

AMENDMENT TO COUNCIL'S POLICY FOR THE USE OF THE REGULATION OF INVESTIGATORY POWERS (RIPA) ACT 2000

To: **Cabinet**

Date: **17th September 2012**

From: **LGSS Director of Law and Governance**

Electoral division(s): **All**

Forward Plan ref: **Not applicable** *Key decision* **Not applicable**

Purpose: **For Cabinet to consider amendments to the Council's Policy for the Regulation of Investigatory Powers Act 2000**

Recommendation: **That Cabinet approve the Policy annexed to the report**

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1. BACKGROUND

- 1.1 The Council's current policy upon the use of the limited surveillance powers available to it under the Regulation of Investigatory Powers Act 2000 ("RIPA"), requires some updating to reflect that a number of persons who had the role of Authorising Officers for the purpose of that Act, have now left the Authority. Updating is also required to comply with changes to RIPA requiring judicial approval of authorisations, which have been introduced by the Protection of Freedoms Act 2012 and restrictions imposed by the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012, both of which will come into force on 1 November 2012.

2. MAIN ISSUES

- 2.1 Persons appointed as Authorising Officers undertake a critical role in ensuring that such authorisations are made in accordance with the legislation. It is important that there are sufficient officers available and recent restructuring has resulted in the loss of certain named officers. Regulations require that Authorising Officers hold the rank of Director, Head of Service or Service Manager or equivalent.
- 2.2 It is recommended that the following individuals are added to the list of Authorising Officers detailed on page 11 of the policy (appended to this report):

Claire Bruin - Service Director Adult Social Care

Steve Tinkler - LGSS Head of Audit and Risk Management

3. Legislative Changes

- 3.1 Further amendments to the policy document are required to take account of changes to be introduced by the Protection of Freedoms Act 2012. Section 38 of that Act will come into force on 1st November. That provision amends the Regulation of Investigatory Powers Act 2000 to require that, where an Authorising Officer has granted an authorisation for the use of directed surveillance or for the use of covert human intelligence sources, judicial approval will be required.
- 3.2 The Authority will be required to make an application, without giving notice, to the Magistrates' Court. The Magistrates will give approval if and only if, at the date of the grant of authorisation or renewal of an existing authorisation they are satisfied that:
- (a) there were reasonable grounds for believing that obtaining the covert surveillance or use of a human covert intelligence source was reasonable and proportionate and that these grounds still remain.
 - (b) the "relevant conditions" were satisfied in relation to the authorisation.

Relevant conditions include that:

- (i) the relevant person was designated as an Authorising Officer.

(ii) it was reasonable and proportionate to believe that using covert surveillance or a covert human intelligence source was necessary and that the relevant conditions have been complied with.

(iii) the grant or renewal of any authorisation or notice was not in breach of any restrictions imposed under section 25(3) of RIPA (restrictions on the rank of the person granting the authorisation).

(iv) any other conditions provided for by an order made by the Secretary of State were satisfied.

If the Magistrates' Court refuses to approve the grant of the authorisation, then it may make an order to quash that authorisation.

3.3. To ensure compliance with this new requirement it is recommended that the policy is amended at page 15, to provide that any Authorising Officer who proposes to approve an application for the use of directed surveillance or for the use of a covert human intelligence source must immediately inform the RIPA Monitoring Officer who will then make arrangements for an application to be made to the Magistrates' Court by LGSS lawyers.

3.4 The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012, which will come into force on 1 November 2012 imposes further restrictions on local authorities use of RIPA. It restricts Authorising Officers from authorising the carrying out of directed surveillance unless it is for the purpose of preventing or detecting a criminal offence unless the criminal offence to be prevented or detected is punishable by a maximum term of at least six months' imprisonment or constitutes an offence under sections 146, 147 or 147A of Licensing Act 2003 (sale of alcohol to children) or section 7 of the Children and Young Persons Act 1933 (sale of tobacco to children under 18 years old).

3.5 It is recommended that the RIPA policy is amended at page 4 to state this important restriction. It should be noted that the vast majority of authorisations granted in the past have been for trading standards investigations and would have satisfied this new requirement.

4. ALIGNMENT WITH PRIORITIES AND WAYS OF WORKING

4.1 Developing the local economy for the benefit of all

There are no significant implications for this priority.

4.2 Helping people live healthy and independent lives

There are no significant implications for this priority.

4.3 Supporting and protecting vulnerable people

There are no significant implications for this priority.

