

POLICY TITLE

The Regulation of Investigatory Powers Act 2000

POLICY AIM

To ensure that the Borough Council of King's Lynn and West Norfolk (the Council) and its officers when undertaking covert investigative activities which may interfere with a person's right to respect for private and family life, home and correspondence, do so in such a way that is compatible with the European Convention on Human Rights (ECHR) and the Human Rights Act 1998 (HRA).

EXECUTIVE SUMMARY

This Policy and the associated procedures are intended to ensure that investigations undertaken by the Council are conducted in accordance with the requirements of Regulation of Investigatory Powers Act 2000 (RIPA). RIPA ensures that when the Council needs to use covert investigation techniques, which by their very nature may otherwise be in breach of the HRA and ECHR, they are placed on a legitimate footing and that appropriate controls are put in place to ensure that the activities are properly controlled and monitored. It should be noted that these powers are only available in more serious cases and where other investigative methods are not appropriate or have been unsuccessful.

RIPA allows Local Authorities to carry out Directed Surveillance (surveillance of an individual/s for a specific purpose without their knowledge), use a Covert Human Intelligence Source (use of informants or undercover officers) and access communications data (obtaining subscriber information of a telephone number or internet user etc) provided the investigatory activity is lawful, necessary, proportionate and non-discriminatory.

The requirements of the ECHR, HRA and RIPA impact on any officers of the Council who undertake investigatory or enforcement activities. This policy requires that all officers undertaking investigative activities only do so in accordance with the requirements set out by the Regulation of Investigatory Powers Act 2000 and its associated codes of guidance.

This policy covers the broad principals behind RIPA and general responsibilities of the Council, with the finer details, including interpretation of the law and procedures, being recorded in separate procedural guidelines. The rationale for this is to allow any changes in the law and procedure to be updated as and when necessary with greater efficiency.

POLICY STATEMENT

Article 8 of the ECHR serves to protect an individual's right to respect for his private and family life, his home and his correspondence. This is incorporated in to English law by the HRA. Furthermore, a right of action for breach of convention rights is available in English law by the Human Rights Act 1998.

However, article 8 is not an absolute right but a qualified right, and therefore in some circumstances the Council can override this right and carry out investigative activities which would otherwise amount to a breach of an individual's right to privacy. However, in order to do so then principles set out in article 8.2 must be complied with. Essentially, the proposed investigatory activity must be:

- Lawful;
- Proportionate;
- Necessary; and
- Non-discriminatory.

RIPA provides a clear statutory mechanism for the operation of certain investigative techniques which would otherwise be a breach of the ECHR and HRA, thus making such investigative techniques lawful. It further seeks to ensure that any interference with an individual's rights under Article 8 is necessary and proportionate and in doing so, ensures that both the public interest and human rights of individuals are suitably balanced.

The purpose of RIPA as it affects the Borough Council of King's Lynn and West Norfolk is to regulate:

- The carrying out of directed surveillance;
- The use of covert human intelligence sources; and
- Accessing communications data.

The Home Office have published a number of Statutory Codes of Practice which complement and supplement the Regulation of Investigatory Powers Act 2000. These Codes of Practice are sanctioned by the Regulation of Investigatory Powers Act 2000, and are admissible as evidence in criminal and civil proceedings:

- Covert Surveillance and Property Interference;
<https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice>
- Covert Human Intelligence Sources;
<https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice>
- Acquisition and Disclosure of Communications Data
<https://www.gov.uk/government/publications/code-of-practice-for-the-acquisition-and-disclosure-of-communications-data>
- Retention of Communications Data
<https://www.gov.uk/government/publications/code-of-practice-for-the-acquisition-and-disclosure-of-communications-data>

The requirements of RIPA, ECHR and HRA apply to all Council employees and external agencies working on behalf of the Council who undertake investigatory or enforcement activities.

Compliance with RIPA and the associated processes and procedures therefore serves to provide protection to the Borough Council of King's Lynn and West Norfolk **and to the individual officers involved** against claim, either in civil proceedings or a complaint to the Local Government Ombudsman or the Investigatory Powers Tribunal, by persons who

maintain that their right to privacy afforded article 8 has been breached. Such compliance further ensures that any evidence obtained throughout the investigation is admissible in any subsequent legal proceedings. It is therefore crucial that all officers of the Council undertaking an investigation which may unduly interfere with a person's right to privacy adhere to the requirements of RIPA.

In recognition of its responsibilities and duties under the European Convention on Human Rights, the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000 the Council shall:-

1. Ensure that all officers involved with enforcement or who may undertake investigatory activities are aware of and comply with the requirements and duties contained in the Regulation of Investigatory Powers Act 2000 and the associated Codes of Practice;
2. Ensure that all other statutory requirements associated with The Regulation of Investigatory Powers Act 2000, including the retention and handling of material obtained through surveillance and record keeping, are complied with.
3. Have in place detailed and up to date procedures in respect of Directed Surveillance, the use of Covert Human Intelligence Source and accessing Communications Data which shall be widely available and made known to relevant officers. These procedures shall be maintained and updated from time to time by the Borough Council of King's Lynn and West Norfolk's Legal Representatives.
4. Ensure appropriate training is made available to all officers involved with enforcement or who may undertake investigatory techniques and authorising officers.

AUTHORISED OFFICERS

The following officers are authorised officers for the purposes of RIPA:

- Ray Harding – Chief Executive
- Debbie Gates – Executive Director, Central Services
- Geoff Hall – Executive Director, Development Services