House of Commons
House of Lords

Joint Committee on Human Rights

Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill: Government Response to the Committee's Tenth Report of Session 2019–21

Second Special Report of Session 2019–21

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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The current staff of the Committee are Miguel Boo Fraga (Committee Operations Manager), Chloe Cockett (Senior Specialist), Alexander Gask (Deputy Counsel), Zoë Grünewald (Media Officer), Katherine Hill (Committee Specialist), Eleanor Hourigan (Counsel), Lucinda Maer (Commons Clerk), Dan Weedon (Lords Committee Assistant), and George Webber (Lords Clerk).

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Second Special Report of Session 2019–21

The Joint Committee on Human Rights published its Ninth Report of Session 2019–21, Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill (HC 847/ HL 164) on 10 November 2020. The Government response was received on 5 January 2021 and is appended below.

Appendix: Government Response

The recommendations in the JCHR report are embedded amongst the conclusions, so the numbers here refer to the index numbers in the conclusions and recommendations section of the report.

Recommendations

3. ***The Bill requires amendment to include a prohibition on the authorisation of serious criminal offences, in similar terms to that appearing in the Canadian Security Intelligence Service Act.*** (Paragraph 53)

The Government is grateful for the Committee's report and their recognition that an express statutory scheme is important. As the Committee acknowledge in their report, the authorisation of criminal conduct for Covert Human Intelligence Sources (CHIS) is a vital tool when seeking to disrupt the activities of criminals and terrorists who would seek to undermine our country's national security, commit crime, or damage the economic wellbeing of the United Kingdom.

The CHIS (Criminal Conduct) Bill would not allow the public authorities named in the Bill to grant CHIS unlimited authority to commit any and all crimes. To allow this would breach the Human Rights Act 1998, which acts as one of the many safeguards that govern the use and conduct of CHIS in the United Kingdom.

All public authorities are bound by the Human Rights Act to operate in a way that is compatible with the Convention rights protected by the Human Rights Act. These rights include the right to life (Article 2), and the prohibition of torture or subjecting someone to inhuman or degrading treatment or punishment (Article 3). No Criminal Conduct Authorisation (CCA) that contravened these rights could ever be validly authorised by a public authority.

This would be the case even if the Human Rights Act were not named on the face of the Bill. However, for clarity, it is explicitly referenced to emphasise the fact that it is imperative that human rights' considerations are at the forefront of the mind of every Authorising Officer in all the public authorities named in the Bill when authorising CHIS to engage in criminal conduct.

As has been stated by the Government during the passage of the Bill through Parliament, it is unhelpful to compare this Bill with legislation in other countries. Our intelligence and law enforcement agencies work closely with our Five Eyes partners, however each country

has its own legal systems, traditions, public bodies, and perhaps most crucially, threat picture. It is also important to note that the United Kingdom is the only Five Eyes country that is bound by the European Convention on Human Rights (ECHR).

The approach taken by other countries, including the Canadians, does not work for the United Kingdom. One reason for this is the unique challenges faced in Northern Ireland. The principal reason the Bill cannot explicitly state certain offences or categories of offences that could not be authorised by a CCA takes into account both public safety and the safety of CHIS. CHIS testing is a real occurrence and as such the Government did not want to set out a ready-made checklist of exactly which crimes a CHIS would never be authorised by the State to undertake. In providing limits on the face of the Bill, there is a genuine concern that criminals and terrorists would use this as a checklist to root out CHIS in their ranks by tasking suspected CHIS to undertake crimes they know they could never commit. This would then impact on public safety when public authorities lose vital investigative tools to undermine and disrupt criminal and terrorist activity.

There is also the regrettable truth that in providing an explicit list of limits for CHIS, we run the risk of handing criminal and terrorist groups a means of initiating new recruits into their ranks. There are certain Organised Crime Groups (OCG) that, in seeking to ensure their ranks are not infiltrated by CHIS posing as new members, may insist new recruits undertake heinous crimes they know a CHIS could never undertake. We should also consider what happens when a criminal or terrorist group asks someone suspected of being a CHIS, who is in fact not a CHIS, to undertake a proscribed crime in order to test them. In a bid to protect themselves, a person falsely accused of being a CHIS could be more likely to undertake a crime they might otherwise not commit.

The Government's decision to not place specific limits on the face of the Bill has been driven by a need to both safeguard the public and protect CHIS.

