

**SURREY COUNTY COUNCIL**

**CABINET**

**DATE: 26 NOVEMBER 2013**

**REPORT OF: MRS HELYN CLACK, CABINET MEMBER FOR COMMUNITY SERVICES**

**LEAD OFFICER: YVONNE REES, STRATEGIC DIRECTOR FOR CUSTOMERS AND COMMUNITIES**

**SUBJECT: REGULATION OF INVESTIGATORY POWERS ACT 2000 – UPDATED CORPORATE POLICY AND PROTOCOL**



**SUMMARY OF ISSUE:**

1. The Cabinet is asked to endorse an updated Corporate Policy and Protocol on the use of the Regulation of Investigatory Powers Act 2000 (RIPA) by council services.
2. The proposed policy provides an updated framework to ensure that the Authority continues to comply fully with the requirements of RIPA following the coming into force of the Protection of Freedoms Act 2012 and to take account of the changes in the structure of the Trading Standards Service.

**RECOMMENDATIONS:**

3. Following statutory introduction of approval from a Justice of the Peace, it is recommended that the Cabinet endorses the proposed new Corporate Policy and Protocol on the application of the Regulation of Investigatory Powers Act 2000. (Annex 2)

**REASON FOR RECOMMENDATIONS:**

4. The introduction of a new Corporate Policy and Protocol will provide an updated framework to ensure that the authority continues to comply fully with the requirements of RIPA. It will maintain existing controls and the external audit regime and implement the additional statutory requirements of the Protection of Freedoms Act 2012.

**DETAILS:**

5. The Human Rights Act 1998 (HRA) came into force in October 2000. One of the principles enshrined in the HRA is that everyone has the right to respect for their privacy and family life, home and correspondence and that there should be no interference by a public authority except in accordance with the law.
6. The HRA recognises however that there are circumstances in a democratic society where it may be necessary for the State (which includes a range of

public authorities of which Surrey County Council is one) to interfere with these rights.

7. RIPA is a piece of legislation designed to regulate the powers of public bodies to carry out surveillance and investigation, and covering the interception of communications.
8. RIPA only permits the Council to exercise powers for the purposes of preventing and detecting crime or preventing disorder and only if it can be demonstrated that the proposed action is lawful, necessary and proportionate to the objective.
9. Only specific sections of RIPA relating to directed surveillance, use of a covert human intelligence source and the acquisition of communications data are applicable to all public authorities.
10. Directed surveillance is the covert and targeted monitoring of an individual **not** including that defined as intrusive. Directed surveillance would be used in situations such as underage test purchase exercises where it forms an integral part of the risk assessment and allows a trading standards officer to protect the young person attempting the transaction by observing the sale and facilitating rapid intervention where appropriate.
11. Covert human intelligence sources (CHIS) are used in situations where it is necessary to cultivate a relationship with an individual in order to obtain evidence of criminal activity and it would frustrate the investigation for the officer to declare they are working for trading standards. An example would include online test purchasing exercises based around social media websites where criminals as part of their strategy to avoid prosecution will only interact with specific approved groups of people.
12. Acquisition of communications data is used to obtain the subscriber and billing details of a person under investigation. This is often the only way of identifying rogue traders and criminal gangs who deliberately withhold information from victims in an attempt to avoid liability and evade investigation and prosecution.
13. The Council **cannot** obtain the content of any phone calls, e-mails or postal communication.
14. Over the last five years the Trading Standards Service has been the only service that has utilised this legislation.

During 2012/13 a total of 9 RIPA authorisations were granted. For comparison purposes the figures for three previous years are also given.

	2009/10	2010/11	2011/12	2012/13
<b>Communications Data Authorisations</b>	26	14	11	7
<b>Directed Surveillance Authorisations</b>	9	39	10	1
<b>Covert Human Intelligence Source authorisations</b>	1	0	0	1

15. The Trading Standards Service uses RIPA in a range of scenarios affecting community safety from underage sales of age restricted products to investigating incidents of rogue traders using virtual websites to sell dangerous goods to unsuspecting consumers. As criminals become more sophisticated and with the increase in organised criminality and their use of advanced technology the investigative techniques governed by RIPA have become an important tool in the successful investigation and prosecution of these rogue elements and ultimately the protection of local communities and the legitimate economy.

#### **Example**

16. An older Surrey resident was cold called by a group of men who persuaded the individual that his roof required immediate work. Once started the initial quote of £650 ballooned to £26,350. It was subsequently estimated that to return the property to its original condition prior to the start of the extremely poor work would cost the resident up to £14,500.

