

ABERDEEN CITY COUNCIL

COMMITTEE	FINANCE, POLICY & RESOURCES COMMITTEE
DATE	15 TH SEPTEMBER 2015
INTERIM DIRECTOR	ANGELA SCOTT, CHIEF EXECUTIVE
TITLE OF REPORT	REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 ("RIPSA") – CORPORATE PROTOCOL AND PROCEDURES AND TRAINING PLAN
REPORT NUMBER:	CG/15/90
CHECKLIST RECEIVED	YES

1. PURPOSE OF REPORT

The purpose of this report is to seek Members approval of the revised Aberdeen City Council Corporate Protocol and Procedures on Covert Surveillance. In addition, the report outlines a newly developed RIPSA Training Plan for Members endorsement.

2. RECOMMENDATION(S)

It is recommended that the Committee:

- 2.1 Approve the Revised Aberdeen City Council Corporate Protocol on Covert Surveillance as set out in Appendix 1 of this report.
- 2.2 Endorse the RIPSA Training Plan detailed in Appendix 2 of this report.
- 2.3 Otherwise note the report.

3. FINANCIAL IMPLICATIONS

There are no financial implications at this time as delivery of the training programme outlined within the RIPSA training policy will be delivered within existing resources.

4. OTHER IMPLICATIONS

Failure to have proper arrangements in place for the management of covert activities may leave the Council open to challenge on the legality of investigations and would have detrimental impact on the operation of a number of areas of investigatory and enforcement work.

5. BACKGROUND/MAIN ISSUES

- 5.1 There are a range of situations in which the Council's employees, in the course of their duties, have to carry out investigations and activities which, by their very nature are covert, i.e. they are concealed, secret or clandestine. In accordance with the Human Rights Act 1998, it is essential that covert investigations are compatible with Article 8 of European Convention on Human Rights (ECHR) which states that: *"everyone has the right to respect of family and private life, his home and correspondence"*.
- 5.2 The Regulation of Investigatory Powers (Scotland) Act ("RIPSA") came into force on 29th September 2000 and is applicable in Scotland only. It provides a legal framework for covert surveillance by public authorities and an independent inspection regime to monitor these activities. RIPSA sets out a process for the authorisation of covert surveillance by designated officers, for the duration of that authorisation and for the review, termination or renewal of authorisations.
- 5.3 The primary purpose of RIPSA is to ensure compliance with ECHR Article 8 in relation to covert surveillance. As such, so long as local authority investigators, acting in the course of their duties, ensure that they obtain authorisation **and** that they act in accordance with that authorisation, any interference with Article 8 rights will be in accordance with the law and therefore the activities and evidence of investigating officers will be lawful.
- 5.4 The Office of the Surveillance Commissioner is responsible for overseeing the use of covert surveillance by designated public authorities based in the UK, of which the Council is one. OSC conduct an inspection of the Council's arrangements in respect of RIPSA every three years. Previous inspections took place in 2005, 2008 and 2011. The recommendations arising from previous audits were all implemented prior to the 2014 inspection which took place on 24th April 2014.
- 5.5 The Full Inspection Report concluded that the *"Council has invested considerable resources in aiming for legislative compliance and the policies, guidance and training materials provide good examples of how Councils can be properly prepared. Most of the staff seen by the Inspector know and understand what is required, save in relation to CHIS (Covert Human Intelligence Source)."*

- 5.6 The Inspection Report makes three recommendations, namely:
- 5.6.1 That the Council amends its protocol and procedures document to address the issues discussed in the Inspection Report.
 - 5.6.2 That there should be an audit of Council Staff to identify those who hold either an investigative or enforcement function and then provide training tailored to the needs of those officers on RIPSAs to ensure that they have the knowledge required which is commensurate with their responsibilities.
 - 5.6.3 That authorisations should always address in full the activity authorised, where and how: this should be monitored by the oversight regime which should also be taking steps to ensure that all authorisations are cancelled as soon as they are no longer required.
- 5.7 An action plan to address these recommendations was considered and approved by the Audit, Risk & Scrutiny Committee at its meeting on 23rd September 2014. Since then, Officers within Legal Services have been implementing the agreed actions and, in connection with Recommendation 1, a revised Corporate Protocol and Procedure document is presented to Members for approval via this report.
- 5.8 The Aberdeen City Council Corporate Protocol and Procedures on Covert Surveillance outlines the core principles which apply within Aberdeen City Council in respect of the use of covert surveillance by staff. Further, it outlines the process which must be followed in situations where directed surveillance or a Covert Human Intelligence Source is to be utilised by Aberdeen City Council.
- 5.9 The Protocol and Procedure document are designed to be used alongside the Scottish Government Code of Practice on Covert Surveillance and Property Interference and the Scottish Government Code of Practice on the Use of Covert Human Intelligence sources. The procedures have been revised and updated to address the specific comments made by the OSC Inspector during his inspection in 2014 and to incorporate best practice as detailed in the December 2014 published OSC Revised Procedures and Guidance for Covert Surveillance.
- 5.10 The RIPSAs Training Plan has been developed in order to meet Recommendation 2 of the OSC Inspection undertaken in 2014. Following a desk top audit of job roles, a process is in place to categorise each Job Role within Aberdeen City Council as a Tier

0, Tier 1, Tier 2 or Tier 3 post. The Training Plan addresses the training needs for each Tier, ranging from general awareness raising for Tier 3 identified posts to detailed and in depth training for Tier 0 identified posts. Further, the Training Plan identifies the frequency to which training refresher / update will be required for each Tier. Training to meet the needs of officers at all 4 Tiers is presently being developed and roll out of revised training opportunities will commence in October 2015.

