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POILEAS ALBA

Surveillance

(Operations and Log Keeping)

Standard Operating Procedure

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1. Purpose

- 1.1 This Standard Operating Procedure (SOP) supports the Police Service of Scotland, hereafter referred to as Police Scotland, Policy (or policies) for –
- Issue, storage, control and retention of Surveillance Logs
 - General guidance, format and completion of a surveillance log
 - Protection of tactics and intelligence
 - Surveillance evidence at court
 - Authority / Productions / Disclosure
- 1.2 This SOP ensures that Police Scotland conducts Surveillance Operations and Log Keeping procedures nationally, in accordance with the law. It sets out the core aspects of Surveillance log keeping and the impact on data recording and retention. It should be regarded as an introduction to the Scottish Executive Covert Surveillance Code of Practice and guidance.
- 1.3 Directed surveillance carried out by officers of Police Scotland will be in full compliance with the relevant guidelines and best practice on all aspects of surveillance. This SOP relates to Surveillance Log keeping and should be read in conjunction with the Directed Surveillance, Intrusive Surveillance and Property Interference SOP.
- 1.4 There have been many developments and guidelines implemented which have placed an increased demand on Police Scotland, particularly in relation to disclosure and the European Convention on Human Rights (ECHR). The conduct of such covert surveillance in accordance with the relevant legislation ensures compliance with the Human Rights Act 1998 and the principles of the ECHR. The legislation provides a basis for conducting covert surveillance and care must be taken to ensure that surveillance logs are compiled and comply with the legislation.
- 1.5 Covert surveillance is an important tool in the investigation of crime. It can take many forms, such as conventional surveillance through to the deployment of sophisticated electronic equipment. These standard operating procedures seek to ensure that all involved in the application of such tactics are aware of how these methods are protected and how to document this within the surveillance log.
- 1.6 The primary aim of this SOP is to ensure that when carrying out directed surveillance and completing surveillance logs, officers of Police Scotland are doing so in accordance with the law, thereby ensuring the protection of the resultant evidence from successful challenges in court. All Police Scotland officers involved in covert surveillance must be conversant with this SOP and the relevant legislation.

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- 1.7 The accepted operating procedures must retain an element of flexibility that will allow Police Scotland to adapt and accept new and more efficient practices, whilst also taking full cognisance of new case law and legal interpretations provided by the Office of the Surveillance Commissioners (OSC).
- 1.8 All officers performing Directed Surveillance must have a full understanding of the legal basis on which they do so, they must have an appreciation of the legislation which allows surveillance to be carried out and have knowledge of what is authorised. Officers should also be trained to the required standard, i.e. Successful completion of the National Surveillance Course and/or the National Observation Team Course.
- 1.9 Part II of the Regulation of Investigatory Powers (Scotland) Act 2000 regulates the use of Directed Surveillance, which may be defined as:
- “Pre-planned covert observations that are carried out for the purpose of a specific investigation or operation in such a manner that is likely to result in the obtaining of private information about any person, whether or not that person is, or becomes a subject of the operation”.**
- 1.10 Pre-planned covert observations that are carried out in relation to anything taking place on any residential premises or in any private vehicle, and involves the presence of an individual on the premises or in the vehicle is classified as Intrusive Surveillance which is subject to a different application and authorisation processes.
- 1.11 **Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.**

2. Surveillance Log keeping

2.1 Introduction

- 2.1.1 The surveillance log is a contemporaneous record of events detailing, actions and movements of a subject(s) as witnessed by a surveillance operative(s) during a surveillance tour of duty.
- 2.1.2 **Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.**

