

Chapter 07 Covert Operations

7.1 Introduction

Most surveillance done by Civil Aviation Authority of Nepal officials is of an overt nature, that is, undisguised and designed to encourage compliance through a visible presence, to deter regulatory infractions and to detect infractions. There are however instances where covert operations may be appropriate or necessary in order to gather evidence. Covert operations are surveillance activities during which inspectors intentionally represent themselves as being someone other than a Civil Aviation official.

7.2 Covert Operations Policy

Covert operations may be conducted in order to gather evidence of continuing wilful violations of the aviation safety regulations. Covert operations shall be conducted only when a threat to aviation safety exists and when normal investigative means have been ineffective or are likely to be ineffective to stop the unsafe activity.

The decision to conduct a covert operation shall be made by the DG CAAN on the advice of the Director, Flight Safety Standard Department (FSSD). Should the DG CAAN be satisfied that a need exists for inspectors to conduct a covert operation, the Director, Flight Safety Standard Department (FSSD) will be granted the authority by the DG CAAN. The DG CAAN should advise the Government of the particulars of the case (if considered necessary).

7.3 Definitions

See Chapter 3 for definitions of surveillance activities.

"Criminal Activity" - is any act that is illegal under the *Criminal laws* of Nepal and is clearly outside the scope of responsibility of CAA of Nepal.

"Joint Covert Operation" - is a covert operation involving Civil Aviation officials in cooperation with another agency.

"Third Party Agents" - are persons employed specifically for the purposes of a covert operation excluding police officers, other agency personnel or Civil Aviation inspectors.

7.4 Principles of Covert Operations

The following principles should be considered when planning or conducting covert operations:

- (1) all covert operations shall be approved by the DG CAAN;
- (2) DG CAANs shall be responsible for the conduct of covert operations in their regions;

- (3) the Director, Flight Safety Standard Department (FSSD) shall ensure adequate command, control and communications are exercised during each operation;
- (4) where Civil Aviation Authority contemplates involvement in a joint covert operation, the agency in charge of the operation will be identified prior to the start of the operation;
- (5) Civil Aviation Authority may provide technical advice but will not participate actively in a joint covert operation where it is anticipated activity that is likely to place an inspector in physical danger will be encountered during the operation;
- (6) during the planning stage of a joint covert operation, a contingency plan shall be developed that will permit Civil Aviation Inspectors to withdraw from active participation in the operation if there is a likelihood that the inspectors personal safety may be jeopardized;
- (7) no inspector shall obtain employment in an aviation company for the purpose of gaining access to information or evidence otherwise unavailable;
- (8) care must be taken to ensure that the associated investigation is not construed as entrapment; and,
- (9) the Director, Flight Safety Standard Department (FSSD) shall ensure inspectors are thoroughly briefed for the covert operation and are aware of the guidelines for inspectors.

7.5 Guidelines for Inspectors

Inspectors engaged in covert operations shall be bound by the following guidelines:

- (1) in no case shall an inspector counsel or facilitate the commission of an offence;
- (2) if other illegal acts are detected during an operation, the appropriate enforcement agency shall be notified;
- (3) if activity that is likely to place an inspector in physical danger is detected, the operation shall be abandoned rather than place inspectors at risk. In joint covert operations, the contingency plan developed to withdraw the inspectors from the operation will be activated, ensuring the operation or other operatives are not compromised. Inspectors may continue to provide technical advice and support;
- (4) inspectors conducting an operation are to respect the rights of individuals;
- (5) inspectors conducting covert operations must not allow a flight to take place if, in the opinion of the inspector, a condition exists that is an immediate threat to the safety of the flight.