



**AGENDA ITEM: 12**

**CABINET: 16 June 2009**

**EXECUTIVE OVERVIEW AND  
SCRUTINY COMMITTEE :  
2 July 2009**

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**Report of: Council Secretary and Solicitor**

**Relevant Portfolio Holder: Councillor I Grant**

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**SUBJECT: REGULATION OF INVESTIGATORY POWERS ACT 2000 –  
CONSOLIDATING ORDERS AND CODES OF PRACTICE – PUBLIC  
CONSULTATION PAPER**

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Borough wide interest

**1.0 PURPOSE OF THE REPORT**

1.1 To consider and respond to the Consultation issued by the Home Office proposing updated arrangements regulating public authorities use of covert investigatory techniques.

**2.0 RECOMMENDATIONS TO CABINET**

2.1 That the Council Secretary and Solicitor in consultation with the Leader be authorised to respond on the basis set out at paragraph 6 of the report, incorporating relevant comments provided by the Executive Overview and Scrutiny Committee (if any).

2.2 That as the report is to be referred to the Executive Overview and Scrutiny Committee for consideration call-in shall not apply.

**3.0 RECOMMENDATION TO EXECUTIVE OVERVIEW AND SCRUTINY**

3.1 That the Executive Overview and Scrutiny Committee on the 2<sup>nd</sup> July 2009 be asked to provide comments to the Council Secretary and Solicitor to assist in responding to the Consultation

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## 4.0 BACKGROUND

- 4.1 Prior to the enactment of the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000 (RIPA) public authorities, including local authorities, could use a number of covert investigatory techniques in order to assist their functions without the burden of any statutory control. In accordance with the Acts just mentioned the public authorities have been required to consider whether such techniques are necessary and proportionate having regard to the particular matter under investigation. Prescriptive Codes of Practice have been issued under the RIPA which assist public authorities in determining whether or not an authorisation for the use of such techniques is necessary or proportionate. In addition to the Codes of Practice and the legislation underpinning them there is a supervisory body, the Office of the Surveillance Commissioner, which has an inspection and monitoring role in relation to the use of the techniques by the various public authorities.
- 4.2. There has been a significant amount of press coverage in relation to what was perceived to be an inappropriate use of the powers. It is important to note that the legislation is not in any way anti-terrorism legislation, as has been implied in certain media articles. Neither did RIPA of itself create any covert powers.
- 4.3. To set matters in context it is important to be aware that as a local authority there are limited investigative techniques which the Council may use in accordance with RIPA. These are:-
- ‘Directed Surveillance’ – covertly monitoring movements and actions of specifically targeted individuals in public places.
- ‘Covert Human Intelligence Sources’ – people who at the direction of the Council establish or maintain a relationship with someone else for the covert purpose of obtaining and disclosing information.
- ‘Communications Data’ – this is limited to who, where and when a communication is sent – it does not involve disclosure of the content of the communication and certainly not phone-tapping information (as may have been implied in more alarmist press coverage).
- 4.4. The Council cannot undertake intrusive surveillance, i.e. covert surveillance in residential premises or in a private vehicle, nor can it undertake interception of communications, which would involve the contents of the communication being made available during the course of its transmission to a person other than the sender or the intended recipient.
- 4.5. In relation to the powers, which the Council is authorised to undertake I have attached, at Appendix 1, details of the activities the Council has undertaken to date. As can be seen this is related only to directed surveillance. The Council has been subject to two formal inspections by the Office of the Surveillance Commissioner with very satisfactory results.

