



Limits of Authorised Conduct

The Bill provides an express power for CHIS to participate in criminal conduct through a Criminal Conduct Authorisation (CCA). The use of a CCA is subject to strict requirements set out in the Bill and the Code of Practice. Authorisations are governed by the oversight arrangements in the Investigatory Powers Act 2016.

- This Bill does not provide a 'license to kill' and a CHIS will never be given unlimited authority to commit all or any criminality.
- The limits to the activity that can be authorised under this Bill are contained in the Human Rights Act. This includes the right to life, and prohibition of torture or subjecting someone to inhuman or degrading treatment or punishment.
- In addition, all authorisations must be necessary and proportionate to the criminality it is seeking to prevent. Authorising Officers must ensure that criminality authorised must be at the lowest level possible to achieve the aims of the operation.
- The Bill does not list specific crimes which may be authorised, or prohibited, as to do so would place into the hands of criminals, terrorists and hostile states a means of creating a checklist for suspected CHIS to be tested against. This would threaten the future of the CHIS capability, and result in an increased threat to the public.
- The Investigatory Powers Commissioner provides independent oversight and will be uniquely well-placed to judge whether Authorising Officers are acting in accordance with the law, and that conduct is authorised only where it is truly appropriate to do so.

Example of authorised conduct

An example of the criminality which might be authorised, and one which we can mention because it is in the public domain, is that a CHIS may be required to join the organisation they are seeking to disrupt and this membership itself will sometimes be criminal. The Investigatory Powers Tribunal, in its 2019 judgment in the Third Direction litigation, noted that it would have been impossible for MI5 to run agent operations in Northern Ireland without agents being members of the organisations they were seeking to disrupt.

ECHR compliance

- All public authorities are bound by the Human Rights Act to comply with the European Convention of Human Rights. It provides for the right to life, and prohibits torture, or subjecting someone to inhuman or degrading treatment or punishment.
- All authorisations will be compliant with obligations under the ECHR, will be necessary and proportionate to the criminality it is seeking to prevent and will be proportionate to a particular public authority's investigative responsibilities.

Safeguards

- All authorisations are granted by an experienced and highly trained authorising officer who will ensure that the authorisation has strict parameters.
- All activity will be overseen by the independent Investigatory Powers Commissioner (IPC). The IPC conducts inspections of public authorities and publishes an annual report on the findings from these inspections. The Bill includes a clause requiring the IPC to keep criminal conduct authorisations under review and include information about public authorities' use of criminal conduct authorisations in his annual report.
- Intelligence agencies are accountable to the UK Parliament via the cross-party Intelligence and Security Committee of Parliament (ISC);
- In addition the Investigatory Powers Tribunal has jurisdiction to investigate and determine complaints raised by any person or organisation against public authority's use of the investigatory powers. The Tribunal is entirely independent from the Government and public authorities who use investigatory powers.
- The Bill does not prevent the Crown Prosecution Service, Crown Office and Procurator Fiscal, or Public Prosecution Service from considering a prosecution for any activity outside of the specific authorisation granted;