

ITEM No ...3.....

REPORT TO: POLICY AND RESOURCES COMMITTEE - 13TH NOVEMBER, 2017

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

REPORT BY: EXECUTIVE DIRECTOR OF CORPORATE SERVICES

REPORT NO: 393-2017

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 Regulation of Investigatory Powers Act 2000 during 2016/2017.

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 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.

3.0 FINANCIAL IMPLICATIONS

- 3.1 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 on 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 where 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", that is 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 Council also has limited powers under similar UK legislation - the Regulation of Investigatory Powers Act 2000 - to access certain telecommunications data. These powers have been very rarely used by the Council and have not been used at all in the past year.
- 4.6 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 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 of the Council considers these issues and authorises the directed surveillance.
- 4.7 The Council receives regular inspections from the Office of the Surveillance Commissioner and is due for another inspection in June 2019.
- 4.8 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 such a report.

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 Council Management Team have been consulted in the preparation of this report.

7.0 BACKGROUND PAPERS

None.

Gregory Colgan
Executive Director of Corporate Services

DATE: 2 November 2017

APPENDIX**AUTHORISATIONS FOR DIRECTED SURVEILLANCE FROM NOVEMBER 2016 TO OCTOBER 2017**

Noise Nuisance	2
Alleged Drug Dealing	5
Harassment/Vandalism/Threats of Violence	9
Test Purchase of Cigarettes	1
Theft/Verbal Abuse/Threatening Behaviour	1
Dumping bags of Rubbish/Urinating/Injecting Drugs in close	1
<i>TOTAL</i>	19

