

Cabinet Secretary for Justice  
Michael Matheson MSP

T: 0300 244 4000  
E: scottish.ministers@gov.scot

Christine Grahame MSP  
Convener  
Justice Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP



2nd March 2016

*Dear Christine,*

## **REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 – CODES OF PRACTICE**

I am writing to make you aware of an administrative error by the Scottish Government when publishing two Codes of Practice and to advise you of our interim and longer-term remedies.

The Scottish Government put in place revised Codes of Practice for 'Covert Surveillance and Property Interference' and 'Covert Human Intelligence Sources' under the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A) at the beginning of 2015. Each Code contains an annex which lists the level of authorisation required in circumstances where confidential information is likely to be obtained, or where consideration is being given to the use of a juvenile or vulnerable source. The information contained in the annexes, however, reflects the 'normal' level of authorisation required for this conduct, as set out in SSI 2010/350 - The Regulation of Investigatory Powers (Prescription of Offences, etc and Specification of Public Authorities) (Scotland) Order 2010. The intended policy was that a more senior level of authorisation would be needed in the circumstances mentioned.


The public authorities affected are Marine Scotland, the Scottish Prison Service, Transport Scotland, local authorities, the Common Services Agency for the Scottish Health Service and the Scottish Environment Protection Agency.

The entries for Police Scotland, the Police Investigations and Review Commissioner and the Accountant in Bankruptcy are as intended and do not require to be amended.

Our interim solution is to write to the affected bodies to provide them with the correct information. I have attached a copy of one of the letters which includes both corrected annexes. It is highly unlikely that the any of these bodies will have made authorisations which would have required reference to these annexes. We are, nevertheless, seeking that assurance and I will be happy to report further to the Committee once that information has been gathered.

The Chief Surveillance Commissioner, Lord Judge, has agreed to this interim solution. In the longer term the Scottish Government will issue revised Codes which will be laid before the Scottish Parliament. The revisions will include the amendments to the annexes and will reflect the changes to the oversight of investigatory powers as contained in the UK Government's Investigatory Powers Bill when it receives Royal Assent. These changes include oversight of activity authorised under RIP(S)A.

I hope that this information is helpful to you.

Best regards  


**MICHAEL MATHESON**

«Name»  
«Organisation»  
«Address1»  
«Address2»  
«Address3»  
«Address4»  
«Address5»  
«Address6»  
«Address7»

February 2016

Dear xxxx,

## **REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 – CODES OF PRACTICE**

I am writing to make you aware that an administrative error contained in the annex of each of the Codes of Practice – ‘Covert Surveillance and Property Interference’ and ‘Covert Human Intelligence Sources’ under the Regulation of Investigatory Powers (Scotland) Act (RIP(S)A) – issued in February 2015. This has led to the entry for your public authority in each annex being lower than appeared in the previous versions of the Codes where confidential information is likely to be obtained or where a vulnerable individual is to be used as a covert human intelligence source.

Details of the intended authorisation levels are attached and I would be grateful if you could ensure these are made available to the relevant individuals in your organisation.

It is our intention to issue revised Codes in line with changes that will be required due to oversight provisions contained in the UK Government’s Investigatory Powers Bill.

The Cabinet Secretary for Justice has written to the Convenor of the Scottish Parliament’s Justice Committee to make her aware of the issue and our remedy. While we believe it is unlikely that your organisation will have authorised any activity under RIP(S)A that would be subject to the annexes’ requirements, I would be grateful if you could provide me with details (including nil returns) of any RIP(S)A authorisations that have obtained confidential information or have involved the use of a juvenile or vulnerable individual as a CHIS since 2 February 2015.

I look forward to hearing from you in due course.

Yours sincerely,

**Graeme Waugh**

Safer Communities: Police Division

# REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 – CODES OF PRACTICE

## Annex A

### Covert Human Intelligence Sources Code of Practice

Authorisation levels when knowledge of confidential information is likely to be acquired or when a vulnerable individual or juvenile is to be used as a source

Relevant Public Authority	Authorisation level for when knowledge of confidential information is likely to be acquired	Authorisation level for when a vulnerable individual or a juvenile is to be used as a source
<b>The Police Service of Scotland</b>	Chief Constable	Assistant Chief Constable
<b>The Police Investigations and Review Commissioner</b>	Commissioner	Commissioner
<b>The Scottish Administration</b>		
Marine Scotland	Head of Compliance	
Accountant in Bankruptcy	Accountant in Bankruptcy	
Scottish Prison Service	Chief Executive or Director of Operations	Chief Executive or Director of Operations
Contracted out prisons	Chief Executive or Director of Operations	Chief Executive or Director of Operations
Transport Scotland	Chief Executive	
<b>A council constituted under section 2 of the Local Government etc (Scotland) Act 1994</b>	Chief Executive	Chief Executive
<b>The Common Services Agency for the Scottish Health Service</b>	Director of Practitioner and Counter Fraud Services	Director of Practitioner and Counter Fraud Services
<b>The Scottish Environment Protection Agency</b>	Chief Executive	

**Covert Surveillance and Property Interference Code of Practice**

<b>Relevant Public Authority</b>	<b>Authorisation level</b>
<b>The Police Service of Scotland</b>	Chief Constable
<b>The Police Investigations and Review Commissioner</b>	Commissioner
<b>The Scottish Administration</b>	
Marine Scotland	Head of Compliance
Accountant in Bankruptcy	Accountant in Bankruptcy
Scottish Prison Service	Chief Executive or Director of Operations
Contracted out prisons	Chief Executive or Director of Operations
Transport Scotland	Chief Executive
<b>A council constituted under section 2 of the Local Government etc (Scotland) Act 1994</b>	Chief Executive
<b>The Common Services Agency for the Scottish Health Service</b>	Director of Practitioner and Counter Fraud Services
<b>The Scottish Environment Protection Agency</b>	Chief Executive