The Committee has flagged that the Human Rights Act has not prevented previous human rights violations. It has been acknowledged that issues have arisen in the past and has sought to ensure these issues do not occur again. For example, in 2013 in response to the misconduct by some undercover officers, the Relevant Sources Order came into effect, which provides greater oversight of undercover deployments. In 2017, the Investigatory Powers Commissioner's Office (IPCO) was formed through the Investigatory Powers Act (2016) to provide oversight of all investigatory powers; this will include CCAs.

There is also the additional oversight provided by the Investigatory Powers Tribunal (IPT), which can consider claims where human rights' abuses are alleged to have taken place in relation to CCAs.

On the issue of the extent to which the Human Rights Act applies to the conduct of CHIS: nothing in this Bill seeks to undermine the important protections in the Human Rights Act. It is neither necessary, nor appropriate, nor possible to seek to devise legislative controls based on a description of conduct, such as the amendments that have been proposed containing explicit limits, because the facts of each individual case will demand close attention and scrutiny.

The requirement on the face of the Bill that any authorisation be necessary and proportionate, together with the Human Rights Act, provide the necessary and entirely sufficient protection. The Government will not act in a way that is in breach of its legal

obligations under the Human Rights Act, and this includes in circumstances in which the Human Rights Act applies overseas. All CCAs will comply with the Human Rights Act as well as with relevant domestic and international law.

The Committee has drawn attention to the power in the Bill to prohibit certain conduct by order. New Section 29B, which covers the authorisations of CHIS criminal conduct, has been drafted so that it closely resembles the structure of Section 29 of the Regulation of Investigatory Powers Act 2000 (RIPA), which provides the underlying authorisation for CHIS use and conduct. There is a high degree of interrelationship between the two provisions. The order making power in new Section 29B(10)(a), which allows the Secretary of State to prohibit the authorisation of such conduct as may be described in the order, corresponds to Section 29(7).

Taking similar powers in respect of CCAs to those already contained in Section 29 will allow the Secretary of State to make equivalent provision for Section 29 authorisations and CCAs, where appropriate, so that similar arrangements are in place for both.

Examples of past use of the Section 29 order-making powers are the additional safeguards imposed when considering the use of a juvenile as a CHIS (Regulation of Investigatory Powers (Juveniles) Order 2000 (amended in 2018)), and the additional requirements imposed on undercover police officers following instances of misconduct (The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013).

Finally, on the point of the future of the Human Rights Act, the Committee is correct that the Government has committed to reviewing the Human Rights Act. The Government is planning to look at the broader aspects of the United Kingdom's constitution, including the balance between the rights of individuals and effective government. The Human Rights Act is now twenty years old and the Government is considering the arrangements for an independent review into the operation of the Human Rights Act. The Government will make further announcements in due course, and in advance of the Review commencing. This does not in any way change the fact that the United Kingdom is committed to human rights and will continue to champion human rights at home and abroad. The United Kingdom is committed to the ECHR.

4. ***The Bill requires amendment to clarify who can be authorised to commit criminal offences. In the absence of a clear explanation of the need for a CCA to authorise more than the conduct of the CHIS, only the conduct of the CHIS and any resulting secondary liability, should be capable of authorisation.*** (Paragraph 58)

The Committee is correct that the wording in the Bill that criminal conduct can be authorised "in relation to" the CHIS refers to the issue of secondary liability. The public authority will retain close oversight of the activity carried out by a CHIS and will provide support and assistance to the CHIS. Most obviously, officials within the public authority will task the CHIS to perform the criminal activity. It is possible that, in itself, the tasking may attract criminal liability and it is therefore the intention of the Bill that this activity may be authorised and rendered lawful by a CCA.

Officials in the public authority may also provide necessary practical assistance to the CHIS. It is the intention of the Bill to be clear that where such activity is conducted "in relation to" the CHIS, and in connection with the conduct of the CHIS, such activity may be authorised.

The Committee has suggested that this aspect of the Bill could result in a CCA being authorised to allow for "an assault committed against a CHIS by a police officer" or "the use of violence by a manager against a CHIS handler". Such activity could never be authorised under the Bill as it would not meet the criteria set out in the Bill. It is important to refer to the criteria that apply before activity may be authorised—the activity must relate to a specific CHIS and a specific investigation or operation, and it must be in connection with the conduct of the CHIS. Additionally, the activity must be necessary in pursuit of one of the specified statutory purposes, it must be proportionate to what it seeks to achieve, and it must operate within the limits of the Human Rights Act, including the State's positive protective duties that arise under this Act. Applying these tests to the scenarios suggested makes it clear that no such conduct could ever be authorised.

