



RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

CABINET

16TH OCTOBER 2018

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) - USE OF RIPA IN 2017-18 BY RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL AND THE COUNCIL'S CORPORATE ENFORCEMENT POLICY

DISCUSSION PAPER OF THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES IN DISCUSSIONS WITH THE DEPUTY LEADER, CLLR WEBBER

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1. PURPOSE

- 1.1 To enable Members to review the Council's use of the Regulation of Investigatory Powers Act 2000 (as amended) ('RIPA') in 2017-18 and to review and set the Council's Corporate Enforcement Policy and its policy on the use of RIPA.

2. RECOMMENDATIONS

It is recommended that Cabinet:

- 2.1 Notes the contents of the report;
- 2.2 Acknowledges RIPA has been used in an appropriate manner that is consistent with the Council's RIPA policies during the period 1st April 2017 – 31st March 2018; and
- 2.3
- 2.3.1 Approves the proposed revisions to (i) the Corporate Enforcement Policy and (ii) the Corporate RIPA Policy as shown in Appendices 1 and 2 to the report respectively; and
- 2.3.2 Notes that in the Senior Responsible Officer's opinion the current Acquisition of Communications Data under RIPA Policy remains fit for purpose.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To ensure Members are kept apprised of how RIPA has been used during the period 1st April 2017 - 31st March 2018 and that it has been used in an appropriate manner consistent with the Council's RIPA policies.
- 3.2 The Cabinet is responsible for approving revisions to the Council's Corporate Enforcement Policy and Corporate RIPA Policy in order to ensure that they remain fit for purpose.

4. USE OF RIPA BY THE COUNCIL: 1ST APRIL 2017 – 31ST MARCH 2018

4.1 Directed Surveillance and the use of Covert Human Intelligence Sources

4.2 New Authorisations

During the year 1st April 2017 - 31st March 2018, 8 new authorisations were granted by Authorising Officers as follows:

- 8 x directed surveillance; and
- 0 x use of a Covert Human Intelligence Source.

Directed surveillance authorisations can be issued where it is necessary and proportionate in order to prevent or detect crime, or prevent disorder, where at least one of the offences is punishable by a maximum term of imprisonment of at least 6 months or more or relates to the underage sale of alcohol or tobacco/nicotine.

The 8 x directed surveillance authorisations all related to fly tipping.

4.3 Authorisations extant as at 1st April 2017

There were 3 authorisations in respect of either directed surveillance that had been authorised in the previous year (2016-17) and were carried forward to the 2017-18 financial year.

The outcomes from these 3 authorisations are included in paragraph 4.4 below.

There were no authorisations in respect of a Covert Human Intelligence Source extant as at 1st April 2017.

4.4 Cancellation of Authorisations & Subsequent Outcomes

During the 2017-18 financial year 9 authorisations for directed surveillance were cancelled (3 extant from 2016-17, and 6 authorised during 2017-18) and 2 authorisations were carried forward to the current financial year.

The outcomes of the investigations that were concluded were as follows:

Evidence of fly tipping at location under investigation

- 1 x authorisation resulted in 3 prosecutions - fines of £580, £828.86 and an arrest warrant being issued for the third defendant;
- 1 x authorisation resulted in two fixed penalty notices for littering - fly tipping was observed but clear images were not available;
- 1 x authorisation resulted in a hearing date being set for October 2018;
- 1 x authorisation identified fly tipping however the vehicle concerned did not bear a registration plate

No evidence of fly tipping at location identified

- 1 x authorisation evidenced illegal drug activity; this intelligence was passed to South Wales Police;
- 1 x authorisation resulted in the camera being covered in earth due to nearby factory works; a decision was made to remove the camera;
- 1 x authorisation resulted in the camera being disturbed; a decision was made to remove the camera;
- 2 x authorisations resulted in no instances of fly tipping being observed during the authorisation period.

4.5 Authorisations extant as at 1st April 2018

Investigations carried over into 2018-19:

- 2 x directed surveillance

4.6 The outcomes of some of the cases above demonstrate how the use of directed surveillance is able to produce results that are of benefit from an enforcement point of view. Without the use of directed surveillance, officers would not have been able to progress the investigation to determine whether the alleged incidents were ongoing: directed surveillance has therefore enabled officers to ascertain the true situation at the relevant locations, in a manner that was the most cost-effective in relation to officer time.

4.7 Human Rights Act Authorisations

As part of initial investigations, officers may need to carry out non-overt work which does not fall within the statutory requirements for RIPA, mainly because the work is carried out in such a manner that there is little likelihood of obtaining private information (collateral intrusion). The use of non-overt enforcement techniques are assessed to ensure that they are carried out in compliance with the requirements of the Human Rights Act 1998 (HRA). Such assessments are recorded on a Human Rights Act consideration form, whereby the necessity, proportionality and purpose of the activity are addressed, precautions are introduced to minimise collateral intrusion and the use of the technique is approved by a senior manager.

Importantly, if the initial work carried out using the HRA-compliant technique shows that an investigation needs to be carried out using RIPA-based techniques, officers will apply for RIPA authorisation.

Five Human Rights Act authorisations currently exist in relation to:

- Anti-social behaviour monitoring;
- Underage sales test purchasing;
- Proxy sales monitoring;
- Internet site monitoring;
- Vehicle test purchasing;

During 2017 - 18 these authorisations were used to carry out monitoring of potential locations for anti-social behaviour on 0 days; underage sales test purchasing operations on 3 days; proxy sales of alcohol monitoring operations on 0 days; vehicle test purchasing operations on 0 occasions; and monitoring of internet sites for 29 investigations. A review of these operations and investigations showed that on no occasion did they result in an improper infringement of a person's human rights.

4.8 Communications Data

During the year from 1st April 2017 - 31st March 2018, 0 applications for communications data were submitted for approval by the Designated Person in relation to telephone numbers used as part of fraudulent activity.

5. CHANGES TO USE OF RIPA

5.1 During the reporting period there were no statutory changes that affected the use of RIPA within the Council; some changes were introduced but their effect was limited to Police powers and requirements.

5.2 Looking ahead, new Codes of Practice are expected to be published during this Municipal Year which is likely to have an effect on work carried out under RIPA within the Council.

5.3 As reported in last year's annual report to Cabinet the Council had its triennial inspection in late 2016 in respect of its use of RIPA. The inspector's report made several recommendations in respect of current best practice which have now been reflected in proposed revisions to the Council's Corporate RIPA Policy as shown in Appendix 2 to the report. Officers have also taken the opportunity when making these particular revisions to review and update this policy more generally and also review the Council's Corporate Enforcement Policy (attached at Appendix 1 to the report). The proposed changes to the previous versions of both these policies are shown in the Appendices as 'tracked changes' for Members' ease of reference.

6. CONSULTATION

6.1 This report has been prepared in consultation with the Council's Trading Standards Manager who is responsible for operational oversight of RIPA matters.

7. EQUALITY AND DIVERSITY

7.1 There are no equality or diversity implications linked to this report.

8. FINANCIAL IMPLICATIONS

8.1 There are no financial implications linked to the contents of this report.

9. LINKS TO THE COUNCILS CORPORATE PLAN/ OTHER COUNCIL PRIORTIES

- 9.1 The report will ensure that effective governance arrangements with regards to RIPA remain in place by the Council.

10. CONCLUSION

- 10.1 The Senior Responsible Officer (Director of Legal & Democratic Services) considers that RIPA has been used appropriately in relation to all of the above uses of directed surveillance and acquiring of communications data and that RIPA has been used in a manner that is consistent with the two corporate policies.
- 10.2 The Senior Responsible Officer also considers that the proposed revisions to be made to the Council policies attached at Appendices 1 and 2 to this report will ensure they remain fit for purpose and therefore Cabinet's approval is now sought in respect of their adoption. The Senior Responsible Officer considers the current Acquisition of Communications Data under RIPA Policy remains fit for purpose.

**RHONDDA CYNON TAF COUNTY BOROUGH
COUNCIL**

CORPORATE ENFORCEMENT POLICY



RHONDDA CYNON TAF

~~August 2015~~ **OCTOBER 2018**

Policy approved on {date}

Introduction

~~“The Rhondda Cynon Taf Community Strategy 2010-20: Live, Grow, Aspire, Achieve Corporate Plan 2016-20” explains the way ahead for the Council at a time when local government nationally is going through enormous change ~~is a programme of change to create a better future~~. Our ~~shared~~ vision is that: Rhondda Cynon Taf will be for a County Borough of Opportunity that has high aspirations, is confident and promotes opportunity for all.~~

In order to achieve this, the Council is focussed on three priorities:

1. Economy: Building a strong economy
2. People: Promoting independence and positive lives for everyone
3. Place: Creating neighbourhoods where people are proud to live and work

The Corporate Plan vision, priorities and principles support the seven Well-being Goals identified in the Wellbeing of Future Generations (Wales) Act 2015.

- ~~• A safe Rhondda Cynon Taf where all residents are able to live their lives in a County Borough free from crime and the fear of crime~~
- ~~• Children and young people in Rhondda Cynon Taf are healthy, well-educated, confident and creative individuals contributing to and living safely within their sustainable communities~~
- ~~• A healthier Rhondda Cynon Taf where all residents are supported to take control of their own physical and mental health and well-being, through living healthy and active lifestyles and having easy access to high quality health services when ill health does occur~~
- ~~• Everyone in Rhondda Cynon Taf benefits from the prosperity of the local economy of the Capital City Region, with strong businesses within the County Borough providing well paid jobs to local residents.~~
- ~~• A cleaner, greener Rhondda Cynon Taf, which leads the UK in waste and carbon reduction, has excellent parks and green spaces where biodiversity thrives, and the highest quality of affordable housing. We will have neighbourhoods in which our residents feel pride and have a real sense of belonging and ownership~~

~~To achieve this, t~~he Council will support, direct and enhance its services to and with our local communities, working closely with our partners. We will encourage people to comply with the law in the interests of our wider communities. When this is undermined, and the Council has legal powers to protect our communities from harm, we will use them. The use of these legal powers is *enforcement*, and this ranges from the servicing of notices requiring people to carry out certain actions, to prosecution which could result in fines, imprisonment, and being prohibited from carrying out certain activities.

This Corporate Enforcement Policy is intended to establish a uniform approach to enforcement throughout the Council, without placing too onerous a burden on local businesses, organisations, consumers, and the public. The policy has been

developed with the Enforcement Concordat's principles of good enforcement as its foundation as well as the principles of the Regulators' Code, together with the aim of clearly setting out the Council's approach to enforcement of its legal powers. The policy will be periodically reviewed by senior officers and any necessary ~~changes~~amendments will be ~~made~~proposed in the light of best practice and changes to legislation. Any amendments will be approved by the Council's Cabinet prior to implementation.

Enforcement of legislation is undertaken by several services of the Council and covers a broad range of issues. In adopting this policy, the Council intends to apply its legal powers consistently and fairly, whatever the circumstances.

~~The Single Integrated Plan for Rhondda Cynon Taff sets out a programme of change to create a new future for Rhondda Cynon Taf. The three action themes are:~~

- ~~• Safety~~
- ~~• Health~~
- ~~• Prosperity~~

The Council's enforcement activities impact on all ~~of these~~ themes within the Corporate Plan, ranging from taking action against offenders, to ensuring that people have access to information concerning their legal rights. Effective enforcement has an important role to play in helping the Council achieve ~~its~~the objectives ~~of the Single Integrated Plan~~. A directory of Council Groups/Divisions involved in enforcement is presented as Appendix 1, to illustrate the range of our current enforcement activities. When allocating resources to the relevant functions the Council will have regard to the National Enforcement Priorities for Wales

In recognition of this, the Council is working to improve its approach to enforcement, through better coordination of resources, improvements in joint working, and partnerships with other stakeholders, such as the Police. Where the law permits, the Council will exchange information with its partners, and between Council services, in the interests of the prevention and detection of crime and the protection of public safety.

The Council will undertake its enforcement functions to achieve the following aim and objectives:

Aim of Enforcement Policy

To clearly set out the Council's approach to enforcement, to support the delivery of the Rhondda Cynon Taf ~~Single Integrated Corporate Plan~~ and associated plans concerning the well-being of those who live and work in the County Borough. The Council aims to work with those it regulates and seeks to promote compliance by a variety of means. These range from providing support and advice to encourage compliance, to securing prosecutions and prohibitions where appropriate and necessary to protect more vulnerable local people from harm, and in the interests of

our wider communities. We are committed to avoiding imposing unnecessary regulatory burdens and to assessing whether similar outcomes could be achieved by less burdensome means.

This policy is intended to provide guidance for officers, businesses, consumers and the public, but it does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

Certain Council enforcement services currently have their own enforcement policies or enforcement guidance that relate to their own specific service areas, such as planning and development-control, noise enforcement, parking and animal-food and feed enforcement policies. These individual policies may contain a high level of detail about when and how that service will carry out a particular type of enforcement. In these circumstances the service will still need to comply with the guidance in this Corporate Enforcement Policy, but their enforcement policy will provide specific details for the enforcement of that particular area of legislation. If there ever arises a conflict between the individual enforcement policies/ guidance and the Corporate Enforcement Policy, this Corporate Enforcement Policy shall take precedence. Copies of ~~such~~ service-specific enforcement policies are available on the Rhondda Cynon Taff website or can be obtained on request from the relevant Council service.

Objectives

To ensure that all enforcement activities are:

1. Undertaken in accordance with the principles of good enforcement specified by the Enforcement Concordat.
2. Compatible with the convention rights specified by the Human Rights Act 1998, to protect the rights of the individual.
3. Managed in an efficient manner.
4. Taken promptly and without unnecessary delay.
5. Undertaken consistently by all services of the Council.
6. Undertaken in a fair, independent and transparent manner, with each case being considered on its own merits.
7. Not influenced by colour, ethnic origin, race, gender, disability, sexuality, religion, marital status, age, ~~or~~ political beliefs or preferred language.
8. Not influenced by improper or undue pressure from any source or by inappropriate or illegal practices by the officer.
9. Aligned to the Rhondda Cynon Taf Single Integrated Corporate Plan and to each service's Business Delivery Plan.

Equality and Diversity

The council and its officers will take all reasonable and practicable steps to prevent and eliminate unlawful discrimination and encourage good relations between all parties, treating all those involved with equal respect, both when corresponding with those individuals and businesses and during enforcement activities.

This will be done irrespective of the individual's ethnic origin, gender, age, marital status, sexual orientation, disability, gender reassignment, religious beliefs or non-beliefs, language, nationality, responsibility for any dependents or any other reason that cannot be shown to be justified.

This policy is bilingual and will be provided in any other language or format with sufficient notice. Officers are aware of and respect cultural requirements and when necessary and with prior notice, will offer suitable meetings and appropriate translation or interpretation services.

When dealing with juveniles or persons who are vulnerable, whether due to learning difficulties, physical or mental illness or in some other way, due regard will be taken of their vulnerability and any current codes of practice to ensure that these persons are treated fairly.

The Principles of Good Enforcement – Local Government Concordat on Good Enforcement

Since the introduction of the Regulators' Code 2013, the Concordat on Good Enforcement only applies officially to Council enforcement services that are not covered by the Regulators' Code. However in order to demonstrate best practice all Council enforcement services will still comply with the principles of the Concordat.

Policy

This Council has signed up to the UK and local government Concordat on Good Enforcement, which commits us to good enforcement policies and procedures. This document supplements the Concordat, by setting out an additional statement of the Council's policy on enforcement. The following principles of the Concordat will be adhered to:

Standards

We will draw up clear standards, setting out the level of service and performance the public and business people can expect to receive. These standards will be developed in consultation with other relevant interested parties, where appropriate. We will publish these standards and our annual performance against them. The standards will be made available to local businesses and others who are regulated.

Openness

We will provide information and advice in plain language on the rules that apply, and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives, where appropriate. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties in relation to legislation that the service enforces, by responding to enquiries and visiting individuals when requested. We will clearly explain the nature of any non-compliance, the advice that we give, the actions required and why the decisions are taken.

In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful business practices or criminal activity so, where appropriate, we may publicise the results of specific court cases, both on our website and via press releases. We will follow any relevant guidance, such as from the Ministry of Justice, when deciding to publish information on sentencing outcomes.

We will undertake our enforcement duties in accordance with the [legislative requirements placed on the Council's in respect of the Welsh Language Scheme. This includes providing services and communications through the medium of Welsh and in compliance with the Welsh Language Standards applicable to the Council.](#) We will provide interpreters for those people who do not have English as their first language, if requested to do so by them.

Helpfulness

We believe that “prevention is better than cure”, and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us, and we will encourage businesses to seek advice/information from us. [As part of the Council's Digital Strategy, many services and information are available online to ensure a prompt and accessible service outside of normal working hours.](#) Applications for approval of establishments, registrations, planning consultations etc will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

Proportionality

Any enforcement action that we take will be proportionate to the risks posed to the public, property and the environment. We will minimise the costs of compliance for business, by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action. When carrying out our activities we will have regard to the National Enforcement Priorities for Wales.

We will take particular care to work with small businesses and voluntary and community organisations, so that they can meet their legal obligations without unnecessary expense, where practicable.

When dealing with individual members of the public, the concept of proportionality will also apply, in so far as the relevant legislation permits. We will attempt to identify and contact all individuals concerned with each case, where possible, and take action that balances the benefit to the complainant or public against the cost or inconvenience to those concerned.

Consistency

We will carry out our duties in a fair, equitable and consistent manner. While Officers are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies. This will be achieved through staff development and training, and the use of written protocols and procedures where appropriate.

Complaints about Service

Complaints will be dealt with in accordance with the Council's Corporate Comments, Compliments and Complaints Procedure. Details of the Comments, Compliments and Complaints Procedure [are available online and](#) will be provided to persons or businesses on request.

We will provide well-publicised, effective and timely complaints procedures, easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

If anyone has any comments on this policy or has any complaints about how it is being operated in a particular instance then he or she should bring those issues to the attention of a senior officer in the service area in which the officer is working.

Procedures

All officers who carry out enforcement work will carry appropriate documentation to show that they are authorised to do so by an appropriate senior officer. This will be done in compliance with the General Scheme of Delegation under the Council's Constitution.

In circumstances where no formal action is to be taken, advice will be given clearly and in plain language and will be confirmed in writing on request. An explanation will be given as to why remedial work is required and over what time-scale. Legal requirements will be clearly distinguished from suggested best practice, codes of practice, guidance and other advice.

Officers will be encouraged to promote compliance with legal requirements, by raising awareness of relevant standards and legal requirements, by means of press-statements, distributing leaflets, [providing online communication, including the use of social media](#), face-to-face contact and business and community partnerships.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference before deciding on the best approach, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed or where this is likely to defeat the purpose of the proposed enforcement action). However if we are considering a formal action this discussion might need to take place by means of a formal interview.

Where immediate action is considered necessary, an explanation of why such action is required will be given at the time, and confirmed in writing, in most cases within 5 working days and, in all cases, within 10 working days.

In some circumstances businesses and individuals might wish to challenge a regulatory decision made by an enforcement officer. Some legislation contains a statutory mechanism for appeal, such as making an appeal to the magistrates' court in relation to certain statutory notices. In cases where there are rights of appeal against formal action, information on the appeal mechanism will be clearly set out in writing and provided at the time the action is taken and, wherever possible, will be issued with the enforcement notice.

If there are no relevant mechanisms within the legislative process that cover the particular action taken by the officer, some service areas, ~~such as Public Health & Protection~~, operate their own appeal procedures. Details of such appeal procedures and how to access them will be provided on request. The intention of such appeals procedures is to allow affected persons to challenge the advice they have been given or the enforcement-related actions taken by the investigating officer. The appeal procedures do not allow a business or individual to appeal against a decision to prosecute them or to offer them the opportunity to accept a simple caution, because the activities of the UK Courts are fully compliant with Human Rights legislation.

Conduct of Investigations

When officers are investigating breaches of legislation, subject to the requirements of the legislation, they will be able to make use of any statutory powers that are available to them under the specific act or regulations. These powers can include entering premises to inspect goods, services, procedures, facilities or documentation, taking samples, making test purchases and seizing items. Officers will comply with any associated guidance or codes of practice under the particular legislation. Often the legislation will include an offence that is committed by any person who obstructs an authorised officer or fails to comply with a reasonable requirement made by the officer. When exercising enforcement powers officers will also have regard to the Powers of Entry Code of Practice 2014 produced by the Home Office, when the code applies to the particular power.

If there is a victim who has been directly affected by an offence, we will encourage the person to make a Victim Personal Statement (VPS), which is a statement written in the person's own words to explain how the crime has affected them. It can explain the effect that the crime had on the victim's life physically, emotionally, financially or in

any other way. The victim is entitled to say whether or not they would like to have the VPS read aloud in court if a suspect is found guilty. They can decide whether to read their VPS aloud themselves or have it read aloud by someone else and we will comply with any such request.

As well as using such powers officers may need to speak to individuals and, in the more serious case, interview persons under caution. Any such interview under caution will take place in compliance with the requirements of the Police and Criminal Evidence Act 1984. In the most serious cases officers may make arrangements for a potential defendant to be arrested by the police to facilitate the investigation. Some legislation provides a statutory time limit from the date of the offence or sometimes from the date when it was discovered. In these circumstances the Council cannot commence legal proceedings after such a time limit has expired.

As well as the complying with the requirements of the legislation governing the issue under investigation, officers will carry out their investigations in compliance with the following legislation and in accordance with any relevant associated guidance or codes of practice, in so far as they relate to the Council:

- Police and Criminal Evidence Act 1984;
- Criminal Procedure and Investigations Act 1996;
- Human Rights Act 1998;
- Regulation of Investigatory Powers Act 2000;
- Criminal Justice and Police Act 2001;
- [Protection of Freedoms Act 2012](#); and
- [Investigatory Powers Act 2016](#)

These acts and the associated guidance control how evidence is collected and used and provide a range of protections for individuals and potential defendants.

The officers that carry out the investigations will do so under the management of a more senior officer.

Officers are required to conduct themselves in compliance with the Council's Anti-fraud, [Bribery](#) & Corruption Policy [and Procedure](#) and [the](#) Bribery Act 2010

The Principles of Good Regulation and the Regulators' Code

The Legislative and Regulatory Reform Act 2006 requires local authorities to have regard to the Principles of Good Regulation when exercising regulatory functions specified by an order made under the Act. (These functions mainly relate to the legislation enforced by Environmental Health, Licensing and Trading Standards staff.)

These principles are that we will exercise our regulatory functions in a way that is:

- 1) Proportionate –so that activities reflect the level of risk to the public and enforcement action taken relate to the seriousness of the offence;
- 2) Accountable – so that activities are open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures;
- 3) Consistent – so that advice to those regulated is robust and reliable and respects advice provided by others and, where circumstances are similar, endeavouring to act in a similar way to other local authorities;
- 4) Transparent – so that those regulated are able to understand what is expected of them and what they can anticipate in return;
- 5) Targeted –so that resources are focused on higher risk enterprises and activities, reflecting local need and national priorities;

~~In 2008 the Government introduced a supplement to the Enforcement Concordat, namely the Regulators' Compliance Code that only applies to the above regulatory functions because they are specified by an order made under the Legislative and Regulatory Reform Act 2006. (The practical effect of this is that the requirements of the Regulators' Code replace the requirements of the Enforcement Concordat for enforcement activities carried out by Environmental Health, Licensing and Trading Standards staff.)~~

~~In 2013 the Government replaced the Regulators Compliance Code with the Regulators' Code~~

For the ~~above~~ areas of legislation enforced by Environmental Health, Licensing and Trading Standards, we will have regard to the principles of the Regulators' Code published by the Government in 2013 including the following:

Supporting regulated businesses to comply and grow

We will try to avoid imposing unnecessary regulatory burdens on businesses through our regulatory activities and we will assess whether the desired outcomes could be achieved by less burdensome means. We will only adopt a particular approach if the benefits justify the costs and it entails the minimum burden compatible with achieving the objectives. Our policies and practices will encourage and promote compliance but, in doing so, will try to minimise the negative economic effect of our activities and the cost of compliance. We will choose proportionate approaches to the businesses we regulate, based on such relevant factors as the business's size and capacity and the nature of their activities. We will ensure that our officers have the necessary knowledge and skills to support those we regulate and to enable them to choose proportionate and effective approaches.