17. In this case the only evidence available were two contact numbers the scammers had written on a scrap of paper. Using the powers contained within RIPA relating to accessing communications data it was possible to identify the individuals and instigate an investigation. A pattern of related activity was identified dating back to 2009.

18. The Trading Standards service is responsible for overseeing the use of RIPA by Surrey County Council as a whole, however any Unit/Service that proposes to undertake directed surveillance, covert human intelligence sources, or obtaining permitted communications data, must first demonstrate that all relevant staff have received instruction in the use and compliance with RIPA and the various Codes of Practice. Only then will they be added to the Authorised Officer List. In relation to obtaining communications data the designated officer will have undergone Home Office recognised and accredited training.

19. Paragraph 3.6 of Part 1 of the Scheme of Delegation prescribes the senior officers capable of authorising Covert Surveillance and the Use of Covert Human intelligence.

20. 'The Trading Standards Community Protection Manger and Policy and

Operations Manager are required to authorise directed surveillance, the use of covert human intelligence sources and communications data checks and to keep the Council's central record of such authorisations in accordance with the Regulation of Investigatory Powers Act 2000<sup>1</sup>.

21. The designated senior officers are prescribed on page 67 of the Scheme of Delegation within Part 3 Specific Delegation to Officers as amended October 2013.

TS6	Community Protection Manager Policy and Operations Manager	To authorise directed surveillance and the use of covert human intelligence sources (other than those authorisations that are likely to lead to the disclosure of confidential information, or where a juvenile or vulnerable individual is used as a source, which can only be authorised by the Chief Executive or in his absence a Director acting as his Deputy) and to keep the Council's central record of such authorisations in accordance with the Regulation of Investigatory Powers Act 2000.
TS7	Community Protection Manager Policy and Operations Manager	To authorise Communications Data checks on submission from the Single Point of Contact under the Regulation of Investigatory Powers Act 2000 and to keep the Council's central record of such authorisations in accordance with the Regulation of Investigatory Powers Act 2000

22. The Protection of Freedoms Act 2012 implements an additional level of scrutiny to ensure the principles contained within the HRA.
23. The amendments reflect the judicial approval now required namely that a Justice of the Peace is satisfied that individual applications for use of RIPA powers are legal, necessary and proportionate.
24. These controls complement the checks and balances already in place both internally and externally. Internally safeguards include training and monitoring of officers to ensure competence, use of prescribed senior level officers for review and authorisations, including the Strategic Director for Customers and Communities and regular reporting to the Head of Legal and Democratic Services, the Communities Select Committee and the Cabinet Member for Community Services.
25. External scrutiny is undertaken by audits conducted by the Office of Surveillance Commissioners and the Interception of Communications Commissioners Office. The subsequent reports are then integrated into the internal reporting mechanisms.

26. The 2012 Act has also introduced minimum thresholds that have to apply before directed surveillance can be authorised:
- Criminal offences that are punishable by a maximum term of at least 6 months imprisonment, or
  - Criminal offences relating to the sale of alcohol or tobacco to underage persons.
27. The proposed policy has also been amended to reflect changes to the structure of the Trading Standards Service specifically staff titles and the designated named officers.

Old Title	New Title
Head of Trading Standards	Community Protection Manager
Assistant County Trading Standards Officer	Policy and Operations Manager
Enterprise Manager	Business Intelligence and Legal Manager
Safer & Stronger Communities Team Manager	Investigations and Enforcement Manager West
Economy & Environment Team Manager	Business Advice and Compliance Manager East
Trading Standards Investigations Team Manager	Deleted

28. The current policy and protocol was approved by the Cabinet on 3 November 2009 and amended on 28 September 2010.
29. The current Corporate Policy and Protocol on the use of the Regulation of Investigatory Powers Act 2000 (RIPA) is attached as Annex 1.
30. The proposed amended Corporate Policy and Protocol on the use of the Regulation of Investigatory Powers Act 2000 (RIPA) is attached as Annex 2.
31. The amendments necessary to enact the obligations of the Protection of Freedoms Act 2012 directly affect Parts 4, 11 and 12 of the Corporate Policy and Protocol.
32. The changes in the structure of the Trading Standards Service are reflected in Part 16 of the Corporate Policy and Protocol.

**CONSULTATION:**

33. Given these amendments are necessary in order to comply with changes to statutory provisions consultation has been undertaken with Surrey County Council Legal Officers and their observations/amendments implemented.

