

Regulation Audit and Accounts Committee

23 July 2020

Regulation of Investigatory Powers Policy

Report by Director of Law and Assurance

Summary

The County Council is able to use powers available under the Regulation of Investigatory Powers Act 2000 to facilitate enforcement action in connection with functions of the Council relating to potential unlawful activity within its area.

Whilst these powers are used rarely and in relation to very limited areas of Council activity it is prudent for the Council to maintain an up to date policy governing the exercise of these powers.

Following recent changes in guidance and best practice and the recommendations of the external inspectorate the policy has been updated and is presented for consideration and approval. The annexes and flowcharts referred to in the policy are not included in the draft attached as an appendix to the report.

Recommendation

That the Committee reviews and endorses the revised policy (attached) for the governance and control of the Council's exercise of the powers available to it under the Regulation of Investigatory Powers Act 2000 and that the Director of Law and Assurance be authorised to maintain and update the policy in line with changes to law or Codes of Practice or future inspectorate recommendations.

1. Background and Context

- 1.1 The Regulation of Investigatory Powers Act 2000 provides all public authorities which have criminal enforcement responsibilities with a range of powers which they can choose to exercise to support investigations and enforcement activity. The powers comprise:
 - Directed surveillance
 - Covert intelligence sources
 - Interception of electronic communicationsEvidence gathered through the use of these powers can be used in enforcement activity and so their use must be strictly managed.
- 1.2 The County Council has historically only exercised these powers in connection with Trading Standards enforcement work – principally to help monitor trade in counterfeit and otherwise unsafe or unlawful products and to provide evidence to deter such activity and to prosecute when considered necessary
- 1.3 It is also necessary to have a clear policy for the exercise of such powers in order to ensure and show that the Council is fully compliant with the restrictions the legislation imposes and to ensure officers are aware of the

constraints and requirements for the exercise of such powers. This also provides assurance to the public that the powers are not used excessively.

- 1.4 To date all RIPA authorisations have been made for Trading Standards investigations – principally to deal with suspected trade in counterfeit or unlawful goods and most of these related to surveillance using social media. Officers have been authorised to undertake test purchases using false identities in order to secure evidence of trade in unlawful goods. Most have led to warning notices being served upon those suspected of such activity.

2. Proposal

- 2.1 The attached policy updates an established policy framework which the County Council has had in place since the legislative powers were made available. The revisions include changes which take account of recent changes to guidance and the recommendations from external inspection.
- 2.2 The amendments are in line with the recommendations of the Assistant Surveillance Commissioner, whose office oversees the proper use of the legislation, following recent inspection of the Council’s policy and practice.
- 2.3 The Policy has been expanded and updated to recognise the change in social habits and the growth in the use of social media. It is important that officers are alert to the danger of inadvertent misuse of social media monitoring, and that officers who do not have a formal investigatory role are made aware of the risks for routine and legitimate enquiries to go beyond open source materials. The updated policy provides explanations for newcomers to RIPA, and signposts them to correct procedure and source materials.
- 2.4 The updated policy also removes references to obsolete applications, such as the ability to grant oral authorisations in urgent cases and has been updated to reflect changes in legislation and the Codes of Practice, with specific reference to the new thresholds introduced for judicial approval.

3. Resources

- 3.1 There are no resource implications associated with the adoption and implementation of the policy.

4. Consultation

- 4.1 The head of Trading Standards whose service is the principal user of the powers has commented on the policy and specifically the changes being proposed and endorses the document as now presented.

5. Risk Implications and Mitigations

Risk	Mitigating Action
Policy not compliant with current best practice and guidance. Activity places enforcement action vulnerable to challenge.	All current guidance and all recent external inspection recommendations have been considered and applied to the revision.

Risk	Mitigating Action
Policy not sufficiently well known or understood by officers in enforcement roles. Activity occurs outside the policy.	The principal service user has contributed to the revisions. All services with enforcement powers required to confirm dissemination of the policy to relevant officers and ensure they are trained.

6. Other Options Considered

- 6.1 The changes only address recent changes to best or recommended good practice and recommendations from the national inspectorate. No other options were considered.

7. Equality Duty & Human Rights Implications

- 7.1 There is no specific implication for the equality duty from the adoption of the revised policy as the changes do not have any direct or indirect implications for those with protected characteristics. The equality duty will be considered in connection with specific enforcement activity.
- 7.2 The Council must meet obligations arising under the Human Rights Convention in relation to all enforcement activity. By their very nature the powers available under the Regulation of Investigatory Powers Act encroach upon rights to private family life (Article 8) and also have implications for the obligations of any enforcement authority to ensure the fair treatment of those accused or suspected of wrong-doing (Articles 6 and 7).
- 7.3 These obligations will be assessed in connection with all enforcement action and in particular in the exercise of the specific powers described in the policy. It is the aim of the policy to ensure that the rights and freedoms of individuals are properly safeguarded through the strict application of the checks and balances the policy sets and the attached policy addresses this.

8. Crime and Disorder Act Implications

- 8.1 The policy has direct implications for the duty of the County Council to ensure, as far as it is able to do so, to reduce the impact of crime and disorder in its area. The exercise of the powers described in the policy will be directed at meeting that obligation in connection with the range of enforcement obligations the Council has.

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Appendices

Appendix A - Revised RIPA policy (excluding annexes and flowcharts)

Background Papers

None