4.4 Ways of Working

There are no significant implications for this priority.

5. SIGNIFICANT IMPLICATIONS

5.1 Resource and Performance Implications

There are no significant implications for any of the prompt questions within this category

5.2 Statutory, Risk and Legal Implications

There is a risk that unless the list of Authorising Officers is reviewed that there may be an insufficient number of Authorising Officers available to deal with urgent applications. The policy requires amendment to ensure the Council's policy reflects new legislative requirements.

5.3 Equality and Diversity Implications

There are no significant implications.

5.4 Engagement and Consultation Implications

There are no significant implications.

5.5 Public Health Implications

There are no significant implications.

Source Documents	Location
Current RIPA Policy The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 Protection of Freedoms Act 2012	http://camweb2/DocumentLibrary/LGSS/legal/15RIPA Policy.doc

RIPA POLICY

Regulation of Investigatory Powers Act 2000

Introduction

The following pages of these Guidance Notes are intended to ensure that investigations are conducted in accordance with the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA). The purpose of this Act is to ensure that any public body that needs to use covert investigation techniques, which by their very nature may otherwise be in breach of the Human Rights Act 1998 are placed on a legitimate footing and that appropriate controls are put in place to ensure that the activities are properly controlled and monitored.

Why is RIPA important?

The provisions of RIPA are designed to regulate any act of covert investigation or surveillance carried out by a local authority.

RIPA was enacted to provide a lawful procedure for public bodies to carry out covert investigations without the risk of a claim being made under the Human Rights Act 1998, against either that body or the investigating officer, by the person subject to such an investigation.

The Human Rights Act introduced a remedy for persons claiming that their privacy had been breached. The right to privacy contained in the European Convention on Human Rights (ECHR) is not an absolute right. It is a qualified right and will not apply in the circumstances set out in Article 8.2 of the ECHR.

The provisions of Article 8.2 of the ECHR have been incorporated into English law by the enactment of Part II of RIPA. The effect of Part II of RIPA is to provide protection to the local authority itself **and to the individual officer** against any claim for breach of privacy, provided that they are able to demonstrate that they have fully complied with the procedures prescribed by RIPA.

If an investigation is carried out in accordance with RIPA procedures, then any possible resultant breach of the subject's privacy rights would not be actionable as a civil claim. In addition, in criminal proceedings arising from the investigation, the evidence gathered will not be challengeable under Section 78 of the Police & Criminal Evidence Act 1984, on the ground that it is a breach of privacy rights.

The protection afforded by RIPA also extends to complaints made to the Investigatory Powers Tribunal and to the local government ombudsman. Strict adherence to the requirements of RIPA therefore provides a defence to any civil proceedings and claims for damages for breach of privacy.

It is therefore crucial that all investigating officers adhere to the requirements of RIPA.

More information on the implementation of RIPA may be found by clicking on the following links:

[RIPA: More relevant than you might think](#) (PowerPoint Presentation)
[RIPA and the Human Rights Act 1998](#) (PowerPoint Presentation)
[Data Protection and Covert Surveillance](#) (PowerPoint Presentation)

Scope of the RIPA Investigation process

These guidance notes are intended to guide the actions of any employee of the Council who acts as an Enforcement (Investigating) Officer in any capacity or who acts as an Authorising Officer. They will direct Officers from the start of the investigation to the point at which legal process will begin which is beyond the scope of this guidance. They do not replace the need for proper training in investigation techniques.

Covert Surveillance

RIPA provides for the authorisation of covert surveillance by public authorities, where the surveillance is likely to result in the obtaining of private information about a person. It does so by establishing a procedure for authorising covert surveillance. It prescribes the office, rank and position of those permitted to authorise covert surveillance. From 1st November 2012 the authorisation process will be subject to judicial approval and any authorisation granted by a local authority will not take effect unless it is approved by the Magistrates' Court.

What is Surveillance?

Surveillance includes:-

- monitoring, observing or listening to persons their movements, their conversations or any of their activities or communications
- recording anything monitored, observed or listened to in the course of surveillance
- surveillance by or with the assistance of any surveillance device.

What is Covert Surveillance?

Covert Surveillance is any surveillance which is carried out in a manner calculated to ensure that the subject is unaware it is, or may be taking place. The provisions of RIPA authorise the following forms of covert surveillance:

- (a) directed surveillance;
- (b) intrusive surveillance; and
- (c) the conduct and use of covert human intelligence sources (CHIS).

