

Policy and Procedures

Authorisation of Covert Surveillance

Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA)

1. Background

- 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 surveillance is carried out in a manner calculated to ensure the subject(s) is unaware that it is or may be 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, or when CCTV is installed for covert surveillance, then authorisation must be obtained.

2. Dumfries and Galloway Council Policy Statement

- 2.1 In some circumstances, it may be necessary for Dumfries and Galloway Council employees, in the course of their duties, to make observations of a person or persons in a covert manner, i.e. carried out in a manner that is calculated to ensure that the person is unaware that it is or may be taking place. By their nature, actions of this sort may constitute an interference with that person's right to respect for privacy and may give rise to legal challenge, for example, 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, home and correspondence).
- 2.2 The Regulation of Investigatory Powers Act 2000 (RIPA) and the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) introduced 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, Dumfries and Galloway Council employees **shall** adhere to the authorisation procedure before conducting any covert surveillance.
- 2.4 Local Authorities are not authorised to carry out intrusive surveillance. Accordingly, employees of Dumfries and Galloway Council cannot lawfully carry out intrusive surveillance within the meaning of the Regulation of Investigatory Powers (Scotland) Act 2000.

2.5 Intrusive surveillance is defined as covert 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 private vehicle. The Regulation of Investigatory Powers (Modification of Authorisations Provisions: Legal Consultations) (Scotland) Order 2015 provides that directed surveillance that is carried out in specified premises is to be treated as intrusive surveillance. As stated above, Local Authorities cannot carry out intrusive surveillance.

See 3.2.5 and 3.2.6 below for the definition of residential premises and private vehicle.

3. Authorisation Procedure: Objective

3.1 The objective of this procedure is to ensure that all work involving directed surveillance by Dumfries and Galloway 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 current version of the Scottish Minister's Code of Practice on the Use of Covert Human Intelligence Sources and the Code of Practice on Covert Surveillance. These can be viewed on the Scottish Government's website - <http://www.gov.scot.uk>

3.2 Definitions of Terms used in the Authorisation Procedure

3.2.1 Directed surveillance is defined in the Code of Practice as covert surveillance that is not intrusive but is carried out in relation to a specific investigation or operation in such a manner as is likely to result in the obtaining of private information about any person (other than by way of an immediate response to events or circumstances such that it is not reasonably practicable to seek authorisation under RIP(S)A) .

For further guidance on this definition see [C v Police \(2006\)](#), a decision of the Investigatory Powers Tribunal.

3.2.2 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.

3.2.3 Authorising Officer is the person who is entitled to give an authorisation for directed surveillance in accordance with section 8 of the Regulation of Investigatory Powers (Scotland) Act 2000, and the Regulation of Investigatory Powers (Prescription of Offices etc. and Specification of Public Authorities) (Scotland) Order 2010.

3.2.4 Private Information, in relation to a person, includes any information relating to the person's private or family life. Private information should be taken generally to include any aspect of a person's private or personal relationship with others, including family and professional or business relationships. Whilst a person may have a reduced expectation of privacy when in a public place, covert surveillance of that person's activities in public may still result in the obtaining of private information if they had an expectation of some degree of privacy.

3.2.5 Residential premises means any premises occupied or used, however temporarily, for residential purposes or otherwise as living accommodation. This includes any place whatsoever, including any vehicle or moveable structure. The following examples would **not** be regarded as residential premises: Communal Stairways in a block of flats; hotel reception area; front garden or driveway of a house; or residential premises occupied by a public authority for non-residential purposes.

3.2.6 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 Authorisation Procedure

4.1 This procedure applies in all cases where 'directed surveillance' is being planned or carried out. Surveillance includes monitoring, observing or listening to people, their movements, conversations or other activities and communications. It may be conducted with or without the assistance of a surveillance device and includes the recording of any information obtained.

4.2 The procedure does not apply to:

- General observations that do not involve the systematic surveillance of specific person(s) (general observation duties as detailed in 2.25 of the code of practice)
- Observations that are not carried out covertly,
- Unplanned observations made as an immediate response to events,
- Covert surveillance activities which are unlikely to result in the obtaining of private information.

