

Report to the Council

Committee: Cabinet

Date: 30 July 2013

Portfolio Holder: Councillor H Ulkun (Support Services)

REGULATION OF INVESTIGATORY POWERS ACT – POLICY AND PROCEDURE

Recommending:

- (1) That the attached Policy and Procedure for dealing with the requirements of the Regulation of Investigatory Powers Act (as amended) (RIPA), be approved;**
- (2) That the Director of Corporate Support Services be appointed as the Senior Responsible Officer and the Assistant to the Chief Executive be appointed as the Deputy Senior Responsible Officer for the purposes of RIPA; and**
- (3) That the Director of Corporate Support Services and the Assistant to the Chief Executive be appointed as Authorising Officers for the purposes of RIPA.**

1. The Regulation of Investigatory Powers Act (RIPA) introduced in 2000, and amended, by the Protection of Freedoms Act 2012 is intended to give lawful authority to certain types of covert surveillance in order to prevent and detect crime which would otherwise have been unlawful and in contravention of the Human Rights legislation. However, it requires such activity to be proportionate to the matter being investigated.

2. Since 2008, the Director of Corporate Support Services and the Assistant to the Chief Executive have been RIPA Officer and Deputy RIPA Officer respectively.

3. This Council has made very limited use of the powers available because it is essential to exhaust all other reasonable methods of seeking evidence before contemplating an application under RIPA.

4. In January 2013, Mr Andrew Mackian on behalf of the Office of Surveillance Commissioners inspected this authority for compliance with the requirements of RIPA. Mr Mackian's report following the inspection acknowledges the Council's approach. It also accepts that based on this approach it is appropriate to limit to two the number of officers with designated responsibilities under the Act.

5. Mr Mackian found that previous recommendations had been implemented but clarified at length what an authorisation could be granted for and has made two additional recommendations. Corporate Governance Group has considered and accepted the recommendations as good practice. This report and the attached Policy are intended to put those recommendations into practice.

6. Mr Mackian's three recommendations concern:

- (a) re-drafting of RIPA guidance notes within a formal procedural document for

formal reporting to elected members of the authority;

(b) the re-introduction of a Central record of authorisations; and

(c) authorisation periods to comply with statutory requirements.

7. The attached Policy and Procedure Document addresses the first recommendation.

The major changes to the process are highlighted below:

(a) RIPA authorisations can now only be sought for investigations into the more serious offences i.e. those carrying a custodial sentence of at least six months; and

(b) in addition to authorisation from one of the two designated officers, application must be made by the officer seeking authorisation to the magistrates' court.

8. We have agreed that the procedure for reporting the use of RIPA authorisations to Members will be through the Corporate Governance Group and the Council Bulletin.

9. We have been informed that the second recommendation is unfortunately worded as it suggests the discontinuance of the Central Register. In fact the spreadsheet used contained the necessary information – it was simply that the last two entries were handwritten. We have been informed that the spreadsheet has now been formally completed and is held and will be updated in future by the Executive Assistant to the Director of Corporate Support Services.

10. Mr Mackian's third recommendation arose from an error in the time period for which the last authorisation was granted. Ultimately the investigation authorised did not take place. The Director of Corporate Support Services had limited the timing for authorisation to three hours either side of midnight on the evening of the operation but this is not permitted by the legislation. The correct procedure is to authorise for the statutory three months and then cancel the authorisation when the operation is complete.

11. This point has been noted by both authorising officers and the timescales are set out clearly in the attached policy.

12. The Director of Corporate Support Services has advised us that she intends to organise and deliver appropriate training courses for both senior and operational officers to raise awareness and ensure the policy is understood and implemented. In addition both of the authorised officers will attend training as appropriate.