Note that RIPA does not enable a local authority to make any authorisations to carry out intrusive surveillance.

What is Intrusive Surveillance?

This is surveillance which is covert surveillance that:

- (a) is carried out in relation to anything taking place in any residential premises or any private vehicle; and
- (b) involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

Residential premises include a rental flat occupied for residential purposes, a police cell and a hotel bedroom.

Examples of places which may **not** be regarded as residential premises are a communal stairway in a block of flats or the front garden of premises readily visible to the public.

There are a number of exceptions applicable to the use of certain monitoring equipment some of which are not considered to constitute the use of intrusive surveillance. It is important to note that not all surveillance of a suspect's home or vehicle is likely to amount to intrusive surveillance. For example, if an Investigating Officer observes a suspect leaving his home from the street using binoculars, this is unlikely to be intrusive, unless the quality of the image obtained is of the same quality as might be expected to be obtained from a device actually present on the premises. But the intrusiveness of the surveillance proposed must be considered before any surveillance operation takes place.

For the avoidance of doubt, surveillance that enables an Investigating Officer to view or monitor anything going on inside a dwelling is almost certainly going to be regarded as intrusive and conduct of that nature cannot be authorised by a local authority.

What Is Directed Surveillance?

Local authorities are permitted under RIPA to authorise directed covert surveillance **on the grounds that such surveillance is necessary for the prevention or detection of crime**. Surveillance is directed if it is **covert but not intrusive** and is undertaken:

- (a) for the purpose of a specific investigation or a specific operation;
- (b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
- (c) otherwise and by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under RIPA to be sought for the carrying out of the surveillance.

Limitation on the Use of Directed Covert Surveillance

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 (SI 2012/1500) (2012 Order) will come into force on 1 November 2012. It restricts Authorising Officers in a local authority in England or Wales, from authorising the carrying out of directed surveillance unless it is for the purpose of preventing or detecting a criminal offence and meets the following conditions:

- **that the criminal offence to be prevented or detected is punishable by a maximum term of at least six months' imprisonment or**
- **constitutes an offence under sections 146, 147 or 147A of Licensing Act 2003 (sale of alcohol to children) or section 7 of the Children and Young Persons Act 1933 (sale of tobacco to children under 18 years old).**

It is therefore essential that Investigating officers consider the penalty attached to the criminal offence which they are investigating, before considering whether it may be possible to obtain an authorisation for directed surveillance

What is Private Information?

Information is considered to be private information if it includes any information relating to the subject's private or family life or the private or family life of any other person. It would include any aspect of a person's private or personal relationship with others, including family and professional or business relationships. Private information may include personal data for example names, telephone numbers and address details.

Private information may be acquired through covert surveillance even where a person is in a public place and may have a reduced expectation of privacy. For example, where two people hold a conversation on the street they may have a reasonable expectation of privacy over the contents of that conversation. A directed surveillance authorisation may therefore be required if a public authority records or listens to the conversation as part of a specific investigation or operation.

Note also that the information relating to the private life of an individual may be obtained when a number of records are analysed together, or where a number of pieces of information are obtained, covertly, for the purpose of making a record about a person or for data processing to generate further information. The totality of the information may constitute private information even if the individual records do not.

For example, enforcement officers may photograph the exterior of business premises for record purposes without the need for a RIPA authorisation. If, however the officers wished to establish a pattern of occupancy of those premises by any person and took photographs on a number of occasions, that conduct would be likely to result in the obtaining of private information and a RIPA authorisation would be needed.

Tracking Devices

The use of a surveillance device designed or adapted for the purpose of providing information regarding the location of a vehicle does not necessarily constitute

directed surveillance as it may not provide private information about any individual, but simply information about the location of the device at any one time. However, using that information coupled with other surveillance activity which may obtain private information, may amount to directed surveillance and an authorisation may be required.

Exceptions where a RIPA Authorisation is not Required

Some surveillance activity does not constitute directed surveillance for the purposes of RIPA and no authorisation can be provided for such activity. These activities include:

- (a) covert surveillance by way of an immediate response to events;
- (b) covert surveillance as part of general observation activities;

For example, if enforcement officers attend a market where it is suspected that counterfeit goods are being sold, but they are not carrying out surveillance of any particular individual and their intention is to identify and tackle offenders, then this forms part of the general duties of the public authority and the obtaining of private information is unlikely. In such a case a directed surveillance authorisation need not be sought.

