

**WEST DUNBARTONSHIRE COUNCIL****Report by Chief Officer - Regulatory and Regeneration****Corporate Services Committee – 22 May 2024**

---

**Subject: Update in relation to the Council's use of its powers under the Regulation of Investigatory Powers (Scotland) Act 2000**

**1. Purpose****1.1** To advise Members of:-

- a) minor updates to the Council's Policy in relation to its use of its investigatory powers; and
- b) update Members on the Council's use of such powers.

**2. Recommendations****2.1** It is recommended that the Committee:-

- a) approve minor updates to the Council's Policy in relation to its use of investigatory powers as outlined at paragraph 4.1; and
- b) note how the Council used its investigatory powers in 2023.

**3. Background**

- 3.1** The use of surveillance to obtain information is a valuable resource for the protection of the public and preventing crime and disorder. The Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A) provides public bodies with a legal framework to use when engaged in covert activities such as where surveillance of a person is likely to result in the obtaining of private information about that person. When carrying out such surveillance the Council must comply with the terms of RIP(S)A as well as the Scottish Government's Covert Surveillance & Property Interference Code of Practice.
- 3.2** The Council has a Policy setting out how it will exercise its functions under RIP(S)A (see Appendix 1).
- 3.3** Requests to engage in Directed Surveillance and to use Covert Human Intelligence Sources require to be authorised by one of the Council's Authorising Officers. Authorising Officers must be satisfied that the authorisation is: (i) for a lawful purpose – preventing or detecting crime and disorder, protecting public health or in the interests of public safety, (ii) necessary – where there is no reasonable and alternative way of achieving the objective, and (iii) proportionate – any use of the surveillance shall not be excessive i.e. it shall be in proportion to the significance of the matter being investigated. The Policy sets out the

recording keeping requirements so that the appropriate records of authorisations are retained for the appropriate period of time.

- 3.4 The Investigatory Powers Commissioner has responsibility for reviewing the use of investigatory powers by local authorities. The Commissioner has a statutory obligation to inspect the use of regulatory powers as part of their oversight.

4. **Main Issues**

*Updates to the Policy*

- 4.1 The Council’s Policy details the steps required to make sure that covert surveillance whether direct surveillance or the use of a covert human intelligence source complies with RIP(S)A and the Council’s authorisation procedure in relation to covert surveillance requests. Officers having reviewed the Policy have identified that some minor updates are required. These updates are narrated in Table 1.

<b>Paragraph</b>	<b>Change</b>
General	Amended numbering and layout of document to create a cohesive policy document.
General	Updated list of Authorising Officers (now at Appendix 1).
Various	Amended job titles to match current Council structure and to better reflect operational responsibilities, for example, Manager of Legal Services being responsible for management of authorisation process and keeping records of same.
Various	Updated addresses and locations of Council Services.
<i>Part A</i>	
1.2	Confirming that Investigating Officers must obtain appropriate authorisation <i>and</i> comply with the terms of said authorisation.
1.2.2	Advising that unplanned observations in immediate response to unfolding events are unlikely to require an authorisation.
2.1	Clarified that oral authorisations can be extended by three months (subject to the request being in writing).
	Confirmed that list of Authorising Officers moved to an appendix for ease of reference.
2.8	Moved list of Authorising Officers to Appendix 1 to improve readability.
<i>Part B</i>	
7	Confirmed that sources under 16 can only give information about members of their family (except those with parental responsibilities) in exceptional cases.

*Table 1*

*The Council’s use of its powers*

- 4.4 The Investigatory Powers Commissioner inspects local authorities on a three yearly basis. The Council was inspected 2023 having last been inspected 2020. Having been provided with information by Council Officers, the Commissioner

confirmed he was satisfied that the Council was complying with the terms of RIP(S)A and Code of Practice. The Commissioner only had minor advisory comments in relation to the completion of authorisation forms. The Commissioner will next inspect the Council's use of these powers in 2026.

- 4.6 So to comply with RIP(S)A and the Code of Practice, Officers having updated the Policy, are arranging refresher training for Authorising Officers, and reviewing the retention and destruction of any materials obtained through the use of convert powers.
- 4.7 The Council further completed an annual return in relation to 2023 for the Investigatory Powers Commissioner's Office. The details of this return are noted at Table 2.

Question	Return
The total number of applications made for Directed Surveillance authorisation (including renewals and urgent cases)?	2
The total number of Directed Surveillance authorisations issued (including renewals and urgent cases)?	2

*Table 2*

The Directed Surveillance authorisations referred to in Table 2 relate to operations carried out by Trading Standards and were for the purposes of preventing or detecting crime and/or preventing disorder.

## 5. People Implications

- 5.1 Legal Services' monitoring of the use of the Council's use of surveillance under RIP(S)A is part of its business as usual duties.

## 6. Financial Implications

- 6.1 There are no financial implications for the Council arising from this report.

## 7. Risk Analysis

- 7.1 There is no increased risk to the Council associated with the contents of this report.

## 8. Equalities Impact Assessment (EIA)

- 8.1 EIA 1006: The Policy in relation to convert surveillance and management of convert human intelligence sources makes sure that Council Officers complies with a legal framework that makes sure that authorisations for such activities are signed off at an appropriate level with a suitable evidence base. This protects Human Rights and Equality Groups. Minor amends have been made to clarify matters within policy.

## **9. Consultation**

**9.1** Consultation on this report has taken place with Finance.

## **10. Strategic Assessment**

**10.1** In terms of the Council's Strategic Priorities, the purpose of licensing is to ensure our Communities are Resilient and Thriving.

Chief Officer – Regulatory and Regeneration

Date 9 May 2024

**Person to Contact:** Michael McDougall  
Manager of Legal Services  
Legal Services  
West Dunbartonshire Council

[michael.mcdougall@west-dunbarton.gov.uk](mailto:michael.mcdougall@west-dunbarton.gov.uk)

### **Appendices:**

1. Policy incorporating updates
2. EIA

### **Background Papers:**

1. RIP(S)A
2. Scottish Government's Code of Practice in relation to covert surveillance and property interference