



# COVERT SURVEILLANCE POLICY

Compliant with the Human Rights Act 1998, Regulation of Investigatory Powers Act 2000, Protection of Freedoms Act 2012 and Crime and Court Act 2013

<b>Version Control:</b>	
<b>Document Name:</b>	Covert Surveillance Policy
<b>Version:</b>	Version 4.0
<b>Author:</b>	Corporate Support Manager
<b>Approved by:</b>	Full Council
<b>Date Approved:</b>	October 2018
<b>Review Date</b>	31 <sup>st</sup> July 2021

## Policy Statement

Barrow Borough Council will apply the principles of the Regulation of Investigatory Powers Act 2000 (RIPA) to all activities where covert surveillance or Covert, human intelligence sources are used.

RIPA sets out a regulatory framework for the use of covert investigatory techniques by public authorities. RIPA does not provide any powers to carry out covert activities. If such activities are conducted by Council officers, then RIPA regulates them in a manner that is compatible with the European Convention on Human Rights (ECHR), particularly Article 8; the right to respect for private and family life.

The Human Rights Act 1998 requires that all actions which may potentially breach an individual's human rights are:

- Proportionate
- Necessary
- Non-discriminatory
- lawful

The Council may use two techniques for detecting and preventing a crime:

- **Directed Surveillance:** covert surveillance in places other than residential premises or private vehicles (**Council officers cannot conduct intrusive surveillance in a residential premises or private vehicle**)
- **Covert Human Intelligence Source (CHIS):** includes undercover officers, public informants and people who make test purchases

## Restrictions of RIPA

The Protection of Freedoms Act 2012 (in particular a statutory instrument made under the Act) restricts the use of RIPA to conduct that would constitute a criminal offence which is punishable by a maximum custodial sentence of 6 months or more. This effectively restricts the use of RIPA to circumstances when the conduct is considered to be serious criminal conduct, by reference to sentencing powers. There are some limited exceptions to the 6 month rule, set out in statutory instrument. These are:

- The sale of alcohol to children (S.146 of the Licensing Act 2003)
- Allowing the sale of alcohol to children (S.147 of the Licensing Act 2003)

- Persistently selling alcohol to children (S.147A of the Licensing Act 2003)
- The sale of tobacco to persons under 18 years of age (S.7 Children and Young Persons Act 1933)

Use of these techniques has to be authorised internally by an authorising officer or a designated person at Head of Service or equivalent level. They can only be used where it is considered necessary (e.g. to investigate a suspected crime or disorder) and proportionate (e.g. balancing the seriousness of the intrusion into privacy against the seriousness of the offence and whether the information can be obtained by other means).

The relevant Codes of Practice should be referred to for further information on the scope of powers, necessity and proportionality.

<http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-codes-of-practice/>

Each covert surveillance operation involving directed surveillance and covert human intelligence sources must be authorised internally in writing using the standard forms application forms approved by the Secretary of State provided. The authorisation forms are available on the Council's intranet:

In addition to the internal authorisation process an application must also be externally authorised by a Magistrate. No investigation can commence until both internal and external authorisations have been given.

The Council will ensure that all Officers who are involved in surveillance and granting of authorisations are aware of the procedures to be followed, and that appropriate training is given.

Authorising officer should not be responsible for authorising investigations or operations in which he is directly involved, although it is recognised that this may sometimes be unavoidable.

The Council's Authorising Officer is Assistant Director - Community Services

## **Social media**

Social media is now an embedded form of communication and one that public authorities may use for investigative purposes. There is now a heightened awareness that this media is being used and it is advisable that we consider authorisations under RIPA before undertaking such investigations. It can be argued that information made publicly available in this medium cannot be considered private, however, the Office of Surveillance Commissioners remain of the view that the repeat viewing of individual "open source" sites for the purpose of intelligence gathering and data collation should be considered within the context of the protection that RIPA authorisation provides.

The Council is preparing social media guidelines to advise staff on appropriate use of this media.

## **Time limits**

Any authorisations granted for directed surveillance will cease to have effect at the end of the period of three months beginning with the date on which it took effect. Covert human intelligence source authorisations will cease to have effect after a period of 12 months beginning with the day on which the grant takes effect.

Any request for a renewal will be fully investigated, but in any event must be approved by a Line Manager before submission for authorisation. The renewal will also require approval by a magistrate.

## **Reviews**

Reviews of Authorisations should be undertaken following any significant occurrence or within one calendar month of the authorisation commencing. Details of the review should be recorded on the review form:

## **Cancellation**

If the conditions for surveillance being carried out are no longer satisfied, and the authorisation period has not ended, a cancellation form must be completed and all those involved in the surveillance should receive notification of the cancellation, which must be confirmed in writing at the earliest opportunity.

