

REPORT TO: POLICY AND RESOURCES COMMITTEE ON 27 APRIL 2010

SUBJECT: REVISED POLICY IN TERMS OF THE REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000

BY: CHIEF LEGAL OFFICER

1. REASON FOR REPORT

- 1.1 To invite the Committee to consider and approve a revised policy regarding arrangements for covert surveillance within Moray in terms of the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA).
- 1.2 This report is submitted to Committee in terms of Section A(62) of the Council's Administrative Scheme relating to Review of Council wide policy.

2. RECOMMENDATION

- 2.1 **It is recommended that the Committee considers and approves the proposed revised Policy and Authorisation Procedure on Covert Surveillance and Covert Human Intelligence Sources as set out in Appendix I.**

3. BACKGROUND

- 3.1 In some circumstances, it may be necessary for council employees, in the course of their duties, to make observations of a person or person(s) in a covert manner, ie without that person's knowledge, or to instruct third parties to do so on the Council's behalf. By their nature, actions of this sort are potentially intrusive (in the ordinary sense of the word) and may give rise to legal challenge as a potential breach of Article 8 of the European Convention on Human Rights and the Human Rights Act 1998 ("the right to respect for private and family life).
- 3.2 The Regulation of Investigatory Powers Act (2000) ("RIPA") and the Regulation of Investigatory Powers (Scotland) Act (2000 ("RIPSA")) together provide a legal framework both for authorising covert surveillance and covert human intelligence sources ("undercover" officers or informants) by public authorities and for an independent inspection regime to monitor these activities within the United Kingdom.

4. REPORT

- 4.1 As a matter of good practice, Local Authorities require to have a policy setting out the administrative arrangements in operation in their areas for the authorisation of covert surveillance in terms of the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA). Moray Council has had a policy in this respect for a number of years in terms of which the Chief Legal Officer acted as the Authorising Officer for all applications in terms of RIPSA within the Council.

- 4.2 A visit by the Office of Surveillance Commissioners in order to review the Council's operational management of covert surveillance activities highlighted a number of areas where improvements were required to the existing RIPSAs policy and indicated that rapid action to revise the policy was expected.
- 4.3 In light of these considerations, on August 24th 2009 officers involved in covert surveillance activities met and formed a group known as the RIPSAs Forum, in order to consider a draft revised policy which addressed the issues raised in the Surveillance Commissioner's Report. During that meeting officers also discussed alterations to the various application forms.
- 4.4 In terms of the previous policy, use of the Chief Legal Officer as the sole Authorising Officer (excepting the Chief Executive) created an artificial divide between services carrying out an investigation in terms of RIPSAs and the officer authorising that investigation. In many instances a detailed understanding of the basis for the investigation is beneficial when considering applications for authorisation. In light of this, members of the RIPSAs Forum asked the Chief Legal Officer to revise the authorisation structure, with a view to instead enabling relevant Heads of Service to act as Authorising Officers. This is the practice followed in many other authorities. The pre-existing RIPSAs policy has been revised on this basis, and the fully revised policy is produced as **Appendix 1** to this report. A version of the previous policy with all changes tracked is available on request. Copies of the Code of Practice are also available on request.
- 4.5 Following completion of the policy review, training was provided to officers working with RIPSAs, including those officers who are expected to assume a role as an Authorising Officer in terms of the revised policy and was attended by all core staff involved in covert surveillance. Staff from Aberdeenshire Council also attended the training session. Final revisions were made to the draft policy and forms following that training session, and members of the RIPSAs Forum have now agreed that the policy and supporting forms are in an acceptable format. If Committee approves the revised policy, arrangements will be made to provide RIPSAs pages on the Council Intranet holding the policy and relevant supporting forms.

5. **SUMMARY OF IMPLICATIONS**

(a) **Single Outcome Agreement/Service Improvement Plan**

This policy assists in delivering the Local Outcome "Agencies will work together and individually to improve services" contained within National Outcome 15.

(b) **Policy and Legal**

The revised policy will enable the Council to ensure that appropriate checks and balances in terms of RIPSAs are in place within Moray as an officer from Legal Services is available to give advice on the application of RIPSAs, and all applications are copied to Legal Services, thereby ensuring that covert surveillance activity is conducted in an efficient and proportionate manner.

(c) Resources (Financial, Risks, Staffing and Property)

There are no direct policy implications arising from this report.

(d) Consultations

Consultation has taken place with all Heads of Service and Officers working with RIPSA including: Stewart Halkett, Head of Development Services; John Carney, Head of Children and Families; Donnie MacKay, Environmental Health Manager; Chris Tamburrini, Principal Trading Standards Officer; Marion Ogg, Assistant Resources Officer for Education; Andy Jamieson, Anti-Social Behaviour Co-ordinator; Mike McClafferty, Senior Area Housing Manager; Linda McFarlane, Senior Revenues Officer and Daffyd Lewis, Senior Auditor.

6. CONCLUSION

- 6.1** This report details the changes now incorporated in the revised policy and seeks approval for implementation for that revised policy.

Author of Report: Rhona Gunn, Acting Principal Solicitor (Litigation & Licensing)

Background Papers: None

Ref: