

South Ayrshire Council

**Report by Head of Legal and Regulatory Services
to Cabinet
of 15 February 2023**

Subject: Regulation of Investigatory Powers (Scotland) Act 2000 - Inspection of South Ayrshire Council by the Investigatory Powers Commissioner's Office

1. Purpose

- 1.1 The purpose of this report is to advise the Cabinet of the content of the inspection report by the Investigatory Powers Commissioner's Office (IPCO) dated 18 November 2022 regarding the Council's arrangements for the use of covert techniques; to seek endorsement of revisions to the Council's procedures to address the comments made within that report; and to provide an update on the Council's use of Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA)

2. Recommendation

2.1 It is recommended that the Cabinet:

- 2.1.1 notes the terms of the report from the IPCO dated 18 November 2022 (see Appendix 1);**
- 2.1.2 approves the proposed revised Council Procedures for Directed Surveillance and the Use of Covert Human Intelligence Sources (CHIS) (see Appendix 2); and**
- 2.1.3 notes the level and type of covert activity which has been authorised since the previous inspection (see Appendix 3).**

3. Background

- 3.1 The Human Rights Act 2000 provides that people within the United Kingdom have certain rights respected, including the right to a fair trial and the right to privacy. The right to privacy cannot be interfered with by public authorities, except for certain defined purposes, and such interference must also be proportionate. The Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) requires public authorities such as local authorities and the police, to conduct any covert activities in a manner which is consistent with these rights. The legislation creates a framework which, if followed, allows for surveillance by public authorities without breaching the right to privacy.
- 3.2 The two types of surveillance currently available to the Council under RIPSA are directed surveillance (observing persons without their knowledge) and the use of a

covert human intelligence source (asking a third party to establish or maintain a relationship to obtain information in secret) which, for example, may be an informant or officer working undercover.

3.3 Public authorities may legitimately intrude on a person's right to privacy on certain grounds as long as they can demonstrate the intrusion is both necessary and proportionate. These grounds are:

3.3.1 for the prevention or detection of crime;

3.3.2 for public health; or

3.3.3 for public safety reasons

3.4 Both covert surveillance and CHIS activity have to be justified in terms of the legislation and, in line with Council procedure, cannot take place without an 'authorisation'. An authorisation is signed approval from a 3rd tier or above senior officer, of a written application to carry out covert activities. It considers the necessity and proportionality of the proposed operation and sets out the limits, duration and circumstances under which officers may conduct the covert activity. The procedures and associated forms, covering the process from grant of application, review and cancellation, are contained in the Council procedure documents for directed surveillance and CHIS respectively. Observance of these procedures protects both the Council and the public. Failure to comply with them renders the Council liable to action for breach of a person's human rights, may result in any evidence obtained by covert activity being inadmissible in court, and carries a reputational risk for the Council for failing to observe its own procedures.

3.5 Training of Council staff on the legislation and Council procedures is important in order to maintain a level of awareness among relevant officers of the need to consider RIPSAs in certain circumstances. An online training package on COAST was devised by Legal Services in 2022, and approximately 110 Council staff completed the course last year, having been identified by their service managers as a relevant training area. These included staff from Legal, Housing, Planning & Building Services, Internal Audit and Neighbourhood Services. It is intended that this will be refreshed on an annual basis.

3.6 The Council receives an audit every 3 years from the Investigatory Powers Commissioner's Office (IPCO). During these audits, the Surveillance Inspector examines the policies and procedures in place, completed authorisation documentation, and training programmes, as well as interviewing operational and authorising staff to ascertain the level of knowledge of the principles and procedures. Until the 2019 audit, all previous audits have involved a physical visit by the Inspector to the Council. However, since 2019, the IPCO have changed their practice, and carry out 'desktop' audits of some public authorities, where they are satisfied from all documentation submitted, that the Council's arrangements under RIPSAs were satisfactory.

4. Proposals

4.1 The Council's previous inspection in 2019 was carried out by the IPCO as a desktop audit, and the most recent inspection in 2022 was similarly a desktop audit, following receipt of all documentation required, including copy applications, training material and updated procedures, and a remote interview with the Council's Senior Responsible Officer for RIPSAs matters, Catriona Caves, and the Service Lead - Legal and Licensing, Karen Briggs. A copy of the IPCO report dated 18 November

2022 is attached as Appendix 1. As with the 2019 report, the Inspector did not find it necessary to highlight any 'areas of non-compliance' (formerly referred to as 'recommendations'), instead offering some observations on applications and suggestions for updating the Council's RIPSAs procedures,

- 4.2 The inspection report confirms that the 3 observations made in the 2019 report had been addressed by the Council, and that 'the information provided had demonstrated a level of competence which removes, for the present, the requirement for a physical inspection'. The report also notes the voluntary reporting of the error to the IPCO in 2021, in respect of 2 authorisations from 2017 and 2019 which had not been recorded in the Central Register of Authorisations (this was referred to in the Members' Bulletin dated January 2022 – [Covert Surveillance Annual Update](#)), and confirms that the Inspector was satisfied with the remedial action taken by the Council.
- 4.3 The report also provides comments on the Council's protocols and guidance for staff on areas such as retention and destruction of data and inclusion of collateral intrusion material in the Retention Schedule, which has been updated as a result, and investigations using social networking sites. The Inspector also makes observations on the wording in specific RIPSAs authorisations which were reviewed by the Inspector, in particular relating to aspects such as proportionality and collateral intrusion, and provides guidance on how applicants and authorisers can improve the information provided in the application forms. Relevant staff have been updated on this.
- 4.4 Overall the report was positive about the Council's arrangements under RIPSAs, including the following comments:
- 'Your authority has been found to demonstrate good practice and compliance as highlighted within the report'
 - 'The training package in particular is of a high standard and reflects well on the efforts of the Council to upskill staff and ensure compliance'
 - 'The delivery of training to 110 members of staff since June 2022, and ongoing monitoring of course completion, is to be commended and encouraged to continue'
 - 'Your Protocol for Investigation involving Social Networking Sites, combined with instructions contained in the COAST training package, contains suitable guidance to staff regarding how this should be used'
 - 'Applicants demonstrate awareness for the timely destruction of non-relevant material within authorisations'
- 4.5 The report contains some observations on areas in the Council RIPSAs procedures which could be clarified, including the authorisation level within the Council in relation to confidential material and juvenile sources. The procedures (see Appendix 2) have been amended to take account of these comments, and the details of the Nominated Officers in Annex 1 of each procedure have also been updated to reflect the retirement of David Strang and the appointment as Nominated Officer by the Head of Legal and Regulatory Services of Gavin Cockburn, Service Lead – Education Support Services, in his place.
- 4.6 The Cabinet is asked to approve the proposed revised Council Procedures (see Appendix 2 – changes marked in **bold** text) and note the level and type of covert activity which has been authorised since the last inspection. (see Appendix 3).

5. Legal and Procurement Implications

5.1 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.