## **Records**

The designated officers are responsible for recording use of the powers under the legislation and for retaining the necessary documentation. A central record of surveillances undertaken will also be kept with the Corporate Support Manager. This will include all authorisation, review and cancellation forms. Authorisation forms will be kept for three years from the end of the authorisation period and then destroyed.

## **Monitoring and Review**

The Executive Director or his designated officer will review the authorisations held on the central file on an annual basis to ensure that the Act is being used consistently with the policy and that the policy remains fit for purpose and that authorisation forms are being correctly completed.

The Office of the Surveillance Commissioner has set up an Inspectorate to monitor the various authorities' compliance with the Act. For local authorities the first point of contact for the Inspectors will be the Executive Director.

## Authorisation Procedures

At the start of an operation Council officers will need to satisfy themselves that what they are investigating is a criminal offence which is punishable by a maximum custodial sentence of 6 months or more. The exceptions being:

- The sale of alcohol to children (S.146 of the Licensing Act 2003)
- Allowing the sale of alcohol to children (S.147 of the Licensing Act 2003)
- Persistently selling alcohol to children (S.147A of the Licensing Act 2003)
- The sale of tobacco to persons under 18 years of age (S.7 Children and Young Persons Act 1933)

The Protection of Freedoms Act guidance specifically states that RIPA authorisations should not be used for: littering, dog control and fly-posting, however, overt techniques may be used for these offences.

The covert surveillance operation involving directed surveillance and covert human intelligence sources must be authorised internally using the standard forms provided and a unique reference number should be obtained from the Corporate Support Manager

<http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-forms/>

The investigator should contact the administration officer at Her Majesty's Courts and Tribunal Service (HMCTS) at the magistrate's court to arrange a hearing. The investigator should attend the hearing with the authorised RIPA form, a Judicial Approval application form and any supporting material.

If the authorisation is approved by the magistrate the investigator may use covert techniques. If the authorisation is refused the investigator may not use covert techniques and must investigate the case using other means.

In exceptional circumstances out of hours access to the magistrate may be gained via HMCTS staff in this case two copies of the authorisation form and a Judicial Approval form will be required.

Once internal and external approval have been granted the operation may commence.

Reviews of Authorisations should take place every four weeks or sooner if the risk of obtaining private information or of collateral intrusion is high and in accordance with the circumstances of the case.

A Review will take place by an applicant completing a Review Form which is located intranet before the date for review and forward the form to the Authorising Officer for consideration.

<http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-forms/>

Records of the review should also be forwarded to the Corporate Support Manager for inclusion onto the central file.

If your authorisation time period is about to end, it will be necessary to complete a renewal form and forward this to the relevant authorising officer who will then consider whether the grounds for authorisation still exist. If the authorising officer agrees to extend the authorisation period Judicial Approval by a magistrate will be required.

The renewal form is available on the intranet

<http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-forms/>

The renewal forms should be to the Corporate Support Manager for retention in the central record.

If the conditions for surveillance being carried out are no longer satisfied, and the authorisation period has not ended, a cancellation form must be completed and all those involved in the surveillance should receive notification of the cancellation, which must be confirmed in writing at the earliest opportunity.

The cancellation form is available on the intranet

<http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-forms/>

The completed cancellation forms should be forwarded to the Corporate Support Manager for retention in the central record.

To ensure that the Central Retrievable record is up to date, and to allow proper central oversight, it is important that all applications approved and any subsequent renewals, extensions or cancellations are forwarded to the Policy Review Officer

The Central Retrievable record and copy authorisations are kept for a period of three years from the date of the end of the authorisation.

All Original and copy documents shall be destroyed after a period of three years from the date the authorisation comes to an end. Regular reviews should take place to ensure that retention and destruction take place appropriately.

## **Monitoring and Review**

Officers who made applications for Authorisations and Authorising Officer should monitor any Authorisation and keep them under review. Consideration should also be given by applicant officers and authorising officers as to whether Authorisations should be cancelled or renewed. Decisions should be recorded in addition to the reasons for those decisions.

In addition to the above review mechanism the Executive Director or his designated officer will review the authorisations held on the central file on an annual basis to ensure that the Act is being used consistently with the policy and the policy remains fit for purpose and that authorisation forms are being correctly completed.

The Office of the Surveillance Commissioner has set up an Inspectorate to monitor the various authorities' compliance with the Act. For local authorities the first point of contact for the Inspectors will be the Executive Director.