

**OVERVIEW AND SCRUTINY
22 SEPTEMBER 2015**

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

16

TITLE OF REPORT: REGULATION OF INVESTIGATORY POWERS ACT UPDATE AND ANNUAL REVIEW

REPORT OF THE CORPORATE LEGAL MANAGER

1. SUMMARY

- 1.1 This Report updates on the Council's current use of RIPA and reports on the annual policy review.

2. RECOMMENDATIONS

- 2.1 That the content of the report be noted.
- 2.2 That Overview and Scrutiny Committee recommend to Cabinet the adoption of the Council's amended RIPA Policy.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To comply with best practice guidance and the Committee's terms of reference.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 None.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1 Members are referred to previous Reports of the Corporate Legal Manager. Members will recall that the Codes of Practice state that elected Members should review the local authority's use of RIPA.
- 7.2 The Council's current RIPA Policy was approved by Cabinet on 23 September 2014. The RIPA Policy must be reviewed annually.

8. ISSUES

Council's Use of RIPA

- 8.1 Members may recall that it was considered that the quarterly report to Overview and Scrutiny Committee should continue even though RIPA is not currently being used, as this provides a useful mechanism to ensure that the issue of RIPA remains in the consciousness of Members (and Officers).
- 8.2 There have been no further RIPA authorisations since the last Report to the Committee. There are currently no ongoing RIPA authorisations.

Annual Review

- 8.3 The Council has not used its RIPA powers since the policy was last reviewed, however there has been updated guidance produced by the Office of Surveillance Commissioners (OSC) which has been reflected in the updated policy
- 8.4 In particular, a new Paragraphs 6.4 has been included to reflect the judgement in the case of *Kinloch v Her Majesty's Advocate [2012] UKSC 62* where police had conducted covert surveillance without an authorisation under RIPA. It was stressed that it is fundamental that authorisations are granted *before* any activity takes place, and thus before anyone can tell what will happen or has happened. The need for authorisation has to be judged at the time of making that authorisation, not with the benefit of hindsight.
- 8.5 A new Paragraph 12 has also been included to make reference to the increased use of Social Media. Members are directed to the end of Paragraph 12.3 contained within the squared parenthesis referencing a separate policy regarding the use of Social Networking Sites when conducting investigations, which is currently being developed. It is envisaged that if the new policy is adopted, that the paragraph within the squared parenthesis can be included in the RIPA Policy. It has been alluded to in previous reports that the OSC has an interest in the use of Social Networking Sites and the proposed approach is in line with the OSC's views.
- 8.6 If members are satisfied with the proposed amendments it is proposed that they recommend to Cabinet that they adopt the amended RIPA policy for the coming year.

9. LEGAL IMPLICATIONS

- 9.1 The Overview and Scrutiny Committee's Terms of Reference and Council's Constitution at paragraph 6.2.7(r) states that it shall be entitled to consider reports relating to the authority's use of the Regulation of Investigatory Powers Act (2000) (RIPA).
- 9.2 The Overview and Scrutiny Committee will consider this report and make a recommendation to Cabinet in line with its Terms of Reference. It is Cabinet's responsibility to adopt the RIPA Policy.
- 9.3 Paragraph 5.6.1 of the Council's Constitution states that The Cabinet may, by resolution, prepare and agree to implement policies and strategies other than those reserved to Council.

10. FINANCIAL IMPLICATIONS

10.1 There are no financial implications arising from this Report.

11. RISK IMPLICATIONS

11.1 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.

12. EQUALITIES IMPLICATIONS

12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 8.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.3 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. The commencement of improvements arising from the 'Protections of Freedoms Act' strengthens existing Human Rights Legislation, protecting individuals from inappropriate levels of covert surveillance, such as that used by some authorities, featured in the national media, regarding the enforcement of school catchment areas.

13. SOCIAL VALUE IMPLICATIONS

13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at paragraphs 12.

14. HUMAN RESOURCE IMPLICATIONS

14.1 The officer involvement required to comply with these statutory obligations are factored into service plans and work plans.

15. APPENDICES

15.1 Appendix A – RIPA Policy and Procedures

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

17.1 None