- (c) covert surveillance not relating to the prevention or detection of crime or the prevention of disorder; and
- (d) overt surveillance by CCTV and ANPR systems.

CCTV and ANPR Systems

Where overt surveillance equipment is used for example in town centres, members of the public will be aware of the use and no RIPA authorisation is required. The use of an ANPR system to monitor traffic flows or to detect traffic offences would not require a RIPA authorisation.

If, however, CCTV cameras or an ANPR system are used in a covert, pre-planned manner as part of a specific investigation or operation for the surveillance of a particular individual, then an authorisation for directed surveillance may be required. Such surveillance is likely to result in the obtaining of private information about a person, that is, a record of his movements and activities.

Use of Noise Monitoring Equipment

Where possible the use of noise monitoring equipment should be notified to the owner and occupier of the premises. Where this is not possible, covert monitoring may be considered a reasonable and proportionate approach. If it is decided to seek an authorisation, then the Authorising Officer should consider whether the surveillance equipment is capable of measuring volume only, or whether it can identify individuals, being mindful that the more sensitive the equipment, the greater the risk that the surveillance will be Intrusive Surveillance.

If the noise monitoring equipment is calibrated only to detect excessive noise levels it may be considered that no private information is likely to be obtained and it may be that in such circumstances, an authorisation is not necessary.

An Example of the Use of Directed Surveillance

This type of surveillance may be used to gather evidence for an offence such as a breach of the Trade Marks Act 1994. An Investigating Officer may need to carry out surveillance of a suspect's home to obtain information about their contacts and work patterns.

This would be directed surveillance as it would result in obtaining private information. A RIPA authorisation should be obtained. The Investigating Officer would need to demonstrate that such surveillance was necessary and proportionate. The Authorising Officer must be satisfied that the action proposed would not amount to intrusive surveillance and place conditions on the conduct to avoid this happening prior to authorising the application or decline to authorise as necessary.

Note that if the surveillance involves the use of a surveillance device, that provides detail of the same quality as may be expected to be obtained by a device located on the premises, this may amount to intrusive surveillance. No RIPA authorisation may be given for intrusive surveillance.

Grounds for Making an Authorisation under RIPA

The grounds on which a local authority may make an authorisation permitting the use of directed surveillance under RIPA **are limited to the prevention or detection of crime or the prevention of disorder**. If directed surveillance is carried out for any other purpose, then an authorisation under RIPA cannot be granted.

Core Functions

A local authority may only make authorisations under RIPA when performing its core functions. Those are the specific public functions undertaken by the local authority as opposed to its ordinary functions which are undertaken by all public authorities.

For example, an authorisation under RIPA cannot be used when the principal purpose of an investigation is for taking disciplinary action against an employee, as the disciplining of an employee is not a core function. It may, however, be appropriate to seek an authorisation under RIPA if there are associated criminal investigations.

Further Guidance on Covert Surveillance

Further guidance on the use of covert surveillance may be found in the Home Office Code of Practice for Covert Surveillance and Property Interference at [\[link\]](#)

The Conduct of Covert Human Intelligence Sources

A local authority may grant an authorisation under RIPA for the use of a covert human intelligence source (a "CHIS".) The conduct that may be authorised is any conduct that:

- (a) is comprised in any such activity including the conduct of CHIS or use of CHIS, as are specified in the authorisation;
- (b) consists in conduct by or in relation to a person who is so specified or described as a person as to whose actions as a CHIS the authorisation relates;
- (c) is carried out for the purposes of or in connection with the investigation or operation so specified or described; and
- (d) is necessary and proportionate to the intelligence dividend that it seeks to achieve.

A person is considered to be a CHIS if:

- (a) s/he establishes or maintains a personal or other relationship with a person for the covert purpose of doing anything falling within paragraphs (b) or (c) below;
- (b) s/he covertly uses such a relationship to obtain information or provide access to any information to another person;
- (c) s/he covertly discloses information obtained by the use of the said relationship, or as a consequence of the existence of such a relationship.

Authorisations for the use of a CHIS do not relate solely to the obtaining of private information. An authorisation is necessary where there is covert manipulation of a relationship to gain any information. Article 8 of ECHR includes the right to establish and develop a relationship so such a right may be infringed where a public authority manipulates that relationship to obtain information.

To establish a relationship simply means to "set up" a relationship and does not require endurance of a relationship over a period of time. The use of a CHIS is most likely to arise when individuals are used to make test purchases. Whether a relationship exists between the buyer and seller depends upon the circumstances, but a repetition of purchases is not always necessary to give rise to a relationship.