Engaging with those we regulate and hearing their views

In responding to non-compliance we will clearly explain what is non-compliant, the advice being given, the actions required or the decisions taken by us and we will give the reasons for doing so.

When considering enforcement action in response to a non-compliance we will, where appropriate, provide an opportunity to discuss the advice, requirements or decision and take this dialogue into account to ensure we are acting in a proportionate and consistent way. However this will not apply where we can demonstrate that immediate enforcement action is required to prevent or respond to a serious breach or where to provide such an opportunity is likely to defeat the purpose of the proposed enforcement action. We will provide an impartial appeal procedure for an appeal against a regulatory decision or a failure to act in accordance with the code and we will give a written explanation of the right to appeal or make a representation. As well as the appeal procedure, we will make available the Council's Comments, Compliments and Complaints Procedure so that complaints can be made about the conduct of our officers. We will consider the impact of our policies and service standards on businesses, so we invite views from businesses, citizens and others about our policies and service standards.

Basing our regulatory activity on risk

We will take an evidence-based approach to determine the priority risks to ensure that the allocation of our efforts and resources is targeted where they would be most effective in addressing these priority risks. Such risk assessments will inform our approach to regulatory activity including inspection programmes, business advice and enforcement/sanctions. We will make use of any evidence-based risk assessment methodology schemes that are devised and approved by relevant Government Departments for our specific service areas, in order to decide the frequency of inspections and visits to check compliance. Where the risk assessment methodology scheme allows the use of 'earned recognition', when carrying out risk assessments we will take into account the results of any visits carried out by outside auditors under an external verification scheme: [if guidance directs, inspection and intervention frequency will be reduced accordingly.](#)

We will ensure that inspections and other visits to check compliance will only occur in accordance with a risk assessment methodology, except where visits are requested by businesses, ~~or~~ where visits are made to check that businesses are [complying with our advice regarding](#) rectifying non-compliances or where we act on relevant intelligence or complaints. In those circumstances we will still be able to carry out compliance visits outside of the frequencies stated in the appropriate risk assessment methodology schemes. In addition we may use a small element of random inspection in our programme.

When we carry out a revisit to check that non-compliances have been rectified we will expect this to have happened, ~~at least to a significant extent,~~ and for the business to demonstrate that they have improved their systems to prevent similar non-compliances happening in the future. [Should a business require additional time to](#)

[resolve a non compliance, they are encouraged to discuss this with the officer concerned.](#) If non compliances have continued we will consider taking more formal enforcement action.

We will focus our greatest inspection efforts on businesses where our risk assessment shows that a compliance breach would pose a serious risk to a regulatory outcome and there is a high likelihood of non-compliance by businesses. We will provide feedback to businesses about the results of our visits including, where appropriate, feedback on the positive aspects of the visits. We will encourage and reinforce good practice. When carrying out these visits we will have regard to any published inspection plans [and assured advice](#) for businesses that are in a Primary Authority Partnership.

If the business under investigation is in a registered Primary Authority Partnership under the Regulatory Enforcement and Sanctions Act, we will comply with the requirements of the Act when we are considering taking enforcement action against them. In particular we will consult with the Primary Authority and take into account any [assured](#) advice that they have provided, notify them of any proposed enforcement action and comply with the statutory procedure if the Primary Authority does not consent to us taking this action.

At every step of the decision making process we will choose the most appropriate type of intervention or way of working with businesses, including when targeting checks on compliance or taking enforcement action. If the performance of a business is seen to represent a greater or lesser risk than other businesses of a similar type, we will make a change to their risk rating when this is allowed by the relevant risk assessment methodology. We will recognise the compliance record of businesses, including any relevant data on their compliance or evidence of the business being subject to any relevant external verification, so that we can consider using earned recognition approaches. We will review the effectiveness of our regulatory activities in delivering the desired outcomes and will make any necessary adjustments accordingly.

Sharing information about compliance and risk

If possible, [and in compliance with the General Data Protection Regulation](#), we will collect information from businesses once and try to use it many times. When determining what data we require from businesses we will endeavour to reduce business costs, where possible, by varying data requests according to risk, limiting collection to specific businesses or sectors, reducing the frequency of data collection, obtaining data from other sources, allowing electronic submission and requesting only data which is justified by risk assessment. In order to help target our resources and activities and to minimise duplication we will share information about businesses with other regulators when the law allows this.

Making information, guidance and advice available to businesses

We will provide [and direct to](#) general information, advice and guidance to make it easier for businesses to understand and meet their legal responsibilities and we will

provide it in clear, concise and accessible format using plain language. Where possible we will look to utilise any relevant national guidance. When providing advice and guidance we will distinguish legal requirements from suggested best practice and we will try not to impose any unnecessary burdens. When responding to requests for advice we will provide the advice necessary to support compliance. In doing this we will respect relevant advice that has been provided by other enforcement agencies. If there is any disagreement with another regulator over the advice provided we will discuss this to reach agreement with the other regulator. Businesses may seek advice from us on non-compliances without directly triggering an enforcement action, as long as the business shows a willingness to resolve the non-compliance. The Council will stand by the advice that we provide so that it can be relied on and we will communicate any update to the advice when this is appropriate.

[Information, advice and guidance shall be provided bi-lingually where language preference is unknown, or in Welsh where the business identifies this as their preferred language. Communicating with us in Welsh will not lead to a delay.](#)

If a business wishes to enter into a formal Primary Authority Partnership arrangement with us under the Regulatory Enforcement and Sanctions Act 2008, or a more informal Home Authority arrangement, we will use our best efforts to achieve a satisfactory arrangement.

Ensuring our approach is transparent

Individual service areas will publish a set of clear service standards about:

- How we communicate with those we regulate and how we can be contacted;
- Our approach to providing information, guidance and advice;
- Our approach to checks on compliance and protocols for their conduct;
- Details of the risk assessment frameworks we use to target our checks;
- Our enforcement policy;
- Our fees and charges;
- Our appeals procedure;
- Our complaints procedure;

These service standards will be available on the council website and will be provided on request.

On a regular basis we will publish:

- Feedback from those we regulate, such as satisfaction surveys;
- Data about complaints made about our regulatory activities;
- Data about appeals made against our decisions;

Applicability of the Code

The [Regulatory Enforcement and Sanctions Act 2008](#) states that the regulator must have regard to the code when developing policies and operational procedures that guide their regulatory activities. However it does not state that the Code applies directly to the work of an officer in carrying out investigations and enforcement

activities in individual cases. Nevertheless we expect that our officers should operate in accordance with our general policy or guidance on inspections, investigations and enforcement activities.

There is an active duty on the authority to have regard to the Code, so we need to comply with its provisions or be able to explain why we have chosen another course of action. In certain instances we may conclude that a provision of the Code is either not applicable or is outweighed by another relevant consideration and so we will not follow that provision. However, we will ensure that any decision to depart from the code is based on material evidence. We will record the decision and the reasons for it.

It should also be noted that our duty to have regard to the Code is subject to any other legal requirement affecting how we exercise our regulatory functions.

Further information is included elsewhere in this document to cover other issues relating to the above points in the Regulators' Code.

Enforcement Options

A number of enforcement options are available to the Council. Officers are authorised to enforce legislation in accordance with the General Scheme of Delegation under the Council Constitution. The appropriate option will be determined, following careful consideration of the circumstances of each individual case. The action that the Council decides to take will be influenced by the particular circumstances of the case, and this is likely to include the attitude of the business or person.

Our enforcement staff will interpret and apply legal requirements and enforcement policies consistently and fairly. We will comply with any requirements imposed by the legislation under which we are acting. To help to ensure consistency we will make use of any relevant codes of practice or national guidance provided in relation to legal requirements.

Our enforcement actions will

- Aim to change the behaviour of the offender **and deter future non-compliance**;
- Aim to eliminate any financial gain or benefit from non-compliance;
- Consider what is appropriate for the particular offender and regulatory issue;
- Be proportionate to the nature of the offence and the harm caused;
- Aim to restore the harm caused by regulatory non-compliance, where appropriate;
- Aim to deter future non-compliance;

Informal Action and Advice

In circumstances where minor breaches of legislation have been identified, formal action may not be considered appropriate. There may be no significant risk and the offence **may** appear to have been committed by a genuine mistake or accident and, from the individual's / enterprise's past history, it can be reasonably expected that

informal action will achieve compliance. Therefore formal action may not be in the public interest. Informal action may consist of a verbal or written warning. The decision to do so will be at the discretion of the investigating officer.

We will clearly identify any contraventions of the law and give advice on how to put them right. The time allowed [for rectification](#) will be reasonable and take into account the seriousness of the contravention. Sometimes we will give advice about good practice, but we will clearly distinguish between what must be done to comply with the law and such good practice. Any advice will be given clearly and in plain language. If we provide advice to a business or individual we will stand by that advice. Also we will respect any advice that has been provided by other regulators or enforcement agencies. On completion of the time period that has been allowed for the implementation of any such advice we will follow this up to ensure that it has been complied with. Failure to comply with identified legal requirements could result in an escalation of enforcement action.

We recognise that where a business has entered into a Primary Authority Partnership, the primary authority may provide [compliance assured](#) advice and support, regarding certain legislation and the Council will take such advice into account when considering the most appropriate enforcement action for us to take. We may discuss any need for compliance advice and support with the primary authority. We will comply with the statutory requirement to notify the primary authority of any proposed enforcement action.

We recognise that there may be a need for ongoing compliance advice and support to be provided to a business or person against whom we have taken formal enforcement action so as to prevent future breaches.

Formal Action

1. Statutory Notices

Certain legislation allows statutory notices to be served to require offenders to take specific actions or cease certain activities within specified time periods. These can include prohibition, improvement, suspension and remedial action notices. In some cases officers can impose a statutory notice to initially close a premises for a short period of time, but officers will then need to apply to the courts for an order to extend the period of closure. A statutory notice will clearly set out the actions that must be taken and the timescale within which they must be taken. Failure to comply with statutory notices can be an offence and in some instances may allow the Council to carry out works in default and charge the person served with the notice for the cost of such work being carried out. These notices will be used where there is a significant contravention of legislation; there may be a lack of confidence in the response of the individual/ enterprise to an informal approach; or there may be a history of non-compliance. The consequences of non-compliance could be potentially serious. Action will consist of the service of an appropriate legal notice, signed by a duly authorised officer, when the investigating officer deems this to be appropriate and in compliance with the requirements of the legislation. When deciding whether or not to

serve a statutory notice, officers should take into account any financial burden that this could cause for the Council. All notices issued will include details of any applicable appeal procedure. Some notices issued in respect of premises may be affixed to the premises and/ or registered as local land charges.

2. Fixed Penalty Notice, Penalty Notices for Disorder and Penalty Charge Notices

Certain legislation allows the issuing of fixed penalty notices, penalty notices for disorder, penalty charge notices or excess charge notices in relation to these offences. In some instances the breach for which the notice can be issued is not a criminal offence but is only a civil breach, so a prosecution would not be available for such a breach. However failure to pay the amount imposed by the notice may result in the person being pursued in the County Court for non-payment of a debt.

In the remaining instances the notices give the offender the opportunity to avoid prosecution by payment of a prescribed amount of money in recognition of the breach. They are recognised as being a low-level enforcement tool, whereby they do not create a criminal record for the offender. Choosing to pay the required penalty is not an admission of guilt and so the issuing of these notices cannot be used as evidence in any future court proceedings. Payment of such a penalty does not provide immunity from prosecution in respect of similar or recurrent breaches. The decision to issue these notices will be at the discretion of the investigating officer. In some circumstances, particularly where the breaches are serious or recurrent, it may be that a prosecution is more appropriate than the issuing of such a notice. Officers will follow relevant guidance on issuing such notices to juveniles, with the action taken being influenced by the offender's age and the circumstances of the offence. Such notices will only be issued where there is adequate evidence to support a prosecution. Failure to pay the amount imposed by the notice may result in the offender being pursued in the County Court for non-payment of a debt. In some circumstances, the Council may choose to use its discretion in initiating prosecution proceedings for the original offence that led to the issuing of the original notice. All notices issued will include details of any applicable appeal procedure.

3. Seizure and Forfeiture Proceedings

Certain legislation enables authorised officers to seize goods, equipment or documents, where they may be required as evidence for possible future court proceedings or to prevent further offences from being committed. When items are seized an appropriate receipt will be given to the person from whom the items are taken. The decision to seize items will be at the discretion of the investigating officer, subject to the requirements of the legislation.

In certain circumstances officers will make an application to the Magistrates' Courts for forfeiture of the goods. Forfeiture may be used in conjunction with seizure and / or prosecution, where there is a need to dispose of the goods, vehicles or equipment to

prevent them being used to ~~cause a further problem~~further an offence or to prevent them re-entering the market place.

In animal welfare cases where certain animals are suffering or are likely to suffer if their circumstances do not change, the council may consider taking them into our possession and applying to the court for orders for the reimbursement of the relevant expenses incurred.

4. Injunctive Action

In certain circumstances officers may seek injunctive orders in the civil courts to stop infringements of a wide range of laws, which seriously affect the rights of others. They can be used to deal with repeat offenders, dangerous goods or significant harm to consumers in general. Sometimes these matters can be dealt with by informal undertakings with the offender, but otherwise applications may be made to the civil courts for an injunction to stop these detrimental activities. In urgent cases officers may be able to apply for an interim order without a full hearing. The decision to seek an injunction will be made by a senior officer who will consider the seriousness and circumstances of the case.

In some cases, where the law allows, we will accept voluntary undertakings from an offender who agrees to stop or make changes to relevant activity, rather than us applying for a formal injunction. These will only be accepted ~~when~~where we have sufficient confidence that the terms of the undertaking will be delivered. We are more likely to accept a voluntary undertaking when it is offered early. We will be unlikely to accept an informal undertaking where we have already decided that a prosecution is required in a particular case.

In certain circumstances officers are required to seek enforcement orders after issuing some enforcement notices, in order to provide the court with an opportunity to consider the restrictions imposed by the notice.

For consumer protection issues injunctions may be sought under the Enterprise Act. Where consumers have suffered detriment as a result of certain breaches of consumer protection legislation, the Council may also apply for an order under the Enterprise Act to obtain redress for consumers who have suffered loss or to achieve compliance so as to reduce the likelihood of future breaches or to provide information to enable consumers to exercise greater choice. Where the investigation relates to persistent anti-social behaviour, after liaison with the Council's Anti-Social Behaviour Co-ordinator, officers may apply to the Magistrates' Court for a Criminal Behaviour Order. Officers may also apply for Criminal Behaviour Orders against persons who have been convicted of a criminal offence. Contravention of an order issued by the courts could result in proceedings for contempt of court, which may be punishable by a fine or imprisonment.

5. Refusal, Revocation, Review and Suspension of Licences and Permits

The Council issues a number of licences and permits and also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take certain steps. In certain circumstances the Council may decide to refuse to issue such a licence,

Where there is a requirement for a business, activity or property to be licensed by the Council, the Council usually has the power to suspend, review or revoke a variety of licences as well as amending it to attach a range of conditions. Sometimes - and particularly in relation to taxi drivers - a licence may be immediately suspended where there is an immediate public danger or the continuation of the licence would be likely to bring the licensing system into disrepute. In respect of commercial premises that are licensed such actions can usually only be taken by the Licensing Committee. Various enforcement agencies or relevant local residents can call reviews of commercial licenses. Licence holders have the right to attend review or revocation hearings and to be informed of their right of appeal against the Committee or local authority decision.

The Council is responsible for issuing Environmental Permits to operators who carry out certain types of industrial process. The permits contain conditions intended to prevent or minimise pollution by using the best available techniques. The Council has powers of enforcement to ensure the regulated facilities are strictly monitored and controlled. Enforcement powers include revocation and suspension of permits, and in serious cases prosecution for non compliance with an enforcement notice.

When considering licence applications the council may take previous breaches and enforcement action into account.

6. Prohibitions

Where very serious offences are committed or offences are repeated, the Council has powers in some areas to apply to the courts to prohibit people from carrying out certain activities. In deciding to take this action, a senior officer of the Council will have regard to all the relevant factors that are listed in relation to prosecutions.

In addition, where an offender continually breaks the law by selling tobacco products to underage persons, officers may apply to the court for an order to prohibit a premise or person from selling tobacco for a period of time.

7. Proceeds of Crime Act Orders

The council recognises that the use of the powers given within the Proceeds of Crime Act (POCA) to recover criminal assets can make a significant contribution to the disruption of criminal activity. Therefore the council promotes the use of financial investigations as an integral part of criminal investigations and this may lead to confiscation of the benefits of the crime. Such work is carried out by Financial Investigators who have been suitably accredited by the National Crime Agency. The

use of the Proceeds of Crime Act is not just for serious criminals, but it can apply to any case of acquisitive crime. Acquisitive crime describes offences where the perpetrator derives material gain from the crime. The council will actively work with other law enforcement agencies that conduct financial investigations in order to maximise the amount of assets and money seized under POCA legislation.

Officers may make applications under the Proceeds of Crime Act for confiscation of assets of offenders in relevant cases. The purpose is to recover the financial benefit that the offender has obtained from their crimes. Proceedings only take place after a criminal conviction has been obtained, but they are conducted according to the civil standard of proof. Proceeds of Crime Act proceedings will only take place after we have considered the factors relating to the tests in the Code for Crown Prosecutors in reaching our initial decision to prosecute. We will consider any relevant factors when deciding whether to commence a Proceeds of Crime Investigation or whether to continue with it or change it if further evidence comes to light during the investigation. It should be noted that the Courts can instruct us to carry out a Proceeds of Crime investigation when they consider that this is appropriate.

As part of an investigation, Accredited Financial Investigators will be able to apply for the orders that are available under the legislation, including applying for Restraint Orders to restrain assets and for Production Orders to obtain financial information. Accredited Financial Investigators will also be able to carry out seizures of cash of £1000 and above [and specific high-value goods such as art works](#), when it is found whilst officers are lawfully on premises. This is for the purpose of investigating the origins of the cash with a view to applying for a Forfeiture Order at a Magistrates' Court. In a similar manner Accredited Financial Investigators may be able to seize property that otherwise might disappear, which could be used to satisfy a confiscation order.

8. Civil Sanctions

Certain legislation gives the Council the power to impose various civil sanctions.

8.1) Monetary Penalties

Some legislation enables officers who consider that an offence or breach has been committed to issue various types of notices imposing a financial penalty; these are often referred to as penalty notices. Monetary penalties are not criminal fines and do not appear on an individual's criminal record. In some instances the amount of the penalty is variable, between specified upper and lower limits, and is determined by the Council, but in some instances it is a fixed amount. Normally the payment of the penalty amount within a specified period of time will prevent the Council from taking legal proceedings, but if such payment is not made the Council will then be able to institute a prosecution.

The form and content of such notices varies between different legislation. Any notice that is issued will be in the form required by the particular legislation. Almost invariably the notice will require details of the circumstances that amount to the

offence, the amount of the penalty, the period during which proceedings will not be taken for the offence and details of how and where to pay. Usually the legislation will allow the Council to amend or withdraw such notices if it is appropriate to do so.

Some legislation requires the Council to issue a notice of our intention to issue a 'penalty notice' and to allow the offender to make representations and objections within a specified period. Once the person makes representations or does nothing we will then make a final determination within the specified period, based on all the circumstances and the person's response. If we set the level of the penalty we might decide to impose the original amount, or to modify this amount, or not to impose the penalty at all, perhaps where the response indicates that the person has an appropriate defence or because imposing a monetary penalty would be unproductive. If we decide to proceed we will issue a final notice as required by the particular legislation.

Some legislation enables the person to discharge their liability by making a payment of a reduced amount of money by a specified early date.

When we are deciding the appropriate level for those penalty notices that allow the Council to decide the amount, we will take into account all of the factors in the case, including any ones specified by the legislation. In doing so, we will often be aiming to remove any benefit from non-compliance and to deter future non-compliance. In appropriate cases when reaching such a decision our approach is likely to be:

- a) We will estimate the benefit derived from the non-compliance; (If we are unable to do this or do not consider it appropriate to use it as a starting point, we will use the most relevant of the level of fixed penalty available or the maximum fine that can be imposed by a magistrates' court for the offence);
- b) We will add on an appropriate deterrent component based on any aggravating or mitigating factors;
- c) We will adjust the amount downwards if it exceeds the statutory maximum; (We will also consider making adjustments to deduct the cost of the person complying with any non-monetary requirement, if we have imposed such requirements.)

The types of matters that we will consider to be aggravating factors include degree of blameworthiness; ignoring earlier advice and guidance; lack of prompt attention to rectify identified failings; and history of non compliance. The types of matter that we will consider to be mitigating factors include preventative measures taken; cooperation with the Council during the investigation (such as voluntarily providing information or assistance); voluntary reporting of the non compliance; any restoration taken; personal circumstances that might otherwise reduce blameworthiness (e.g. age, health issues); and other case specific mitigating features

The Council will comply with any requirements specified in the particular legislation regarding the issuing of all such notices. If relevant national guidelines are produced on the use of any such civil sanctions under particular legislation we will comply with them. We will also comply with any appeal mechanism specified by the legislation.

Fixed monetary penalties are mainly appropriate for clearcut offences where advice and guidance has already been given and has not been complied with, or lax regard

has been given to that advice and guidance. This is likely to be in circumstances where we judge that recourse to formal procedures is warranted to signal that the business operator or individual needs to pay more serious attention to its obligations and to prioritise its compliance efforts. They are not appropriate for more serious cases of non-compliance, for example where the impact of non-compliance is significant or where there is evidence of intentional disregard for the law, or repeated non-compliance. Variable monetary penalties are likely to be imposed for those cases where we aim to remove the benefit from non-compliance and to deter future non-compliance, for instance where the impact of non-compliance is significant or there is evidence of intentional disregard for the law.

8.2) Non-monetary requirements

Some legislation enables officers who consider that an offence or breach has been committed to impose non-monetary requirements, where the precise nature of the sanctions is decided by us. In these circumstances we may impose non-monetary requirements in combination with monetary penalties. We will usually use such non-monetary requirements for more serious cases of non-compliance, such as when there is evidence of an intentional disregard for the law or repeated non-compliance. Where the Council decides to impose non-monetary discretionary requirements it will clearly set out what steps should be taken by the business and the time period within which they must be completed.

Non-monetary requirements include compliance notices, restoration notices and stop notices. Compliance notices are sometimes known as improvement notices. They are requirements for the person to take steps to ensure that a breach does not continue or recur. Restoration notices are requirements for the person to take steps to restore harm caused by non-compliance. Stop notices prohibit the person from carrying out an activity until the person has taken the specified steps to remove the risk of serious harm. In each case we decide what those steps will be and the time period within which they must be completed. Different names may be used in different legislation for notices serving similar purposes.

We will consider such non-monetary requirements in all cases where we believe that it is warranted to impose sanctions but a monetary penalty alone is unsuitable or is not available. The primary purpose of imposing these types of requirements is to secure the person modifying his or her behaviour, so as to halt the on-going breach or to address the causes that give rise to a breach or to restore any harm that was caused by the activity.

The form and content of such notices varies between different legislation. Any notice that is issued will be in the form required by the particular legislation. Almost invariably the notice will require details of the circumstances that amount to the offence, details of what steps the person is required to take and the period during which this should be done. Usually the legislation will allow the Council to amend or withdraw such notices if it is appropriate to do so.