6. IMPACT

Failure to have in place proper arrangements for the management of the Council's covert activities has a potential negative impact on the Council's compliance with the obligations arising from the ECHR.

7. MANAGEMENT OF RISK

Proper procedures for the management of any covert activities undertaken by the Council are necessary in order to ensure the Council is compliant with legislation and that the risk of interference with individuals human rights is minimised. Implementing the Recommendations arising from the OSC Inspection of the Council's arrangements supports the management of this risk by ensuring the Council's arrangements reflect best practice as highlighted during the Inspection process.

8. BACKGROUND PAPERS

None

9. REPORT AUTHOR DETAILS

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APPENDIX ONE – DRAFT RIPSA PROTOCOL

Aberdeen City Council

Corporate Protocol and Procedures on Covert Surveillance

Issue 2 (August 2015)

Contents

Section One:	Introduction
Section Two:	Overview legislative position
Section Three:	Definitions
Section Four:	Key Principles
Section Five:	Training
Section Six:	Covert Human Intelligence Sources (CHIS)
Section Seven:	Application Process
Section Eight:	Authorising Officers
Section Nine:	Authorising Process
Section Ten:	Authorisation, Review and Cancellation
Section Eleven:	Monitoring and Quality Control
Section Twelve:	Oversight of Covert Surveillance Arrangements
Section Thirteen:	Complaints
Section Fourteen:	Further Information

1. Introduction

- 1.1 This protocol provides an overview of the arrangements Aberdeen City Council has in place to manage occasions on which it is necessary for Officers to undertake covert surveillance, either via Directed Surveillance (DS) or through the use of a Covert Human Intelligence Source (CHIS).
- 1.2 This Protocol and Procedure document should be used in conjunction with the Scottish Government “Covert Surveillance and Property Interference Code of Practice”, the Scottish Government “Use of Covert Human

Intelligence Sources Code of Practice” and the Office of the Surveillance Commissioners (OSC) “Revised Procedures and Guidance for Covert Surveillance”. All three publications are available on the RIPSA page of the Zone.

2. Overview of Legislative Position

- 2.1 There are a range of situations in which the Council’s employees, in the course of their duties, have to carry out investigations and activities which, by their very nature are **covert**, i.e. they are concealed, secret or clandestine.
- 2.2 Under the Human Rights Act 1998 (‘HRA 1998’) it is unlawful for a public authority to act in a way which is incompatible with a European Convention on Human Rights (‘ECHR’) right.
- 2.3 In accordance with the HRA 1998, it is essential that covert investigations are compatible with Article 8 of ECHR which states that: *“everyone has the right to respect for his private and family life, his home and correspondence”*.
- 2.4 The rights guaranteed in Article 8 can be interfered with if such action can be justified as being in accordance with the law and necessary in the interests of at least one of the following:
 - national security;
 - public safety;
 - the economic well-being of the country;
 - the prevention of disorder or crime;
 - the protection of health or morals; or
 - the protection of the rights and freedoms of others.
- 2.5 The Regulation of Investigatory Powers (Scotland) Act 2000 (“RIPSA”) came into force on 29th September 2000 and is applicable in Scotland only. It provides a legal framework for covert surveillance by public authorities and an independent inspection regime to monitor these activities. RIPSA sets out a process for the authorisation of covert surveillance by designated officers, for the duration of that authorisation and for the review, termination or renewal of authorisations.
- 2.6 The primary purpose of RIPSA is to ensure compliance with ECHR Article 8 in relation to covert surveillance. As such, so long as local authority investigators, acting in the course of their duties, ensure that they obtain authorisation **and** that they act in accordance with that authorisation, any

interference with Article 8 rights will be in accordance with the law and therefore the activities and evidence of investigating officers will be lawful.

3. Definitions

3.1 Surveillance includes:

- Monitoring, observing or listening to persons, their movements, their conversation or their other activities or communication.
- Recording anything that is monitored, observed or listened to in the course of surveillance.
- Surveillance by or with the assistance of a surveillance device

3.2 Surveillance can be overt or covert.

- Overt: Surveillance is overt where it is carried out in such a way that anyone subject to it is aware that the surveillance is taking place

Examples:

- CCTV cameras recording general scene since members of the public should have been aware of such use by placed notices
- City Warden observations in the Community as their presence will be obvious due to their uniforms.

- Covert: Surveillance is covert where it is carried out in such a way that anyone subject to it is unaware that the surveillance is taking place.

Examples:

- External Agency requesting access to Council CCTV system to undertake a specific investigation
- Covert video recording of Trading Standards test purchasing
- Covert monitoring of Social Media Profile(s) of a client / customer

3.3 RIPSAs only applies to **covert surveillance** – no authorisation is necessary for overt surveillance. Officers who are unsure if the surveillance they plan to

conduct is overt or covert should seek advice from Team 2, Commercial and Advice, Legal Services prior to undertaking the surveillance.

3.4 Covert Surveillance should only be undertaken by suitably trained or experienced employees and consideration must be given to employees Health & Safety at all times.

3.5 There are three types of covert surveillance, only two of which Aberdeen City Council can conduct:

- **Directed Surveillance (DS)**

- Surveillance which is covert but not intrusive and undertaken:
 - For the purposes of a specific investigation or specific operation
 - and
 - In such a manner as is likely to result in the obtaining of private information about any person.
- Private information includes information relating to the person's private or family life including the way in which a business is run

- **Covert Human Intelligence Source (CHIS)** (See section 6 for further guidance)

- A CHIS establishes or maintains a false personal relationship with others to obtain or access information covertly
- Covers some 'undercover work' undertaken by local authorities where the officer (without disclosing his or her true identity) pursues an investigation by dealing with a particular individual gaining their confidence with a view to securing information
- May also apply to situations where a Council Officer receives information from someone who approaches them voluntarily on repeated occasions.

