

# **APPENDIX G**

## **WAVERLEY BOROUGH COUNCIL**

### **COMMUNITY OVERVIEW AND SCRUTINY COMMITTEE – 15 JUNE 2009**

#### **EXECUTIVE – 7 JULY 2009**

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#### **Title:**

### **REVIEW OF REGULATION OF INVESTIGATORY POWERS ACT 2000 HOME OFFICE CONSULTATION**

**[Portfolio Holder for Community Safety: Cllr Mrs Carole King]  
[Wards Affected: All]**

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#### **Summary and purpose:**

This report, which was considered by the Community Overview and Scrutiny Committee at its meeting on 15 June 2009, is to inform the Executive of the detail of the Home Office's consultation paper in respect of the Regulation of Investigatory Powers Act 2000 ("RIPA"), and to update them on the Council's use of the covert investigatory techniques.

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#### **How this report relates to the Council's Corporate Priorities:**

Improving the quality of life for all, particularly the more vulnerable in our society, is one of the Council's Corporate Priorities. The effective investigation into and prosecution of criminal activity within the Borough will help in improving the quality of life for both individuals and businesses.

#### **Equality and Diversity Implications:**

There are no equality and diversity implications in this report.

#### **Resource/Value for Money implications:**

The impact of RIPA on budgetary resources is neutral.

#### **Legal Implications:**

The investigative procedures of the Council accord fully with the provisions of RIPA and supporting secondary legislation, and records of compliance support probity and provide evidence in the event of challenge in a particular case.

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#### **Introduction/Background**

1. The Regulation of Investigatory Powers Act 2000 ("RIPA"), which came into force on 25 September 2000, introduced a regulatory framework within which public authorities, including the Council, use covert investigatory techniques.

2. RIPA was created following the bringing into force of the Human Rights Act 1998 in 2000, which, amongst a number of other rights, introduced into English law the Article 8 right for respect for private and family life. Up to that point, public authorities could use covert investigatory techniques, with the exception of the interception of communications and the use of property interference, without statutory control.
3. The introduction of the 1998 Act meant that public authorities were obliged by law to justify any intrusion into the private and family life of the subjects of any investigation. There was at that time no regulatory system in place to govern the use of covert investigatory techniques, and so RIPA was introduced in order to address this gap in the law.
4. RIPA sets out a regulatory framework under which public authorities must justify their interference with the Article 8 right. RIPA dictates which covert techniques each public authority is able to use, and for what purposes those techniques can be used.
5. In the Council's case, the only ground on which it may authorise the use of covert techniques and intrude on private and family life is the "legitimate aim", as defined by the 1998 Act, of the "prevention and detection of crime or the prevention of disorder."
6. RIPA dictates that the Council can use the following three covert techniques:

**Directed Surveillance:** Covert surveillance in public places for the purposes of a specific investigation or operation which is likely to obtain private information about a person, and which is undertaken otherwise than as an immediate response to events or circumstances. Examples include observation of movements, photographing or filming, tracking vehicles in person or with recording devices and recording of noise escape from premises.

**Interception of Communications Data:** Information about a communication, such as telephone numbers involved and the time and place a call was made, but not the content of the communication. The same applies in respect of an email. Local authorities are currently permitted to intercept service use data and subscriber data.

**Covert Human Intelligence Sources:** A person authorised by a local authority to establish or maintain a relationship in order covertly to obtain information and disclose it to that local authority. The person acting as a 'CHIS' can be an undercover officer or a tasked informant (eg. a member of the public).

7. It is important to note that if the Council wishes to use any of the above investigatory techniques, it must be sure that it is necessary and proportionate to do so in the circumstances of each individual case.

### **The Council's use of RIPA**

8. At the time of writing, the Council has in 2009 granted one authorisation for the use of directed surveillance in the form of the covert monitoring of the alleged breach of a noise abatement notice issued under the Environmental Protection Act 1990.
9. In 2008 the Council granted two directed surveillance authorisations – one to investigate alleged anti-social behaviour, and the second authorising the covert investigation of another alleged breach of a noise abatement notice. The Council also granted two authorisations in 2007, which again related to alleged breaches of abatement notices.
10. Although the Council is permitted under RIPA to authorise both the interception of communications data and the use of Covert Human Intelligence Sources, it has not done so since RIPA came into force.
11. The Council now authorises Covert Surveillance through the Chief Executive and Strategic Directors.

