

3. POLICY FOR COVERT SURVEILLANCE (A1516/LT)

1 Purpose of the report

- 1.1 To outline the provisions of the Regulation of Investigatory Powers Act 2000 and to recommend that, whilst the Act does not specifically apply to the Authority, the draft Policy for Covert Surveillance at Annex 1 be adopted by the Authority.

2 Recommendations

- 2.1 **The Policy for Covert Surveillance at Annex 1 of this report be considered and adopted by the Authority, to come into force on 1 April 2009.**

- 2.2 **The Head of Planning (in respect of planning matters) and the Head of Field Services (in respect of Access matters) and, in their absence or in cases where they are personally involved in the investigation, the Director of Strategy & Development and the Director of Operations, be designated as Authorising Officers for the purposes of RIPA to authorise any covert surveillance in accordance with the Policy.**

- 2.3 **The Authorising Officers and all other officers who may potentially undertake covert surveillance be trained on the new Policy and relevant aspects of RIPA.**

3 How does this contribute to our policies and legal obligations?

- 3.1 The action is proposed in order to assist the Authority to enforce the law, and ensure that any covert surveillance the Authority undertakes complies with best practice and is less susceptible to challenge.

4 Background

- 4.1 The Regulation of Investigatory Powers Act 2000 (RIPA) governs (amongst other things) how certain public bodies should undertake covert surveillance of individuals and their property. Although National Park Authorities were not included as one of the bodies required to comply with RIPA, during the Audit Review of 2007/8 the Auditors recommended that the Authority should adopt RIPA as a best practice model and determine standards and authorisation frameworks which ensure any surveillance complies with best practice in this sensitive area.

- 4.2 Officers have obtained advice from the Chief Surveillance Commissioner, as it was unclear whether the lack of protection of RIPA would render any evidence obtained covertly unlawful, and whether the Authority should be attempting to persuade Government to include National Park Authorities within the scope of RIPA in order to enjoy the protection of the Act. The Chief Surveillance Commissioner has confirmed that:

- National Park Authorities are not listed in the Act, so it is not possible for them to enjoy the protection which the Act provides
- The absence of a RIPA authorisation does not render covert surveillance unlawful and the product of unauthorised surveillance can be tendered as evidence in court. It is for a trial judge to decide whether admitting such evidence is fair and he or she might well do so if the Authority could show that it had managed its covert activity in the ways indicated in RIPA and the Codes of Practice.
- It is open to the Authority to make representations to the Home Office that it should be added to the authorities identified in the Act

- 4.3 Officers of the Authority involved with the investigation of potential criminal offences, such as breaches of enforcement and stop notices, harm to listed buildings, breaches of tree preservation orders, breaches of advertisement regulations and some activities under the CROW Act, have to obtain evidence for the purposes of enforcement and prosecution. Rarely, such evidence may have to be obtained in a covert manner. If this covert surveillance is “Directed Surveillance” as defined in the Act (see paragraph 4.8 below), officers will need to comply with the Draft Policy.
- 4.4 The main purposes of RIPA are to ensure that the relevant investigatory powers are used in accordance with the Human Rights Act 1998 (which imposes a duty to act compatibly with the European Convention on Human Rights). Article 8 of the Convention, for example, states that everyone has a right to respect for his private and family life, his home and his correspondence, and that a public authority can only interfere with those rights if it is lawful to do so. Article 6 is relevant in the context of covert surveillance, in that everyone has the right to a fair trial, and fairness extends to the way in which evidence is obtained. Consequently, a public authority cannot interfere with those rights except where such interference is in accordance with the law and is necessary in a democratic society in the interests of:
- national security
 - public safety or the economic well-being of the country
 - the prevention of disorder or crime
 - the protection of health or morals
 - the protection of the rights and freedoms of others.
- 4.5 RIPA seeks to ensure that when undertaking investigatory work public bodies will conform with Convention Rights.
- 4.6 RIPA covers a number of activities of public bodies, the only one relevant to the Authority’s activities being “Directed Surveillance”.
- 4.7 “Surveillance” is widely defined as covering monitoring, observing, listening to persons, recording or undertaking any other form of surveillance with the assistance of a device such as a camera or microphone.
- 4.8 “Directed surveillance” is defined as surveillance which is “covert” but not “intrusive”, and is undertaken:
- i) for the purposes of a specific investigation/operation
 - ii) in such manner as is likely to result in the obtaining of private information about a person, and
 - iii) otherwise than by way of an immediate response to events such that it would not be reasonably practicable for authorisation to be sought.
- 4.9 “Covert” surveillance is surveillance which is carried out in a manner calculated to ensure persons are unaware it is or may be taking place.
- 4.10 “Intrusive” surveillance is covert surveillance carried out in relation to anything taking place on any residential premises or in any private vehicle by an individual on the premises or in the vehicle or is carried out by means of a surveillance device. Local authorities are not authorised to conduct intrusive surveillance and for this reason this aspect is not included in the Draft Policy document.
- 4.11 Covert Surveillance is only caught by the Act if it is likely to result in the obtaining of “private information” about a person. In most cases, the Authority will be conducting surveillance over commercial premises or in connection with commercial activities. However, there is no definition in the Act of “private information”, and it is felt that the Authority should follow the Draft Policy in respect of any covert surveillance it proposes to undertake.

4.12 RIPA provides that Directed Surveillance is lawful for all purposes if it is authorised in accordance with the Act (and its associated regulations and Code of Practice), and is undertaken in accordance with the authorisation.

5 Proposals

5.1 In the light of the Auditors' recommendations and the Chief Surveillance Commissioner's comments, officers consider that the Authority should adopt the Draft Policy, in an attempt to provide the maximum possible protection in the limited number of cases in which the Authority may use covert surveillance, and to ensure that any evidence obtained is fair and admissible. However, it is not considered necessary to seek to be added to the list of authorities covered by the Act. This would require a Statutory Instrument to be approved by both Houses of Parliament, would take a significant amount of time and it is considered that the Authority would be sufficiently protected by implementing a covert surveillance policy which accords with RIPA.

5.2 The main requirements of the RIPA legislation are that:

- the surveillance should be authorised by designated officers sufficiently trained to give authorisations in accordance with the Act
- the surveillance should be necessary on certain grounds, such as detecting or preventing crime or preventing disorder
- the surveillance is proportionate to what it seeks to achieve
- there should be a central register of authorisations

These matters are all dealt with in the Draft Policy.

5.3 The persons who can be designated as authorising officers in respect of the various bodies covered by the Act are prescribed by Statutory Instrument. Given that National Park Authorities are not within the scope of the Act, no officers are prescribed, however in the case of County and District Councils the relevant persons are the Assistant Chief Officer, Assistant Head of Service, Service Manager or equivalent, or persons with more senior positions than these. It is therefore proposed that the authorising officers should be the Head of Planning and the Director of Strategy & Development (in respect of planning matters) and the Head of Field Services and the Director of Operations (in respect of Access matters).

6 Are there any corporate implications members should be concerned about?

6.1 Financial:

The Draft Policy has been prepared within existing resources. Although resources will be required for training, it is considered that this can be done within current budgets. Given that officers do not believe that the Authority will need to undertake many covert surveillance operations, implementation of the new policy will not impact greatly on resources after the training of officers has been completed.

6.2 Risk Management:

It is believed that by adopting the Draft Policy on covert surveillance as a best practice model in accordance with the Auditors' recommendations, the Authority will limit the scope for any unlawful covert surveillance and for the opportunity for such activities to be challenged under the Human Rights legislation.

6.3 Sustainability:

Not applicable.

Report Author, Job Title and Publication Date

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Background Papers - None