- **Intrusive Surveillance**

- Covert surveillance carried out in relation to anything taking place on any residential premises or in any private vehicle which

involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

- No provision within RIPSA for a local authority to conduct intrusive surveillance, only a Chief Constable can authorise such surveillance being undertaken.
- As such, Local Authority Officers **MUST NOT** engage in intrusive surveillance

4. Key Principles

4.1 In order to be lawful, covert surveillance must:

- Have a **lawful purpose** which directly relates to Aberdeen City Council's regulatory functions and be in pursuance of one of the following:
 - For the purpose of preventing or detecting crime or the prevention of disorder
 - In the interests of public safety
 - For the purposes of protecting public health
 - For any other purpose prescribed in an order made by the Scottish Ministers.
- Be **necessary**
 - Covert surveillance can only be undertaken where there is no reasonable and effective alternative way of achieving the desired objectives.
 - Necessity must be viewed in all of the circumstances of the specific case
- Be **proportionate**
 - The use and extent of covert surveillance should not be excessive and should be proportionate to the significance of what is being investigated.

- If the same information could be gathered by less infringement of a citizen's rights then the lesser path should be taken.
 - In considering proportionality consideration should be given to the seriousness of the alleged behaviour / breach
- 4.2 In addition, surveillance should be planned in such a way as to avoid any confidential material, such as matters subject to legal privilege, confidential medical information or confidential journalistic material, from being obtained and applications where there is a significant risk of acquiring confidential material require to be authorised by the Chief Executive or, in her absence, the Director who is deputising for her as Head of Paid Service.

5. Training

- 5.1 Aberdeen City Council has a RISPA Training Policy. This identifies a process whereby each job role within the authority is tiered as applicable to the roles exposure to Covert Surveillance activities.
- 5.2 Any officer of the Council who wishes to make an application for authorisation for Covert Surveillance **MUST** have undertaken the Tier 1 training as detailed in this Training Policy prior to doing so.

6. Covert Human Intelligence Source (CHIS)

- 6.1 Where an employee establishes or maintains a relationship with a view to obtaining or accessing information covertly, a CHIS Authorisation is necessary. This includes situations where, without disclosing his or her true identity, an officer pursues an investigation by dealing with a particular individual over a prolonged period thereby gaining this confidence with a view to securing information.
- 6.2 In addition, a CHIS can be a person who supplies information to a Council employee on a purely voluntary basis where it has not been sought out by the authority. If the information being provided is recorded as potentially useful or actionable, the Council has a duty of care to the individual and, in order to manage this source appropriately, an authorisation may be necessary. In situations where the Council is receiving information from a voluntary source, particularly attention must be given to paragraphs 2.16; 2.17 and 2.23 – 2.25 of the Scottish Government "Covert Human Intelligence Sources Code of Practices".
- 6.3 There are a number of groups to which special consideration must be given prior to their use as a CHIS:

- Juvenile: Juvenile source are those under the age of 18. The maximum duration of authorisation for juvenile sources is one month as opposed to the usual 12 month duration for adult sources.
- Vulnerable Individuals: A vulnerable individual is a person who may be in need of community care services by reason of mental or other disability, age or illness **and** who is or may be unable to take care of himself, or be unable to protect himself from significant harm of exploitation. Only in the most exceptional of circumstances should vulnerable individual be authorised as a source.

Only the Chief Executive, or in her absence the Director deputising for her as Head of Paid Service, can authorise an application to authorise the use of juveniles or vulnerable individuals as a source.

6.4 Authorisation for the use of a Covert Human Intelligence Source (CHIS) can only be granted if sufficient arrangements are in place for handling the Source. Those arrangements that are required are:

- That a suitably training and / or experienced Officer is appointed as the Handler of the Source. The Handler is responsible for dealing with the CHIS on behalf of the Council; directing the day to day activities of the CHIS; recording information supplied by the CHIS and monitoring the CHIS's security and welfare.
- That a suitably senior Officer, normally the Handler's Line Manager, is appointed as the Controller of the Source. The Controller is responsible for the supervision of the Handler and for general oversight of the use of the CHIS.
- That the Authorising Officer is satisfied that suitable arrangements are in place for maintaining a record of the use made of the source including:
 - The identity of the Source and the identity used by the Source in the operation
 - The detail of any other relevant investigating authority involved
 - The means by which the Source is referred in each investigating authority
 - Any other significant information connected with the security and welfare of the source and confirmation these have been properly explained to and understood by the Source
 - The date when and the circumstances in which the Source was recruited

- The identities of the Handler, Controller and Authorising Officers and the period(s) in which these people have discharged their responsibilities
- All contacts / communications between the Source and the Handler
- Information obtained through the conduct on use of the Source and any dissemination of that information.

7. Application Process

- 7.1 Prior to any application being made, the applicant must contact the Secretary to the Head of Legal & Democratic Services (E-mail: adonald@aberdeencity.gov.uk; Ext: 3031) to request a Unique Application Reference Number which will apply to the application. This Number must be inserted on each page of the application form.
- 7.2 Before any specific covert surveillance is undertaken, the relevant officer requires to complete a “Directed Surveillance Application Form” or a “CHIS Application Form”, print and sign the application and submit it in hard copy to an Authorising Officer for consideration. These application forms can be downloaded from the RIPSAs page on the Zone. No Covert Surveillance can be undertaken prior to a specific authorisation being granted.
- 7.3 The role of the Applicant is to present the facts to the Authorising Officer. Facts must include:
- The **issue** being investigated;
 - **Why** the investigation has to be covert;
 - **What** covert surveillance is requested and why;
 - **Where** and **When** the covert surveillance will take place;
 - **Who** the covert surveillance will focus on;
 - **Who** else may be affected by the covert surveillance;
 - **How** it is intended to conduct the covert surveillance.