Some legislation requires the Council to issue a notice of our intention to issue a non-monetary requirement and to allow the offender to make representations and objections within a specified period. [Once-Whether](#) the person makes representations

or does nothing within that period, we will then make a final determination on the requirement that we will impose within the specified period, based on all the circumstances and the person's response. We might decide to impose the original or a modified version of the requirement ~~or to impose the requirement with modifications, or instead to~~ impose another requirement or not to impose the requirement at all, perhaps if the response indicates that the person has an appropriate defence or imposing the requirement would be unproductive. If we decide to proceed we will issue a final notice as required by the particular legislation. Some legislation may allow us to serve an enforcement costs recovery notice at the same time as serving the final notice to allow us to recover all the costs we incurred, including investigation costs, administration costs and costs of obtaining expert advice.

If the person does not fully comply with a non-monetary requirement by the required date then a breach of some notices may be an offence in itself for which we can prosecute. However often we can impose a financial penalty, sometimes known as a non-compliance penalty. In setting a non-compliance penalty usually it is the Council that decides the amount to be paid, subject to the statutory maximum and any prescribed criteria. In doing this we will aim to set the amount at a level to reflect the amount of costs avoided by the failure to comply with the original notice. When the person has completed some, but not all, of the required steps, we will aim to set the amount of the non-compliance penalty at the full costs of complying with the requirements, less the costs incurred in carrying out the steps already taken. Some legislation imposes a requirement on the Council to serve a notice of intention to serve a non-compliance penalty. Once the person who receives such a notice of intention has made representations or does nothing we will then make a final determination within the specified period, based on all the circumstances and the person's response.

The Council will comply with any requirements specified in the particular legislation regarding the issuing of all such notices. If relevant national guidelines are produced on the use of any such civil sanctions under particular legislation we will comply with them. We will also comply with any appeal mechanism specified by the legislation.

Service of a compliance notice will mainly be appropriate in order to stop an offence from recurring where compliance can be achieved by relatively simple adjustments to the process or labelling and in serious cases to avoid further supply of non-compliant product to consumers or distributors.

Service of a stop notice will mainly be appropriate when we are satisfied that the activity is causing serious harm or is presenting a significant risk of causing serious harm to human health or the environment or the financial interests of consumers. However it may not be appropriate to do so if it is not in the public interest or the person or business has taken immediate voluntary steps to cease a particular course of action.

In some situations the legislation may allow voluntary enforcement undertakings to be offered by the business as a formal agreement about the steps, that they proactively offer to carry out, to ensure that a breach will be rectified and/or recurrences will be prevented. The Council may accept such voluntary undertakings, but will take any

failure to honour such voluntary undertakings very seriously and enforcement action is likely to result.

We consider that it may not be appropriate to accept an enforcement undertaking when there is insufficient detail as to how non-compliance will be resolved or if the level of non-compliance is not fully recognised or when factors are present that indicate that a prosecution or another civil sanction is more appropriate.

9. Simple Cautions

A simple caution is an alternative to prosecution, where the circumstances are such that the caution is likely to be effective and the use of a caution is appropriate to the offence. It is an admission of guilt, but it is not a form of sentence, nor is it a criminal conviction. Simple cautions are issued by a senior officer and can only be given to an offender who is over 18, where there is sufficient evidence to give a realistic prospect of a conviction and it is considered to be in the public interest to use a simple caution rather than institute criminal proceedings. Additionally, the offender must admit guilt and consent to a caution in order for one to be given. ~~A senior, authorised officer may give a simple caution.~~ There is no legal obligation for any person to accept the offer of a simple caution, but failure to receive a caution will normally result in prosecution for the offence.

When deciding whether or not to prosecute consideration may be given to issuing a simple caution, but it may be decided that issuing a caution is not appropriate for the circumstances of the case.

Normally it is not appropriate to administer a second simple caution to the same offender for a similar offence within a period of two years.

If a person is offered a simple caution but declines to accept it or fails to attend, then the case must proceed to prosecution. At this stage, as the person has already declined to accept a caution it will not be appropriate to offer the caution to the person for a second time.

If the offender commits a further offence the caution may influence the decision whether or not to take a prosecution. A simple caution can be cited in court, so it may influence the severity of any sentence imposed by the court. Accepting a simple caution may have consequences if an individual seeks certain types of employment.

The Criminal Justice and Courts Act 2015 imposes statutory restrictions on the use of Simple Cautions. This legislation restricts the use of Simple Cautions for indictable-only offences, for certain specified either-way offences (but these do not relate to legislation enforced by the council) and for other offences where the offender has been convicted of or cautioned for a similar offence within the two years before the offence was committed, unless, in each case, it is decided that exceptional circumstances apply.

Under the Criminal Justice and Courts Act 2015 the Council is only permitted to conclude that there are exceptional circumstances justifying a simple caution if satisfied that, were the offender to be convicted of the offence, the court would be unlikely to impose an immediate or suspended custodial sentence or a high-level community order. Furthermore in assessing whether such exceptional circumstances exist account must be taken of the following non exhaustive factors: a) the level of culpability of the offender; b) any harm which the offence caused; c) any aggravating or mitigating factors; d) the offender's antecedents; e) the overall justice of the case and whether the circumstances require the case to be dealt with by prosecution and f) the range of sentences appropriate to the facts of the case. Officers must treat a previous offence as being similar to the present offence if it was of the same description or of a similar nature, e.g. they both involve dishonesty.

If all of the above requirements are met, the senior officer must consider whether the seriousness of the offence makes it appropriate for disposal by a Simple Caution and whether a Caution is likely to be effective in the circumstances. Generally the more serious the offence the more likely a prosecution will be required. Officers should consider any aggravating and mitigating factors when assessing seriousness and also consider whether the sentencing guidelines indicate a likely sentence of imprisonment or a high level community order. The senior officer may conclude that the public interest does not require the immediate prosecution of the offender.

10. Prosecutions

We recognise that most persons wish to comply with the law. However there are occasions when we will take enforcement action, including prosecution against those who flout the law, or who deliberately or persistently fail to comply, or who act irresponsibly or where there is an immediate risk to health and safety. In deciding what action to take, a number of factors will be taken into consideration, including:

- The nature of the alleged offence
- The seriousness of the alleged offence.
- The previous history of the business or persons involved
- The likelihood of a defendant establishing an available statutory defence
- Action taken by business to prevent any recurrence
- Any explanation offered and, as far as the law allows, the circumstances and attitude of the business towards compliance
- What course of action will best serve the public interest of the community

(Please also see the public interest factors under the Code for Crown Prosecutors.)

The decision to prosecute is taken by a senior officer who is an appropriately authorised under the Council's scheme of delegation:

- In accordance with this Policy;

- In accordance with the Code for Crown Prosecutors;
- And in accordance with statutory requirements, taking into consideration all other codes of practice.

Having decided to prosecute our policy is to select offences that reflect the seriousness and extent of the offending, give the court adequate powers to sentence and impose appropriate post-conviction orders and enable the case to be presented in a clear and simple way.

On some occasions prosecutions may be taken in the criminal courts at the same time as civil proceedings are also taking place in the civil courts.

In circumstances where the defendant wants to plead guilty to some, but not all of the charges, the Council will only accept such a plea if we think that the court is still able to pass a sentence that matches the seriousness of the offending. If the defendant pleads guilty to the charges but on the basis of facts that are different to the Council case and where this may significantly affect the sentence, we will usually invite the court to hear evidence to determine what happened and then sentence on that basis

A conviction will result in a criminal record. The court may impose a fine and/ or a community order and/or impose a prison sentence in respect of particularly serious breaches. The court may also order the forfeiture of seized items or non compliant goods. In some circumstances a prosecution may lead to the disqualification of individuals from driving or from acting as company directors.

Code for Crown Prosecutors

We use two tests under the Code for Crown Prosecutors to determine whether a prosecution or simple caution is a viable and appropriate method of disposal and the case must pass both tests before commencing a prosecution or using a simple caution.

We must be satisfied under the evidential test that, after an objective assessment of the evidence, including the impact of any defence and any other information that has been put forward by the suspect or on which he or she might rely, there is sufficient evidence to provide a “realistic prospect of conviction” against each defendant on each offence. This means that an objective, impartial and reasonable jury or bench of magistrates or a judge hearing the case alone when properly directed and acting in accordance with the law is more likely than not to convict the defendant of the alleged offence. As part of this test we will assess whether the evidence can be used in court, whether it is reliable and whether it is credible. We will look closely at any evidence where we are not sure that it can be used or whether it is reliable or credible.

If the case passes the evidential test we must apply the public interest test to decide whether it is in the public interest to take the action. A prosecution will usually take place unless there are public interest factors tending against prosecution which outweigh those in favour or we are satisfied that the public interest may be properly

served by using another method of disposal. We will balance factors both for and against prosecution carefully and fairly. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

In deciding the public interest we will consider the following questions:

1. How serious is the offence that has been committed?
2. What is the level of culpability of the suspect?
3. What are the circumstances of and the harm caused to the victim?
4. Is the suspect under 18 years old?
5. What is the impact on the community?
6. Is prosecution a proportionate response?
7. Do sources of information require protecting?

The questions are not exhaustive and not all of them are relevant in every case. In answering these questions some factors that we will consider are listed below, but again this list is not exhaustive:

- ~~The more seriousness the offence the more likely that a prosecution is required;~~
- The suspect has acted fraudulently or is reckless or negligent in their activities or there is significant risk to public health & safety or to the environment;
- The amount of gain for the offender or the amount of loss to the victim;
- The offence was committed in order to facilitate more serious offending;
- ~~The greater the suspect's level of culpability, the more likely that a prosecution is required;~~
- Whether the suspect is, or was at the time of the offence, suffering from any significant mental or ill health, ~~which may mean that it is less likely that a prosecution is required~~;
- If there is evidence that a prosecution is likely to have an adverse effect on the victim's physical or mental health;
- The level of the suspect's involvement in the offence;
- The suspect was a ringleader or organiser of the offence;
- The extent to which the offence was premeditated and/ or planned;
- Whether the suspect has previous criminal convictions or out-of-court disposals;
- Whether the offending has taken place whilst the suspect was on bail or subject to a court order;
- Whether the offending is likely to be continued, repeated or escalated;
- The presence of any motivation, of any form of discrimination or hostility ~~the more likely it is that a prosecution is required~~;
- The suspect has attempted to conceal their identity, whether directly or indirectly, to make it more difficult to identify or trace the person;
- The suspect deliberately obstructs an officer;
- The offence was committed as a result of a genuine mistake or misunderstanding;
- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;

- The suspect made a prompt acknowledgement of guilt;
- The suspect has put right the loss or harm that was caused, but must not avoid prosecution or an out-of-court disposal solely because he or she pays compensation or repays the sum of money he or she unlawfully obtained;
- The court is likely to impose a nominal penalty;
- The ~~greater the level of~~ vulnerability of the victim ~~the more likely it is that a prosecution is required~~;
- ~~If there is evidence that a prosecution is likely to have an adverse effect on the victim's physical or mental health this may make a prosecution less likely, but the seriousness of the offence must still be borne in mind~~;
- Whether a position of trust or authority exists between the suspect and the victim;
- If the offence was committed against a victim who was at the time serving the public ~~the more likely it is that a prosecution is required~~;
- The views of the victim about the impact that the offence has had, which may include the views of the victim's family;
- The suspect's age or maturity;
- Where the offender is under 18 ~~the best interests and welfare of the young person must be considered including~~ whether a prosecution is likely to have an adverse effect on the young person's future that is disproportionate to the seriousness of the offending;
- The ~~greater the level of~~ impact of the offending on the community ~~the more likely it is that a prosecution is required~~;
- Whether prosecution is proportionate to the likely outcome, including the cost to the council and the wider criminal justice system;
- Whether the case is capable of being prosecuted in a way that allows effective case management;
- The seriousness and consequences of the offending can be appropriately dealt with by an out-of-court disposal which the suspect accepts and with which he or she complies;

Special care should be taken with cases where details may need to be made public that could harm sources of information;

When we assess the public interest we will not simply add up the number of factors on each side to find out which side has the greatest number. Each case will be considered on its own facts and its own merits. We will decide the importance of each public interest factor in the circumstances of each case and go on to make an overall assessment of the public interest. It is quite possible that one factor alone may outweigh a number of other factors that tend in the opposite direction. We will not assume that the absence of a factor necessarily means that it should be taken as a factor tending in the opposite direction. Although there might be public interest factors tending against prosecution, sometimes we might consider that a prosecution should still go ahead so as to allow the court to consider those factors when deciding the sentence to be passed.

The final decision on whether or not to prosecute in a specific case will be made by a senior officer who has been authorised under the Council's General Scheme of

Delegation to institute a prosecution. He or she will only do so after a thorough review of the evidence and circumstances of the case have been carried out. If a decision is made to prosecute, where the law allows we will always seek to recover the costs of the investigation and the legal proceedings.

If an offence has been committed by a body corporate, where the law allows, we will consider prosecuting –directors or managers or other company officers when the offence has been caused by the negligence, consent or connivance of such a person. In such circumstances we will take action against the most appropriate body, ~~for~~ [example be it](#) the company, the director or both.

11, Orders imposed by the courts that are ancillary to the prosecution

At the successful conclusion of a prosecution we will apply for ancillary court orders in all appropriate cases. Listed below are some of the ancillary orders that a court may make following a conviction:

- Criminal Behaviour Orders;
- Disqualification from driving;
- Disqualification of directors;
- Compensation orders;
- Forfeiture orders;
- Proceeds of Crime Act confiscation orders;
- Proceeds of Crime Act cash detention orders;

Charging suspects

There may be circumstances when a suspect has been arrested by the police although the offence is being investigated by the council. After the suspect has been interviewed at the police station the investigating officer might consider that it is appropriate to charge the offender with the offences at the police station rather than to report the suspect so that [a summonses](#) can be issued at a later date. Such a request will be considered by a senior officer who is authorised to institute a prosecution; if the senior officer is satisfied that the evidential and public interest tests are met he or she will instruct the investigating officer to charge the suspect with the offence(s) at the police station.

Exceptionally there might be circumstances when a suspect has been arrested by the police and the seriousness of the offence indicates that he or she should be kept in custody, but insufficient evidence to meet the evidential test is currently available to the Council. In such cases we will apply the threshold test if

- There are reasonable grounds for believing that further evidence will become available within a reasonable period;
- The seriousness or circumstances of the case justify the making of an immediate decision on charging;
- There are continuing substantial grounds to object to bail and it is proper to do so in all the circumstances of the case;

Under the first part of the threshold test we must be satisfied that there is at least a reasonable suspicion that the person to be charged has committed the offence. If the reasonable suspicion part is satisfied we will then consider the second part of the test. Under this we must be satisfied that there are reasonable grounds for believing that the continuing investigation will produce further evidence, within a reasonable period of time, so that all of the evidence together is capable of establishing a realistic prospect of conviction. To do this we will consider the nature, extent and admissibility of such evidence, the charges it will support, the reason why the evidence is not already available, the time required to obtain the further evidence and whether any consequential delay is reasonable in all the circumstances.

If the senior officer is satisfied that the above threshold test is satisfied, then he or she will instruct the relevant investigating officer to charge the suspect with the offence(s) at the police station. We will keep such a decision to charge under review and, as soon as possible, we will apply the full evidential and public interest tests to the case.

Working in Partnership with other Enforcement Agencies

For some areas of our services, we have a shared or complementary enforcement role with other agencies. On occasion it will be more appropriate for other enforcement agencies or other local authorities to deal with particular breaches of legislation, so officers may pass details of the offence to such other parties. In carrying out these shared duties, we will still comply with our Enforcement Policy, but the other agencies will maintain the right to take any enforcement action that they consider to be necessary.

If an offender commits offences in a number of Local Authority areas, it may be more appropriate for one Council to take a prosecution for all the offences, including ones that took place outside of its area. In such circumstances we may enter into legal agreements with other councils for one authority to take the lead role, making use of provisions under the Section 19 of the Local Government Act 2000, Section 222 of the Local Government Act 1972 or any other enabling powers.

We will work closely with our partners including the Police, the Environment Agency, the Health & Safety Executive, the Food Standards Agency, the Competition and Markets Authority, and the Department for Environment, Food and Rural Affairs/ National Resources Wales, other local authorities and other enforcement agencies. We will exchange information on enforcement activities with our partner organisations and we will do so in accordance with any established methods of information sharing and legal requirements, including the provisions of the Data Protection Act [1998/2018](#), [General Data Protection Regulation 2018](#) and the Crime and Disorder Act 1998 and any information sharing protocols, codes of practice or memoranda of understanding that exist.

Review

The ~~council~~ Council welcomes feedback on this policy, in particular from affected parties, so that we can consider the impact of our policies on individuals and businesses. We strive to monitor the adherence of our officers to this policy. The

policy will be reviewed regularly and we will consider the inclusion of suggested improvements wherever possible.

Suggested revisions to this policy will be considered and proposed by relevant Council senior officers. ~~the Service Director, Public Health and Protection.~~ The ~~Service Director~~Council's Cabinet will then decide whether to approve the changes.

Conclusion

This enforcement policy supports the delivery of the Rhondda Cynon Taf Single Integrated Corporate Plan, developed with our communities and in the interests of our communities. It sets out our approach to encourage compliance, as well as action that will be taken when necessary and appropriate, to protect more vulnerable local people and the wider interests of our communities.

This enforcement policy will be regularly reviewed and updated/developed, as required by changes in legislation or guidance. This will include, where appropriate, consultation with and consideration of the views of other interested parties, relevant bodies and stakeholders in the enforcement process. Consultation may take place through the development of partnerships with other agencies or organisations.

This policy is designed to deliver the best possible enforcement service to the residents and business community of Rhondda Cynon Taf County Borough Council, in line with the Single integrated Plan. It embraces the principles of good enforcement specified by the Government's Enforcement Concordat, the Regulators' Code and reflects the rights of the individual protected by the Human Rights Act 1998 and associated legislation. We aim to provide a service that is efficient, consistent, fair and transparent.

APPENDIX 1 - ENFORCEMENT DIRECTORY 20152018

Enforcement Activity: Community and Children's Services Group		
Public Health & Protection		
Service Area	Nature of Enforcement Activity	Relevant Legislation of Power Officers have proposed removing this column as legislation is regularly changing and evolving meaning references can be out of date
Housing Enforcement	<ul style="list-style-type: none"> • Abandonment of waste • Boundary walls • Drainage • Environmental information • High hedges • Illegal deposits of controlled waste, duty of care, waste management • Licensing of houses in multiple occupation • Noise from vehicles, machinery and equipment • Noxious material • Pest control • Power of enforced sale of property • Private sector housing • Regulation of caravan sites • Requisition for Information • Ruinous & dilapidated buildings • Seizure and forfeiture of noise equipment • Statutory nuisances (noise, animals, premises, dust, fumes, odour etc) 	<p>Anti-social Behaviour Act 2003 Building Act 1984 Caravan Sites and Control of Development Act 1960 Caravan Sites Act 1968 Clean Neighbourhoods and Environment Act 2005 Dangerous Wild Animals Act 1976, Development Act 1960 Dogs Act 1906 Dogs (Fouling of Land) Act 1996, Environment Act 2005 Environmental & Safety Information Act 1996 Environmental Protection Act 1990 Health Act 2006 Housing Acts 1985, 1996 & 2004 Law of Property Act 1925 Local Government & Housing Act 1989 Local Government (Miscellaneous Provisions) Acts 1976 & 1982 Mid Glamorgan County Council Act 1987 Noise Act 1996 Noise and Statutory Nuisance Act 1993 Prevention of Damage by Pests Act 1949 Protection from Eviction Act 1977 Public Health Acts 1936 & 1961 Prevention of Damage by Pests Act 1949</p>

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Food and Health & Safety	<ul style="list-style-type: none"> • Accident investigation • Food hygiene inspections • Food hygiene sampling • Health & safety (commercial premises) inspections • Infectious diseases investigation & control • Safety of sports grounds • Smoking control 	<p> European Communities Act 1972 Fire Safety & Places of Sports Act 1967 Food & Environmental Protection Act 1985 Food Hygiene (Wales) Regulations 2006 Food Safety Act 1990 Health Act 2006 Health and Safety at Work etc Act 1974 Licensing Act 2003 Public Health Acts 1936 & 1961 Public Health (Control of Disease) Act 1984 Safety of Sports Ground Act 1975 Scrap Metal Dealers Act 1964 Sunday Trading Act 1994 Theatres Act 1994 </p>
Licensing	<ul style="list-style-type: none"> • Alcohol licensing • Animal related licenses (pet shops, riding establishments) • Gambling licensing • Miscellaneous licensing (charities, scrap metal) • Petroleum & explosives licensing • Public entertainment licensing • Smoking control • Taxi licensing 	<p> Animal Boarding Establishments Act 1963 Charities Act 2006 Cinemas Act 1985 Dangerous Wild Animals Act 1976 Explosives Acts 1875 Gambling Act 2005 Gaming Act 1968 Health Act 2006 Licensing Act 2003 Local Government (Miscellaneous Provisions) Acts 1976 & 1982 Lotteries and Amusements Act 1976 Nurses Agencies Act 1957 Petroleum (Consolidation) Act 1928 Poisons Act 1972 Private Security Industry Act 2001 Road Safety Act 2006 Town (Police Clauses) Act 1847 & 1889 </p>
Trading Standards	<ul style="list-style-type: none"> • Age-restricted products sales • Animal disease control 	<p> Agricultural (Miscellaneous Provisions) Act 1968 Animal Health Act 1981 Animal Welfare Act 2006 </p>

	<ul style="list-style-type: none"> • Animal identification • Anti-social behaviour • Consumer credit • Counterfeiting • Doorstep crime • Fair trading • Food labelling and composition • Licensing of animal movements • Mis-described goods and services • Protection of animal health and welfare, • Safety of consumer goods • Waste food • Weights & measures 	<ul style="list-style-type: none"> Anti-social Behaviour Act 2003 Business Protection from Misleading Marketing Regulations 2008 Children & Young Persons Act 1933 Consumer Credit Act 1974 Consumer Protection Act 1987 Consumer Protection from Unfair Trading Regulations 2008 Consumer Rights Act 2015 European Communities Act 1972 Food Safety Act 1990 Fraud Act 2006 Licensing Act 2003 Prices Act 1974 Road Traffic Act 1988 Trade Marks Act 1994 Video Recordings Act 1984 Weights & Measures Act 1985
<p>Pollution Control</p>	<ul style="list-style-type: none"> • Approver for furnaces • Contaminated land • Control of hours of operation on construction sites • Duty of care • Illegal deposits of controlled waste • License consultations • Noise from vehicles, machinery & equipment • Planning consultations • Regulated facilities • Requisition for information • Ruinous & dilapidated buildings, drainage • Seizure & forfeiture of noise equipment. • Smoke complaints • Statutory nuisance (noise, animals, premises, dust fumes, odour etc) • Waste management 	<ul style="list-style-type: none"> Building Act 1984 Clean Air Act 1993 Clean Neighbourhoods and Environment Act 2005 Control of Pollution Act 1974 Environment Act 1995 Environmental Protection Act 1990 European Communities Act 1972 Licensing Act 2003 Local Government (Miscellaneous Provisions) Acts 1976 & 1982 Noise Act 1996 Noise and Statutory Nuisance Act 1993 Pollution Prevention and Control Act 1999 Prevention of Damage by Pests Act 1949 Radioactive Substances Act 1960 Refuse Disposal (Amenity) Act 1978 Town and Country Planning Act 1990