6. ***The Bill must be amended to exclude children or to make clear that children can only be authorised to commit criminal offences in the most exceptional circumstances.*** (Paragraph 63)

The use of young people as CHIS is understandably an emotive topic. Juveniles are only authorised as CHIS in extremely rare circumstances, while the authorisation of juveniles to undertake criminality is rarer still. Between January 2015 and December 2018 only seventeen juveniles were authorised under Section 29 of RIPA as CHIS. The commitment that juveniles should only be authorised in exceptional circumstances can be found at paragraph 4.3 of the CHIS Code of Practice, which states that, "juveniles should only be authorised to act as a CHIS in exceptional circumstances".

The duty of care that is owed to juveniles in this context is taken extremely seriously and is reflected in the safeguards that are built into the regime. The Regulation of Investigatory Powers (Juveniles) Order 2000 was reviewed and updated in 2018 to strengthen safeguards for young people who are authorised as CHIS. These safeguards will apply to juveniles who are tasked to participate in criminal conduct.

There are additional safeguards contained in Section 11 of the Children Act 2004 that requires that certain public bodies, including the police, safeguard and promote the welfare of children. Article 3 of the United Nations Convention on the Rights of the Child, which has been ratified by the United Kingdom, says that the best interests of the child shall be a primary consideration in all actions involving children. The CHIS Code of Practice explicitly states that the best interests of the juvenile are a primary consideration in all operations involving juvenile CHIS, reflecting the requirement in Article 3.

The additional safeguards that apply when authorising a juvenile CHIS to undertake criminal conduct are laid out in the updated CHIS Code of Practice, a draft of which has been published alongside this Bill and has legal force. There is a clear distinction between the authorisation of adult CHIS and juveniles in terms of the enhanced safeguards in place for juveniles. These are laid out in the updated CHIS Code of Practice in paragraphs 4.2 to 4.7.

In the 2019 case of R(Just for Kids Law) v Secretary of State for the Home Department, Justice Supperstone concluded that safeguards in place for juveniles were extensive and sufficient to ensure juveniles were appropriately safeguarded when acting as CHIS.[1] Just4Kids Law have withdrawn their appeal to the judgment on the basis that they will be consulted on the changes to the CHIS Code of Practice.

It is worth stressing that, while public authorities may wish to avoid the use of young people as CHIS, we must recognise that some juveniles are involved in serious crimes, as perpetrators and victims. The former Investigatory Powers Commissioner (IPC), who conducted an investigation into the use of juveniles as CHIS, confirmed that as a result of the safeguards in place, juveniles are not tasked to participate in criminality that they are not already involved in. He also noted that the duty of care in this context is taken extremely seriously, and decisions to authorise were only made where this was the best option for breaking the cycle of crime and danger for the young person.

Young people may have unique access to information that is important in preventing and prosecuting gang violence and terrorism. This not only helps remove the young person authorised as a CHIS from the cycle of crime, but also other young and vulnerable individuals who are caught in criminality.

We should also acknowledge that by prohibiting CCAs for juveniles, we may increase the risks to them and place them in an even more vulnerable position. If criminal gangs and terrorist groups know that a young person will never be authorised by the State to undertake criminality, these groups will be more likely to force young people to engage in criminality, confident in the knowledge that they could never be a CHIS.

The relationship between a juvenile CHIS and their handlers will never be an exploitative one—CHIS handlers have a duty of care towards their CHIS, as mandated under RIPA, and are trained to identify when a CHIS requires additional support and put this in place. The authorisation of juveniles to participate in criminal conduct can be an important tool, allowing public authorities to gather vital evidence that cannot be acquired through other means. It can put offenders in prison and can be used to protect vulnerable young people—all whilst ensuring the welfare of the CHIS remains of primary importance.

The Government recognises the concerns that have been raised with regards the authorisation of juvenile CHIS to undertake criminal conduct, and it is committed to ensuring that enhanced safeguards are in place for this activity. As such, the Government has tabled amendments which use the Bill to amend the Regulation of Investigatory Powers (Juveniles) Order 2000 to replicate the enhanced safeguards in place for the authorisation of the use and conduct of juvenile CHIS to the instances when they are authorised to undertake criminal conduct.

