

SUBJECT:	Regulation of Investigatory Powers Act 2013
REPORT OF:	Officer Management Team - Director of Resources Prepared by - Head of Legal and Democratic Services

1. Purpose of Report

- 1.1 This report proposes an updated Policy and Procedures Document for use of covert surveillance techniques following changes in legislation and to harmonise with the arrangements and procedures adopted at Chiltern District Council

2. Links to Council Policy Objectives

- 2.1 This is regulatory requirement and has no specific links to Council policy objectives

3. Background

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) governs how public authorities, including local authorities use covert investigation techniques such as taking up observation posts, covert CCTV, undercover operations and acquiring communications data. RIPA ensures that any evidence obtained using covert methods is admissible in Court and complies with common law, the Police and Criminal Evidence Act 1984 and Human Rights Act 1998.
- 3.2 Local authorities can only be authorised to carry out Directed Surveillance (covert surveillance in public places), use Covert Human Intelligence Sources (informants) and acquire less intrusive types of communications data such as service use and subscriber information. Intrusive surveillance and property interference are reserved for the police and certain other agencies, together with data about where communications are made and received. In all cases the use of covert surveillance must be necessary and the intrusion proportionate to the evidence sought, in order to justify interference with an individuals private life.
- 3.3 The Council has a Corporate Policy Manual on how covert investigation techniques are used to ensure it complies with the stringent requirements of RIPA. This was last updated in 2010 following an inspection by the Office of Surveillance Commissioners (OSC). Revisions were made to reflect RIPA orders and codes of practice restricting local authority use of RIPA to the prevention or detection of crime or prevention of disorder, requiring the designation of a senior responsible officer to oversee compliance with RIPA within the Council and provide for Overview and Scrutiny Committee to receive quarterly reports on use of RIPA and an annual review report. As RIPA powers have not been used since 2010, this position has been included in the annual Freedom of Information Report.
- 3.4 Council Officers are encouraged to use overt surveillance whenever possible and use RIPA as a last resort. The majority of evidence can be obtained overtly and if an officer makes their investigation visible this alone can have the desired effect of compliance. In the last 3 years no authorisations have been sought or authorised.

3.5 The RIPA process is overseen nationally by the OSC who undertake regular inspections of all authorities and examine procedures, forms, record keeping and interview relevant officers. Even though the Council makes little use of RIPA it is still required to have up-to-date procedures in place and for relevant staff to be trained in the process and procedures. An inspection by the OSC is due in August 2013.

4. Discussion

4.1 The legal framework comprises not only RIPA but also a number of statutory instruments and statutory codes of practice which flesh out the requirements of RIPA and what the Government considers to be acceptable and responsible use of covert investigation techniques. Provisions introduced by the Protection of Freedoms Act 2012 and amendments to the RIPA statutory instruments, have made 2 significant changes to how local authorities use RIPA.:-

- All authorisations and notices under RIPA for the use of covert techniques must now be approved by a Justice of the Peace before they can take effect. There is still, however, a requirement for authorisation to be granted internally first. The role of the JP is to ensure that the Council has followed correct procedures and taken appropriate factors into account;
- The use of directed surveillance (e.g. covert CCTV, taking up observation posts, following people etc) is confined to cases where the offence under investigation carries a custodial sentence of 6 months or more and a limited number of other offences relating to underage sale of alcohol and tobacco.

4.2 To reflect these statutory changes and to harmonise with RIPA policy and procedures recently adopted at CDC a new Corporate Policy and Procedure Note on RIPA is attached at Appendix 1 (excluding the forms) for recommendation to Cabinet. The list of Authorised Officers has been updated to reflect the new senior management structure. The Director of Resources was previously designated as Senior Responsible Officer at SBDC and it is proposed that this role should now sit with the Head of Legal and Democratic Services, to mirror the position at CDC. The role of RIPA co-ordinator is currently undertaken by the Corporate Information Officer and no change is proposed to this arrangement.

4.3 The oversight of RIPA authorisations on a quarterly basis by the Overview and Scrutiny Committee and an annual review report is no longer considered necessary in view of the new judicial approval process combined with low usage. It is therefore proposed that the Portfolio Holder is informed of any use of RIPA and that Overview and Scrutiny Committee receive information about any usage as part of the annual Freedom of Information Report. It is also recommended that any amendments/updates required to the Procedures Note as a result of changes to legislation, guidance or authorising officers be delegated to the Head of Legal and Democratic Services in consultation with the Chief Executive and Portfolio Holder.

4.4 Officers last received training on RIPA in 2010 and a refresher on the recent statutory changes as well as the revised Corporate Policy and Procedures Note has been arranged for June. This will be sourced externally but costs can be met from within existing resources.

5. Resources, Risk and Other Implications

There are no specific financial or legal risks associated with the recommendations in this report but reputational and evidential risks could be suffered if the RIPA procedures are not correctly followed.

5. Recommendations

The advice of the PAG is sought on whether the Portfolio Holder should recommend to Cabinet/Council -

- 5.1 That a revised RIPA policy and procedures note attached as Appendix 1 be approved**
- 5.2 That the Head of Legal and Democratic Services be designated as the Senior Responsible Officer for the purposes of RIPA**
- 5.3 That the Head of Legal and Democratic Services be authorised to keep the RIPA procedures up to date and to amend relevant provisions as necessary after consultation with the Cabinet Member for Resources**

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