Enforcement Activity: Corporate and Frontline Services		
Highways & Streetcare		
Street Care Enforcement	<ul style="list-style-type: none"> • Abandoned vehicles • Animal control • Dog fouling • Domestic waste • Fly posting • Fly tipping • Graffiti • Littering • Noisy dogs • Straying dogs and other animals • Trade waste 	<ul style="list-style-type: none"> • Anti-social Behaviour Act 2003 • Clean Neighbourhoods and Environment Act 2005 • Control of Pollution Act 1974 • Dangerous Wild Dogs Act 1976 • Dogs (Fouling of Land) Act 1996 • Environmental Protection Act 1990 • European Communities Act 1972 • Highways Act 1980 • Local Government (Miscellaneous Provisions) Acts 1976 & 1982 • Prevention of Damage by Pests Act 1949 • Refuse Disposal (Amenity) Act 1978 • Road Traffic Act 1984 • Town and Country Planning Act 1990
Highway Maintenance	<ul style="list-style-type: none"> • Builders skips placed on highway without licence • Canopies and structures over the highway • Cellar access covers and grids • Damage to County Borough property • Dangerous trees affecting the highway - on land in unknown ownership • Deposition of building materials on highway without licence • Erectors of scaffolding on highway without a licence • Extraordinary traffic • General obstruction in highway - signs/ displayed merchandise/ advertising stand, trailers/vehicles/ caravans, contractors plant /sheds 	<ul style="list-style-type: none"> • Highways Act 1980 • Local Government (Miscellaneous Provisions) Act 1976

	<ul style="list-style-type: none"> • Removal of things deposited on highway which are a danger e.g. mud, oil etc • Trees/hedges overhanging the highway causing obstruction • Water falling on flowing onto the highway 	
Highways Street Works	<ul style="list-style-type: none"> • Illegal vehicular crossing of footways -(only when new/replacement footway works are programmed) • Recharging of costs incurred cleaning up after road traffic accidents • Regular inspections to ensure works are undertaken to the highway authority standard 	Highways Act 1980 Local Government (Transport Charges) Regulations 1998 New Roads and Street Works Act 1991
Highways Structures	<ul style="list-style-type: none"> • Dangerous building or structure • Dangerous building or structure emergency measures • Dangerous land adjoining street • Powers of entry of highway authority for purpose of marking etc certain structures and works. • Powers relating to retaining walls near streets • Supplementary provisions as to powers of entry for the purpose of survey 	Building Act 1984 Highways Act 1980
Land Reclamation & Engineering	<ul style="list-style-type: none"> • Land drainage • Mines and quarries 	Land Drainage Act Mines and Quarries Act 1954
Parks & Countryside	<ul style="list-style-type: none"> • Dog fouling in parks • Enforcement of parks byelaws • Maintenance and upkeep of allotments • Obstruction to public rights of way • Tree preservation orders 	Byelaws. Byelaws formed by former district councils Dogs (Fouling of Land) Act 1996 Road Traffic Act 1988 Town and Country Planning Act 1990 Highways Act 1980

	<ul style="list-style-type: none"> • Unauthorised use of public rights of way 	
Planning & Building Control		
Building Control	<ul style="list-style-type: none"> • Dangerous buildings/structures 	Building Act 1984
Parking Services		
Civil Parking Enforcement	<ul style="list-style-type: none"> • Enforcement of Council managed off-street car parks and on-street Traffic Regulation Orders. 	Traffic Management Act 2004 The Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008
Highways Development Control		
Enforcement Section	<ul style="list-style-type: none"> • Regulating breaches of the Town and Country Planning Act 1990 	Planning and Compensation Act 1991 Planning (Listed Buildings and Conservation Areas) Act 1990 Planning and Compulsory Purchase Act 2004 Town and Country Planning Act 1990 National Guidance Town and Country Planning (Control of Advertisement) Regulations 1992 Town and Country (General Permitted Development) Order 1995 (as amended)
Cleansing		
Cleansing	<ul style="list-style-type: none"> • Fly tipping (illegal disposal of wastes) • Offence of dropping litter 	Clean Neighbourhoods and Environment Act 2005 Environmental Protection Act 1990

Enforcement Activity: Community and Children's Services Group		
Community Care		
Service Area	Nature of Enforcement Activity	Relevant Legislation or Power
Community Care	<ul style="list-style-type: none"> • Mental Health Act assessments • Protection of property • Vulnerable adults 	<p>Mental Health Act 1983 & 2007 National Assistance Act 1948 Care Standards Act 2000 "In Safe Hands" 2000 Guidance on adult protection</p>
Community Housing	<ul style="list-style-type: none"> • Homeless • Housing advice centre • Protection from eviction/harassment 	<p>Housing Act 1985 & 2004 Landlords & Tenant Act 1954 Protection from Eviction Act 1977</p>
Children's Services	<ul style="list-style-type: none"> • Care proceedings • Supervision orders • Care orders • Secure accommodation orders • Inherent jurisdiction orders • Child assessment orders • Emergency protection orders • Permission to refuse contact • 	<p>Children's Act 1989 Education Act 1996</p>

Enforcement Activity: Education and Lifelong Learning Group		
Planning & Performance Management and Children's Services		
Services Area	Nature of Enforcement Activity	Relevant Legislation or Power
Planning and Performance Management	<ul style="list-style-type: none"> • Prosecution of trespassers 	<p>Local Government (Miscellaneous Provisions) Act 1982</p>
Education	<ul style="list-style-type: none"> • Prosecution of parents for non-school attendance 	<p>Education Act 1996</p>

	<ul style="list-style-type: none"> Licensing of children to carry out work or perform 	Children (Performances) Regulations 1968
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Lifelong Learning Division

Service Area	Nature of Enforcement Activity	Relevant Legislation or Power
Library Service	<ul style="list-style-type: none"> Ban from library premises for anti-social behaviour Suspension of borrowing rights for non return of library materials or non-payment of fines 	Library Byelaws

Enforcement Activity: Corporate & Frontline Services Group

Finance Division

Service Area	Nature of Enforcement Activity	Relevant Legislation or Power
Council Tax	Applications for liability orders at magistrates court: – Enforcement remedies that follow are: - <ul style="list-style-type: none"> Attachment of earnings/benefits/ Members' allowances Charging order Committal Taking control of goods Bankruptcy Request for financial information 	Local Government Finance Act 1992 Tribunal, Courts and Enforcement Act 2007
Business Rates	Applications for liability orders at magistrates court: – Enforcement remedies that follow are: - <ul style="list-style-type: none"> Committal Taking control of goods Bankruptcy/ winding up 	Local Government Finance Act 1988 Tribunal, Courts and Enforcement Act 2007
Enforcement of unpaid Sundry Debts	Action available through the county court only - <ul style="list-style-type: none"> Attachment of earnings Committal warrants. 	Council's Financial Procedure Rules relating to Fees and Charges Local Government Act 1972

	<ul style="list-style-type: none"> • Warrants of distraint 	
Collection of overpaid Housing Benefit	<ul style="list-style-type: none"> • Attachment of earnings • Attachment to state benefit • Charging order • Direct Earnings Attachment Orders 	Social Security Administration Act 1992 Social Security Administration (Fraud) Act 1997 Social Security (Overpayments and Recovery) Regulations 2013
Investigation of fraudulent claims for housing and council tax benefits	<ul style="list-style-type: none"> • Imposition of sanctions as set out in Social Security legislation including formal caution, administrative penalty and criminal prosecution. Sanctions are applied according to the Operational Finance Prosecution & Sanctions Policy 	Social Security Administration Act 1992 Social Security Administration (Fraud) Act 1997
Investigation of awards, discounts (including council tax reduction) and grants	<ul style="list-style-type: none"> • In conjunction, consultation with Internal Audit, any other fraudulent applications made within the Council for awards, discounts, grants, exemptions etc will be investigated, resulting in either repayment, prosecution, civil penalty or simple caution. 	Local Government Finance Act 1992 (For the imposition of civil penalties) Fraud Act 2006 Theft Acts 1968 & 1978 (For prosecution or simple caution matters) The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013
Community Estates, Finance & IT		
Service Area	Nature of Enforcement Activity	Relevant Legislation or Power
Tenancy Conditions	<ul style="list-style-type: none"> • Neighbour nuisance/anti social behaviour • Recharges for damage to property/land not attributed to fair wear and tear • Rent arrears and former tenant arrears 	Crime and Disorder Act 1998 Housing Act 1985 & 2004

Estate Management	<ul style="list-style-type: none">• Abandoned vehicles• Adverse Possession• Breach of lease terms• Encroachment• Fly tipping• Parking on verges• Repossession of shop• Rent arrears• Trespass• Untidy gardens	Housing Act 1985 & 2004 Landlord & Tenant Act 1954
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RHONDDA CYNON TAF

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

CORPORATE POLICY & PROCEDURES DOCUMENT

ON

THE REGULATION OF INVESTIGATORY-POWERS ACT
2000 (RIPA)

POWERS ACT 2000 (RIPA)

Christopher B Jones
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Adopted on:

Revised:

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December 2010, February 2013, August 2014, ~~and~~ June
2015 and October 2018**

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NB:

The Regulation of Investigatory Powers Act 2000 ('RIPA') refers to 'Designated Officers'. For ease of understanding and application within Rhondda Cynon Taf County Borough Council, this Corporate Policy & Procedures Document refers to 'Authorising Officers'.

Acknowledgements:

The Council is most grateful to Birmingham City Council for their helpful contribution to the development of this Corporate Policy & Procedures Document.

A. Introduction and Key Messages

1. This Corporate Policy & Procedures Document is based upon the requirements of The Regulation of Investigatory Powers Act 2000 ('RIPA') and Home Office's Code of Practices on "Covert Surveillance and Property Interference" and "Covert Human Intelligence Sources". The Council takes responsibility for ensuring the RIPA procedures are continuously improved.
2. The authoritative position on RIPA is, of course, the Act itself and the associated Home Office Codes of Practice and any Officer who is unsure about any aspect of this Document should contact, at the earliest possible opportunity, the Senior Responsible Officer, namely the Director of Legal and Democratic Services ('the Senior Responsible Officer') for advice and assistance. Appropriate training and development will be organised by the ~~Service Director~~ Senior Responsible Officer to relevant Authorising Officers and other senior managers.
3. The Codes of Practice are admissible as evidence in court. The provisions of the codes, if relevant, must be taken into account by the court.
4. Copies of this Document and related Forms will be placed on the Staff Intranet.
5. The Senior Responsible Officer will maintain and check the Corporate Register of all RIPA authorisations. It is the responsibility of the relevant Authorising Officer, however, to ensure the Senior Responsible Officer receives a copy of the relevant Forms as soon as practicable.
6. RIPA and this Document are important for the effective and efficient operation of the Council's actions with regard to covert surveillance and Covert Human Intelligence Sources. This Document will, therefore, be kept under review by the Senior Responsible Officer and elected members. Authorising Officers must bring any suggestions for continuous improvement of this Document to the attention of the Senior Responsible Officer at the earliest possible opportunity.
7. In terms of monitoring e-mails and internet usage, it is important to recognise the important interplay and overlaps with the Council's e-mail and internet policies and guidance, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Data Protection Act ~~1998~~2018, General Data Protection Regulation 2018 and ~~its~~any associated Codes of Practice. RIPA ~~f~~Forms should be used where relevant and they will be only relevant where the criteria listed on the Forms are fully met.
8. If you are in any doubt on RIPA, this Document or the related legislative provisions, please consult the Senior Responsible Officer, at the earliest possible opportunity.

B. County Borough Council Policy Statement

1. The Council takes seriously its statutory responsibilities and will, at all times, act in accordance with the law and take necessary and proportionate action in these types of matters. In that regard the Senior Responsible Officer is duly authorised by the Council to keep this Document up to date and to amend, delete, add or substitute relevant provisions, as necessary. For administration and operational effectiveness, the Senior Responsible Officer is also authorised to add or substitute Officers authorised for the purpose of RIPA.
2. The Council's use of RIPA will be overseen by the Senior Responsible Officer, who is a member of the Corporate Management Senior Leadership Team.

C. Effective Date of Operation And Authorising Officer Responsibilities

1. The Corporate Policy, Procedures and the Forms provided in this Document will become operative with effect from the date of its adoption by the Council. Prior to that, departments are encouraged to start using the Forms. After adoption, no other Forms will be allowable and any authorisations under the same will become null and void unless otherwise authorised by the Senior Responsible Officer. It is essential, therefore, that Chief Officers and Authorising Officers in their Divisions take personal responsibility for the effective and efficient operation of this Document.
2. Prior to the adoption date, and on subsequent revisions to this Document, Chief Officers have designated authorising officers within the appropriate divisions to take action under RIPA.
3. Authorising Officers will also ensure that staff who report to them follow this Corporate Policy & Procedures Document and do not undertake or carry out any form of surveillance without first obtaining the relevant authorisations in compliance with this Document.
4. Authorising Officers must also pay particular attention to Health and Safety issues that may be raised by any proposed surveillance activity. Under no circumstances, should an Authorising Officer approve any RIPA ~~f~~Form unless, and until s/he is satisfied the health and safety of Council employees/agents are suitably addressed and/or risks minimised, so far as is possible, and proportionate to/with the surveillance being proposed. If an Authorising Officer is in any doubt, s/he should obtain prior guidance on the same from his/her Service Director, the Council's Health & Safety Officer and/or the Senior Responsible Officer.
5. The Criminal Procedure and Investigation Act 1996 requires that any material, which is obtained during an investigation that may be relevant to the investigation, must be recorded and retained. Authorising Officers must ensure that any material obtained through directed surveillance or the use of a CHIS will be stored and disposed of in a secure manner and in compliance with Data Protection Act Legislation requirements.

6. Authorising Officers must also ensure that, when sending copies of any Forms to the Senior Responsible Officer (or any other relevant authority), the same are sent in sealed envelopes and marked 'Strictly Private & Confidential'.

D. General Information on RIPA

1. The Human Rights Act 1998 (which brought much of the European Convention on Human Rights and Fundamental Freedom 1950 into UK domestic law) requires the County Borough Council, and organisations working on its behalf, pursuant to Article 8 of the European Convention, to respect the private and family life of citizens, his home and his correspondence.
2. The European Convention did not, however, make this an absolute right, but a qualified right. Accordingly, in certain circumstances, the County Borough Council may interfere in the citizen's right mentioned above, if such interference is:-
 - (a) in accordance with the law;
 - (b) necessary (as defined in this Document); and
 - (c) proportionate (as defined in this Document).
3. The Regulation of Investigatory Powers Act 2000 ('RIPA') provides a statutory mechanism (i.e. 'in accordance with the law') for authorising covert surveillance and the use of a 'covert human intelligence source' ('CHIS') – e.g. undercover agents, in circumstances that are likely to result in the obtaining of private information about a person. It seeks to ensure that any interference with an individual's right under Article 8 of the European Convention is necessary and proportionate. In doing so, the RIPA seeks to ensure both the public interest and the human rights of individuals are suitably balanced.
4. Directly employed Council staff and external agencies working for the Council are covered by ~~the Act~~RIPA for the time they are working for the Council. All external agencies must, therefore, comply with RIPA and the work carried out by agencies on the Council's behalf must be properly authorised by one of the Council's designated Authorising Officers. Authorising Officers are those whose posts appear in Appendix 1 to this Document and duly added to or substituted by the Senior Responsible Officer.
5. If the correct procedures are not followed, evidence may be disallowed by the courts, a complaint of maladministration could be made to the Ombudsman, and/or the Council could be ordered to pay compensation. Such action would not, of course, promote the good reputation of the County Borough Council and will, undoubtedly, be the subject of adverse press and media interest. It is essential, therefore, that all involved with RIPA comply with this Document and any further guidance that may be issued, from time to time, by the Senior Responsible Officer.
6. A flowchart of the procedures to be followed appears at Appendix 2.

E. What RIPA Does and Does Not Do

1. RIPA does:

- require prior authorisation of directed surveillance;
- prohibit the Council from carrying out intrusive surveillance;
- require authorisation of the conduct and use of a CHIS;
- require safeguards for the conduct and use of a CHIS.

2. RIPA does not:

- make lawful conduct which is otherwise unlawful;
- prejudice or dis-apply any existing powers available to the Council to obtain information by any means not involving conduct that may be authorised under this Act. For example, it does not affect the Council's current powers to obtain information via the DVLA or to get information from the Land Registry as to the ownership of a property.
- Apply in relation to covert surveillance activities that are unlikely to result in the obtaining of private information about a person.

3. If the Authorising Officer or any Applicant is in any doubt, she/he should ask the Senior Responsible Officer BEFORE any directed surveillance and/or CHIS is authorised, renewed, cancelled or rejected.

F. Types of Surveillance

1. 'Surveillance' includes

- monitoring, observing, listening to persons, watching or following their movements, listening to their conversations and other such activities or communications.
- recording anything mentioned above in the course of surveillance. (*This would include filming, audio recording or writing down*)

~~surveillance, by or with, the assistance of appropriate surveillance device(s). (This would include use of binoculars or listening devices)~~

Surveillance may be conducted with or without the assistance of a surveillance device. (This would include use of binoculars or recording devices)

Note RIPA does not regulate the surveillance of places or premises per se, there has to be a human subject of the surveillance for RIPA to apply.

Surveillance can be overt or covert.

Overt Surveillance

2. Most of the surveillance carried out by the Council will be done overtly – there will be nothing secretive, clandestine or hidden about it. In many cases, Officers will be behaving in the same way as a normal member of the public (e.g. in the case of most test purchases), and/or will be going about Council business openly (e.g. a market inspector walking through markets).
3. Similarly, surveillance will be overt if the subject has been told it will happen e.g. where a noisemaker is warned (preferably in writing) that noise will be recorded if the noise continues, or where a licence is issued subject to conditions, and the licensee is told that officers may visit without notice or identifying themselves to the owner/proprietor to check that the conditions are being met.

Covert Surveillance

4. ~~Covert~~ Surveillance is Covert if it is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware of it taking place. (Section 26(9)(a) of RIPA).
5. RIPA regulates two types of covert surveillance, (Directed Surveillance and Intrusive Surveillance) and the use of Covert Human Intelligence Sources (CHIS).

Directed Surveillance

6. Directed Surveillance is surveillance which:-
 - is covert; and
 - is not intrusive surveillance (see definition below – the Council must not carry out any intrusive surveillance); and
 - is not carried out in an immediate response to events which would otherwise make seeking authorisation under the Act unreasonable, e.g. spotting something suspicious and continuing to observe it; and
 - it is undertaken for the purpose of a specific investigation or operation in a manner likely to obtain result in private information about an individual (whether or not that person is specifically targeted for purposes of an investigation). (~~Section 26(10) of RIPA~~).
7. Private information in relation to a person includes any information relating to his private and family life (Section 26(10) of RIPA). This includes any aspect of a person's private or personal relationship with others, including family and professional or business relationships. Whilst a person may have a reduced expectation of privacy when in a public place, the fact that covert surveillance occurs in a public place or on business premises does not mean that it cannot result in the obtaining of private information about a person. Prolonged surveillance targeted on a single person will undoubtedly result in the

obtaining of private information about him/her and others that s/he comes into contact, or associates, with.

8. Similarly, although overt town centre CCTV cameras do not normally require authorisation, if the camera is tasked for a specific purpose, which involves prolonged surveillance on a particular person, authorisation will be required. The way a person runs his/her business may also reveal information about his or her private life and the private lives of others. The use of the CCTV in these circumstances goes beyond their intended use for the general prevention or detection of crime and protection of the public.
9. For the avoidance of doubt, only those Officers designated to be 'Authorising Officers' for the purpose of RIPA can authorise 'Directed Surveillance' IF, AND ONLY IF, the RIPA authorisation procedures detailed in this Document are followed.

Intrusive Surveillance

10. This form of surveillance can be carried out only by police and other law enforcement agencies. Council Officers must not carry out intrusive surveillance.

This is when it:-

- is covert;
- relates to residential premises and private vehicles; and
- involves the presence of a person in the premises or in the vehicle or is carried out by a surveillance device in the premises/vehicle. Surveillance equipment mounted outside the premises/vehicle will be intrusive, where the device consistently provides information of the same quality and detail as might be expected to be obtained from a device inside the premises/vehicle.

11. Surveillance is intrusive when it:-

- is covert;
- relates to residential premises and private vehicles; and
- involves the presence of a person in the premises or in the vehicle or is carried out by a surveillance device in the premises/vehicle. Surveillance equipment mounted outside the premises/vehicle will be intrusive, where the device consistently provides information of the same quality and detail as might be expected to be obtained from a device inside the premises/vehicle.

This form of surveillance can be carried out only by police and other law enforcement agencies. Council Officers must not carry out intrusive surveillance.

12. Examples of different types of Surveillance

Type of Surveillance	Examples
Overt	<ul style="list-style-type: none"> a) Police Officer or Parks Warden on patrol; b) Signposted or clearly visible Town Centre CCTV cameras (in normal use); c) Recording noise coming from outside the premises after the occupier has been warned that this will occur if the noise persists; d) Most test purchases (where the officer behaves no differently from a normal member of the public).
Covert but not requiring prior authorisation	<ul style="list-style-type: none"> a) CCTV or ANPR cameras providing general traffic, crime or public safety information. b) General observation duties forming part of the legislative functions of officers, as opposed to pre-planned surveillance of a specific person or group c) <u>Covert recording of a person voluntarily being interviewed by an officer during an investigation</u>
Directed (must be RIPA authorised-)	<ul style="list-style-type: none"> <u>a) Officers follow an individual or individuals over a period, to establish whether s/he is working when claiming benefit;</u> <u>a)b) b) Test purchases where the officer has a hidden camera or other recording device to record information if this is likely to include information about the private life of a shop-owner, e.g. where s/he is suspected of running his business in an unlawful manner. (NB When we use volunteers equipped with hidden cameras for undertaking underage sales test purchases we have developed procedures restricting where the camera films and the subsequent occasions when the film may be viewed and by doing so making the obtaining of private information very unlikely. In these circumstances we often consider that an authorisation is not necessary)</u> c) CCTV or ANPR cameras used in a covert and pre-planned manner as part of a specific investigation

Intrusive (the Council cannot do this!)	<ul style="list-style-type: none"> a) Planting a listening or other device (bug) in a person's home, hotel room or in their private vehicle. b) Surveillance taking place at any prisons, police stations, high security psychiatric hospitals, lawyers' offices or court premises that are being used for legal consultations
Directed but not intrusive	Surveillance of a communal stairway in a block of flats, an interview room, an hotel reception or dining area, a front garden of a premise readily visible to the public or a house used for a "house of horrors" type of operation
Neither d Directed or i Intrusive	<ul style="list-style-type: none"> a) Use of a recording device by a CHIS where this is allowed by the CHIS authorisation; b) Overt or covert recording of a voluntary interview with a member of the public by a local authority officer c) Covert recording of noise nuisance where the recording device records only excessive noise levels

Activity which should properly be authorised but which is not should be reported to the [Office of the Surveillance Investigatory Powers](#) Commissioner, in writing, as soon as the error is recognised.

The general observation duties of law enforcement officers including council officers do not require RIPA authorisation whether they are carried out covertly or overtly. Such general observation duties frequently form part of the legislative function of public authorities, as opposed to pre-planned surveillance of a specific person or group of persons. In effect these general observations would include officers parking in an area to keep an eye out or travelling around looking for what is going on.

Surveillance of persons while they are actually engaged in crime in a public place is not obtaining information about them which is properly to be regarded as 'private', so this does not require a ~~d~~Directed ~~s~~Surveillance authorisation.

Covert surveillance for any purposes other than for the prevention or detection of crime should be conducted under other legislation, if relevant, and RIPA authorisation should not be sought. This would include surveillance for the ordinary functions carried out by all authorities such as employment issues, investigating long-term sickness, contractual arrangements etc. The Council may only engage the use of RIPA when it is carrying out its "core functions" relating to enforcement. The disciplining of an employee is not such a core function, but if the investigation is for criminal misconduct the protection of RIPA is available as long as the activity is deemed to be necessary and proportionate.