The Government has also tabled amendments to add further safeguards to the Order, which will state that CCAs will only be authorised in "exceptional circumstances"—exceptional circumstances mean that the Authorising Officer, having considered the relevant risks (as per the enhanced risk assessment) and having taken into account the need to safeguard and promote the best interests of the child as a primary consideration, believes that taking those risks are justified. This reflects the wording in Article 3 of the United Nations Convention on the Rights of the Child.

1 [2019] EWHC 1772 (Admin)

Additionally, the Government has also tabled an amendment to Part 8 of the Investigatory Powers Act (2016)—which sets out the Investigatory Powers Commissioner's (IPC) oversight functions—to add a duty for the IPC to keep under review whether public authorities are complying with the requirements (i.e. the safeguards set out above) imposed on them in relation to criminal conduct authorisations for juvenile CHIS. This amendment will provide additional oversight of the rare occasions when juvenile CHIS are authorised to undertake criminal conduct.

8. ***The purposes for which criminal conduct can be authorised should be limited to national security and the detection or prevention of crime.*** (Paragraph 73)

The Committee have questioned the need for having in the interests of "preventing disorder" or of the "economic wellbeing of the United Kingdom" as purposes for which CCAs may be authorised.

Economic wellbeing is one of the established statutory purposes for which covert investigatory powers may be deployed by public authorities. It recognises that threats to the economic wellbeing of the United Kingdom could be immensely damaging and fundamental in their effect. It might, for example, include the possibility of a hostile cyber-attack against our critical infrastructure, our financial institutions, or the Government itself. It is important that our law enforcement bodies and intelligence agencies are able to deploy the full CHIS functionality against such threats where the use of CHIS is necessary and proportionate to what is sought to be achieved. These threats may not always relate solely to national security or the prevention or detection of crime.

On the issue of the inclusion of "preventing disorder" as a potential justification for authorising a CCA, it is important to note that this Bill cannot authorise conduct for the purpose of interfering with legal and legitimate activities, including those of trade unions and their members. These activities have long been safeguarded by Article 11 of the ECHR, which protects the right to freedom of assembly and association, including the right to form trade unions.

The fact that a CCA relates to the activities of a trade union is not on its own a sufficient justification to establish that the authorisation is necessary, including on the grounds of the economic wellbeing of the UK. Paragraph 3.6 of the updated CHIS Code of Practice clearly sets out this point. However, we cannot rule out a situation where a member of a trade union is also engaged in illicit activities and which provides legitimate grounds for investigation. For that reason, specific groups or individuals cannot be carved out from the statutory regime.

Preventing disorder is an important and legitimate law enforcement function. Where illegal activity takes place, public authorities listed in this Bill have a responsibility to take action as is necessary and proportionate. This is not about targeting legitimate protest, but disorder on our streets that could result in harm to persons and property, and which could involve widespread violence.

The Committee question why the need for an Authorising Officer to have a "reasonable belief", as opposed to a "belief", that a CCA is necessary and proportionate is not placed on the face of the Bill. The Bill has been drafted to fit into the existing statutory framework and in particular, to align with Section 29 of RIPA, which provides the underlying

authorisation for the use and conduct of a CHIS. In setting out that the belief must be a reasonable one only for CCAs, it may cast doubt on whether the belief needs to be a reasonable one for other authorisations.

It is laid out in the updated CHIS Code of Practice in paragraph 3.10 that the person granting the authorisation should hold a reasonable belief that it is necessary and proportionate. The Code of Practice has legal force and as such this requirement will be upheld for CCAs. The Code of Practice will be amended to make this requirement clearer throughout the document.

11. ***The power to authorise criminal conduct should be restricted to public authorities whose core function is protecting national security and fighting serious crime.*** (Paragraph 82)

All the public authorities listed under this Bill already have the power to authorise the use and conduct of CHIS. They have also demonstrated an operational need to authorise CHIS to undertake tightly controlled and specific criminal conduct, in circumstances where it is necessary and proportionate to do so. The Home Office issued updated case studies ahead of the Second Reading of the Bill in the House of Lords, which demonstrate how the public authorities named in this Bill will utilise the power. These public authorities are anticipated to be low users of this power. However, this does not mean their impact will be any less significant.

The Committee questions why the police would not take responsibility for any need to authorise criminal conduct in the course of undercover work that falls under the remit of other public authorities. The answer is that these other public authorities are responsible for and experts in the investigation and prevention of crimes that relate to their particular areas of specialism. We should not underestimate the important role these public authorities play in keeping the public safe.