Grounds for Authorising a CHIS

A local authority may authorise the use of CHIS only on the grounds that it is necessary for the purpose of the prevention or detection of crime or the prevention of disorder. The use of CHIS as part of an investigation is likely to be infrequent and investigating Officers may wish to take specific legal advice prior to making an application for authorisation.

From 1st November 2012 the authorisation process for use of a CHIS will be subject to judicial approval and any authorisation granted by a local authority will require the approval of the Magistrates' Court.

Examples where the use of a CHIS may arise

Test Purchases

When a child or young person is instructed by an Investigating Officer to carry out a test purchase in a shop, for example, buying alcohol, the Investigating Officer should consider whether s/he may be a CHIS and whether it is appropriate to seek a CHIS authorisation. In those circumstances, any relationship between the buyer and seller, if established at all, is likely to be so limited that the Investigating Officer may conclude that a CHIS authorisation is unnecessary. Note that regardless of whether or not a CHIS authorisation is considered to be appropriate, where covert technical equipment is worn by a test purchaser, or an adult is observing the test purchase, then an authorisation for directed surveillance may be required. In all cases a prior risk assessment should be undertaken in relation to the test purchaser.

Public Volunteers

Not every human intelligence source will be a CHIS. Where a person volunteers information to the local authority without being induced, asked or tasked by the local authority, no authorisation under RIPA is required. For example, if a person provides a piece of information about something he has witnessed in his neighbourhood, he would not be regarded as a CHIS as the information he is passing is not as a result of a relationship which has been established or maintained for a covert purpose.

For a further example, if a member of the public is asked by an Investigating Officer to maintain a record of vehicles arriving at and leaving a specific location, no relationship has been established or maintained in order to gather that information. A CHIS authorisation is therefore not required. Note there may, in such circumstances, be the need to obtain a RIPA authorisation for directed surveillance.

In contrast, If an Investigating Officer wishes to use a neighbour to question an individual about the activities carried on at a site which for example, was subject to enforcement action under the Planning Acts, this may amount to the use of a covert human intelligence source.

Professional or Statutory Duty

Any regulatory or professional disclosure made by an individual should not result in that individual falling within the definition of a CHIS, as the information disclosed is derived from a business relationship which will not have been established for the covert purpose of disclosing such information. In addition, such disclosure is undertaken as a statutory requirement and is unlikely to infringe an individual's privacy.

Further Guidance on the Use of a CHIS

Further guidance on the use of a CHIS may be found at the following <http://surveillancecommissioners.independent.gov.uk/> the Home Office Covert Human Intelligence Sources Code of Practice.

The Procedure for Obtaining Authorisations (Directed Surveillance and CHIS)

Each form of covert surveillance which is subject to the provisions of RIPA must be authorised in accordance with the provisions of RIPA.

Regulations prescribe that within a local authority, Authorising Officers must hold the rank of Director, Head of Service, Service Manager or equivalent. The following post holders are designated as Authorising Officers:

Mark Lloyd - Chief Executive

Adrian Loades- Executive Director: Children and Young People's Services

Claire Bruin - Service Director Adult Social Care

Stephen Tinkler – LGSS Head of Audit and Risk Management

Leon Livermore - Head of Businesses and Communities

John Onslow – Service Director: Infrastructure Management and Operations

No person designated as an Authorising Officer may act as an Authorising Officer unless s/he has undertaken appropriate training within 3 years prior to the date of making an authorisation.

Making an Application for an Authorisation

The Investigating Officer must complete all of the information required by the appropriate prescribed form. There are different forms for authorising directed surveillance and for authorising the use of CHIS.

The forms may be found here:

[Directed Surveillance: Application Form](#)
[Directed Surveillance: Review of Authorisation](#)
[Directed Surveillance: Application to Renew Authorisation](#)
[Directed Surveillance: Cancellation Form](#)

[CHIS: Application Form](#)
[CHIS: Review of Authorisation](#)
[CHIS: Application to renew Authorisation](#)
[CHIS: Cancellation Form](#)

The Investigating Officer must obtain a unique reference number for the form from the RIPA Monitoring Officer and must set out on the appropriate form:

