
NORTH AYRSHIRE COUNCIL

13 June 2023

Cabinet

Title: Regulation of Investigatory Powers (Scotland) Act 2000

Purpose: To provide an update to Cabinet on the Council's use of the Regulation of Investigatory Powers (Scotland) Act 2000

Recommendation: That Cabinet notes the measures in place to secure compliance with RIPSA and the use the Council has made of the Act.

1. Executive Summary

- 1.1 In the course of carrying out its regulatory duties, the Council may require to carry out surveillance. The Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) sets up a framework under which surveillance can be authorised and the evidence obtained used in subsequent court actions without challenge under Human Rights legislation. If the legislation is not complied with, it could lead to the Council breaching an individual's right to privacy or for any information gathered being inadmissible as evidence in court.
- 1.2 The present report is intended to update Cabinet on any use made of the Act since the previous update and also advises of proposed changes in the Council's Authorising Officers following staff changes.

2. Background

- 2.1 The European Convention on Human Rights provides for a right to privacy. This cannot be interfered with by public authorities, except for certain defined purposes where the action is lawful, necessary and proportionate in order to:
- protect national security;
 - protect public safety;
 - protect the economy;
 - protect health or morals;

- prevent disorder or crime, or
- protect the rights and freedoms of other people.

2.2 As surveillance of persons without their knowledge (covert surveillance) would be an interference with a person's right to privacy, RIPSA creates a framework, which if followed, allows for surveillance by public authorities. Key issues to be addressed in considering surveillance are whether it is:-

- Necessary (whether there is any other way to achieve the same aim without covert surveillance, e.g., can you stop the problem by letting people know they are being watched (overt surveillance) etc.)
- Proportionate (whether the proposed surveillance is excessive having regard to its objective); and
- Collateral intrusion (whether the surveillance would record details of other individuals, thus breaching their right to privacy).

2.3 Only two types of surveillance are available to the Council – directed surveillance (observing people without their knowledge) and covert human intelligence sources (asking a third party to establish or maintain a relationship to obtain information in secret).

2.4 The Council is audited on its RIPSA procedures by the Investigatory Powers Commissioner's Office (IPCO) every three years. The last such inspection took place in June 2020. The inspector's report, issued 2nd July 2020, commended the key personnel involved with administration of the Council's compliance regime and noted both a strong governance process in place and a positive and mature approach to the delivery of training and development for staff. It is likely that a further inspection will take place in Summer 2023.

2.5 The core aspects of governance which ensures the Council's compliance with RIPSA are:-

- A Senior Responsible Officer, the Head of Democratic Services, has responsibility for the Central Register which records all cases of covert surveillance;
- Authorising Officers consider and approve applications for covert surveillance;
- Council procedures are set out in two Protocols on Directed Surveillance and Covert Human Intelligence Sources, last reviewed and updated April 2023;
- The Council's CCTV policy and procedures;
- Training – this has moved from an annual face to face session to an e-learning course, to enhance the reach of the training to relevant staff. Over and above the e-learning course, teams are welcome to seek out briefings on RIPSA and surveillance procedures to ensure that staff have a broad overview of the terms of the Act.
- A refresher briefing is delivered periodically to the Council's Extended Leadership Team on the requirements of RIPSA, to ensure

that senior staff are aware of the provisions of the Act and that any key employees receive the necessary training. The Chief Executive and Directors are all asked to sign an undertaking in this regard.

- 2.6 The Authorising Officers are presently Paul Doak Head of Service (Finance and Transformation) NAHSCP, Scott MacKenzie Senior Manager Protective Services and the Chief Executive. In terms of the Scheme of Delegation to Officers reviewed and approved by Council in May 2023, the Chief Executive is appointed as Authorising Officer for all types of RIPSA authorisations, including the authorisation of a person under age 18 to act as a covert human intelligence source. The Chief Executive is also authorised to appoint other Officers to act as Authorising Officers for all such functions except the authorisation of a person under age 18 to act as a covert human intelligence source. To take account of changes in staff and to ensure there are sufficient Authorising Officers, the Chief Executive has appointed Laura Miller Senior Manager (Audit, Fraud, Safety and Insurance) as an Authorising Officer and training has been provided. A further training session for Authorising Officers will take place by end June 2023.
- 2.7 Since the Act came into force in 2000, the Council's use of surveillance has gradually reduced. A number of reasons are responsible for this reduction. These include:-
- Covert surveillance is a resource intensive activity;
 - Preference for less intrusive means of investigating cases, such as legally appropriate data sharing;
 - Overt action to disrupt unlawful activity is considered more effective (by making it known that a person or area is under surveillance);
 - The transfer of most benefit fraud investigations to the DWP greatly reduced the type of investigation for which covert surveillance was appropriate;
 - Within Trading Standards, rather than focussing on enforcement action, a more effective use of resources is to educate retailers to self-police rather than to pursue surveillance.
- 2.8 Since the last Cabinet report in September 2019, one authorisation has been sought and granted relating to test purchasing of age-restricted tobacco, e-cigarettes and e-liquid products.

3. Proposals

- 3.1 That Cabinet notes the measures in place to secure compliance with RIPSA and notes the use made of the Act.

4. Implications/Socio-economic Duty

Financial

4.1 There are no financial implications arising from this report.

Human Resources

4.2 There are no Human Resources implications arising from this report.

Legal

4.3 There are no Legal implications arising from this report. This report outlines the measures in place to ensure that the Council complies with its legal obligations.

Equality/Socio-economic

4.4 There are no Equality implications arising from this report. There are likewise no socio-economic implications arising from this report.

Environmental and Sustainability

4.5 There are no environmental implications arising from this report.

Key Priorities

4.6 Compliance with the regime to authorise surveillance set out in RIPSA ensures that any investigations carried out by the Council are lawful which contributes to the Council's priorities of developing Aspiring Communities in North Ayrshire where residents are safe.

Community Wealth Building

4.7 There are no Community Wealth Building benefits arising from this report.

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