

STOCKTON-ON-TEES BOROUGH COUNCIL

CABINET RECOMMENDATIONS

PROFORMA

Cabinet Meeting7th March 2013

1. Title of Item/Report

REGULATION OF INVESTIGATORY POWERS ACT 2000 ("RIPA")

2. Record of the Decision

Consideration was given to a report that provided further information regarding the legislative changes which were outlined in the report to Cabinet on 6th September 2012 and sought Cabinet's confirmation of the related revisions to the Council's RIPA Corporate Policy and Procedures Document.

Significant changes were proposed to RIPA and the way in which local authorities could use RIPA powers for the purpose of preventing or detecting crime or of preventing disorder.

The Protection of Freedoms Act 2012 had introduced independent judicial oversight of all local authority use of RIPA.

Amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 ("the 2010 Order") restricted the use of directed surveillance by local authorities to the investigation of certain types of criminal offences.

These changes had been introduced with effect from 1st November 2012.

The judicial approval process applied to all situations where a local authority proposed to use a RIPA authorised covert investigatory technique.

It was therefore relevant to authorisations or renewals for directed surveillance, the use or conduct of a Covert Human Intelligence Source, or an application or notice for communications data.

The internal application and authorisation process, in each case, would continue in principally the same way as before. The additional stage, subsequent to this process, was that after initial internal authorisation, judicial approval was required to be sought. The Justice of the Peace ("JP"), who would either be a district judge or lay magistrate, would

decide whether a local authority grant or renewal of an authorisation or notice to use RIPA should be approved, and it would not come into effect unless and until it was approved by a JP.

An outline of the procedure to be followed was attached to the report.

The hearing would not be held in open Court, and no press, public, the subject of the investigation or their representatives would be present. The local authority would show the original RIPA authorisation or notice to the JP, and provide a copy. A partially completed judicial application or order form would also be provided by the local authority. This would be the official record of the JP's decision.

Whilst there would be legal oversight of the Council's judicial approval applications, relevant investigative officers (who would need to be formally designated to appear on behalf of the Council) would be the applicants / attendees at Court. This accorded with Home Office guidance.

The amendments to the 2010 Order would have the following effect:-

- Local authorities could only authorise use of directed surveillance under RIPA to prevent or detect criminal offences that were either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months' imprisonment or were related to the underage sale of alcohol and tobacco. The offences relating to the latter were as follows:-

- * Section 146 of the Licensing Act 2003 (sale of alcohol to Children)
- * Section 147 of the Licensing Act 2003 (allowing the sale of alcohol to Children)
- * Section 147A of the Licensing Act 2003 (persistently selling alcohol to children)
- * Section 7 of the Children and Young Persons Act 1933 (Sale of tobacco etc to persons under the age of eighteen)

- Local authorities could not authorise directed surveillance for the purpose of preventing disorder unless this involved a criminal offence(s) punishable (whether on summary conviction or indictment) by a maximum term of at least 6 months' imprisonment.

- Local authorities could therefore continue to authorise use of directed surveillance in more serious cases as long as other tests were met – i.e. that it was necessary and proportionate and where prior approval from a JP had been granted. Examples of cases where the offence being investigated attracted a maximum custodial sentence of six months or more could include more serious criminal damage, dangerous waste

dumping and serious or serial benefit fraud.

- Local authorities could also continue to authorise the use of directed surveillance for the purpose of preventing or detecting specified criminal offences relating to the underage sale of alcohol and tobacco where the necessity and proportionality test was met and prior approval from a JP has been granted.

- A local authority could not authorise the use of directed surveillance under RIPA to investigate disorder that did not involve criminal offences or to investigate low-level offences which might include, for example, littering, dog control and fly-posting.

The Council's policy and procedures document had been reviewed and revised to reflect these legislative changes. The revisions had been highlighted for ease of reference and were available on the SBC Website.

RESOLVED that:-

1. The further information relating to the legislative changes to RIPA be noted; and

2. The Council's RIPA Corporate Policy and Procedures Document be confirmed as revised to reflect the legislative changes which have taken place.

3. Reasons for the Decision

To ensure Members are fully aware of the new legislative provisions relating to RIPA and to reflect those changes in the Authority's Policy and Procedures relating to the use of RIPA.

4. Alternative Options Considered and Rejected

None

5. Declared (Cabinet Member) Conflicts of Interest

None

6. Details of any Dispensations

N/A

7. Date and Time by which Call In must be executed

Midnight on Friday, 15th March 2013

Proper Officer
11 March 2013