- (a) precisely what type of surveillance is to be authorised and against which subjects, the property or location and the techniques and equipment to be used and the maximum penalty applicable for the offence to be investigated;
- (b) the reason why the directed surveillance or use of CHIS is necessary i.e. it is needed for the detection or prevention of crime or disorder and why it is necessary for the investigation of this specific case;
- (c) the reason why it is considered that the use of the surveillance requested is proportionate to the objective to be achieved i.e. what is sought to be achieved by carrying out the covert surveillance and why that objective cannot be achieved through any other means- see below;
- (d) how collateral intrusion (interference with the privacy rights of others not subject to the surveillance) will be minimised;
- (e) where collateral intrusion is unavoidable, a risk assessment should be carried out and a mechanism put in place to disregard any information not relevant to the case;
- (f) that any local community conditions or sensitivities have been considered; and
- (g) where an application is made for use of CHIS which involves carrying out surveillance on premises used as a private dwelling house, the investigating officer must set out what measures will be taken regarding the privacy of other family members, especially children.

Additional requirements for Authorising the use of Juveniles as CHIS

The use of juveniles as CHIS is regulated by the Regulation of Investigatory Powers Act (Juveniles) Order 2000. These regulations provide that when seeking an authorisation the Investigating Officer must:

- (a) make a risk assessment to demonstrate that the physical and physiological risks have been identified and evaluated and explained to CHIS, and
- (b) that an appropriate adult will be present at meetings of any CHIS under 18.

There is a prohibition on a CHIS under the age of 16 being used if a person under surveillance is a parent or has financial responsibility for that CHIS.

Submitting the Application for an Authorisation

The Authorisation form must be submitted in writing to the appropriate Authorising Officer and signed by the Authorising Officer, in all but the most urgent cases.

Responsibilities of the Authorising Officer

The Authorising Officer must ascertain that the Investigating Officer has completed all relevant sections of the appropriate authorisation form. S/He must also be satisfied that all of the matters detailed in the paragraph headed "Making an Application", above, have been properly considered and set out in sufficient detail on the form.

In particular, the Authorising Officer must be satisfied that the surveillance proposed may infringe the human rights of its subject or of others. S/He must also be satisfied that the covert surveillance for which the authorisation is sought is proportionate i.e. that the information could not be obtained by any other means and that it is necessary to further the objectives of the investigation. S/He should consider whether the benefits of obtaining the information are significant rather than marginal. S/He must also consider the risk of collateral intrusion into the privacy of other persons.

The Authorising Officer should clearly set out what activity and surveillance equipment is authorised so that the investigating Officer is certain what has been sanctioned.

If the Authorising Officer is not completely satisfied that the form has been properly completed, s/he should liaise with the Investigating Officer to obtain further information.

Where an application is sought for use of a CHIS the Authorising officer must ensure the form specifies the person to whose actions as a CHIS the authorisation relates, describes the purposes of the investigation or operation and any limit on the conduct authorised.

In addition when an authorisation is sought for use of CHIS, the Authorising Officer must be satisfied that:

- (a) there is a person within the investigating team who will have day to day responsibility for dealing with the source on behalf of the authority and that he will ensure the sources security and welfare;
- (b) there will at all times be another person within the investigating team who will have general oversight of the use made of the source;
- (c) there will be a person within the investigating team who will have responsibility for maintaining a record of the use made of the source;
- (d) the records relating to the source contain all matters as may be specified in regulations; and
- (e) records maintained that disclose the identity of the source will not be available to persons except to the extent that there is a need for them to be made available.

Proportionality

An Authorising Officer must demonstrate how s/he has reached the conclusion that the activity is proportionate to what it seeks to achieve. There are four elements of proportionality to consider:

- (a) balancing the size and scope of the operation against the gravity and extent of the perceived crime or offence;
- (b) explaining how and why the methods to be adopted will cause the least possible intrusion on the target and others;
- (c) that the activity is an appropriate use of the legislation and the only reasonable way, having considered all others, of obtaining the necessary result; and
- (d) evidencing, as far as reasonably practicable, what other methods have been considered and why they were not implemented.

Obtaining Judicial Approval of Authorisations

Authorising Officers must when making authorisations be aware that each authorisation (or renewal of an authorisation) will be subject to judicial approval. The Protection of Freedoms Act 2012, amends RIPA, to require that where a Authorising Officer has granted an authorisation for the use of directed surveillance or for the use of covert human intelligence sources, judicial approval will be required. The Authority will be required to make an application, without giving notice, to the Magistrates' Court. The Magistrates will give approval if at the date of the grant of authorisation or renewal of an existing authorisation if and only if, they are satisfied that:

- (a) there were reasonable grounds for believing that obtaining the covert surveillance or use of a human covert intelligence source was reasonable and proportionate and that these grounds still remain.

