

# Corporate Overview and Scrutiny Management Board

12 October 2018

## Regulation of Investigatory Powers Act 2000 – Annual Review of the Council’s use of powers



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### Report of Helen Lynch, Head of Legal and Democratic Services

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#### Purpose of the Report

1. To inform Members about the Council’s use of powers under the Regulation of Investigatory Powers Act 2000 (‘RIPA’) during the period 1 April 2017 until 31 March 2018 and to notify Members of the outcome of the Council’s inspection by the Investigatory Powers Commissioner’s Office (IPCO).

#### The Council’s use of RIPA for the period 1 April 2017 - 31 March 2018

2. The table below provides details of RIPA authorisations that have been granted by the Council during the period 1 April 2017 to 31 March 2018. Authorisations must be approved by the Magistrates, who ensure that the correct procedures have been followed and relevant factors have been taken into account.

Type of Investigation	Number of Authorisations during the period 1 April 2017 – 31 March 2018
Illicit tobacco products	4 x Directed Surveillance, 2 CHIS (Covert Human Intelligence Source)
Alcohol Test Purchasing	4 x Directed Surveillance
Fireworks	1 Directed Surveillance, 1 CHIS
Animal Sales	1 Directed Surveillance
Counterfeit goods	1 CHIS
	<b>Total 14</b>

3. The council’s use of its powers under RIPA has decreased since the previous year, with 14 RIPA authorisations granted in 2017 – 18 compared with 18 in 2016-17.

4. In relation to illicit tobacco products, this has resulted in enforcement actions which have secured a closure order against an offending retail outlet, the surrender of the alcohol premise licence and a change of ownership of the business. The criminal offences are yet to be heard in court.
5. Further tobacco related investigations where surveillance and purchasing has taken place under RIPA are the subject of pending legal proceedings in the courts.
6. A matter for which covert RIPA activity was authorised and undertaken prior to the current reporting period has now been before the courts, in May 2018. This resulted in four members of a Seaham family being sentenced to a total of five years and two months' imprisonment for running an enterprise selling illegal tobacco with a turnover of approximately £1.2 million over a three year period.
7. The test purchasing of alcohol in targeted test purchase operations to identify under age sales has resulted in two premises being taken before the Licensing Committee for Licence Reviews with more stringent conditions being put in place. Ongoing monitoring will test the effectiveness of these measures.
8. Investigations into the sale of fireworks and in another case counterfeit clothing via the internet resulted in two defendants being issued Cautions for the offences detected.

### **The Council's RIPA Inspection by the Investigatory Powers Commissioner's Office**

9. On 20 February 2018 the Council was inspected by the Investigatory Powers Commissioner's Office (IPCO) and a copy of the inspection report is attached at **Appendix 2**.
10. The inspection report was very positive. It makes two recommendations and the Senior Responsible Officer and Authorising Officers have taken the necessary steps to implement the recommendations identified within the report. These can be summarised as follows:

**Recommendation 1** – Authorising Officers should articulate clearly in authorisations their considerations in relation to Proportionality and Collateral Intrusion. The key points to consider are outlined clearly at Paragraphs 3.6 and 3.8 in the Codes of Practice (Covert Surveillance and Property Interference)

**Action Taken** –This feedback has been taken on board by Authorising Officers in terms of documenting greater detail on considerations of necessity and proportionality. Guidance on this matter is also available to Authorising officers within the revised Codes of Practice and the Commissioner’s Guidance Documents.

**Recommendation 2** – The SRO should satisfy herself that any CHIS application is accompanied by an appropriate risk assessment. The assessment should allow the Authorising Officer to assess the risk in relation to deploying that particular individual as a CHIS

**Action Taken** – Following this feedback, the processes relating to the management of a CHIS are to be revised and updated. Further guidance is to be provided covering the role of the positions of CHIS Handlers and Controllers in overseeing the suitability, health and safety and ongoing welfare of persons acting in the capacity of a CHIS. This is an ongoing requirement, keeping the risk assessment and health and safety matters under review. Further guidance is also being sought on this recommendation from Durham Police.

## **Training**

11. The Investigatory Powers Commissioner’s Office, which oversees the use of covert surveillance by designated public authorities, places a high value on training. RIPA training was last held in September 2017. New training options are currently being sought. This will consider raising awareness of staff around the use of social media within their work role , and new methods of training delivery such as E-Learning.

## **Review of the Council’s Corporate Guidance on RIPA**

12. Usually the council’s Corporate Guidance on RIPA is reviewed simultaneously with producing this Annual Report. The IPCO inspection report noted that the Guidance document dated September 2017 is “an excellently written and comprehensive document”. Nevertheless it does require updating.
13. Minor updates are required to account for legislative and institutional changes, such as recent data protection legislation and the demise of the OSC and its replacement by IPCO
14. Further updating will address the evolving use of technology, social media and other platforms and the use of Drones.

15. The IPCO inspection report noted (at paragraph 10.1) that the SRO had commissioned an audit across the organisation concerning the use of social media in covert investigations. This audit has recently been completed, and a comprehensive revision of the Corporate Guidance document as it relates to social media use (Section F of the present version) is considered to be necessary. This is presently in hand, and revised Corporate Guidance will be brought to a future meeting of the Board.

### **Recommendations and Reasons**

16. It is recommended that Members:
- (i) Receive the annual report on the Council's use of powers under RIPA; and
  - (ii) Note the outcome and the findings of the recent IPCO Inspection, and the measures being taken to implement the recommendations.

### **Background Papers**

IPCO Inspection Report 2018

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## **Appendix 1: Implications**

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**Finance:** None

**Staffing:** None

**Equality and Diversity:** None

**Accommodation:** None

**Crime and Disorder:** The appropriate use of an oversight of RIPA powers will enable the Council to provide evidence to support appropriate prosecutions and tackle crime.

**Human Rights:** Use of investigatory powers potentially engages the Human Rights Act 1998 and in particular the qualified right to private and family life under article 8 of the European Convention. This right may only be interfered with in circumstances where it is necessary and proportionate to do so in pursuit of the public interest. Oversight by the Board of the Council's RIPA operations is designed to facilitate compliance with the Human Rights Act.

**Consultation:** None

**Procurement:** None

**Disability Discrimination Act:** None

**Legal Implications:** The Council's objective is to make lawful and appropriate use of surveillance techniques where required whilst complying with the provisions of the Human Rights Act 1998 and in particular the provisions of Article 8 of the ECHR securing respect for an individual's (qualified) right to privacy.