

**ANGUS COUNCIL**

**SCRUTINY AND AUDIT COMMITTEE – 24 SEPTEMBER 2020**

**REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 – ANNUAL REPORT**

**REPORT BY DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES**

**ABSTRACT**

The purpose of this report is to advise members of the use of surveillance powers by the Council in terms of the Regulation of Investigatory Powers (Scotland) Act 2000 in the period 1 April 2019 to 31 March 2020.

**1. RECOMMENDATIONS**

The Committee is asked to:-

- (i) note the requirements on the Council in respect of surveillance and other investigatory activities in terms of the Regulation of Investigatory Powers (Scotland) Act 2000;
- (ii) note that eight authorisations were granted for surveillance and other investigatory activities regulated by the above Act in the year to 31 March 2020; and
- (iii) note that annual reports on the use of surveillance and other investigatory activities regulated by the above Act will be submitted to this Committee.

**2. BACKGROUND**

- 2.1 Angus Council is a public authority for the purpose of the Regulation of Investigatory Powers (Scotland) Act 2000 ("RIP(S)A") and has the power to authorise directed covert surveillance and the use of covert human intelligence sources. Covert activities covered by RIP(S)A will be lawful if the activities are authorised and if they are conducted in accordance with the authorisation.
- 2.2 In some circumstances it is necessary for Council employees, in the course of their duties, to make observations of a person in a covert manner (without that person's knowledge) or to instruct third parties to make such observations on the Council's behalf. These actions are, by their very nature, potentially intrusive and may be challenged as breaching Human Rights (including the right to a fair trial, the right to respect for family and private life and the right to respect for property). RIP(S)A provides a legal framework for the carrying out of covert surveillance by public authorities.
- 2.3 RIP(S)A covers two main types of surveillance that local authorities are involved in. The first is "directed surveillance". Directed surveillance is defined as surveillance undertaken for the purpose of a specific investigation or operation which is likely to result in obtaining private information about a person. The second is the use of a Covert Human Intelligence Source ("CHIS"). A CHIS is someone who establishes or maintains a relationship with another person with the intention of covertly obtaining information from that person.
- 2.4 Surveillance may require to be undertaken by various Council officers. For example:
  - Community Housing Team officers investigating complaints of anti-social behaviour, such as noise emanating from neighbouring properties.
  - Counter-fraud officers investigating fraudulent Housing Benefit or Council Tax Benefit claims
  - Consumer Protection officers covertly filming the activities of suspected dealers in counterfeit goods

- 2.5 Committee is specifically asked to note that the Council is not authorised to conduct intrusive surveillance under any circumstances. Intrusive surveillance is surveillance in relation to anything taking place in any private vehicle or on any residential premises but not on common areas such as common stairs and closes. Surveillance is not intrusive if it is directed into a home or private vehicle from outside of that home or vehicle unless the information provided from the surveillance is consistently of the same quality as would be provided by having a device actually present in the home or vehicle. Therefore, activities such as filming goods being sold from the back of a car or monitoring the level of noise generated by an antisocial tenant (but not the actual words spoken by the tenant) are unlikely to be classed as intrusive.

### 3. REPORT

In the year to 31 March 2020, eight covert surveillance activities were authorised. These authorisations related to:-

- (i) the prevention and detection of breaches of the Tobacco and Primary Medicinal Services (Scotland) Act 2010 (test purchasing in relation to underage sales of tobacco and nicotine vapour products) (four),
- (ii) the detection and prevention of anti-social behaviour (four).

In the year to 31 March 2020, there were no authorisations in respect of the use of a Covert Human Intelligence Sources.

For comparison purposes, the number of covert surveillance activities authorised in the last previous three financial years were:-

2016/2017 – 3 (all directed surveillance)  
2017/2018 – 0  
2018/2019 – 4 (all directed surveillance)

Committee will note that there has been an increase in covert surveillance activities in recent years. It is submitted that the main reason for this has been the introduction of test purchasing in relation to underage sales of tobacco and nicotine vapour products in October 2018. There have been six covert surveillance authorisations in total since then to date.

### 4. FINANCIAL IMPLICATIONS

There are no financial implications arising directly from this report.

**NOTE:** No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information), were relied on to any material extent in preparing this report.

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