



Carmen Murray  
Scottish Government  
St Andrew's House  
Regent Road  
Edinburgh EH1 3DG

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BY EMAIL

Dear Ms Murray,

Regulations of Investigatory Powers (Scotland) Act 2000 - New Code of Practice for Equipment Interference and revised Codes of Practice for Covert Human Intelligence Sources and Covert Surveillance & Property Interference

The Law Society of Scotland's Privacy Law Sub-Committee welcomes the opportunity to consider the new Code of Practice for Equipment Interference and revisions to the Codes of Practice for Covert Human Intelligence Sources and Covert Surveillance & Property Interference.

Generally speaking we consider that the proposed changes to the guidance are sensible in light of our reading of the legislation.

In particular, the regulations will clarify the situation for those who may unwittingly be carrying out surveillance, although this is an area where we consider that further publicity around the guidance could be beneficial.

However, we have identified a couple of areas where the Covert Surveillance & Property Interference Code of Practice (CPSI Code) could be improved. Firstly, we note paragraph 3.12 of the CPSI Code which read as follows:

*"3.12. In deciding whether online surveillance should be regarded as covert, consideration should be given to the likelihood of the subject(s) knowing that the surveillance is or may be taking place. Use of the internet itself may be considered as adopting a surveillance technique calculated to ensure that the subject is unaware of it, even if no further steps are taken to conceal the activity. Conversely, if reasonable steps have been taken to inform the public or particular individuals that the surveillance is or may be taking place this can be regarded as overt and a directed surveillance authorisation will not normally be available."*

While there are some very helpful examples in other sections of CPSI Code, in the context of online covert activity we observe that it is difficult to see what reasonable steps could be taken to inform the public or particular individuals that the surveillance is or may be taking place.



Secondly, in terms of paragraph 3.17, which deals with aerial surveillance, we consider that some guidance on assessing the reduced visibility of a craft or device at altitude would be useful: for example, how can it be decided whether a police drone can be recognised as such.

We would welcome further clarification on these points to ensure that the guidance is as comprehensive as possible and if we can assist further on this issue, please do contact me.

Yours faithfully,

Carolyn Thurston Smith  
Secretary to the Privacy Law Sub-Committee