

## **DELEGATION FOR OFFICERS TO PRESENT REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) CASES TO JUSTICES OF THE PEACE**

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Wards affected:

### ***PROPOSED RECOMMENDATION***

To update and approve the designation of officers referred to below in the Executive Summary for the purpose of presenting RIPA cases to Justices of the Peace.

#### **Corporate Implications**

1. Changes to the Constitution are made by Council, following recommendation from this Committee, or Cabinet, or another committee, if appropriate. There are no financial implications arising from this report.
2. Since 1 November 2012, sections 37 and 38 of the Protection of Freedoms Act 2012 require a local authority who wishes to authorise the use of directed surveillance, acquisition of communications data and use of a covert human intelligence source (CHIS) to obtain an order approving the grant or renewal of an authorisation or notice from a Justice of the Peace (JPs) (a District Judge or lay magistrate) before it can take effect. The Standing Orders need to be amended to designate particular named officers for the purposes of presenting RIPA cases to JPs under s.223 of the Local Government Act 1972.

#### **Executive Summary**

3. The Office of Surveillance Commissioners considers that the best officer to apply to the magistrate for approval of an authorisation for directed surveillance, or CHIS (Cover Human Intelligence Source), is the Authorising Officer, although they recognise that this is not always practicable. Only he/she can answer questions about his/her reasoning on necessity, proportionality, collateral intrusion and risk. The role of the Senior Responsible Officer (SRO) is to oversee the competence of Authorising Officers and the processes in use in his public authority. Whilst legislation does not preclude his/her use as an Authorising Officer, it is unlikely that he/she would be regarded as objective if he/she oversees his own authorisations. The Corporate Director has been appointed to the role of SRO.
4. This report sets out some proposals to update the Constitution to enable the following officers, including Authorising Officers, to present RIPA cases to JPs:

#### **Authorising Officers**

- Karen Satterford Chief Executive
- Steve Richardson Head of Finance and Commercial Services
- Caroline Hughes Head of Environment
- Elaine Jewell Head of Community Services

#### Corporate Fraud Team

- Katie Nagiel Investigation Officer
- Joanna Price Corporate Investigator

#### Community Services

- Sarah McBrearty Community Safety Team Leader
- Michelle Harvey Anti-Social Behaviour Officer

#### Environmental Services

- Neil Stannett Environmental Health Manager
- Andrew Collinson Divisional Environmental Health Officer
- Julian Smith Divisional Environmental Health Officer
- Caroline Steven Licensing Team Leader
- Stephen Starsmore Environmental Health Officer

### **Sustainable Community Strategy/Council Priorities - Implications**

5. The Council's Constitution and Standing Orders underpin the way the Council works and thus the Sustainable Community Strategy. A robust democratic process supports all the Council's priorities.

### **Background and Issues**

6. The Regulation of Investigatory Powers Act 2000 ("RIPA") was designed to regulate the use of investigatory powers and to satisfy the requirements of the European Convention on Human Rights on its incorporation into UK law by the Human Rights Act 1998. RIPA regulates the use of a number of covert investigatory techniques, not all of which are available to local authorities. The three types of technique available to local authorities are: the acquisition and disclosure of communications data (such as telephone billing information or subscriber details); directed surveillance (covert surveillance of individuals in public places); and covert human intelligence sources ("CHIS") (such as the deployment of undercover officers). Local authorities sometimes need to use

covert techniques in support of their statutory functions. They, not the police, are responsible for enforcing the law in areas such as: environmental crime, taxi cab regulation; underage sale of knives, alcohol, solvents and tobacco and the employment of minors. The communications data powers are primarily used by local authorities to target rogue traders (where a mobile phone number can be the only intelligence lead). Directed surveillance powers are used in benefit fraud cases, to tackle anti-social behaviour (in partnership with the police) and fly-tipping, while CHIS and directed surveillance are used in test purchase operations to investigate the sale of tobacco, alcohol and other age-restricted products.

Wycombe District Council uses the power under RIPA, the Regulation of Investigatory Powers Act 2000, to conduct authorised directed surveillance in connection with the conduct of criminal investigations. Although the Council is also permitted under RIPA to authorise the interception of communications data and the use of Covert Human Intelligence Sources it has not done so since RIPA came into force in 2000.

On 1 November 2012 two significant changes took effect governing how local authorities use RIPA.

(a) Approval of Local Authority Authorisations under RIPA by a Justice of the Peace: Amendments in the Protection of Freedoms Act 2012 mean that local authority authorisations and notices under RIPA for the use of particular covert techniques can only be given effect once an order approving the authorisation or notice has been granted by a Justice of the Peace (JP).

(b) Directed surveillance crime threshold: Amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (“the 2010 Order”) mean that a local authority can now only grant an authorisation under RIPA for the use of directed surveillance where the local authority is investigating particular types of criminal offences. These are criminal offences which attract a minimum custodial sentence of six months or criminal offences relating to the underage sale of alcohol or tobacco. 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 minimum 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 attract a minimum custodial sentence of six months could include serious criminal damage, dangerous waste dumping and serious or serial benefit fraud.

## Next Steps

7. Following approval by the Regulatory and Appeals Committee the decision to authorise named officers will then need to be ratified by full Council

## Background Papers

