



## Covert Human Intelligence Sources (Criminal Conduct) Bill

- Covert Human Intelligence Sources (CHIS) are crucial in preventing and safeguarding victims from many serious crimes including terrorism, drugs and firearms offences and child sexual exploitation.
- Participation in criminal conduct is an essential and inescapable feature of CHIS use, otherwise they will not be credible or gain the trust of those under investigation. This enables them to work their way into the heart of groups that would cause us harm, finding information and intelligence which other investigative measures may never detect.
- The Bill provides an express power to authorise CHIS to participate in conduct which would otherwise constitute a criminal offence.
- This is not a new capability; the Bill provides a clear legal basis for a longstanding tactic which is vital for national security and the prevention and detection of crime.
- Any authorisation for criminal conduct must be necessary and proportionate and compatible with obligations under the European Convention on Human Rights.
- The Bill requires the Investigatory Powers Commissioner to keep under review public authorities' use of the power and to include information on criminal conduct authorisations in his annual report.
- The number of public authorities able to authorise this conduct has been restricted from those who can authorise the use and conduct of CHIS generally. Only the intelligence agencies, NCA, police, HMRC, HM Forces and ten other public authorities will be able to authorise criminal conduct.

### Authorisation Process

The Bill will insert new section 29B into Part II of the Regulation of Investigatory Powers Act, creating a 'Criminal Conduct Authorisation' (CCA).

CCAs may be granted where necessary for a specified purpose:

- In the interests of national security;
- For the purposes of preventing or detecting crime or of preventing disorder;
- In the interests of the economic well-being of the UK.

Authorisations must be proportionate to what is sought to be achieved. Relevant considerations when assessing proportionality include:

- Whether conduct is part of efforts to prevent more serious criminality;
- Whether there are no other reasonable or practicable means by which the outcome could be achieved.

### Independent Oversight/ Safeguards

- ✓ CHIS will never be given unlimited authority to commit any and all crimes; a CCA will be detailed and specific about the conduct that is authorised.
- ✓ Authorisations are granted by an experienced and highly trained authorising officer who will ensure that the authorisation has strict parameters;
- ✓ The Bill does not prevent prosecutors from considering a prosecution for any activity outside the authorised activity;
- ✓ Public authorities are bound by the Human Rights Act to comply with ECHR. It provides for protections including the right to life, and prohibits torture and inhuman or degrading treatment or punishment;
- ✓ All investigatory powers are overseen by the independent Investigatory Powers Commissioner, who monitors the use of these powers through inspections and publishes an annual report on their use.
- ✓ The Investigatory Powers Tribunal will continue to have jurisdiction to investigate and determine complaints against public authorities' use of this power. The Tribunal is entirely independent from the Government and public authorities who use investigatory powers.

**Comments from the Investigatory Powers Tribunal (December 2019) judgment on existing regime:** "exercised with scrupulous care so as to discharge [MI5's] essential functions in protecting national security, whilst giving proper regard to the human rights of persons who may be affected by the activities of agents".

### Key Facts/Figures

- CHIS have helped to identify and disrupt many of the terrorist plots our agencies have stopped.
- In 2018, CHIS operations led the National Crime Agency to disrupt over 30 threats to life, arrest numerous serious organised criminals, seize over 3000kg of Class A drugs, safeguard over 200 people, and take almost 60 firearms and 4000 rounds of ammunition off the street.
- In the last year, CHIS operations by Metropolitan police have led to 3500 arrests, recovery of over 100 firearms and 400 other weapons, seizure of over 400 kg of Class A drugs, and over £2.5m cash.
- Between 2017-19, HMRC CHIS have prevented hundreds of millions of pounds of tax loss. One case alone is anticipated to prevent loss of revenue to the Treasury, estimated to exceed £100 million.