

POLICY NOTE

THE REGULATION OF INVESTIGATORY POWERS (PRESCRIPTION OF RANKS AND POSITIONS) (SCOTLAND) ORDER 2016

SSI 2016/56

1. The above instrument was made in exercise of the powers conferred by section 8(1) of the Regulation of Investigatory Powers (Scotland) Act 2000 (“the 2000 Act”). The instrument is subject to negative procedure.

Policy Objectives

2. This order prescribes Food Standards Scotland (FSS) and more specifically the rank or position of staff within FSS, who are entitled to grant authorisations for directed surveillance and covert human intelligence sources, under the 2000 Act, to help combat food fraud and other food crime in Scotland.

3. Under the terms of the 2000 Act the power to grant authorisations rests only with individuals holding prescribed offices, ranks and positions within a “relevant public authority”. FSS is a relevant public authority, due to its being part of the Scottish Administration. This order prescribes the positions within FSS of the individuals who can grant authorisations. The power to make these types of authorisation is overseen by the Office of Surveillance Commissioners.

4. The designation of individuals within FSS is required to help maintain a similar type of directed surveillance and covert human intelligence sources that has been available to its predecessor organisation – the Food Standards Agency. In April 2015, FSS was established as Scotland’s food safety body and the Food (Scotland) Act 2015 which created FSS also removed responsibility for food safety law from the UK-wide Food Standards Agency.

5. Across the UK the importance of being able to authorise directed surveillance in particular has been emphasised following the horse meat scandal. At the UK level, but not covering Scotland, the surveillance is authorised by a newly formed National Food Crime Unit. This order will ensure a similar regime will remain in place in Scotland to be authorised by either the Head of the Scottish Food Crime and Incident Unit, or by any of the 4 more senior officers within FSS.

Consultation

6. This instrument was made as a consequence of the Food (Scotland) Act 2015 (“the 2015 Act”) establishing FSS and removing responsibility for all aspects of food safety and food information etc in Scotland from the UK-wide Food Standards Agency. This policy decision was subject to two consultations in 2013. The responses and the Scottish Government response which led to the 2015 Act are all published and can be found [here](#). As this order is delivering some consequential changes as a result of that policy, and there is no statutory requirement for consultation prior to making this order, there was no additional consultation for this instrument.

Impact Assessments

7. Equality and environmental impact assessments were considered and published as appropriate for the 2015 Act. These assessments included full consideration of the transfer of responsibilities for all regulation from the Food Standards Agency to FSS, and so no additional impact assessments are required for this instrument.

Financial Effects

8. A Business and Regulatory Impact Assessment (BRIA) was also carried out and published as appropriate for the 2015 Act, and so no additional BRIA is required for this instrument. Authorisation of directed surveillance and covert human intelligence sources is already factored into the FSS budgets.

The Scottish Government
January 2016