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Our ref: DT/CL
Your ref:

Date: 4 February 2014

Dear Councillor,

Overview and Scrutiny Committee

A Meeting of the **Overview and Scrutiny Committee** will be held in the **Council Chamber**, on **Wednesday, 12 February 2014 at 18:00**. You are requested to attend.

Yours faithfully,

Chief Executive

To:- **Conservative Group**

Councillor Mrs. Plenderleith (Chairman), Councillor Atkin (Vice-Chairman) and Councillors Mrs. Hood and Mrs. Patten.

Labour Group

Councillors Bambrick, Dunn, Mrs. Mead and Pearson.



AGENDA

Open to Public and Press

- 1** Apologies
- 2** To receive the Open Minutes of The Meetings held on 18th Sept, 23rd Oct and 11th Dec 2013
To receive the Open Minutes of The Special Meeting on 11th December 2013.
- 3** To note any declarations of interest arising from any items on the Agenda
- 4** To receive any questions by members of the public pursuant to Council Procedure Rule No.10.
- 5** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 6** Housing Revenue Account Budget Report 14 15 **3 - 18**
- 7** Regulation of Investigatory Powers Act 2000 (RIPA) – Authorising Officers & Report on Usage **19 - 64**
- 8** Work Programme **65 - 66**

Exclusion of the Public and Press:

- 9** The Chairman may therefore move:-
That in accordance with Section 100 (A) of the Local Government Act 1972 the press and public be excluded from the remainder of the Meeting as it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that there would be disclosed exempt information as defined in the paragraph of Part I of the Schedule 12A of the Act indicated in the header to each report on the Agenda.
- 10** To receive any Exempt questions by Members of the Council pursuant to Council procedure Rule No. 11.
Details

REPORT TO:	OVERVIEW AND SCRUTINY COMMITTEE	AGENDA ITEM:6
DATE OF MEETING:	12th FEBRUARY 2014	CATEGORY: RECOMMENDED
REPORT FROM:	DIRECTOR OF FINANCE & CORPORATE SERVICES	OPEN
MEMBERS' CONTACT POINT:	KEVIN STACKHOUSE (01283 595811) Kevin.stackhouse@south-derbys.gov.uk	DOC: u/ks/budget round 1415/policy reports/HRA/budget report 1415
SUBJECT:	HOUSING REVENUE ACCOUNT BUDGET 2014/15 Including Proposed Rent Increase and Longer Term Financial Projection	REF:
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE: HC 01

1.0 Recommendations

- 1.1 That an average rent increase of 5.5% (£4.16 per week) for tenanted properties is considered and approved for 2014/15.
- 1.2 That the average rent increase is adjusted for individual tenants in accordance with the Rent Restructuring Formula.
- 1.3 That the proposed estimates of income and expenditure for 2014/15 for the Housing Revenue Account are considered and referred to the Finance and Management Committee for approval.
- 1.4 That the updated financial projection, including the associated assumptions and analysis for the Housing Revenue Account to 2024 is considered and approved.

2.0 Purpose of the Report

- 2.1 As part of the annual financial planning cycle, the report details the Housing Revenue Account's (HRA) base budget for 2014/15 together with an updated financial forecast to 2024. The report also sets out details of the proposed rent increase and options for 2014/15 under the Government's National Rent Setting Policy.

3.0 Detail

3.1 The HRA's base budget and 10-year financial projection is detailed in **Appendix 1**. This shows a summary of each main income and expenditure head within the HRA for 2013/14 to 2023/24, together with the yearly surplus/deficit and balance on the HRA's general reserve.

3.2 This also shows how future surpluses will be built up to repay (self-financing) debt in accordance with the Council's Treasury Management Strategy.

Formulating the 2014/15 Base Budget

3.3 The estimates are generally based on service levels in 2013/14 continuing and include any full year effects of previous year's growth and service restructures. However, a detailed review of the base budget in day to day spending areas has also been undertaken to reflect the most up to date position.

Planning Period

3.4 A rolling 10-year financial projection is considered to be an appropriate planning period as it accords with the approved debt maturity profile and ensures focus is maintained on the longer-term.

3.5 An overall 30-year Business Plan will continue to focus on stock investment in line with available finance and tenant aspirations. This is also considered to be good practice in the self-financing regime to demonstrate to all stakeholders that the housing service is sustainable.

The position entering the Budget Round

3.6 The financial plan was updated and approved in October 2013. This reflected:

- The 2012/13 budget out-turn as approved in June 2013
- The financial impact of delivering the approved strategy for New Build
- The Government's proposals for future rent policy following CSR 2013

3.7 The updated October Plan showed a continuing sustainable financial position over the medium term for the HRA. Within this, some risks were identified with substantial investment planned in capital works and New Build over the life of the MTFP.

3.8 The overall financial position was projected to improve due to the proposed change in the Government's rent policy from 2015/16, subject to consultation. Although this would end rent convergence after 2014/15, a proposal to raise future rents in real terms by 1% above inflation, would increase resources in the HRA compared to that previously estimated.

3.9 Based on this analysis, the level of the HRA's General Reserve was projected to rise to approximately £4.5m by 2023/24, compared to £3m in the previous

projection. This included earmarking an amount of £1.4m for New Build as approved by the Committee in April 2013.

Updated Budget and Longer-term Projection

- 3.10 **Appendix 1** shows the approved base budget for 2013/14 and that proposed for 2014/15, with projections for the following 10 years to 2024. **Appendix 2** shows the proposed base budget for 2014/15 compared to that included in the previous 10-year financial projection.
- 3.11 **Appendix 3** then provides an overall reconciliation of the change between the previous and updated projections; this shows the effect of changes to the proposed base budget in 2014/15 over the 10-year planning period.
- 3.12 The figures continue to forecast a relatively strong and sustainable financial position over the medium term on the HRA.
- 3.13 Compared to the projection in October 2013, there is an improved position over the longer term planning period (subject to future rent increases). This is mainly due to lower costs, together with additional rental income estimated in 2014/15 (subject to the recommended rent increase).
- 3.14 Proposed rent levels and options on future levels are considered in detail later in the report.

The Updated Projection

- 3.15 **Appendix 1** shows the cumulative balances on the HRA and Debt Repayment Reserves by 2024. Compared to the previous projection (shown in **Appendix 4** for information) resources have increased overall by approximately £5.26m over 10-years as shown in the following table.

(Figures cumulative over 10-years)

Increase in estimated Property Rents	-£2,990,788
Decrease in Other Income	£587,306
Decrease in Supporting People Contributions	£500,000
Decrease in estimated Housing Repairs	-£1,120,336
Decrease in estimated Management costs	-£1,348,439
Decrease in Supported Housing costs	-£881,750
Other Changes	-£10,182
	-£5,264,189

- 3.16 This has increased resources available with the HRA General Reserve projected to be approximately £3.1m by 2024, well above the approved minimum level of £1m.

3.17 An analysis of the main changes between the projections is detailed in the following sections.

Increase in Estimated Property Rents

3.18 Proposals for rent levels are detailed later in the report. The main reason for the increase is that the base starting point for 2014/15 is approximately £120,000 higher if the recommended rent increase is approved.

3.19 The previous projection estimated RPI as at September 2013 at 2.25%, this is the base index for increasing rents under the current Policy. Actual RPI was 3.25%, with the 1% increase then compounded cumulatively over the long term financial projection.

(Further analysis of the proposed rent increase and the impact upon average rents and individual tenants, is detailed later in the report).

3.20 Future rent increases from 2015/16 are now based on current rent convergence ending after 2014/15 and being replaced with CPI + 1%, i.e. 3.25% per year. This is in accordance with the Government's intention to change national rent policy as set out in CSR 13. However, this is still subject to consultation and final approval.

3.21 The longer term projection has also been adjusted to reflect the change in accounting methodology previously reported, to smooth out the incidence of "53 week" years (every 5 years) by accounting for rent on a daily and not weekly basis. Overall cash income remains the same over the longer-term financial period although there is a reduction in 2013/14.

Council House Sales

3.22 These have increased over the last 2 years following the Government's policy of increasing discounts to tenants to buy their homes. The revised income figures reflect a greater level of council house sales in 2012/13 (18), together with revised estimates of 20 in 2013/14, 15 in 2014/15 and 10 in 2015/16 (compared to 5 previously).

3.23 The loss of estimated income as a consequence has been partly offset by continuing the policy of reletting void properties directly at Formula Rent.

Total Rent Income

3.24 Based on the above factors, total rent income is estimated at £12.3m in 2014/15, rising to £16.3m by 2024. During this period, it is estimated that the current dwelling stock (excluding any New Build) will reduce by around 100 units from the current level of just over 3,000.

Decrease in Other Income

- 3.25 Approximately £50k per year has been taken out of the base budget for income from garage rents (£30k) and rechargeable repairs (£20k). Other income in the HRA amounts to over £300,000 per year.
- 3.26 Income from the letting of garages continues to decline and the base budget has been updated to reflect this position. In addition, income from rechargeable repairs has been reduced to reflect what is actually recharged and paid; this can vary between years.

Decrease in Supporting People Contributions

- 3.27 This relates to the contribution from the County Council towards costs associated with their services provided to council tenants. The budget has been reduced from £350,000 to £300,000 per year to reflect a change in how the contribution is calculated following a review of service provision.
- 3.28 This contribution could reduce further as the funding body are examining closely their overall budget for supported housing in future years.

Decrease in Estimated Housing Repairs

- 3.29 After allowing for an inflation increase of 2.5%, the estimated spending on responsive repairs and minor planned works has been reduced by £1.1m over the financial period. This is mainly due to the base budget of £100,000 for minor adaptations being accommodated in proposed capital expenditure, effectively meaning that revenue provision is no longer required.

Decrease in Estimated Management and Supported Housing Costs

- 3.30 Total expenditure on these costs is approximately £2.25m per year. The base budget in is just under £200k lower than estimated compared to the previous projection. There are several factors that make up this amount as highlighted in the following table.

	£'000
No inflation increase on the base budget in 2013/14	-60
IT System Development - one-off costs falling out	-28
Lower salary costs following senior management restructure	-27
Contributions/Management - Choice Based Letting Scheme	-23
Salary costs and budget savings (following 2012/13 out-turn review)	-21
Careline and Telecare Equipment - lower maintenance charges	-16
Additional income from court fees, lettings and tenancy management	-13
Relocation of Careline Service into Oaklands - lower service charge	-12
	-200

- 3.31 Some of these savings are being realised due to “one-off” costs incurred over the last couple of years now falling out. In particular, these relate to IT development of the main housing management system, together with development costs associated with the Choice Based Lettings Scheme.
- 3.32 Following a review of the base budget, several savings are being realised such as the relocation of the Careline Service from its temporary accommodation, together with lower equipment maintenance costs.

Main Assumptions

- 3.33 The impact of a change in the base budget can have a significant impact cumulatively over the longer-term financial period. Although the cost base is estimated to reduce, the key assumptions underpinning the projection on the revised base remain unchanged; these are detailed below.

General Inflation

- 3.34 Where applicable, a rate of 2.5% has been included year on year for items of income and expenditure (excluding rents). This is based on a general index of longer-term inflation rates. Excluding national pay award increases, the HRA in recent years has actually spent within the inflated budgets as shown in the previous table.
- 3.35 Where a provision for inflation is not required, this is effectively returned to the HRA’s General Reserve. This also reduces the base level of spending for future years by approximately £60k per year, based on the base budget for 2014/15.
- 3.36 Spending on day to day repairs and maintenance is usually targeted at the inflated amount each year, subject to any changes in policy or capital expenditure.

Income (excluding Housing Rents)

- 3.37 Following a prudent basis no provision, on the updated base budget, for inflation is factored into the projection for income from fees, charges and contributions.

Debt Interest and Capital Investment

- 3.38 Amounts for interest on debt and capital expenditure are those set on the implementation of self-financing and have not changed. Predominantly, the self-financing debt is fixed with an approved maturity profile as set out in the Council’s Treasury Management Strategy. The first repayment is due in 2020.
- 3.39 The capital expenditure profile may change over time, although the total amount of expenditure is fixed. In addition, contributions to the New Build programme may also follow a different profile over time depending on delivery, but the total is currently fixed, as approved, at £1.4m until 2019.

Rent Levels and Proposed Rent Increase 2014/15

3.40 Under self-financing, councils are still expected to follow the national rent setting framework as applied under the previous subsidy system and continue towards rent convergence by 2015/16. Within the system, there are 3 different rent levels as follows:

- The Actual Rent – the current rent charged locally
- The Formula Rent – the rent which should be charged - this is the level to which actual rents have been converging over time.
- The Limit Rent – a rent set by the Department for Works and Pensions for which the actual rent cannot exceed at any one time without a financial penalty being incurred.

