

Subject: Regulation of Investigatory Powers
Act – Revised Codes of Practice

Status: For Publication

Report to: Policy Overview and Scrutiny
Council

Date: 8th March 2011
23rd March 2011

Report of: Head of Legal Services

Portfolio

Holder: Finance and Resources

Key Decision: No

Forward Plan

General Exception

Special Urgency

1. PURPOSE OF REPORT

1.1 In April 2010 the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 came into force and the Home Office has issued two revised Codes of Practice. These require the Council to take certain action to implement new responsibilities in respect of its activities authorised under the Regulation of Investigatory Powers Act 2000 ("RIPA"). The revised Codes of Practice are titled, "Covert Surveillance and Property Interference" and "Covert Human Intelligence Sources".

2. CORPORATE PRIORITIES

2.1 The matters discussed in this report impact directly on the following corporate priorities:-

- Delivering quality Services to our customers
- Encouraging healthy and respectful communities
- Keeping our Borough clean, green and safe
- Providing value for money services

3. RISK ASSESSMENT IMPLICATIONS

3.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:

**Error! Unknown document property name. / Error!
Unknown document property name. / Error! Unknown
document property name.**

By not taking the actions required as a result of the Home Office's revised codes of practice, the Council would run the risk of criticism, complaint, having evidence ruled in admissible in court proceedings, claims for unlawful interference with individuals human rights, costs and damages.

4. BACKGROUND AND OPTIONS

- 4.1 The RIPA, regulates the use of directed covert surveillance, including the use of a covert human intelligence source, (CHIS), i.e. undercover officers seeking to gain the confidence of offenders. RIPA creates a statutory authorisation scheme for the lawful undertaking of such activities.
- 4.2 In summary, the RIPA requires that when the Council undertakes directed surveillance or uses CHIS for the purpose of the prevention or detection of crime, these activities must be authorised by an authorising officer.
- 4.3 Directed covert surveillance or CHIS which has been duly authorised under RIPA by an appropriate authorising officer, will be justified as a lawful interference with an individual's right to respect for private family life.
- 4.4 RIPA activity conducted by local authorities is subject to inspection by the Office of the Surveillance Commissioner and the Council has recently been notified that its next inspection will be in May 2011.
- 4.5 Rossendale Borough Council is not a frequent user of RIPA. The number of authorisations for the previous three years is as follows:-
- For the year ending 31st March 2009 – 3 directed surveillance, 0 CHIS.
For the year ending 31st March 2010 – 5 directed surveillance, 0 CHIS.
For the year ending 31st March 2011 – 0 directed surveillance, 0 CHIS.
- 4.6 Some covert surveillance undertaken by certain local authorities has been the subject of adverse media coverage, which led to calls for a change in the rules governing such activities. The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 and the two revised Codes of Practice create new duties and responsibilities. As a result, it is necessary for us to review our practices and procedures under RIPA.
- 4.7 The revised Code of Practice for Covert Surveillance and Property Interference provides:
- “It is considered good practice that within every relevant public authority, a senior responsible officer should be responsible for:
- the integrity of the process in place within the public authority to authorise directed surveillance.

- compliance with Part II of the 2000 Act [surveillance and covert human intelligence sources].
- engagement with the Commissioners and inspectors when they conduct their inspections, and
- where necessary, overseeing the implementations of any post inspection action plans recommended or approved by a Commissioner”

The revised code goes on to say that:

“Within local authorities, the senior responsible officer should be a member of the corporate leadership team and should be responsible for ensuring that all relevant officers are of an appropriate standard in light of any recommendations in the inspection reports prepared by the Office of Surveillance Commissioners. Where an inspection report highlights concerns about the standards of authorising officers, this individual will be responsible for ensuring concerns are addressed.”

4.8 Currently, the Director of Business is responsible for the day to day management of the Council’s functions in relation to RIPA. In view of the above, it is recommended that the Director of Business be appointed Senior Responsible Officer for the purposes of RIPA.

4.9 The revised Code of Practice considers the following to be good practice:

“... elected members of a local authority should review the authority’s use of the 2000 Act and set policy at least once a year. They should also consider internal reports on use of the 2000 Act on a least a quarterly basis to ensure that it is being used consistently with the local authority’s policy and that the policy remains fit for purpose. They should not however, be involved in making decisions on specific authorisations.”

4.10 Currently, RIPA is not reviewed by the Council’s elected members. In order to comply with the Code, it is recommended that Policy Overview & Scrutiny consider RIPA authorisations on a quarterly basis and that Cabinet review RIPA authorisations and the Council’s RIPA policy annually.

4.11 The level/rank of officer able to authorise covert surveillance has also been altered from, “Assistant Chief Officer, Service Manager or equivalent, or any more senior officer”, to “Director, Head of Service, Service Manager or equivalent”. All officers listed within the Council’s RIPA policy meet this definition.

4.12 It should be noted that there are currently plans to ban the use of powers in RIPA by councils, unless signed off by a Magistrate and required for stopping serious crime. The Freedom Bill is expected to be laid before Parliament in mid February 2011 which will introduce the Magistrates’ Courts approval process.

COMMENTS FROM STATUTORY OFFICERS:

5. SECTION 151 OFFICER

- 5.1 Adoption of the recommendations will assist in safeguarding the Council to any financial exposure.

6. MONITORING OFFICER

- 6.1 The legal issues relating to this matter are referred to in the report, policy and appendices.

7. HEAD OF PEOPLE AND POLICY (ON BEHALF OF THE HEAD OF PAID SERVICE)

- 7.1 No HR Implications.

8. CONCLUSION

- 8.1 The recommendations contained in this report are necessary to meet the requirements of revised Home Office Codes of Practice concerning covert surveillance undertaken under RIPA.

9. RECOMMENDATION(S)

- 9.1 Members are asked to recommend that:-

- a. The changes to the Council's Policy Statement attached as Appendix A be recommended to Council for approval and be adopted with immediate effect; and
- b. The Director of Business be appointed as the "Senior Responsible Officer" for the purposes of RIPA (and the Constitution be updated to reflect this); and
- c. The Policy Overview and Scrutiny Committee recommend that Cabinet be authorised to review the Council's RIPA Policy and the use of RIPA annually and report to the Portfolio Holder, should they be of the opinion that it is not fit for purpose; and
- d. Policy Overview and Scrutiny Committee be authorised to consider the Council's use of RIPA every quarter to ensure that it is being used consistently with the Council's Policy.

- e. That the Committee recommend that all future minor amendments to the Policy to be delegated to the Director of Business in consultation with the Portfolio Holder.

10. CONSULTATION CARRIED OUT

10.1 None.

11. COMMUNITY IMPACT ASSESSMENT

Is a Community Impact Assessment required No

Is a Community Impact Assessment attached No

12. BIODIVERSITY IMPACT ASSESSMENT

Is a Biodiversity Impact Assessment required No

Is a Biodiversity Impact Assessment attached No

Contact Officer	
Name	Sian Roxborough
Position	Head of Legal Services
Service / Team	Legal Services
Telephone	01706 252496
Email address	sianroxborough@rossendalebc.gov.uk

Either

Background Papers	
Document	Place of Inspection
Appendix A – Updated RIPA Policy.	Attached.
Appendix B - Summary of Main Changes.	Attached.
Appendix C - Home Office Revised Code of Practice - “Covert Surveillance and Property Interference”	Attached.
Appendix D - Home Office Revised Code of Practice - “Covert Human Intelligence Sources”	Attached.