If any covert activities do not require RIPA authorisation but, for instance, there is a possibility that some private information may be obtained unexpectedly, it would be

good practice for the officer to record in writing in advance the reasons why it is necessary and proportionate for the activities to take place. This will help to demonstrate that the officer has given consideration to relevant human rights issue. Similar considerations could apply if an elderly victim wanted a CCTV camera to be installed inside the house to protect the person from cold-callers. Officers would not be able to authorise this under RIPA because it would be intrusive surveillance but, as there are good reasons for installing the camera, a human rights consideration form should be used to record the reasoning.

If such human rights consideration forms are used to cover general use of certain covert techniques in a particular set of circumstances, such as for certain types of test purchasing activities, then the Authorising Officer should periodically review the use made of the technique, to check whether any significant collateral intrusion has occurred. If this has occurred the Authorising Officer must decide whether the particular technique should be allowed to continue or only allowed to continue after changes have been made.

The original versions of such general human rights consideration forms should be forwarded for inclusion in the Central Register, where they can be assessed by the Senior Responsible Officer.

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G. Conduct and Use of a Covert Human Intelligence Source (CHIS)

Who is a CHIS?

1. Someone who establishes or maintains a personal or other relationship for the covert purpose of helping the covert use of the relationship to obtain information.
2. RIPA does not apply in circumstances where members of the public volunteer information to the County Borough Council as part of their normal civic duties, or to contact numbers set up to receive information.

What must be authorised?

3. The Conduct or Use of a CHIS requires prior authorisation. Most authorisations will be for both conduct and use.
 - Conduct of a CHIS = these are the steps taken by the CHIS on behalf of the Council. They are actions establishing or maintaining a personal or other relationship with a person for the covert purpose of (or is incidental to) obtaining and passing on information;
 - Use of a CHIS = these are the steps taken by the Council in relation to the CHIS. They are actions regarding inducing, asking or assisting a person to act as a CHIS and the decision to use a CHIS in the first place;
 - Establishing a relationship means setting it up; ~~and~~ maintaining a relationship involves means endurance of the relationship over a particular period. Repetition is not always necessary to give rise to a relationship, but whether one exists depends on the circumstances including the length of time of the meeting and the nature of any covert activity;
 - Unlike for ~~d~~Directed ~~s~~Surveillance that relates to the obtaining of private information, the conduct or use of a CHIS involves the covert manipulation of a relationship to gain any type of information.
4. The Council can use CHIS's IF, AND ONLY IF, RIPA procedures, detailed in this Document are followed.

Circumstances when authorisation is not required

Not all human source activity will meet the definition of a CHIS. These include:

- Persons volunteering or providing information that is within their personal knowledge, without being induced, asked or tasked by the Council;
- Persons who are required to provide information out of a professional or statutory duty;
- Persons who are tasked to do something that does not involve them in a relationship with the target, such as recording what they observe.

Nevertheless Officers should keep under constant review such human sources, as well as members of the public who offer their services to assist an investigation, in order to decide whether, in their judgement, at some point the source needs to become a CHIS. This is to prevent “tasking by implication” where the source thinks they are being encouraged to obtain certain information and such tacit encouragement could amount to tasking the source as a CHIS. Tasking of a person should not be the sole benchmark in seeking a CHIS authorisation, as it is the activity of the CHIS in exploiting a relationship for a covert purpose that triggers authorisation. Therefore it is possible that a person will become engaged in the conduct of a CHIS without the Council inducing, asking or assisting the person to engage in that conduct.

Any manipulation of a relationship by the council is likely to engage the subject’s Article 8 right to privacy, regardless of whether or not the council intends to acquire private information. Consequently an authorisation will be required if a relationship exists between the subject and the CHIS, even if specific information has not been sought by the Council.

Handler, controller and record keeper for CHIS

5. It is important that both Officers and the CHIS are made fully aware of the extent and limits of any conduct authorised. The following persons must be nominated in relation to each CHIS:

Handler

This person must be an officer of the Council and that person will have day-to-day responsibility for dealing with the CHIS, for recording the information supplied by the CHIS and for monitoring the CHIS’s security and welfare. The Handler will need to explain to the CHIS what he or she must do. For example, the CHIS may be someone who assists a trading standards officer and is asked to undertake a test purchase of items that have been misdescribed.

Controller

This person must be an officer of the Council and that person will normally be responsible for the management and supervision of the handler as well as carrying out a general oversight of the use made of the CHIS. This person is likely to have general responsibility for the management of covert operations undertaken by the service.

The Controller and Handler should record that they have been briefed on the parameters of the use and conduct of the CHIS that has been authorised.

The day-to-day contact with the CHIS is to be conducted by the Handler. Some arrangements may be made in direct response to information provided by the CHIS on his meeting with the Handler. Before any person is authorised to act as a CHIS, the Handler should complete a **rRisk aAssessment fForm** for the person and the proposed activity. This may require contact with the police to find out if the proposed target is likely to pose a risk to the CHIS. Steps should be taken to protect the safety and welfare of the CHIS, when carrying out actions in relation to an authorisation, and to others who may be affected

by the actions of CHIS. Before authorising the use or conduct of a CHIS, the Authorising Officer should ensure that a risk assessment is carried out to determine the risk to the CHIS of any action and the likely consequences should the role of the CHIS become known to the subject of the investigation or those involved in the activity which is being investigated. The ongoing security and welfare of the CHIS after the cancellation of the authorisation should also be considered at the outset.

The Handler is responsible for bringing to the Controller's attention any concerns about the personal circumstances of the source, insofar as they might affect:

- The validity of the risk assessment;
- The proper conduct of the CHIS; and
- The safety and welfare of the CHIS.

Where deemed appropriate, the Controller must ensure that the information is considered by the Authorising Officer, and a decision taken on whether or not to allow the authorisation to continue.

Tasking

6. Tasking is the assignment given to the CHIS by the Handler or Controller, asking the CHIS to obtain, provide access or to disclose information. Authorisations should not be drawn so narrowly that a separate authorisation is needed every time the CHIS is tasked. Rather the authorisation should cover in general terms the nature of the CHIS's tasks, although a new authorisation might be needed if the nature of the tasks changes significantly. In those circumstances the matters should be referred to the Authorising Officer to decide whether a new authorisation is needed.

It is difficult to predict exactly what will happen when the CHIS meets the subject of the investigation and there may be occasions when unforeseen actions occur. When this happens the occurrence must be recorded as soon as practicable after the event. If the existing authorisation is insufficient it should either be updated at a review (for minor amendments only) or cancelled and a new authorisation should be obtained before any further activities are carried out.

Juvenile Sources

7. Special safeguards apply to the use or conduct of juvenile sources (i.e. under 18 year olds). On no occasion can a child who at that time is under 16 years of age be authorised to give information against his or her parents. Only the Head of Paid Service is duly authorised by the Council to use Juvenile Sources, as there are other onerous requirements for such matters.

Vulnerable Individuals

8. A Vulnerable Individual is a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself or herself, or unable to protect himself or herself against significant harm or exploitation.

9. A Vulnerable Individual will only be authorised to act as a CHIS in the most exceptional of circumstances. Only the Head of Paid Service is duly authorised by the Council to use Vulnerable Individuals, as there are other onerous requirements for such matters.

Test Purchases

10. Carrying out test purchases will not (as highlighted above) require the purchaser to establish a relationship with the supplier with the covert purpose of obtaining information and, therefore, the purchaser will not normally be a CHIS. ~~For example, a~~ Authorisation would not normally be required for test purchases carried out in the ordinary course of business (e.g. walking into a shop and purchasing a product over the counter).
11. By contrast, developing a relationship with a person in the shop, to obtain information about the seller's suppliers of an illegal product (e.g. illegally imported products) will require authorisation as a CHIS. Similarly, using mobile hidden recording devices or CCTV cameras to record what is going on in the shop, if there is a likelihood of obtaining private information, will require authorisation as ~~d~~Directed ~~s~~Surveillance. A combined authorisation can be given for a CHIS and also ~~d~~Directed ~~s~~Surveillance.

Anti-social behaviour activities (e.g. noise, violence, race etc)

12. Persons who complain about anti-social behaviour, and are asked to keep a diary, will not normally be a CHIS, as they are not required to establish or maintain a relationship for a covert purpose. Recording the level of noise (e.g. the decibel level) or non-verbal noise (such as music, machinery or an alarm) will not normally capture private information and, therefore, does not require authorisation. Also the recording of verbal content at a level which does not exceed that which can be heard from the street outside or adjoining the property with the naked ear, is unlikely to require authorisation, since the perpetrator would normally be regarded as having forfeited any claim to privacy.

When a member of the public is asked to keep a diary to support incidents of anti-social behaviour or noise they should be given detailed instructions in writing about what they are expected to do or not do and what information they are expected to record,. This will help to prevent them from, in effect, carrying out ~~d~~Directed ~~s~~Surveillance on behalf of the Council. These instructions should include telling the person not to attempt to obtain information covertly, for instance by asking questions of the targeted person, because if the person were to do so they could be acting as a CHIS on behalf of the Council. Authorising Officers should carry out random inspections of diary entries to ensure that a RIPA authorisation is not required.

13. Recording sound (with a DAT recorder) on private premises could constitute intrusive surveillance, unless it is done overtly. For example, it will be possible to record if the noisemaker is warned that this will occur if the level of noise continues. Placing a stationary or mobile video camera outside a building to record anti social behaviour on residential estates will require prior authorisation.

Surveillance devices and other technical equipment

14. A CHIS who is authorised to wear or carry a surveillance device, such as a recording device, does not require a separate ~~d~~Directed ~~s~~Surveillance authorisation, provided the device will only be used in the presence of the CHIS, even if this takes place inside a residential premise or private vehicle.
15. Each Division should maintain a register of all equipment that is used for surveillance work. This equipment could include surveillance vehicles, cameras, video recorders and binoculars. Specific individuals should be given responsibility for issuing the equipment from the Divisional central store or location. Every time each item of equipment is issued for surveillance purposes a record should be made of the following:
 - Identification of equipment;
 - RIPA authorisation number for which this equipment is being used;
 - Date the equipment was issued;
 - Person taking possession of the equipment;
 - Date the equipment was returned to the Divisional store.
16. If equipment is issued to a particular officer on a long-term basis where it might also be used for purposes other than covert surveillance, the officer should record on the equipment register any occasions when that equipment is being used for covert surveillance. For instance this could apply to the issuing of binoculars or a camera. However if equipment such as a camera is issued to an officer, but it is only used to record evidence and not for any covert purpose then there is no requirement for such equipment to be recorded on the register.
17. The Central Register held by the Senior Responsible Officer shall include details of surveillance equipment available within the Council, and in which Division this is held.

H. Social Networking Sites and Internet Sites Online Covert Activity

~~1718.~~ The use of the internet may be required to gather information prior to and/ or during an operation, which may amount to directed surveillance. Therefore whenever officers intend to use the internet as part of an investigation they must first consider whether the proposed activity is likely to interfere with a person's Article 8 right to privacy, including the effect of any collateral intrusion. Any activity likely to interfere with an individual's Article 8 rights should only be used when necessary and proportionate to meet the objectives of the specific case. Therefore when it is considered that private information is likely to be obtained an authorisation must be sought. In addition, when an officer wishes to communicate covertly online, for example contacting individuals using social media websites, a CHIS authorisation should be considered.

~~1819.~~ Whilst it is the responsibility of an individual to set privacy settings to protect against unsolicited access to their private information on a social networking

site, and even though the data may be deemed published and no longer under the control of the author, it is unwise to regard it as 'open source' or publicly available; the author has a reasonable expectation of privacy if access controls are applied. Where privacy settings are available but not applied the data may be considered open source and an authorisation is not usually required. However repeat viewings of such open source data may constitute directed surveillance and this should be judged on a case-by-case basis.

~~1920.~~ If it is necessary and proportionate for the Council to covertly breach access controls, the minimum requirement is an authorisation for directed surveillance. An authorisation for the use and conduct of a CHIS is necessary if a relationship is established or maintained by the officer (i.e. the activity is more than mere reading of the site's content). This could occur if an officer covertly asks to become a 'friend' of someone on a social networking site.

~~201.~~ CHIS authorisation is only required when using an internet trading organisation such as E-Bay or Amazon Marketplace in circumstances when a covert relationship is likely to be formed. The use of disguised purchaser details in a simple, overt, electronic purchase does not require a CHIS authorisation, because no relationship is usually established at this stage.

1. The use of the internet may be required to gather information prior to and during the course of an operation. This activity may amount to Directed Surveillance and in some circumstances may also require a CHIS authorisation. Although the information or activity viewed is online rather than at a physical site, the officer must still consider a person's Article 8 right to privacy, collateral intrusion, and what activity is likely to be considered necessary and proportionate to meet the objectives of the specific case.
2. Much information on the internet can be accessed without the need for an authorisation; use of the internet prior to an investigation should not normally engage privacy considerations. But if an officer repeatedly studies an online presence, or systematically extracts and records information, this may give rise to privacy issues and the necessary authorisation(s) will be considered.
3. Depending on the online platform in question and the privacy settings both available and set by the individual, there will be differing expectations of privacy. Where an individual or company places information on a publically accessible database, such as the telephone directory or Companies House there is unlikely to be a reasonable expectation of privacy; an officer may access this information without requiring an authorisation. If privacy settings have not been applied on social media platforms, there may still be a reasonable expectation of privacy over information on that platform.
4. If an officer interacts with a person online where the individual they are communicating with could not reasonably be expected to know their true identity (as an officer of the Council rather than a private individual), the officer must consider whether the activity requires a CHIS authorisation. Where a relationship is established or maintained for a covert purpose to obtain information, a CHIS authorisation is likely to be required.

5. Where a website or social media account requires a minimum level of interaction, such as sending a friend request before access is permitted, this may not of itself constitute a relationship. However, any further interactions of the officer once they have entered the website or social media account may require CHIS authorisation.
6. In determining whether authorisation for Directed Surveillance is required in relation to online activity, the officer will consider:
- Whether the investigation or research is directed towards an individual or organisation;
 - Whether it is likely to result in obtaining private information about a person or group of people;
 - Whether it is likely to involve visiting internet sites to build up an intelligence picture or profile;
 - Whether the information obtained will be recorded and retained;
 - Whether the information is likely to provide an observer with a pattern of lifestyle;
 - Whether the information is being combined with other sources of information or intelligence, which amounts to information relating to a person's private like;
 - Whether the investigation or research is part of an ongoing piece of work involving repeated viewing of the subject(s);
 - Whether it is likely to involve identifying and recording information about third parties, such as friends and family members of the subject of interest, or information posted by third parties, that may include private information and therefore constitute collateral intrusion into the privacy of these third parties.
7. The Codes of Practice under the Act provide a number of examples in relation to online covert activity; these are included in Appendix 3.

Hi. Authorisation Procedures

1. Directed sSurveillance and the use of a CHIS can only be lawfully carried out if properly authorised, and in strict accordance with the terms of the authorisation. Appendix 2 provides a flow chart of process from application consideration to recording of information

Authorisations

An application for authorisation must be made on the Authorisation Form outlining:

- The activities to be authorised;
- The identities, where known, of those to be the subject of any eDirected sSurveillance;
- The purpose of the operation or investigation including a summary of the intelligence case for the operation. The intelligence case should give justification for each individual covert activity that the Applicant wishes to be authorised, eg a) watching a premise and b) following a vehicle;

- For the use of ~~d~~Directed ~~s~~Surveillance confirmation that the action proposed is for the purpose of preventing conduct that constitutes one or more criminal offences, one of which carries a maximum sentence of at least 6 months imprisonment (or is a specified offence under the Licensing Act 2003 or Children and Young Persons Act 1933 or the Children and Families Act 2014);
- For the use of a CHIS confirmation that the action proposed is intended to prevent or detect crime and/or disorder;
- A statement outlining why the operation is considered to be necessary;
- A statement outlining why the operation is proportionate to what it seeks to achieve;
- An explanation of the information which it is desired to obtain as a result of the authorisation and how obtaining this information will assist the investigation;
- An assessment of the potential for collateral intrusion - that is to say, interference with the privacy of persons other than the subjects of the operation - and the precautions to minimise such intrusion;
- An assessment of the likelihood of acquiring any confidential material and how that will be treated;
- ~~Where authorisation is sought urgently, the reasons why the case is considered to be urgent.~~

The need for an authorisation has to be judged at the time of the authorisation, not with the benefit of hindsight.

When authorising the conduct and use of a CHIS, the Authorising Officer should state that he or she is authorising a specific person, referred to by a pseudonym, to be a CHIS for the purpose of investigating the specified illegal activity. After this the Authorising Officer should state "The conduct of the CHIS identified as (pseudonym) that I authorise is as follows..." and then identify this conduct. A CHIS application is person specific, therefore this application must focus on the person who is to conduct the activity, not solely the operation.

Although there is no statutory requirement to do so, the process of judicial approval will be helped if the officer includes background information about the offences under investigation and the kind of evidence that is needed to prove the offences. This information can be provided via a separate background information document.

There must be a record of whether authority was given or refused, by whom and the time and date.

Once an authorisation has been granted the Applicant must ensure that all practitioners, both in the Council and in other agencies, are made aware of the extent and limitations of the authorisation, usually by means of a briefing from the Applicant.

On some occasions applications are made when the supporting information is not received from another enforcement agency such as the police, but instead it might be received from a concerned person or anonymously or from an aggrieved party. In these circumstances the Authorising Officer should view

the intelligence or other report to ensure that a potential CHIS relationship is not being developed.

Once the application has been authorised by the Authorising Officer the authorisation then needs to receive judicial approval from a magistrate (see below).

Reviews

Authorising Officers should consider an appropriate frequency for the reviews at the start of the investigation. Each authorisation should be regularly reviewed to assess whether it remains necessary and proportionate for it to continue. This review should be recorded using the 'Review Form' outlining:

- The review number;
- Summary of the information obtained to date and its value;
- The reasons why it is still i) necessary and ii) proportionate to continue with the operation;
- Details of any incidents of collateral intrusion or the acquiring of confidential information.

Any proposed changes to the activities or targets of the operation should be brought to the attention of the Authorising Officer by means of a review. Authorising Officers should consider proportionality issues before approving or rejecting them. Where the original authorisation targeted unknown persons or associates, once they are identified a review should be carried out to include the identities of these individuals.

During a review the Authorising Officer may amend specific aspects of the authorisation, for example to cease surveillance against named persons or to discontinue the use of a particular method. Authorising Officers should also check whether Applicants are not making use of some of the tactics that have been authorised, where it might be case that some of the tactics are being requested out of habit rather than from necessity.

When reviewing the use of a CHIS the Applicant should include the use made of the CHIS during the period, the tasks given to the CHIS, the information obtained from the CHIS and the reasons why enforcement action is not possible at this stage.

Renewals

The Authorising Officer who grants an authorisation should, where possible, be responsible for considering subsequent renewals of that authorisation and any related security or welfare issues. Any request for a renewal of an authorisation should be recorded using the Renewal Form outlining:

- Whether this is the first renewal, or on how many occasions it has been renewed;
- Details of any significant changes to the information given in the previous authorisation;
- The reasons why it is still i) necessary and ii) proportionate to continue with the operation;

- The content and value to the operation of the information so far obtained;
- The results of the regular reviews of the operation.

Cancellations

Authorising Officers must cancel an authorisation if they are satisfied that the operation will no longer meet the criteria under which it was authorised. All authorisations must be cancelled in writing using the **Cancellation Form** outlining:

- The reason for the cancellation of the authorisation;
- The value of the authorised activities in the operation;
- Whether or not the objectives of the operation were achieved;
- The products of surveillance that were obtained (such as written notes, photographs, hard disc recordings or video footage) and how they will be stored or disposed of; (Any products of surveillance that do not match the objectives of the investigation should be disposed of as soon as possible, even if other material needs to be retained as part of the investigation.);
- The date and time when the Authorising Officer instructed the operation to cease;
- The date and time when the authorisation was cancelled;
- It is considered to be best practice for the Applicant to record each date that surveillance has been carried out under the authorisation in the box relating to the value of the authorised activities.

If the requirement for **Directed Surveillance** needs to continue for some time after the last surveillance activity etc has taken place, then an explanation for the delay in cancelling the authorisation should be included on the Cancellation Form. This explanation should show why it was necessary and proportionate for the surveillance to continue, for instance because an assessment needed to take place of the intelligence that was available.

When cancelling CHIS authorisations the Applicant should record whether technical surveillance equipment was used by the CHIS and, if so, state what information was recorded by the equipment.

After a CHIS authorisation has been cancelled the security and welfare of the CHIS should continue to be taken into account. Therefore the Authorising Officer will need to be satisfied that all welfare matters have been addressed.

Authorising Officers

2. Forms can only be signed by Authorising Officers. Authorised posts are listed in Appendix 1. This Appendix will be kept up to date by the Senior Responsible Officer, and added to as needs require. If a Chief Officer wishes to add, delete or substitute a post, s/he must refer such request to the Senior Responsible Officer for consideration, as necessary. The Senior Responsible Officer has been duly authorised to add, delete or substitute posts listed in Appendix 1.
3. Authorisations under RIPA are separate from delegated authority to act under the Council's Scheme of Delegation and internal Schemes of Management.

RIPA authorisations are for specific investigations only, and must be renewed or cancelled once the specific surveillance is complete or about to expire. The authorisations do not lapse with time!

4. The Council and those persons acting under of the Act must have regard to the Codes of Practice issued under the Act. Each Authorised Officer will have access to copies of these codes which are available at www.gov.uk. The Codes of Practice give some helpful examples to provide guidance on various points. Some of these examples are given in Appendix 3, but should be used with care, as it is not possible for theoretical examples to replicate the level of detail to be found in real cases.

Training

5. It is a requirement that Propersuitable training ~~will~~ be given to Authorising Officers who are authorised to sign any RIPA Forms and also to Applicants.
6. If the Senior Responsible Officer feels that an Authorising Officer has not complied fully with the requirements of this Document, the Senior Responsible Officer is duly authorised to retract that Officer's authorisation.

Application Forms

7. ~~For all Sections~~ Only the approved RIPA ~~f~~Forms set out in this Document must be used. Any other forms used will be rejected by the Authorising Officer and/or the Senior Responsible Officer.

'DS Forms' (Directed Surveillance) – See Appendix 4

8. Form DS 1 Application for Authority for Directed Surveillance
Form DS 2 Renewal of Directed Surveillance Authority
Form DS 3 Cancellation of Directed Surveillance
Form DS 4 Review of Directed Surveillance Authority

CHIS Forms – See Appendix 5

9. Form CHIS 1 Application for Authority for Conduct and Use of a CHIS
Form CHIS 2 Renewal of Conduct and Use of a CHIS
Form CHIS 3 Cancellation of Conduct and Use of a CHIS.
Form CHIS 4 Record of use of a CHIS.
Form CHIS 5 Review of Conduct and Use of a CHIS

Grounds for Authorisation

10. Directed Surveillance (DS Forms) can be authorised by the Council only on the following grounds:

For the purpose of preventing or detecting conduct which:-

- a. Constitutes one or more criminal offences;

AND

- b. At least one of the criminal offences is punishable, whether on summary conviction or on indictment, by a maximum term of imprisonment of at least 6 months of imprisonment;

OR

- c. Is an offence under Section 146, 147 or 147A of the Licensing Act 2003 or Section 7 of the Children and Young Persons Act 1933 or Section 91 or 92 of the Children and Families Act 2014.
11. The Conduct and use of the Covert Human Intelligence Sources (CHIS Forms) can be authorised by the ~~County Borough Council~~ only ~~on the following ground:~~ ~~F~~for the purpose of preventing or detecting crime or of preventing disorder.