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- 2.1.3 A surveillance log is not a police issue notebook and should only be used to detail observations whilst conducting surveillance. Police issue notebooks will be used for detentions/arrests etc. and should be carried by officers whilst conducting surveillance.
- 2.1.4 Although neither the police issue notebook nor the surveillance log are necessarily productions in any criminal proceedings; the Procurator Fiscal will ordinarily instruct that surveillance logs be lodged as Crown productions in Solemn Procedure cases.
- 2.1.5 A surveillance log must be completed by a nominated log keeper(s) who is a member of staff tasked with completing the record of surveillance within the log. Surveillance logs should be completed by surveillance operatives who have knowledge of log keeping procedures. They must be comfortable and competent with the law surrounding the use of surveillance and logs; issues raised through disclosure or when presenting evidence at court from surveillance logs; the directives for the issue, use, control and storage of logs; and how to complete surveillance logs in order to achieve the least possible exposure of surveillance methodology and sensitive policing methods without compromising the integrity of the evidence subsequently produced. It is common practice that the first surveillance officer to give evidence is more often than not the surveillance log keeper. It is accepted that the log keeper may be an inexperienced member of the team; if this is the case then the operational commander should ensure that the log keeper has the support and assistance of an experienced surveillance operative, who is competent with the log keeping process.
- 2.1.6 The log keeper is responsible for the surveillance log in its entirety; they must take ownership of the log, ensuring that it is completed in full. The log keeper must ensure the contents of the log are correct, the de-brief is completed correctly and that all officers who require to sign the log do so correctly. They must also ensure that the log is filed / stored accordingly once completed.

2.2 Issue

- 2.2.1 The issue, movement and storage of a surveillance log are ultimately the responsibility of the Surveillance Record System Supervisor who should be a member of staff not below the rank of Inspector. The Inspector must take overall responsibility for the surveillance record system. It is understood and accepted that the Inspector is more than likely to delegate the issue, movement and storage to a Sergeant or on occasion a Constable who will ensure the daily running of such procedures are adhered to.
- 2.2.2 It is accepted that there are various systems and styles adopted by departments and teams, however, all systems / styles must evidence an audit trail in relation to the storage and retention of these documents.
- 2.2.3 The movements of a surveillance log must be detailed with the Surveillance Log Register, which is a register for recording the issue of the log, the allocated log keeper(s) details and the movements of surveillance logs. It is common practice that a nominated officer(s) will issue surveillance logs each

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day and these will be issued to the log keeper(s) and the registers **must** be updated at the time of issue. It is best practice to allocate a nominated officer to have overall responsibility for log keeping procedures with regards to the allocation of the logs and the storage procedures.

- 2.2.4 On returning to the station/office, surveillance logs will be completed accordingly and stored as per the surveillance record system supervisor's guidelines. Logs should be stored chronologically (in date order). (It is accepted that this may not always be possible).

2.3 General Guidance

- 2.3.1 Prior to deploying on surveillance, logs will be issued to the designated log keeper(s). The log keeper(s) will take the surveillance log(s) with them when deployed and take responsibility for the log(s) until they are completed and filed accordingly. Consideration should be given to the person(s) allocated the role of log keeping. If there is an opportunity to give that responsibility to a person deployed within a static Observation Post or similar, then this opportunity should be taken.
- 2.3.2 Each log will refer only to the authorised operation in which operatives are briefed. Should the Operational Commander instruct that observations are to conclude and recommence elsewhere on another operation, officers must be briefed again and the log keeper(s) will be instructed to commence a new log.
- 2.3.3 It is now a common occurrence to continue observations from one team's tour of duty to another's. This is managed by means of handing control and observations to another surveillance team. Each team will carry their own logs. Each surveillance log, as per the SOP will read as a 'stand-alone log'. There will be **no** reference to continuation of observations from another team within the surveillance log. This will be detailed in the Surveillance Management Record by the Operational Commander. Log keepers must ensure that the handover of observations from one log to another is done and document at the same time, i.e. observations are concluded in one log and commenced in the other at the same time to ensure continuity.
- 2.3.4 It should be noted that Authorised Professional Practice for Covert Surveillance states that operatives should not re-deploy on a further surveillance tour of duty before the log is de-briefed. However, it is accepted that this may not be operationally or geographically practical. A surveillance log **must** however be de-briefed at the earliest opportunity. It is good practice to ensure that a surveillance log is de-briefed on returning to the station/office on completion of the surveillance tour of duty. This will allow all officers to be present and ensure that the log is de-briefed and completed accordingly. Logs cannot be completed and stored until the de-brief process has been carried out. Best evidence will come from logs being de-brief and discussed as close to the completion of those observations as possible. The surveillance supervisor, which is likely to be a Sergeant, should ensure that this practice is adhered to.

