

POLICY NOTE

THE REGULATION OF INVESTIGATORY POWERS (COVERT SURVEILLANCE AND PROPERTY INTERFERENCE – CODE OF PRACTICE) (SCOTLAND) ORDER 2015

SSI 2015/xxx

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 2002.
4. Both codes have been revised and updated. They contain more expansive information and reflect a number of organisational changes that have taken place since 2002, most notably the amalgamation of the Scottish police forces and the Scottish Crime and Drugs Enforcement Agency into the single Police Service of Scotland.
5. The covert surveillance and property interference code has also been updated to reflect the new arrangements for directed surveillance in relation to matters subject to legal confidentiality to be treated as intrusive surveillance as set out in the Regulation of Investigatory Powers (Modification of Authorisation Provisions: Legal Consultations) (Scotland) Order 2015.
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

7. 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 13 January 2014 and finished on 17 March 2014. 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). Seven responses were received, and of those five groups agreed that their responses could be made public:
 - the Law Society of Scotland
 - Her Majesty's Inspectors of Constabulary for Scotland
 - Police Scotland
 - The Scottish Human Rights Commission, and
 - The Information Commissioner
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 Office of Surveillance Commissioners.

Scottish Government

Safer Communities Directorate

Police Division