

Divisions Affected - All

AUDIT AND GOVERNANCE COMMITTEE

18th SEPTEMBER 2024

REPORT ON THE AUTHORITY'S POLICY FOR COMPLIANCE WITH THE REGULATION OF INVESTIGATORY POWERS ACT 2000 AND USE OF ACTIVITIES WITHIN THE SCOPE OF THIS ACT

**Report by Anita Bradley, Director of Law & Governance and
Monitoring Officer**

RECOMMENDATION

1. The Committee is RECOMMENDED to:
 - a) Note the Policy for Compliance with the Investigation of Regulatory Powers Act 2000 included in the annex of this paper and to comment on any changes to the policy that the committee would wish the Director of Law & Governance and Monitoring Officer to consider, and
 - b) Consider and note the use of any activities within the scope of the Regulation of Investigatory Powers Act by the Council

Executive Summary

2. The Council may occasionally need to carry out covert surveillance. The Regulation of Investigatory Powers Act 2000 ('the Act') and supporting Codes of Practice provide the legal framework under which public bodies may lawfully undertake covert surveillance. Compliance with the Act and the supporting Codes of Practice provides protection to the Council in the event that an individual challenges the actions of the Council on the basis that those actions were an infringement of the individual's human rights. It also reduces the likelihood that any evidence obtained through covert surveillance and used in legal proceedings is ruled inadmissible.
3. Codes of Practice under the Act require that elected members review the Authority's use of activities within the scope of the Act periodically and review the Authority's Policy annually. This report provides a summary of the covert activities undertaken by the council between April 2023 and March 2024 for review by Cabinet.

4. The Council's Policy for Compliance with the Investigation of Regulatory Powers Act 2000 ('the policy') is updated annually and received a significant refresh in 2023. This included incorporating feedback from the Investigatory Powers Commissioner's Office (IPCO). This year, officers are not recommending any changes to the policy.

Exempt Information

5. None

Introduction

6. The Act regulates the use of covert investigatory activities by local authorities. It creates the statutory framework by which covert surveillance activities may be lawfully undertaken. Special authorisation arrangements need to be put in place whenever a local authority considers commencing covert surveillance or seeks to obtain information by the use of informants or officers acting in an undercover capacity.
7. Under the Act local authorities may only carry out covert surveillance where it is necessary for the prevention or detection of crime. In addition, local authorities can only authorise surveillance activities within the framework created by the Act if it meets one of the following tests – criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol, tobacco or nicotine inhaling products (the 'seriousness' threshold). Covert surveillance for other matters, such as for the investigation of minor criminal offences not meeting the 'seriousness' threshold cannot be authorised under the Act.
8. Codes of Practice under the Act require that elected members review the Authority's use of activities within the scope of the Act periodically and review the Authority's policy annually. This paper provides a summary of the activities undertaken by Oxfordshire County Council that fall within the scope of this Act for the period from April 2023 to March 2024. The Authority's Policy for Compliance with the Regulation of Investigatory Powers Act 2000 is attached in Annex 1 for consideration.

Investigatory Powers Commissioner's Office Inspection

9. As part of the legislative regime, the Investigatory Powers Commissioner's Office (IPCO) carry out three-yearly inspections to examine an authority's policies, procedures, operations and administration. The Council's last inspection was in 2023, where the IPC informed the Council that they were satisfied that the Council had demonstrated ongoing compliance with the Act and that the Council will be due its next inspection in 2026.

