



Oversight and Safeguards

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.

- CHIS will never be authorised to commit any and all crimes;
- Authorisation for a CCA can only be given where it is deemed necessary and proportionate to what is sought to be achieved;
- All authorisations are granted by an experienced and highly trained authorising officer who will ensure that the authorisation has strict parameters;
- 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;
- The Bill does not prevent the prosecution services from considering a prosecution for any activity outside of the specific authorisation granted;
- All activity is 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 in particular keep criminal conduct authorisations under review and include information about public authorities' use of the power in their annual report.
- The Investigatory Powers Tribunal has jurisdiction to investigate and determine complaints against public authority's use of the investigatory powers. The Tribunal is entirely independent from the Government and public authorities who use investigatory powers.

Comments from the IPT's 2019 judgment on MI5's current 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".

Investigatory Powers Commissioner 2018 Annual Report on CHIS participation authorisations by MI5:

"In every case that we examined, we noted good articulation of the matters taken into consideration and we concluded that the activity authorised was proportionate to the anticipated operational benefits."

Authorisation Process – The authorising officer is of a senior grade or rank within a relevant public authority. They are highly trained and will carefully consider necessity and proportionality as well as the bespoke risk assessment of any CHIS deployment before granting an authorisation.

Where authorisations are granted, these are detailed and specific about the conduct that is authorised, setting tight parameters to avoid a CHIS engaging in activity which is not deemed strictly necessary and proportionate; CHIS will never just be given authority to pursue a criminal lifestyle.

Detailed records must be kept of authorisations, which must be made available to the Investigatory Powers Commissioner on request, ensuring the process is subject to robust and independent oversight.

Code of Practice - The Code provides guidance and detailed safeguards that all public authorities must adhere to when authorising the use and conduct of CHIS. The Code has been updated to provide detailed guidance for Criminal Conduct Authorisations.

The Code also sets out the additional safeguards which apply to the authorisation of juvenile or vulnerable individuals as sources and where confidential information is likely to be acquired, including a requirement for a higher level of authorisation.