

**REPORT TO THE PERFORMANCE SCRUTINY PANEL
MEETING OF 9 DECEMBER 2021**

Status: For Information
Title: Regulation of Investigatory Powers Act (2000) RIPA
Originator: Verina Wenham, Director Law and Governance and Monitoring Officer
Where from: Executive, 14th February 2011 and Council 4th April 2011
Where to next: N/A

Objective: To update the Scrutiny Panel on instances of when the Council has invoked RIPA powers.

1. Outcome sought from Panel

1.1 To note that the Council has not yet invoked RIPA powers.

2 Background

2.1 On 4th April 2011 the Council resolved that: “oversight of the RIPA Policy be referred to Scrutiny” (Council Minute 645(g) 2010/11).

2.2 The Human Rights Act 1998 (which became effective on the 2nd October 2000) incorporates into UK law the European Convention on Human Rights, the effect of which is to protect an individual’s rights from unnecessary interference by the “State”.

The relevant parts of the Regulation of Investigatory Powers Act 2000 (RIPA) are Part II which came into force on 25th September 2000 and regulates covert investigations and Part 1 Chapter II, the acquisition and disclosure of communications data which came into force on 5th January 2004. These provide a framework within which the “State” (the specified public bodies) can work to ensure that law enforcement and other important functions can effectively protect society as a whole.

2.3 The Council’s Regulation of Investigatory Powers Act 2000 policy (“RIPA Policy”) was updated in July 2013 following the coming into force of the Protection of Freedoms Act 2012. Sections 37 and 38 of that Act, amends the Regulation of Investigatory Powers Act 2000 to require that, where an Authorising Officer has granted an authorisation for the use of directed surveillance, the use of covert human intelligence sources or acquisition of communications data, judicial approval will be required.

2.4 The Council is required to make an application, without giving notice, to the Magistrates' Court. The Magistrates will give approval if and only if, at the date of the grant of authorisation or renewal of an existing authorisation they are satisfied that:

- (a) There were reasonable grounds for believing that obtaining the covert surveillance or use of a human covert intelligence source and whether it was necessary and proportionate and that these grounds still remain.
- (b) The "relevant conditions" were satisfied in relation to the authorisation.

Relevant conditions include that:

- (i) The relevant person was designated as an Authorising Officer.
- (ii) It was reasonable to believe that using covert surveillance or a covert human intelligence source was necessary and proportionate and that the relevant conditions have been complied with.
- (iii) The grant or renewal of any authorisation or notice was not in breach of any restrictions imposed under section 25(3) of RIPA (restrictions on the rank of the person granting the authorisation).
- (iv) Any other conditions provided for by an order made by the Secretary of State were satisfied.

If the Magistrates' Court refuses to approve the grant of the authorisation, then it may make an order to quash that authorisation.

2.5 To ensure compliance with this new requirement the Policy was amended and approved by Council on 29 July 2013. The Policy now provides that any Authorising Officer who proposes to approve an application for the use of directed surveillance, use of a covert human intelligence source or acquisition of communications data, must immediately inform the Senior Responsible Officer who will then make arrangements for an application to be made to the Magistrates' Court. It is anticipated that the Senior Responsible Officer will authorise the Investigating Officer to attend the Magistrates' Court to make the necessary application.

2.6 Further restrictions have now been imposed on local authority's use of RIPA. It restricts Authorising Officers from authorising the carrying out of directed surveillance unless it is for the purpose of preventing or detecting a criminal offence unless the criminal offence to be prevented or detected is punishable by a maximum term of at least six months' imprisonment or constitutes an offence under sections 146, 147 or 147A of Licensing Act 2003 (sale of alcohol to children) or section 7 of the Children and Young Persons Act 1933 (sale of tobacco to children under 18 years old). The Policy has been amended to reflect this provision.

2.7 Following a remote inspection in July 2021 by the Surveillance Commissioner, the Council was required to update its RIPA Policy to include guidance on the use of internet and social media (which was an outstanding recommendation) and to update the Policy to include changes brought about by the introduction of the Investigatory Powers Act 2016 (“IPA”) and linked to the revised Codes of Practice for both Surveillance and CHIS (Covert Human Intelligence Source). The proposed amendments were considered by this Panel prior to the revised RIPA policy being adopted by Cabinet on 8 February 2021.

2.8 The Panel is asked to note that the Council has not yet invoked RIPA powers.

3 Points for discussion

3.1 The Panel is asked to note that the Council has not yet invoked RIPA powers.

4 Equality Impact Assessment Implications/Outcomes (attach completed EIA)

4.1 Not applicable.

5 Impact on Communities

5.1 Not applicable.

6 Legal Issues

6.1 The Public Bodies defined in RIPA include Local Authorities and, therefore, Harborough District Councils’ activities are subject to the RIPA framework. The Policy has been amended to reflect the legislative changes enacted by Section 37 and 38 of the Protection of Freedoms Act 2012.

7 Resource Issues

7.1 Not applicable.

8 Community Safety Implications

8.1 Not applicable.

9 Carbon Management Implications

9.1 Not applicable.

10 Risk Management Implications

10.1 Not applicable.

11 Consultation

11.1 Not applicable.

12 Background Papers

12.1 RIPA Policy

Previous report(s): Executive, 14th February 2011, and Council 4th April 2011, 31st July 2014, 7th July 2016, 15th December 2016, 23rd March 2017, 29 June 2017, 15 March 2018, 21st June 2018, 20th September 2018, 13th December 2018, 21 March 2019, 20th June 2019, 19th September 2019, 5th December 2019, 12th March 2020, 17th September 2020, 10th December 2020, 18th March 2021, 17 June 2021

Information Issued Under Sensitive Issue Procedure: No