

TITLE OF REPORT: MONITORING OF THE REGULATION OF INVESTIGATORY POWERS ACT 2000

REPORT OF THE ACTING CORPORATE LEGAL MANAGER AND MONITORING OFFICER

1. SUMMARY

1.1 This Report presents to the Overview and Scrutiny Committee an update on the position in relation to the Regulation of Investigatory Powers Act 2000 (RIPA).

2. FORWARD PLAN

2.1 This report does not contain a recommendation on a key decision and has not been referred to in the forward plan.

3. BACKGROUND

3.1 Members are referred to previous Reports of the Corporate Legal Manager. Members will recall that the two Codes of Practice state that elected Members should review the local authority's use of RIPA.

4. ISSUES

Council's Use of RIPA

4.1 There have been no further RIPA authorisations since the last Report to the Committee on 6 December 2011. There are currently no ongoing RIPA authorisations.

Policy Review

4.2 The Committee will be aware that the RIPA Policy is reviewed annually and on 27 September 2011 Cabinet re-confirmed the existing Policy for a further year. The Policy will need to be updated during the forthcoming review to take account of legislative changes (see 4.3 below) and it is anticipated that the revised Policy will be presented to the next Committee in September.

Protection from Freedoms Act 2012

4.3 Members will recall from previous reports that amendments to the RIPA legislation were proposed in the Protection of Freedoms Bill. The Protection from Freedoms Act (PFA) 2012 received Royal Assent on 1 May 2012 and the first Commencement Order has already been published. The amendments to the

RIPA legislation were not included in that first Commencement Order and it is not clear when they will come into force.

- 4.4 The Committee will recall that following the review of counter-terrorism and security powers, which considered the use of RIPA powers by local authorities, the government decided that the use of directed surveillance powers by local authorities should be subject to a seriousness threshold and that the use of all three surveillance techniques (directed surveillance, covert human intelligence sources, and the acquisition of communications data) should be subject to a magistrate approval mechanism. Chapter 2 of Part 2 of the PFA 2012 gives effect to the judicial approval mechanism in relation to communications data, directed surveillance and covert human intelligence.

Section 37 – Communications Data

- 4.5 Section 37 of the PFA 2012 amends RIPA, inserting two new sections (23A and 23B). These sections require judicial approval from the Magistrates Court after the grant by a "relevant person" of an authorisation or notice to obtain communications data (as defined in section 21 of RIPA) following a successful application (or renewal application) by a local authority. Relevant person is defined in the new section 23A(6) and is an individual holding an office, rank or position in a local authority (in England or Wales).
- 4.6 The new sections 23A(3) and (4) of RIPA set out the tests for judicial approval of a local authority authorisation or notice to obtain communications data. The tests require approval to be given if the relevant judicial authority is satisfied that at the time of the grant or renewal:
- There were reasonable grounds for believing that obtaining the communications data was reasonable and proportionate and that these grounds still remain.
 - The "relevant conditions" were satisfied in relation to the authorisation or notice. Relevant conditions include that:
 - The relevant person was designated as such under Chapter 2 of Part 1 of RIPA.
 - The grant or renewal of any authorisation or notice was not in breach of any restrictions imposed under section 25(3) of RIPA.
 - Any other conditions provided for by an order made by the Secretary of State were satisfied.
- 4.7 Under the new section 23B of RIPA set out in section 37, the public authority within which the relevant person holds an office, rank or position may apply to a justice of the peace for judicial approval of a grant or renewal of an authorisation or notice. This application can be without notice. If judicial approval is not received then the authorisation or notice can be quashed.

Section 38 – Directed Surveillance and Covert Human Intelligence Sources

- 4.8 Section 38 of the PFA 2012 inserts two new sections into RIPA (sections 32A and 32B), stating that, where a relevant person has granted an authorisation for the use of directed surveillance and covert human intelligence sources, judicial approval will be required.
- 4.9 The same procedural requirements are necessary as for local authorities seeking to obtain authorisations or notices to obtain communications data, including the tests that a judicial authority must apply and that it was reasonable and proportionate to believe that obtaining the data was necessary and that the relevant conditions have been complied with.
- 4.10 It is anticipated that further information, in particular Guidance, will become available to explain how the changes to the legislation will work in practice. The Monitoring Officer will also note any reported cases on the use of the new procedures when they come into force and will report any points of interest in future updates.

5. LEGAL IMPLICATIONS

- 5.1 The Report is before the Overview and Scrutiny Committee for consideration in accordance with its Terms of Reference.
- 5.2 As referenced within the body of the report amendments have been made to the governing legislation and the Council's RIPA Policy will need to be updated to reflect these changes.

6. FINANCIAL AND RISK IMPLICATIONS

- 6.1 It is important that the Council continues to operate in accordance with RIPA to ensure that it is able to effectively manage its reputational risk whilst also exercising its legitimate evidence gathering powers in connection with enforcement activity.
- 6.2 There are no financial implications arising from this Report.

7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS

- 7.1 The officer involvement required to comply with these statutory obligations are factored into service plans and work plans. Where necessary, specialist skills may be required to deal with matters such as legal support and advice.
- 7.2 The Council incorporates the statutory equalities duties which apply to all its activities into policies and services as appropriate, as set out in the Council's Corporate Equality Strategy. We also recognise that in our society, groups and individuals continue to be unfairly discriminated against and we acknowledge our responsibilities to actively promote good community relations, equality of opportunity and combat discrimination in all its forms.

7.3 The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

8. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

8.1 None.

9. RECOMMENDATIONS

9.1 Members are asked to note the matters contained in this Report.

10. REPORT AUTHOR

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