

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Executive Member for Policy and Resources
Date of Decision:	20 July 2016
Decision Title:	Regulation of Investigatory Powers Act 2000 – Ability of officers to seek judicial approval for authorisations granted for related surveillance activity.
Decision Reference:	7638
Report From:	Director of Culture, Communities and Business Services

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1. Executive Summary

1.1. The purpose of this paper is to seek approval to clarify, and extend, existing authorisations for staff under Section 223 of the Local Government Act 1972, to appear on behalf of Hampshire County Council at Magistrates' Court, in connection with applications made under the Regulation of Investigatory Powers Act 2000 (RIPA).

2. Contextual information

- 2.1. RIPA is the act of Parliament that regulates the County Council's use of covert surveillance. The County Council operates a strict control policy which ensures that only authorised surveillance takes place; where it is lawful, necessary and proportionate to do so.
- 2.2. The current policy was subject to Executive Decision approval on 21 September 2015, item reference 6885. The current statutory Codes of practice made by the Secretary of State for the Home Officer under the Regulation of Investigatory Powers Act 2000 require that each local authority must have their RIPA policy confirmed by Members on an annual basis.
- 2.3. Monitoring of the County Council's activity in respect of the Regulation of Investigatory Powers Act 2000 is conducted by the Audit Committee on a quarterly basis.
- 2.4. Changes to the RIPA landscape from November 2012 introduced a legal requirement for all authorisations under RIPA by local authorities to be subject to judicial approval. Such judicial approval processes are legal

proceedings for which officers attending Magistrates' Court must either have a right of audience, by virtue of their profession, or be authorised under Section 223 of the Local Government Act 1972 to appear on behalf of the County Council.

- 2.5. The majority of the County Council's RIPA activity is conducted by officers of the Trading Standards Service, and as per the current County Council RIPA policy, all RIPA activity is authorised via that Service.
- 2.6. In October 2012 Executive Decision approval, item reference 4237, was given to authorise officers within the Trading Standards Service to appear on behalf of the County Council at Magistrates' Court in respect of judicial approval for RIPA activity. Said authorisation being by virtue of Section 223 of the Local Government Act 1972.
- 2.7. The limited covert surveillance activity undertaken by the County Council falls within three areas:
 - Directed Surveillance
 - Covert Human Intelligence Sources
 - Acquisition and disclosure of communications data
- 2.8 In January 2015 Hampshire County Council joined the National Anti-Fraud Network (NAFN) as a result of further changes to the RIPA landscape affecting the acquisition and disclosure of communications data.
- 2.9 In order to ensure that any authorisations to appear at Magistrates Courts are strictly controlled and remain appropriate and proportionate, detailed recommendations are made with respect to the officers authorised for each of these specific areas of activity. The recommendations made seek to confirm and to a minor degree alter those authorisations made in October 2012. This is not only to reflect current practices in respect of the acquisition and disclosure of communications data but, to reduce the burden upon the Legal & Compliance Team within the Trading Standards Service, who may have other conflicting Court commitments which would unnecessarily delay the acquisition of said data.

3. Finance

- 3.1. The decisions which are sought to be recommended by this report will have no effect upon the budgetary position of Hampshire County Council.
- 3.2. There may, however, be a budgetary impact if the decisions recommended are not made. There would be a need to seek external legal representation in the event that the officers who are already authorised under Section 223 of the Local Government Act 1972, or who have rights of audience by profession, have other prior Court commitments.

4. Impact on Performance

- 4.1. The recommended decisions sought will not only ensure that the County Council complies with the statutory Codes of Practice under RIPA, but, will

also clarify the legal position of the County Council with regards to RIPA authorisations, following the coming into force of the relevant provisions of the Protection of Freedoms Act 2012. This in turn will ensure a smooth and continuous delivery of service by officers of the County Council who are both skilled and competent in the area of law enforcement and associated surveillance activity.

- 4.2. Should the recommended decisions not be made, there will be a negative impact on performance. Investigations will inevitably take longer due to the need to ensure that an appropriately authorised person is available to appear before the Magistrates' Court in connection with a RIPA authorisation. Such delays could impede the work of the Trading Standards Service and thus lead to a failure of the County Council to maintain Hampshire as a place that is safe and secure for all.

5. Recommendation(s)

- 5.1. That with regards to the approval of **directed surveillance** (as defined in RIPA) authorisations and renewals sought by the Trading Standards Service, all officers within the Trading Standards Service who are authorised by the Director of Culture, Communities and Business Services to enforce criminal legislation on behalf of the County Council are also authorised under Section 223 of the Local Government Act 1972 to appear before a Magistrates' Court in connection with the said authorisations and renewals **only**.
- 5.2. That with regards to the approval of **covert human intelligence source** (as defined in RIPA) authorisations and renewals sought by the Trading Standards Service, all officers within the Trading Standards Service who are authorised by the Director of Culture, Communities and Business Services to enforce criminal legislation on behalf of the County Council are also authorised under Section 223 of the Local Government Act 1972 to appear before a Magistrates' Court in connection with the said authorisations and renewals **only**.
- 5.3. That with regards to the approval of **directed surveillance** and **covert human intelligence source** authorisations and renewals sought by any other Service within the County Council, only those officers within the Trading Standards Service Legal & Compliance Team who are authorised by the Director of Culture, Communities and Business Services as prosecutors by virtue of Section 223 of the Local Government Act 1972 are also authorised to appear before a Magistrates' Court in connection with said authorisations.
- 5.4. That with regards to the approval of **acquisition and disclosure of communications data** (as defined in RIPA) authorisations and notices sought by the Trading Standards Service, all officers within the Trading Standards Service who are authorised by the Director of Culture, Communities and Business Services to enforce criminal legislation on behalf of the County Council are also authorised under Section 223 of the Local Government Act 1972 to appear before a Magistrates' Court in connection with the said authorisations and notices **only**.

- 5.5. That with regards to the approval of **acquisition and disclosure of communications data** (as defined in RIPA) authorisations and notices sought by any other Service within the County Council, only those officers within the Legal & Compliance Team who are authorised by the Director of Culture, Communities and Business Services as prosecutors by virtue of Section 223 of the Local Government Act 1972 are also authorised under Section 223 of the Local Government Act 1972 to appear before a Magistrates' Court in connection with the said authorisations and notices only.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	Yes
Corporate Business plan link number (if appropriate):	
Maximising well-being:	Yes
Corporate Business plan link number (if appropriate):	
Enhancing our quality of place:	No
Corporate Business plan link number (if appropriate):	

Other Significant Links

Links to previous Member decisions:		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
Regulation of Investigatory Powers Act 2000 – Annual Review and Confirmation of Existing Policy with Regards to Surveillance	6885	21 Sept 2015
Regulation of Investigatory Powers Act 2000 - Approval for authorisations granted for related surveillance activity and of existing policy	4237	5 Oct 2012
Direct links to specific legislation or Government Directives		
<u>Title</u>	<u>Date</u>	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

IMPACT ASSESSMENTS:

1. Equalities Impact Assessment:

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2. Equalities Impact Assessment:

No adverse impact

2. Impact on Crime and Disorder:

2.1. Efficient arrangements for seeking judicial approval of authorisations assists with efficient and effective enforcement of legislation.

3. Climate Change:

a) How does what is being proposed impact on our carbon footprint / energy consumption?

No impact

b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

Not relevant.