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- 2.3.5 The Operational Commander may also instruct that observations are to conclude to allow observations to begin on a different subject under the same operation. The Operational Commander will determine whether the same log will continue with reference being made that the subject has changed, or whether a new log will be commenced.
- 2.3.6 – 2.3.16 - **Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.**
- 2.3.17 Two teams may also come together at the same time, i.e. both arrive at a location at the same time, and therefore no team was settled with control. On this occasion the operational Commanders should communicate and decide which team will take primacy / control. The procedure will continue as above with regards to the log etc.
- 2.3.18 A flexible approach to each scenario is required with Operational Commanders controlling the situation as it arises, giving clear instructions to the team(s). If the meeting are pre-planned then a devised plan can be introduced during the briefing. Impromptu meeting must be managed by Operational Commanders as soon as possible. Control is a priority, the tactics as above should be passed once control is gained and the subject(s) are settled.
- 2.3.19 **Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.**
- 2.3.20 It is imperative that officers ensure that the integrity of the surveillance log cannot be compromised under any circumstances. There should be no misleading information contained within the log. The log, once completed should be clear, concise and easy to understand by person's out-with the organisation. For example, members of a jury should fully understand the wording of a surveillance log as it should refer to a detailed description of the actions and movements of a subject of surveillance. There will be no reference to surveillance glossary, or abbreviations, as these are only understood by practitioners. There will be no reference made to words such as 'possibly', 'may', 'maybe' or 'believed to be'. These words infer it is the thoughts of the officer as opposed to what is actually happening.

2.4 Format

- 2.4.1 **Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.**
- 2.4.2 A surveillance log must be constructed in the following format;
- Completed only by a competent member of the surveillance team
 - The surveillance log must be a bound book containing secure consecutively numbered pages

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- The outer cover should make no reference to the police or mention that the document is a surveillance log
- A unique serial number should be printed on each page
- The Government Protective Marking Scheme (GPMS) must be applied appropriately
- Page one of the log must contain a section for the Operation name, Subject (Forename/Surname), Date and Surveillance Authority Number
- The foot of each page will have a section for log keepers signature and supervisors signature
- All pages will be in the format detailing columns for time/call sign, details of observations and witnessing officers initials

2.5 Completion of Log

2.5.1 The surveillance log will

- Be completed in BLACK ink
- Use only the spaces provided for writing
- Have no writing omitted or erased so that it is then unreadable
- Contain cross-through of words which have been written in error, ensuring that the error remains readable. The error will be initialled by the log keeper, followed by the correct entry.
- Contain no blank spaces. Incomplete lines will be crossed through as per a police issue notebook.
- Have pages which are accidentally missed, damaged or otherwise, will **not** be discarded. They will be crossed through and initialled by the log keeper with an explanation.
- Be written in plain English, making no reference to surveillance glossary, with **no** use of abbreviations.
- The log keeper must ensure that the surveillance log is legible. It is not their personal issue notebook and must be clear to any person reading the document. Officers may have to print the details within the log if it is unreadable. Other officers may be required to read entries from a surveillance log when giving evidence in court.
- The taking of contemporaneous notes during surveillance can be difficult; officers must not write in short hand. Officers should detail what is happening as best as they can, additional information can be included at a later time with further detail/descriptions being added at the de-brief etc.

2.5.2 The name of the Operation, Subject, Date and the Directed Surveillance Authority number will be recorded on page 1.

2.5.3 The log keeper will record the time the log is started in column 1, their call sign will be endorsed in column 2. In column 3 they will sign on as log keeper as follows;

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“I L. Moffat sign on as log keeper for Operation Magic (log keeper then endorses their signature). The subject of surveillance is Joseph Bloggs.”

2.5.4 NB: The log keeper endorses their signature as they are stating that they ‘sign’ on as log keeper, and must therefore ensure they endorse their signature.

2.5.5 There is no requirement for dates of birth, the subjects name is sufficient; unless there are persons with the same name (see section 2.5.8).

2.5.6 The subject of observations may not be a person who is identified; it can be an unidentified person, premises, object, vehicle or location. There are a number of ways to endorse the log dependant on the varying circumstances, for example;

The subject is a known individual whose details are known to police and can therefore be named –

“I L. Moffat sign on as log keeper for Operation Magic (log keeper then endorses their signature). The subject of surveillance is Joseph Bloggs.”

2.5.7 – 2.5.11 **Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.**

2.5.12 Entries thereafter will be timed in the relevant column; reference will be made to the call sign of the person(s) making the observations (this should only be the call sign, there is no need for any further information written in this section, there should be no reference to names). The log keeper will then detail the observations communicated to them within the surveillance log. It is important that the log keeper writes the entry in plain English as opposed to scribing the commentary passed on the radio.

2.6 - 2.11.8 **Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.**

2.12 Structure of Surveillance Log

2.12.1 The surveillance log should be written in the present tense, as if providing live commentary of what is happening. It should be precise and unambiguous.

2.12.2 There will be no reference made to words such as ‘possibly’, ‘may’, ‘maybe’ or ‘believed to be’. These words infer it is the thoughts of the officer as opposed to what is actually happening. If it is unclear due to a lack of commentary, use of tones etc. it should be understood that it is the responsibility of the log keeper to seek clarification. The relevant details should be noted in the log at the first available opportunity. Delayed messages can be detailed within the log during a deployment, it is not necessary to wait until the de-brief.

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- 2.12.3 **Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.**
- 2.12.4 **Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.**
- 2.12.5 It is accepted that log keeping responsibilities will on occasion be shared by officers throughout the deployment. Should it be necessary to hand over the responsibility to another officer, the new log keeper must document this within the log. This should be done as follows; **'I L. Moffat sign on as log keeper'** (officer will endorse their signature after this statement). The log process will then continue as normal. There is no requirement for log keepers to 'sign off' as log keepers.
- 2.12.6 When all pages of a surveillance log are used but observations have not yet concluded, the log keeper should simply start a new log (preferably the next sequential log number which they should have with them). They should again sign on as log keeper and ensure that the details at the top of the log are endorsed (Operation/Subject etc.). The log keeper should sign on as normal.
- 2.12.7 The log keeper must record the time and location of any loss of control of the subject of surveillance. This will be explained on the radio as it happens using glossary/commentary, however, the log keeper must ensure that this is recorded clearly, in plain English, with reference to street names etc.
- 2.12.8 – 3.2 **Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.**

3.3 Process of the Debrief

- 3.3.1 The log keeper will endorse the log with the date (only if done on a different date from the observations) and time in which the de-brief commences. There will be no reference to the location of the de-brief, the team who are debriefing, officers who are not present or any other irrelevant information. This information will be detailed in the SMR only. The log entry should simply state;

“De-brief commenced”

- 3.3.2 The log keeper will then read through the content of the Surveillance Log, entry by entry, ensuring that the log is an accurate account of the observations referred to. Each entry should be read out in full, verbatim. Log keepers should ensure that what is written is what is read out in full.
- 3.3.3 **Corrections and additions** - When it is ascertained that a log entry is incorrect, or there is additional information to add to that entry the log keeper will provide the opportunity for officers to expand on log entries. This process

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should not be rushed, the de-brief is an essential element of a surveillance deployment. Corrections and additions will be titled within the log as follows;

“Corrections and Additions”

or

“No corrections or Additions”

- 3.3.4 The corrections and additions will be made at the end of the log by the witnessing officer; they will be cross-referenced to the main log by means of continuous alphabetical notations in the margin at the appropriate entry/time. The correct information will then be contained at the end of the log by means of an amendment. Additions should be made when an entry can contain more information. This is often the case when due to operational reasons information could not be passed to the log keeper. For example, full descriptions of persons. Additions provide the opportunity to expand and fully detail an entry. **A credible log will more than likely contain corrections and additions.**
- 3.3.5 When making corrections and additions officers should be handed the log at the time and write their entry/amendment. The officer will note the alphabetical notation in the margin. That officer should then read their entry at the de-brief and return the log to the log keeper who will continue with the de-brief process. This will ensure that the log is read in full and all persons present are aware of the corrections and additions. These entries will run concurrent with the de-brief.
- 3.3.6 Every entry, when accepted as a true and accurate version of events will be initialled by the witnessing officer(s). **Witnessing officers will initial the entry on the right hand column and will do so at the end of the entry (last line of that entry).** Witnesses must ensure that they can speak to the whole entry before initialling it. If they only speak to partial information contained within that entry then they should not be initialling the entry. They should include an addition to the log, detailing their partial observation as opposed to speaking to an entry which they have only part witnessed. They will then sign the addition. This addition should be cross referred to the main entry as previously stated using continuous alphabetical referencing.
- 3.3.7 If an event is witnessed by a number of officers then each officer must ensure that they initial that entry, despite the call sign. There is no limit to how many officers can and should sign an entry. It is important with reference to Operational statements that all witnesses sign the entries they can speak to.
- 3.3.8 **Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.**
- 3.3.9 On completion of the de-brief, once all entries are verified as correct and the relevant corrections and additions are made, the following entry will be made in the log book;

