

MEETING:	CABINET
MEETING DATE:	12 JUNE 2014
TITLE OF REPORT:	REVIEW OF REGULATION OF INVESTIGATORY POWERS ACT (RIPA) POLICY
REPORT BY:	SOLICITOR TO THE COUNCIL

Classification

Open

Key Decision

This is not a key decision.

Wards Affected

County-wide

Purpose

The purpose of this report is to seek approval of the Regulation of Investigatory Powers Act 2000 (RIPA) policy which has been reviewed and updated to reflect legislative changes under the Protection of Freedoms Act 2012.

RIPA provides a legal framework for a local authority to conduct covert surveillance techniques. The legislation ensures that any surveillance activity conducted by the council is legal, proportionate and necessary. The recent legislative changes provide further protection to individuals to ensure that covert surveillance techniques are only used if they are judicially approved and are required to detect or prevent serious crime.

Recommendation

THAT: Cabinet note the current legal position with regard to the Protection of Freedoms Act 2012 and approve the revised policy.

Alternative Options

1. Not approving the revised policy would lead to failure to follow legislative provision.

Reasons for Recommendations

2. The council policy on RIPA has been updated to reflect the legislative changes identified below and is included as Appendix 1.

Key Considerations

3. The Regulation of Investigatory Powers Act 2000 (RIPA) provides the framework under which authorised regulators are able to carry out surveillance activities and access communications data which would otherwise not be legal because of the impact on human rights. RIPA regulates councils in a manner that is compatible with the European Convention of Human Rights and Fundamental Freedoms, which is incorporated into domestic law by the Human Rights Act 1998.
4. Herefordshire Council will, on occasion, need to use covert surveillance in order to carry out its enforcement functions effectively. Examples of enforcement activities which may require the use of RIPA include trading standards enforcement activities against rogue traders and loan sharks, community and fire safety, fraud investigations and child protection.
5. RIPA provides safeguards to ensure that where councils undertake directed surveillance, use Covert Human Intelligence Sources (CHIS) or access communications data, their usage is always recorded and fully transparent.
6. Some local authorities have been criticised in the past for using surveillance powers in low level cases such as school admissions issues or bin collections. On 1 November 2012 legislative changes were introduced governing how local authorities use RIPA. Amendments in the Protection of Freedoms Act 2012 mean that local authority authorisations under RIPA can only be given effect once an order approving the authorisation has been granted by a Justice of the Peace (JP).
7. In addition a local authority can only grant authorisation under RIPA for the use of directed surveillance where the local authority is investigating particular types of criminal offences. These are criminal offences that could attract a custodial sentence of six months or more, or relate to knife, tobacco or alcohol sales to children. In recent years the council has only used RIPA for these types of activities.
8. Local authorities will no longer be able to use directed surveillance in some cases where it was previously authorised. But this does not mean that it will not be possible to investigate these areas with a view to stopping offending behaviour. The statutory RIPA Code of Practice on covert surveillance makes it clear that routine patrols, observation at trouble 'hotspots', immediate response to events and overt use of CCTV are all techniques which do not require RIPA authorisation.
9. RIPA applications must still go through the current authorisation process and be authorised by one of the specified authorising officers. The authorised RIPA application must then be presented to the Magistrate for judicial approval. The primary function of local government enforcement work is to protect the public, the environment and groups such as consumers and workers. Carrying out regulatory functions and enforcement in an equitable, practical and consistent manner helps to promote a thriving national and local economy, and can help prevent and detect crime and disorder.

Community Impact

10. Local authorities have a wide range of functions and are responsible for enforcing 1,000 separate Acts of Parliament and secondary legislation. Regulatory functions include consumer protection, animal health and welfare, fire safety and child protection. Effective and efficient enforcement protects the most vulnerable in our communities and acts as an enabler for economic progress.

Equality and Human Rights

11. RIPA sets out a regulatory framework for the use of covert surveillance techniques by public authorities. If such activities are conducted by Council officers then RIPA regulates them in a manner which is compatible with the European Convention on Human Rights (ECHR), particularly Article 8 (the right to respect for private and family life).

Financial Implications

12. There are no financial or value for money implications as a result to the change in policy due to legislative changes in the Protection of Freedoms Act 2012.

Legal Implications

13. Compliance with RIPA and its provisions ensures that regulatory officers have the necessary permissions to operate, and that the activity is legal, necessary and proportionate.
14. The proposed policy helps safeguard the council in its use of RIPA and when followed will ensure we comply with the law. Should the council fail to approve the policy or a similar revised legally compliant policy, we would be at real risk of legal challenge in our subsequent use of RIPA.

Risk Management

15. Failure to follow the legislative provision could result in legal challenge and would seriously damage the council's ability to deliver its statutory roles in regulation.

Consultees

Trading standards
Legal
Children's commissioning
Parking and CCTV
Management board

Appendices

Appendix 1 – Updated RIPA policy

Background Papers

None