Further, for an application for the authorisation of a use of a CHIS, the following additional information is also required:

- The **identity** of the CHIS, the Controller and the Handler.
- Details of the risk assessment undertaken on the **security** and **welfare** of using the source.

In addition, the completed Application Form must provide sufficient detail to allow the following points to be considered:

- Necessity
 - The application must state which of the four purposes outlined in paragraph 4.1 above apply.
 - In addition, specific detail of which legislative provision(s) apply, and/or which powers the Council is seeking to utilise, should be detailed.
 - The application must detail why the application is necessary at the time it is made, it is not appropriate to seek authorisation for activities that may be necessary at some point in the future.

- Effectiveness
 - The application must detail how the covert surveillance will be undertaken and who will do it, the time period(s) and date(s) when it will be done, and the location. It can be useful to provide a map or illustration of the site in order to demonstrate to the Authorising Officer the sight lines and why the location chosen is suitable for the intended operation.

- Collateral Intrusion
 - The application must demonstrate that account has been taken of the likely nature and degree of intrusion into the privacy of persons other than the intended target of the investigation.
 - The application must detail what measures will be taken to avoid unnecessary intrusion into the lives of others. It is necessary that all reasonable practicable measures are implemented.

- Proportionality
 - The application should outline the following factors for the Authorising Officers consideration:
 - The balance of the size and scope of the operation against the gravity and extent of the perceived mischief
 - How and why the methods proposed will cause the least possible intrusion on the target and other people
 - That the covert surveillance activity proposed is the only reasonable way, having considered any other possible ways, of obtaining the desired result

Further guidance on proportionality is set out in a Guidance Note on Proportionality which is contained in Appendix One of this protocol and is also available on the Zone.

A guide on completing the application form is contained in Appendix Two of this protocol.

The entire application process is summarised in a flowchart in Appendix Three of this protocol.

- 7.4 Upon completion, the application form is passed to one of the Council's four Authorising Officers.

8. Authorising Officers

- 8.1 An Authorising Officer is a person who is entitled to give an authorisation for covert surveillance in accordance with the applicable regulations. No other officer, with the exception of that outlined in paragraph 8.3 below, is able to authorise covert surveillance to take place.
- 8.2 It is the responsibility of the Authorising Officer to assess and approve the necessity and proportionality of any proposed covert surveillance activity.
- 8.3 Aberdeen City Council has four RIPSAs Authorising Officers:

Name	Job Title	Contact Details
Carole Jackson	Protective Services Manager	E-mail: cjackson@aberdeencity.gov.uk Ext: 2057
Hugh Murdoch	Transportation Manager	E-mail: hughm@aberdeencity.gov.uk Ext: 3965
Wayne Connell	Revenue & Benefits Manager	E-mail: waynec@aberdeencity.gov.uk Ext: 6868
Wendy Carle	Housing Manager	E-mail: wcarle@aberdeencity.gov.uk Ext: 89526

- 8.4 In addition, and as stated in paragraph 4.2 above, if there is a significant risk of confidential material (for example matters subject to legal privilege, confidential medical information or confidential journalistic material) being acquired during the covert surveillance, the application requires to be authorised by the Chief Executive or, in her absence, by the Director who is deputising for her as Head of Paid Service.

9. Authorising Process

- 9.1 Authorising Officers should avoid authorising activities / operations for which they have responsibility wherever possible and should only do so in exceptional circumstances.
- 9.2 Prior to authorising the use of directed surveillance, Authorising Officers must satisfy themselves that:
- The application form has been completed correctly and that it addresses all the requirements of RIPSAs and the Code of Practice on Covert Surveillance and Property Interference and/or the Code of Practice on the Use of a Covert Human Intelligence Source.
 - That the application is for one of the lawful purposes set out in the Act
 - Whether all of the required considerations have been addressed adequately
- 9.3 Where there is insufficient evidence within the application to enable the Authorising Officer to adequately consider the use of directed surveillance or a CHIS, the Authorising Officer should be prepared to challenge the content of the application form and refuse or limit the extent of authorisation.
- 9.4 Authorising Officers must also consider the health and safety of the staff involved prior to giving authorisation, in line with current Council policies and procedures. For this purpose, when completing the application, a risk assessment must be carried out and recorded on the application form. The risk assessment must determine the risk to the source of the tasking proposed. The likely consequences should the role of the source become known and the on-going security and welfare of the source both during the authorisation and following the cancellation of the authorisation.
- 9.5 Authorising Officers determine whether to approve or refuse the application for covert surveillance. If the application is approved, the Authorising Officer must detail:
- A description of the covert surveillance activity authorised
 - Detail of the exact extent of the covert conduct authorised including the time period(s) in which it will take place and the location(s) where it will be conducted. The “5 W’s” – **Who, What, Where, When** and **How** – must be detailed clearly in the application.

This may not always accord with the full extent of the application and will depend on circumstances.

- 9.6 It is **essential** that all original paperwork be forwarded by Authorising Officers to the Head of Legal & Democratic Services who maintains the Central

Register of all Directed Surveillance and CHIS Applications and Authorisations. All documents created under RIPSAs are highly confidential and shall be treated as such. All will be stored, retained and destroyed within the requirements of the Data Protection Act 1998 and any relevant retention policy of the Council.

- 9.7 Where it is in the overriding public interest to secure information by covert surveillance as a matter of urgency, when it would not be practicable to do anything other than act immediately, urgent authorisation can be granted verbally. Such authorisation can last for a maximum of 72 hours and must be recorded in writing as soon as reasonably practicable.