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“The following officers may seek to use this document as a means of recollecting their observations”

- 3.3.10 There will thereafter be a list of all officers who will require to use the surveillance log book evidentially. Officer’s names will be written in the format; the initial of their forename followed by their complete surname. For example, ‘D Wright’. This should be written in the format as the officers appear within the log, chronological order detailing each officer as they feature throughout the log.
- 3.3.11 There will be no reference to forenames, rank, gender or surveillance function within the Surveillance Log. The log will then be endorsed with the following entry;

“De-brief concluded”.

- 3.3.12 **Officers not present at de-brief** – When an officer is not present at the de-brief they must be given the opportunity to view the Surveillance Log regardless of whether they have observations contained within the log. They may wish to corroborate an entry or add information to the log. If they have no need or reason to make any reference to the Surveillance Log then there is **no** need to have them endorse the log or list them within the list of officers. The officer will simply endorse the SMR (section 2.5). For example, if an officer has no observations and therefore does not require to be included in the log at all, once they have read the log when self-debriefing then they will endorse the SMR only.

There may be occasions whereby officers not present at the de-brief will identify errors and require to make a de-brief note etc. When an officer has entries within the log and they are listed then they must endorse the log stating that they have self-debriefed the log. The officers will note the time and date and endorse the log as follows;

“I D. Wright have self-de-briefed this log and make the following correction and/or additions.....(officer will then record any corrections and additions they wish to make)” (officer will initial this entry)

- 3.3.13 Within this section the officer should, if required, include corrections and additions and will again cross reference them to the entries within the log. The officer must also ensure they sign their name within the list of officers and initial the last column.
- 3.3.14 When all absent officers have had the opportunity to self-de-brief and endorse the log then the log is complete. Once complete, the final process for the log keeper is to ‘Z’ line the last page, thus ensuring that no further entries can be made. This should only be done once the log keeper is satisfied that no further information is required. The log will then be handed to the supervising officer for endorsement.

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- 3.3.15 The supervising officer should be present at the de-brief and must ensure that the de-brief is carried out correctly. The supervisor will, once the log is completed, check and sign the bottom of each page. The supervising officer must ensure that the format of the log is correct, there are no blank spaces and that all entries are signed. The supervisor will ensure they do this even if they were not involved in the surveillance.

4. Control and Storage

- 4.1 The control and storage of a surveillance log are also the responsibility of the Surveillance Record System Supervisor. The movement of surveillance logs should be recorded in a manner which proves authenticity and provides a transparent audit trail. All Surveillance Logs will be cross-referenced to the relevant Surveillance Management Record. The issuing of these documents will also be detailed within the relevant registers.
- 4.2 It is accepted that Surveillance teams have different methods of issue, control and storage of these documents. Each team should however ensure that the relevant registers are maintained and the documents are secured within a secure location. This is documented within the SOP at section 2.2.1.
- 4.3 It is accepted that officers who issue the Surveillance Logs may be of the rank of Constable. There may be more than one log issued at one time, this allowing for observations to continue into a second log when the first log is completed etc. Unused Surveillance Logs must be returned for storage and re-registered. Officers should use the logs in numerical order where possible. Subsequent re-issue of logs must be recorded.
- 4.4 On receipt of the completed log (in its entirety), the Surveillance Record System Supervisor or nominated officer will record its use and receipt same within the register. The log will be stored in the secure location and log register should thereafter identify the movements of that log if requested by a Fiscal etc. This section of the register should contain as much information as possible. Any authorised parties taking possession of a Surveillance Log will sign a Police Scotland production receipt.
- 4.5 The College of Policing, Authorised Professional Practice states "Surveillance Logs should not be photocopied. If for any reason logs are required to be photocopied this must be done under the authorisation of the SIO. Supervisors should document the photocopying of Logs, which will be done in agreement with the Surveillance Record System Supervisor and must adhere with Disclosure procedures.
- 4.6 Data Protection Act 2018 requires that personal data should be kept for no longer than necessary for the purpose for which the authorisation was acquired. Surveillance product should be subject to regular reviews, and disposed of where appropriate. Surveillance product should be managed and archived on a regular basis with regular audits. Operatives should refer to the Record Retention SOP for policy on retention of surveillance logs.

