

Report for:	<b>Shadow Executive</b>
Meeting Date:	<b>31 March 2020</b>


<b>Title of Report:</b>	<b>Regulation of Investigatory Powers Act 2000 (RIPA) – Policy and Procedural Guidance</b>
Shadow Portfolio Holder	Martin Tett
Responsible Officer	Sarah Ashmead
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<b>Recommendations:</b>	<b>That Buckinghamshire Council adopts the Regulation of Investigatory Powers Act 2000 (RIPA) – Policy and Procedure Guidance attached as an appendix to this report with effect from 1 April 2020</b> .
Corporate Implications:	The adoption of a RIPA Policy and Procedure Guidance will ensure that Buckinghamshire Council complies with the law, relevant statutory guidance and best practice when undertaking enforcement functions.
Options: (If any)	As the adoption of a policy and procedure for any covert surveillance carried out by Buckinghamshire Council is a legal requirement there are no other options available
Reason:	Under the Regulation of Investigatory Powers Act 2000 (“RIPA”) Buckinghamshire Council must have in place processes for authorising, recording and reviewing any covert surveillance that it carries out that it is regulated by the Act. The processes must comply with the Act, Regulations and any statutory codes of practice; the latter being admissible as evidence in court and may be taken into account by the Investigatory Powers Commissioner when carrying out an inspection. In accordance with the statutory code of practice a local authority must have a policy covering its use of covert surveillance approved by elected members.

## 1. Purpose of Report

- 1.1 This report seeks approval to a Policy and Procedures document setting out how Buckinghamshire Council will carry out its RIPA powers

## 2. Content of Report



- 2.1 RIPA regulates the use of covert surveillance by public authorities. The essence of which is that before any covert surveillance or the use of any covert human intelligence source is undertaken, this must be authorised by a senior officer and in the case of local authorities wanting to use covert surveillance, approved by a Magistrate.
  - 2.2 RIPA requires the Council to have in place procedures to ensure that when required, surveillance is seen as necessary, proportionate and is properly authorised. RIPA is underpinned by a number of statutory codes of practice. These codes of practice are admissible as evidence in court and may be taken into account by the Investigatory Powers Commissioner when carrying out an inspection.
  - 2.3 The Investigatory Powers Commissioner, Lord Justice Fulford and his Judicial Commissioners are responsible for providing independent oversight of the use of investigatory powers by intelligence agencies, police forces, local authorities and other public authorities. Local authorities are required to submit statistics to the Investigatory Powers Commissioner's Office (IPCO) annually on their use of directed surveillance and covert human intelligence source and inspections of local authorities are typically undertaken every 3 years.
  - 2.4 The Revised Code of Practice on Covert Surveillance and Property Interference (August 2018) provides that a local authority must have a policy covering its use of covert surveillance. Elected members, although not involved in the decisions to grant authorisations, are required to approve the policy annually.
  - 2.5 Each of the 5 authorities in Buckinghamshire have adopted RIPA policy and procedure documents which are very similar in content and wording. The authorities have been subject to triennial inspections by the IPCO and importantly their respective authorising and investigating officers have undertaken the necessary training to ensure that any enforcement activities undertaken comply with the statutory requirements. In the past 3 years only one authorisation has been sought and granted across the 5 authorities. The small number of RIPA applications reflects the fact that nearly all enforcement activity by Council Officers is overt and does not require prior authorisation.
  - 2.6 The draft policy and procedure document attached as an Appendix is based on the version currently adopted by Buckinghamshire County Council which has been subject to a favourable assessment during a recent IPCO inspection. In the unitary structure the RIPA function sits under Legal and Democratic Services in the Deputy Chief Executive's directorate. It is recommended that the Service Director Legal and Democratic Services is the Senior Responsible Officer (SRO) for RIPA. The SRO has overall responsibility for the RIPA process and dealing with inspections by the IPCO. It is recommended that the SRO has authority to delegate day to day administration tasks to a senior legal officer who would act as a RIPA co-ordinating officer and would also organise any necessary training for authorising and investigating officers and liaise with the Magistrates Court to obtain judicial approval as and when necessary. It is recommended that there are 3 authorising officers; the Chief Executive Officer (this is statutory requirement for authorisations where confidential information is likely to be acquired and for use of juvenile or vulnerable covert human intelligence source) and the Corporate Director Adults, Health & Housing, who has responsibility for regulatory services and trading standards functions where most of the relevant enforcement activities are undertaken and the Corporate Director Communities who has responsibility for the operation of CCTV and other forms of electronic surveillance.
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### **3. Financial Implications**