### **Home Office consultation**

12. Members will be aware that since the beginning of 2008 there has been significant media coverage regarding local authorities' use of these investigatory powers. That publicity has mainly been negative, although much of the reporting has been inaccurate.
13. As a result of the public focus on the use of RIPA, the Government has issued a consultation document with the aim of ensuring that public authorities use these techniques only when it is appropriate to do so. [The consultation document can be viewed at <http://www.homeoffice.gov.uk/documents/cons-2009-ripa>.]
14. The Government has made clear that techniques authorised under RIPA should not be used for trivial purposes, and that in order to ensure local authorities only use those techniques when it is appropriate to do so, it is proposing raising the rank at which authorisations can be granted to "senior executives". It is also considering creating a role for elected councillors in overseeing the way in which local authorities use RIPA. The consultation document also includes two revised codes of practice governing covert surveillance and covert human intelligence sources.
15. Enquiries made with the Home Office have confirmed that the Government is envisaging chief executives and their deputies authorising covert investigations in future, but that it wants to hear from those within local authorities who know how their organisational structures operate. The Home Office is very much aware that the draft code of practice in the consultation document makes clear that those authorising covert techniques must have the necessary level of oversight, judgment and objectivity to validate applications, and they must also have sufficient understanding of operational realities to give them a clear knowledge of what is reasonable and workable.

16. The Home Office has also confirmed that it has in mind a situation where local authority officers regularly report to Members on how and when RIPA is used, and how the Council's resources are deployed, rather than envisaging Members being involved in the actual authorisation process.
17. The Home Office has asked seven questions in the consultation:
  1. Taking into account the reasons for requiring the use of covert investigatory techniques under RIPA set out for each public authority, should any of them nevertheless be removed from the RIPA framework?
  2. If any public authorities should be removed from the RIPA framework, what, if any, alternative tools should they be given to enable them to do their jobs?
  3. What more should we do to reduce bureaucracy for the police so they can use RIPA more easily to protect the public against criminals?
  4. Should the rank at which local authorities authorise the use of covert investigatory techniques be raised to senior executive?
  5. Should elected councillors be given a role in overseeing the way local authorities use covert investigatory techniques?
  6. Are the Government's other proposed changes in the Consolidating Orders appropriate?
  7. Do the revised Codes of Practice provide sufficient clarity on when it is necessary and proportionate to use techniques regulated in RIPA?
18. Your officers' view is that, while the Council has used the RIPA provisions sparingly in recent years, covert surveillance continues to be a valuable tool in respect of investigating criminal activity within the Borough, and that its availability to local authorities should remain. Given that the Council has not authorised the interception of communications data or the use of Covert Human Intelligence Sources, it is difficult to comment on whether these techniques should remain within the RIPA framework.
19. It is not considered appropriate to comment on whether other public authorities should be removed from the framework. Similarly, it is not considered appropriate to comment in respect of question 3.
20. While the reasons for proposing an increase in the level of authorising officer to "senior executive" in all cases, your officers' view is that the Council's current authorising ranks, which accord with the legislation, ensure that authorising officers have the requisite understanding of operational requirements and techniques to give them a clear knowledge of what is reasonable and workable. However, there is scope for the number of authorising officers to be reduced to an absolute minimum so as to ensure strict control and consistency in respect of RIPA authorisations.

21. The Government's proposal regarding oversight by elected Members is a prudent one, and our Executive has agreed that use of RIPA will be reported to it on a regular basis.
22. The Government's Consolidating Orders propose no changes as far as local authorities are concerned. However, the revised codes of practice have been expanded considerably, and your officers consider that the changes made therein provide clearer and more comprehensive guidance than before, thereby ensuring the necessary clarity for local authorities.

### **Conclusion**

23. The Council continues to use covert investigatory techniques sparingly, and only when considered absolutely necessary and proportionate in the circumstances of each individual. Nonetheless, the Government's consultation proposes sensible and appropriate modifications to the way in which local authorities authorise such techniques, and to the codes of practice that guide them.

### **Community Overview and Scrutiny Committee**

24. The Community Overview and Scrutiny Committee considered the report on the Government's Regulation of Investigatory Powers Act 2000 consultation and the Council's use of the RIPA provisions.
25. The Committee engaged in considerable discussion regarding the level required for the authorisation of covert investigations in the future and Members proposed that the techniques authorised under RIPA should only be granted at the highest officer level. This would reduce the number of authorising officers to a minimum so as to ensure the necessary level of oversight, judgement and objectivity to validate applications and enable strict control and consistency in respect of RIPA authorisations.
26. Although the Committee endorsed an oversight by elected members, members did not agree that a senior elected member should be involved in the authorisation of RIPA investigations.
27. The Committee requested an oversight of the policy during the consultation period and an annual report to review decisions taken during that 12-month period.
28. The Committee agreed that the observations be passed to the Executive for their consideration.

### **Recommendation**

It is recommended that the Executive

1. notes the observations of the Community Overview and Scrutiny Committee on the Government's Regulation of Investigatory Powers Act 2000

consultation, and the Council's use of the RIPA provisions and endorses the Council's response as set out at paragraphs 18 to 22 of the report; and

2. requests that all use of RIPA in future be reported to the Executive at its subsequent meeting.

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**Background Papers (CS&P)**

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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