

**REGULATION OF INVESTIGATORY POWERS ACT - SCHEME OF DELEGATIONS
AND AMENDMENT TO THE PLANNING CODE OF PRACTICE.**

Relevant Portfolio Holder	Councillor P Mould, Portfolio Holder for Corporate Management
Portfolio Holder Consulted	No
Relevant Head of Service	Claire Felton
Ward(s) Affected	All
Ward Councillor(s) Consulted	N/A
Non-Key Decision	

1. SUMMARY OF PROPOSALS

- 1.1 Council is asked to note the changes to the Regulation of Investigatory Powers Act (RIPA) affecting the Council and approve a delegation to the Head of Legal Services to authorise Officers to appear in Court proceedings on the Council's behalf, including for the purposes of the new RIPA requirements and approve the resulting amendment to the Scheme of Delegations which forms part of the Constitution; and
- 1.2 Approve an amendment to the Planning Code of Practice to reflect Shared Service arrangements beyond the Redditch Borough Council and Bromsgrove District Council agreement.

2. RECOMMENDATIONS

The Council is asked to RESOLVE that:

- 1) the changes to how the Council conducts investigations under the Regulation of Investigatory Powers Act 2000 (RIPA) be noted;**
- 2) the Head of Legal Services be delegated authority to authorise Officers to appear on the Council's behalf in Court proceedings, including as required as a result of the changes to RIPA procedures;**
- 3) the addition to the Council's Planning Code of Practice as set out in Appendix 1 be approved; and**
- 4) the Head of Legal Services be authorised to make the necessary changes to the Scheme of Delegations and the Planning Code of Practice within the Council's Constitution to reflect the decisions at 2) and 3), above.**

3. KEY ISSUES

Financial Implications

- 3.1 There are no direct financial implications arising from this report.

Legal Implications

- 3.3 Sections 37 and 38 of The Protection of Freedoms Act 2012 introduced a requirement for a Justice of the Peace to approve authorisations and notices under the RIPA for the use of particular covert surveillance techniques before they can be given effect.
- 3.4 To obtain such approval, Officers of the Council will have to appear in the Magistrates Court and to do so such Officers will have to be appointed under Section 223 of the Local Government Act 1972.
- 3.5 The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2012 restricts the use of directed surveillance under RIPA to serious offences (as defined) and for offences involving underage sale of alcohol and tobacco.
- 3.6 The Local Government Act 1972 (as amended) gives a general power to local authorities to discharge functions through Officers (s101). Local authorities are required by s100G (as amended) to maintain a list – the Scheme of Delegations – specifying those powers of the Council which for the time being are exercisable from time to time by Officers of the Council.
- 3.7 The Planning Code of Practice currently reflects the shared service arrangements between Redditch Borough Council and Bromsgrove District Council but does not include Officers now employed by other local authorities providing services to RBC and BDC. For example, Economic Development Officers are now employed by Wyre Forest District Council and Officers within the Audit Service are employed by Worcester City Council. This will ensure consistent and fair processing of planning applications made to BDC and RBC by Officers employed by those other authorities

Service / Operational Implications

RIPA

- 3.8 The Regulation of Investigatory Powers Act (RIPA) 2000 enabled public authorities to authorise the conduct of certain types of surveillance to investigate crimes, strictly in compliance with the legislation itself and Codes of Practice.
- 3.9 The Policy was adopted on 24 November 2004 and delegated authority granted to the Head of Legal Services to carry out all necessary action to ensure that the

Office of the Surveillance Commissioner, which oversees surveillance activity, is satisfied with the Council's policy and procedures in respect of RIPA.

3.10 The Council has not exercised these powers very often. In the last five years there have been four authorisations under RIPA: To date in 2012 one authorisation has been granted; there was one authorisation in 2011 and 2010, none in 2009 and one in 2008.

3.11 However, a number of Local Authorities have over the years been criticised for disproportionate use of surveillance techniques and as a result two major changes to the regime came into force on **1 November 2012**:

1. Amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2012 mean that a local authority can now only grant an authorisation under RIPA for the use of directed surveillance:

i) to prevent or detect serious criminal offences i.e. offences that are punishable by a maximum term of at least 6 months' imprisonment; or

ii) offences related to the underage sale of alcohol and tobacco.

and

2. The Protection of Freedoms Act 2012 provides that local authority authorisations and notices under RIPA for the use of particular covert techniques can only be given effect once an Order approving the authorisation or notice has been granted by a Justice of the Peace.

The combined impact of these changes is likely to result in even fewer RIPA authorisations being sought by the authority.

3.12 To obtain an Order under the Protection of Freedoms Act, an application will have to be made to the Magistrates Court and an officer of the authority will be required to participate in the proceedings before the Magistrates for the consideration of the Authorisation by the Court. It is envisaged by the Government Guidance that the case investigator will be able to fulfil this role.

3.13 At present there is no delegation that enables officers to be appointed to appear on the Council's behalf in proceedings before a Magistrates Court so to enable such an appointment to be made for RIPA purposes (and other Magistrates' Court Matters) a delegation is sought to the Head of Legal, Equalities and Democratic Services.

Planning Code of Practice

- 3.14 The current Planning Code of Practice does not include provisions regarding the processing of applications for planning consents made to the Council by Members or Officers and Officers currently working for either Bromsgrove District Council or Redditch Borough Council under shared service arrangements to provide that such applications should not be dealt with under delegated powers and should instead be decided by the Planning Committee.
- 3.15 There are also shared-service arrangements in place whereby other local authorities provide services for or on behalf of the Council whose Officers are not currently affected by this provision in the Code of Practice. For example, shared Economic Development and Land Drainage Services are hosted by Wyre Forest District Council, the Audit Service is hosted by Worcester City Council and Property Services are provided by Worcestershire County Council.
- 3.16 To ensure that the same safeguards apply to Members, and Officers who are employed in the shared service with Bromsgrove District Council or by any authority providing services to the Council under a shared service arrangement, the amendment to the Planning Code of Practice, as set out in Appendix 1, is proposed.

Customer / Equalities and Diversity Implications

- 3.17 The recommendation will have minimal impact on internal/external customers. No Equality and Diversity implications have been identified.

4. RISK MANAGEMENT

- 4.1 The main risks associated with the details included in the report are failure to implement good governance arrangements to ensure compliance with legislation and good practice, which may expose the Council to the risk of criticism by the Office of the Surveillance Commissioner (in respect of RIPA) or challenge by way of judicial review or appeal and which may result in awards of damages and costs against the Council and loss of reputation.

5. APPENDICES

Appendix 1 - Planning Code of Practice

6. BACKGROUND PAPERS

The Council's Constitution.

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