

# The Highland Council

Agenda Item	<b>9</b>
Report No	<b>AS/17/23</b>

**Committee:**           **AUDIT AND SCRUTINY**

**Date:**                   **28 September 2023**

**Report Title:**       **Regulation of Investigatory Powers (Scotland) Act**

**Report By:**           **Head of Legal and Governance**

## **1. Purpose/Executive Summary**

- 1.1 This is a report to advise members on the Council's use of the powers within the Regulation of Investigatory Powers (Scotland) Act (RIPSA) since September 2022.
- 1.2 The report also advises Members on the recent inspection of the Council's use of covert surveillance powers by the Investigatory Powers Commissioner's Office.

## **2. Recommendations**

- 2.1 Members are asked to:
  - i. Note the Council continues to be a modest user of the powers and that a further report will be forthcoming to the March 2024 meeting.
  - ii. Note the outcome of the IPCO Inspection

## **3. Implications**

- 3.1 **Resource:** There are no immediate resource implications arising directly from this report. The training to be delivered to officers on the use of RIPSA will involve a modest outlay which will be met from existing service budgets.
- 3.2 **Legal:** There are no direct legal implications arising from the report. The Council continues to follow the terms of its policies and procedures to ensure compliance with the Act.
- 3.3 **Community (Equality, Poverty, Rural and Island):** No implications are envisaged from this report.
- 3.4 **Climate Change / Carbon Clever:** No implications are envisaged from this report.
- 3.5 **Risk:** There are no immediate risks identified in the report. The actions to be agreed by the RIPSA Management Group and their ongoing supervision will ensure that the

Council continues to comply with the legislation and guidance in dealing with covert surveillance.

3.6 Health and Safety (risks arising from changes to plant, equipment, process, or people): No implications are envisaged from this report.

3.7 Gaelic: No implications are envisaged from this report.

#### **4. Background**

4.1 On occasion Highland Council officials will require to conduct covert surveillance including the use of covert human intelligence sources, as part of their Council duties. Such activity would principally be for the purposes of detecting crime such as the sale of counterfeit goods. All such activity is regulated by and authorised through the Regulation of Investigatory Powers (Scotland) Act 2000.

4.2 The Council's use of these powers is subject to regular external scrutiny through independent inspection by the Investigatory Powers Commissioner's Office. The previous inspection took place in July 2020 and was reported to the 24 September 2020 meeting of this Committee.

4.3 Recent inspection reports and the Covert Surveillance & Property Interference Code of Practice have recommended that the Council should report on the use of the powers contained in the 2000 Act to members on a regular basis. The purpose of such reporting is to ensure that the powers are being used consistently with the Council's policy and that the processes remain fit for purpose. Reports on the Council's use of RIPSAs are submitted to this Committee every six months.

#### **5. The Council's Use of RIPSAs Powers**

5.1 The Council has been described previously as a modest user of its RIPSAs powers and various inspections have acknowledged the value of the policies and procedures that the Council has in place.

5.2 The purpose of this Report is to inform members upon the Council's use of its RIPSAs powers in the period from 1 September 2022 to 31 August 2023.

5.3 In the period from October 2021 seven new authorisations were sought. One authorisation for use of a Covert Human Intelligence Source (CHIS) which was renewed in September 2022 continues to be in place.

5.4 As in previous years all applications are made by the Council's Trading Standards Service. Typically, the officers will have been undertaking investigation into the unlawful sale of age restricted products, the sale of suspected counterfeit goods or into the supply of illegal goods. An emerging area of concern has been the sale of disposable vapes to young people.

#### **6. IPCO Inspection: Summary of Findings and Recommendations**

6.1 The IPCO inspection took place on 6 September 2023. In the three-year period since the previous inspection the Council has made use a total of 8 directed surveillance authorisations and 1 covert human intelligence source (CHIS) authorisation. This level of authorisation is lower than previously reflecting the impact of the pandemic. The

Council received a positive inspection report which recognised amongst other elements the appropriate use of the powers, that the authority obtained had been used with some success by Trading Standards and that officers submitting applications had a good understanding of the legal requirements.

- 6.2 The inspection highlighted an emerging issue in the monitoring of social media and other platforms by staff members with a suggestion that the Council considers reviewing and establishing a register for those services which may rely on online research. This issue is one which is recognised nationally with work being undertaken currently to prepare guidance/good practice for local authorities.
- 6.3 The Council has planned for up to 32 officers to receive training on RIPSAs related activities. The training will take place on 25 and 26 September. The inspection recognised the value of the proposed training which will both assist with ensuring compliance and with raising awareness on the use of social media.
- 6.4 The Senior Responsible Officer and RIPSAs Management Group will meet to consider the outcome of the inspection and agree on any measures that will be taken forward to implement the emerging issues identified by the Inspector.

Designation: Head of Legal and Governance

Date: 15 September 2023

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