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5. Observation Posts

5.1 – 5.4 Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.

6. Mobile Phone / Electronic Device Usage

6.1 – 6.6 Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.

7. Technical Surveillance

7.1 – 7.4 Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.

8. Protection of Tactics and Intelligence

8.1 – 8.2 Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.

9. Statements

9.1 General Guidance

9.1.1 It is a requirement that a statement submitted in the name of a police officer has been prepared by that officer and contains an accurate and reliable account of the evidence which they can give, from their own recollection or notes.

9.1.2 For reasons of operational and personal security, all officers involved in covert enquiries into serious and organised crime or criminals will ensure that they disclose only the relevant personal details. Such officers will supply COPFS with their name (consistent with the name used in any surveillance log), their age, rank, and length of police service.

9.1.3 Within the disclosable text of their statement officers will describe their role, including department, for example;

“I am a Detective Constable within the Police Service of Scotland currently attached to the Specialist Crime Division. I am based within

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the Organised Crime and Counter Terrorism Unit. I am xx years old and have xx years service”.

9.1.4 – 9.1.17 Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.

9.1.18 The location of the briefing will not be included in the statement. There is no requirement to ever provide where the briefings / de-briefs take place. It is accepted that these take place at secure locations.

9.1.19 At the conclusion of their statement officers will indicate which persons they will be able to identify in court. The full name of persons referred to will be included.

9.1.20 If an officer is deployed on surveillance but has no specific observations, it is a requirement that the officer provides a statement stating that they were deployed on surveillance and had no specific observations. All officers deployed on surveillance will be recorded in the SMR and must therefore submit a negative statement.

9.2 Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.

9.3 Surveillance Evidence at Court

9.3.1 The Courts generally accept that some sensitive police methods and tactics should be protected from public disclosure but this will not be allowed to compromise the right of any individual to a fair trial as enshrined in Article 6 of European Convention of Human Rights (ECHR).

9.3.2 The Defence is entitled to test the credibility of the evidence and as such they may be permitted by the Judge to ask any question in order to do so.

9.3.3 Any sensitive matters relating to the case must be discussed with COPFS by the Senior Investigating Officer (SIO) in order that the Advocate Depute (AD) is able to anticipate any likely difficulties during trial.

9.3.4 Agreement will often be reached with COPFS that the most senior member of the surveillance team will give evidence first in order that any questions pertaining to sensitive issues can be put to them.

9.3.5 This of course will not always be possible and it is therefore essential that all surveillance officers are familiar with all procedures relating to surveillance questions.

9.3.6 Police witnesses must not knowingly mislead the court and cannot refuse to answer questions in court simply because they relate to sensitive surveillance matters. It should be noted that the term ‘protection of the court’ is not a universal COPFS term and should not be used as a matter of course, not all

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Procurator Fiscal Deputes acknowledge its existence or attribute any meaning to it within the court.

- 9.3.7 The underlying principles of 'need to know' that apply to all intelligence matters should ensure that officers are able to truthfully answer many sensitive questions by stating that they do not know the answer to the question. If they do know the answer to the question but decline to answer they should justify this decision.

