

BABERGH DISTRICT COUNCIL

TO: Cabinet	REPORT NUMBER: BCa/19/5
FROM: Cabinet Member for Customers, Digital Transformation and Improvement	DATE OF MEETING: 13 June 2019
FROM: John Snell – Corporate Manager – Internal Audit	KEY DECISION REF NO. CAB114

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) – USE OF LEGISLATION AND UPDATED POLICY

1. PURPOSE OF REPORT

- 1.1 To inform members about issues relevant to the use of RIPA and provide a refreshed policy for approval.

2. OPTIONS CONSIDERED

- 2.1 The Codes of Practice that cover RIPA require the Councils to report the use of its powers under the Act and require Cabinet notification for its policy on the use of RIPA. This report fulfils the Councils' requirements under the Code of Practice. There are no alternative reporting or notification options under the Codes of Practice.

3. RECOMMENDATIONS
3.1 The refreshed Joint RIPA Policy and the changes in respect of officer roles be approved and the change in the judicial oversight in the United Kingdom noted.
REASON FOR DECISION
3.2 The Protection of Freedoms Act requires members to be advised about the use of powers under RIPA and to note the Councils' policy for the use of surveillance.

4. KEY INFORMATION

- 4.1 The attached refreshed Joint RIPA Policy is a high-level document capturing the key elements of the legislation.

Background

- 4.2 On 25th September 2000 RIPA was brought into effect in England and Wales. The purpose of the Act was to ensure that all public authorities were able to carry out directed (covert) surveillance on a statutory basis without breaching The Human Rights Act 1998, Article 8, the right to privacy providing specified procedures are followed. Under RIPA the Home Secretary issues Codes of Practice with which authorising authorities are expected to comply.

- 4.3 On 1st November 2012, the Protection of Freedoms Act 2012 came into effect. This legislation requires local authorities to obtain judicial approval before using RIPA. Since this date, all applications must also be authorised by a Justice of the Peace before they can take effect and the Council has to apply to the Magistrates Court to grant an order approving the authorisation.
- 4.4 On the 1st September 2017, The Office of Surveillance Commissioners, The Intelligence Services Commissioner's Office and The Interception of Communications Commissioner's Office were abolished by the Investigatory Powers Act 2016. The Investigatory Powers Commissioner's Office (IPCO) is now responsible for the judicial oversight of the use of direct (covert) surveillance by public authorities throughout the United Kingdom.
- 4.5 The two Legal officers responsible for acting as the Councils' Senior Responsible Officer and RIPA Co-ordinator left the organisation when the Shared Legal Service was formed. Although it is very unlikely for the Councils to use RIPA, as confirmed by each Council's nil statistical return over the past years, there was a recognition that the existing Joint RIPA Policy should be refreshed and the key roles re-assigned to appropriate officers.
- 4.6 A report was recently presented to the Senior Leadership Team (SLT) and the key roles of the Senior Responsible Officer, RIPA Co-ordinating Officer and Authorising Officers have now been assigned, details of which can be found in Appendix 1 of the attached Joint RIPA Policy.

Performance Monitoring and Training

- 4.7 The IPCO have adopted a more flexible approach to the arrangements for inspections of local authorities as it has become apparent in recent years for a variety of reasons, which have included reduced resources, greater access to data-matching and overt rather than covert law enforcement, that most authorities have granted fewer or no recent surveillance requests.
- 4.8 An appropriate form of inspection is therefore dependent of the Councils' current level of compliance, which may result in:
- No visit by an inspector is necessary on this occasion;
 - Further information or documentation is required before a final decision about a visit is made; or
 - A visit will be undertaken.
- 4.9 On 2nd November 2018 the IPCO advised that based on the information provided the Councils have demonstrated a level of compliance that removes, for the present, the requirement for a physical inspection (Note: the last inspection was carried out in 2015). The IPCO noted that the draft Joint Policy document being presented today was clear and generally comprehensive; and importantly that an all training session had been organised (the training day took place on 13th November 2018 – see paragraph 4.11), which put the Councils in a position to be able to apply the Act in a lawful and efficient way if the need arose.

- 4.10 SLT have nominated the Assistant Director Law & Governance and Monitoring Officer, as the Senior Responsible Officer who is responsible for the integrity of the process in place within the Councils and compliance with the Home Office Codes of Practice. The Corporate Manager – Internal Audit has been nominated as the RIPA Co-ordinating Officer who is responsible for the management and oversight of surveillance requests and authorisations under RIPA.
- 4.11 RIPA training was undertaken on 13th November 2018 and attended by key officers and appropriate operational officers in service areas where covert surveillance could be requested. The one-day training course provided officers with an understanding of the legal regime imposed under RIPA.

5. LINKS TO JOINT STRATEGIC PLAN

- 5.1 The Joint RIPA Policy links to legislative compliance which is mandatory and this Cabinet is responsible for supporting good governance arrangements and practices across the Councils, which underpin the Councils' strategic plan and operational workings.

6. FINANCIAL IMPLICATIONS

- 6.1 There are no direct financial implications arising from this report. The work of the key officers and service areas to undertake directed surveillance and comply with RIPA legislation is contained and managed within the relevant services' revenue budgets.

7. LEGAL IMPLICATIONS

- 7.1 The Legal issues have been set out in the body of the Policy.

8. RISK MANAGEMENT

- 8.1 This report is most closely linked with the Council's Significant Business Risk No. 5f – The Council may be perceived to be untrustworthy and have a poor reputation. Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
Failing to comply with the requirements of RIPA may entail legal and reputational risks for the Councils. Prosecution cases may well fail if the law has not been applied correctly and Human Rights may be breached. It is also likely that the IPCO would criticise the Council for the failure to comply and may lead to direct recommendations from this office.	Unlikely (2)	Bad (3)	Mitigation to all these risks involve having experienced officers in this field with regular returns to the governing body i.e. IPCO, and appropriate training for all relevant officers.

9. CONSULTATIONS

9.1 The SLT and the Service Manager for Shared Legal Services have been consulted in the preparation of this report.

10. EQUALITY ANALYSIS

10.1 When using RIPA legislation, the Council will be required to demonstrate a strong commitment to equality and fairness in their actions and work practices, and adherence to the Equality Act 2010.

11. ENVIRONMENTAL IMPLICATIONS

11.1 When using RIPA legislation, the Council will need to be mindful/aware of any environmental implications.

12. APPENDICES

Title	Location
(a) Joint RIPA Policy	Attached