Necessary, Proportionate, Collateral Intrusion and Confidential Material

12. **What does the term “necessary” mean?**

RIPA provides a framework for ensuring that any surveillance activities do not infringe the human rights of the individual. In considering whether to grant an authorisation, the authorising officer must consider whether the proposed conduct is necessary.

An ~~a~~Authorising ~~e~~Officer must consider a number of issues in deciding if a proposed course of action is necessary. These include:

- Balancing the “target’s” human rights with the rights and freedoms of other individuals;
- Deciding that the required information needs to be acquired in this way and that it cannot reasonably be acquired by other means that would involve less, or no, invasion of privacy.

Every case must be considered on its merits, as what is necessary in some circumstances is not necessary in others. Always consider other ways in which the information could be obtained, such as use of third party information powers, the Internet, and other sources. The information must be necessary in order to carry out the investigation. The Council should not consider obtaining information through covert means that it does not need for the investigation. ~~It might be nice to know and very interesting but if it is not strictly necessary to have it then officers should not seek to obtain it.~~ Officers need to show why it is necessary in this case and at this time.

What does the term “proportionate” mean?

Proportionality is a very important concept, and it means that any interference with a person’s rights must be proportionate to the intended objective. This means that the action is aimed at pursuing a legitimate aim (for example, protecting a child from potential abuse). Interference will not be justified if the means used to achieve the aim are excessive in all the circumstances. Thus where surveillance is proposed that action must be designed to do no more than meet the objective in question; it must not be unfair or arbitrary; and the impact on the individual or group of people concerned must not be too severe.

Each action authorised should bring an expected benefit to the investigation and should not be disproportionate. The fact that a suspected offence may be serious will not on its own render intrusive actions proportionate. No action will be considered proportionate if the information sought could reasonably be obtained by other less intrusive means.

What questions should the Applicant address on the proportionality part of the aApplication fForm?

The Applicant should address the following elements of proportionality:

- (a) Balance the size and scope of the proposed activity against the gravity and extent of the perceived offence;
- (b) Consider whether the activity is an appropriate use of RIPA and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;
- (c) Explain how and why the methods to be adopted will cause the least possible intrusion on the target and others;
- (d) Evidence, as far as reasonably practicable, what other methods had been considered and why they were not implemented.

Additionally, in respect of CHIS activity, the Applicant must address the following element of proportionality:

(e) whether the conduct to be authorised will have any implications for the privacy of others, and an explanation of why (if relevant) it is nevertheless proportionate to proceed with the operation.

What does the term “collateral intrusion” mean?

Collateral intrusion occurs when officers obtain private information about people unconnected with the investigation. Authorising Officers must consider the likelihood and extent of collateral intrusion when considering any application and ensure that Applicants have planned to minimise collateral intrusion. Where the collateral intrusion is unavoidable the activity may still be authorised, provided that the collateral intrusion is considered to be proportionate. Situations where collateral intrusion can occur include where

- Observing how busy a business is, results in watching unconnected people come and go;
- At a test purchase, we might observe or overhear other customers' conversations.

Particular consideration must be given where confidential material may be involved.

What does the term “confidential material” mean?

Confidential material is anything

- That is subject to legal privilege, for example communications between a legal adviser and his/her client;
- That is a communication between a Member of Parliament/ Assembly Member/ Member of European Parliament and a constituent regarding constituency matters;
- That is confidential personal information, for example information about a person’s health or spiritual counselling or other assistance given or to be given to him or her;
- That is confidential journalistic material (this includes related communications), that is, material obtained or acquired for the purposes of journalism and subject to an undertaking to hold it in confidence.

In cases where it is likely that knowledge of confidential material will be acquired, then the ~~d~~Directed ~~s~~Surveillance must be authorised by the ~~Chief Executive~~~~Head of Paid Service~~

Assessing the Application Form

13. Before an Authorising Officer signs a Form, s/he must:-

- (a) Be mindful of this Corporate Policy & Procedures Document, the training provided and ~~any other guidance issued, from time to time, on such matters~~current guidance.
- (b) Satisfy him/herself that the RIPA authorisation is:-
 - i) in accordance with the law;
 - (ii) necessary in the circumstances of the particular case on one of the grounds mentioned in paragraph 10 above; and
 - (iii) proportionate to what it seeks to achieve.
- (c) In assessing whether or not the proposed surveillance is proportionate, consider other appropriate means of gathering the information. **The least intrusive method will be considered proportionate by the courts.**
- (d) Take into account the risk of intrusion into the privacy of persons other than the specified subject of the surveillance (Collateral Intrusion). Measures must be taken ~~wherever practicable~~ to avoid or minimise (so far as is possible) collateral intrusion and the matter may be an aspect of determining proportionality;
- (e) Set a date for review of the authorisation and review on or before that date;

- (f) Ensure that the ~~a~~Application ~~f~~Form has been identified with a Unique Reference Number that the Applicant has obtained from the ~~appropriate Co-ordinator in that service area~~office of the Senior Responsible Officer.

~~For directed surveillance the URN will be of the format of a prefix followed by a number that increases by 1 with every application eg C001, C002. The prefixes used will be as follows:~~

~~Corporate Services — C
Counter Fraud Team — F
Public Health & Protection — P
Regeneration & Planning — R
Streetcare — S~~

~~For the use of a CHIS the URN will be of the format of the appropriate prefix followed by CHIS followed by a number that increases by 1 with every application e.g. PCHIS001, PCHIS002.~~

~~For ~~d~~Directed ~~s~~Surveillance, the URN will follow the format:~~

- ~~• RCT/001/18/DS~~

~~Where 001 is a sequentially progressive number, 18 identifies the current year and DS indicates the application as relating to Directed Surveillance.~~

~~For the use of a CHIS, the URN will follow the format:~~

- ~~• RCT/001/18/CHIS~~

~~Where 001 is a sequentially progressive number, 18 identifies the current year and CHIS indicates the application as relating to CHIS activity and authorisation.~~

- (g) ~~Each Division will keep a register of the RIPA authorisation / review / renewal / cancellation / rejection forms completed within the Division and ensure that the Divisional RIPA Register is duly completed, and that a copy of the RIPA Forms (and any review / renewal / cancellation / rejection of the same) is included on the Divisional Register. The original RIPA authorisation (and any review / renewal / cancellation / rejection of the same) form shall be forwarded to the Senior Responsible Officer's Central Register, as soon as practicable. Completed RIPA documentation, including applications, authorisations, rejections, renewals and cancellations, shall be forwarded in good time to the office of the Senior Responsible Officer for filing and updating the Central Register. This shall not preclude the individual Division maintaining a copy of the documentation for live operational activity purposes.~~
- (h) The Authorising Officer should also record whether or not they are directly involved in the investigation. (NB an Authorising Officer should not be responsible for authorising operations in which they are directly involved unless it is unavoidable)

Officers must record on the Authorisation, Review and Renewal Forms the date on which the authorisation should next be reviewed.

14. **Judicial Approval**

- (a) Once an application for the use of **d**Directed **s**Surveillance or for the use or conduct of a CHIS has been authorised by the Authorising Officer, the authorisation then needs to receive judicial approval from a **m**Magistrate (**J**ustice of the **P**ea**c**e).
- (b) The Applicant will need to contact the magistrates' court to arrange an appointment for the application to be made. The Applicant will complete the Judicial Approval **a**Application **f**Form (Form JA1) and prepare a Judicial Approval Order **f**Form (Form JA2) for signature by the Justice of the Peace (JP) The **a**Application **f**Form will contain a brief summary of the circumstances of the case.
- (c) The officer will provide the JP with a copy of the original RIPA authorisation and the supporting documents setting out the case. This forms the basis of the application to the JP and should contain all information that is relied upon. The original RIPA authorisation should be shown to the JP but it will be retained by the local authority. The court may wish to take a copy. The partially completed **j**Judicial **a**Application and **e**Order **f**Forms will be provided to the JP.
- (d) The hearing will be in private and will be heard by a single JP. The JP will read and consider the RIPA authorisation and the **j**Judicial **a**Application and **e**Order **f**Forms. He or she may ask questions to clarify points or to require additional reassurance on particular matters.
- (e) The JP will consider whether he or she is satisfied that at the time the authorisation was granted or renewed there were reasonable grounds for believing that the authorisation was necessary and proportionate. They will also consider whether there continues to be reasonable grounds. In addition they must be satisfied that the authorisation was made in accordance with any applicable legal restrictions, for example that the crime threshold for **d**Directed **s**Surveillance has been met.

The **f**Forms and supporting papers must by themselves make the case. It is not sufficient for the officer to provide oral evidence where this is not reflected or supported in the papers provided. The JP may note on the **f**Form any additional information he or she has received during the course of the hearing but information fundamental to the case should not be submitted in this manner.

- (f) If more information is required to determine whether the authorisation has met the tests then the JP will refuse the authorisation. If an application is refused the local authority should consider whether they can reapply, for example, if there was information to support the application which was available to the local authority, but not included in the papers provided at the hearing.
- (g) The JP will record his/her decision on the Judicial Order **f**Form. This will be the official record of the JP's decision. Court staff will retain a copy of the

RIPA authorisation and the **j**udicial **a**pplication and **e**Order **f**orms. This information will be retained securely.

(h) The decisions that the JP can make are as follows:

1. Approve the grant or renewal of the authorisation;
2. Refuse to approve the grant or renewal of an authorisation;
3. Refuse to approve the grant or renewal and quash the authorization.

If the JP refuses to grant or renew the authorisation it will not take effect and the local authority may not use the technique in that case.

- (i) The authorisation will be granted at the time that it is approved by the JP. If it is not renewed, the authorisation will cease to have effect at the end of a period of three months (for Directed Surveillance) or 12 months (for the use of a CHIS) starting with the time it was approved by the JP. It is important that the expiry date is correctly recorded by using the date of judicial approval, rather than the date of approval by the Authorising Officer.
- (j) Where an application has been refused the Council may wish to consider the reasons for that refusal. For example, a technical error in the **f**orm may be remedied without the Council going through the internal authorisation process again. The officer may then wish to reapply for judicial approval once those steps have been taken. If the JP decides to quash the original authorisation, the court must not exercise its power to quash that authorisation unless the Applicant has had at least 2 business days from the date of the refusal in which to make representations. There is still a requirement to record and file, in the Central Register, applications which are refused.
- (k) The Council will need to obtain judicial approval for all initial RIPA authorisations/applications as well as for all renewals and officers will need to retain a copy of the **j**udicial **a**pplication and **e**Order **f**orms after they have been signed by the JP. There is no requirement for the JP to consider either cancellations or internal reviews.
- (l) On rare occasions officers might have need for out of hour's access to a JP so the officer will need to make the necessary arrangements with the court staff. The officer will need to provide two partially completed **j**udicial **a**pplication and **e**Order **f**orms so that one can be retained by the JP. The officer should provide the court with a copy of the signed judicial application and order forms on the next working day.
- (m) Where renewals are timetabled to fall outside of court hours, for example during a holiday period, it is the investigating officer's responsibility to ensure that the renewal is completed ahead of the deadline. Out of hours procedures are for emergencies and should not be used because a renewal has not been processed in time.
- (n) If the magistrates make any pertinent comments to the Applicant about the quality of the application or the information contained in it, the Applicant should promptly report this back to the Authorising Officer. This is so that any necessary action can be taken to incorporate or address these issues. It

would be best practice for the Authorising Officer to make a record of any such comments and any action that is taken.

~~(e) The introduction of these additional rules means that the Council is not able to orally authorise the use of RIPA techniques.~~

Additional Safeguards when Authorising a CHIS

15. When authorising the conduct or use of a CHIS, the Authorising Officer must also:-
- (a) be satisfied that the conduct and/or use of the CHIS is proportionate to what is sought to be achieved;
 - (b) be satisfied that appropriate arrangements are in place for the management and oversight of the CHIS and this must address health and safety issues through a risk assessment;
 - (c) consider the likely degree of intrusion of all those potentially affected;
 - (d) consider any adverse impact on community confidence that may result from the use or conduct or the information obtained;
 - (e) ensure records containing particulars are not available except on a need to know basis; and
 - (f) consider the ongoing security and welfare of the CHIS after the authorisation is cancelled.

16. Urgent Authorisations

~~Because of the need for judicial approval of all authorisations it is no longer possible for the Council will be able to make use of oral authorisations in urgent cases.~~

167. Duration

- (a) The Form must be reviewed in the time stated and cancelled once it is no longer needed. The 'authorisation' to carry out/conduct the surveillance lasts for a maximum of 3 months (from approval of the authorisation by a Justice of the Peace) for Directed Surveillance, and for 12 months (from approval of the authorisation by a Justice of the Peace) for a CHIS. However, whether the surveillance is carried out/conducted or not, in the relevant period, does not mean the 'authorisation' is 'spent'. In other words, the Forms do not expire! The ~~f~~Forms have to be reviewed and/or cancelled (once they are no longer required)!
- (b) Authorisations cannot be renewed in writing when the maximum period has expired. The Authorising Officer must consider the matter afresh, including taking into account the benefits of the surveillance to date, and any collateral intrusion that has occurred.
- (c) The renewal will begin on the day when the authorisation would have expired.

U. Working With / Through Other Agencies

1. When an individual or non-governmental organisation is acting under the direction of the Council then they are acting as the agent of the Council. Any activities that they conduct that meet the definition of ~~d~~Directed ~~s~~Surveillance should be considered for authorisation under RIPA. Consequently, when some other agency has been instructed on behalf of the Council to undertake any action under RIPA, this Document and the Forms in it must be used (as per normal procedure) and the agency advised or kept informed, as necessary, of the various requirements. They must be made aware explicitly what they are authorised to do.
2. When some other agency (e.g. Police, Customs & Excise, Inland Revenue, and Department of Work & Pensions etc):-
 - (a) wishes to use the Council's resources (e.g. CCTV surveillance systems), that agency must use its own RIPA procedures and, before any Officer agrees to ~~allow the Council's resources to be used for the other agency's purposes~~ such use, s/he must obtain a copy of that agency's RIPA ~~authorisation form for the record~~ (a copy of which must be ~~passed to the Service Director for~~ maintained with the Central Register) and/or relevant extracts from the same or a letter from the agency confirming the existence of the RIPA authorisation which are sufficient for the purposes of protecting the ~~County Borough~~ Council and the use of its resources;
 - (b) wishes to use the Council's premises for their own RIPA action, the Officer should, normally, co-operate with the same, unless there are security or other good operational or managerial reasons as to why the Council's premises should not be ~~so used for the agency's activities~~. Suitable insurance or other appropriate indemnities may be sought, if necessary, from the other agency for the Council's co-operation in the agent's RIPA operation. In such cases, however, the Council's own RIPA ~~f~~Forms should not be used as the Council is only 'assisting' not being 'involved' in the RIPA activity of the external agency.
3. In terms of 2(a), if the Police or other Agency wish to use Council resources for general surveillance, as opposed to specific RIPA operations, an appropriate letter requesting the proposed use, extent of remit, duration, who will be undertaking the general surveillance and the purpose of it must be obtained from the Police or other Agency before any Council resources are made available for the proposed use.
4. Where it is foreseen that the operational support of another agency, such as the police, will be involved in carrying out the surveillance then this involvement should be explicitly stated on the authorisation. There is no need for the other agency to obtain a separate authorisation. Officers must ensure that officers from the other agency are made aware of the extent and limitations of the authorisation.

5. In cases where the authorisation for the use of a CHIS will benefit agencies in addition to the Council, the responsibility for the management of the CHIS may be taken up by one of the agencies on behalf of the others.
6. -If in doubt, please consult with the Senior Responsible Officer at the earliest opportunity.

JK. Record Management

1. The Council must keep a detailed record of all authorisations, reviews, renewals, cancellations and rejections in Divisions and a Central Register of all Authorisation Forms will be maintained and monitored by the Senior Responsible Officer. These records should be kept for at least 3 years from the ending of each authorisation, ~~although it would be best practice to retain these records for 5 years.~~

Records maintained in the Division

- ~~2. The following documents must be retained by the relevant Chief Officer (or his/her Divisional Co-ordinator) for such purposes:
 - a copy of the Forms together with any supplementary documentation and notification of the approval given by the Authorising Officer;
 - a record of the period over which the surveillance has taken place;
 - the frequency of reviews prescribed by the Authorising Officer;
 - a record of the result of each review of the authorisation;
 - a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested;
 - the date and time when any instructions regarding cancellations or urgent approvals were given by the Authorising Officer;
 - the Unique Reference Number for the authorisation.~~
- ~~3. Each form will have a unique reference number. The cross-referencing of each reference number takes place within the Forms for audit purposes. Rejected Forms will also have reference numbers.~~
- ~~4. The only records that need to be maintained centrally for the use of a CHIS are the name or code name of the CHIS, the dates of authorisation, renewal and cancellation of an authorisation and whether the activities were self authorised. Copies of the CHIS 4 form and any risk assessment should be retained by the Council but these do not need to be retained on the central register.~~

Central Register maintained by the Senior Responsible Officer

52. Authorising Officers must forward the original ~~a~~A~~u~~thorising ~~f~~F~~o~~r~~m~~ (and any review / renewal / cancellation and rejection of the same) plus a copy of any ~~j~~J~~u~~dicial ~~a~~A~~p~~proval ~~e~~O~~r~~der ~~f~~F~~o~~r~~m~~ as soon as is practicable. The Senior Responsible Officer will monitor the same and give appropriate guidance, from time to time, or amend this Document, as necessary

63. The Central Record ~~for directed surveillance~~ will consist of:

- Date and time of authorisation
- Name & grade of Authorising Officer
- A Unique Reference Number for the investigation
- Title of operation including the names of the subjects if known
- ~~Whether urgency provisions used~~
- Details of attendances at the ~~m~~M~~a~~gistrates' ~~e~~C~~o~~urt for judicial approval, (This will consist of the date of attendance at court, the determining magistrate, the decision of the court and the time and date of that decision)
- Dates of any reviews
- Date of renewal
- Name and grade of Authorising Officer granting renewal
- Whether investigation is likely to result in obtaining confidential material
- Whether Authorising Officer was directly involved in the investigation
- Date of cancellation
- Name / Code name of CHIS
- Individual CHIS risk assessment

74. Council will retain records for a period of at least three years from the ending of the authorisation. The ~~Office of the Surveillance Commissioners (OSC)~~Investigatory Powers Commissioner's Office (IPCO) can audit/review the Council's policies and procedures, and individual authorisations.

85. Gatekeeper Role

As a number of different Authorising Officers are entitled to authorise the use of ~~e~~D~~i~~rected ~~s~~S~~u~~rveillance or the use of a CHIS it is important that the quality of all such authorisations is checked for consistency by or on behalf of the Senior Responsible Officer.

On receipt of the authorisation the Secretary to the Senior Responsible Officer will check the central register to ascertain whether or not another officer is authorised to undertake such activities at that address or in that area and, if this occurs, will bring this overlap to the attention of the proposed Authorising Officer.

The Senior Responsible Officer or a solicitor acting on his behalf will examine in detail all the authorisations when they are received at the central register. If any such authorisation is found not to meet the high standards expected in Rhondda Cynon Taff the solicitor, on behalf of the Senior Responsible Officer, will instruct the Authorising Officer to immediately cancel the authorisation. If the difficulties can be overcome, a new application must be made by the

Applicant and carefully assessed by the Authorising Officer, bearing in mind the concerns of the Senior Responsible Officer. If it is decided that the granting of an authorisation for this investigation will not be appropriate, for reasons of lack of necessity or proportionality or otherwise, the Applicant will be instructed that no surveillance may be used in this investigation.

Use of CCTV Cameras

~~96. Copies of all authorisations in respect of the use of Council owned CCTV cameras must be sent to the CCTV control room.~~

KL. Oversight of exercising of functions

1. Senior Responsible Officer

The Senior Responsible Officer is responsible for:

- Ensuring that all Authorising Officers are of an appropriate standard
- The integrity of the processes of authorising surveillance and the management of the use of a CHIS;
- Compliance with the act and codes of practice;
- Oversight of the reporting of errors to the ~~Office of Surveillance Commissioners (OSC)~~Investigatory Powers Commissioner's Office (IPCO), identification of causes of errors and implementation of processes to minimise repetition of errors
- Engaging with ~~OSC~~IPCO inspectors when they conduct inspections;
- Overseeing the implementation of any post-inspection action plans recommended by the ~~OSC~~IPCO;

The Director of Legal and Democratic Services is the Senior Responsible Officer with regard to the use of ~~d~~Directed ~~s~~Surveillance or the use of a CHIS.

The ~~Office of Surveillance Commissioners~~IPCO allows only the SRO to make requests for guidance from them.

2. Elected Members

- Every year elected members should review the Council's use of RIPA and set the Corporate Policy for the use of RIPA.
- On a regular basis elected members should consider an internal report from the Senior Responsible Officer to ensure that the use of RIPA is consistent with Corporate Policy and that the Corporate Policy remains fit for its purpose.
- Elected members should not be involved in making decisions on specific authorisations.

3. Office of Surveillance CommissionersInvestigatory Powers Commissioner's Office

The ~~Office of Surveillance Commissioners~~IPCO regularly carries out inspections to review how the Council makes use of RIPA. The Commissioners then produce a report on the inspection of how the Council

exercises and performs its powers under the legislation. The reports may make recommendations to help the Council improve and implement good practice. The Senior Responsible Officer will ensure that a post inspection plan is made to implement these recommendations and that the improvements are then introduced.

The OSC-IPCO advises that, if views about a particular issue are received from the OSC-IPCO inspector during the inspection, it would be unwise for officers to extrapolate guidance provided in one context to all other situations.

4. **Investigatory Powers Tribunal**

The Investigatory Powers Tribunal has been introduced by the legislation and it is made up of senior members of the judiciary and the legal profession. It is independent of the government. The Tribunal has full powers to investigate and decide on any cases within its jurisdiction that are referred to it.