(b) the "relevant conditions" were satisfied in relation to the authorisation.

Relevant conditions include that:

(i) the relevant person was designated as an Authorising Officer.

(ii) it was reasonable and proportionate to believe that using covert surveillance or a covert human intelligence source was necessary and that the relevant conditions have been complied with.

(iii) the grant or renewal of any authorisation or notice was not in breach of any restrictions imposed under section 25(3) of RIPA.

(iv) any other conditions provided for by an order made by the Secretary of State were satisfied.

If the Magistrates' Court refuses to approve the grant of the authorisation, then it may make an order to quash that authorisation.

No activity permitted by the authorisation granted by the Authorising Officer may be undertaken until the approval of the Magistrates' Court to that authorisation has been obtained.

To ensure compliance with this requirement, any Authorising Officer who proposes to approve an application for the use of directed surveillance or for the use of a covert human intelligence source must immediately inform the RIPA Monitoring Officer by telephone or e-mail of the details of the authorisation. The RIPA Monitoring Officer will then make the necessary arrangements for an application for an order to approve the authorisation to be made to the Magistrates' Court. The Authorising Officer and the Investigating Officer may be required to attend the Magistrates' Court to support the application.

Cases where Authorisations must be obtained from Specifically Designated Officers

Confidential Information

Note that where an authorisation for a CHIS is sought and it is likely through the conduct of the CHIS that confidential information would be obtained, then a higher level of authorisation is required. i.e. authorisation by the Chief Executive or by a Deputy Chief Executive.

"Confidential Information" consists of matters subject to legal privilege, confidential personal information or confidential journalistic material.

Legally Privileged Information

This is any communication or information passing between a subject and their legal advisors. It is considered to be particularly sensitive. It is unlikely that such information obtained from CHIS would be admissible in evidence in criminal proceedings. Action which may lead to legally privileged information being obtained by a CHIS is subject to additional safeguards. Investigating officers seeking to obtain such information must refer to the Home Office Covert Human Intelligence Sources Code of Practice.

Confidential Personal Information

This is information held in confidence concerning an individual who can be identified from it (whether living or dead) relating to their physical or mental health or to spiritual counselling or assistance to which a person has had recourse.

Confidential Journalistic Material

This is material acquired or created for the purpose of journalism or communications resulting in information being so acquired and held subject to an undertaking to hold it in confidence.

Use of Juveniles as CHIS

Note that an authorisation as to the use of a juvenile as a CHIS may only be made by the Chief Executive or in his absence a Deputy Chief Executive.

Expiry of Authorisations

Written authorisations granted under RIPA for a CHIS cease to have effect 12 months after the date of granting of the authorisation.

All other written authorisations under RIPA cease to have effect 3 months after the authorisation was granted. The Authorising Officer must ensure that the correct expiry date is recorded on the authorisation form. For example, an authorisation given on 1st April will expire on 30th June. Authorisations cease at 23:59 on the last day, so it is not necessary to specify a time.

Review of Authorisations

Regular reviews of authorisations which have been granted should be undertaken by the Investigating Officer to ascertain whether it is necessary for the authorisation to continue. Authorisations may be renewed at any time before they cease to have effect by any person who would be entitled to grant a new authorisation in the same terms.

Obligations of the Authorising Officer Relating to the Renewal of Authorisations

When considering an application for renewal of an authorisation for a CHIS the Authorising Officer must consider:

- (a) the use made of the source in the period since the grant or latest renewal of the authorisation; and
- (b) the task given to the source during that period and the information obtained from the conduct or use of the source. The Authorising Officer must be certain that all of the information which was presented to justify the original authorisation is still subsisting and relevant. This applies to authorisations both for directors of surveillance and for use of CHIS.

Renewals become effective on the day on which the existing authorisation expires. Renewals of authorisations will also be subject to approval by the Magistrates Court and the Authorising Officer must advise the RIPA Monitoring Officer immediately when h/she is minded to grant a renewal.

Cancellation of Authorisations

Authorisations under RIPA do not lapse automatically. They continue for the statutory 3 or 12 month's period from the date on which the authorisation was given, unless cancelled earlier. Once an investigation has been completed or the circumstances of the case dictate that it must be closed, the Investigating Officer must complete a cancellation of authorisation form and submit it to the Authorising Officer who granted or last renewed the authorisation.

