POLICY NOTE

The Regulation of Investigatory Powers (Covert Surveillance and Property Interference – Code of Practice) (Scotland) Order 2018

SSI 2018/

1. The above instrument is made in exercise of the powers conferred by section 24(5) of the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A). The instrument is subject to the affirmative procedure.

Policy Objectives

2. RIP(S)A requires Scottish Ministers to issue one or more codes of practice relating to the exercise and performance of the powers and duties contained in both RIP(S)A and Part III of the Police Act 1997 (authorisation of interference with property or wireless telegraphy).
3. There are two existing codes, one covering covert surveillance, and the other covering covert human intelligence sources. These were issued in 2014.
4. The covert surveillance and property interference code has been updated to reflect the new arrangements for oversight and inspection by the Investigatory Powers Commissioner's Office. The Investigatory Powers Commissioner was established by the Investigatory Powers Act 2016 and replaces the Office of Surveillance Commissioners (and also the Interception of Communications Commissioner and the Intelligence Services Commissioner).
5. A number of other minor changes have been made to bring the code up to date
6. Section 26 of RIP(S)A requires any person exercising or performing any power under RIP(S)A to have regard to the Codes.

Consultation

- Section 24(3) of RIP(S)A requires Scottish Ministers to publish and consider representations made on draft codes of practice. A public consultation exercise commenced on 7 July 2017 and finished on 29 September 2017. That consultation involved the publication of two revised codes of practice (one on covert surveillance and property interference and one on covert human intelligence sources) and a new code dealing with equipment interference. Six responses were received within the consultation period; in addition, a further five late responses were accepted. All of the respondents agreed that their responses could be made public (although one requested that their name not be published):

- Steven Templer (individual)
- Police Scotland
- Orkney Islands Council
- Aberdeen City Council
- Stirling Council
- Open Rights Group
- The Faculty of Advocates
- Scottish PEN
- The Law Society of Scotland

- The Information Commissioner's Office, and
- An individual.

7. No respondents objected to the requirement for the Codes. Where possible, the comments made in response to this consultation have been taken on board and have resulted in amendments being made to the final codes to be laid with the Scottish Parliament. Additional information has been included where relevant and clarification provided where required.
8. The practice of how the different covert tactics are authorised are well established and the Code does not provide any public body with additional powers.

Impact Assessments

9. There are no equality impact issues and an EQIA has, therefore, not been completed. It is extremely unlikely that any particular group will be impacted by the provisions contained in the code.

Financial Effects

10. A Business and Regulatory Impact Assessment (BRIA) was considered. On the basis, however, that the measures do not impose additional costs or reduce existing costs on business or the third sector, do not impose additional costs on public sector organisations that deliver public services, and do not involve some kind of distribution where there is an exchange of transfer of costs or benefits from one group to another, a BRIA was not considered necessary.
11. The updated code will not impact financially on public authorities or on the Investigatory Powers Commissioner's Office.

Scottish Government

Safer Communities Directorate

Defence, Security and Cyber Resilience Division