10. Authorisation Review and Cancellation

- 10.1 Each written authorisation for Directed Surveillance expires **3 months** after the date on which it was granted. A written authorisation for a CHIS expires **12 months** after the date on which it was granted. At any time before an authorisation expires, it can be **extended** for a further 3 month period, subject to an Authorising Officer agreeing that such an extension is necessary.
- 10.2 In addition, each authorised covert surveillance operation must be **reviewed** at intervals of not more than one month by the Authorising Officer who authorised the application. Any changes in circumstances must be considered. The review may lead to the authorisation being continued, the authorisation being varied or the authorisation being cancelled. Where it is not reasonably practicable for the same Authorising Officer to undertake the review (i.e they are out of the country, or have left employment with Aberdeen City Council), the review can be undertaken by another Authorising Officer.
- 10.3 The Authorising Officer who granted or last renewed the authorisation must **cancel** an authorisation if he/she is satisfied that the directed surveillance operation is no longer necessary or proportionate. The cancellation should occur as soon as possible. Where it is not reasonably practicable for the same Authorising Officer to undertake the cancellation (i.e they are out of the country, or have left employment with Aberdeen City Council), the cancellation can be made by another Authorising Officer.
- 10.4 All original review and cancellation paperwork must be forwarded by the Authorising Officer to the Head of Legal & Democratic Services for retention in the Central Register. As previously, documents within the central register are highly confidential and will be stored, retained and destroyed within the requirements of the Data Protection Act 1998 and any relevant retention policy of the Council.

11. Monitoring and Quality Control

- 11.1 Each Service or discrete location within a Service must maintain its own record of all applications made for authorisation, including instances where an application has been refused, renewals, reviews and cancellations. This record must be kept in a secure, locked location. Separate files should be maintained in respect of the authorisation of directed surveillance and the authorisation of covert human intelligence sources.
- 11.2 All original paperwork and operational practice will be reviewed by appropriate Officers as Applications are received by the Head of Legal & Democratic Services. The purpose of these reviews will be to identify any areas of procedural or policy weakness. If necessary, Applicant Officers and Authorising Officers may be contacted as part of this review and learning points from each will be addressed via appropriately formatted briefings.

12. Oversight of Covert Surveillance Arrangements

- 12.1 The Office of Surveillance Commissioners (OSC) provides independent oversight of the use of powers contained within RIPSA.
- 12.2 OSC conduct Inspection Visits to each public authority on a triannual basis during which a sample of applications for authorisation are reviewed by the Inspector in detail.

13. Complaints

- 13.1 The Regulation of Investigatory Powers Act 2000 ("the UK Act") establishes an Independent Tribunal, called the Investigatory Powers Tribunal. This Tribunal has jurisdiction for authorisations granted under the Scottish Act.
- 13.2 The Tribunal is a court which investigates and determines complaints of unlawful use of covert techniques by public authorities which infringe on an individual's right to privacy.

14. Further Information

- 14.1 Further information about the Council's procedures for authorising Covert Surveillance can be accessed on the Zone -
http://thezone/cg/LegalServices/rm_covertsurveillance.asp

Also available on this page is:

- Scottish Government Covert Surveillance and Property Interference Code of Practice
- Scottish Government Covert Human Intelligence Sources Code of Practice
- Office of Surveillance Commissioner Procedures and Guidance: Oversight arrangements for covert surveillance and property interference conducted by public authorities (NB: This publication must not be shared externally to Aberdeen City Council)

14.2 Further advice on any aspect of Covert Surveillance procedures can be sought by any Service from Legal Services by contacting the Team Leader (Team 2 – Commercial & Advice).

APPENDIX ONE

Guidance Note on Proportionality

The term's 'necessity' and 'proportionality' are not defined within RIPSAs, but are 'imported from the European Convention on Human Rights.

'Necessity' is a concept which guards against the arbitrary interference with a citizen's rights. There are three statutory grounds of 'necessity' inherent in section 6(3) of RIPSAs, namely; the prevention and detection of crime or prevention of disorder, the interests of public safety and the protection of public health. In addition to this, the law requires the interference to be proportionate and in response to a pressing 'social need'.

'Proportionality' is a difficult concept to grasp but a paramount consideration for Officers who are responsible for completing and authorising Application forms for Directed Surveillance and the use of a Covert Human Intelligence Source or CHIS.

Proportionality-

An illustration of how the Court assesses the 'proportionality test' can be found on the case of *Peck v UK*. Footage of Peck carrying a large knife was captured on CCTV cameras in Brentwood High Street, shortly after his attempt to commit suicide. The CCTV operator (an employee of Brentwood County Council) contacted the Police who arrested Peck and detained him under Mental Health legislation. A few months later, stills from the CCTV footage were used in an advertising campaign to promote the CCTV system.

Further to this, footage of Peck was broadcast on national television. Although Peck's face had been masked in one of the broadcasts, the masking was held to be inadequate, as persons who knew Peck could easily identify him from the footage. Peck then made an application to the European Court of Human Rights on the grounds that his rights under Articles 8 (right to respect for private and family life) had been violated. Peck argued that it was the disclosure of that footage to the

public in a manner in which he could never have foreseen which gave rise to such an interference.

In considering whether the interference with his right to privacy was proportionate, the Court had regard to:

1. the failure of the Council to attempt to identify Peck and seek his consent to the disclosure of the footage,
2. the failure of the Council to have 'masked' the image of Peck or enter into a written agreement with the media organisations ensuring that this would be done appropriately,
3. the strong interest the Government has in detecting and preventing crime by use of a CCTV system, and
4. the purpose for publishing the footage.

The Court held that Peck was a victim of a serious interference with his right to privacy involving national and local media coverage. In addition, disclosures by the Council of the CCTV material in 'CCTV news' and to the 'Yellow Advertiser', Anglia television, and the BBC were not accompanied by sufficient safeguards to prevent disclosure inconsistent with the guarantees of respect for the Peck's private life contained in Article 8. As such, the disclosure constituted a disproportionate and therefore unjustified interference with his private life and a violation of Article 8.

Officers should have in mind a wide range of factors when assessing whether an investigation is 'proportionate' to the achieved aim. Below is listed for information some considerations that should be taken into account. This list is not exclusive.

- Interests affected

Identify whose and what interests are affected. Have you considered the risks involved and prepared for them?

- Extent of interference

Must have regard to the extent of the interference, have less intrusive measures been exhausted first, can you consult with other agencies?

- Duration of the interference

Duration should not be excessive, consider planning, times and places of surveillance.

- Seriousness of the offence involved

Is surveillance excessive in light of the offence involved? Is there a pressing social need?

- Availability of less intrusive alternatives of investigation

Can the aim of the investigation be achieved without surveillance?

- Structured objectives

Operational implications of the investigation

- Absence of irrationality, arbitrariness and unfairness

Are you being unfair, have you made reasonable enquiries with the individual prior to considering surveillance, is what you wish to do relevant? Can you justify interfering with that person's human rights to achieve your aim?

- Relevant and sufficient reasons affected

Be clear with your decision making and evidence on the application form that you have considered the above.

Ultimately, a balance will be required to be struck between the needs of society and the rights of individuals.

APPENDIX TWO

Guide on completing the Application Form



REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 (RIP(S) ACT)

APPLICATION FOR AUTHORISATION TO CARRY OUT DIRECTED SURVEILLANCE

Unique Reference
Number* (*Filing Ref)

Insert the unique reference number provided by the Head of Legal's PA. This should be inserted on every page.

Public Authority <i>(including full address)</i>	ABERDEEN CITY COUNCIL Town House Broad Street ABERDEEN AB10 1AQ
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Insert the section/department the applicant works in.

This should be the investigating officer's full name.

Name of Applicant	Unit/Branch/Division
Full Address	
Contact Details	
Investigation/Operation Name (if applicable)	

This should be the full postal address.

All known contact details should be provided. Include the dialling code, extension numbers and email address.

An operation or investigation name or reference number must be included. This must be something that officers can link to the record/ file within their office that corresponds with the complaint, allegation or investigation.

Details of application:

1. Give rank or position of authorising officer in accordance with The Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Order 2000, No 343; The Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Amendment Order 2001, No. 87; and The Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Amendment (No. 2) Order 2003, No. 50 ¹

It is a statutory requirement that certain officers are granted powers to authorise surveillance. In ACC this is the Director, Head of Service or Third Tier officer, where appropriate. The full job details of the authorised officer must be inserted here including their level in ACC. For up to date information, see the Zone.

Why are you investigating this subject matter, what piece of legislation empowers you to undertake an investigation and enforce that particular law/ offence?

2. Describe the conduct to be authorised and purpose of the investigation or operation.

3. Identify which grounds the directed surveillance is necessary under section 6(3) of RIP(S) Act. *delete as inapplicable*

- For the purpose of preventing or detecting crime or of preventing disorder;
- In the interests of public safety;
- For the purpose of protecting public health.

One of the grounds must be selected and the other non relevant grounds deleted. If you select the first ground, you will be required to detail what alleged crime/ offence has been committed. If you cannot satisfy a ground you should not continue with the application.

¹ For Local authorities: The exact position of the authorising officer should be given. For example, Head of rather than officer responsible for the management of an investigation.

4. Explain why directed surveillance is necessary in this particular case.

You are required to explain why a covert operation will obtain the information you want

5. Explain why the directed surveillance is proportionate to what it seeks to achieve (why is the intrusion outweighed by the need for surveillance in operational terms or can the evidence be obtained by any other means?)
--

Expanding on what you've put in 4. above, be clear about what efforts you've made to ascertain the information prior to this application e.g. house visits, written communication. Is what you are intending on doing excessive, is there a less intrusive way to get the information/ intelligence required? Have previous attempts of ascertaining the information failed?

--

6. Describe the nature of the surveillance to be authorised, including any premises or vehicles involved (e.g. camera, binoculars, video recorder) that may be used.

--

You should include in this section whether surveillance is static, on foot, in a vehicle or a residence. Also what the surveillance involves; cameras, video, photographs, visual monitoring equipment, notebooks etc, whether a corroborating officer will be undertaking the surveillance; the times and location of the surveillance e.g the postal address. If you have a map of the area you are carrying out the surveillance in, mark this up and attach this to the application form.

7. Provide details of the investigation or operation to be carried out. The identities, where known, of those to be subject of the directed surveillance.
--

Name: Address: Date of Birth: Other information as appropriate:
--

Where this information is known please ensure you insert it. If you have a description of the subject of surveillance then this should also be included. If you do not know the details of the subject, clarify why these details aren't known.

8. Explanation of the information which it is desired to obtain as a result of the directed surveillance.

You should include here what you want the surveillance to provide. This can be an expansion or repetition of 2.

Either include a copy of a risk assessment or detail what the risks are, how you have planned to minimise them and what exit strategy you have employed. Always have regard to the type of location someone is being tasked to observe/visit.