The Authorising Officer may cancel the authorisation if he considers that the requirements of the authorisation are no longer satisfied. The Authorising Officer who granted a CHIS authorisation must cancel it if s/he is satisfied that the use of the CHIS no longer meets the criteria for authorisation.

All of the information relating to the authorisation will form part of the records of the investigation and must be kept on the appropriate file for 5 years or longer if appeals are made.

Information that may be of value in connection with concurrent investigations may be kept, but information not relevant to those enquiries must be destroyed.

Maintaining Records of Authorisations, Renewals and Cancellations

The Authorising Officer must send the originals of all records of authorisations, renewals and cancellations to the RIPA Monitoring Officer (the Legal Services Team Manager-Contracts/Highways/Planning/Litigation) who will keep a central record. The Unique Reference Number (URN) required on the paperwork must bear a prefix indicating which service the paperwork has originated from (e.g. TS for trading standards or A for audit).

The Investigating Officer should keep the following record and diarise the dates for renewal and cancellation:

- (a) a copy of the authorisation together with supporting documents;
- (b) a copy of any renewal of any authorisation together with supporting documents;
- (c) any authorisation which was granted or renewed orally (an urgent case) and the reason why the case was considered to be urgent ;
- (d) any risk assessment raised in relation to a CHIS ;
- (e) the circumstances in which tasks were given to the CHIS;
- (f) the value of the CHIS to the investigation;
- (g) a record of the results of any reviews of the authorisation;

- (h) the reasons for not renewing an authorisation;
- (l) the reasons for cancelling an authorisation; and
- (j) the date and time when any instructions were given by the authorising officer since using a CHIS.

The Investigating Officer should diarise the dates for review of each authorisation.

The RIPA Monitoring Officer

The RIPA Monitoring Officer will provide a Unique Reference Number for each RIPA application, upon request by an Investigating Officer. The RIPA Monitoring Officer will maintain a central record of all RIPA authorisations, renewals and cancellations. In addition, the RIPA Monitoring Officer will review the authorisations/renewals made on a regular basis to ensure that such authorisations/renewals are made properly, are appropriate and that all forms have been fully completed. In addition the RIPA Monitoring Officer will be able to provide advice on RIPA issues to Investigating and Authorising Officers.

The RIPA Monitoring Officer will make arrangements for application to be made to the Magistrates' Court to obtain the approval of every authorisation or renewal that has been granted. The RIPA Monitoring Officer will obtain details of the relevant Authorising Officer when providing a Unique Reference Number and will require the Authorising Officer to provide a copy of the authorisation or renewal that has been granted as soon as reasonably practicable, in order that an application may be made to the Magistrates' court in good time.

The RIPA Monitoring Officer will advise the relevant Authorising Officer and the relevant Investigating Officer as soon as reasonably practicable of the outcome of the application to the court for approval of the authorisation.

The Senior Responsible Officer for RIPA

Quentin Baker is the Council's appointed Senior Responsible Officer for RIPA. He has responsibility for the integrity of the process to authorise directed surveillance, to ensure compliance with the Act and the Codes of Practice, to engage with the Commissioners and Inspectors when they conduct inspections, to oversee the implementation of any post-inspection action plan recommended or approved by a Commissioner and to ensure all Authorising Officers are of an appropriate standard in the light of any concerns raised by an inspection.

Regulation of Use of Authorisations

The Chief Surveillance Commissioner reviews the exercise and performance of the use of authorisations by public bodies.

Information must be provided on request and inspections re carried out regularly by the Surveillance Commissioner.

A tribunal has been established to consider and determine complaints relating to the exercise of RIPA powers by any person aggrieved. The tribunal deals with these matters in a similar manner to the courts when dealing with judicial review cases. Complaints must be lodged with the tribunal within one year unless the tribunal determines it is just and equitable to extend that period.

The tribunal may order the quashing or cancellation of any authorisation, records or information obtained by use of an authorisation.

The Council is under a duty to disclose to the tribunal all documents that may be required relating to the authorisation.

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Further information is obtainable from the [Home Office Covert Surveillance and Property Interference Revised Code of Practice 2010 and the Home Office Covert Human Intelligence Sources Code of Practice 2010](#) available on the OSC website.

Further advice is available from the RIPA Monitoring Officer. Malcolm Taylor and David Broughton who are experienced investigating and authorising officers in Trading Standards are also willing to provide advice.