

Divisions Affected - All

CABINET – 23rd January 2024

REPORT ON THE AUTHORITY'S POLICY FOR COMPLIANCE WITH THE REGULATION OF INVESTIGATORY POWERS ACT 2000, THE USE OF ACTIVITIES WITHIN THE SCOPE OF THIS ACT AND RECENT INSPECTION BY THE INVESTIGATORY POWERS COMMISSIONER'S OFFICE

Report by the Director of Law and Governance and Monitoring Officer

RECOMMENDATIONS

1. Cabinet is RECOMMENDED to
 - a) Consider and note the use of activities within the scope of the Regulation of Investigatory Powers Act by the Council, and
 - b) Approve the revised Policy for Compliance with the Investigation of Regulatory Powers Act 2000 included in the annex of this paper
 - c) Note the comments provided by the Investigatory Powers Commissioner's Office regarding assurance of ongoing compliance with RIPA 2000 and the Investigatory Powers Act 2016 and that a further inspection is not required until 2026.

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 2022 and March 2023 for review by Cabinet.
4. The Council's existing Policy for Compliance with the Investigation of Regulatory Powers Act 2000 ('the policy') is updated annually but has not been

subjected to a full refresh since 2017. Since that time the authority has been subject to three inspections by the Investigatory Powers Commissioner's Office (IPCO). Responding to feedback from the IPCO, a complete refresh of the policy has been undertaken. The report provides cabinet with an opportunity to review and approve the council's Regulation of Investigatory Powers Act Policy. The policy requires Cabinet approval in the absence of a delegation in the Constitution to another body or committee for approval.

Exempt Information

5. None

Report

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 2022 to March 2023. 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. In 2020, the Council was subject to a desktop, telephone-based inspection, since the IPCO did not carry

out physical inspections during the pandemic. Following a review of how the IPCO conducts its oversight of local authorities, they now no longer undertake routinely an inspection as has previously been the case. Instead, the Investigatory Powers Commissioner (IPC) has agreed that each local authority should provide a written update, in the first instance, on its compliance with the legislation. In June, the Council provided a written response to the IPCO and the Director of Law and Governance and Monitoring Officer, Head of Legal and Head of Trading Standards met with an inspector to provide further information. In July, 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 2022 and March 2023 the Council authorised covert surveillance on 4 occasions.
11. Of the authorisations for surveillance granted in the last year, all related to investigations concerning the sale of illegal tobacco. Illegal tobacco refers to cigarettes, hand-rolling tobacco or other smoking products that have been smuggled into the UK without tax being paid on them, or which are counterfeit. They can be attractive to children and young people as they are often sold at “pocket money prices” by unscrupulous sellers. The importation, distribution and supply of illegal tobacco is often linked with other forms of criminality.
12. The County Council’s Trading Standards team is working with retailers and partner organisations to raise awareness of the problem of illegal tobacco and carries out enforcement action when required, including against those selling online and via social media. Investigations of suspected supplies of illegal tobacco normally involve a covert test purchase. The purpose of the test purchase is to obtain a sample of the product being sold in order to ascertain whether it is legal to sell in this country and to identify the persons involved in the sale. Covert test purchases also assist in identifying where stocks of the product are being stored since illegal tobacco is frequently hidden in or around the premises from which it is sold. Covert test purchases are undertaken only where there are grounds to suspect the person or business concerned is involved in the supply of illegal tobacco products.
13. Covert test purchases are an essential operational tactic in the efforts to tackle the sale of illegal tobacco. These test purchases must be authorised under the Act and require the careful consideration of whether the intrusion is necessary for the purpose of prevention and detection of crime and proportionate to the outcome being sought.
14. Whilst legal proceedings are still ongoing in relation to the substantive investigations that included the recent authorisations of covert surveillance activities, authority to prosecute has been given of 3 individuals, for criminal

offences including Trade Marks Act, money laundering and tobacco labelling and packaging requirements.

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's approval before they take effect. All applications made to Magistrates between April 2022 and March 2023 were approved.

Updating of the Council's RIPA Policy

16. The Council's existing Policy for Compliance with the Investigation of Regulatory Powers Act 2000 ('the policy') is updated annually but has not been subjected to a full refresh since 2017. Since this time the IPCO has provided feedback to local authorities 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. In addition, when the annual report on the Council's use of RIPA and the RIPA policy was taken to the Audit and Governance Committee in 2022, the committee asked that more emphasis to be placed on safeguarding young people in the policy. As a result, a complete refresh of the policy has been undertaken.
17. This new policy reflects the recommendations following previous IPCO inspections and the comments of the Audit and Governance Committee. 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.
18. The policy requires Cabinet approval in the absence of a delegation in the Constitution to another body or committee for approval. It is recommended that this new Policy is adopted by the Council.

Corporate Policies and Priorities

19. 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

20. 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

21. 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 revised policy draws together relevant powers and duties into this document. Legal Services have reviewed and commented on the revised policy, and it is appropriate for adoption.

Comments checked by:

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Staff Implications

22. There are no staffing implications arising from the policy. It is a replacement of the existing policy, introducing no new staffing requirements. It will be published on the Council's Intranet.

Equality & Inclusion Implications

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

Sustainability Implications

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

Risk Management

25. 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

26. 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.

NAME

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

Background papers: None

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