Use of the Act by Oxfordshire County Council

10. Within the Council, covert surveillance is mainly carried out by the Trading Standards Service as part of investigations into suspected contraventions of consumer protection legislation. Between April 2023 and March 2024, the Council authorised covert surveillance on 1 occasion.
11. The authorisation for surveillance granted related to conducting underaged test purchasing of nicotine inhaling products (vapes). Covert test purchases are an essential operational tactic in the efforts to tackle the sale of age restricted products to children. These test purchases must be authorised under the Act and require the careful consideration of whether the intrusion is necessary for the statutory purpose of prevention and detection of crime and proportionate to the outcome being sought.
12. The County Council's Trading Standards team is working with retailers and partner organisations to raise awareness of the problem of both the sale of vapes to children and the selling of non-compliant vapes. Much of this work is to provide advice and support to those selling age restricted products, including simple, practical steps that can be taken to reduce the likelihood of a sale being made to a child. This includes introducing a 'Challenge 25' policy, asking anyone who looks under 25 to produce a suitable form of age verification when buying age restricted items. All premises visited during covert surveillance test purchasing will have received an overt, advisory visit, before testing takes place.
13. The recent authorisation of covert surveillance activities led to 14 premises being visited for test purchasing. At 2 of the shops visited, a sale was made to a 16 year old volunteer. Furthermore, at 1 of the premises where a sale was made to the volunteer, an inspection of the shop after the sale was made discovered a large quantity of illegal high-capacity disposable vapes and a small quantity of non-UK duty paid shisha tobacco. Both instances remain under investigation.
14. The activity detailed above is part of wider work to tackle concerns around vaping, both their availability to children and the supply of devices that are not compliant with UK legal requirements. This work is being undertaken with support from OCC's public health team and recognises that for those who currently smoke, the use of legally compliant vapes are a much safer alternative, and play an important part in attempts to reduce smoking rates and to the reduce the harm and premature deaths that smoking results in. Since June 2022:
 - 95 premises have been visited and issued advice due to complaints received about the underaged sales of vapes
 - Seizures of illegal disposable vapes were made at 54 of the 95 premises visited, totalling 10,444 vapes – a recent news story is available here: <https://news.oxfordshire.gov.uk/over-10000-illegal-vapes-seized-by-trading-standards/>
 - All products seized were due to their excess capacity or strength, along with labelling non-compliance

- Products seized are mainly 10-20ml capacity (or 5-10 times the UK legal maximum) and up to 5% nicotine content (when the UK limit is 2%).
- Multiple previously unknown products have been identified and their details shared with other local authorities and regulatory partners.
- Oxfordshire County Council's website now includes an advice section for retailers and "what not to buy" list for both retailers and consumers – see here: <https://www.oxfordshire.gov.uk/business/trading-standards/advice-communities/e-cigarettes-and-vape-pens>
- Eight businesses are under investigation for continuing to sell illegal high capacity vapes after already having been issued warnings following earlier seizures.

Magistrate's Oversight

15. From October 2012 the Protection of Freedoms Act 2012 required Judicial oversight of authorisations of covert surveillance activities. All authorisations for covert surveillance activities falling within the scope of the Act granted by local authorities now need Magistrate approval before they take effect. All applications made to Magistrates between April 2023 and March 2024 were approved.

The Council's RIPA Policy

16. The Council's Policy for Compliance with the Investigation of Regulatory Powers Act 2000 ('the policy') is reviewed annually and was subject to a significant refresh in 2023. This was to take account of feedback to local authorities, from the IPCO, of the need to provide clearer guidance to council staff and better reflect the council's position on monitoring social media, and to outline the importance of clear document management processes for the product of surveillance.
17. The current policy reflects the recommendations following previous IPCO inspections and it provides more clarity on how RIPA applies when looking at social media, ensures there is early reference to the importance of safeguarding young people and strengthens the expectations in relation to records retention and information management. No new amendments are proposed this year, following the comprehensive refresh in 2023.

Corporate Policies and Priorities

18. This RIPA policy is an internal policy setting out governance arrangements for operational activity within the scope of the Act. It has no direct implications on Council priorities. However, compliance with the Act is important to manage risk for the Council and to ensure successful outcomes of operational activity undertaken by a number of council services.

Financial Implications

19. This is a procedural matter and there are no direct financial implications arising from the adoption of the new policy.

Comments checked by:

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Legal Implications

20. In using the investigatory powers which are available to it, the Council must comply with the provisions of the Regulation of Investigatory Powers Act 2000, together with Codes of Practice issued by the government and other regulations. The policy draws together relevant powers and duties into this document. Legal Services reviewed and commented on the revised policy in 2023, and it remains appropriate.

Comments checked by:

Paul Grant, Head of Legal and Deputy Monitoring Officer,
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Staff Implications

21. None

Equality & Inclusion Implications

22. There are no equality and inclusion implications arising from the policy.

Sustainability Implications

23. There are no sustainability implications arising from the policy.

Risk Management

24. The policy is important in order to ensure there is appropriate governance over activities that fall within the scope of the Act and as such assists in managing risks to the council.

Consultations

25. No consultation is required. This policy replaces the existing policy and does not introduce any new requirements and has no direct impact on Oxfordshire residents and businesses.

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Annex: Policy on Compliance with Investigation of Regulatory Powers Act 2000.

Background papers: None

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September 2024