9.4 Evidence of Identification

- 9.4.1 Officers are asked when giving evidence in relation to surveillance, how they are able to identify a particular person. Officers must ensure that they can do so legitimately and that they can explain how they were able to do so, for example - professional knowledge prior to the operation, criminal records photograph, surveillance photograph, or subsequent knowledge where identity was established after arrest.
- 9.4.2 If an officer has prior professional knowledge of an individual or has viewed a Criminal History System (CHS) convicted prisoner photograph, they may initially advise the Defence that it would not be in their client's interest to state how the officer knows his client. Should the Defence persist then the facts should be made known to the court.
- 9.4.3 Photographs shown at a briefing or photographs made available to surveillance officers must be retained and be available for any subsequent trial. These should also be noted in the SMR.
- 9.4.4 – 9.4.6 **Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.**

9.5 Sensitive Aspects of Surveillance

- 9.5.1 The Courts generally accept that some sensitive police methods and tactics should be protected from public disclosure but this will not be allowed to compromise the right of any individual to a fair trial as enshrined in Article 6 of European Convention of Human Rights (ECHR). The Defence is entitled to test the credibility of the evidence and as such they may be permitted by the Judge to ask any question in order to do so.
- 9.5.2 – 9.5.3 **Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, Section 35, Law Enforcement.**

10. Productions

- 10.1 It is imperative that all officers are aware of the importance of the correct procedures to be adopted in the handling, safe storage and accurate recording of the location and movement of productions.

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- 10.2 In line with current Police Scotland procedures it is considered best practice to allocate the responsibility of productions to two officers at the earliest opportunity, usually at the beginning of an operation. The officers should be fully briefed by the SIO in relation to the operation's forensic strategy and thereafter must follow the guidance found in the Productions SOP.

11. Disclosure

- 11.1 In its statutory role as a crime investigating agency, Police Scotland act as an agent of the COPFS, reporting the facts of investigations for the consideration of prosecution by way of a Standard Prosecution Report (SPR) or other agreed reporting template.
- 11.2 The content of these reports facilitate prosecution decisions by COPFS, and they therefore must contain accurate summaries of the findings of police investigations, both for and against accused persons.
- 11.3 The decision as to what information should be disclosed to the accused is only the responsibility of COPFS. The Police role in disclosure is one of revelation, i.e. to reveal to COPFS all material obtained or generated during the course of an investigation that may be relevant in order to ensure that the Crown is able to comply with its disclosure obligations.
- 11.4 In all cases consideration must be given to the sensitivity of a document in conjunction with the COPFS.
- 11.5 SMR's will normally be considered sensitive for disclosure purposes. In cases of doubt, advice should be sought.
- 11.6 Any independent material (e.g. Notes) generated by an operative during the course of a briefing or a surveillance tour of duty must be retained and, where necessary, the disclosure officer must be informed for appropriate action, i.e. material which would become relevant in any subsequent criminal case.

12. Surveillance Management Record (SMR)

- 12.1 The SMR is designed to provide a sequential record of the administration of a surveillance deployment, and one must be completed for every surveillance deployment. The SMR will normally be completed by the nominated supervisor or surveillance commander who has been placed in charge of that deployment.
- 12.2 It follows that more complex or lengthy deployments involving a greater number of officers are likely to involve more logistical and administrative issues than short term deployments of a few officers; however there are certain requirements which will always be completed.

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12.3 The SMR must be formatted as follows (this reflects the surveillance log format):

- It must be a bound book containing consecutively numbered pages;
- It must have nothing on the outside cover that could identify the book as a surveillance document;
- It must have a unique serial number printed on it.

12.4 The SMR must contain obligatory content as detailed below:

- **Title Page**
- **Details of Briefing** – This section should be completed at the time of the briefing. It is not intended to replace any operational briefing sheet or order which may also have been produced. It is vital that all operatives deployed on surveillance are aware of what they have been authorised to do and that they have been shown any images of subject where available to allow them to make an identification for the purposes of surveillance.
- **Officers attending Briefing** – All officers attending the briefing need to be recorded on the SMR. The duty start times of those due to be deployed on surveillance must be recorded to allow the surveillance commander to monitor any fitness for duty and health and safety concerns which may arise from prolonged deployment. The SMR will record a comprehensive list of the name of all officers deployed on surveillance. The format will be initial and surname only.
- **Officers Joining/Leaving the Team** – Supervisors should note any changes to the make-up of the team during the deployment together with any relevant reasons e.g. re-deployed on other duties or stood down for domestic reasons.
- **Working Time Directive** – Supervisors should record here any considerations or decisions made regarding the prolonged deployment of operatives. For example, the justification for officers commencing duties following a rest period of less than 11 hours; the use of officers who have exceeded the threshold; any special considerations for motorcyclists; or any other consideration which may affect the officers fitness or willingness to continue duties.
- **Results of Enquires Carried Out** – Provides a format for recording the progress and results of any dynamic checks made during the deployment.
- **Visual Imagery Taken** – A section to list the types and references of any footage/capture of which has been collected during the course of the deployment.
- **Productions** – No 'actions' taken by operatives should be recorded in the surveillance log. This section of the SMR is the place to list any items recovered which may become productions, together with any actions taken by the officer to secure evidence.
- **De-brief** – The primary purpose of the debrief section in the SMR is for the de-brief of the surveillance log. Other tactical or strategic debriefs may