- 3.1 There will be a small cost attached to provision of training for the three authorising officers in readiness for vesting day. All investigating officers at the current councils have attended a relevant RIPA training course or received refresher training within the last 2 years. After vesting both authorising and investigating officers will require refresher training on a periodic basis. This can be delivered at minimal cost using on-line training materials developed by Bucks County Council. Any other costs would be met from within annual training budgets for the relevant enforcement teams across the Council.

### **4. Legal Implications**

- 4.1 Under the Regulation of Investigatory Powers Act 2000 public authorities must have in place processes for authorising, recording and reviewing any covert surveillance that it carries out that it is regulated by the Act. The processes must comply with the Act, Regulations and any statutory codes of practice; the latter being admissible as evidence in court and may be taken into account by the Investigatory Powers Commissioner when carrying out an inspection. In accordance with the statutory code of practice a local authority must have a policy covering its use of covert surveillance approved by elected members.

### **5. Other Key Risks**

- 5.1 Failure to comply with the policy and procedural guidance could result in evidence being inadmissible in court proceedings and potential claims that an individual's right to privacy has been breached. However, each of the current councils have RIPA policies and procedures in place which are similar in content and officers have received the necessary training to ensure compliance. Information on the new Buckinghamshire Council policy and procedures will be disseminated to relevant officers to ensure that they understand the legal requirements and training provided as necessary.

### **6. Dependencies**

- 6.1 None

### **7. Consultation**

- 7.1 Not applicable.

### **8. Communications Plan**

- 8.1 No plan is required.

### **9. Equalities Implications**

- 9.1 The policy and procedure document provides guidance on use of the statutory powers linked to the investigation of criminal offences. It accords with statutory guidance issued by the Home Office and Investigatory Powers Commissioner. It includes specific provisions for dealing with covert surveillance and use of covert human intelligence sources in relation to young or vulnerable adults. In these cases, authorisations must be approved by the Chief Executive Officer.

## 10. Data Privacy Implications

- 10.1 By requiring directed covert surveillance operations or the proposed use of a covert human intelligence source to be authorised in advance and kept under review by a limited number of senior officers, RIPA seeks to ensure that any interference with an individual's right to privacy under Article 8 of the Convention on Human Rights and Fundamental Freedoms, is both necessary and proportionate.
- 10.2 RIPA, as amended by the Protection of Freedom Act 2012 also imposes three further important restrictions on the Council. Firstly, it provides that the Council cannot under any circumstances engage in the most intrusive form of covert surveillance (called 'intrusive surveillance') - operations which involve the presence of a person or a listening device in residential premises or a private vehicle. Therefore, by definition, the Council can only carry out covert, non-intrusive surveillance (called 'directed surveillance').
- 10.3 Secondly, the only lawful basis on which the Council can conduct a surveillance operation is for the prevention or detection of a criminal offence that attracts a sentence of imprisonment of six months or more or a criminal offence that relates to the underage sale of alcohol or tobacco.
- 10.4 Thirdly, every authorisation given pursuant to RIPA to carry out directed surveillance or for the use of covert human intelligence source must also be approved by the Magistrates Court before it can be acted on - as must any renewal of an authorisation

## 11. Next Steps

- 11.1 Information about the adopted policy and procedure will be disseminated to authorising and investigating officers and training provided to authorising officers, in readiness for vesting day.

<b>Background Papers</b>	None other than referred to in this report
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