace (JP). If the JP is satisfied that the statutory tests have been met and that the use of the technique is necessary and proportionate, they will issue an order approving the grant or renewal for the use of the technique as described in the application. The amendment means that local authorities are no longer able to orally authorise the use of RIPA techniques. All authorisations must be made in writing and require JP approval. The authorisation cannot commence until this has been obtained.
- 2.11 Under the 2000 Act, a person is a CHIS if:
- they establish or maintain a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within Section 26(8)(b) or (c);
 - they covertly use such a relationship to obtain information or to provide access to any information to another person; or
 - they covertly disclose information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.
- 2.12 A relationship is established or maintained for a covert purpose if and only if it is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose.
- 2.13 A relationship is used covertly, and information obtained is disclosed covertly, if and only if the relationship is used or the information is disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.
- 2.14 It is necessary to obtain an authorisation under the provisions of Section 29 of the 2000 Act to use a CHIS. The 2000 Act requires that the person granting a Section 29 authorisation believes that the use or conduct to be authorised is necessary on one or more of the statutory grounds listed in Section 29(3) of the 2000 Act.
- 2.15 Local authorities in England and Wales need to obtain an order approving the grant or renewal of a Section 29 authorisation from a Justice of the Peace before it can take effect. If the Justice of the Peace is satisfied that the statutory tests have been met and that the use or conduct is necessary and proportionate, they will issue an order approving the grant or renewal for the use of the CHIS as described in the application.
- 2.16 The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 has the following effects:

- Local authorities in England and Wales can only authorise use of directed surveillance under RIPA to prevent or detect criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months' imprisonment or are related to the underage sale of alcohol and tobacco or nicotine inhaling products.
- Local authorities cannot authorise directed surveillance for the purpose of preventing disorder unless this involves a criminal offence(s) punishable (whether on summary conviction or indictment) by a maximum term of at least 6 months' imprisonment.
- Local authorities may therefore continue to authorise use of directed surveillance in more serious cases as long as the other tests are met – i.e., that it is necessary and proportionate and where prior approval from a JP has been granted. Examples of cases where the offence being investigated attracts a maximum custodial sentence of six months or more could include more serious criminal damage, dangerous waste dumping and serious or serial benefit fraud.
- Local authorities may also continue to authorise the use of directed surveillance for the purpose of preventing or detecting specified criminal offences relating to the underage sale of alcohol and tobacco where the necessity and proportionality test is met and prior approval from a JP has been granted.
- A local authority may not authorise the use of directed surveillance under RIPA to investigate disorder that does not involve criminal offences or to investigate low-level offences which may include, for example, littering, dog control and fly posting.

2.17 Members are advised that for the period 01/01/2023 to 31/12/2023 the Council did not use its RIPA powers. The Council has not used such powers since 2011 as there are few matters which it enforces that carry custodial penalties which would justify the use of such powers. The underage sale of alcohol and tobacco are dealt with by Surrey County Council in its capacity as Trading Standards authority. Whilst fly tipping could carry such a custodial sentence the Council only uses cameras to observe a particular location rather than conducting surveillance on a particular individual.

2.18 Investigation work is undertaken on behalf of the Council by officers at Reigate and Banstead. Their officers are trained in the use of such powers, and should they wish to use such powers they would need to be authorised by the Council. No requests for authorisations have been received during the time they have undertaken work for the Council.

2.1 The Council has in place a RIPA Policy which complies with all the legal requirements. Members are invited to adopt the revised RIPA Policy which appears at Appendix A with tracked changes. The Policy has been reviewed to ensure that statutory references are up to date and has replaced two of the authorised officers whose details appear in the Annex. The change is because two of the officers previously named are no longer employed by the Council. Those officers have been replaced by officers of a similar grade familiar with the legislation's requirements. The policy has also been updated to reflect changes in guidance and legislation.

3. Policy framework implications

3.1 There is requirement on local authorities to have a policy in place to govern their use of powers under the Regulation of Investigatory Powers Act 2000. The proposals contained in this report enable the Council to comply with that legal obligation.

4 Resource implications/Value for Money (where applicable)

- 4.1 There are no resource implications associated with the matters contained within this report. The preparation of this report has been undertaken by officers as part of their normal duties. The review of the RIPA Policy has also been undertaken as part the normal duties of officers. Should it be necessary to use RIPA powers this will be undertaken by officers as part of their normal duties. If the Council had to seek judicial authorisation to use RIPA powers, there is currently no fee payable.

5. Legal implications

- 5.1 Legal implications are contained within the body of the report.

6. Equality implications

- 6.1 This policy is for criminal investigations to ensure that covert surveillance is conducted lawfully and proportionately. This policy safeguards citizens as it puts in place a clear procedure to ensure that all surveillance is only conducted where it is lawful to do so. A test of necessity, proportionality and collateral intrusion are carried out as part of the process.

7. Environmental/Sustainability/Biodiversity implications

- 7.1 Should the Council exercise its RIPA powers this may involve the use of CCTV technology which would enable activities to be undertaken remotely without any adverse environmental impact. There may be instances which involve officers travelling by motor vehicles which could have an environmental impact. Efforts will be made to minimise any such impact.

8. Risk Implications

- 8.1 By not having in place a policy to govern the use of RIPA powers the Council would be failing to adhere to the Codes of Practice issued to regulate such matters. There could be a reputational risk to the Council as it will be subject to criticism by the body which oversees the exercise of such powers by public authorities. Failing to have an up-to-date policy could also lead the Council to act in an unlawful manner.

9. Other implications (where applicable)

- 9.1 As indicated in the body of the report the use of RIPA powers would have to comply with Human Rights, Data Protection and Equalities legislation.

10. Timetable for Implementation

- 10.1 The revised RIPA Policy will come into operation from the date of formal adoption by Full Council.

11. Conclusions

- 11.1 RIPA powers are one of the tools available to local authorities to discharge their various regulatory functions. The use of the powers by local authorities has declined dramatically over the last decade because of the constraints which apply to their use. Nevertheless, the powers still exist, and the Council is required to have in place the necessary policies and procedures to ensure that if it were to use the powers they are utilised in a lawful manner.

12. Background papers

12.1 None

13. Appendices

- Revised RIPA Policy detailing proposed changes