

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM ____

REPORT TO CABINET

7 MARCH 2013

REPORT OF CORPORATE
MANAGEMENT TEAM

CABINET DECISION

Corporate Management and Finance - Lead Cabinet Member – Councillor Harrington
Housing and Community Safety – Lead Cabinet Member – Councillor S Nelson

REGULATION OF INVESTIGATORY POWERS ACT 2000 (“RIPA”)

1. Summary

This report provides further information regarding the legislative changes which were outlined in the report to Cabinet on 6 September 2012 and seeks Cabinet’s confirmation of the related revisions to the Council’s RIPA Corporate Policy and Procedures Document.

2. Recommendations

It is recommended that Cabinet:-

1. Notes the further information relating to the legislative changes to RIPA; and
2. Confirms the Council’s RIPA Corporate Policy and Procedures Document as revised to reflect the legislative changes which have taken place.

3. Reasons for the Recommendations

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. Members’ Interests

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council’s code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member’s judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

Disclosable Pecuniary Interests

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code)

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SUMMARY

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RECOMMENDATION

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DETAIL

Legislative Changes

1. It was reported to Cabinet at the meeting on 6 September 2012 that 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.
2. The Protection of Freedoms Act 2012 has introduced independent judicial oversight of all local authority use of RIPA.
3. Amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (“the 2010 Order”) restrict the use of directed surveillance by local authorities to the investigation of certain types of criminal offences.
4. These changes were introduced with effect from 1 November 2012.

Judicial Approval

5. The judicial approval process applies to all situations where a local authority proposes to use a RIPA authorised covert investigatory technique.

6. It is 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.
7. The internal application and authorisation process, in each case, will continue in principally the same way as before. The additional stage, subsequent to this process, is that after initial internal authorisation, judicial approval is required to be sought. The Justice of the Peace ("JP"), who will either be a district judge or lay magistrate, will decide whether a local authority grant or renewal of an authorisation or notice to use RIPA should be approved, and it will not come into effect unless and until it is approved by a JP.
8. An outline of the procedure to be followed is attached as an Appendix to the report.
9. The hearing is not held in open Court, and no press, public, the subject of the investigation or their representatives are present. The local authority will show the original RIPA authorisation or notice to the JP, and provide a copy. A partially completed judicial application or order form is also provided by the local authority. This will be the official record of the JP's decision.
10. Whilst there will be legal oversight of the Council's judicial approval applications, relevant investigative officers (who will need to be formally designated to appear on behalf of the Council) will be the applicants/attendees at Court. This accords with Home Office guidance.

Directed Surveillance Crime Threshold

11. The amendments to the 2010 Order have the following effect: -
 - Local authorities can only authorise use of directed surveillance under RIPA to prevent or detect criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months' imprisonment **or** are related to the underage sale of alcohol and tobacco. The offences relating to the latter are 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 **cannot** authorise directed surveillance for the purpose of preventing disorder unless this involves a criminal offence(s) punishable (whether on summary conviction or indictment) by a maximum term of at least 6 months' imprisonment.
 - Local authorities may therefore continue to authorise use of directed surveillance in more serious cases as long as other tests are met – i.e. that it is necessary and proportionate and where prior approval from a JP has been granted. Examples of cases where the offence being investigated attracts 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 may 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 is met and prior approval from a JP has been granted.
- A local authority **may not authorise** the use of directed surveillance under RIPA to investigate disorder that does not involve criminal offences or to investigate low-level offences which may include, for example, littering, dog control and fly-posting.

RIPA Policy and Procedures Document

12. The Council's policy and procedures document has been reviewed and revised to reflect these legislative changes. The revisions have been highlighted for ease of reference.
13. The updated document is accessible at:-

<http://www.stockton.gov.uk/resources/council/reginvpowers/ripadoc2232169.doc>

FINANCIAL AND LEGAL IMPLICATIONS

Financial

14. There are no financial implications arising directly from the report, however there will be increased officer time and effort involved in obtaining the approval of a Justice of the Peace to a proposed RIPA authorisation/application.

Legal

15. The Council's policy and procedures document has been revised to reflect the new legislative requirements.

RISK ASSESSMENT

16. Each RIPA authorisation is the subject of a separate, specific risk assessment. RIPA activities generally are considered to be low to medium risk, taking into account the current policy and procedures, together with the oversight arrangements and inspection regime.

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

17. RIPA authorisations and applications are made, when it is necessary and proportionate to do so, in order to assist in the prevention or detection of crime or in preventing disorder. They are therefore relevant to the Authority's community safety objectives. The RIPA policy and procedures are also an inherent element of the council's organisational effectiveness

EQUALITY IMPACT ASSESSMENT

18. The report has not been the subject of an Equality Impact Assessment. The policy changes reflect new legislation.

CONSULTATION

19. The matters referred to in the report have been the subject of prior consultation with relevant Cabinet Members.

Director of Law & Democracy

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| <u>Background Papers:</u> | None |
| <u>Ward(s) and Ward Councillors:</u> | Not ward specific |
| <u>Property Implications:</u> | None |