

## **EAST AYRSHIRE COUNCIL**

### **POLICY AND RESOURCES COMMITTEE – 18<sup>TH</sup> APRIL 2002**

#### **REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 PROCEDURES FOR AUTHORISATION OF SURVEILLANCE**

##### **Report by Depute Chief Executive/Director of Corporate Resources**

### **1.0 PURPOSE OF REPORT**

- 1.1 To invite Members to consider and approve proposed corporate procedures relative to the proper conduct and authorisation of surveillance activity by officers of the Council in exercise of various statutory functions.

### **2.0 BACKGROUND**

- 2.1 The Regulation of Investigatory Powers (Scotland) Act 2000 introduced new legal requirements in respect of the formal authorisation of directed surveillance and for the use of covert human intelligence sources.

- 2.2 Surveillance is 'directed' if it is covert and undertaken:-

- (a) for the purposes of a specific investigation or a specific operation
- (b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation) and
- (c) otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation to be sought for the carrying out of the surveillance.

- 2.3 In common with all other Local Authorities in Scotland, this Council carries out a range of regulatory and enforcement activity which comes within the definition of directed surveillance. Such activity primarily occurs within the Benefits Service, and within Trading Standards and Environmental Health, but may also be required less frequently in other areas, such as Planning Enforcement, Civic Government Licensing and possibly within the Homes Section in terms of investigation of anti-social behaviour cases, noise/nuisance complaints etc.

- 2.4 A Covert Human Intelligence Source (CHIS) is defined as a person who establishes or maintains a personal or other relationship with another person for the purpose of facilitating anything that:-

- (a) covertly uses such a relationship to obtain information or to provide information or to provide access to information to another person or
- (b) covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

A relationship is used covertly if, and only if, it is conducted in a manner calculated to ensure that the person is unaware of its purpose.

2.5 This Council does not generally make much, if any, use of such sources in the course of its normal activity but it is recognised that situations could arise in the future where it may prove necessary and it is accordingly considered appropriate to implement a suitable procedure to allow for such an eventuality.

### **3.0 DISCUSSION**

3.1 The use of directed surveillance or a CHIS can only be authorised in terms of the Act if it is necessary:-

- (a) for the purpose of preventing or detecting crime or of preventing disorder
- (b) in the interests of public safety
- (c) for the purpose of protecting public health or
- (d) for any other purpose prescribed in an order made by the Scottish Ministers

and the authorised activity must be proportionate to that which is sought to be achieved by carrying it out.

3.2 Whilst the conduct of covert surveillance without the appropriate authorisation in terms of RIPSAs 2000 does not in itself constitute an illegal act, in terms of criminal law, on the part of the Council or its officers, any such unauthorised activity could have significant consequences for the Council.

3.3 Firstly, any evidence obtained by officers through unauthorised surveillance or from an unauthorised CHIS would be susceptible to successful legal challenge in any subsequent criminal proceedings and would be likely to be dismissed as inadmissible due to the manner in which it was obtained. In most cases this would be likely to leave insufficient evidence to sustain a conviction.

3.4 Further, any unauthorised surveillance could render a Local Authority liable to a civil claim for damages by any person who considers their right to privacy has been breached by the actions of the authority. Ironically, this could even be the subject of the surveillance activity or, as is more likely, an innocent

third party in respect of whom collateral private information may have been obtained.

#### **4.0 PROCEDURES**

- 4.1 The proposed procedure for the authorisation of covert surveillance is set out in Appendix A to this report, whilst the proposed procedure in respect of the authorisation of the use of Covert Human Intelligence Sources is set out in Appendix B.
- 4.2 These have both been the subject of earlier consideration by the Senior Staff Management Team and all Directors/Departments have had the opportunity to comment on their contents. The procedures have been revised to take account of all such comments received.
- 4.3 In addition, the proposed procedures have been considered by the Office of Surveillance Commissioners and confirmed to be fit for purpose subject to certain changes which have been incorporated into the final drafts set out in Appendices A and B.
- 4.4 Each Director will be responsible in the first instance for the proper and consistent implementation of the proposed procedures within their own service, having particular regard to
- (a) the need to ensure that all relevant activity is the subject of an appropriate authorisation
  - (b) the appointment of appropriate authorising officers in accordance with the terms of the Act
  - (c) the full and proper completion of all applications for authorisation of proposed activity, including an appropriate explanation of the proportionality of that activity in relation to the subject matter of the investigation
  - (d) the provision by authorising officers upon the grant of an authorisation of a definitive statement of the specific activity being authorised, and the equipment authorised to be used in support of that activity, with a clear record of their relevant deliberations as regards proportionality and necessity
  - (e) the requirement to operate a Departmental overview through regular review and, where appropriate, cancellation or extension of previous authorisations and
  - (f) the need for regular review of appropriate training requirements of both 'front line' and authorising officers, (the provision of which is to be co-ordinated on a corporate basis by the Director of Community Services).

4.5 In addition, the proposed procedures provide for the Head of Administrative and Legal Services, as the Council's Monitoring Officer, to receive copies of all authorisations as and when they may be granted within individual Departments, as well as all subsequent cancellations and extensions. This is intended to provide both an independent check and balance and a corporate overview as to the nature and extent of the application of the procedures across all service Departments.

4.6 A single set of forms will be prepared and issued in tandem with the proposed procedures to ensure consistency.

## **5.0 POLICY/LEGAL IMPLICATIONS**

5.1 Implementation of the proposed procedures will ensure full compliance with the relevant statutory framework.

## **6.0 FINANCIAL IMPLICATIONS**

6.1 None arising directly from the contents of this report.

## **7.0 RECOMMENDATIONS**

7.1 Members are asked to

- (i) approve the procedures set out in Appendices A and B respectively and
- (ii) otherwise note the actions which have been, and will continue to be, carried out within this Council to ensure continuing compliance with the Regulation of Investigatory Powers (Scotland) Act 2000.

Fiona Lees

**Depute Chief Executive/Director of Corporate Resources**

FL/DM/CMCT

8<sup>th</sup> April 2002

### **LIST OF BACKGROUND PAPERS**

1. Scottish Executive Interim Code of Practice in respect of Cover Surveillance
2. Scottish Executive Interim Code of Practice in respect of the Use of Covert Human Intelligence Sources

Any person wishing to inspect the background papers relative to this report should contact David Mitchell, Head of Administrative and Legal Services, on Tel No (01563) 576061.

**Implementation Officers:** Bill Stafford, Director of Community Services, David Mitchell, Head of Administrative and Legal Services

**AGENDA**