## **5.0 PROPOSALS**

- 5.1 The Home Office has issued a consultation on revised Codes and Orders under RIPA. They have asked for responses by 10 July 2009. A full copy of the link to the consultation document on the Home Office website has been sent by email to all members. A copy of the consultation document has also been placed in the Member's Library.
- 5.2 It is proposed that the guidance in relation to the use of the powers is recast to make more explicit what is and what is not considered 'necessary and proportionate'. For example, in relation to a proposed application for an authorisation for directed surveillance for a minor offence such as littering, it is suggested that such authorisation should not be given as it would not be necessary and proportionate to undertake the following of an individual in order to gain relevant information. It is proposed that in such circumstances rather than following an individual around in order to gather information about him/her and potentially third parties, general observation should be undertaken of the area where alleged incidents have taken place and, if spotted, the individual may be apprehended. In addition, there may be other techniques that would assist.
- 5.3 The proposed Codes of Practice do not prescribe particular offences which shall not be the subject of relevant authorisations, but rather set out to ensure that the tests of necessity and proportionality are better understood and applied lawfully, consistently and with commonsense. They also seek to reduce bureaucracy by informing public authorities with greater clarity when authorisations are not needed, there are also further minor changes reflecting legal and operational developments.
- 5.4 The proposed changes to the Consolidating Orders recognise that Local Authorities should continue to be allowed to use the basic covert techniques referred to above as regulated by the RIPA. In doing so it acknowledges the important work, for example, in tackling fraud and trading standards issues that these methods assist in. However, the Government is concerned at the consistency of the standard applied in deploying the techniques. Accordingly the Government proposes that the revised codes will assist in achieving these standards (as referred to above) and are considering whether the rank at which the techniques are authorised within Local Authorities should be lifted to senior executive level and perhaps allowing elected Councillors a role in overseeing the use of the techniques. If they elect to follow this course this will be achieved through the issue of Consolidating Orders. There are again some minor changes reflecting organisational and name changes.

## **6.0 PROPOSED RESPONSE**

The Government asks seven questions, as set out below. It is proposed that the responses noted in italicised text be given.

1. Taking into account the reasons for requiring the use of covert investigatory techniques under RIPA set out for each public authority, should any of them nevertheless be removed from the RIPA framework?

*In respect of local authorities it is considered that these should remain within the RIPA framework. Appropriate monitoring arrangements are in place both in-house and through the Office of the Surveillance Commissioner and these, allied to the revised documents proposed, should ensure that the limited investigatory activities are carried out lawfully. The loss of the investigatory processes would have significant impacts in terms of the ability to respond to and address serious criminal activity, such as fraud and anti-social behaviour. This would be to the detriment of the communities they serve.*

2. If any public authorities should be removed from the RIPA framework, what, if any, alternative tools should they be given to enable them to do their jobs?

*If these are removed from local authorities suitable resources to deploy covert techniques through external agencies should be provided, e.g. the Police. This would have to be subject to appropriate, responsive arrangements to ensure the Council may call on this resource and direct its deployment being in place. The Council is skeptical about this being achieved.*

3. What more should we do to reduce bureaucracy for the police so they can use RIPA more easily to protect the public against criminals?

*No comment.*

4. Should the rank at which local authorities authorise the use of covert investigatory techniques be raised to senior executive?

*The definition of senior executive is uncertain. It is considered that the existing arrangements are sufficient to ensure appropriate authorisation. They also allow some degree of flexibility to meet operational requirements to obtain authorisation within reasonable timescales.*

As Members will be aware the Council procedures limit the granting (etc) of authorisations to Chief Officer level, which is believed to be equivalent to senior executive.

5. Should elected councillors be given a role in overseeing the way local authorities use covert investigatory techniques?

*It is considered that this is a matter for the individual local authorities to determine. Within the Council a report is to be presented to Members on an annual basis to confirm the Council's activities under RIPA. The Central Register and checking procedures (as provided for in the Codes), which are discrete from the operational activity, provide additional comfort here.*

6. Are the Government's other proposed changes in the Consolidating Orders appropriate?

No comments.

7. Do the revised Codes of Practice provide sufficient clarity on when it is necessary and proportionate to use techniques regulated in RIPA?

Yes.

## **7.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

7.1 Adherence to the RIPA procedures should ensure the Council deals appropriately with its investigatory functions, assisting it in achieving its crime and disorder targets.

## **8.0 FINANCIAL AND RESOURCE IMPLICATIONS**

8.1 There are no significant implications arising from the report under this heading.

## **9.0 RISK ASSESSMENT**

9.1 Failure to conduct investigations in accordance with the RIPA and the Human Rights Act 1998 may lead to the loss of valuable evidence, with detrimental impacts upon the Council's regulatory activities. In addition it may lead to claims for damage for breach of its responsibilities under the Human Rights Act 1998 where damage is proven to result.

## **10.0 CONCLUSIONS**

10.1 The Council does not fall within that band of public authorities that have been subject to criticism for inappropriate use of the RIPA authorisation process. Many of the matters the consultation document seeks to address are already in hand within the Council. It is proposed that in consultation with the Leader I should respond on the basis indicated at paragraph 5 above, with any additional comments members wish to provide.

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### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

### **Equality Impact Assessment**

There is no evidence from an initial assessment of an adverse impact on equality in relation to the equality target groups.

## **Appendices**

### Appendix 1 – Council’s Use of RIPA Procedures

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