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take place at a later stage for some operations. Every officer who has been deployed on the surveillance is required to sign the SMR, regardless of whether they have observed events. There is a separate section for those officers to sign who were deployed but could not attend the de-brief.

- **Dynamic Operational Notes** – For any other issue that arises during the course of the surveillance deployment that is not covered elsewhere. This is not exhaustive and is not intended to be prescriptive as to the format. For example, any dynamic risk assessments made, any significant decisions or changes of operational strategy affecting the surveillance. Other considerations for this section are Identification Rationale; Noteworthy events, i.e. change in objectives, joint operations, compromises, collateral intrusion, technical support or Mobile Armed Support to Surveillance (MASTS).

- 12.5 It is imperative that SMRs do not duplicate information contained within the surveillance log book or intelligence received during the course of a surveillance deployment.
- 12.6 Upon completion of the surveillance deployment and the de-brief, the SMR must be returned and stored securely with the original surveillance log book(s).
- 12.7 When cases are being prepared for court, the Disclosure Officer and SIO will need to be aware that the SMR is designed to remove all tactical aspects of surveillance from the surveillance log. As such SMRs will normally be regarded as sensitive for disclosure purposes, if indeed they have any relevance to the prosecution or defence case. This does not override the obligation under Part 6 of the Criminal Justice and Licensing (Scotland) Act 2010 to reveal to COPFS any material which may either undermine the prosecution case or assist the defence case – if the Disclosure Officer and SIO consider that any such material has been recorded in the SMR this must be brought to the attention of the prosecutor at the earliest opportunity.
- 12.8 The GPMS must also be applied on completion of the document.

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13. Surveillance Compromise

- 13.1 Any criminal awareness or behaviour in relation to covert tactics should be regarded as a surveillance compromise. There is no requirement for a compromise to be confirmed, the mere demonstration of awareness provides sufficient grounds to record such an instance. The pace of technological change and advances in covert techniques broadens the scope of how such compromises may occur, this is not restricted to, but could include;
- Conventional surveillance
 - Technical surveillance
 - Internet
 - Other covert methods
- 13.2 The National Compromise Database (NCD) is maintained by the National Crime Agency (NCA), who retains all submissions for law enforcement agencies in the United Kingdom (UK). The NCA require submissions of all perceived compromises including intelligence of this nature. **It should also be stressed that officers' personal opinions and beliefs are both relevant and valuable for the purposes of the NCD.**
- 13.3 As a matter of good practice, compromises should be identified at team debriefs, and the details submitted onto a NCD form. The completed form should then be forwarded to the respective CAB for that region. The CAB will retain a copy of the compromise report before notifying the NCA administrator and relevant Authorising Officer(s).
- 13.4 An NCA bulletin is held in the Surveillance Module Application and CAB Guidance Documents section of the force intranet which fully defines the NCA intelligence requirements relative to the management of surveillance compromise. It is incumbent of all staff working in the covert arena to familiarise themselves with the content of the document in order that Police Scotland staff contribute appropriately to the database.
- 13.5 There will be no reference to surveillance compromise(s) within a surveillance log.

List of Associated Legislation

- The Regulation of Investigatory Powers (Scotland) Act 2000
- The Regulation of Investigatory Powers Act 2000
- The Police Act 1997 (Part III)
- Human Rights Act 1998
- Data Protection Act 2018

List of Associated Reference Documents

Standard Operating Procedures

- Directed Surveillance, Intrusive Surveillance and Property Interference SOP
- Productions SOP

Guidance

- Scottish Executive Covert Surveillance Code of Practice