9. Details of risk assessment on the security and welfare of those carrying out the directed surveillance.

10. Collateral intrusion.

THE USE OF DIRECT SURVEILLANCE WITHIN THE PUBLIC DOMAIN WILL LEAD TO COLLATERAL INTRUSION OF OTHERS NOT ENGAGED IN SUSPECTED ILLEGAL OR CRIMINAL ACTIVITY. PERSONS WHO HAVE LEGITIMATE ACCESS TO AREAS WHICH ARE SUBJECT TO COVERT SURVEILLANCE MAY BE SUBJECTED TO COLLATERAL INTRUSION. ALL REASONABLE EFFORTS MUST BE MADE TO MINIMISE COLLATERAL INTRUSION. THIS WILL INCLUDE:

- UTILISATION OF TRAINED SURVEILLANCE OPERATIVES WITH APPROPRIATE KNOWLEDGE AND EXPERTISE
- FOCUSING OF SURVEILLANCE ON THE SUBJECTS OF AUTHORISATION
- DAILY BRIEFING AND DEBRIEFING OF AND TO LINE MANAGERS
- CONSTANT REVIEW AND ASSESSMENT OF OPERATIONAL TACTICS.

INDICATE THE EXTENT OF ANY POTENTIAL FOR COLLATERAL INTRUSION ON PERSONS OTHER THAN THOSE TARGETED: (INCLUDING DETAILS IN THE BOX BELOW OF PLANS TO MINIMISE COLLATERAL INTRUSION)

In this section you need to be clear as to the potential for collateral intrusion. If others may also be surveyed, you need to identify how you will minimise this risk, if possible and what steps you'll take to record your observations.

Unique Reference
Number* (*Filing Ref)

11. Confidential Information

INDICATE THE LIKELIHOOD OF ACQUIRING ANY CONFIDENTIAL INFORMATION:

Confidential information is information which is subject to legal professional privilege (communications between a professional legal adviser and their client), personal information (such as information relating to someone's physical or mental health e.g. medical records) and journalistic material, e.g. the source of information. Any investigation/ operation which is likely to obtain confidential information should be authorised by the Chief Executive.

12. Anticipated Start

Date:

Time:

13. Applicant's Details

Name (print)

Tel No:

Grade/Rank

Date:

Signature

This section is to be completed by the Applicant

14. Confirmation of urgent authorisation: details of why application is urgent.

15. Authorising Officer's comments explaining why in his view the directed surveillance is necessary and proportionate. This box must be completed.

In this section the Authorising Officer needs to expand on why the surveillance is required, and why having regard to all the circumstances, it should be authorised.

An urgent authorisation may be authorised if an officer was out on official duty but not working under an authorisation and the authorising officer was of the view that the time taken to authorise the surveillance would be likely to endanger life or jeopardise the investigation or operation for which the authorisation was being sought. Details of the time, date and reason for granting an urgent authorisation should be completed by the Authorising Officer who sanctioned it.

Unique Reference Number* (*Filing Ref)	
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16. Authorising Officer's Statement

I, [insert name], hereby authorise the following directed surveillance investigation/operation []. This authorisation will cease to have effect at the end of the period of three months commencing on the date of authorisation, unless renewed in writing (see separate form for renewals).

This authorisation will be reviewed frequently (see below) to assess the need for the authorisation to continue.

Name (Print):		Grade/Rank:	
Signature:		Date:	
		Time:	

Date of first review:	
Date of subsequent reviews of this authorisation:	

In this section the Authorising Officer should explain in his/her own words What is being authorised, Why the surveillance is necessary, whom the surveillance will be directed against, Where and When it will take place, what surveillance activity/ equipment will be used and How is it to be achieved.

16. Confidential Information Authorisation.

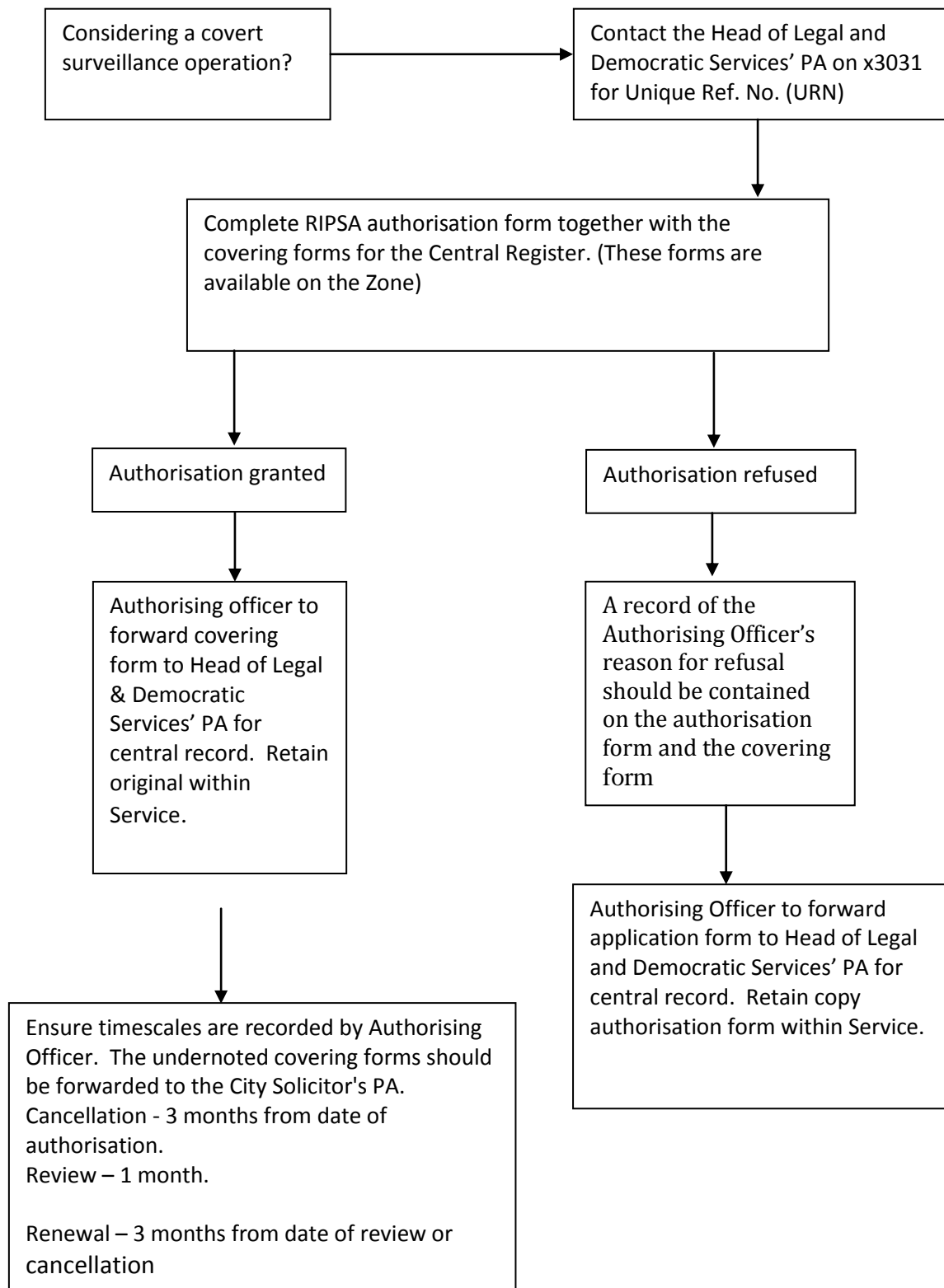
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Name (Print)		Grade/Rank	
Signature		Date	

