



POLICY AND RESOURCES SCRUTINY COMMITTEE – 30TH SEPTEMBER 2015

**SUBJECT: REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA
CORPORATE POLICY REVIEW)**

**REPORT BY: ACTING DIRECTOR OF CORPORATE SERVICES AND SECTION 151
OFFICER**

1. PURPOSE OF REPORT

- 1.1 To seek the views of Members of the proposed changes to the current corporate RIPA policy prior to referral to Cabinet for formal approval.

2. SUMMARY

- 2.1 The Council is under an obligation to comply with legislative requirements and is subject to the provisions of the Regulation of Investigatory Powers Act 2000, Protection of Freedom Act 2012, and the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 (S1 2012/1500). This Report recommends changes to the Council's current corporate RIPA policy to ensure that the policy remains fit for this purpose.

3. LINKS TO STRATEGY

- 3.1 The Council is under an obligation to comply with legislation requirements and this Report helps to do that. The RIPA policy promotes the wellbeing of the citizens of Caerphilly as a place where people can live in a high quality safe environment.

4. THE REPORT

- 4.1 Members are reminded that RIPA provides a statutory mechanism for authorising covert surveillance and the use of a 'covert human intelligence source' (a 'CHIS') (e.g. undercover agents/informants) in circumstances that are likely to result in the obtaining of private information about a person for the purpose of preventing or detecting crime or of preventing disorder. RIPA also controls the acquiring of communications data by Local Authority staff. Its aim is to provide a balance between preserving people's right to privacy and enabling enforcement agencies to gather evidence for effective enforcement action.
- 4.2 With effect from 1st November, 2012, Local Authorities have only been able to authorise the use of directed covert 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 six months, imprisonment or an offence under:-

S146 Licensing Act 2003 (sale of alcohol to children)
S147 Licensing Act 2003 (allow sale of alcohol to children)
S147A Licensing Act 2003 (persistently selling alcohol to children)
S7 Children and Young Persons Act 1933 (sale of tobacco etc. to persons under 18)

- 4.3 Since November 2012 Local Authorities have to obtain an order approving the grant or renewal of a RIPA authorisation from a Justice of the Peace (a District Judge or Lay Magistrate) at the Magistrates Court for directed surveillance, covert human intelligence source (CHIS) and communication data.
- 4.4 The Council's Corporate RIPA policy was reviewed in December 2012 following the changes in legislation referred to in paragraph 4.2 of the Report and the inspection undertaken by the office of the Surveillance Commissioner in October 2012.
- 4.5 Following the implementation of the new legislation the numbers of RIPA operations undertaken by the Authority reduced, and the main user is now Public Protection undertaking operations in the main in relation to under age sales of alcohol and tobacco. Members will be aware that the numbers and nature of the RIPA operations undertaken are reported routinely to the Audit Committee. For information there has been two operations undertaken since 1st April, 2015, both in relation to the supply of alcohol to minors. Both applications were judicially approved.
- 4.6 Following a further internal review undertaken by the Council's Interim Monitoring Officer, it is proposed that the current policy is reviewed in its entirety to strengthen the governance arrangements around the RIPA process more adequately address the comments of the Inspector in 2012, address the changes made in relation to the Acquisition of Communications Data which is now dealt with via the National Anti Fraud Network (NAFN) to reduce the number of Authorising Officers and to introduce a more formal training regime.
- 4.7 Finally, the revised Policy now incorporates guidance on the use of social networking sites and the internet as these are being used more commonly as an investigative tool.
- 4.8 Members are asked to note formally that this Policy is not intended for use in connection with the surveillance of its employees. Members are also reminded that the surveillance of employees is currently suspended pending the implementation of a specific policy and there are no current plans to progress this issue.
- 4.9 The revised draft Policy is attached at Appendix 1 for consideration by Members.

5. EQUALITIES IMPLICATIONS

- 5.1 The proposed Policy complies with relevant legislation.

6. FINANCIAL IMPLICATIONS

- 6.1 None arising from the Report.

7. PERSONAL IMPLICATIONS

- 7.1 No additional resources required.

8. CONSULTATIONS

- 8.1 The Report reflects the views of the Consultees.

9. RECOMMENDATIONS

9.1 It is recommended that:-

- (i) Members note the contents of the Report;
- (ii) Provide comments on the proposed Corporate RIPA Policy prior to the draft Policy being referred to Cabinet for formal approval.

10. REASONS FOR THE RECOMMENDATIONS

10.1 To ensure compliance with statutory requirements.

11. STATUTORY POWERS

11.1 Regulation of Investigatory Powers Act 2000 and Regulations made under the Act, and the Protection of Freedoms Act 2012.

Author:

Consultees: Gail Williams, Interim Head of Legal Services/Monitoring Officer
Chris Burns, Interim Chief Executive
Nicole Scammell, Interim Director of Corporate Services
Christina Harhy, Corporate Director – Education & Community Services
Councillor C. Forehead, Cabinet Member for Human Resources & Governance
Robert Hartshorn – Head of Public Protection
Jacqui Morgan – Trading Standard & licensing Manager
Kathryn Peters – Community Safety Manager

Appendix: Draft Corporate RIPA Policy (revised September 2012)

Background

Papers: Existing Corporate RIPA Policy