

DATA LABEL: PUBLIC



PUBLIC & COMMUNITY SAFETY POLICY DEVELOPMENT AND SCRUTINY PANEL

REGULATION OF INVESTIGATORY POWERS – ANNUAL REPORT 2024/25

REPORT BY DEPUTE CHIEF EXECUTIVE

A. PURPOSE OF REPORT

To report on activity in 2024/25 under the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA)

B. RECOMMENDATIONS

To note the council's continuing restricted use of RIPSA powers in 2024/25 and the completion and outcome of the IPCO 2025 statutory triennial inspection of the council's RIPSA activity.

C. SUMMARY OF IMPLICATIONS

- I **Council Values** Being honest, open and accountable
- II **Policy and Legal (including Regulation of Investigatory Powers (Scotland) Strategic Environmental Act 2000, statutory Codes of Practice; Council Assessment, Equality Issues, Policy and Procedure Health or Risk Assessment)**
- III **Implications for Scheme of None Delegations to Officers**
- IV **Impact on performance and None performance Indicators V Relevance to Single Outcome N/A Agreement VI Resources - (Financial, None Staffing and Property) VII Consideration at PDSP Ongoing**

VIII Other consultations

Governance Manager, Chief Solicitor

D. TERMS OF REPORT 1 Background

1.1 The council has duties and responsibilities when undertaking certain types of surveillance in relation to the investigation of crime, public safety and the protection of public health. These are found principally in the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA). The legislation provides that in certain circumstances a

formal authorisation is needed from an appropriate senior council officer before some forms of information-gathering activity can be carried out.

- 1.2 The RIPSAs regime is about controlling the way public bodies use existing statutory powers. It is there to balance the public interest in enforcement against private interests and privacy rights. A RIPSAs authorisation does not confer additional or wider powers on the council that it does not otherwise possess. It regulates and controls the way in which existing powers are used. It provides protection for members of the public
- 1.3 An authorisation is required for planned covert surveillance in relation to criminal activity, public health or public safety where the surveillance is designed to gather private information without the subject being aware of it. No authorisation is needed for overt surveillance, unplanned or spontaneous surveillance, or for one-off instances of information gathering or reconnaissance. A different regime applies where the council is gathering information solely as employer rather than as a public body. If officers act without an authorisation when one should have been granted then evidence gathered may be inadmissible, enforcement action may fail, and the council may suffer reputational damage.
- 1.4 The council's use of and compliance with RIPSAs is overseen by the (UK) Investigatory Powers Commissioner's Office (IPCO). That oversight is carried out through annual statistical returns and triennial inspections and reports. Following a review of how the IPCO conducts its oversight of local authorities the IPCO no longer routinely undertakes physical inspection site visits. Instead, the IPCO has agreed each local authority will, in the first instance, provide a written update on its compliance with the legislation to the IPCO to enable the IPCO to assess whether further remote, or on-site inspection is required. This approach takes cognisance of the general decline in the use of covert powers by many local authorities, and is based upon the IPCO's assessment of risk and where resources are best directed. Generally, if a council has not used RIPSAs powers since its last inspection, and its responses to the questions asked by the IPCO assure the IPCO of it having maintained good levels of compliance, the IPCO will require no further engagement. Where the powers have been used, or the council is planning to use them, an appropriate discussion with an Inspector may be arranged to help the IPCO form a view of the approach the council is taking.
- 1.5 The council approved a revised RIPSAs Policy on 17 September 2017, to be reviewed every three years. A revised policy was approved at Council Executive on 6 October 2020 and then again on 23 May 2023. It is supported by an internal procedure, guidance and suite of forms to help both council officers who may require authorisation and those who determine if authorisation should be granted. The policy requires an annual report to this panel on RIPSAs activity and issues relevant to the council's use of RIPSAs powers. The policy and procedure are scheduled for review in 2025/26 to coincide with the latest IPCO triennial inspection.

2 Roles and responsibilities

- 2.1 The policy lists the roles and responsibilities of all officers engaged in RIPSAs activity. They are reflected in the Scheme of Delegations to Officers.
- 2.2 The Senior Responsible Officer (SRO) is the Depute Chief Executive (Corporate, Housing & Operational Services). The Authorising Officers (AO) are the Governance Manager/Monitoring Officer and the Chief Solicitor. Advice is provided when required by Legal Services.

3 Council RIPSAs activity

3.1 Where required, authorisations are used in relation to issues such as noise nuisance, potentially criminal antisocial behaviour, trading standards, environmental health, and counter fraud investigations. These services typically use different methods of investigation and enforcement which do not engage the RIPSAs regime. The fact that authorisations are not requested and given does not mean that enforcement powers are not being used. For example, investigations and surveillance carried out by council officers who are openly identified as such are not being carried out “covertly”. An example of that is where CCTV surveillance has been used in relation to fly tipping. Since warning notices about the use of cameras are used, the surveillance is “overt” and the Act is not engaged.

3.2 There were no authorisations sought or granted in 2024/25. The authorisations requested and granted in 2024/25 and the previous 5 years are as follows.

YEAR	REQUESTED	GRANTED
2019/20	0	0
2020/21	0	0
2021/22	0	0
2022/23	0	0
2023/24	0	0
2024/25	0	0

3.3 There have been no failures of compliance in 2024/25.

4 IPCO Triennial Inspection

4.1 The findings of the triennial IPCO inspection carried out in 2022/23 were, overall, very positive. It was found that the council has robust and effective measures in place to ensure compliance with RIPSAs. Those findings were reported to the panel on 23 February 2023. That included an action plan which had been agreed with the IPCO. It was reported to panel on 29 August 2023 that those actions had been completed.

4.2 The council’s RIPSAs policy was reviewed during that reporting year, to coincide with the IPCO inspection. The findings of the inspection were incorporated into the changes made to the policy. The revised policy, along with the supporting procedure and guidance, was considered by panel on 27 April 2023. It was approved by Council Executive on 20 May 2023.

4.3 A RIPSAs annual compliance statement was re-introduced to the annual corporate governance reporting process in 2023. That ensures that Governance and Risk Committee is sighted on RIPSAs compliance. That is in addition to the annual PDSP reporting requirement and not an alternative or substitute

- 4.4 There have been no changes to legislation since 2022/23. The IPCO wrote to the council in January 2025 advising that a triennial inspection would be carried out and requesting that the council provide a written update. Following receipt of the council's written update the IPCO issued its report on 9 June 2025.
- 4.5 The IPCO was satisfied that the council's written update gave assurance that ongoing compliance with RISPA and the Investigatory Powers Act 2016 will be maintained. As such the council will not require further inspection this cycle. The council is asked to ensure that key compliance issues continue to receive the necessary internal governance and oversight through the Chief Executive and Senior Responsible Officer by means of: policy refreshes; annual updates to elected members; ongoing training and awareness raising; and the retention, review and destruction of any product obtained through the use of covert powers by means of Record and Product Management in accordance with the Safeguards Chapters of the relevant Codes of Practice.
- 4.6 As provided above the council has Policy, Procedure and Guidance in place. Those documents were last reviewed and updated through committee in May 2023. The next review of those documents will take place in 2025/26
- 4.7 The council receives an annual report on compliance and any concerns arising. That report is made to this panel in August of each year
- 4.8 No authorisations were requested, refused or granted in 2024/25. Services continue to have alternative methods in place for investigation and enforcement which do not include covert surveillance and so do not require an authorisation. Services which may engage in covert surveillance activity for the statutory core purposes are aware of the council's legal duties and have arrangements in place to ensure compliance. There have been no incidents of activity taking place in 2024/25 where an authorisation should have been applied for. Refresher training will be delivered to relevant services in 2025.
- 4.9 The council's approach to the retention, review and destruction of any product obtained through the use of covert powers is as set out in the council's Information Governance Policy. That is an umbrella policy with related procedures and controls which is used by all council staff for all functions. All staff are required to comply. The policy controls the creation, retention and destruction of council records; the safekeeping and sharing of personal data; and the employment of internet and social media. Below that policy sits the Council's Records Management Plan, which more particularly covers retention and destruction. The retention/destruction arrangements are designed around guidance from the Scottish Council for Archives. Each Council area must have a retention schedule based on that guidance. Each service involved in the sort of activities that may lead to covert surveillance being undertaken has a retention schedule. Supporting guidance and instructions are provided to officers to assist them in complying with the associated legal requirements.
- 4.10 The IPCO has advised, in its 2025 triennial inspection report, that the council's approach to the retention, review and destruction of material obtained through covert powers provides assurance of compliance with the Safeguards outlines in Chapter 9 of the relevant Codes of Practice.
- 4.11 The council's next three yearly statutory inspection will be undertaken by the IPCO in 2028.

E. CONCLUSION

This report meets the requirements of the revised Policy to report annually on the use made of the council's powers and compliance with its duties.

F. BACKGROUND REFERENCES

Public & Community Safety PDSP, 25 August 2022, 23 February 2023, 27 April 2023

Appendices/Attachments: None

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Elaine Cook, Depute Chief Executive (Corporate, Housing and Operational Services) Date
of meeting: 26 August 2025