

**EXPLANATORY MEMORANDUM TO
THE COVERT HUMAN INTELLIGENCE SOURCES (CRIMINAL CONDUCT)
BILL**

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office in place of an Impact Assessment.
- 1.2 A full impact assessment has not been carried out as the costs are expected to be minimal and relevant staffing numbers cannot be included in a public document at this classification.

2. Purpose of the Bill

- 2.1 The Covert Human Intelligence Sources (Criminal Conduct) Bill amends Part II of the Regulation of Investigatory Powers Act 2000 (RIPA) to provide a statutory power for the security and intelligence agencies, law enforcement agencies and a limited number of other public authorities to authorise Covert Human Intelligence Sources (CHIS) to participate in criminal conduct where it is necessary and proportionate to do so for a limited set of specified purposes.
- 2.2 This is not new activity. The Bill puts existing practice onto a clear and consistent statutory footing.
- 2.3 Under the Bill, an authorisation for participation in criminal conduct may only be granted where necessary (i) in the interests of national security, (ii) for the purpose of preventing or detecting crime or of preventing disorder, or (iii) in the interests of the economic well-being of the United Kingdom. A criminal conduct authorisation may only be granted where it is proportionate to what is sought to be achieved by that conduct.
- 2.4 The effect of a criminal conduct authorisation issued under the Bill regime will be to render the authorised conduct “lawful for all purposes”. This is consistent with the effect of other authorisations under the existing RIPA regime, and under other investigatory powers legislation.
- 2.5 The authorisation of CHIS participation in criminal conduct is overseen by the Investigatory Powers Commissioner (IPC) through audit, inspection and investigation, including an annual report which is published and laid before Parliament.
- 2.6 The Bill requires the IPC to provide information about the use of the power to grant criminal conduct authorisations in his annual report.
- 2.7 The Bill will also amend Schedule 1 of RIPA to provide a list of public authorities that will be able to use this power:
 - Any of the intelligence services
 - Any police force
 - The National Crime Agency
 - Her Majesty’s Revenue and Customs

- Any of Her Majesty’s forces
- The Department of Health and Social Care
- The Home Office
- The Ministry of Justice
- The Competition and Markets Authority
- The Environment Agency
- The Financial Conduct Authority
- The Food Standards Agency
- The Gambling Commission
- The Serious Fraud Office

2.8 Some public authorities use the Regulation of Investigatory Powers (Scotland) Act 2000 to authorise CHIS use and conduct in Scotland. The Bill therefore includes equivalent amendments to the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A). Police Scotland and the Scottish Administration are able to use the power under RIP(S)A.

3. Matters of special interest to Parliament

3.1 None.

4. Extent and Territorial Application

4.1 The Bill extends to the UK apart from the amendments to the Regulation of Investigatory Powers (Scotland) Act which extend only to Scotland. Subject to that the Bill will apply UK-wide.

5. European Convention on Human Rights

5.1 The Government considers that the Covert Human Intelligence Sources (Criminal Conduct) Bill is compatible with the European Convention on Human Rights. The Home Secretary, the Rt. Hon. Priti Patel MP, has made a statement under section 19(1)(a) of the Human Rights Act 1998 to that effect.

6. Legislative Context

6.1 The activity that will be authorised under the Bill is not new activity. It is a continuation of existing practice that is currently authorised using a variety of legal bases.

6.2 Participation in criminality by CHIS and undercover officers has been accepted in the UK courts (and around the world) for many years, with numerous case law precedents sanctioning its legitimacy as a tactic to acquire evidence. Yet, to date, there has been no statute law that authorises it explicitly in the UK. It has long been recognised that an express power would provide a clear legal basis for the authorisation of this activity.

6.3 As such, the Government is introducing the CHIS (Criminal Conduct) Bill which provides an express power for the authorisation of this conduct, providing certainty to public authorities utilising this critical tool, and will confirm a common set of

safeguards which they are bound by, including our legal obligations with regards to human rights.

7. Policy background

- 7.1 CHIS are a core part of security, intelligence and policing work. A CHIS may be a police officer, someone holding a position in a public authority who is acting undercover, or a member of the public who is recruited by a public authority.
- 7.2 The use of CHIS is a key tactic in protecting national security and investigating serious crime. It allows investigators to gain an insight into the criminal and terrorist organisations they are targeting. For decades, CHIS have played a crucial part in preventing and prosecuting many very serious crimes including terrorism, drugs and firearms offences and child sexual exploitation. This has included helping to identify and disrupt many of the terrorist plots our agencies have stopped.
- 7.2 There will be occasions where CHIS may need to participate in criminal conduct. This may be necessary, for example, to maintain credibility or gain the trust of those under investigation. The circumstances in which CHIS participate in crime are carefully managed.
- 7.3 The Bill will provide a clear and consistent authorisation framework for all public authorities that need to authorise CHIS participation in crime. The regime will allow for the activity to be authorised where it is necessary on one of the three specified grounds and proportionate to what is sought to be achieved by the authorised conduct. The power will be subject to robust independent oversight by the Investigatory Powers Commissioner.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

- 9.1 N/A

10. Consultation outcome

- 10.1 The changes in this Statement have not been subject to a public consultation, as this would be disproportionate given the nature of the changes.

11. Guidance

- 11.1 Draft amendments to the CHIS Code of Practice will be published alongside the Bill on introduction.

12. Impact

- 12.1 This is a short, single issue, Bill which is seeking to put existing capability onto an express statutory footing for a small number of public authorities. Once the legislation is in force, the operational practices of those public authorities are expected to broadly stay the same and the existing independent oversight attached to the regime

to continue. However, when the legislation comes into force there may be some costs associated with:

- Public authorities familiarising themselves with the new legislation;
- Training and administration to support public authorities' implementation of the legislation; and
- Short term costs in relation to transferring existing authorisations to the new regime.

12.2 There is no, or no significant, impact on business, charities or voluntary bodies.

12.3 There is no, or no significant, impact on the public sector.

13. Regulating small business

13.1 There is no, or no significant, impact on activities undertaken by small businesses.

14. Monitoring & review

14.1 The Investigatory Powers Commissioner IPC will continue to have independent oversight of this power. Part 8 of the Investigatory Powers Act 2016 sets out the oversight that the IPC has in this area, including:

- The requirement to keep the exercise of CHIS functions under review including through audit, inspection and investigation.
- The requirement to produce an annual report which must be published and laid before Parliament.
- The requirement for public authorities to disclose all documents and information necessary for the IPC to disclose his functions.
- The requirement to inform a person of a relevant error relating to that person that is serious and where it is in the public interest.
- The ability of the Intelligence and Security Committee to ask the IPC to investigate a matter.

15. Contact

15.1 The CHIS Bill team (CHISBillTeam@homeoffice.gov.uk) at the Home Office can be contacted with any queries regarding this legislation.

15.2 The Minister of State for Security at the Home Office can confirm that this Explanatory Memorandum meets the required standard.