LM. Concluding Remarks

1. Where there is an interference with the right to respect for private life and family guaranteed under Article 8 of the European Convention on Human Rights, and where there is no other source of lawful authority for the interference, or if it is held not to be necessary or proportionate to the circumstances, the consequences of not obtaining or following the correct authorisation procedure set out in RIPA and this Document, may be that the action (and the evidence obtained) will be held to be unlawful by the Courts pursuant to Section 6 of the Human Rights Act 1998.
2. Obtaining an authorisation under RIPA and following this Document, will ensure, therefore, that the action is carried out in accordance with the law and subject to stringent safeguards against abuse of anyone's human rights.
3. Authorising Officers will be suitably trained and they must exercise their minds every time they are asked to sign a Form. They must never sign ~~or rubber stamp~~ Form(s) without thinking about their personal and the Council's responsibilities.
4. Any boxes not needed on the Form(s) must be clearly marked as being 'NOT APPLICABLE', 'N/A' or a line put through the same. Great care must also be taken to ensure accurate information is used and is inserted in the correct boxes. Reasons for any refusal of an application must also be kept on the ~~f~~Form and the ~~f~~Form retained for future audits.
5. For further advice and assistance on RIPA, please contact the Senior Responsible Officer. Details are as follows:-

Paul J LucasChristopher B Jones,
Director Legal and Democratic Services
The Pavilions,
Cambrian Park,
Tonypany.
CF40 2XX

Tel: (01443) 424105

Fax: ~~(01443) 424114~~

E-mail: paul.j.lucaschris.b.jones@rhondda-cynon-taffrctcbc.gov.uk

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APPENDIX 1

List of Authorising Officer Posts

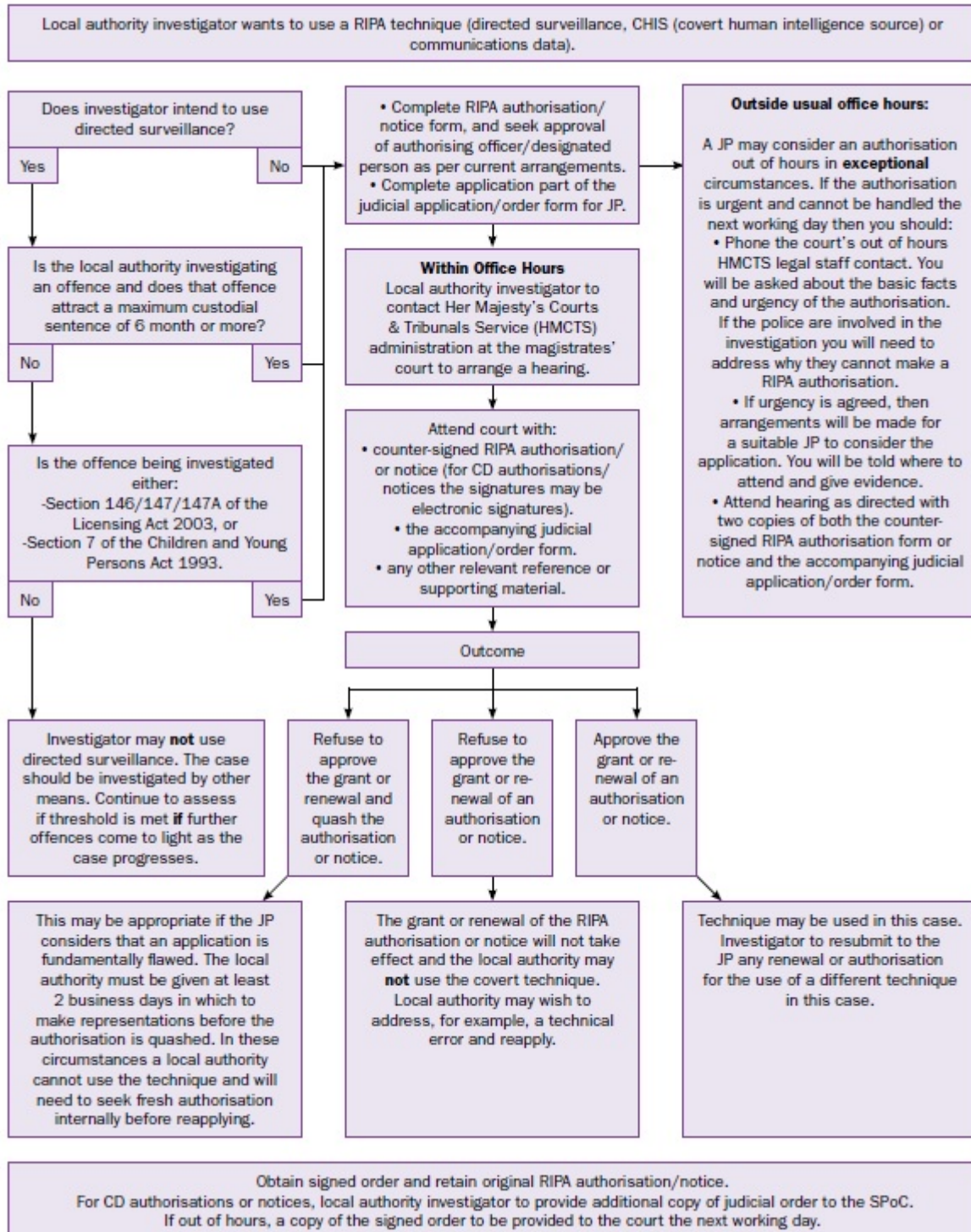
GROUP	Name of Contact Officer
<p>CHIEF EXECUTIVE <i>Authorising Officers:</i> Chief Executive <u>Director of Legal and Democratic Services</u> <u>Head of Legal – Litigation, Planning & Environment and Community and Children’s Services</u> Director of Regeneration and Planning <u>Service Director, Planning</u></p>	<ul style="list-style-type: none"> - Chris Bradshaw - <u>Chris Jones</u> - <u>Paul Nicholls</u> - Jane Cook - <u>Simon Gale</u>
<p>CORPORATE <u>AND FRONTLINE</u> SERVICES <i>Authorising Officers:</i> <u>Director of Highways and Streetcare Services</u> <u>Head of Streetcare Services</u> <u>Head of Revenues and Benefits</u> Director of Legal and Democratic Services Service Director, Legal and Democratic Services Principal Solicitor Solicitor Head of Reviews and Benefits Team Manager Benefits</p>	<ul style="list-style-type: none"> - <u>Nigel Wheeler</u> - <u>Steve Owen</u> - <u>Matthew Phillips</u> <u>Paul Lucas</u> - Chris Jones - Paul Nicholls - Simon Humphreys - Andrew Symes - Helen Phillips
<p>COMMUNITY & CHILDREN’S SERVICES <i>Authorising Officers:</i> Service Director, - Public Health, & Protection and Community Services Environmental Head of Public Protection Manager Community Safety Manager Trading Standards Manager Housing and Enforcement Project <u>Strategy and Investment</u> Manager Food and Health and Safety Manager Pollution <u>and Public Health</u> Manager Licensing Manager</p>	<ul style="list-style-type: none"> - Paul Mee - Louise Davies - <u>Andrew Mallin</u> - <u>Judith Parry</u> Tony O’Leary - Jennifer Ellis - Amy Lewis - Neil Piliner - <u>Meryl Williams</u>
<p>Service Director Planning Manager Special Projects Planning Enforcement Manager</p> <p>Service Director for Highways & Streetcare Head of Streetcare</p>	<ul style="list-style-type: none"> - Simon Gale - Jim Bailey - Julie Williams - Nigel Wheeler - Steve Owen

IMPORTANT NOTES

- A. All persons employed in the posts identified above must receive appropriate training.
- B. Only the ~~Head of Paid Service~~Chief Executive is authorised to sign Forms relating to Juvenile Sources and Vulnerable Individuals (see paragraph **G** of this Document).
- C. If a Chief Officer wishes to add, delete or substitute a post, s/he must refer such request to the Senior Responsible Officer for consideration, as necessary.
- D. If in doubt, ask the Senior Responsible Officer BEFORE any ~~e~~Directed ~~s~~Surveillance and/or CHIS is authorised, renewed, rejected or cancelled.

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NB: If in doubt, ask the Senior Responsible Officer BEFORE any **d**irected **s**urveillance and/or CHIS is authorised, renewed, cancelled, or rejected. Chief Officers will designate members of their staff to be a Divisional. Co-ordinators for the purpose of RIPA and advise the Senior Responsible Officer accordingly.

APPENDIX 3

Specific Examples from RIPA Code of Practice

Directed Surveillance Code of Practice

Private information

Example 1

Two people holding a conversation on the street or in a bus may have a reasonable expectation of privacy over the contents of that conversation, even though they are associating in public. The contents of such a conversation should therefore still be considered as private information. A ~~e~~Directed ~~s~~Surveillance authorisation would therefore be appropriate for a public authority to record or listen to the conversation as part of a specific investigation or operation.

Example 2

Officers of a local authority wish to drive past a café for the purposes of obtaining a photograph of the exterior. Reconnaissance of this nature is not likely to require a ~~e~~Directed ~~s~~Surveillance authorisation, as no private information about any person is likely to be obtained or recorded. However, if the authority wished to conduct a similar exercise, for example to establish a pattern of occupancy of the premises by any person, the accumulation of information is likely to result in the obtaining of private information about that person and a ~~e~~Directed ~~s~~Surveillance authorisation should be considered.

Example 3

A surveillance officer intends to record a specific person providing their name and telephone number to a shop assistant, in order to confirm their identity, as part of a criminal investigation. Although the person has disclosed these details in a public place, there is nevertheless a reasonable expectation that the details are not being recorded separately for another purpose. A ~~e~~Directed ~~s~~Surveillance authorisation should therefore be sought.

Intrusive surveillance

Example 1

~~An observation post outside residential premises which provides a limited view compared to that which would be achievable from within the premises does not constitute intrusive surveillance. However, the use of a zoom lens, for example, which consistently achieves imagery of the same quality as that which would be visible from within the premises, would constitute intrusive surveillance.~~

Immediate response

Example 1

An authorisation under the 2000 Act would not be appropriate where police officers conceal themselves to observe suspicious persons that they come across in the course of a routine patrol.

General observation duties

Example 1

Plain clothes police officers on patrol to monitor a high street crime hot-spot or prevent and detect shoplifting would not require a ~~d~~Directed ~~s~~Surveillance authorisation. Their objective is merely to observe a location and, through reactive policing, to identify and arrest offenders committing crime. The activity may be part of a specific investigation but is general observational activity, rather than surveillance of individuals, and the obtaining of private information is unlikely. A ~~d~~Directed ~~s~~Surveillance authorisation need not be sought.

Example 2

Local authority officers attend a car boot sale where it is suspected that counterfeit goods are being sold, but they are not carrying out surveillance of particular individuals and their intention is, through reactive policing, to identify and tackle offenders. Again this is part of the general duties of public authorities and the obtaining of private information is unlikely. A ~~d~~Directed ~~s~~Surveillance authorisation need not be sought.

Example 3

Intelligence suggests that a local shopkeeper is openly selling alcohol to underage customers, without any questions being asked. A trained employee or person engaged by a public authority is deployed to act as a juvenile in order to make a purchase of alcohol. In these circumstances any relationship, if established at all, is likely to be so limited in regards to the requirements of the Act, that a public authority may conclude that a covert human intelligence source (CHIS) authorisation is unnecessary. However, if the test purchaser is wearing recording equipment but is not authorised as a CHIS, or an adult is observing, consideration should be given to granting a directed surveillance authorisation.

Example 4

Surveillance officers intend to follow and observe Z covertly as part of a pre-planned operation to determine her suspected involvement in shoplifting. It is proposed to conduct covert surveillance of Z and record her activities as part of the investigation. In this case, private life considerations are likely to arise where there is an expectation of privacy and the covert surveillance is pre-planned and not part of general observational duties or reactive policing. A ~~d~~Directed ~~s~~Surveillance authorisation should be considered.

Not relating to core functions

Example 1

A police officer is suspected by his employer of undertaking additional employment in breach of discipline regulations. The police force of which he is a member wishes to conduct covert surveillance of the officer outside the police work environment. Such activity, even if it is likely to result in the obtaining of private information, does not constitute ~~d~~Directed ~~s~~Surveillance for the purposes of the 2000 Act as it does not relate to the discharge of the police force's core functions. It relates instead to the carrying out of ordinary functions, such as employment, which are common to all public authorities. Activities of this nature are covered by the Data Protection Act 1998 and employment practices code.

Example 2

~~A police officer claiming compensation for injuries allegedly sustained at work is suspected by his employer of fraudulently exaggerating the nature of those injuries. The police force of which he is a member wishes to conduct covert surveillance of the officer outside the work environment. Such activity may relate to the discharge of the police force's core functions as the police force may launch a criminal investigation. The proposed surveillance is likely to result in the obtaining of private information and, as the alleged misconduct amounts to the criminal offence of fraud, a directed surveillance authorisation may be appropriate.~~

CCTV and ANPR

Example 1

Overt surveillance equipment, such as town centre CCTV systems or ANPR, is used to gather information as part of a reactive operation (e.g. to identify individuals who have committed criminal damage after the event). Such use does not amount to covert surveillance as the equipment was overt and not subject to any covert targeting. Use in these circumstances would not require a ~~d~~Directed ~~s~~Surveillance authorisation.

Example 2

A local police team receives information that an individual suspected of committing thefts from motor vehicles is known to be in a town centre area. A decision is taken to use the town centre CCTV system to conduct surveillance against that individual such that he remains unaware that there may be any specific interest in him. This targeted, covert use of the overt town centre CCTV system to monitor and/or record that individual's movements should be considered for authorisation as ~~d~~Directed ~~s~~Surveillance.

Proportionality

Example 1

An individual is suspected of carrying out a series of criminal damage offences at a local shop, after a dispute with the owner. It is suggested that a period of ~~d~~Directed ~~s~~Surveillance should be conducted against him to record his movements and activities for the purposes of preventing or detecting crime. Although these are legitimate grounds on which ~~d~~Directed ~~s~~Surveillance may be conducted, it is unlikely that the resulting interference with privacy will be proportionate in the circumstances of the particular case. In particular, the obtaining of private information on the individual's daily routine is unlikely to be necessary or proportionate in order to investigate the activity of concern. Instead, other less intrusive means are likely to be available, such as overt observation of the location in question until such time as a crime may be committed.

Collateral Intrusion

Example 1

HMRC seeks to conduct ~~d~~Directed ~~s~~Surveillance against T on the grounds that this is necessary and proportionate for the collection of a tax. It is assessed that such surveillance will unavoidably result in the obtaining of some information about members of T's family, who are not the intended subjects of the surveillance. The authorising officer should consider the proportionality of this collateral intrusion, and whether sufficient measures are to be taken to limit it, when granting the

authorisation. This may include not recording or retaining any material obtained through such collateral intrusion.

Example 2

A law enforcement agency seeks to conduct a covert surveillance operation to establish the whereabouts of N in the interests of preventing a serious crime. It is proposed to conduct **eD**irected **sS**urveillance against P, who is an associate of N but who is not assessed to be involved in the crime, in order to establish the location of N. In this situation, P will be the subject of the **eD**irected **sS**urveillance authorisation and the authorising officer should consider the necessity and proportionality of conducting **eD**irected **sS**urveillance against P, bearing in mind the availability of any other less intrusive means to identify N's whereabouts. It may be the case that **eD**irected **sS**urveillance of P will also result in obtaining information about P's family, which in this instance would represent collateral intrusion also to be considered by the authorising officer.

Online Covert Activity (1) – Directed Surveillance

Example 1

A police officer undertakes a simple internet search on a name, address or telephone number to find out whether a subject of interest has an online presence. This is unlikely to need an authorisation. However, if having found an individual's social media profile or identity, it is decided to monitor it or extract information from it for retention in a record because it is relevant to an investigation or operation, authorisation should then be considered.

Example 2

A customs officer makes an initial examination of an individual's online profile to establish whether they are of relevance to an investigation. This is unlikely to need an authorisation. However, if during that visit it is intended to extract and record information to establish a profile including information such as identity, pattern of life, habits, intentions or associations, it may be advisable to have in place an authorisation even for that single visit. (As set out in the following paragraph, the purpose of the visit may be relevant as to whether an authorisation should be sought.)

Example 3

A public authority undertakes general monitoring of the internet in circumstances where it is not part of a specific, ongoing investigation or operation to identify themes, trends, possible indicators of criminality or other factors that may influence operational strategies or deployments. This activity does not require RIPA authorisation. However, when this activity leads to the discovery of previously unknown subjects of interest, once it is decided to monitor those individuals as part of an ongoing operation or investigation, authorisation should be considered.

Online Covert Activity (2) – CHIS

Example 1

An HMRC officer intends to make a one-off online test purchase of an item on an auction site, to investigate intelligence that the true value of the goods is not being declared for tax purposes. The officer concludes the purchase and does not correspond privately with the seller or leave feedback on the site. No covert relationship is formed and a CHIS authorisation need not be sought.

Example 2

HMRC task a member of the public to purchase goods from a number of websites to obtain information about the identity of the seller, country of origin of the goods and banking arrangements. The individual is required to engage with the seller as necessary to complete the purchases. The deployment should be covered by a CHIS authorisation because of the intention to establish a relationship for covert purposes.

Example 3

An officer maintains a false persona, unconnected to law enforcement, on social media sites in order to facilitate future operational research or investigation. As part of the legend building activity he “follows” a variety of people and entities and “likes” occasional posts without engaging further. No relationship is formed and no CHIS authorisation is needed.

Example 4

The officer sends a request to join a closed group known to be administered by a subject of interest, connected to a specific investigation. A Directed Surveillance authorisation would be needed to cover the proposed covert monitoring of the site. Once accepted into the group it becomes apparent that further interaction is necessary. This should be authorised by means of a CHIS authorisation.

Updating authorisations by review

Example 1

A **d**Directed **s**Surveillance authorisation is obtained by the police to authorise surveillance of “X and his associates” for the purposes of investigating their suspected involvement in a crime. X is seen meeting with A in a café and it is assessed that subsequent surveillance of A will assist the investigation. Surveillance of A may continue (he is an associate of X) but the **d**Directed **s**Surveillance authorisation should be amended at a review to include “X and his associates, including A”.

Covert Human Intelligence Source Code of Practice

Establishing, maintaining and using a relationship

Example 1

Intelligence suggests that a local shopkeeper is openly selling alcohol to underage customers, without any questions being asked. A juvenile is engaged and trained by a public authority and then deployed in order to make a purchase of alcohol. In these circumstances any relationship, if established at all, is likely to be so limited in regards to the requirements of the 2000 Act that a public authority may conclude that a CHIS authorisation is unnecessary. However, if the test purchaser is wearing recording equipment but is not authorised as a CHIS, consideration should be given to granting a **d**Directed **s**Surveillance authorisation.

Example 2

In similar circumstances, intelligence suggests that a shopkeeper will sell alcohol to juveniles from a room at the back of the shop, providing he has first got to know and trust them. As a consequence the public authority decides to deploy its operative on a number of occasions, to befriend the shopkeeper and gain his trust, in order to

purchase alcohol. In these circumstances a relationship has been established and maintained for a covert purpose and therefore a CHIS authorisation should be obtained.

Public Volunteers

Example 1

A member of the public volunteers a piece of information to a member of a public authority regarding something they have witnessed in their neighbourhood. The member of the public would not be regarded as a CHIS. They are not passing information as a result of a relationship which has been established or maintained for a covert purpose.

Example 2

A caller to a confidential hotline (such as Crimestoppers, the Customs Hotline, the Anti-Terrorist Hotline, or the Security Service Public Telephone Number) reveals that he knows of criminal or terrorist activity. Even if the caller is involved in the activities on which they are reporting, the caller would not be considered a CHIS as the information is not being disclosed on the basis of a relationship which was established or maintained for that covert purpose. However, should the caller be asked to maintain their relationship with those involved and to continue to supply information, an authorisation for the use or conduct of a CHIS may be appropriate

Tasking not involving a relationship

Example 1

A member of the public is asked by a member of a public authority to maintain a record of all vehicles arriving and leaving a specific location or to record the details of visitors to a neighbouring house. A relationship has not been established or maintained in order to gather the information and a CHIS authorisation is therefore not available. Other authorisations under the Act, for example, **e**Directed **s**Surveillance may need to be considered where there is an interference with the Art 8 rights of an individual

Identifying when a human source becomes a CHIS

Example 1

Mr Y volunteers information to a member of a public authority about a work colleague out of civic duty. Mr Y is not a CHIS at this stage as he has not established or maintained (or been asked to establish or maintain) a relationship with his colleague for the covert purpose of obtaining and disclosing information. However, Mr Y is subsequently contacted by the public authority and is asked if he would ascertain certain specific information about his colleague. At this point, it is likely that Mr Y's relationship with colleague is being maintained and used for the covert purpose of providing that information. A CHIS authorisation would therefore be appropriate to authorise interference with the Article 8 right to respect for private and family life of Mr Y's work colleague.

Collateral intrusion

Example 1

An undercover operative is deployed to obtain information about the activities of a suspected criminal gang under CHIS authorisation. It is assessed that the operative

will in the course of this deployment obtain private information about some individuals who are not involved in criminal activities and are of no interest to the investigation. The authorising officer should consider the proportionality of this collateral intrusion, and whether sufficient measures are to be taken to limit it, when granting the authorisation.

Example 2

The police seek to establish the whereabouts of Mr W in the interests of national security. In order to do so, an undercover operative is deployed to seek to obtain this information from Mr P, an associate of Mr W who is not of direct security interest. An application for a CHIS authorisation is made to authorise the deployment. The authorising officer will need to consider the necessity and proportionality of the operation against Mr P and Mr W, who will be the direct subjects of the intrusion. The authorising officer will also need to consider the proportionality of any collateral intrusion that will arise if there is any additional interference with the private and family life of other individuals of no interest to the investigation.

Reviewing and renewing authorisations

Example 1

An authorisation is obtained by the police to authorise a CHIS to use her relationship with “Mr X and his close associates” for the covert purpose of providing information relating to their suspected involvement in a crime. Mr X introduces the CHIS to Mr A, a close associate of Mr X. It is assessed that obtaining more information on Mr A will assist the investigation. The CHIS may use her relationship with Mr A to obtain such information but the review of the authorisation should specify any interference with the private and family life of “Mr X and his associates, including Mr A” and that such an interference is in accordance with the original authorisation

Specific situations not requiring authorisation

Noise Nuisance

~~The covert recording of suspected noise nuisance where: the recording is of decibels only or constitutes non-verbal noise (such as music, machinery or an alarm) or the recording of verbal content is made at a level which does not exceed that which can be heard from the street outside or adjoining property with the naked ear. In the latter circumstance the perpetrator would normally be regarded as having forfeited any claim to privacy. In either circumstance, an authorisation is unlikely to be required.~~

Recording of interviews

~~The recording, whether overt or covert, of an interview with a member of the public where it is made clear that the interview is entirely voluntary and that the interviewer is a member of a public authority. In such circumstances, whether the recording equipment is overt or covert, the member of the public knows that they are being interviewed by a member of a public authority and that information gleaned through the interview has passed into the possession of the public authority in question.~~

APPENDIX 4

RIPA DS FORMS : DIRECTED SURVEILLANCE

Form DS 1 : Application for authorisation to carry out **eD**irected **sS**urveillance.

Form DS 2 : Application for Renewal of Form DS 1.

Form DS 3 : Review of Form DS 1.

Form DS 4 : Cancellation of Form DS 1.

NB: If in doubt, ask the Senior Responsible Officer BEFORE any **eDirected **sS**urveillance and/or CHIS is authorised, renewed, cancelled or rejected.**

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Directed Surveillance Unique Reference Number (URN)	
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**PART II OF THE REGULATION OF INVESTIGATORY
POWERS ACT (RIPA) 2000**

**APPLICATION FOR AUTHORISATION TO CARRY OUT
DIRECTED SURVEILLANCE**

Public Authority (Including full address)	
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<u>Name of Applicant</u>		<u>Unit/Branch/Division</u>	
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<u>Full Address</u>	
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Contact Details	
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Investigation/Operation Name (if applicable)	
---	--

Investigating Officer (if a person other than the applicant)	
---	--

Details of application:

1. Give rank or position of authorising officer in accordance with the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010; No 521.¹

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¹For local authorities: The exact position of the authorising officer should be given. For example, Head of Trading Standards.

Directed Surveillance Unique Reference Number (URN)	
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2. Describe the purpose of the specific operation or investigation.

3. Describe in detail the surveillance operation to be authorised and expected duration, including any premises, vehicles or equipment (e.g. camera, binoculars, recorder) that may be used.

4. The identities, where known, of those to be subject of the directed surveillance.

- Name:
- Address:
- DOB:
- Other information as appropriate:

Directed Surveillance Unique Reference Number (URN)	
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5. Explain the information that it is desired to obtain as a result of the directed surveillance. Please include how the information will assist the investigation.

