

ITEM No ...3.....

REPORT TO: POLICY AND RESOURCES COMMITTEE - 13 JUNE 2016

REPORT ON: POLICY ON REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 AND REGULATION OF INVESTIGATORY POWERS ACT 2000

REPORT BY: EXECUTIVE DIRECTOR OF CORPORATE SERVICES

REPORT NO: 210-2016

1.0 PURPOSE OF REPORT

To advise the Committee of the use made by the Council of the powers under the Regulation of Investigatory Powers (Scotland) Act 2000 and the use of powers under the Regulation of Investigatory Powers Act 2000 since 2015 and adopt a policy on its use.

2.0 RECOMMENDATIONS

- 2.1 The Committee is asked to note the use which the Council has made of powers contained in the Regulation of Investigatory Powers (Scotland) Act 2000 and in related powers contained in the Regulation of Investigatory Powers Act 2000.
- 2.2 To agree that the use of these powers will be subject to an annual report by June every year to make the Committee aware of the Council's activities in this area.
- 2.3 To appoint the Legal Manager as the Senior Responsible Officer overseeing the operation of this legislation.
- 2.4 To approve the Council's continued proportionate use of the powers, where necessary, in the areas of crime prevention and detection or preventing disorder, in the interests of public safety or for the purpose of protecting public health. In particular, the Council will continue to use the powers to prevent and detect anti-social behaviour.
- 2.5 To approve and adopt the updated internal guidance note on the use of RIPSAs.

3.0 FINANCIAL IMPLICATIONS

None.

4.0 BACKGROUND

- 4.1 Since 2 October 2000, the Human Rights Act 1998 has made it unlawful for the Council to act in any way which is incompatible with the Convention rights found in the European Convention of Human Rights. One of these rights is the right set out in Article 8(1) of the Convention to "respect for private and family life, home and correspondence".
- 4.2 A number of services within the Council occasionally require to carry out covert surveillance ie persons are placed under observation without them being aware of it. These activities occur, for example, within Trading Standards, Corporate Fraud Team and, in particular, in the Council's Anti-Social Behaviour Team. A summary of the Council's directed surveillance activities are appended to this report for information.
- 4.3 Surveillance can, by its very nature, impact on the right to privacy of those being observed. In carrying out surveillance the Council therefore needs to satisfy the tests found in Article 8 under which it is legitimate to interfere with privacy rights. The first test is that the interference must be explicitly authorised by law.

- 4.4 The Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) created a legal framework for the conduct of surveillance and related use of "covert human intelligence sources" ie undercover agents or informants. The Council has, however, never used covert human intelligence sources and the Council's practice is to use directed surveillance which is a much less intrusive activity.
- 4.5 The powers to conduct directed surveillance contained in the Regulation of Investigatory Powers (Scotland) Act 2000 have been utilised by a number of Council services in order to assist and help, in particular, those suffering from anti-social behaviour.
- 4.6 The Council also has limited powers under similar UK legislation and Regulation of Investigatory Powers Act 2000, to access certain telecommunications data. This data is restricted to subscriber identity for telephone numbers and information similar to an itemised phone bill. The Council cannot tap phones or in any way access the content of telephone calls or other communications (apart from our own internal e-mail monitoring and recording of calls to the Customer Service Centre). These powers have been very rarely used by the Council and not been used in the past year.
- 4.7 Whenever considering directed surveillance, the Council has to balance whether the action is both necessary and proportionate. The possible interference in someone's private life has to be necessary in order to obtain the benefit of the supply of information. If there are other means of obtaining the information without directed surveillance then it would not be appropriate to carry out directed surveillance. Similarly, the Council has to balance as to whether the action in terms of the risk of interfering in someone's privacy is proportionate with the benefit that is achieved with obtaining the information through directed surveillance. In every case a senior officer on the Council considers these issues and authorises the directed surveillance.
- 4.8 The Council receives regular inspections from the Office of the Surveillance Commissioners and is due another inspection in June 2016.
- 4.9 The Scottish Government has issued a Code of Practice indicating that in order that there is proper governance of the arrangements of surveillance activities that a report should be submitted to Councillors on an annual basis detailing the use of surveillance which has been carried out by the Council. This is the basis of Recommendation 2 above.

5.0 POLICY IMPLICATIONS

This report has been screened for any policy implications in respect of Sustainable Development, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management.

There are no major issues.

6.0 CONSULTATIONS

The Chief Executive and Head of Democratic and Legal Services have been consulted in the preparation of this report.

7.0 BACKGROUND PAPERS

None.

APPENDIX**AUTHORISATIONS FOR DIRECTED SURVEILLANCE IN 2015-2016**

Noise nuisance	10
Alleged drug dealing	9
Harassment/Verbal Abuse/Threats of Violence and Vandalism	3
Test purchase of cigarettes	1
Fraudulent use of Blue Badge	2
Multiple Parking Fraud	1
Nuisance behaviour	2
Fraud	1
TOTAL	29

