

## **Item: 6**

**Policy and Resources Committee: 17 April 2018.**

**Regulation of Investigatory Powers – Revised Policies and Procedures.**

**Joint Report by Chief Executive and Executive Director of Corporate Services.**

### **1. Purpose of Report**

To consider amendments to existing policies and procedures in connection with the Council's arrangements for covert surveillance, including directed surveillance and the use of covert human intelligence sources.

### **2. Recommendations**

The Committee is invited to note:

#### **2.1.**

That, on 9 March 2017, the Council approved updated policies and procedures in connection with the exercise of its statutory powers to conduct covert surveillance.

#### **2.2.**

That Codes of Practice, issued by the Scottish Government in 2015, relating to the use of covert surveillance and use of covert human intelligence sources by public authorities, were used as models for the Council's own policies and procedures.

#### **2.3.**

That, on 28 February 2018, the Scottish Government issued new Codes of Practice concerning the use of covert surveillance and covert human intelligence sources by public authorities.

#### **2.4.**

That the Council's existing policies and procedures in relation to the use of covert surveillance, covert human intelligence sources and surveillance through social media have been amended and updated in order to align with the relevant provisions of the new Codes of Practice.

**It is recommended:**

## **2.5.**

That the following revised policies and procedures, attached as Appendices 1 to 5 of this report respectively, be approved:

- Policy on Use of Covert Human Intelligence Sources.
- Procedure for Authorisation of the use of Covert Human Intelligence Sources.
- Policy on Covert Surveillance.
- Procedure for Authorisation of Covert Surveillance.
- Surveillance through Social Media Policy.

## **3. Policy Aspects**

This report relates to the Council complying with its statutory obligations and does not relate specifically to progressing any of the Council's key priorities.

## **4. Background**

### **4.1.**

In terms of the Regulation of Investigatory Powers (Scotland) Act 2000, the Council can carry out covert surveillance:

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

### **4.2.**

Examples of how the Council can carry out covert surveillance include:

- To investigate complaints of antisocial behaviour.
- To investigate breaches of certain types of legislation (for example, Trading Standards or Environmental Health legislation).
- To investigate fraudulent benefit claims.

### **4.3.**

Covert surveillance includes directed surveillance, which is a covert surveillance undertaken for the purposes of a specific investigation or operation in a manner that is likely to result in the obtaining of private information about a person.

### **4.4.**

A covert human intelligence source is a person who establishes or maintains a personal relationship with another person for the purpose of either covertly using the relationship to obtain information or to provide access to any information to another person, or covertly disclosing information obtained by the use of such a relationship.

#### **4.5.**

There has been no use of these powers since the Council's policies were previously reviewed in March 2017, and consequently no applications for their use during this period.

### **5. Policies and Procedures**

#### **5.1.**

The Council has policies and procedures in place in connection with the Council's exercise of its statutory powers to conduct covert surveillance, including the use of covert human intelligence sources.

#### **5.2.**

The policies and procedures were previously reviewed by the Policy and Resources Committee on 28 February 2017 and thereafter approved by Council on 9 March 2017.

#### **5.3.**

Codes of Practice relating to the use of covert surveillance and use of covert human intelligence sources by public authorities were issued by the Scottish Government in 2015. The provisions of the Codes of Practice have been used as a model for the Council's own policies and procedures.

#### **5.4.**

On 28 February 2018, the Scottish Government issued new Codes of Practice concerning the use of covert surveillance and covert human intelligence sources by public authorities.

#### **5.5.**

The provisions of the new Codes of Practice have been reviewed. The new Codes are similar in their terms to the former Codes but there are some changes particularly in relation to guidance concerning the use of specific powers which vest in the intelligence community and in the Police. There is also reference to new oversight arrangements which have been put in place by the Investigatory Powers Act 2016 and which affect all public authorities, including the Council.

### **6. Proposed Amendments to the Policies and Procedures**

#### **6.1.**

The proposed amendments to the Policies and Procedures align with the provisions of the Scottish Government's new Codes of Practice. The proposed revised Policies and Procedures, with the changes shown tracked, are attached as Appendices 1 to 5 of this report.

## 6.2.

The salient changes include the following:

- References have been added to the Investigatory Powers Commission which provides oversight of the use of investigatory powers by public authorities in the United Kingdom and replaces the Office of Surveillance Commissioners.
- Details are provided in respect of the Investigatory Powers Tribunal which is an independent body and has a remit to determine complaints against public authority use of investigatory powers.
- Additional provisions aimed at protecting the welfare and safety of covert human intelligence sources are included.
- There is confirmation of the need to take measures, wherever practicable, to avoid unnecessary intrusion into the privacy of other third parties when authorising a covert surveillance.
- The requirement for appropriate and effective record keeping is emphasised.
- Reference is made to the matters to be considered when considering applications for covert surveillance that may result in the obtaining of information subject to legal privilege.
- Further guidance is included in the Surveillance through Social Media Policy as to the circumstances in which an authorisation would be required for carrying out surveillance online.

## 7. Equalities Impact

An Equality Impact Assessment has been undertaken and is attached as Appendix 6 to this report.

## 8. Financial Implications

There are no significant financial implications arising from the recommendations contained in this report.

## 9. Legal Aspects

The legal aspects are contained within the body of this report.

## 10. Contact Officers

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## **11. Appendices**

Appendix 1: Amended Policy on Use of Covert Human Intelligence Sources.

Appendix 2: Amended Procedure for Authorisation of the use of Covert Human Intelligence Sources.

Appendix 3: Amended Policy on Covert Surveillance.

Appendix 4: Amended Procedure for Authorisation of Covert Surveillance.

Appendix 5: Amended Surveillance through Social Media Policy.

Appendix 6: Equality Impact Assessment.