4.3 In cases of doubt, the authorisation procedures described below must be followed.

5. Principles of Surveillance

5.1 In planning and carrying out covert surveillance, Dumfries and Galloway 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

Applications where a likelihood of acquiring confidential material has been identified shall always require the approval of the Chief Executive. Confidential material consists of:

- Confidential personal information (for example relating to a person's physical or mental health)
- Confidential constituent information (for example communications between a constituent and their MSP or MP), or
- Confidential journalistic material.

5.4 Social networking sites

The Office of Surveillance Commissioners procedures and [guidance](#) (July 2016) provides guidance on the use of surveillance of this type of site. With reference to expectations of privacy, it may be that repeated viewing of 'open source' sites may constitute covert surveillance and as such an authorisation may be required.

6. **The Authorisation Process**

6.1 Applications for directed surveillance will be authorised at the level of Investigations Manager or Assistant Head of Service, or above, as prescribed by the Regulation of Investigatory Powers (Prescription of Offices etc. and Specification of Public Authorities) (Scotland) Order 2010. Even in cases of urgency, authorisation by officers of a lower grade is not permitted. The RIPSAs monitoring officer, Legal Services, shall keep and maintain a list of authorisers.

6.2 Authorising Officers should not be responsible for authorising investigations or operations in which they are directly involved, although it is recognised that this may sometimes be unavoidable, especially where it is necessary to act urgently. Where an Authorising Officer authorises such an investigation or operation the central record of authorisations should highlight this and it must be brought to the attention of a commissioner or inspector during his or her next inspection. An authoriser could consider asking an authoriser from another Council service to consider an application, if that option is not available within his own service.

6.3 Authorisations shall be in writing. All applications for directed surveillance authorisations will be made on **Form 1** (ref: *RIPSA 1 DS authorising form*). The applicant in all cases must complete this. However, in urgent cases the Authorising Officer may give an oral authorisation. A statement that the Authorising Officer has expressly granted the authorisation must 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 must later be endorsed by the Authorising Officer.

6.4 A written application for a directed surveillance authorisation must describe any conduct to be authorised and the purpose of the investigation or operation. The application must also include:

- the reasons why the authorisation is necessary in the particular case and on the grounds (e.g. for the purpose of preventing or detecting crime) listed in Section 6(3) of RIP(S)A;
- the nature of the surveillance;
- the identities, where known, of those to be the subject of the surveillance;
- a summary of the intelligence case and appropriate unique intelligence references where applicable;
- an explanation of the information which it is desired to obtain as a result of the surveillance;
- the details of any potential collateral intrusion and why the intrusion is justified;
- the details of any confidential information that is likely to be obtained as a consequence of the surveillance;
- the reasons why the surveillance is considered proportionate to what it seeks to achieve;
- the level of authority required (or recommended where that is different) for the surveillance; and,
- a subsequent record of whether authorisation was given or refused, by whom, and the time and date this happened.

6.5 All applications for directed surveillance renewals will be made on **Form 2** (ref: *RIPSA 2 DS renewal form*). The applicant in all cases must 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 3** (ref: *RIPSA 3 DS cancel form*)

6.7 Regular reviews of authorisations must be undertaken to assess the need for the surveillance to continue. The results of a review must be recorded using **Form 4** (ref: *RIPSA 3 DS review form*)

6.8 The forms and supplementary material are available on the Council Intranet and will be reviewed and maintained by the RIPSA inter service working group as necessary.

The Scottish Government's Code Of Practice is accessed at <http://www.gov.scot.uk>

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

- The authorisation is necessary for a prescribed **lawful purpose**. (see 5.2)
- 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

or minimise unnecessary intrusion into the lives of those affected by collateral intrusion. All applications must include an assessment of the risk of collateral intrusion and details of the measures that will be taken to minimise it.

- The authorised surveillance is proportionate in terms of size and scope of the proposed activity, methods to be adopted and if it is the most appropriate use of the legislation.
- Any equipment to be used is specified.
- All those involved are aware of the extent and limitations of the authorisation.

7. Time Periods – Authorisations

7.1 Oral authorisations expire after 72 hours. If required they can be renewed for a further period of 3 months if renewed in writing.

7.2 Written authorisations expire after 3 months beginning on the day from which they took effect.

7.3 It is essential to record the date and time the authorisation was granted on the application form. Details of the authorisation must be recorded on Form 1 which must be kept in accordance with paragraph 12.1 and the monitoring officer shall be provided with a copy of the authorisation form.