This section should be completed by the Chief Executive and should set out why it's necessary and proportionate to obtain confidential information having regard to the particular investigation.

APPENDIX THREE

RIPSA Authorisation Process



REMEMBER - it's the AUTHORISING OFFICER'S responsibility to ensure that the surveillance operation is cancelled, renewed and reviewed timeously.

APPENDIX TWO – RIPSA TRAINING POLICY

Aberdeen City Council

Regulation of Investigatory Powers (Scotland) Act (“RIPSA”)

Training Policy – Version 1 (August 2015)

Introduction

This policy outlines the training that will be provided across Aberdeen City Council in connection with powers under RIPSA to conduct Covert Surveillance in certain, limited circumstances.

The aim of this policy is to ensure that, across the organisation a high level of awareness of the restraints of undertaken covert surveillance exists and, where necessary, training of a suitably detailed nature is delivered in order that Officers are familiar with the legal and procedural requirements relating to Covert Surveillance. A further aim of the Training Policy is to ensure that those Officers who undertake Directed Surveillance and Covert Human Intelligence Source (CHIS) applications and those Officers appointed as Authorising Officers for such applications receive regular opportunities to refresh and update their knowledge and skills in this area.

Classification of Job Roles

For the purposes of identifying RIPSA training requirements, all job roles within Aberdeen City Council will be classified into one of four tiers. This classification is undertaken using a simple review as detailed in the flowchart in Appendix One:

Tier	Description	Example Job Roles
Tier 0	RIPSA Authorising Officers (including the Chief Executive and Directors who, in the absence of the Chief Executive deputise as the Head of Paid Service) Officers within Legal Services with responsibility for oversight of RIPSA.	Solicitors Legal Team Leaders
Tier 1	Job Roles held by Officers who do or will prepare applications for consideration by a RIPSA Authorising Officer.	Trading Standards Officers Environmental Health Officers Fraud Officers Service Manager – Community Safety
Tier 2	Job Roles identified as those which have an Investigative or Enforcement function.	Anti-Social Behaviour Investigation Officers City Wardens Social Workers Licensing Standards Officers Human Resources Advisers / Investigatory Officers
Tier 3	All other job roles.	

Training Requirements

Tier 0 Roles: Officers identified in Tier 0 roles must attend RIPSAs Authorising Training as soon as possible following their appointment. No Officer in Tier 0 will be permitted to Authorise or Review an Application for Covert Surveillance prior to having attended this training.

Officers should receive refresher training every 2 – 3 years and receive Update Bulletins, including practice improvement notes developed from previous applications, on at least one occasion per year.

Tier 1 Roles: Officers identified in Tier 1 roles must attend RIPSAs in Practice Training as soon as possible following their appointment. No Officer in Tier 1 will be permitted to make a Directed Surveillance or CHIS Application prior to having attending this training.

Officers in Tier 1 should attend refresher training every 2 -3 years and will receive Information Bulletin updates as appropriate.

Tier 2 Roles: Officers identified in Tier 2 roles will be invited to complete an on-line training module 'An overview of RIPSAs'. Officers will be reminded, via a rolling campaign of Information Posters and Zone banners, of the importance of considering whether covert surveillance of individuals is being undertaken and of appropriate steps being taken to regulate such activity prior to it being undertaken. In addition, an article about Covert Surveillance will be published within the Service specific newsletter / briefing for each service in which Tier 2 Officers are identified.

If any Officer identified as being in Tier 2 requires to make an application for authorising of Directed Surveillance or CHIS, they will require to complete the RIPSAs in Practice Training detailed in Tier 1 above prior to doing so.

Tier 3 Roles: Officers in Tier 3 will be exposed to the rolling campaign of Information Posters and Zone banners which will seek to raise awareness of Covert Surveillance and the need for such activity to be properly authorised prior to taking place.

Any Officer in Tier 3 who recognises that they may partake in Covert Surveillance as part of their job role will be required to complete the

RIPSA in Practice Training outlined in Tier 1 above as soon as possible following this recognition.

Review

This training policy will be kept under review by Officers in Legal Services and will be subject to a formal review not more than three years following implementation.

Appendix One