3.41 By the time rent convergence is fully implemented, all 3 of these rents should be at the same level, i.e. converged.

3.42 The previous HRA projection reported in October was based on a proposed change (subject to consultation) in the Government's rent policy from 2015/16. Although this proposal would bring to an end rent convergence after 2014/15, a further proposal to raise future rents in real terms by 1% above inflation would increase resources in the HRA compared to that previously estimated.

3.43 Although the Council does have some flexibility in setting rents, its current policy is to adhere to the national rent convergence framework and bring all tenanted properties to their Formula Rent.

3.44 As highlighted above, within the current framework, a Limit Rent also exists and average rent cannot exceed this Limit without incurring a financial penalty through loss of benefit subsidy for rent rebates.

3.45 As previously reported, the Council's average rent has remained below its Formula, although the gap has narrowed each year. For 2013/14, the headline rents are as follows:

- Average Rent - £74.93
- Formula Rent - £77.79
- Limit Rent - £75.83

Future Rent Policy

3.46 Following CSR 2013, the Department for Communities and Local Government (DCLG) wrote to representative housing groups. This set out the Government's intention to end rent convergence after 2014/15 and to introduce new policy direction from 2015/16.

- 3.47 The DCLG confirmed that, subject to consultation, rents in the social sector will be increased by the Consumer Prices Index (CPI) plus 1% annually from 2015/16 to 2024/25.
- 3.48 It is assumed that this would apply across the board for all tenants without any individual caps or adjustments with the rent level in 2014/15 being the base starting point. Details are due to be provided in a consultation exercise later in the year.
- 3.49 Consultation aside, the Government appears committed to ending rent convergence and setting new rent policy. In principle, this could have a significant effect on those councils (such as South Derbyshire) who have still to fully converge.
- 3.50 However, this will depend on how close actual rents are to the Formula and exactly what assumptions have been used in individual councils. In addition, the proposals indicate a change in the inflation index from RPI to CPI.
- 3.51 Historically, RPI has been a higher figure, although it should be noted that the new policy will include an on-going real terms increase in rents of 1% per year.
- 3.52 Under rent convergence, this has been 0.5% (*subject to caps being applied to individual tenants of inflation plus £2 per week*) and any real terms increase beyond 2015/16 has been uncertain until this announcement. Until October 2013, the Council's HRA projection had assumed no real terms increase beyond 2015/16, but this was changed based on the Government's announcement.
- 3.53 In summary, the rent projection was recalculated in October based on the revised national policy and this added an additional £2.7m into the HRA over the 10-years to 2024. This was based on a rent increase of 4.7% in 2014/15 (effectively now the final year of convergence) and 3.25% a year thereafter (2.25% CPI + 1%).

Proposed Increase 2014/15

- 3.54 Based on the rent convergence methodology, the base line increase for 2013/14 is 3.7% - i.e. RPI as at September 2013 of 3.2% + 0.5%.
- 3.55 In 2013/14, the Council's average rent is £3.33p per week (4.3%) lower than the national formula. In order to continue convergence, the average rent would need to increase by a further 1.8 % in 2014/15.
- 3.56 This makes the proposed overall average rent increase equal to **5.5%** (3.7% + 1.8%) for 2014/15 – an average of just over **£4 per week**.

Analysis of Increases

- 3.57 Based on the National Formula, all tenants will see an increase in their rents for 2014/15. This will range from £2.09p to £5.46p per week (between 3.5% and 6%).
- 3.58 Within this, almost half of properties (1,474) would have their increase capped at 3.7% plus £2 per week under the rent convergence guidelines.
- 3.59 The Council's average rent will increase from £74.93 per week to **£79.09 per week**. The average Formula Rent for 2014/15 is now £81.08 per week – 2.6% higher than the proposed actual of £79.05 per week.
- 3.60 Actual rents will range from £58 per week for bedsits to just over £100 per week for a 4 bedroom property in certain parts of the District. The Limit Rent for 2014/15 is still to be notified to the Council but is estimated to be around £80 per week.
- 3.61 If the average rent increase of 5.5% is approved for 2014/15, there will still be approximately 1,700 properties below their Formula Rent to varying degrees because of the cap on individual increases that has applied in previous years.
- 3.62 If rent convergence was to remain in place, all properties would eventually converge by 2018/19.

Rent Collection and Potential Arrears

- 3.63 It has previously been reported that arrears have been increasing over the last year. Based on the current level of arrears, there is a separate Bad Debts Provision of £180,000 against which uncollectable debts are written off.
- 3.64 The HRA projection allows for an increase in this provision of £20,000 per year. The provision was increased by £44,000 in 2012/13, so this will need to be kept under review. In the meantime, specific work is currently taking place with affected tenants to reduce the overall level of arrears.

HRA General Reserve

- 3.65 Based on the proposed rent increase of 5.5% and following changes to the Base Budget, the balance on the HRA Reserve is forecast to increase from £2.6m in 2013/14 to £3.1m in 2017/18.
- 3.66 This level of £3.1m is maintained over the remainder of the 10-year financial period as the HRA moves into surplus following the current capital investment programme. As originally planned, future surpluses after 2017/18 will be set-aside to repay debt for when it matures.
- 3.67 The balance of £3.1m is in excess of the minimum level of £1m approved in the Council's Financial Strategy for the HRA.

3.68 It is considered that proposed spending budgets are realistic but prudent and allow for inflation. The debt costs are sustainable and allow the planned repayment of debt

3.69 Clearly, the most significant variable continues to be rent. As the report highlights, a relatively low change in percentage terms can have a significant impact in cash terms, particularly when projected over 10-years. Depending on the outcomes of the consultation on proposed change to national rent policy from 2015/16, the projected rent levels could change again.

Potential Use of Additional Resources

3.70 With projected reserves now expected to be much higher over the medium term, the HRA continues to have several options as set out in the following table.

Options	Benefits	Risks
Set lower rent increases	<ul style="list-style-type: none"> • Lessens the potential for larger increases • Eases the cost for individual tenants 	<ul style="list-style-type: none"> • Constraining the main revenue source • Reducing the income base in the short term when resources are required in the longer-term • Could be constrained by national policy
Set-aside and use resources for New Build or additional capital investment – could be used as a contribution to Phase 2 of New Build	<ul style="list-style-type: none"> • Would supplement other capital receipts and avoid technical and risky methods of financing New Build • Resources are maintained in the meantime and not immediately used 	<ul style="list-style-type: none"> • One-off financing method, once resources are spent they cannot easily be replenished
Take advantage of borrowing headroom	<ul style="list-style-type: none"> • Additional debt costs are affordable • Interest rates still very low 	<ul style="list-style-type: none"> • Additional borrowing could be costly longer term if financial position changes •
Use resources for debt management - set-aside to accelerate the repayment of debt	<ul style="list-style-type: none"> • Prudent approach to financial management • Would reduce interest costs in the longer term 	<ul style="list-style-type: none"> • Need to invest resources until debt matures – current investment returns very low • Repaying debt early could incur a premium, although interest rates have reduced and a discount may be available

Set-aside as a separate contingency	<ul style="list-style-type: none"> • Prudent approach to financial management 	<ul style="list-style-type: none"> • Could be challenged for holding onto resources unnecessarily
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Apportionment of Indirect HRA Costs

3.71 As reported last year, a comprehensive review was undertaken during this Budget Round of the apportionment of central services, senior management and other corporate costs between the General Fund and the HRA.

3.72 This included a review of 20 cost categories covering services such as HR, ICT, Finance and Customer Services, etc., together with the core management and democratic costs of the Council.

3.73 The review aimed to ensure that there is a fair and reasonable charge for these services in the HRA in accordance with accounting regulations. The last review of the basis for these charges was in 2004/05; since that time the structure of the Council has changed several times and the social housing function has also undergone significant change culminating in the implementation of self-financing in 2013/14.

3.74 The outcome is currently being assessed and validated by the Council's External Auditor and will be reported to the Finance and Management Committee on 20th February.

4.0 Financial Implications

4.1 As detailed in the report

5.0 Corporate Implications

5.1 There are no other legal, HR or other corporate implications apart from that considered in the report.

6.0 Community Implications

6.1 The proposed budgets and spending within the HRA provides the financial resources to enable many of the on-going services and Council priorities associated with council housing to be delivered to its tenants.

7.0 Background Papers

7.1 None

HRA BASE BUDGET & FINANCIAL PROJECTION (as at February 2014)

All figures in £'s	Approved 2013/14	Revised 2013/14	Proposed 2014/15	Projection 2015/16	Projection 2016/17	Projection 2017/18	Projection 2018/19	Projection 2019/20	Projection 2020/21	Projection 2021/22	Projection 2022/23	Projection 2023/24
Rent From Dwellings	-11,874,330	-11,682,234	-12,285,102	-12,719,119	-13,096,610	-13,522,249	-13,961,722	-14,652,445	-14,843,203	-15,325,608	-15,823,690	-16,337,960
Garage and Shop Rents	-130,000	-130,000	-97,499	-100,668	-103,939	-107,317	-110,805	-114,406	-118,125	-121,964	-125,928	-130,020
Insurances Recharged	-20,000	-20,000	-20,000	-20,500	-21,013	-21,538	-22,076	-22,628	-23,194	-23,774	-24,368	-24,977
Other Fees & Charges	-180,750	-180,750	-187,110	-187,110	-187,110	-187,110	-187,110	-187,110	-187,110	-187,110	-187,110	-187,110
Rechargeable Repairs	-20,000	-20,000	0	0	0	0	0	0	0	0	0	0
Interest received from General Fund	-20,000	-20,000	-20,000	-20,000	-20,000	-20,000	-20,000	-20,000	-20,000	-20,000	-20,000	-20,000
Supporting People Contributions	-350,000	-350,000	-300,000	-300,000	-300,000	-300,000	-300,000	-300,000	-300,000	-300,000	-300,000	-300,000
TOTAL INCOME	-12,595,080	-12,402,984	-12,909,711	-13,347,397	-13,728,672	-14,158,214	-14,601,713	-15,296,589	-15,491,632	-15,978,456	-16,481,096	-17,000,067
Housing Repairs	3,235,959	3,235,959	3,216,858	3,297,280	3,379,712	3,464,205	3,550,810	3,639,580	3,730,569	3,823,834	3,919,430	4,017,415
General Management	1,289,719	1,289,719	1,242,186	1,273,240	1,305,071	1,337,698	1,371,141	1,405,419	1,440,555	1,476,568	1,513,483	1,551,320
Managing Tenancies	15,360	15,360	14,910	15,283	15,665	16,056	16,458	16,869	17,291	17,723	18,166	18,621
Rent Collection & Accounting	29,280	29,280	20,280	20,787	21,307	21,839	22,385	22,945	23,519	24,107	24,709	25,327
Supported Housing	888,726	888,726	832,240	853,046	874,372	896,231	918,637	941,603	965,143	989,271	1,014,003	1,039,353
Provision for Bad Debts	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000
Capital Charges (Historical Debt)	51,872	51,872	51,750	51,629	51,508	51,386	51,265	51,143	51,022	50,901	50,779	50,658
Depreciation	2,851,007	2,851,007	2,805,432	2,805,432	2,805,432	2,805,432	2,805,432	2,805,432	2,805,432	2,805,432	2,805,432	2,805,432
Interest on Self Financing Debt	1,574,805	1,574,805	1,574,805	1,684,805	1,804,805	1,904,805	2,004,805	2,024,805	2,024,805	2,024,805	1,504,805	1,504,805
Treasury Management Fees	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000
Capital Expenditure Requirement	5,500,000	5,500,000	5,500,000	5,500,000	5,500,000	3,452,362	3,452,362	3,452,362	3,452,362	2,996,741	2,996,741	2,996,741
Capital Salaries	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
Incremental Salary Increases	0	0	0	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000
Provision for Pay and Grading / Pensions	22,950	37,950	18,380	18,564	18,935	19,409	19,894	20,391	20,901	21,424	21,959	22,508
Contribution to New Build	0	0	286,800	286,800	286,800	286,800	286,800	0	0	0	0	0
TOTAL EXPENDITURE	15,537,678	15,552,678	15,641,641	15,888,866	16,145,607	14,338,223	14,581,989	14,462,549	14,613,599	14,312,806	13,951,507	14,114,180
HRA NET EXPENDITURE	2,942,598	3,149,694	2,731,930	2,541,469	2,416,935	180,009	-19,724	-834,040	-878,033	-1,665,650	-2,529,589	-2,885,887
Less Depreciation	-2,851,007	-2,851,007	-2,805,432	-2,805,432	-2,805,432	-2,805,432	-2,805,432	-2,805,432	-2,805,432	-2,805,432	-2,805,432	-2,805,432
HRA (Surplus)/Deficit	91,591	298,687	-73,502	-263,963	-388,497	-2,625,423	-2,825,156	-3,639,472	-3,683,465	-4,471,082	-5,335,021	-5,691,319
Appropriation												
Set aside for Debt Repayment	0	0	0	0	0	2,625,423	2,825,156	3,639,472	3,683,465	4,471,082	5,335,021	5,691,319
Transfer to General Reserve	91,591	298,687	-73,502	-263,963	-388,497	0	0	0	0	0	0	0
HRA GENERAL RESERVE												
Balance b/f	-2,686,082	-2,686,082	-2,387,395	-2,460,897	-2,724,860	-3,113,357	-3,113,357	-3,113,357	-3,113,357	-3,113,357	-3,113,357	-3,113,357
Transfer out/(in)	91,591	298,687	-73,502	-263,963	-388,497	0	0	0	0	0	0	0
Balance c/f	-2,594,491	-2,387,395	-2,460,897	-2,724,860	-3,113,357							
DEBT REPAYMENT PROVISION												
Balance b/f	0	0	0	0	0	0	2,625,423	5,450,579	9,090,051	12,773,516	7,244,598	12,579,619
Debt repayment set aside	0	0	0	0	0	0	2,625,423	2,825,156	3,639,472	3,683,465	4,471,082	5,691,319
Debt repayment	0	0	0	0	0	0	0	0	0	-10,000,000	0	-10,000,000
Balance c/f	0	0	0	0	0	0	2,625,423	5,450,579	9,090,051	12,773,516	7,244,598	8,270,938

Analysis of Change in Base Budget 2014/15 and that Projected

All figures in £'s	Projection	Budget	Change
Rent From Dwellings	-12,091,647	-12,285,102	-193,455
Garage and Shop Rents	-136,099	-97,499	38,600
Insurances Recharged	-20,500	-20,000	500
Other Fees & Charges	-180,750	-187,110	-6,360
Rechargeable Repairs	-20,500	0	20,500
Interest received from General Fund	-20,000	-20,000	0
Supporting People Contributions	-350,000	-300,000	50,000
TOTAL INCOME	-12,819,496	-12,909,711	-90,215
Housing Repairs	3,316,858	3,216,858	-100,000
General Management	1,349,575	1,242,186	-107,389
Managing Tenancies	15,744	14,910	-834
Rent Collection & Accounting	30,012	20,280	-9,732
Supported Housing	910,944	832,240	-78,704
Provision for Bad Debts	20,000	20,000	0
Capital Charges (Historical Debt)	51,751	51,750	-1
Depreciation	2,851,007	2,805,432	-45,575
Interest on Self Financing Debt	1,574,805	1,574,805	0
Treasury Management Fees	8,000	8,000	0
Capital Expenditure Requirement	5,500,000	5,500,000	0
Capital Salaries	50,000	50,000	0
Incremental Salary Increases	0	0	0
Provision for Pay and Grading / Pensions	23,524	18,380	-5,144
Contribution to New Build	286,800	286,800	0
TOTAL EXPENDITURE	15,989,020	15,641,641	-347,379
HRA NET EXPENDITURE	3,169,524	2,731,930	-437,594
Less Depreciation	-2,851,007	-2,805,432	45,575
HRA (Surplus)/Deficit	318,517	-73,502	-392,019

Analysis of Change in 10-year Projection to 2023/24

All figures in £'s	Projection	Budget	Change
Rent From Dwellings	-151,259,154	-154,249,942	-2,990,788
Garage and Shop Rents	-1,676,305	-1,260,671	415,634
Insurances Recharged	-249,670	-244,068	5,602
Other Fees & Charges	-1,988,250	-2,051,850	-63,600
Rechargeable Repairs	-249,670	-20,000	229,670
Interest received from General Fund	-220,000	-220,000	0
Supporting People Contributions	-3,850,000	-3,350,000	500,000
TOTAL INCOME	-159,493,049	-161,396,531	-1,903,482

Housing Repairs	40,395,988	39,275,652	-1,120,336
General Management	16,436,462	15,206,400	-1,230,062
Managing Tenancies	191,747	182,402	-9,345
Rent Collection & Accounting	365,517	256,485	-109,032
Supported Housing	11,094,375	10,212,625	-881,750

HRA BASE BUDGET & FINANCIAL PROJECTION (as at October 2013)

	Budget 2013/14	Projection 2014/15	Projection 2015/16	Projection 2016/17	Projection 2017/18	Projection 2018/19	Projection 2019/20	Projection 2020/21	Projection 2021/22	Projection 2022/23	Projection 2023/24
	£	£	£	£	£	£	£	£	£	£	£
Income											
Rent From Dwellings	-11,874,330	-12,091,647	-12,463,886	-12,847,550	-13,242,987	-13,650,557	-14,341,220	-14,503,592	-14,949,833	-15,409,760	-15,883,792
Garage and Shop Rents	-130,000	-136,099	-141,707	-146,063	-149,691	-153,233	-156,688	-160,217	-163,822	-167,508	-171,277
Insurances Recharged	-20,000	-20,500	-21,013	-21,538	-22,076	-22,628	-23,194	-23,774	-24,368	-24,977	-25,602
Other Fees & Charges	-180,750	-180,750	-180,750	-180,750	-180,750	-180,750	-180,750	-180,750	-180,750	-180,750	-180,750
Rechargeable Repairs	-20,000	-20,500	-21,013	-21,538	-22,076	-22,628	-23,194	-23,774	-24,368	-24,977	-25,602
Interest received from Gen Fund	-20,000	-20,000	-20,000	-20,000	-20,000	-20,000	-20,000	-20,000	-20,000	-20,000	-20,000
Supporting People Contributions	-350,000	-350,000	-350,000	-350,000	-350,000	-350,000	-350,000	-350,000	-350,000	-350,000	-350,000
TOTAL INCOME	-12,595,080	-12,819,495	-13,198,369	-13,587,439	-13,987,581	-14,399,796	-15,095,047	-15,262,106	-15,713,141	-16,177,972	-16,657,022

Expenditure											
Housing Repairs	3,235,959	3,316,858	3,399,780	3,484,774	3,571,893	3,661,191	3,752,721	3,846,539	3,942,702	4,041,270	4,142,301
General Management	1,316,659	1,349,575	1,383,314	1,417,897	1,453,345	1,489,678	1,526,920	1,565,093	1,604,221	1,644,326	1,685,434
Managing Tenancies	15,360	15,744	16,138	16,541	16,955	17,378	17,813	18,258	18,715	19,183	19,662
Rent Collection & Accounting	29,280	30,012	30,762	31,531	32,320	33,128	33,956	34,805	35,675	36,567	37,481
Sheltered & Other Services	888,726	910,944	933,717	957,060	980,987	1,005,511	1,030,649	1,056,415	1,082,826	1,109,896	1,137,644
Provision for Bad Debts	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000
Capital Charges (old debt)	51,872	51,751	51,629	51,508	51,386	51,265	51,143	51,022	50,901	50,779	50,658
Depreciation - Dwellings	2,851,007	2,851,007	2,851,007	2,851,007	2,851,007	2,851,007	2,851,007	2,851,007	2,851,007	2,851,007	2,851,007
Interest on Self-Financing Debt	1,574,805	1,574,805	1,684,805	1,804,805	1,904,805	2,004,805	2,024,805	2,024,805	2,024,805	1,504,805	1,504,805
Treasury Management Fees	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000
Capital Expenditure Requirement	5,500,000	5,500,000	5,500,000	5,500,000	3,452,362	3,452,362	3,452,362	3,452,362	2,996,741	2,996,741	2,996,741
Contribution to New Build	0	286,800	286,800	286,800	286,800	286,800	0	0	0	0	0
Capital Salaries	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
Provision for Pay & Grading	22,950	23,524	24,112	24,715	25,333	25,966	26,615	27,280	27,962	28,661	29,378
TOTAL EXPENDITURE	15,564,617	15,989,019	16,240,064	16,504,638	14,705,192	14,957,091	14,845,991	15,005,586	14,713,554	14,361,235	14,533,111
HRA NET EXPENDITURE	2,969,537	3,169,524	3,041,696	2,917,200	717,611	557,295	-249,056	-256,520	-999,587	-1,816,738	-2,123,911
Less Depreciation	-2,851,007	-2,851,007	-2,851,007	-2,851,007	-2,851,007	-2,851,007	-2,851,007	-2,851,007	-2,851,007	-2,851,007	-2,851,007
HRA Surplus (-) / Deficit	118,530	318,517	190,689	66,193	-2,133,396	-2,293,712	-3,100,063	-3,107,527	-3,850,594	-4,667,745	-4,974,918

Appropriation											
Set aside for Debt Repayment	0	0	0	0	2,405,479	2,430,475	2,804,801	2,673,699	3,264,399	3,915,131	4,058,098
Transfer to (-) / from General Reserve	118,530	318,517	190,689	66,193	272,083	136,763	-295,262	-433,828	-586,195	-752,614	-916,820

HRA GENERAL RESERVE											
Balance b/f	-2,686,082	-2,567,552	-2,249,035	-2,058,346	-1,992,154	-1,720,070	-1,583,307	-1,878,569	-2,312,396	-2,898,592	-3,651,205
Transfer (as above)	118,530	318,517	190,689	66,193	272,083	136,763	-295,262	-433,828	-586,195	-752,614	-916,820
Balance c/f	-2,567,552	-2,249,035	-2,058,346	-1,992,154	-1,720,070	-1,583,307	-1,878,569	-2,312,396	-2,898,592	-3,651,205	-4,568,025

DEBT REPAYMENT PROVISION											
Balance b/f	0	0	0	0	0	2,405,479	4,835,954	7,640,755	10,314,454	3,578,853	7,493,984
Debt repayment set aside	0	0	0	0	2,405,479	2,430,475	2,804,801	2,673,699	3,264,399	3,915,131	4,058,098
Actual debt repayments	0	0	0	0	0	0	0	0	-10,000,000	0	-10,000,000
Balance c/f	0	0	0	0	2,405,479	4,835,954	7,640,755	10,314,454	3,578,853	7,493,984	1,552,082

Increase in estimated Property Rents	-£2,990,788
Decrease in Other Income	£587,306
Decrease in Supporting People Contributions	£500,000
Decrease in estimated Housing Repairs	-£1,120,336
Decrease in estimated Management costs	-£1,348,439
Decrease in Supported Housing costs	-£881,750
Other Changes	-£10,182
	-£5,264,189

	£'000
No inflation increase on the base budget in 2013/14	-60
IT System Development - one-off costs falling out	-28
Lower salary costs following senior management restructure	-27
Contributions/Management - Choice Based Letting Scheme	-23
Salary costs and budget savings (following 2012/13 out-turn review)	-21
Careline and Telecare Equipment - lower maintenance charges	-16
Additional income from court fees, lettings and tenancy management	-13
Relocation of Careline Service into Oaklands - lower rental charge	-12
	-200

REPORT TO:	Overview and Scrutiny Committee	AGENDA ITEM: 7
DATE OF MEETING:	12th February 2014	CATEGORY: DELEGATED
REPORT FROM:	Chief Executive	OPEN
MEMBERS' CONTACT POINT:	Ardip Kaur – 595715 ardip.kaur@south-derbys.gov.uk	DOC:
SUBJECT:	Regulation of Investigatory Powers Act 2000 (RIPA) – Authorising Officers & Report on Usage	REF:
WARD(S) AFFECTED:	All	TERMS OF REFERENCE:

1.0 Recommendations

- 1.1 To approve the amendments to the Council's Authorising Officers and update the RIPA Policy and Procedure document in line with organisational change.
- 1.2 To consider the internal report on the Council's use of the Regulation of Investigatory Powers Act 2000 in the last quarter.

2.0 Purpose of Report

- 2.1 To approve the amendments made to the Council's Authorising Officers and update the Policy and Procedure document accordingly (Appendix 1).
- 2.2 To receive a report on the Council's use of the Regulation of Investigatory Powers Act 2000 ("RIPA") since November 2013.

3.0 Detail

- 3.1 Sections 37 and 38 of the Protection of Freedoms Act 2012 came into force in November 2012. In line with this legislation, if the Council wishes to authorise the use of directed surveillance, the acquisition of communications data and use a covert human intelligence source (CHIS) under RIPA, it will need to obtain an Order approving the grant or renewal of an authorisation or Notice from a District Judge or lay Magistrate (JP) before it can take effect.
- 3.2 Further change by way of amendment to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 also came into effect on 1st November 2012. The amendments relate to the directed surveillance crime threshold.
- 3.3 Full Council on 24th January 2013 approved the Council's amended RIPA Policy and Guidance document. The Overview and Scrutiny Committee is authorised to review the Council's use of RIPA, set the Council's general surveillance policy, and consider

quarterly reports on the use of RIPA to ensure that it is being used as per the Council's policy.

- 3.3 RIPA is intended to regulate the use of investigatory powers and ensure they are used in accordance with human rights. This is achieved by requiring certain investigations involving covert surveillance to be authorised by an appropriate Authorising Officer and then a JP before they are carried out.
- 3.4 Directed surveillance is often conducted by local authorities to investigate benefit fraud or to collect evidence of anti-social behaviour. It may involve covertly following people, covertly taking photographs of them or using hidden cameras to record their movements.
- 3.5 RIPA stipulates that the person (Authorising Officer) granting an authorisation for directed surveillance must believe that the activities to be authorised are necessary on one or more statutory grounds. The members of the Corporate Management Team, identified in the Council's Policy and Procedure, consider all applications for authorisation. The Authorising Officer must ensure that there is satisfactory reason for carrying out the surveillance, the covert nature of the investigation is necessary, proper consideration has been given to collateral intrusion, and the proposed length and extent of the surveillance is proportionate to the information being sought. This involves balancing the seriousness of the intrusion into the privacy of the subject of the operation against the need for the activity in investigative and operational terms. Following legislative changes, in addition to the aforementioned, the Council is required to obtain judicial approval prior to using covert techniques and the Councils use of directed surveillance under RIPA will be limited to the investigation of crimes which attract a six month or more custodial sentence.
- 3.6 The usage of RIPA during the period November 2013 to January 2014 has been nil. No authorisations have been requested or granted.

4.0 Financial Implications

- 4.1 None arising directly from this report.

5.0 Corporate Implications

- 5.1 The Council must act in accordance with recent legislative changes regarding the authorisation process and the surveillance crime threshold.

6.0 Community Implications

- 6.1 Covert surveillance is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware of it taking place. The Council carries out directed surveillance which is covert, not intrusive, is not carried out in an immediate response to events, and is undertaken for the purpose of a specific investigation or operation in a manner likely to obtain private information about an individual.
- 6.2 Section 8 of the application form asks the applicant to supply details of any potential collateral intrusion and to detail why the intrusion is unavoidable. The idea behind collateral intrusion is to identify who else, apart from the subject of the surveillance, can be affected by the nature of the surveillance. Any application for authorisation should include an assessment of the risk of the collateral intrusion and this should be taken into account by the Authorising Officer when considering proportionality. The Authorising Officer needs to know if carrying out the surveillance if the investigation or operation would unexpectedly interfere with the privacy of individuals

not covered by the authorisation. An Authorising Officer must be made aware of any particular sensitivities in the local community.

7.0 Background Papers

RIPA Policy and Procedure document

SOUTH DERBYSHIRE DISTRICT COUNCIL

REGULATION OF
INVESTIGATORY POWERS ACT 2000 (RIPA)

POLICY AND GUIDANCE

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27	Appendix C – Office of Surveillance Commissioners Procedures & Guidance 2010
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SOUTH DERBYSHIRE DISTRICT COUNCIL

**POLICY ON REGULATION OF INVESTIGATORY POWERS
ACT 2000 (RIPA)**

Introduction

South Derbyshire District Council only carries out covert surveillance where such action is justified and endeavours to keep such surveillance to a minimum. It recognises the importance of complying with RIPA when such an investigation is for the purpose of preventing or detecting crime or preventing disorder and has produced this guidance document to assist officers.

Applications for authority

Members of the Corporate Management Team identified in the table below (Chief Executive, Director of Finance and Corporate Services) will consider all applications for authorisation in accordance with RIPA (“Authorising Officers”). Any incomplete or inadequate application forms will be returned to the applicant for amendment. Authorising Officers shall in particular ensure that: -

- there is a satisfactory reason for carrying out the surveillance
- the covert nature of the investigation is necessary
- proper consideration has been given to collateral intrusion
- the proposed length and extent of the surveillance is proportionate to the information being sought.
- Chief Executive’s authorisation is sought where legal/medical/clerical issues are involved
- The authorisations are reviewed and cancelled.
- Records of all authorisations are sent to the Legal and Democratic Services Manager for entry on the Central Register.

AUTHORISING OFFICERS
CHIEF EXECUTIVE
DIRECTOR OF FINANCE & CORPORATE SERVICES

Senior Responsible Officer

The Senior Responsible Officer is the Chief Executive. The Senior Responsible Officer has overall responsibility for RIPA, as outlined in the Codes of Practice and the Council's Policy and Guidance.

RIPA Co-ordinating Officer / Training

The RIPA Co-ordinating Officer is the Council's Legal and Democratic Services Manager. The RIPA Co-ordinating Officer is responsible for the maintenance of the Central Record of Authorisations and the collation of RIPA applications/authorisations, reviews, renewals, and cancellations. In addition, there is responsibility for providing oversight of the RIPA process within the Council and for RIPA training.

The RIPA Co-ordinating Officer shall ensure that refresher training is offered once a year to all directorates of the Council and also give advice and training on request.

The RIPA Co-ordinating Officer is responsible for raising RIPA awareness within the Council.

Authorising Officers shall be responsible for ensuring that relevant members of staff are aware of the Act's requirements.

Legislative Changes

By virtue of sections 37 and 38 of the Protection of Freedoms Act 2012, from 1st November 2012 the Council will be required to obtain judicial approval prior to using covert techniques. Authorisations and notices under RIPA will only be given effect once an Order has been granted by a Justice of the Peace (JP), a District Judge or lay Magistrate,

Furthermore, from 1st November 2012, the Council's use of directed surveillance will be limited to the investigation of crimes which attract a six month or more custodial sentence, with the exception of offences relating to the underage sale of alcohol and tobacco.

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

GUIDANCE - PART I

DIRECTED SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCE

1. Purpose

The purpose of this guidance is to explain

- the scope of RIPA – Part II;
- the circumstances where it applies; and
- the authorisations procedures to be followed

2. Introduction

2.1 The Regulation of Investigatory Powers Act 2000 (“the Act”), which came into force in 2000, is intended to regulate the use of investigatory powers exercised by various bodies including local authorities, and ensure that they are used in accordance with human rights. This is achieved by requiring certain investigations to be authorised by an appropriate Authorising Officers before they are carried out.

2.2 The investigatory powers, which are relevant to a local authority, are directed covert surveillance in respect of specific operations or specific investigations and the use of covert human intelligence sources. The Act makes it clear for which purposes they may be used, to what extent, and who may authorise their use. There are also Codes of Practice in relation to the use of these powers and these are attached at **Appendix A and Appendix B**. Attached at **Appendix C** is the Procedure and Guidance document issued by the Office of Surveillance Commissioners in September 2010.

2.3 Consideration must be given, prior to authorisation as to whether or not the acquisition of private information is necessary and proportionate, i.e. whether a potential breach of a human right is justified in the interests of the community as a whole, or whether the information could be gleaned in other ways.

2.4 A public authority may only engage the Act when in performance of its core functions, that is the specific public functions undertaken by the authority in contrast to the ordinary functions that are undertaken by every authority, for example, employment issues, contractual arrangements, etc.

3. Scrutiny and Tribunal

3.1 External Scrutiny

3.1.1 The Office of Surveillance Commissioners (OSC) was set up to monitor compliance with the Act. The OSC has “a duty to keep under review the exercise and performance by the relevant persons of the powers and duties under Part II of the Act”, and the Surveillance Commissioner will

from time to time inspect the Council's records and procedures for this purpose.

3.1.2 In order to ensure that investigating authorities are using the powers properly, the Act also establishes a Tribunal to hear complaints from persons aggrieved by conduct, e.g. directed surveillance. Applications will be heard on a judicial review basis. Such claims must be brought no later than one year after the taking place of the conduct to which it relates, unless it is just and equitable to extend this period.

3.1.3 The Tribunal can order:

- Quashing or cancellation of any warrant or authorisation
- Destruction of any records or information obtained by using a warrant or Authorisation
- Destruction of records or information held by a public authority in relation to any person

3.1.4 The Council has a duty to disclose to the tribunal all documents they require if any Council officer has:

- Granted any authorisation under the Act
- Engaged in any conduct as a result of such authorisation

3.2 **Internal Scrutiny**

3.2.1 The Senior Responsible Officer is responsible for:

- The integrity of the process in place within the Council to authorise directed surveillance and CHIS
- Compliance with Part II of the Act and with the accompanying Codes of Practice
- Engagement with the OSC when they conduct their inspections and
- Where necessary oversee the implementation of any post-inspection action plans recommended or approved by the OSC

3.2.2 The Overview and Scrutiny Committee will review the authority's use of the Act and the Policy and Guidance document at least once a year. They will also consider internal reports on the use of the Act on at least a quarterly basis to ensure that it is being used consistently with this Policy and that that Policy is fit for purpose. The Members will not, however, be involved in making decisions on specific authorisations.

Elected members and Senior Responsible Officers (see paragraphs 3.26 and 9.2 of the CHIS Code of Practice) are required to ensure that policies are fit for purpose and that Authorising Officers are competent. An elected member has no need to know the identity of a CHIS nor have access to the product of the use of a CHIS nor know the detail of conduct authorisations. Chief Executives should usually provide elected members with a copy of OSC inspection reports, redacted if necessary. [Note 259 OSC Procedures and Guidance 2010].

4. Benefits of RIPA authorisations

- 4.1 The Act states that if authorisation confers entitlement to engage in a certain conduct and the conduct is in accordance with the authorisation, then it will be lawful for all purposes. Consequently, the Act provides a statutory framework under which covert surveillance can be authorised and conducted compatibly with Article 8 of the Human Rights Act 1998 – a person’s right to respect for their private and family life, home and correspondence.
- 4.2 Material obtained through properly authorised covert surveillance is admissible evidence in criminal proceedings.
- 4.3 Section 78 Police and Criminal Evidence Act 1984 allows for the exclusion of evidence if it appears to the court that, having regard to all the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse affect on the fairness of the proceedings that the court ought not to admit it. Evidence obtained through covert surveillance will not be excluded unless the test of unfairness is met.

5. Definitions

- 5.1 ‘Covert’ is defined as surveillance carried out in such a manner that is calculated to ensure that the person subject to it is unaware that it is or may be taking place. (s.26 (9)(a) of the Act)
- 5.2 ‘Covert human intelligence source’ (CHIS) is defined as a person who establishes or maintains a relationship with a person for the covert process of obtaining information about that person. (s.26 (8) of the Act)
- 5.3 ‘Directed surveillance’ is defined as covert but not intrusive and undertaken:
- for a specific investigation or operations
 - in such a way that is likely to result in the obtaining of private information about any person
 - other than by way of an immediate response (s.26 (2) of the Act)
- 5.4 ‘Private information’ includes information relating to a person’s private or family life and can embrace aspects of business and professional life.
- 5.5 ‘Intrusive’ surveillance is covert surveillance that is carried out in relation to anything taking place on any residential premises or in any private vehicle and involves the presence of an individual on the premises or in the vehicle or using a surveillance device. **South Derbyshire District Council may not authorise such surveillance.**
- 5.6 ‘Authorising Officers’ will be responsible to ensure their relevant members of staff are suitably trained as ‘Applicants’ so as to avoid errors in the operation of the process and completion of relevant forms. It is important

that relevant Directors, Heads of Service and Authorising Officers take personal responsibility for the efficient and effective operation of this Policy and Guidance document within their respective areas.

5.7 Authorising Officers will also ensure that staff who report to them follow this Policy and Guidance document and do not undertake or carry out any form of surveillance without first obtaining the relevant authorisations in compliance with this document.

5.8 Authorising Officers must also ensure when sending copies of any forms to the RIPA Co-ordinating Officer, that they are sent in sealed envelopes marked 'RIPA – Private and Confidential'.

6. When does the Act apply ?

6.1 Where the directed covert surveillance of an individual or group of individuals, or the use of a CHIS is necessary for the purpose of preventing or detecting crime or of preventing disorder.

The Act 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 CHIS
- permit the Council to acquire communications data in certain circumstances

The Act does not:

- make unlawful conduct which is otherwise lawful
- prejudice or dis-apply any existing powers available to the District Council to obtain information by any means not involving conduct that may be authorised under this Act. For example, it does not affect the District 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.

6.2 If Authorising Officers or any Applicants are in doubt, s/he should speak to a representative from the Legal Services Section BEFORE authorising, renewing, cancelling or rejecting any directed surveillance, use of a CHIS and/or acquisition of communications data.

CCTV

6.3 The normal use of CCTV is not usually covert because members of the public are informed by signs that such equipment is in operation. However, authorisation should be sought where it is intended to use CCTV covertly and in a pre-planned manner as part of the specific investigation or operation to target a specific individual or group of individuals. Equally a request, say by the police, to track particular individuals via CCTV recordings may require authorisation (from the police).

7. Covert Human Intelligence Source (“CHIS”)

7.1 Put simply, this is undercover officers who do not reveal their true identity or professional witnesses used to obtain information and evidence.

7.2 The Act defines a CHIS under section 26 of the Act as anyone who:

- (a) establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraphs (b) or (c)
- (b) covertly uses such a relationship to obtain information or provide access to any information to another person; or
- (c) covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship

7.3 Any reference to the conduct of a CHIS includes the conduct of a source which falls within (a) to (c) or is incidental to it.

7.4 References to the use of a CHIS are references to inducing, asking or assisting a person to engage in such conduct.

7.5 Section 26(9) of the Act goes on to define:-

- (b) a purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if, and only if, the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of that purpose; and
- (c) a relationship is used covertly, and information obtained as mentioned in paragraph 7(c) above and is disclosed covertly, if, and only if it is used or as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

Some local authorities may not wish to use CHIS and may in practice avoid authorising CHIS. However, all such local authorities should recognise that the occasion may arise when a CHIS appears unexpectedly and has to be authorised and managed. Consequently all local authorities must be equipped with a policy and the awareness training to recognise status drift and to manage anyone who has become a CHIS. It is the responsibility of the Senior Responsible Officer to ensure competent officers exist for such purposes (see CHIS Code of Practice 9.1). [Note 260 OSC Procedure and Guidance 2010].

7.6 Juvenile Sources

7.6.1 Special safeguards apply to the use or conduct of juvenile sources; that is sources under the age of 18 years. On no occasion should the use or conduct of a source under the age of 16 years be authorised to give

information against his parents or any person who has parental responsibility of him. The duration of a juvenile CHIS is **one** month. The Regulation of Investigatory Powers (Juveniles) Order 2000 SI No. 2793 contains special provisions which must be adhered to in respect of juvenile sources.

7.7 Vulnerable Individuals

7.7.1 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 unable to protect himself against significant harm or exploitation. Any individual of this description should only be authorised to act as a source in the most exceptional circumstances.

8. Types of Surveillance

8.1 '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 authorised surveillance
- surveillance, by or with, the assistance of appropriate surveillance device(s)

Surveillance can be overt or covert

8.2 **Overt Surveillance**

8.2.1 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 and/or will be going about Council business openly.

8.2.2 Similarly, surveillance will be overt if the subject has been informed it will be happen (e.g. where a noisemaker is warned (preferably in writing) that noise will be recorded if the noise continues, or where an entertainment 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.

8.3 **Covert Surveillance**

8.3.1 Covert surveillance 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 the Act*).

8.3.2 The Act regulates two types of covert surveillance, (directed surveillance and intrusive surveillance) and the use of Covert Human Intelligence Sources (CHIS's).

8.4 Directed Surveillance

8.4.1 Directed Surveillance is surveillance which: -

- is covert; and
- is not intrusive surveillance (see definition below – the Council must not carry out any intrusive surveillance);
- 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 private information** about an individual (whether or not that person is specifically targeted for purposes of an investigation), (*Section 26(10) of the Act*).

Directed surveillance is covert surveillance that is carried out for the purposes of a specific investigation or operation in such a manner as is likely to result in the obtaining of private information about any person, whether or not he is a subject of the action. It includes the activity of monitoring, observing, listening and recording by or with the assistance of surveillance equipment. It need not be subject specific. A search for an identified person in a public place will not amount to directed surveillance, unless it includes covert activity that may elicit private information about that person or any other person. Any processing of data (e.g. taking a photograph to put on record) is an invasion of privacy. [Note 269 OSC Procedures and Guidance 2010]

8.4.2 Private information in relation to a person includes any information relating to his private and family life, his home and his correspondence. 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.

8.4.3 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 life of others.

8.4.4 **For the avoidance of doubt, only those Officers designated and certified to be ‘Authorising Officers’ for the purpose of the Act can authorise ‘Directed Surveillance’ IF, AND ONLY IF, the Act authorisation procedures detailed in this document are followed. If an Officer has not been ‘authorised’ for the purposes of the Act, s/he can NOT carry out or approve/reject any action set out in this policy and guidance document.**

8.5 Directed Surveillance Crime Threshold

The crime threshold applies only to the authorisation of directed surveillance by the Council under RIPA, not to the authorisation of the Council's use of CHIS or the acquisition of communications data.

The amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 have the following effect:

- The Council can only authorise use of directed surveillance under RIPA to prevent or detect criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months imprisonment or are related to the underage sale of alcohol and tobacco.
- The Council cannot authorise directed surveillance for the purpose of preventing disorder unless this involves a criminal offence(s) punishable (whether on summary conviction or indictment) by a maximum term of at least 6 months imprisonment.
- The Council may therefore continue to authorise the use of directed surveillance in more serious cases as long as the other tests are met, i.e. that it is necessary and proportionate and where approval from a JP has been granted. Examples of cases where the offence being investigated attracts a maximum custodial sentence of 6 months or more could include more serious criminal damage, dangerous waste dumping and serious or serial benefit fraud.
- The Council may also continue to authorise the use of directed surveillance for the purpose of preventing or detecting specified criminal offences relating to the underage sale of alcohol and tobacco where the necessity and proportionality test is met and prior approval from a JP has been granted.
- The Council may not authorise the use of directed surveillance under RIPA to investigate disorder that does not involve criminal offences or to investigate low-level offences which may include, for example, littering, dog control and fly-posting.

8.5.1 Impact on Investigations

At the start of an investigation, Officers will need to satisfy themselves that what they are investigating is a criminal offence. Directed surveillance is an invasive technique and at the point it is decided whether or not to authorise its use it must be clear that the threshold is met and that it is necessary and proportionate to use it.

During the course of an investigation the type and seriousness of offences may change. The option of authorising directed surveillance is dependent on the offence under investigation attracting a sentence of a maximum 6 months imprisonment or more or being related to the underage sale of alcohol and tobacco. Providing the offence under investigation is one which appears on the statute book with at least a maximum 6 months term of imprisonment or is related to the specific offences listed in the order concerning the underage sale of alcohol and tobacco an application can be

made. However, if during the investigation it becomes clear that the activity being investigated does not amount to a criminal offence or that it would be a less serious offence that does not meet the threshold, the use of directed surveillance should cease. If a directed surveillance authorisation is already in force it should be cancelled.

Directed surveillance will be authorised against a specific offence which meets the threshold, and the type and the timing of the deployment of the surveillance will always reflect this. There may be cases where it is possible, with the same evidence obtained by the same deployment, to substantiate a variety of different charges, some of which fall below the threshold, it will be for the Courts to decide whether to admit, and what weight to attach to, the evidence obtained in the lesser charges.

The Council will no longer be able to use directed surveillance in some cases where it was previously authorised. But this does not mean that it will no longer be possible to investigate these areas with a view to stopping offending behaviour. The statutory RIPA Code of Practice makes it clear that routine patrols, observation at trouble 'hotspots', immediate response to events and overt use of CCTV are all techniques which do not require RIPA authorisation.

8.6 Intrusive Surveillance

8.6.1 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 premise will not be intrusive, unless the device consistently provides information of the same quality and detail as might be expected if they were in the premises/vehicle.

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

8.7 Proportionality

8.7.1 Proportionality is a key concept of the Act. If the activities are deemed necessary, the person granting the authorisation must also believe that they are proportionate to what is sought to be achieved by carrying them out. This involves balancing the seriousness of the intrusion into the privacy of the subject of the operation (or any other person who may be affected) against the need for the activity in investigative and operational terms.

8.7.2 The term incorporates four concepts:

- the means should not be excessive in relation to the gravity of the mischief being investigated;
- the least intrusive means of surveillance should be chosen; and
- collateral intrusion involves invasion of third parties privacy and should, so far as is possible, be minimised; and
- proportionality in terms of the mischief and the degree of target on others.

8.7.3 When assessing proportionality, the following four elements of proportionality must be fully considered:

- balancing the size and scope of the operation against the gravity and extent of the perceived mischief,
- explaining how and why the methods to be adopted will cause the least possible intrusion on the targets and others,
- that the activity is an appropriate use of the legislation and the only reasonable way, having considered all others, of obtaining the necessary result, and
- providing evidence of other methods considered and why they were not implemented. [Note 106 OSC Procedures and Guidance 2010]

8.7.4 Extra care should be taken over any publication of the product of the surveillance.

9. Authorisations (See flowchart at Appendix D)

9.1 Applications for directed surveillance

All application forms (**see Appendix F**) must be fully completed with the required details to enable the Authorising Officer to make an informed decision. The description of the proposed operation should be full and detailed, specifying any equipment to be used. The use of maps or sketches to show for example observation posts and target premises should also be considered.

No authorisation shall be granted unless the Authorising Officer is satisfied that the investigation is:

- necessary for one of the reasons listed above
- proportionate to the ultimate objective
- at an appropriate level (i.e. not excessive)

and that no other form of investigation would be appropriate.

Section 32(5) of RIPA requires the Authorising Officers to describe and specify what he is granting. This may or not be the same as requested by the applicant. For the benefit of those operating under the terms of an authorisation, or any person who may subsequently review or inspect an authorisation, it is essential to produce, with clarity, a description of that which is being authorised (i.e. who, what, where, when and how). Authorising Officers should as a matter of routine state explicitly and in his own words what is being authorised, and against which subjects, property or location. Mere reference to the terms of the application is inadequate. [Note 116 OSC Procedures and Guidance 2010].

Authorising Officers must be careful in the use of 'or' and 'and' in order not to restrict what is intended. For example, do not use 'or' when 'and' is meant (e.g. deployment ofon vehicle A or vehicle B' limits deployment to either vehicle, not both simultaneously or one after the other). [Note 118 OSC Procedures and Guidance 2010].

The Authorising Officer's statement should be completed in handwriting as a personal contemporaneous record of the thinking which justified the authorisation.

Authorising Officers should set out, in his own words, why he is satisfied or why he believes (RIPA) the activity is necessary and proportionate. A bare assertion is insufficient. [Note 107 OSC Procedures and Guidance 2010].

- 9.1.1 Necessity: Covert surveillance cannot be said to be necessary if the desired information can reasonably be obtained by overt means. It must also be necessary for the purpose of preventing or detecting crime or of preventing disorder.

Authorising Officers must be satisfied that the use of covert surveillance is necessary for one of the purposes specified in s.28(3) of RIPA. In order to be satisfied, the conduct that it is aimed to prevent or detect must be identified and clearly described, particularly if it is questionable whether serious crime criteria are met. Often missed is an explanation of why it is necessary to use the covert techniques requested. [Note 104 OSC Procedures and Guidance 2010].

- 9.1.2 Proportionality: The method of surveillance proposed must not be excessive in relation to the seriousness of the matter under investigation. It must be the method which is the least invasive of the target's privacy.

Proportionality should be carefully explained, not merely asserted, nor is describing parts of the operation itself germane to proportionality.

A potential model answer would make clear that the four elements of proportionality had been fully considered:

1. balancing the size and scope of the operation against the gravity and extent of the perceived mischief,
2. explaining how and why the methods to be adopted will cause the least possible intrusion on the target and others,

3. that the activity is an appropriate use of the legislation and the only reasonable way, having considered all others, of obtaining the necessary result, and
4. providing evidence of other methods considered and why they were not implemented. [Note 106 OSC Procedures and Guidance 2010].

An authorisation should demonstrate how an authorising officer has reached the conclusion that the activity is proportionate to what it seeks to achieve, including an explanation of the reasons why the method, tactic or technique proposed is not disproportionate (the proverbial 'sledgehammer to crack a nut'). Proportionality is not only about balancing the effectiveness of covert methods but of explaining why the particular covert method, technique or tactic is least intrusive. It is insufficient to make a simple assertion or to say that the 'seriousness' of the crime justifies any or every method available. [Note 105 OSC Procedures and Guidance 2010]

9.1.3 Collateral intrusion, which affects the privacy rights of innocent members of the public, must be minimised and use of the product of the surveillance carefully controlled so as to respect those rights.

Authorisations should state specifically covert activities or techniques likely to be required. It is recognised that it is not always possible, at the outset of any investigation, to foresee how it will progress. However, it is inappropriate to authorise property interference or covert surveillance techniques where they are not demonstrated to be necessary, or clearly not required, or where they would not be used until the investigation is more mature. Authorising Officers may not authorise more than can be justified at the time and should demonstrate control and a proper understanding of proportionality, which relates to the method to be used, not only the seriousness of the crime or the convenience of those conducting covert surveillance. [Note 130 OSC Procedures and Guidance 2010].

Pressure of work is not to be regarded as rendering it impracticable for Authorising Officers to consider an application. [Note 135 OSC Procedures and Guidance 2010].

Advice should be sought from the Legal Services Section on any issues of concern.

Authorising Officers must also take into account the risk of '**collateral intrusion**' i.e. intrusion on, or interference with, the privacy of persons other than the subject of the investigation. The application must include an **assessment** of any risk of collateral intrusion for this purpose.

Steps must be taken to avoid unnecessary collateral intrusion and minimise any necessary intrusion.

Those carrying out the investigation must inform Authorising Officers of any unexpected interference with the privacy of individuals who are not covered by the authorisation, as soon as these become apparent.

Where such collateral intrusion is unavoidable, the activities may still be authorised, provided this intrusion is considered proportionate to what is sought to be achieved.

9.1.3 **The use of template entries**

Template forms inevitably lead to, or at least give the appearance of, minimal or no consideration of: (a) the nature and extent of the surveillance proposed and the justification for the use of the devices to be employed; (b) necessity; (c) proportionality; (d) collateral intrusion; and (e) what alternative methods have been considered. Template entries are therefore to be avoided or used with great care. [Note 166 OSC Procedures and Guidance 2010].

9.1.4 **Special consideration in respect of confidential information**

Particular attention is drawn to areas where the subject of surveillance may reasonably expect a high degree of privacy e.g. where confidential information is involved.

Confidential information consists of matters subject to legal privilege, communication between a Member of Parliament and another person on constituency matters, confidential personal information or confidential journalistic material.
(ss 98-100 Police Act 1997)

Legal privilege

Generally, this applies to communications between an individual and his/her legal adviser in connection with the giving of legal advice in connection with or in contemplation of legal proceedings. Such information is unlikely ever to be admissible as evidence in criminal proceedings.

If in doubt, the advice of the RIPA Co-ordinating Officer should be sought in respect of any issues in this area.

Confidential personal information

This is oral or written information held in (express or implied) confidence, relating to the physical or mental health or spiritual counselling concerning an individual (alive or dead) who can be identified from it. Specific examples provided in the codes of practice are consultations between a health professional and a patient, discussions between a minister of religion and an individual relating to the latter's **spiritual welfare** or matters of **medical or journalistic confidentiality.**

Confidential journalistic material

This is material acquired or created for the purposes of journalism and held subject to an undertaking to hold it in confidence.

It should be noted that matters considered to be confidential under the Act may not necessarily be properly regarded as confidential under section 41 Freedom of Information Act.

Where such information is likely to be acquired, the surveillance may only be authorised by the Chief Executive, or, in his absence, a member of Corporate Management Team and should only be authorised where there are exceptional and compelling circumstances that make the authorisation necessary.

Authorisations must be in writing except in urgent cases but these should be followed up in writing as soon as possible. Urgency only arises where to await written authorisation would endanger life or jeopardise the operation. Delay caused in obtaining an authorisation cannot justify an urgent, oral authorisation.

9.1.5 **Notifications to Inspector/Commissioner**

The following situations must be brought to the inspector/commissioner's attention at the next inspection:

- Where an officer has had to authorise surveillance in respect of an investigation in which he/she is directly involved.
- Where a lawyer is the subject of an investigation or operation;
- Where confidential personal information or confidential journalistic information has been acquired and retained.

9.1.6 **Applications for CHIS**

Same as for directed surveillance except that the authorisation must specify the activities and identity of the CHIS and that the authorised conduct is carried out for the purposes of, or in connection with, the investigation or operation so specified.

There are additional requirements in s29(5) of the Act relating to responsibility for dealing with the source and maintenance of records relating to the source.

All application forms (**see Appendix G**) must be fully completed with the required details to enable Authorising Officers to make an informed decision.

There should be a controller, a handler and recorder for a CHIS together with the requirement for a risk assessment if one is to be employed.

In addition to the requirements of the Act the duties set out in the RIP Source Records Regulations (S.I.2000/2725) must also be observed.

Any officer considering applying for a CHIS should consult the RIPA Co-ordinating Officer before taking any practical steps.

10. **Judicial Approval**

In order to authorise the use of directed surveillance, acquisition of communications data and use of a CHIS under RIPA, the Council will need to obtain an Order approving the grant or renewal of an authorisation from a JP before it can take effect. If the JP is satisfied that the statutory tests have been met and that the use of the technique is necessary and proportionate he/she will issue an Order approving the grant or renewal for the use of the technique as described in the application.

Judicial approval is in addition to the existing authorisation process under the relevant parts of RIPA as outlined in the Codes of Practice. The process of assessing necessity and proportionality, completing the RIPA authorisation/application form and seeking approval from an Authorising Officer remains the same.

10.1 **Procedure for Applying for Judicial Approval**

10.1.1 **Making the Application**

The flowchart at **Appendix E** outlines the procedure for applying for judicial approval. The application must be made by the Council. Following approval by the Authorising Officer the first stage of the process is for the local authority to contact Her Majesty's Courts and Tribunals Service administration team at the Magistrates Court to arrange a hearing.

The Council will need to provide the JP with a copy of the original RIPA authorisation or notice 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. For communications data requests the RIPA authorisation or notice may seek to acquire consequential acquisition of specific subscriber information. The necessity and proportionality of acquiring consequential acquisition will be assessed by the JP as part of his/her consideration.

The original RIPA authorisation or notice should be shown to the JP but will be retained by the Council so that it is available for inspection by the Commissioners' offices and in the event of any legal challenge or investigation by the Investigatory Powers Tribunal. The Court may wish to take a copy.

In addition, the Council will provide the JP with a partially completed judicial application/order form (**Appendix J**).

Although the Council is required to provide a brief summary of the circumstances of the case on the judicial application form, this is supplementary to and does not replace the need to supply the original RIPA authorisation as well.

The order section of the form will be completed by the JP and will be the official record of the JP's decision. The Council will need to obtain judicial approval for all initial RIPA authorisations/applications and renewals and the Council will need to retain a copy of the judicial application/order form after it has been signed by the JP. There is no requirement for the JP to consider either cancellations or internal reviews.

Legal Services will contact the Magistrates Court to arrange a hearing. On the rare occasions where out of hours access to a JP is required then it will be for Legal Services to make arrangements with Court legal staff.

10.1.2 Attending a Hearing

The hearing is a 'legal proceeding' and Council Officers need to be formally designated to appear, be sworn in and present evidence or provide information as required by the JP.

The hearing will be held in private and heard by a single JP who will read and consider the RIPA authorisation or notice and the judicial application/order form. He/she may have questions to clarify points or require additional reassurance on particular matters.

The investigating Officer will need to answer the JP's questions on the policy and practice of conducting covert operations and detail of the case itself. The investigating Officer will have detailed knowledge of the investigation and will have determined that use of a covert technique is required in order to progress a particular case. This does not, however, remove or reduce in any way the duty of the Authorising Officer to determine whether the tests of necessity and proportionality have been met. Similarly, it does not remove or reduce the need for the forms and supporting papers that the Authorising Officer has considered and which have been provided to the JP to make the case.

10.1.3 Decision

The JP will consider whether he/she is satisfied that at the time the authorisation was granted or renewed or the notice was given or renewed, there were reasonable grounds for believing that the authorisation or notice was necessary and proportionate. They will also consider whether there continues to be reasonable grounds. In addition they must be satisfied that that the person who granted the authorisation or gave the notice was an appropriate designated person within the Council and the authorisation was made in accordance with any applicable legal restrictions, for example that the crime threshold for directed surveillance has been met.

The forms and supporting papers must by themselves make the case. It is not sufficient for the local authority to provide oral evidence where this is not reflected or supported in the papers provided. The JP may note on the 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.

If further information is required to determine whether the authorisation or notice has met the tests then the JP will refuse the authorisation. If an application is refused the Council should consider whether they can reapply, for example, if there was information to support the application which was available to the Council, but not included in the papers provided at the hearing.

The JP will record his/her decision on the order section of the judicial application/order form. The Magistrates Court will retain a copy of the Council's RIPA authorisation or notice and the judicial application/order form. This information will be retained securely. Magistrates' Courts are not public authorities for the purposes of the Freedom of Information Act 2000.

The Council will need to provide a copy of the order to the communications Single Point of Contact for all communication data requests. Single Points of Contact must not acquire the communication data requested, until the JP has signed the order approving the grant.

10.1.4 Outcomes

Following consideration of the case the JP will complete the order section of the judicial application/order form recording their decision. The JP may decide to:

- Approve the Grant or renewal of an authorisation notice
The grant or renewal of the RIPA authorisation or notice will then take effect and the local authority may proceed to use the technique in that particular case.
In relation to communications data, the Council will be responsible for providing a copy of the Order or the Single Point of Contact.
- Refuse to approve the grant or renewal of an authorisation or notice
The RIPA authorisation or notice will not take effect and the Council may not use the technique in that case.
Where an application has been refused the Council may wish to consider the reasons for refusal. For example, a technical error in the form may be remedied without the local authority going through the internal authorisation process again. The Council may then wish to reapply for judicial approval once those steps have been taken.
- Refuse to approve the grant or renewal and quash the authorisation or notice
This applies where a Magistrates Court refuses to approve the grant, giving or renewal of an authorisation or notice and decides to quash the original authorisation or notice.
The court must not exercise its power to quash that authorisation or notice unless the applicant has had at least 2 business days from the date of refusal in which to make representations.

10.1.5 Complaints/Judicial Review

There is no complaint route for a judicial decision unless it was made in bad faith. Any complaints should be addressed to the Magistrates Advisory Committee.

The Council may only appeal a JP decision on a point of law by judicial review.

The Investigatory Powers Tribunal will continue to investigate complaints about the use of RIPA techniques by public bodies, including local authorities. If, following a complaint to them, the Tribunal does find fault with a RIPA authorisation or notice it has the power to quash the JP's order which approved the grant or renewal of the authorisation or notice.

11. Working With/Through Other Agencies

When some other agency has been instructed on behalf of the Council to undertake any action under the Act, this document 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.

When some other agency (e.g. Police, Customs & Excise, Inland Revenue, etc.):-

- (a) wish 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, s/he must obtain a copy of that agency's RIPA form for the record (a copy of which must be passed to the RIPA Co-ordinating Officer for the RIPA Central Register) and/or relevant extracts from the same which are sufficient for the purposes of protecting the Council and the use of its resources;
- (b) wish 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 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 forms should not be used as the Council is only 'assisting' not being 'involved' in the RIPA activity of the external agency.

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. Copies of letters should be sent to the RIPA Co-ordinating Officer for retention.

11. Duration and Cancellation

- An authorisation for **directed surveillance** shall cease to have effect (if not renewed) 3 months from the date of grant or renewal.
- An authorisation for **CHIS** shall cease to have effect (unless renewed) 12 months from the date of grant or renewal.
- An **oral** authorisation or renewal shall cease to have effect (unless renewed) 72 hours from the date of grant or renewal

If the proposed operation is expected to be completed quickly, then an early review should take place and Authorising Officers, in accordance with s.45 of the Act, must cancel each authorisation as soon as Authorising Officers decide that the surveillance should be discontinued.

It is a statutory requirement that authorisations are cancelled as soon as they are no longer required. [Note 138 OSC Procedures and Guidance 2010].

The fact that the operation to which authorisation relates is only expected to last for a short time cannot affect the authorisation period. An early review can take care of issues of continuing necessity and proportionality. [Note 119 OSC Procedures and Guidance 2010].

Documentation of any instruction to cease surveillance should be retained and kept with the cancellation form.

When cancelling an authorisation, Authorising Officers should:

1. record the time and date (if at all) that surveillance took place and the order to cease the activity was made.
2. The reason for cancellation.
3. Ensure that surveillance equipment has been removed and returned.
4. Provide directions for the management of the product.
5. Ensure that detail of property interfered with, or persons subjected to surveillance, since the last review or renewal is properly recorded,
6. Record the value of the surveillance or interference (i.e. whether the objectives as set in the authorisation were met). [Note 141 OSC Procedures and Guidance 2010].

A Surveillance Commissioner and Authorising Officers can only authorise on the basis of what they have been told. Issues of disclosure should not inhibit the proper construction of applications and authorisations but can be dealt with at the appropriate time using existing procedures. Where necessary, authorisations should cross-refer to the intelligence report. [Note 144 OSC Procedures and Guidance 2010].

To comply with *R V Sutherland* Authorising Officers should clearly set out what activity and surveillance equipment is authorised in order that those conducting the surveillance are clear on what has been sanctioned. [Note 145 OSC Procedures and Guidance 2010].

12. Reviews

Authorising Officers should review all authorisations at intervals determined by him/herself. This should be as often as necessary and practicable. **The reviews should be recorded.** If it is anticipated that the surveillance period will be short, an early review should be carried out and the authorisation subsequently cancelled.

If the directed surveillance authorisation provides for the surveillance of unidentified individuals whose identity is later established, the terms of the authorisation should be refined at review to include the identity of these individuals. It would be appropriate to call a review specifically for this purpose.

Reviews and renewals should not broaden the scope of the investigation but can reduce its terms. Where other subjects may unexpectedly come under surveillance, authorisations can anticipate it by using words such as 'suspected of', 'believed to be' or 'this authority is intended to include conversations between any and all of the subjects of this investigation, including those whose identities are not yet known'. [Note 125 OSC Procedures and Guidance 2010].

Particular attention should be paid to the possibility of obtaining confidential information.

13. Renewals

Authorising Officers may renew an existing authorisation on the same terms as the original at any time before the original ceases to have effect.

A CHIS authorisation must be thoroughly reviewed before it is renewed.

14. Central Register of Authorisations

14.1 All authorities must maintain the following documents:

- Copy of the application and a copy of the authorisation together with any supplementary documentation and notification of the approval given by Authorising Officers;
- A record of the period over which the surveillance has taken place;
- The frequency of reviews prescribed by Authorising Officers;
- A record of the result of each review of the authorisation;
- A copy of any renewal of an authorisation and supporting documentation submitted when the renewal was requested;

- The date and time when any instruction to cease surveillance was given
 - The date and time when any other instruction was given by Authorising Officers.
- 14.2 To comply with paragraph 14.1 above, the RIPA Co-ordinating Officer holds the central register of all authorisations issued by officers of South Derbyshire District Council. A copy of every authorisation, renewal and cancellation issued should be lodged within 2 working days with the RIPA Co-ordinating Officer in an envelope marked 'Private and Confidential'.
- 14.3 The Council must also maintain a centrally retrievable record of the following information:
- type of authorisation
 - date the authorisation was given
 - name and rank/grade of the Authorising Officer
 - unique reference number of the investigation/operation
 - title (including brief description and names of the subjects) of the investigation/operation;
 - whether urgency provisions were used, & if so why
 - details of renewal
 - whether the investigation/operation is likely to result in obtaining confidential information
 - whether the authorisation was granted by an individual directly involved in the investigation
 - date of cancellation

These records will be retained for at least 3 years and will be available for inspection by the OSC.

15. Retention of records

The Authority must ensure that arrangements are in place for the secure handling, storage and destruction of materials obtained through the use of directed surveillance. The Authorising Officers, through their relevant Data Controller, must ensure compliance with the appropriate data protection requirements under the Data Protection Act 1998 and any relevant codes of practice relating to the handling and storage of material.

The Central Register of Authorisations will be kept securely in a locked cabinet in the Legal Services Section.

16. Complaints procedure

- 16.1 The Council will maintain the standards set out in this guidance and the Codes of Practice (**See Appendices A and B**). The Chief Surveillance Commissioner has responsibility for monitoring and reviewing the way the Council exercises the powers and duties conferred by the Act.

- 16.2 Contravention of the Data Protection Act 1998 may be reported to the Information Commissioner. Before making such a reference, a complaint concerning a breach of this Policy and Guidance document should be made using the Council's own internal complaints procedure. To request a complaints form, please contact the Complaints Officer, South Derbyshire District Council, Civic Offices, Civic Way, Swadlincote, Derbyshire, DE11 0AH or telephone 01283 595784.

REGULATION OF INVESTIGATORY POWERS ACT 2000

GUIDANCE – PART II

ACQUISITION AND DISCLOSURE OF COMMUNICATIONS DATA

Introduction

With effect from 5 January 2004, and in accordance with Chapter I of Part I of Regulation of Investigatory Powers Act ('the Act'), local authorities can authorise the acquisition and disclosure of 'communications data' provided that the acquisition of such data is necessary for the purpose of **preventing or detecting crime or preventing disorder**; and proportionate to what is sought to be achieved by acquiring such data

Following implementation of sections 37 and 38 of the Protection of Freedoms Act 2012, from 1st November 2012 the acquisition of communications data will be subject to obtaining an Order approving the authorisation or notice from a JP. (Please revert to the 'Judicial Approval' section of this document at page 18)

There is a Code of Practice (**Appendix H**) ('the Code')

NOTHING IN THIS CODE PERMITS THE INTERCEPTION OF THE CONTENT OF ANY COMMUNICATION.

The procedure is similar to that of authorisation for directed surveillance and CHIS but has extra provisions and processes.

The purpose and effect of the procedure is the same i.e. to ensure proper consideration is given to permitting such investigations and to provide protection against a human rights challenge.

The Authorising Officer is called a 'designated person'.

1. What is 'Communications data'?

Communications data is information relating to the use of a communications service e.g. postal service or telecommunications system. It is defined by Section 21(4) of the Act and falls into three main categories: -

Traffic data - where a communication was made from, to whom and when

Service data – use made of service e.g. Itemised telephone records

Subscriber data – information held or obtained by operator on person they provide a service to.

Local authorities are restricted to subscriber and service use data and only for the purpose of preventing or detecting crime or preventing disorder.

2. Designated person

A Designated Person must be at least the level of Unit Manager.

3. Application forms

All applications must be made on a standard form (**Appendix I**) and submitted to the single point of contact (“SPOC”). The SPOC will ensure that the application meets the required criteria and then pass to the Designated Person.

4. Authorisations

Authorisations can only authorise conduct to which Chapter II of Part I of the Act applies.

In order to comply with the Code, a Designated Person can only authorise the obtaining and disclosure of communications data if:

- (i) it is **necessary** for any of the purposes set out in Section 22(2) of the Act. (NB South Derbyshire District Council can only authorise for the purpose set out in Section 22 (2) (b) which is the purpose of preventing or detecting crime or preventing disorder); and
- (ii) it is **proportionate** to what is sought to be achieved by the acquisition of such data (in accordance with Section 22(5) of the Act)

Consideration must also be given to the possibility of **collateral intrusion** and whether any **urgent** timescale is justified.

Once a Designated Person has decided to grant an authorisation or a notice given there are two methods: -

- (1) By authorisation of some person in the same relevant public authority as the designated person, whereby the relevant public authority collects the data itself (Section 22(3) of the Act). This may be appropriate in the following circumstances:
 - The postal or telecommunications operator is not capable of collecting or retrieving the communications data.
 - It is believed the investigation may be prejudiced if the postal or telecommunications operator is asked to collect the data itself;
 - There is a prior agreement in place between the relevant public authority and the postal or telecommunications operator as to the appropriate mechanisms for the disclosure of communications data.

- (2) By notice to the holder of the data to be acquired (Section 22(4) of the Act) which requires the operator to collect or retrieve the data. Disclosure may only be required to either the Designated Person or the single point of contact.

Service provider must comply with the notice if it is reasonably practicable to do so (s.22 (6)-(8) of the Act) and can be enforced to do so by civil proceedings.

The postal or telecommunications service can charge for providing this information.

There are standard forms (**Appendix I**) for authorisations and notice.

5. Oral authority

South Derbyshire District Council is not permitted to apply or approve orally.

6. Single point of contact (“SPOC”)

Notices and authorisations should be passed through a single point of contact within the Council. This should make the system operate more efficiently as the SPOC will deal with the postal or telecommunications operator on a regular basis and also be in a position to advise a designated person on the appropriateness of an authorisation or notice.

SPOCs should be in position to:

- Where appropriate, assess whether access to communications data is reasonably practical for the postal or telecommunications operator;
- Advise applicants and Designated Person on whether communications data falls under section 21(4)(a), (b) or (c) of the Act;
- Provide safeguards for authentication;
- Assess any cost and resource implications to both the public authority and the postal or telecommunications operator.

A SPOC must be accredited which involves undertaking appropriate training.

7. Duration

Authorisations and notices are only valid for one month beginning with the date on which the authorisation is granted or the notice given. A shorter period should be specified if possible.

8. Renewal and cancellation

An authorisation or notice may be renewed at any time during the month it is valid using the same procedure as used in the original application. A renewal takes effect on the date which the authorisation or notice it is renewing expires.

The code requires that all authorisations and notices should be cancelled by the Designated Person who issued it as soon as it is no longer necessary, or the conduct is no longer proportionate to what is sought to be achieved. The relevant postal or telecommunications operator should be informed of the cancellation of a notice.

9. Retention of records

Applications, authorisations and notices must be retained until the Council has been audited by the Commissioner (see paragraph 10).

Applications must also be retained to allow the Tribunal (see paragraph 10 below) to carry out its functions.

A record must be kept of:-

- the dates on which the authorisation or notice is started or cancelled.
- any errors that have occurred in the granting of authorisations or giving of notices.

A report and explanation of any errors must also be sent to the Commissioner as soon as is practicable.

Communications data, and all copies, extracts and summaries of it, must be handled and stored securely and the requirements of the Data Protection Act 1998 must be observed.

The RIPA Co-ordinating Officer will maintain a centrally retrievable register.

10. Oversight and Complaints

The Act provides for an Interception of Communications Commissioner whose remit is to provide independent oversight of the use of the powers contained in Part I and the Code requires any person who uses the powers conferred by Part II to comply with any request made by the Commissioner to provide any information he requires to enable him to discharge his functions.

The Act also establishes an independent Tribunal to investigate and decide any case within its jurisdiction. Details of the relevant complaints procedure should be available for reference at South Derbyshire District Council's public offices.

APPENDIX A

Code of Practice

Covert Surveillance

See Home Office website:

<http://tna.europarchive.org/20100419081706/http://security.homeoffice.gov.uk/ripa/publication-search/general-publications/ripa-cop/covert-surveil-prop-inter-COP>

APPENDIX B

Code of Practice

Covert Human Intelligence Sources (CHIS)

See Home Office website:

<http://tna.europarchive.org/20100419081706/http://security.homeoffice.gov.uk/ripa/publication-search/general-publications/ripa-cop/covert-human-intel-source-COP>

APPENDIX C

Office of Surveillance Commissioners

Procedures & Guidance 2010

Please note:

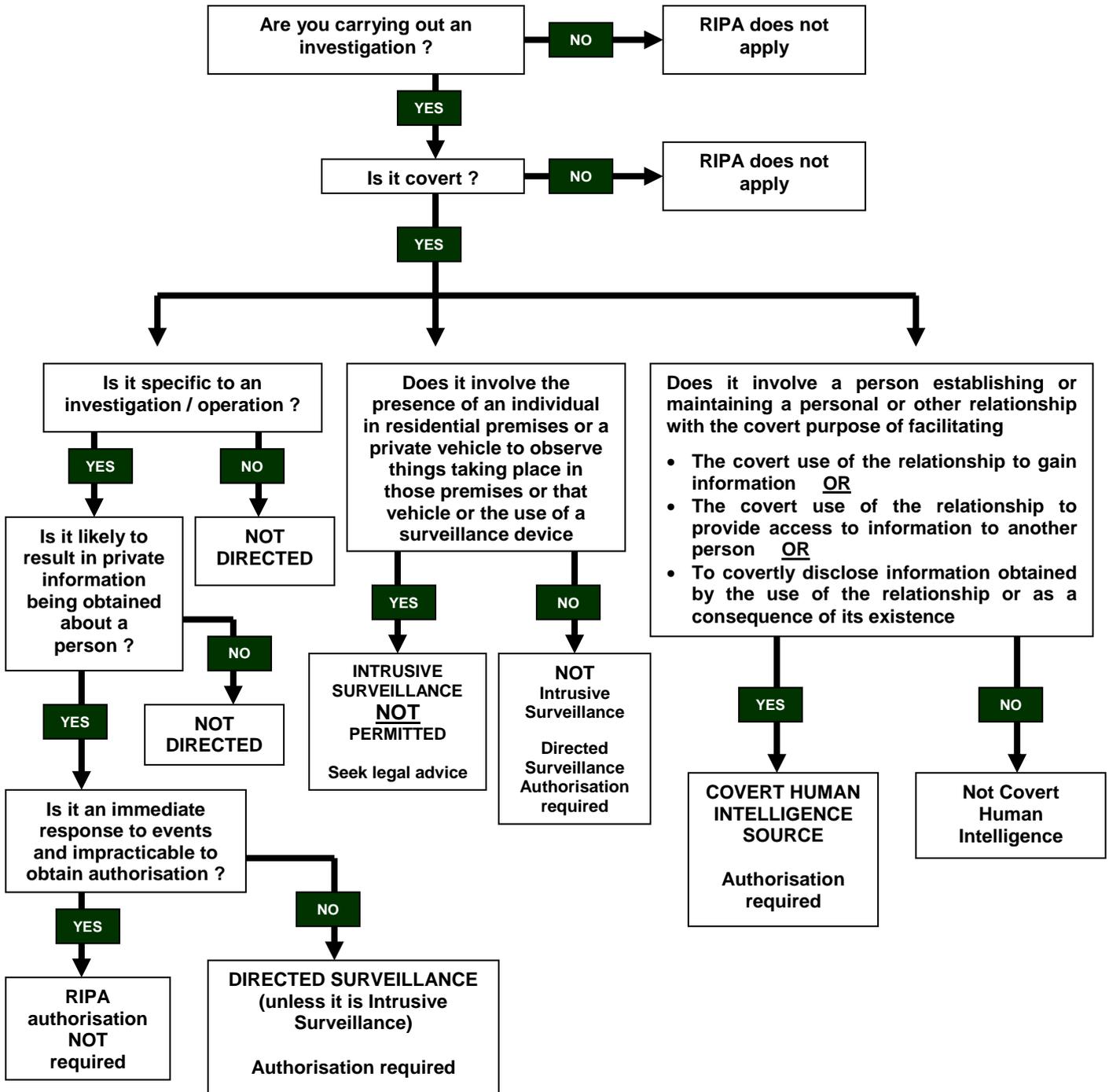
As there is no link to this document on the Office of Surveillance Commissioners' website, it has been placed (as a PDF document – 'Appendix C') with the Council's RIPA Policy and Guidance Notes on the intranet

APPENDIX D

DIRECTED SURVEILLANCE

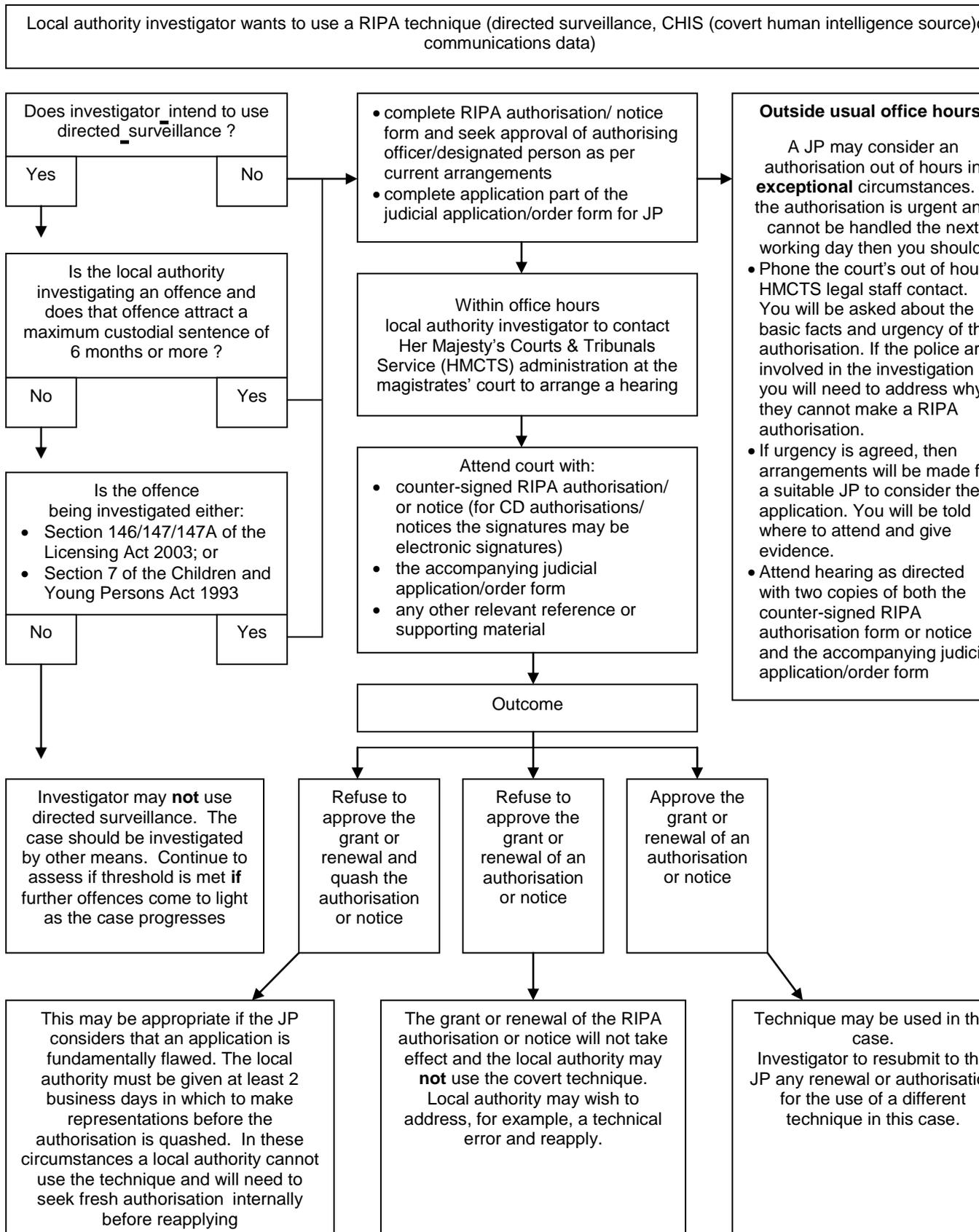
Regulation of Investigatory Powers Act 2000

Do you need Authorisation ?



APPENDIX E

LOCAL AUTHORITY PROCEDURE: APPLICATION TO A JUSTICE OF THE PEACE SEEKING AN ORDER TO APPROVE THE GRANT OF A RIPA AUTHORISATION OR NOTICE



APPENDIX F

Forms

Directed Surveillance

APPLICATION

<http://tna.europarchive.org/20100419081706/http://security.homeoffice.gov.uk/ripa/publication-search/ripa-forms/application-directed-surveillance?view=Standard&pubID=690596>

REVIEW

<http://tna.europarchive.org/20100419081706/http://security.homeoffice.gov.uk/ripa/publication-search/ripa-forms/review-directed-surveillance?view=Standard&pubID=690602>

CANCELLATION

Please note:

As the Home Office website does not contain the latest version of the cancellation form, this is attached separately to this document at Appendix I

(Please ensure you remove the words 'APPENDIX I' before printing this form)

RENEWAL

<http://tna.europarchive.org/20100419081706/http://security.homeoffice.gov.uk/ripa/publication-search/ripa-forms/renewal-directed-surveillance?view=Standard&pubID=690600>

APPENDIX G

Forms

Covert Human Intelligence Sources (CHIS)

APPLICATION

www.security.homeoffice.gov.uk/ripa/publication-search/ripa-forms/chis-application?view=Standard&pubID=447389

REVIEW

www.security.homeoffice.gov.uk/ripa/publication-search/ripa-forms/chis-review?view=Standard&pubID=447372

CANCELLATION

www.security.homeoffice.gov.uk/ripa/publication-search/ripa-forms/chis-cancellation?view=Standard&pubID=447391

RENEWAL

www.security.homeoffice.gov.uk/ripa/publication-search/ripa-forms/chis-renewal?view=Standard&pubID=447370

APPENDIX H

Code of Practice

Acquisition and Disclosure of Communications data

See Home Office website:

<http://tna.europarchive.org/20100419081706/http://security.homeoffice.gov.uk/ripa/publication-search/general-publications/ripa-cop/acquisition-disclosure-cop>

APPENDIX I

Forms – Part I

Communications data

APPLICATION

<http://www.security.homeoffice.gov.uk/ripa/publication-search/ripa-forms/communications-data.doc?view=Standard&pubID=446995>

NOTICE TO COMMUNICATION SERVICE PROVIDER

www.security.homeoffice.gov.uk/ripa/publication-search/ripa-forms/ripa-section-22-notice-update?view=Standard&pubID=590984

APPENDIX J

Unique Reference Number	
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Part II of the Regulation of Investigatory Powers Act 2000

Cancellation of a Directed Surveillance 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)			

Details of cancellation:

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

Unique Reference Number	
--------------------------------	--

2. Explain the value of the directed surveillance in the operation:

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3. What product has been obtained as a result of the surveillance activity? (You should list here the dates and times of the activity; the nature of the product (i.e., what it shows) and its format (e.g., visual recordings; stills images); associated log/reference numbers; where the product is to be held; and the name of the officer responsible for its future management.) *nb – if you have already provided these details in earlier reviews, a cross-reference here should suffice.*

Dates/times	Product obtained	Format & reference numbers	Storage location	Officer responsible

Name (Print)	Grade
Signature	Date

4. Authorising Officer's comments on product obtained. (Paragraph 2.18 of the Covert Surveillance Code of Practice states that arrangements must be in place for the handling, storage and destruction of material obtained through the use of covert surveillance. Authorising Officers must ensure compliance with the appropriate data protection requirements and any relevant codes of practice produced by individual authorities relating to the handling and storage of material. **You should record here how you intend this to be achieved.**)

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Unique Reference Number	
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5. Authorising Officer's comments on the outcome of this use of directed surveillance and formal cancellation instructions.

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Name (Print)	Grade
Signature	Date and Time

6. Time and Date when the Authorising Officer instructed the surveillance to cease (*if done verbally prior to this formal written cancellation*).

Date:		Time:	
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APPENDIX K

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.

Local authority:
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

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.....
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.....
.....

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.

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

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Reasons

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Signed:

Date:

Time:

Full Name:

Address of magistrates' court:

REPORT TO:	OVERVIEW AND SCRUTINY COMMITTEE	AGENDA ITEM: 8
DATE OF MEETING:	12th February 2014	CATEGORY: DELEGATED
REPORT FROM:	CHIEF EXECUTIVE	OPEN PARAGRAPH NO: N/A
MEMBERS' CONTACT POINT:	DEBRA TOWNSEND debra.townsend@south-derbys.gov.uk 01283 595848	DOC:
SUBJECT:	WORK PROGRAMME	REF:
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE: N/A

1.0 Recommendations

1.1 That the Overview and Scrutiny Committee considers its work programme and agrees the review area(s) for the next meeting.

2.0 Purpose of Report

2.1 To enable the Committee to review and update its work programme.

3.0 Detail

3.1 The Overview and Scrutiny Committee agrees an annual work programme, which is reviewed at each meeting. Attached at Annexe 'A' is the updated work programme for 2013/14. Members are asked to consider the work programme for future meetings and particularly the review areas to be included on the agenda for the next meeting.

3.2 Task Group Members for the Environmental Volunteering and Clean Team / Litter Reviews are invited to give verbal updates.

4.0 Financial Implications

4.1 There are no financial implications arising from this report.

5.0 Corporate Implications

5.1 None arising directly from this report.

6.0 Background Papers

6.1 Scoping documents for reviews and previous Committee reports.

Overview & Scrutiny Work Programme 2013/2014

Project	COMMIT TEE DATE	JUN		SEP		OCT		NOV		DEC		JAN		FEB		MAR		APR		MAY		Responsible Head of Service / Notes
			26		18		23				11		22		12		26				14	
Annual Report	Council																					Legal and Democratic Services (Paul Spencer)
Budget	F&M																					Director of Finance and Corporate Services
Crime and Disorder Scrutiny	H&CS																					Director of Community and Planning (Chris Smith)
RIPA	F&M																					Legal and Democratic Services Manager.
Grounds Maintenance	E&DS and H&CS																					Director of Housing & Environmental Services.
Cemetery Provision	H&CS																					Director of Community and Planning
Environmental Volunteering																						Director of Community and Planning
Debt Recovery																						Director of Finance and Corporate Services
Clean Team / Litter																						Director of Housing & Environmental Services.
Key																						
Report to Committee																						
Report to Task Group																						