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. Details of the renewal must be recorded on Form 2 which must be attached to the original application and the monitoring officer shall be provided with a copy of the renewal form.

8.2 All applications for renewal must record the following

- If this is the first renewal or each time that it has previously been renewed;
- Any significant changes from the original application;
- The reasons for continuing;
- The value of the information obtained so far;
- The results of regular reviews of the investigation or operation.

8.3 Any person entitled to authorise may renew authorisations. They may be renewed more than once, provided they continue to meet the criteria for authorisation. The Scottish Government's Code of Practice recommends that, where possible, renewals are granted by the original Authorising Officer.

9. Review

9.1 The Authorising Officer shall review all authorisations as frequently as is considered necessary and practicable to assess the need for surveillance activity to continue. This should be more frequent where the surveillance provides access to confidential information or involves collateral intrusion. This should be decided on a case by case basis and considered at the outset by the authorising officer.

Details of the review and the decision reached shall be noted on the review form which must be attached to the original application and the monitoring officer shall be provided with a copy of the review form.

- 9.2 Where possible the review should be carried out by the original Authorising Officer.

10 Cancellation

10.1 The Authorising Officer or appropriate deputy must cancel an authorisation if he is satisfied that the directed surveillance no longer satisfies the criteria for authorisation. As soon as the decision is taken that directed surveillance must be discontinued, all those involved must be instructed to stop the surveillance activities.

10.2 **An authorisation must always be formally cancelled; even if it has expired at the end of the 3 month period (or any period of subsequent renewal) An authorisation must not simply be allowed to lapse.** Details of the cancellation must be recorded on Form 3 which must be attached to the original application and the monitoring officer shall be provided with a copy of the cancellation form.

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.

11.2 Regular operational reviews should be undertaken by services and monitored by the Inter Service Working Group to ensure that, for example, RIPSAs training for appropriate staff takes place. A record of all satisfactory training must be retained.

12. Security and Retention of Documents

12.1 Material obtained through the use of directed surveillance must be securely handled and stored and must be appropriately disposed of when no longer required. Authorising officers, through their Data Controller, must ensure compliance with the appropriate data protection requirements under the Data Protection Act 1988 and the Council's Data Protection and Information Security policies. See 12.3 for retention timescales.

12.2 Legal Services will maintain the Central Register of Authorisations. Authorising Officers shall notify the Head of Legal and Democratic Services of the grant, renewal, review or cancellation of any authorisations as soon as practicable and in any event within one week to ensure the accuracy of the Central Register. This will be achieved by sending a signed and dated photocopy of the original form which is to be kept by the service.

12.3 The Authorising Officer shall retain the original Authorisation and, if applicable, renewal and review forms until cancelled. On cancellation, the original application, renewal, review and cancellation forms and any associated documents shall be

retained in a closed file, in a secure place for at least four years from the date of cancellation.

13. The Office of Surveillance Commissioners

- 13.1 The Office of Surveillance Commissioners (OSC) provides an independent overview of the use of the powers contained within the Regulation of Investigatory Powers (Scotland) Act 2000. This scrutiny includes inspection visits to local authorities by Inspectors appointed by the OSC.

14. Complaints

- 14.1 The Regulation of Investigatory Powers Act 2000 (the 'UK Act) establishes the independent Investigatory Powers Tribunal. This has full powers to investigate and decide any cases within its jurisdiction, including cases under RIP(S)A, Information on the Tribunal is available at <http://www.ipt-uk.com/>
- 14.2 The Council will ensure that copies of the Tribunal's information sheet, its complaint form and its Human Rights Act claim form will be made available by accessing the Council's internet site and if a request is made for one or more of these at a public Council office it should be downloaded from the internet and given to the requester. These documents can be downloaded from the [complaints page](#) .
- 14.3 To better inform potential complainers there is a requirement to make available for reference copies of the relevant Codes of Practice produced by the Scottish Government. These will be made available at public offices of Dumfries and Galloway Council by downloading from the Scottish Government's website as well as being accessible through the Council's internet web-site through the following hyperlink - <http://www.gov.scot.uk>

15. Policy Review

This policy shall be reviewed on an annual basis and approved by Elected Members.

Directed Surveillance Policy and Procedures end.