5.2 There are no procurement implications arising from this report.

6. Financial Implications

6.1 Not applicable.

7. Human Resources Implications

7.1 Not applicable.

8. Risk

8.1 *Risk Implications of Adopting the Recommendations*

8.1.1 There is no new risk to adopting the recommendations.

8.2 *Risk Implications of Rejecting the Recommendations*

8.2.1 The risk associated with rejecting the recommendations in this report are that the Council may be criticised by the IPCO in future RIPSAs inspections, for not having updated the RIPSAs procedures in line with their observations.

9. Equalities

9.1 The proposals in this report have been assessed through the Equality Impact Assessment Scoping process. There are no significant potential positive or negative equality impacts of agreeing the recommendations and therefore an Equalities Impact Assessment is not required. A copy of the Equalities Scoping Assessment is attached as Appendix 4.

10. Sustainable Development Implications

10.1 ***Considering Strategic Environmental Assessment (SEA)*** - This report does not propose or seek approval for a plan, policy, programme or strategy or document otherwise described which could be considered to constitute a plan, programme, policy or strategy.

11. Options Appraisal

11.1 An options appraisal has not been carried out in relation to the subject matter of this report.

12. Link to Council Plan

12.1 The matters referred to in this report contribute to Commitment 5 of the Council Plan: Stand up for South Ayrshire/ Increase the profile and reputation of South Ayrshire and the Council.

13. Results of Consultation

- 13.1 There has been no public consultation on the contents of this report.
- 13.2 Consultation has taken place with Councillor Martin Kilbride, Portfolio Holder for Buildings, Housing and Environment, and the contents of this report reflect any feedback provided.

14. Next Steps for Decision Tracking Purposes

- 14.1 If the recommendations above are approved by Members, the Head of Legal and Regulatory Services will ensure that all necessary steps are taken to ensure full implementation of the decision within the following timescales, with the completion status reported to the Cabinet in the 'Council and Leadership Panel Decision Log' at each of its meetings until such time as the decision is fully implemented:

Implementation	Due date	Managed by
Revise Council procedures under RIPSA and substitute new versions on the Core	1 March 2023	Service Lead – Legal and Licensing

Background Papers **Members' Bulletin – January 2022 – [Covert Surveillance Annual Update](#)**

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Date: 6 February 2023

IPCO

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Chief Executive
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18 November 2022

Dear Ms. Howat,

IPCO Surveillance and CHIS Inspection of South Ayrshire Council

South Ayrshire Council was recently the subject of a remote inspection by one of my Inspectors, xxxxxxxxxxxxxx, who looked at your use of powers and procedures in relation to directed surveillance and CHIS. This was facilitated through Ms. Karen Briggs (Service Lead – Legal and Licensing) who provided documentation and further information in relation to the Council's current usage of the powers under RIP(S)A, the response to the previous inspection in 2019, and my letter of July 2020 regarding Data Assurance.

The information provided has demonstrated a level of compliance which removes, for the present, the requirement for a physical inspection.

The last inspection was undertaken by xxxxxxxxxxxxxx in November 2019. On this occasion three observations were noted as follows:

- Signposting of staff to good practical examples of directed surveillance online and open-source research within the Scottish Government Codes of Practice (2017).
- Amendments to Section 6 of CHIS and Directed Surveillance policies to reflect prescription of offences (SSI 2010/350).
- Elected Members should be sighted on the authority's use of the legislation and set policy at least once a year.

xxxxxxx reviewed the Procedure for Authorisation of Covert Surveillance, Procedure for Authorisation of the Use of Covert Human Intelligence Sources, the online RIP(S)A Awareness Training package (COAST), and Elected Members' briefings on the use of powers. He has noted the observations have been addressed sufficiently for all matters. The training package in particular is of a high standard and reflects well on the efforts of the Council to upskill staff and ensure compliance.

I would ask that the procedures detailing the authorisation of juvenile CHIS (Procedure for Authorisation of the Use of Covert Human Intelligence Sources, paragraph 5.5.4) and directed surveillance confidential material (Procedure for Authorisation of Covert Surveillance, paragraph 5.3.1) be reviewed. The current Council position of such authorisations falling to the Chief Executive, in [their] absence the Deputy Chief Executive, and in [their] absence a Director, goes beyond the defined authorisation level within Scottish Government Codes of Practice for councils constituted under section 2 of the Local Government etc (Scotland) Act 1994. The Authorising Officer is required to be a person exercising the role of Chief Executive at that time. It will also be helpful for additional clarification to be added to the Procedure for Authorisation of Covert Surveillance, paragraph 6.13, relating to applications being submitted within their own line management. Paragraph 5.7 of the Scottish Government Covert Surveillance and Property Interference Code of Practice 2017 (CSPI) states that the Authorising Officer should not normally be directly involved in the investigation.

Ms. Briggs has advised my Inspector that the Council no longer has a CCTV monitoring station, but staff may occasionally be available to monitor specific events on the request of Police Scotland. The relevant CCTV protocol with Police Scotland has been reviewed and it is noted that although agreed in 2019, references within the document do not correspond with the associated 2017 Code of Practice paragraphs. Although infrequently requested, it is important that staff are able to refer to the appropriate legislation, and as such, a request to Police Scotland to review and update or withdraw the document should be made.

The error reported to IPCO in 2021 in respect of not recording two authorisations on your Central Register, and consequently not making them available for inspection to xxxxxxxxxxxx in 2019, is noted. xxxxxxxxxxxx has been satisfied by the remedial action taken by the Council to prevent reoccurrence. Although outside of the current inspection period, my Inspector has reviewed both authorisations (148, 149). In addition, he has reviewed a single completed authorisation (147), and a live authorisation (150).

Authorisations 148 and 149 relate to suspected theft by employees. Tactics deployed included visual observation and video recording in public places. Authorisation 147 and 150 relate to Trading Standards deployments against suspected illicit cigarette vendors. The statutory requirements for necessity were met in relation to the prevention or detection of crime. In authorisation 148, which related to the theft of fuel, this was also noted for public safety and public health which were not relevant in that particular case.

Within all authorisations, the Inspector noted minimal consideration of proportionality relating to what other methods had been considered and why they were not implemented (CSPI paragraph 4.7), and as required within section 9 of the Council RIP(S)A Directed Surveillance application. This is addressed within slide 12 of the COAST online training you deliver and will hopefully be used as a source of guidance for staff in future applications.

Collateral intrusion considerations within 148, 149 and 150 were generic, and minimised intrusion on members of the public using the public spaces and not involved in criminality. There is a marked improvement within 150, which is concise but explains the risk well. Collateral intrusion considerations form part of the applicant section of the RIP(S)A forms used at section 8. The Authorising Officer requirements within section 13 describe Necessity and Proportionality but do not guide Authorising Officers to consider the extent of collateral intrusion (CSPI paragraph 4.11). Inclusion of this within the explanation heading would assist the focus on this important element.

Section 12 of the application form requires the Authorising Officer to provide a statement and is structured "Who, What, Where, When, Why and How". This is useful for the Authorising Officer's considerations and describing the specific activity authorised. It is important that an authorisation is the consideration of the Authorising Officer and not merely a rubber-stamp of an application. It is important also that the activity authorised is clearly defined and communicated to staff involved in administering it (*R v Sutherland*).

Authorisation 150 is considered too brief and does not describe the activity authorised, endorsing the application instead. The period authorised is of such a short duration that should the deployment date be delayed by more than two days, a renewal authorisation was said to be required. Directed Surveillance authorisations are authorised for three months. Whilst laudable that the Council does not appear to be excessive with the use of powers, it would be sensible for the Authorising Officer to factor in a reasonable amount of time to cater for unforeseen operational difficulties. It is their prerogative to set an early review date following authorisation if they wish to maintain robust control of the ongoing necessity and proportionality of what they have sanctioned.

The monitoring of social media and the internet offers investigative opportunities to assist with your enforcement or other responsibilities. Your Protocol for Investigation Involving Social Network Sites, combined with instructions contained in the COAST training package, contains suitable guidance to staff regarding how this should be used. Ms. Briggs is aware of the challenge for the Council to raise awareness across all relevant departments. The delivery of training to 110 members of staff since June 2022, and ongoing monitoring of course completion, is to be commended and encouraged to continue.

A specific focus for the inspection was the retention, review, and destruction (RRD) of data gathered utilising the covert powers available. It is acknowledged that the Scottish Council for Archives (SCARRS) places a significant level of structure and oversight around data acquired and retained by Councils. Ms. Briggs and the SRO, Ms. Catrina Caves (Head of Legal and Regulatory Services), demonstrated a good understanding of how relevant covert material is retained and disposed of within relevant departments. Applicants demonstrate awareness for the timely destruction of non-relevant material within authorisations. Ms. Briggs and Ms. Caves have agreed to ensure that collateral intrusion material is reflected within relevant SCARRS guidance. This will be sufficient for South Ayrshire Council to discharge its responsibilities around Data Assurance. I hope the advice of my Inspector was helpful in identifying the minimum requirements required in this regard.

Whilst my Inspector is satisfied that this matter will be attended to promptly, this area of compliance will continue to be focused upon in future inspections. Highlighting RRD responsibilities to new staff and weaving this into your refresher training inputs will ensure those persons likely to engage the covert powers are fully au fait with the safeguarding requirements.

Your authority has been found to demonstrate good practice and compliance as highlighted within the report. Ms. Briggs and Ms. Caves take their responsibilities seriously and I would like to thank you for the assistance provided to my Inspector during the inspection.

I hope your authority has found this inspection to be of benefit. My Office is available to you should you have any further queries following this inspection, or at any point in the future. Contact details are provided at the foot of this letter.

I shall be grateful if you would acknowledge receipt of this letter within two months.

Yours sincerely,

The Rt. Hon. Sir Brian Leveson
The Investigatory Powers Commissioner

Please be aware that IPCO is not a "public authority" for the purpose of the Freedom of Information (Scotland) Act (FOISA) and therefore falls outside the reach of the FOISA. It is appreciated that local authorities are subject to the FOISA and that they may receive requests for disclosure of our reports. In the first instance the SRO should bring the matter to the attention of the IPCO Data Protection Officer (at: info@ipco.org.uk), before making any disclosure. This is also the case if you wish to make the content of this letter publicly available.

Procedure for Authorisation of Covert Surveillance

Author: Karen Briggs, Service Lead - Legal and Licensing; Legal and Regulatory Services

Date: 6/7/01 First Revision: 9/07/09. Second Revision 1/04/11. Third revision: 18/07/12. Fourth revision 18/02/14. Fifth revision 18/10/16. Sixth revision 19/11/18. Seventh revision 19/12/19. Eighth revision 6/01/23.

Status: Internal document for use by South Ayrshire Council staff but may be shared with other Councils or agencies and the public.

1. Foreword

- 1.1 The use of surveillance to provide information is a valuable resource for the protection of the public and the maintenance of law and order. In order that local authorities and law enforcement agencies are able to discharge their responsibilities, use is made of unaided surveillance and surveillance devices. Where this surveillance is covert i.e. the subject of the surveillance is unaware that it is taking place, then it must be authorised to ensure that it is lawful. CCTV systems in the main will not be subject to this procedure as they are 'overt' forms of surveillance. However where CCTV is used as part of a pre-planned operation of surveillance then authorisation should be obtained.
- 1.2 Until October 2000 covert surveillance was not subject to statutory control in the UK. From that date a legal framework ensures that the use of surveillance is subject to an authorisation, review, renewal and cancellation procedure.

2. Policy statement

- 2.1 In some circumstances, it may be necessary for South Ayrshire Council employees, in the course of their duties, to make observations of a person or person(s) in a covert manner, i.e. without that person's knowledge. This may also be by means of open source material such as social media. By their nature, actions of this sort may constitute an interference with that person's right to privacy and may give rise to legal challenge as a potential breach of Article 8 of the European Convention on Human Rights and the Human Rights Act 1998 ('the right to respect for private and family life').
- 2.2 The Regulation of Investigatory Powers Act (2000) [RIPA] and the Regulation of Investigatory Powers (Scotland) Act (2000) [RIP (S) A] ('the Acts') together provide for the first time a legal framework for covert surveillance activities by public authorities (including local authorities) and an independent inspection regime to monitor these activities.
- 2.3 Whilst the Acts do not impose a requirement for local authorities to seek or obtain an authorisation, where one is available South Ayrshire Council employees will adhere to the authorisation procedure before conducting any covert surveillance.

- 2.4 Employees of South Ayrshire Council will **not** carry out intrusive surveillance within the meaning of the Regulation of Investigatory Powers (Scotland) Act 2000. This is surveillance of anything taking place on residential premises or in a private vehicle that involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device capable of providing information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the house.
- 2.5 An authorisation for directed surveillance is only appropriate for the purposes of a specific investigation or operation, insofar as that investigation or operation relates to the grounds specified at section 6(3) or 10(2) of RIP(S)A. Covert surveillance for any other general purposes should be conducted under other legislation, if relevant, and an authorisation under RIP(S)A should not be sought. A public authority may only engage RIP(S)A when in performance of its 'core functions'.
- 2.6 The 'core functions' are the specific 'public functions', undertaken by a particular authority, in contrast to the 'ordinary functions' which are those undertaken by all authorities (e.g. employment issues, contractual arrangements etc.). The disciplining of an employee is not a 'core function', although related criminal investigations may be. The protection of RIP(S)A may therefore be available in relation to associated criminal investigations so long as the activity is deemed to be necessary and proportionate. Further guidance on this is provided in sections 3.32 to 3.33 of the Scottish Government Code of Practice on Covert Surveillance and Property Interference dated December 2017 a link to which is provided below. <https://www.gov.scot/publications/covert-surveillance-property-interference-code-practice/>

3. Objective

- 3.1 The objective of this procedure is to ensure that all work involving directed surveillance by South Ayrshire Council employees is carried out effectively, while remaining in accordance with the law. It should be read in conjunction with the Regulation of Investigatory Powers (Scotland) Act 2000 and the Scottish Government's Code of Practice on the Use of Covert Human Intelligence Sources and the Code of Practice on Covert Surveillance and Property Interference (referred to as the 'Codes').

3.2 Definitions

- 3.2.1 **Covert surveillance** means surveillance that is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is taking place.
- 3.2.2 **Authorising officer** is the person who is entitled to give an authorisation for directed surveillance in accordance with section 8(3)(c) of the Regulation of Investigatory Powers (Scotland) Act 2000.

- 3.2.3 **Private information** includes information about a person relating to his private or family life.
- 3.2.4 **Residential premises** means any premises occupied or used, however temporarily, for residential purposes or otherwise as living accommodation.
- 3.2.5 **Private vehicle** means any vehicle that is used primarily for the private purpose of the person who owns it or of a person otherwise having the right to use it. This does not include a person whose right to use a vehicle derives only from his having paid, or undertaken to pay, for the use of the vehicle and its driver for a particular journey. A vehicle includes any vessel, aircraft or hovercraft.

4. Scope of the Procedure

- 4.1 This procedure applies in all cases where 'directed surveillance' is being planned or carried out. Directed surveillance is defined in the Code of Practice as surveillance undertaken "for the purposes of a specific investigation or operation" and "in such a manner as is likely to result in the obtaining of private information about a person." Directed surveillance and the need for authorisation to conduct directed surveillance may also cover web resources and social networking sites. Even though these may be considered as 'open source' with limited or no privacy controls, nevertheless repeated or systematic observations of such sources that result in private information being obtained may require prior directed surveillance authorisation. Useful further guidance on this and examples of good practice can be found in the Scottish Government Code of Practice referred to in paragraph 2.6 above. For instance, sections 3.11 to 3.15 of the Code provide detailed guidance on Online Covert Activity; section 3.31 provides examples of general observation activities; and sections 4.40 to 4.43 provide guidelines on general best practices.
- 4.2 The procedure does not apply to:
- Ad-hoc covert observations that do not involve the systematic surveillance of specific person(s)
 - Observations that are not carried out covertly, or
 - Unplanned observations made as an immediate response to events.
- 4.3 The authorisation procedures described below should be followed but in cases of doubt further advice should be sought from Legal Services.

5. Principles of Surveillance

- 5.1 In planning and carrying out covert surveillance, South Ayrshire Council employees shall comply with the following principles.

5.2 Lawful purposes

Directed surveillance shall only be carried out where necessary to achieve one or more of the permitted purposes (as defined in the Acts) namely:

- 5.2.1. For the purpose of preventing or detecting crime or the prevention of disorder;
- 5.2.2 In the interests of public safety;
- 5.2.3 For the purpose of protecting public health;
- 5.2.4 For any other purpose prescribed in an order made by the Scottish Ministers.

Employees carrying out surveillance shall not interfere with any property or harass any person.

5.3 Confidential material

5.3.1 Applications where a significant risk of acquiring confidential material has been identified shall always require the authorisation of the Chief Executive **or in his/her absence, of the person exercising the role of Chief Executive.**

5.3.2 Confidential material consists of:

- Matters subject to legal privilege (for example between professional legal advisor and client),
- Confidential personal information (for example relating to a person's physical or mental health) or
- Confidential journalistic material.

6. The Authorisation Process

6.1 Applications for directed surveillance will be authorised at the level of Investigations Manager or Assistant Head of Service as prescribed by the Regulation of Investigatory Powers (Prescription of Offices, etc. and Specification of Public Authorities)(Scotland) Order 2010, SSI 2010/350. For the purposes of South Ayrshire Council the Investigation Manager will be no lower than Service Lead or equivalent level and specifically nominated by the Head of Legal and Regulatory Services. The nominated authorisers are listed at Annex 1 which will be updated as required. For public authorities there are no substitutes of lower grade prescribed to authorise 'urgent' cases in contrast, for example, to the police.

6.2 Authorising officers within the meaning of this procedure should **ensure that they are not directing or enabling any operations which they authorise, and** avoid authorising their own activities wherever possible and only do so in exceptional circumstances.

6.3 Authorisations will be in writing. However, in urgent cases a Service Lead or equivalent or above may approve applications orally.

6.4 All applications for directed surveillance authorisations will be made on form SAC/DS/App. The applicant in all cases should complete this. In urgent cases the authorising officer may give an oral authorisation. A statement that the authorising officer has expressly granted the authorisation should be recorded on the form or, if that is not possible, in the applicant's notebook or diary. This should be done by the person to whom the authorising officer spoke (normally the applicant) but should later be endorsed by the authorising officer.

Please note that it is the responsibility of the Authorising Officer to ensure that each application is complete, registered in the Central Register of Authorisations kept by the Head of Legal and Regulatory Services, and a Unique Reference Number from the Central Register included on the application at the top of every page, before signing.

6.5 All applications for directed surveillance renewals will be made on form SAC/DS/Ren. The applicant in all cases should complete this where the surveillance requires to continue beyond the previously authorised period (including previous renewals).

6.6 Where authorisation ceases to be either necessary or appropriate the authorising officer or appropriate deputy will cancel an authorisation using form SAC/DS/Can.

6.7 Forms, codes of practice and supplementary material will be available from the Council Intranet and will be maintained by the Trading Standards Service.

6.8 Any person giving an authorisation for the use of directed surveillance must be satisfied that:

- Account has been taken of the likely degree of intrusion into the privacy of persons other than those directly implicated in the operation or investigation ('collateral intrusion'). Measures must be taken, wherever practicable, to avoid unnecessary intrusion into the lives of those affected by collateral intrusion.
- The authorisation is necessary.
- The authorised surveillance is proportionate.

6.9 **Necessity**

Surveillance operations shall only be undertaken in accordance with law where there is applicable legislation and/or where there is a risk to public health or safety.

6.10 **Effectiveness**

Surveillance operations shall be undertaken only by suitably trained or experienced employees, or under their direct supervision.

6.11 **Proportionality**

The use of surveillance shall not be excessive i.e. it shall be in proportion to the significance of the matter being investigated. Factors to be considered are how intrusive might it be on the subject of surveillance or on others? Why is this intrusion outweighed by the need for surveillance in operational terms or can the evidence be obtained by any other means? More guidance is provided within the directed surveillance application form, and in sections 4.4 to 4.15 of the Scottish Government Code of Practice.

6.12 Authorisation

All directed surveillance shall be authorised in accordance with this procedure.

- 6.13 Applicants should apply within their own line management structure unless other arrangements have been agreed or it is unreasonable or impractical in the circumstances.

7. Time Periods – Authorisations

- 7.1 Oral applications expire after 72 hours. If required they can be renewed for a further period of 3 months if renewed in writing. It is not expected oral authorisations will be required by Council services given the criteria that must be met.
- 7.2 Written authorisations expire 3 months beginning on the day from which they took effect.

8. Time Periods – Renewals

- 8.1 If at any time before an authorisation would expire (including oral authorisations) the authorising officer considers it necessary for the authorisation to continue for the purpose for which it was given, it may be renewed in writing for a further period of 3 months beginning with the day on which the previous authorisation ceases to have effect. Applications should only be made shortly before the authorisation is due to expire.
- 8.2 Any person entitled to authorise may renew authorisations. They may be renewed more than once, provided they continue to meet the criteria for authorisation.

9. Review

- 9.1 The Authorising Officer shall review all authorisations as often as he/she deems necessary in the circumstances and in any case at intervals of not more than one month. Review dates should be set taking into account the likely duration of the operation. Details of the review and the decision reached shall be noted on form SAC/DS/Rev.

10. Cancellation

- 10.1 The authorising officer or appropriate deputy must cancel an authorisation if he/she is satisfied that the directed surveillance no longer satisfies the criteria for authorisation.

11. Monitoring

- 11.1 Each Service or discrete location within Services must maintain a record of all applications for authorisation (including refusals), renewals, reviews and cancellations. The most senior authoriser in that Service or at that location will maintain the monitoring sheet form SAC/ms/ripsa.

12. Security, Retention and Monitoring of Documents

- 12.1 Documents created under this procedure are highly confidential and shall be treated as such. Services shall make proper arrangements for their retention, security and destruction, in accordance with the requirements of the Data Protection Act 1998 and the Code of Practice.
- 12.2 The Head of Legal and Regulatory Services will maintain the Central Register of Authorisations. An applicant shall notify the Head of Legal and Regulatory Services (or his/her nominated officer) and provide such detail as is sufficient for the completion of the Central Register. The Head of Legal and Regulatory Services (or his/her nominated officer) will record the details of the application as required in the Central Register and allocate a Unique Reference Number (URN) to the applicant.
- 12.3 Upon authorising the application, the Authorising Officer shall send the original Authorisation to the Central Register as soon as possible and no later than the next working day. If applicable, all Review, Renewal and Cancellation forms shall be forwarded to the Central Register as soon as possible after completion and no later than the next working day with the Authorising Officer retaining copies of all documents. All documentation that requires a signature shall be completed with either a digital or 'wet' signature. If sent by mail, all material shall be conspicuously marked 'Strictly private and confidential.'
- 12.4 On each occasion the Head of Legal and Regulatory Services shall notify the person nominated by the Head of Legal and Regulatory Services to act as Quality Auditor who shall examine the documents referred to. Any issues arising from the completion of these documents shall be recorded on the Quality Audit Form and fed back to the applicant and authoriser concerned. The Quality Audit Form shall be appended to each original form as applicable and retained in the Central Register.
- 12.5 The Authorising Officer shall retain the copy forms for at least three years after cancellation. The Head of Legal and Regulatory Services will retain the original forms for at least five years after cancellation.

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- 13.1 Technical equipment such as still and video cameras can be used overtly or covertly. It is essential that control be exercised over such equipment to ensure that it is not deployed covertly without first obtaining a RIPS(A) authorisation. Applicants and authorising officers must consider carefully if the use of covert equipment is necessary, proportionate and can be justified. Equipment should be secured to ensure that access is restricted to a person designated within the authorisation and only for the duration of the authorisation.
- 13.2 The equipment deployed for directed surveillance should be clearly identified in and identifiable from the authorisation.

14. Retention and destruction of material ('product')

- 14.1 Arrangements must be put in place for the secure handling, storage and destruction of material obtained through the use of directed surveillance. Authorising officers, through their relevant Data Controller, must ensure compliance with the appropriate data protection requirements under the Data Protection Act 2018, the General Data Protection Regulation 2018, and any relevant codes of practice relating to the handling and storage of material.
- 14.2 Where the product of surveillance could be relevant to legal proceedings it should be retained in accordance with established legal requirements for a suitable further period. There is nothing which prevents material obtained under directed surveillance or intrusive CHIS authorisations from being used to further other investigations.
- 14.3 Material obtained as a result of surveillance activities e.g. photographs; video film; surveillance logs etc. must either be retained in accordance with relevant evidence procedures if required for further proceedings or securely destroyed if not or no longer required. All Officers should ensure that the integrity, security and confidentiality of this material is maintained. Such material should be retained for a period of five years.
- 14.4 The disposal and/or retention of product must be clearly detailed on the cancellation form SAC/DS/Can. **Disposal/retention will be carried out in line with the Council's Retention Schedule (SCARRS) , section 4.004 ("Investigation, inspections and monitoring") - [scarrs schedule \(south-ayrshire.gov.uk\)](https://www.scarrs.gov.uk).**

15. Responsibility of Elected Members

- 15.1 The Scottish Government Codes of Practice recommend that elected members of a local authority should review the authority's use of RIP(S)A and set the policy at least once a year. They should not, however, be involved in making decisions on specific authorisations. **South Ayrshire Council elected members will be provided with an annual Members' Bulletin to update them on RIPS(A) activity and issues, and Panel reports will also be**

presented to elected members where appropriate, including to provide updates following IPCO regulatory inspections.

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Nominated officers for the purposes of the Regulation of Investigatory Powers (Prescription of Offices, etc. and Specification of Public Authorities) (Scotland) Order 2010, SSI 2010/350.

Name	Title
Morton Houston	Service Lead - Trading Standards and Environmental Health
Kenny Dalrymple	Assistant Director, Housing and Operations
Tom Simpson	Service Lead - Corporate Accounting
Gavin Cockburn	Service Lead – Education Support Services
Michael Alexander	Service Lead - Housing Services

Nominated officers for authorisation of operations where there is significant risk of acquiring confidential material shall always be the Chief Executive or in his/her absence the person exercising the role of Chief Executive.

Procedure for Authorisation of the Use of Covert Human Intelligence Sources

Author: Karen Briggs, Service Lead – Legal and Licensing; Legal and Regulatory Services

Date: 6/7/01 First Revision: 9/07/09. Second Revision 1/04/11. Third revision: 18/07/12. Fourth revision 18/02/14. Fifth revision 18/10/16. Sixth revision 19/11/18. Seventh revision 19/12/19. Eighth revision 6/01/23.

Status: Internal document for use by South Ayrshire Council staff but may be shared with other Councils or agencies and the public.

1. Foreword

- 1.1 The use of human beings to provide information ('informants') is a valuable resource for the protection of the public and the maintenance of law and order. In order that local authorities and law enforcement agencies are able to discharge their responsibilities, use is made of 'undercover' officers and informants. These are referred to as 'covert human intelligence sources' or 'sources' and the area of work of undercover officers and informants to whom this procedure applies will be referred to as 'source work.'
- 1.2 Until October 2000 the use of such sources was not subject to statutory control in the UK. From that date a legal framework ensures that the use, deployment, duration and effectiveness of sources is subject to an authorisation, review and cancellation procedure.

2. Policy statement

- 2.1 In some circumstances it may be necessary for South Ayrshire Council employees, in the course of their duties, to make use of informants and to conduct 'undercover' operations in a covert manner, i.e. without a person's knowledge. This may also be by means of open source material such as social media. By their nature, actions of this sort may constitute an interference with that person's right to privacy and may give rise to legal challenge as a potential breach of Article 8 of the European Convention on Human Rights and the Human Rights Act 1998 ('the right to respect for private and family life').
- 2.2 The Regulation of Investigatory Powers Act (2000) [RIPA] and the Regulation of Investigatory Powers (Scotland) Act (2000) [RIP (S) A] ('the Acts') together provide for the first time a legal framework for covert surveillance and the use of covert human intelligence sources by public authorities (including local authorities) and an independent oversight regime to monitor these activities.
- 2.3 Whilst the Acts do not impose a requirement for local authorities to seek or obtain an authorisation, where one is available South Ayrshire Council employees will adhere to the authorisation procedure before using a source or allowing or conducting an undercover operation.

- 2.4 Employees of South Ayrshire Council will **not** carry out intrusive surveillance within the meaning of the Regulation of Investigatory Powers (Scotland) Act 2000 nor will they authorise any person for any covert human intelligence source activity as an opportunity to install any surveillance equipment into residential premises or private vehicle.
- 2.5 An authorisation for use of CHIS is only appropriate for the purposes of a specific investigation or operation, insofar as that investigation or operation relates to the grounds specified at section 6(3) or 10(2) of RIP(S)A. Deployment of a CHIS for any other general purposes should be conducted under other legislation, if relevant, and an authorisation under RIP(S)A should not be sought. A public authority may only engage RIP(S)A when in performance of its core functions’.
- 2.6 The ‘core functions’ are the specific ‘public functions’, undertaken by a particular authority, in contrast to the ‘ordinary functions’ which are those undertaken by all authorities (e.g. employment issues, contractual arrangements etc.). The disciplining of an employee is not a ‘core function’, although related criminal investigations may be. The protection of RIP(S)A may therefore be available in relation to associated criminal investigations so long as the activity is deemed to be necessary and proportionate.

3. Objective

3.1 The objective of this procedure is to ensure that all work involving the use or conduct of a source by South Ayrshire Council employees is carried out effectively, while remaining in accordance with the law. It should be read in conjunction with the Regulation of Investigatory Powers (Scotland) Act 2000 and the Scottish Government’s Code of Practice on the Use of Covert Human Intelligence Sources and the Code of Practice on Covert Surveillance and Property Interference (referred to as the ‘Codes).

3.2 Definitions

3.2.1 **Covert human intelligence source** means a person who establishes or maintains a personal or other relationship with another person for the covert purpose of facilitating anything that:

- (a) covertly uses such a relationship to obtain information or to provide information or to provide access to information to another person; or
- (b) covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

A relationship is used covertly if, and only if, it is conducted in a manner calculated to ensure that the person is unaware of its purpose.

- 3.2.2 **Authorising officer** is the person who is entitled to give an authorisation for the use or conduct of a source in accordance with section 8(3)(c) of the Regulation of Investigatory Powers (Scotland) Act 2000.
- 3.2.3 **Handler** means the person referred to in section 7(6)(a) of the Regulation of Investigatory Powers (Scotland) Act 2000 holding an office or position within the local authority and who will have day to day responsibility for:
- Dealing with the source on behalf of the local authority;
 - Directing the day to day activities of the source;
 - Recording the information supplied by the source; and
 - Monitoring the source's security and welfare.
- 3.2.4 **Controller** means the person/the designated managerial officer within the local authority referred to in section 7(6)(b) of the Regulation of Investigatory Powers (Scotland) Act 2000, responsible for the general oversight of the use of the source.
- 3.2.5 **The conduct** of a source is action of that source, falling within the terms of the Regulation of Investigatory Powers (Scotland) Act 2000, or action incidental to it.
- 3.2.6 **The use** of a source is any action to induce, ask or assist a person to engage in the conduct of a source or to obtain information by means of an action of the source.
- 3.2.7 **Private information** includes information about a person relating to his private or family life.
- 3.2.8 **Residential premises** means any premises occupied or used, however temporarily for residential purposes or otherwise as living accommodation.
- 3.2.9 **Private vehicle** means any vehicle that is used primarily for the private purpose of the person who owns it or of a person otherwise having the right to use it. This does not include a person whose right to use a vehicle derives only from his having paid, or undertaken to pay, for the use of the vehicle and its driver for a particular journey. A vehicle includes any vessel, aircraft or hovercraft.

4. Scope of the Procedure

- 4.1 This procedure applies in all cases where the use of an undercover officer or source is being planned or carried out. The deployment of a CHIS and the need for authorisation to deploy a CHIS may also cover web resources and social networking sites. Even though these may be considered as 'open

source' with limited or no privacy controls, nevertheless an authorisation for the use and conduct of a CHIS is necessary if a relationship is established or maintained by a member of a public authority or by a person acting on its behalf (i.e. the activity is more than mere reading of the site's content). Useful further guidance on this and examples of good practice can be found in the Scottish Government Code of Practice on Covert Human Intelligence Sources dated December 2017, a link to which is provided below. For instance, sections 2.24 to 2.26 provide guidance on identifying when a human source becomes a CHIS; and sections 4.7 to 4.14 of the Code provide detailed guidance on Online Covert Activity.

<https://www.gov.scot/publications/covert-human-intelligence-sources-code-practice/>

4.2 This procedure does not apply to:

- Covert test purchase transactions under existing statutory powers where the officers involved do not establish a personal or other relationship for the purposes stated (see definition of a covert human intelligence source). As an example the purchase of music CD for subsequent expert examination would not require authorisation but where the intention is to ascertain from the seller where he buys suspected fakes, when he takes delivery etc. then authorisation should be sought beforehand.
- Tasks given to persons (whether that person is an employee of the Council or not) to ascertain purely factual information (for example the location of cigarette vending machines in licensed premises). Guidance on this is provided in section 2.23 of the Code of Practice.

It should be noted that the definition of CHIS in the Act does not include a reference to 'tasking', but instead talks about the establishment and maintenance of a relationship for a covert purpose. It is therefore possible that, even without direct tasking of a source, the CHIS criteria in the Act might still be met in any particular situation. The authorisation procedures described below should be followed but in cases of doubt further advice should be sought from Legal Services.

5. Principles of use or conduct of covert human intelligence source

5.1 In planning and carrying out source work, South Ayrshire Council employees shall comply with the following principles.

5.2 Lawful purposes

Source work shall only be carried out where necessary to achieve one or more of the permitted purposes (as defined in the Acts) namely:

5.2.1 For the purpose of preventing or detecting crime or the prevention of disorder;

5.2.2 In the interests of public safety;

5.2.3 For the purpose of protecting public health;

5.2.4 For any other purpose prescribed in an order made by the Scottish Ministers.

5.2.5 Employees carrying out source work or using sources must be aware that a source has no licence to commit crime. Any source that acts beyond the acceptable limits of case law in regard to this principle risks prosecution.

5.2.6 It is also important to appreciate that a source may face reprisals if their identity is disclosed. Extreme care should be taken to protect the identity of a source where there may be a risk of such reprisals. Before authorising a source, the authorising officer should ensure that a risk assessment is carried out to determine the risk to the source. The ongoing welfare and security of the source, after the cancellation of an authorisation, should be considered at the outset.

5.3 Confidential material

5.3.1 Applications where a significant risk of acquiring confidential material has been identified shall always require the authorisation of the Chief Executive **or in his/her absence, of the person exercising the role of Chief Executive.**

5.3.2 Confidential material consists of:

- Matters subject to legal privilege (for example between professional legal advisor and client),
- Confidential personal information (for example relating to a person's physical or mental health) or
- Confidential journalistic material.

5.4 Vulnerable individuals

5.4.1 Vulnerable individuals, such as the mentally impaired, will only be authorised to act as a source in the most exceptional circumstances. Authorisation by the Chief Executive **or in his/her absence by the person exercising the role of Chief Executive will be required.**

5.5 Juvenile sources

5.5.1 The use or conduct of any source under 16 years of age living with their parents cannot be authorised to give information about their parents.

5.5.2 Juvenile sources can give information about other members of their immediate family in exceptional cases. A parent, guardian or other 'appropriate adult' should be present at meetings with the juvenile source under the age of 16 years.

5.5.3 The authorisation should not be granted unless or until:

- The safety and welfare of the juvenile has been fully considered;
- The authorising officer has satisfied himself/herself that any risk has been properly explained and understood by the juvenile;
- A risk assessment has been undertaken as part of the application to deploy a juvenile source, covering the physical dangers and the moral and psychological aspects of his or her deployment.

5.5.4 Deployment of juvenile sources will only be authorised by the Chief Executive **or in his/her absence by the person exercising the role of Chief Executive.**

6. The Authorisation Process

6.1 Applications for the use or conduct of a source will be authorised at the level of Investigations Manager or Assistant Head of Service as prescribed by the Regulation of Investigatory Powers (Prescription of Offices, etc and Specification of Public Authorities) (Scotland) Order 2010, SSI 2010/350. For the purposes of South Ayrshire Council the authorising officer will be no lower than Service Lead or equivalent level and specifically nominated by the Head of Legal and Regulatory Services. The nominated authorisers are listed at Annex 1 which will be updated as required. For public authorities there are no substitutes of lower grade prescribed to authorise 'urgent' cases in contrast to, for example, the police.

6.2 Authorising officers within the meaning of this procedure should **ensure that they are not directing or enabling any operations which they authorise**, and avoid authorising their own activities wherever possible and only do so in exceptional circumstances. An authorising officer can also act as a controller or handler of a source.

6.3 Authorisations will be in writing. However, in urgent cases a Service Lead or equivalent or above may approve applications orally.

6.4 All applications for covert human intelligence source authorisations will be made on form [SAC/auth/chis](#). The applicant in all cases should complete this. In urgent cases an oral authorisation may be given by the authorising officer. A statement that the authorising officer has expressly granted the authorisation should be recorded on the form or, if that is not possible, in the applicant's notebook or diary. This should be done by the person to whom the authorising officer spoke (normally the applicant) but should later be endorsed by the authorising officer.

Please note that it is the responsibility of the Authorising Officer to ensure that each application is complete, registered in the Central Register of Authorisations kept by the Head of Legal and Regulatory Services, and a Unique Reference Number from

the Central Register included on the application at the top of every page, before signing.

- 6.5 All applications for covert human intelligence source renewals will be made on form [SAC/ren/chis](#). The applicant in all cases should complete this where the source work requires to continue beyond the previously authorised period (including previous renewals).
- 6.6 Where authorisation ceases to be either necessary or appropriate the authorising officer or appropriate deputy will cancel an authorisation using form [SAC/can/chis](#).
- 6.7 Forms, codes of practice and supplementary material will be available from the Council Intranet and will be maintained by the Trading Standards Service.
- 6.8 Any person giving an authorisation for the use or conduct of a source must be satisfied that:
- Account has been taken of the likely degree of intrusion into the privacy of persons other than those directly implicated in the operation or investigation ('collateral intrusion'). Measures must be taken, wherever practicable, to avoid unnecessary intrusion into the lives of those affected by collateral intrusion.
 - The authorisation is necessary.
 - The authorised use or conduct is proportionate.
 - Satisfactory arrangements exist for the management of the source.
- 6.9 Authorisation for use of a Covert Human Intelligence Source can only be granted if sufficient arrangements are in place for handling the source's case. The arrangements that are considered necessary are that:
- 6.9.1 There will at all times be a person holding the requisite office, rank or position with the relevant investigating authority who will have day to day responsibility for dealing with the source on behalf of that authority and for the source's security and welfare – this should be the source's line manager (the Handler).
- 6.9.2 There will at all times be another person holding the requisite office, rank or position with the relevant investigating authority who will have general oversight of the use made of that source – this should be the handler's line manager (the Controller).
- 6.9.3 There will be at all times a person holding the requisite office, rank or position with the relevant investigating authority who will have responsibility for maintaining a record of the use made of that source – this should be the Authorising Officer
- 6.9.4 The records relating to the use of that source are maintained by South Ayrshire Council which will always contain particulars of such matters as may be specified in regulations made by the Scottish Ministers.

6.9.5 The records maintained by South Ayrshire Council that discloses the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available to those persons.

6.10 Necessity
Source work shall only be undertaken in accordance with law where there is applicable legislation and/or where there is a risk to public health or safety.

6.11 Effectiveness

Planned undercover operations shall be undertaken only by suitably trained or experienced employees, or under their direct supervision.

6.12 Proportionality

The use of covert human intelligence sources shall not be excessive i.e. it shall be in proportion to the significance of the matter being investigated. Factors to be considered are how intrusive might it be on the subject of surveillance or on others? Why is this intrusion outweighed by the need for surveillance in operational terms or can the evidence be obtained by any other means? More guidance is provided within the CHIS application form, and in sections 3.2 to 3.12 of the Code of Practice.

6.13 Authorisation

All use and conduct of covert human intelligence sources shall be authorised in accordance with this procedure.

6.14 Additionally, the authorising officer must make an assessment of any risk to a source in carrying out the conduct in the proposed authorisation.

6.15 *Use of a covert human intelligence source with technical equipment*

6.15.1 A covert human intelligence source wearing or carrying a surveillance device and invited into residential premises or a private vehicle does not require special authorisation to record activity taking place inside the premises or vehicle provided it is in the presence of the source. Authorisation for the use of that covert human intelligence source may be obtained in the usual way.

6.15.2 Applicants should apply within their own line management structure unless other arrangements have been agreed or it is unreasonable or impractical in the circumstances.

6.15.3 Services wishing to adopt a more devolved authorisation process may do so only on the explicit approval of a written policy by the Council; all authorisations must remain within the scope of the Scottish Government's guidance on authorising grades.

7. Time Periods – Authorisations

- 7.1 Oral applications expire after 72 hours. If required they can be renewed for a further period of 12 months if renewed in writing.
- 7.2 Written authorisations expire 12 months beginning on the day from which they took effect, except for juvenile sources, which last for one month only.

8. Time Periods – Renewals

- 8.1 If at any time before an authorisation would expire (including oral authorisations) the authorising officer considers it necessary for the authorisation to continue for the purpose for which it was given, it may be renewed in writing for a further period of 12 months beginning with the day on which the previous authorisation ceases to have effect. Applications should only be made shortly before the authorisation is due to expire.
- 8.2 Any person entitled to authorise may renew authorisations. They may be renewed more than once, provided they continue to meet the criteria for authorisation.
- 8.3 Authorisations for the deployment of a juvenile source are renewable for one further period of 1 month.

9. Review

- 9.1 The Authorising Officer shall review all authorisations as often as he/she deems necessary in the circumstances and in any case at intervals of not more than one month. Review dates should be set taking into account the likely duration of the operation. Details of the review and the decision reached shall be noted on form [SAC/REV/CHIS](#).

10. Cancellation

- 10.1 The authorising officer or appropriate deputy must cancel an authorisation if he/she is satisfied that the use or conduct of the source no longer satisfies the criteria for authorisation or that procedures for the management of the source are no longer in place. Where possible, the source must be informed that the authorisation has been cancelled.

11. Monitoring

- 11.1 Each Service or discrete location within Services must maintain a record of all applications for authorisation (including refusals), renewals, reviews and cancellations. The most senior authoriser in that Service or at that location will maintain the monitoring sheet form [SAC/ms/ripsa](#).

12. Security and Retention of Documents

- 12.1 Documents created under this procedure are highly confidential and shall be treated as such. Services shall make proper arrangements for their retention, security and destruction, in accordance with the requirements of the Data Protection Act 2018, GDPR and the Code of Practice.
- 12.2 The Head of Legal and Regulatory Services will maintain the Central Register of Authorisations. An applicant shall notify the Head of Legal and Regulatory Services (or his/her nominated officer) and provide such detail as is sufficient for the completion of the Central Register. The Head of Legal and Regulatory Services will record the details of the application as required in the Central Register and allocate a Unique Reference Number (URN) to the applicant.
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Authorising officers, through their relevant Data Controller, must ensure compliance with the appropriate data protection requirements under the Data Protection Act 2018, the General Data Protection Regulation 2018, and any relevant codes of practice relating to the handling and storage of material.

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List of Authorisations since last Inspection

No	Service	DS/ CHIS	Date of Authorisation	Operation Name and Description
1	Trading Standards	DS	30-Jan-2020	Tobacco and NVP 2 2019-20 (<i>Under-age sales test purchasing programme for tobacco and nicotine vapour products</i>)
2	Trading Standards	DS	9-Nov-2022	Tobacco and NVP 1 2022-23 (<i>Under-age sales test purchasing programme for tobacco and nicotine vapour products</i>)

South Ayrshire Council Equality Impact Assessment Scoping Template

Equality Impact Assessment is a legal requirement under the Public Sector Duty to promote equality of the Equality Act 2010. Separate guidance has been developed on Equality Impact Assessment's which will guide you through the process and is available to view here: <https://www.south-ayrshire.gov.uk/equalities/impact-assessment.aspx>

Further guidance is available here: <https://www.equalityhumanrights.com/en/publication-download/assessing-impact-and-public-sector-equality-duty-guide-public-authorities/>

The Fairer Scotland Duty ('the Duty'), Part 1 of the Equality Act 2010, came into force in Scotland from 1 April 2018. It places a legal responsibility on Councils to actively consider ('pay due regard to') how we can reduce inequalities of outcome caused by socio-economic disadvantage, when making strategic decisions. [FSD Guidance for Public Bodies](#) in respect of the Duty, was published by the Scottish Government in March 2018 and revised in October 2021. See information here: <https://www.gov.scot/publications/fairer-scotland-duty-guidance-public-bodies/>

1. Policy details

Policy Title	Regulation of Investigatory Powers (Scotland) Act 2000 - Inspection of South Ayrshire Council by the Investigatory Powers Commissioner's Office
Lead Officer (Name/Position/Email)	Karen Briggs, Service Lead – Legal and Licensing – karen.briggs@south-ayrshire.gov.uk

2. Which communities, groups of people, employees or thematic groups do you think will be, or potentially could be, impacted upon by the implementation of this policy? Please indicate whether these would be positive or negative impacts

Community or Groups of People	Negative Impacts	Positive impacts
Age – men and women, girls & boys	-	-
Disability	-	-
Gender Reassignment (Trans/Transgender Identity)	-	-
Marriage or Civil Partnership	-	-
Pregnancy and Maternity	-	-
Race – people from different racial groups, (BME) ethnic minorities and Gypsy/Travellers	-	-
Religion or Belief (including lack of belief)	-	-
Sex – (issues specific to women & men or girls & boys)	-	-

Community or Groups of People	Negative Impacts	Positive impacts
Sexual Orientation – person’s sexual orientation i.e. LGBT+, lesbian, gay, bi-sexual, heterosexual/straight	-	-
Thematic Groups: Health, Human Rights & Children’s Rights	-	-

3. What likely impact will this policy have on people experiencing different kinds of social disadvantage i.e. The Fairer Scotland Duty (This section to be completed for any Strategic Decisions). Consideration must be given particularly to children and families.

Socio-Economic Disadvantage	Negative Impacts	Positive impacts
Low Income/Income Poverty – cannot afford to maintain regular payments such as bills, food, clothing	-	-
Low and/or no wealth – enough money to meet Basic living costs and pay bills but have no savings to deal with any unexpected spends and no provision for the future	-	-
Material Deprivation – being unable to access basic goods and services i.e. financial products like life insurance, repair/replace broken electrical goods, warm home, leisure/hobbies	-	-
Area Deprivation – where you live (rural areas), where you work (accessibility of transport)	-	-
Socio-economic Background – social class i.e. parent’s education, employment and income	-	-

4. Do you have evidence or reason to believe that the policy will support the Council to:

General Duty and other Equality Themes Consider the ‘Three Key Needs’ of the Equality Duty	Level of Negative and/or Positive Impact (High, Medium or Low)
Eliminate unlawful discrimination, harassment and victimisation	Low
Advance equality of opportunity between people who share a protected characteristic and those who do not	Low
Foster good relations between people who share a protected characteristic and those who do not. (Does it tackle prejudice and promote a better understanding of equality issues?)	Low
Increase participation of particular communities or groups in public life	Low
Improve the health and wellbeing of particular communities or groups	Low
Promote the human rights of particular communities or groups	Low
Tackle deprivation faced by particular communities or groups	Low

5. Summary Assessment

Is a full Equality Impact Assessment required? (A full Equality Impact Assessment must be carried out if impacts identified as Medium and/or High)	YES NO
Rationale for decision: This report recommends certain minor changes to Council procedures but has no material impact on their effect. These changes have no specific equality implications	
Signed : Karen Briggs Date: 9 January 2023	Service Lead