### **RISK MANAGEMENT AND IMPLICATIONS:**

34. The adoption and application of this policy and protocol will help ensure that the local authority continues to act correctly when carrying out criminal investigations and reduce the risk of any actions in relation to allegations of breaches of the Human Rights Act. It will also minimise the potential reputational risk from any claims of misuse of investigatory powers.
35. RIPA requires the local authority to keep a central record of all authorisations. As the primary user of the legislation the central record is maintained and retained by the Trading Standards service. All authorisations are also subject to regular external inspection to ensure compliance with requirements of RIPA. Surrey County Council was last inspected by the Interception of Communications Commissioners Office (for communication data checks) in 2009 and by the Office of the Surveillance Commissioner (for Directed Surveillance and CHIS authorisations) in 2011. Each time the Commissioner has indicated that Surrey County Council has acted correctly. All recommendations for process improvements have been implemented.

### **Financial and Value for Money Implications**

36. Application of this policy and protocol will minimise any risk of claims being made against the local authority alleging Human Rights breaches.
37. The revised policy will be administered by Trading Standards within existing resources and budgets. The presentation of each authorisation to the Justice of the Peace will be carried out by existing Trading Standards staff and no fee is payable.

### **Section 151 Officer Commentary**

38. The Section 151 Officer confirms that the proposed updated policy has no new financial implications and can be delivered within existing resources and budget. Implementation of the revisions will ensure compliance with updated legislation and will therefore ensure that risks are minimised.

### **Legal Implications – Monitoring Officer**

39. The Monitoring Officer has had the opportunity to review this report and is satisfied that it makes reference to the relevant statutory provisions and that the policy is in accordance with the legal requirements.

### **Equalities and Diversity**

40. An Equality Impact Assessment (EIA) has been completed and is attached as Annex 3 to enable the Cabinet to take account of the public sector equality duty when considering the report.
41. The proposed amendments to this policy and protocol will not impact on residents or staff with protected characteristics.

## EIA summary of key impacts and actions

<p><b>Information and engagement underpinning equalities analysis</b></p>	<p>A report on the use of the Regulation of Investigatory Powers Act 2000 including the proposed changes went before the Communities Select Committee in July 2013</p> <p>The RIPA Corporate Policy and Protocol last received approval from Cabinet on 3 November 2009</p> <p>Engagement and scrutiny will be a continuing process.</p> <p>Once introduced all services will be made aware of the policy and protocol amendments.</p> <p>An annual report on the use of RIPA is produced for consideration by the Communities Select Committee and the Head of Legal Services</p> <p>Quarterly updates on the use of RIPA are produced for the Cabinet Member for Community Safety.</p>
<p><b>Key impacts (positive and/or negative) on people with protected characteristics</b></p>	<p>No significant implications arising from this report</p>
<p><b>Changes you have made to the proposal as a result of the EIA</b></p>	<p>N/A</p>
<p><b>Key mitigating actions planned to address any outstanding negative impacts</b></p>	<p>N/A</p>
<p><b>Potential negative impacts that cannot be mitigated</b></p>	<p>N/A</p>

42. However, it is important to consider the overall context of the policy already in operation and recognise that many rogue traders deliberately target elderly and vulnerable people. The investigative techniques covered by RIPA are very often used in such crimes to help identify and locate such criminals. The continuation of this policy and protocol will ensure that the Trading Standards service in particular can continue to effectively protect the most vulnerable people in our communities.

43. Any decision to use techniques covered by RIPA are made against standard criteria and not adversely influenced by ethnicity, race or other factors. The process requires consideration to be given to any local community influences or sensitivities.

### **WHAT HAPPENS NEXT:**

44. The new policy and protocol will be introduced and all services made aware of the requirements.

45. An annual report produced for consideration by the Communities Select Committee.

- 46. An annual report produced for the Head of Legal and Democratic Services
  - 47. Quarterly updates produced for the Cabinet Member for Community Services.
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**Contact Officer:**

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**Consulted:**

The report on the proposed changes went before the Communities Select Committee in July 2013

**Annexes:**

Annex 1    Current Corporate Policy and Protocol on the use of the Regulation of Investigatory Powers Act 2000 (RIPA)

Annex 2    Proposed amended Corporate Policy and Protocol on the use of the Regulation of Investigatory Powers Act 2000 (RIPA)

Annex 3    Equality Impact Assessment

**Sources/background papers:**

The Protection of Freedoms Act 2012

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