6. Identify on which grounds the directed surveillance is necessary under Section 28(3) of RIPA. Delete *those that are inapplicable*. *Ensure that you know which of these grounds you are entitled to rely on. (SI 2012 No.1500)*

For the purpose of preventing or detecting conduct which:-
 Constitutes one or more criminal offences, namely

AND

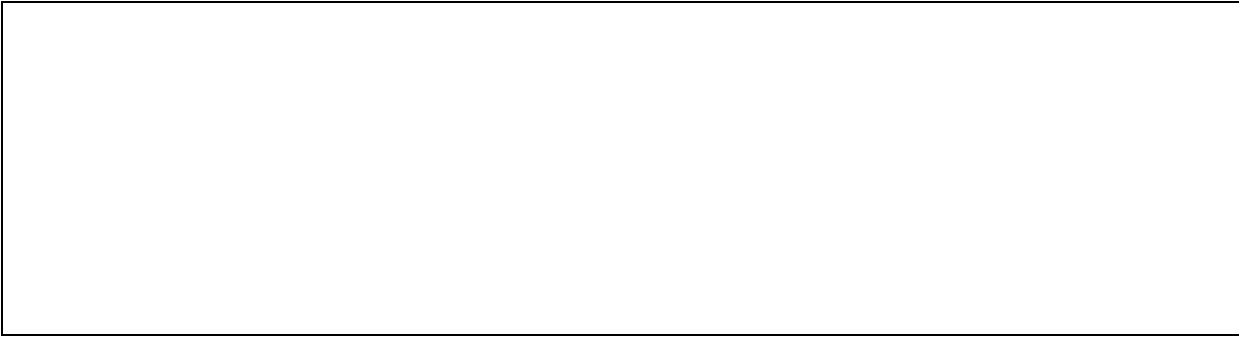
At least one of the criminal offences is punishable, whether on summary conviction or on indictment, by a maximum term of imprisonment of at least 6 months of imprisonment, namely

OR

Is an offence under Section 146, 147 or 147A of the Licensing Act 2003 or Section 7 of the Children and Young Persons Act 1933 or Section 91 or 92 of the Children and Families Act 2014

Background information about these types of offences and the kind of evidence that is needed to prove the offences is provided as a separate document (Optional)

7. Explain why this directed surveillance is necessary on the grounds you have identified [Code paragraph 3.3]



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Directed Surveillance Unique Reference Number (URN)	
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8. Supply details of any potential collateral intrusion and why the intrusion is unavoidable. [Bear in mind Code paragraphs [3-84.11](#) to [3-114.19](#)]

Describe precautions you will take to minimise collateral intrusion

Blank area for response to question 8.

9. Explain why this directed surveillance is proportionate to what it seeks to achieve. How intrusive might it be on the subject of surveillance or on others? And why is this intrusion outweighed by the need for surveillance in operational terms or can the evidence be obtained by any other means? [Code paragraphs [34.4](#) to [3-74.10](#)]

Blank area for response to question 9.

Directed Surveillance Unique Reference Number (URN)	
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10. Confidential information. [Code paragraphs 4-19.23 to 4-319.72]

INDICATE THE LIKELIHOOD OF ACQUIRING ANY CONFIDENTIAL INFORMATION:

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11. Applicant's Details

Name (print)		Tel No:	
Grade/Rank		Date	
Signature			

12. Authorising officer's statement. [Spell out the "5 Ws" – Who; What; Where; When; Why and HOW – in this and the following box.]

I hereby authorise directed surveillance defined as follows: [*Why is the surveillance necessary, whom is the surveillance directed against, Where and When will it take place, What surveillance activity/equipment is sanctioned, How is it to be achieved?*]

Directed Surveillance Unique Reference	
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Number (URN)	
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13. Explain why you believe the directed surveillance is necessary. [Code paragraph [3.34.5](#)]

Explain why you believe the directed surveillance to be proportionate to what is sought to be achieved by carrying it out. [Code paragraphs [3.44.6](#) to [3.74.9](#)]

14. (Confidential Information Authorisation.) Supply detail demonstrating compliance with Code paragraphs [4.19.23](#) to [4.319.72](#)

Date of first review	
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Directed Surveillance Unique Reference Number (URN)	
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Programme for subsequent reviews of this authorisation: [Code paragraph [3.234.34 to 4.39](#)]. Only complete this box if review dates after first review are known. If not or inappropriate to set additional review dates then leave blank.

Name (Print)		Grade/Rank	
Signature		Date and time	
Justice of the Peace granting Judicial Approval		Date and time of judicial approval	
Expiry date and time [e.g.: authorisation granted on 1 April 2005 – expires on 30 June 2005, 23:59]			

15. Is Authorising officer directly involved in this Investigation/Operation?

YES/NO

Directed Surveillance Unique Reference Number (URN)	
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~~16. Urgent Authorisation [Code paragraphs 5.9]: Authorising officer: explain why you considered the case so urgent that an oral instead of a written authorisation was given.~~

~~17. If you are only entitled to act in urgent cases: explain why it was not reasonably practicable for the application to be considered by a fully qualified authorising officer~~

Name (Print)		Grade/Rank		
Signature		Date and Time		
Urgent authorisation Expiry date:		Expiry time:		
<i>Remember the 72 hour rule for urgent authorities – check Code of Practice</i>	e.g. authorisation granted at 5pm on June 1 st expires 4:59pm on 4 th June			

Directed Surveillance Unique Reference Number (URN)	
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**PART II OF THE REGULATION OF INVESTIGATORY
POWERS ACT (RIPA) 2000**

**APPLICATION FOR RENEWAL OF A DIRECTED SURVEILLANCE
AUTHORISATION**

(Please attach the original authorisation)

Public Authority <i>(including full address)</i>			
Name of Applicant		Unit/Branch/ Division	
Full Address			
Contact Details			
Investigation/Operation Name (if applicable)			
Renewal Number			

Details of Renewal:

1. Renewal numbers and dates of any previous renewals.	
Renewal Number	Date

Directed Surveillance Unique Reference Number (URN)	
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2. Detail any significant changes to the information as listed in the original authorisation as it applies at the time of the renewal.

3. Detail the reasons why it is necessary to continue with the directed surveillance.

4. Detail why the directed surveillance is still proportionate to what it seeks to achieve.

5. Indicate the content and value to the investigation or operation of the information so far obtained by the directed surveillance.

6. Give details of the results of the regular reviews of the investigation or operation.

Directed Surveillance Unique Reference Number (URN)	
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7. Applicants Details

Name (Print)		Tel. No.	
Grade/Rank		Date	
Signature			

8. Authorising Officer's Comments. This box must be completed.

9. Authorising Officer's Statement.

I, [insert name], hereby authorise the renewal of the directed surveillance operation as detailed above. The renewal of this authorisation will last for 3 months unless renewed in writing.

This authorisation will be reviewed frequently to assess the need for the authorisation to continue.

Name (Print) **Grade/Rank**.....
Signature **Date**

Renewal From:	Time:	Date:		
Name of Justice of the Peace granting Judicial Approval				
Signature		Date and time of judicial approval		
Expiry date and time [e.g.: authorisation granted on 1 April 2005 – expires on 30 June 2005, 23:59]				

Date of first review.

Date of subsequent reviews of this authorisation.	
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Directed Surveillance Unique Reference Number (URN)	
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**PART II OF THE REGULATION OF INVESTIGATORY
POWERS ACT (RIPA) 2000**

REVIEW OF A DIRECTED SURVEILLANCE AUTHORISATION

Public Authority <i>(including full address)</i>			
Applicant		Unit/Branch/ Division	
Full Address			
Contact Details			
Operation Name		Operation Number* *Filing Ref	
Date of Authorisation or Last Renewal		Expiry Date of Authorisation or Last Renewal	
		Review Number	

Details of Review:

1. Review number and dates of any previous reviews.	
Review Number	Date

Directed Surveillance Unique Reference Number (URN)	
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2. Summary of the investigation/operation to date, including what private information has been obtained and the value of the information so far obtained.

3. Detail the reasons why it is necessary to continue with the directed surveillance.

4. Explain how the proposed activity is still proportionate to what it seeks to achieve.

5. Detail any incidents of collateral intrusion and the likelihood of any further incidents of collateral intrusions occurring.

6. Give details of any confidential information acquired or accessed and the likelihood of acquiring confidential information.

Directed Surveillance Unique Reference Number (URN)	
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7. Applicant's Details			
Name (Print)		Tel No.	
Grade/Rank		Date	
Signature			

8. Review Officer's comments, including whether or not the directed surveillance should continue.

9. Authorising Officer's Statement.
I, [insert name], hereby agree that the directed surveillance investigation/operation as detailed above [should/should not] continue [until its next review/renewal] [it should be cancelled immediately].
Name (Print) Grade/Rank Signature Date

10. Date of next review.	
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Directed Surveillance Unique Reference Number (URN)	
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**PART II OF THE REGULATION OF INVESTIGATORY
POWERS ACT (RIPA) 2000**

**CANCELLATION OF A DIRECTED
SURVEILLANCE AUTHORISATION**

Public Authority <i>(including full address)</i>			
Name of Applicant		Unit/Branch/ Division	
Full Address			
Contact Details			
Investigation/Operation Name (if applicable)			

Details of cancellation:

1. Explain the reason(s) for the cancellation of the authorisation:

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Directed Surveillance Unique Reference Number (URN)	
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2. Explain the value of surveillance in the operation:

3. Explain the outcome that was obtained from using the surveillance:

4. Identify a) the types of products of surveillance that were obtained in the operation and b) how they will be securely stored or disposed of:

5. Authorising officer's statement.
I, [insert name], hereby authorise the cancellation of the directed surveillance investigation/operation as detailed above.
Name (Print) Grade
Signature Date

6. Time and Date of when the authorising officer instructed the surveillance to cease.			
Date:		Time:	

7. Authorisation cancelled.	Date:	Time:

APPENDIX 5.

RIPA B FORMS : COVERT HUMAN INTELLIGENCE SOURCE (CHIS)

Form CHIS 1 : Application for authorisation of the Use or Conduct of a Covert Human Intelligence Source (CHIS).

Form CHIS 2 : Application for Renewal of Form CHIS 1.

Form CHIS 3 : Cancellation of Form CHIS 1.

Form CHIS 4 : Record of Use

Form CHIS 5 : Review of Form CHIS 1.

NB: If in doubt, ask the Senior Responsible Officer BEFORE any directed surveillance and/or CHIS is authorised, renewed, rejected or cancelled.

DRAFT

CHIS Unique Reference Number (URN)	
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**PART II OF THE REGULATION OF INVESTIGATORY
POWERS ACT (RIPA) 2000**

**APPLICATION FOR AUTHORISATION OF THE CONDUCT OR USE OF A
COVERT HUMAN INTELLIGENCE SOURCE (CHIS)**

Public Authority <i>(including full address)</i>			
Name of Applicant		Service/Department/ Branch	
How will the source be referred to? i.e. what will be his/her pseudonym or reference number			
The name, rank or position of the person within the relevant investigating authority who will have day to day responsibility for dealing with the source, including the source's security and welfare. (Often referred to as the Handler)			
The name, rank or position of another person within the relevant investigating authority who will have general oversight of the use made of the source. (Often referred to as the Controller)			
Who will be responsible for retaining (in secure, strictly controlled conditions, with need-to-know access) the source's true identity, a record of the use made of the source and the particulars required under RIP (Source Records) Regulations 2000 (SI 2000/2725)?			
Investigation/Operation Name (if applicable)			

Details of application:

1. Give rank or position of authorising officer in accordance with the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010; No. 521¹.

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CHIS Unique Reference Number (URN)	
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2. Describe the purpose of the specific operation or investigation.

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3. Describe in detail the purpose for which the source will be tasked or used. Please explain how achieving this purpose will assist the investigation.

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4. Describe in detail the proposed covert conduct of the source or how the source is to be used

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¹ For Local Authorities: The exact position of the authorising officer should be given. For example, Head of Trading Standards rather than officer responsible for the management of an investigation.

5. Identify on which grounds the conduct or the use of a source is necessary under Section 29(3) of RIPA. *Delete those that are in applicable. Ensure that you know which of these grounds you are entitled to rely on. (SI 2010 No. 521)*

- For the purpose of preventing or detecting crime or of preventing disorder;

Background information about these types of offences and the kind of evidence that is needed to prove the offences is provided as a separate document (Optional)

CHIS Unique Reference Number (URN)	
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6. Explain why this conduct or use of a source is necessary on the grounds you have identified [Code paragraph 3.2 to 3.3]

7. Supply details of any potential collateral intrusion and why the intrusion is unavoidable. [Bear in mind Code paragraphs 3.8-9 to 3.11-12]

Describe precautions you will take to minimise collateral intrusion and how any will be managed.

8. Are there any particular sensitivities in the local community where the source is to be used? Are similar activities being undertaken by other public authorities that could impact on the deployment of the source (see Code paragraphs 3.17-18 to 3.198)?

9. Provide an assessment of the risk to the source in carrying out the proposed conduct (see Code paragraph 6.413 to 6.15).

10. Explain why this conduct or use of a source is proportionate to what it seeks to achieve. How intrusive might it be on the subject(s) of surveillance or on others? And why is this intrusion outweighed by the need for a source in operational terms or can the evidence be obtained by any other means? [Code paragraphs 3.3-4 to 3.5]

CHIS Unique Reference Number (URN)	
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11. Confidential information [Code paragraph 4.18.26 to 4.218.71]
Indicate the likelihood of acquiring any confidential information

12. Applicant's Details

Name (Print)		Grade/Rank/ Position	
Signature		Tel No:	
Date			

13. Authorising Officer's Statement. [Spell out the "5 Ws" – Who; What; Where; When; Why and HOW – in this and the following box.] The authorisation should identify the pseudonym or reference number of the source, not the true identity

I hereby authorise the conduct or the use of a covert human intelligence source defined as follows: *[Why is the conduct or use of the source necessary, with Whom will the source establish or maintain a relationship for a covert purpose or to covertly use the relationship, What conduct is being authorised, Where and When will the source undertake the conduct authorised, How will the source undertake the conduct authorised?]*

This authorisation will cease to have effect at the end of a period of 12 months unless renewed. The authorisation will be reviewed frequently to assess the need for the authorisation to continue.

14. Explain why you believe the conduct or use of the source is necessary. [Code paragraph 3.2 to 3.3]

Explain why you believe the conduct or use of the source to be proportionate to what is sought to be achieved by their engagement. [Code paragraphs 3.34 to 3.5]

15 (Confidential Information Authorisation). Supply detail demonstrating compliance with Code paragraphs 8.264.1 to 4.218.71

16. Date of first review:

17. Programme for subsequent reviews of this authorisation: [Code paragraphs 5.153.13 and 5.163.17]. Only complete this box if review dates after first review are known. If not, or inappropriate to set additional review dates, then leave blank.

--

18. Authorising Officer's Details

Name (Print)		Grade/Rank/Position	
Signature		Time and date granted Time and date authorisation ends	
Justice of the Peace granting judicial approval		Time and date of judicial approval	

Remember an authorisation may be granted for a 12 month period, ie 17:00 hrs 4 June 2006 to 2359 hrs 3 June 2007

19. Is Authorising officer directly involved in this Investigation/Operation?

<u>YES/NO</u>

20. Urgent Authorisation [Code paragraphs 5.13 and 5.14]: Authorising officer: explain why you considered the case so urgent that an oral instead of a written authorisation was given.

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CHIS Unique Reference Number (URN)	
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~~21. If you are only entitled to act in urgent cases: explain why it was not reasonably practicable for the application to be considered by a fully qualified authorising officer.~~

~~22. Authorising Officer of urgent authorisation~~

Name (Print)		Grade/Rank/ Position	
Signature		Date and Time	
Urgent authorisation Expiry date:		Expiry time:	

~~Remember the 72 hour rule for urgent authorities — check Code of Practice [Code Paragraph 4.18]. e.g. authorisation granted at 17:00pm on 1st June 2006 expires 16:59pm on 4th June 2006.~~

CHIS Unique Reference Number (URN)	
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**PART II OF THE REGULATION OF INVESTIGATORY
POWERS ACT (RIPA) 2000**

**APPLICATION FOR RENEWAL OF A COVERT HUMAN
INTELLIGENCE SOURCE (CHIS) AUTHORISATION**
(please attach the original authorisation)

Public Authority <i>(including full address)</i>	
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Name of Applicant		Unit/Branch/ Division	
Full Address			
Contact Details			
Investigation/Operation Name (if applicable)			
Renewal Number			

Details of renewal:

1. Renewal numbers and dates of any previous renewals.	
Renewal Number	Date

CHIS Unique Reference Number (URN)	
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2. Detail any significant changes to the information in the previous authorisation.

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3. Detail why it is necessary to continue with the authorisation, including details of any tasking given to the source.

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4. Detail why the use or conduct of the source is still proportionate to what it seeks to achieve.

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5. Detail the use made of the source in the period since the grant of authorisation or, as the case may be, latest renewal of the authorisation.

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CHIS Unique Reference Number (URN)	
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6. List the tasks given to the source during that period and the information obtained from the conduct or use of the source.

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7. Detail the results of regular reviews of the use of the source.

--

8. Give details of the review of the risk assessment on the security and welfare of using the source.

--

9. Applicant's Details

Name (Print)		Tel. No.	
Grade/Rank		Date	
Signature			

10. Authorising Officer's Comments. This box must be completed

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CHIS Unique Reference Number (URN)	
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11. Authorising Officer's Statement. The authorisation should identify the pseudonym or reference number of the source not the true identity.

I, [insert name], hereby authorise the renewal of the conduct/use of the source as detailed above. The renewal of this authorisation will last for 12 months unless further renewed in writing.
 This authorisation will be reviewed frequently to assess the need for the authorisation to continue.

Name (Print) **Grade/Rank**

Signature **Date**

Renewal From: **Time:** **Date:**

NB. Renewal takes effect at the time/date of the original authorisation would have ceased but for the renewal

Name of Justice of the Peace granting Judicial Approval				
Signature		Date and time of judicial approval		
Expiry date and time [e.g.: authorisation granted on 1 April 2005 – expires on 30 June 2005, 23:59]				

Date of first review:	
Date of subsequent reviews of this authorisation:	

Operation Reference Number* (Filing Ref)	
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PART II OF THE REGULATION OF INVESTIGATORY POWERS ACT (RIPA) 2000

CANCELLATION OF AN AUTHORISATION FOR THE USE OR CONDUCT OF A COVERT HUMAN INTELLIGENCE SOURCE

Public Authority <i>(including full address)</i>	
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Name of Applicant		Unit/ Branch	
Full Address			
Contact Details			
Pseudonym or reference number of source			
Investigation/Operation Name (if applicable)			

Details of cancellation:

1. Explain the reason(s) for the cancellation of the authorisation:

Operation Reference Number* (Filing Ref)	
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2. Explain the value of the source in the operation:

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3. Explain the outcome that was obtained from using the source:

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4. Identify if technical surveillance equipment was used by the source in the operation and, if so, state what information was recorded by the equipment.

--

5. Authorising officer's statement. This should identify the pseudonym or reference number of the source not the true identity

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Name (print)		Grade:	
Signature		Date	

6. Time and Date of when the authorising officer instructed the use of the source to cease.

Date:		Time:	
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7. Authorisation cancelled.	Date:	Time:

DRAFT

Record of Use of a Covert Human Intelligence Source

Identity of the Source.	
Identity or Identities used by the source, where known.	
The means within the authority of referring to the source.	
Any significant information connected with the security and welfare of the source.	
Any risk assessment made in relation to the source.	
Date when and circumstances in which the source was recruited.	

Officer dealing with source on day to day basis	
Officer overseeing use made of source	
Officer maintaining record of use made of source	
Any other authority maintaining records	
Tasks given to the source and the demands made of him in relation to his activities as a source. (i.e. dates and what source was asked to do)	
All contacts or communications between the source and a person acting on behalf of the investigating authority.	
The information obtained by the investigating authority by the conduct or use of the source arising from the above contacts or communications	
The information obtained which is disseminated by the investigating authority.	

CHIS Unique Reference Number (URN)	
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**PART II OF THE REGULATION OF INVESTIGATORY
POWERS ACT (RIPA) 2000**

**REVIEW OF A COVERT HUMAN INTELLIGENCE
SOURCE (CHIS) AUTHORISATION**

Public Authority <i>(including full address)</i>			
Applicant		Unit/Branch/ Division	
Full Address			
Contact Details			
Operation Name		Operation Number* *Filing Ref	
Date of Authorisation or Last Renewal		Expiry Date of Authorisation or Last Renewal	
		Review Number	

Details of Review:

1. Review number and dates of any previous reviews.	
Review Number	Date

CHIS Unique Reference Number (URN)	
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2. Summary of the investigation/operation to date, including what information has been obtained and the value of the information so far obtained.

--

3. Detail the reasons why it is necessary to continue with using a Covert Human Intelligence Source.

--

4. Explain how the proposed activity is still proportionate to what it seeks to achieve.

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5. Detail any incidents of collateral intrusion and the likelihood of any further incidents of collateral intrusions occurring.

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6. Give details of any confidential information acquired or accessed and the likelihood of acquiring confidential information.

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CHIS Unique Reference Number (URN)	
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7. Give details of the review of the risk assessment on the security and welfare of using the source.

8. Applicant's Details			
Name (Print)		Tel No.	
Grade/Rank		Date	
Signature			

9. Review Officer's Comments, including whether or not the use or conduct of the source should continue.

10. Authorising Officer's Statement. The authorisation should identify the pseudonym or reference number of the source not the true identity.	
Name (Print) Grade/Rank Signature Date	
Date of next review:	

CHIS 6

Risk Assessment of the conduct and use of a source

URN:

General

The controller must evidence and complete all aspects of the risk assessment personally. Comment on the relationship between handlers and source. For instance do the handlers have the necessary skills to manage the day-to-day requirements of the source? What arrangements are in place for the source to contact the handlers etc? Remember just because your informant's use presents a risk. It does not mean that he or she should not be used. Just analyse, balance, assess and manage their activities.

Risk assessed as: Low/ Medium/ High

Council and Community Risks

Risk assessed as: Low/ Medium/ High

Information

Source

Handler and Controller

Council Service Area

Public

Physical Risks

Risk assessed as: Low/ Medium/ High

Information

Source

Handlers and controllers

Council Service Area

Public

Psychological Risks

Risk assessed as: Low/ Medium/ High

Source

Handlers and controllers

Council Service Area

Public

Legal Risks

Risk assessed as: Low/ Medium/ High

Information

Source

Handlers and controllers

Council Service Area

Public

Economic Risks

Risk assessed as: Low/ Medium/ High

Information

Source

Council Service Area

Public

Moral Risks

Risk assessed as: Low/ Medium/ High

Information

Source

Handlers and controllers

Public

Council Service Area

Management Risks

Risk assessed as: Low/ Medium/ High

APPENDIX 6.

JUDICIAL APPROVAL FORMS

Form JA1: Judicial Approval Application.

Form JA2: Judicial Approval Order Form.

DRAFT

**Application for judicial approval for authorisation to obtain or disclose communications data, to use a covert human intelligence source or to conduct directed surveillance.
Regulation of Investigatory Powers Act 2000 sections 23A, 23B, 32A, 32B. FORM JA1**

Local authority: Rhondda Cynon Taff County Borough Council

Local authority department:

Offence under investigation:

Address of premises or identity of subject:

Covert technique requested: (tick one and specify details)

Communications Data

Covert Human Intelligence Source

Directed Surveillance

Summary of details

Note: this application should be read in conjunction with the attached RIPA authorisation/RIPA application or notice.

Investigating Officer

Authorising Officer/Designated Person:

Officer(s) appearing before JP:

Address of applicant department:

Contact telephone number:

Contact email address (optional):

Local authority reference:

Number of pages:

Order made on an application for judicial approval for authorisation to obtain or disclose communications data, to use a covert human intelligence source or to conduct directed surveillance. Regulation of Investigatory Powers Act 2000 sections 23A, 23B, 32A, 32B.

FORM JA2

Magistrates' court:

Having considered the application, I (tick one):

- am satisfied that there are reasonable grounds for believing that the requirements of the Act were satisfied and remain satisfied, and that the relevant conditions are satisfied and I therefore approve the grant or renewal of the authorisation/notice
- refuse to approve the grant or renewal of the authorisation/notice
- refuse to approve the grant or renewal and quash the authorisation/notice

Notes:

Reasons:

Signed:

Date:

Time:

Full name:

Address of magistrates' court: