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**Subject:** REGULATION OF INVESTIGATORY POWERS ACT 2000 – JUDICIAL APPROVAL

**Meeting and Date:** Leader of the Council (in respect of Executive Functions)

Licensing Committee – 20 November 2012 (in respect of their Statutory Functions)

Council – 12 December 2012 (in respect of Non-Executive Functions)

**Report of:** Harvey Rudd, Solicitor to the Council

**Decision Type:** Non-Key

**Classification:** Unrestricted

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**Purpose of the report:** To amend the scheme of officer delegations

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**Recommendation:** That the arrangements for the discharge of executive functions set out in Section 6 of Part 3 of the Council’s constitution be amended by the insertion of the following delegation to the Solicitor to the Council and the Community Safety, CCTV and Parking Manager:  
**(Leader)**

| Column 1<br>Legislation                     | Column 2<br>Brief Description  | Column 3<br>Conditions/Exclusions/Limitations/Notes |
|---|--|---|
| Regulation of Investigatory Powers Act 2000 | To make any necessary application to a Justice of the Peace for an Order approving the grant of an authorisation under the Regulation of Investigatory Powers Act 2000 |   |

**Recommendation:** That the arrangements for the discharge of council functions set out in Section 6 of Part 3 of the Council’s constitution be amended by the insertion of the following delegation to the Solicitor to the Council and the Community Safety, CCTV and Parking Manager:  
**(Council & Licensing Committee)**

| Column 1<br>Legislation                     | Column 2<br>Brief Description  | Column 3<br>Conditions/Exclusions/Limitations/Notes |
|---|--|---|
| Regulation of Investigatory Powers Act 2000 | To make any necessary application to a Justice of the Peace for an Order approving |   |

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|--|---|--|
|  | the grant of an authorisation under the Regulation of Investigatory Powers Act 2000 |  |
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## 1. Summary

With effect from 1 November 2012, Local Authority Authorisations under the Regulation of Investigatory Powers Act 2000 (RIPA) will require approval by a Justice of the Peace. These amendments to RIPA are being made by the Protection of Freedoms Act 2012 and come into force on 1 November 2012.

## 2. Introduction and Background

- 2.1 RIPA sets out a regulatory framework for the use of covert investigatory techniques by public authorities. The legislation limits local authorities to using three covert techniques for the purpose of preventing or detecting crime – directed surveillance, covert human intelligence source (CHIS) and communications data. In practice, it is generally only directed surveillance which is used.
- 2.2 Currently, the authorisation process involves assessing necessity and proportionality, completing the RIPA authorisation form and seeking approval from the Chief Executive. These processes will remain the same but with effect from 1 November 2012, the local authority will also need to obtain an order approving the grant or renewal of an authorisation from a Justice of the Peace, before it can take effect. The JP will need to be satisfied that the statutory tests have been met and the use of surveillance is necessary and proportionate. The Home Office has published Guidance relating to the judicial approval process
- 2.3 From 1 November 2012, the serious crime threshold will also come into effect. This provides that local authorities will only be able to authorise directed surveillance under RIPA if the criminal offences it is being used to prevent or detect are punishable by maximum term of at least 6 months imprisonment or are related to the underage sale of alcohol or tobacco.
- 2.4 There has of course been a great deal of media coverage surrounding the inappropriate use of RIPA by some Local Authorities for the investigation of very low level offences. The Government has therefore introduced the measures above to prevent this. Members should be aware, however, that Dover District Council is not one of these authorities and has always had extremely robust processes for managing the use of RIPA.
- 2.5 The use of RIPA will usually be an executive function. However, given that it is possible that the offences being investigated may not be the responsibility of the executive, it is necessary for both the Council and the statutory licensing committee to approve the authorisation for the Solicitor to the Council and the Community Safety, CCTV and Parking Manager to apply for judicial approval.

2.6 The Solicitor to the Council is entitled to appear at the Court hearing by virtue of his rights of audience as a solicitor. Other officers of the Council are not so entitled unless they are solicitors or barristers. Section 223 of the Local Government Act 1972 addresses the difficulties which this can create by making provision for the Council to authorise other officers to appear in the court on its behalf. The function of authorising officers in this regard is already delegated to the Solicitor to the Council who would authorise officers to appear in Court to make the necessary applications.

2.7 In so far as the authorisations being requested in this report amend the Scheme of Officer Delegations in relation to executive functions, they are a matter for the Leader of the Council. The Council is entitled to amend the Scheme of Officer Delegations in relation to most non-executive functions save those which relate to the statutory licensing committee. Therefore, this report is being submitted to the Leader, the Council and the statutory licensing committee.

### 3. **Identification of Options**

3.1 Option 1: To approve the authorisation of the above officers in accordance with the recommendation

3.2 Option 2: To refuse the to authorise the above officers in accordance with the recommendation

### 4. **Evaluation of Options**

4.1 Option 1: This is the preferred option as is will allow the Council to follow procedures provided for by statute.

4.2 Option 2: This option is not recommended as a failure to put in place these authorisations would mean a need to seek Member approval each time there was an application to use RIPA and judicial authority was required.

### 5. **Appendices**

None

### 6. **Background Papers**

None

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