In the letter shared with the Committee in November 2020, the specialist Food Crime Unit in the Food Standards Agency was mentioned. This unit holds a clear and bespoke mandate for the investigation of crime related to food production, manufacture and distribution. It is right that the Food Standards Agency, together with the other public authorities named in this Bill, have access to the tools to enable them to investigate crime, and work towards bringing perpetrators to justice.

The Government will be keeping the number of public authorities named in this Bill under review to ensure only those that have a strong operational need can continue to authorise this activity in circumstances where it is necessary and proportionate to do so. All public authorities will receive appropriate training to ensure Authorising Officers understand the strict necessity and proportionality parameters that must be met before authorising a CCA. IPCO will play a role in raising concerns if these strict standards are not upheld, including where appropriate training is not in place. It is important to acknowledge that as OCG increasingly expand into areas overseen by these public authorities, the need for robust investigative tools is more important than ever.

The provision for the Secretary of State to grant additional public authorities the power to authorise crime allows us to remain agile to the evolving threat picture and ensure public authorities have access to the necessary powers to keep the public safe. Parliament would still need to approve any additions. As highlighted above, OCGs are increasingly

expanding into new areas and as such the investigative powers needed must be available to all the appropriate public authorities to thwart OCG's attempts to commit widespread crime and risk public safety.

As was the case with the inclusion of the existing public authorities in the Bill, any subsequent public authorities who wish to gain access to this power will need to demonstrate a clear operational need in line with the United Kingdom's three established statutory powers—protection of national security, prevention or detection of crime, and the preservation of the economic wellbeing of the United Kingdom. If any public authorities are to be added in the future, it will be subject to the affirmative procedure and therefore there would be a debate in both Houses.

In addition to their power to grant public authorities the use of CCAs, the Secretary of State can, if appropriate, remove the ability to grant a CCA from public authorities that cannot demonstrate an ongoing operational need to have access to this power.

13. ***In his annual report the IPC must provide as much detail on the use of CCAs as possible, in the interests of transparency. Bodies permitted to make CCAs must also ensure accurate records are made and shared with the IPC.*** (Paragraph 99)

The Bill provides a rigorous framework of oversight and accountability necessary to safeguard against abuse of the power to authorise criminal conduct. The oversight regime for this Bill has been given considerable thought, and the Government has been listening to proposals as to how the oversight regime can be further strengthened without having a damaging operational impact.

On the face of the Bill, the IPC is explicitly tasked with reviewing CCAs as part of his annual review of all investigative powers. IPCO conducts regular and thorough inspections of all public authorities that use this power to ensure they are complying with the law and following good practice. The frequency of these inspections is decided by the IPC, whose inspectors must be given unrestricted access to documents and information to support their functions. This allows inspectors to undertake thorough and robust investigations of each public authority's use of the power from the point that a CCA is considered, through each decision and review, to cancellation. The IPC could request to see every CCA authorised by a public authority if they deemed it necessary to do so. The public authority would have to provide access to all the necessary documentation.

As such, the Committee can be confident that the IPC will have access to all the information he requires to ensure there is transparency on the use of this power.

A report is issued after each inspection, which sets out IPCO's conclusions and recommendations, enabling organisations to take action on the basis of those recommendations. This process provides for systemic review of all public authorities' use of the power and allows for continuous improvement in the authorisation and management of the capability. The IPC's annual report is the culmination of a long and extensive process of scrutiny of all public authorities.

The Committee points to other jurisdictions' approaches to oversight, including the requirement for public authorities to provide details on the number and nature of the crimes they have authorised a CHIS to undertake. Providing a breakdown of crime touches on some of the Government's justifications for not providing an explicit list of limits on

the face of the Bill. Providing a list of specific crimes, or even categories of crime that CHIS have been authorised to commit in a particular year, not only reveals sensitive operational detail about how our public authorities operate, but may also lead criminal groups and terrorist organisations to seek to identify when such crimes have been committed by their members, thereby possibly highlighting CHIS within their ranks. As has been said before, CHIS safety must be a key consideration.

There is requirement under RIPA that public authorities maintain accurate records, and this will be the case for CCAs. The Committee highlight that the IPC has identified occasions in the past when MI5's record keeping was not as reliable as it could have been. These concerns did not relate to the content of authorisations of criminal conduct. On this point, IPCO found that MI5's authorisations had "good articulation of the matters taken into consideration and we concluded that the activity authorised was proportionate to the anticipated operational benefits". Rather, IPCO indicated that they would find it easier if they could see details such as overall numbers of authorisations. MI5 welcomed these findings, and steps have been taken to address this issue.

The IPC has the power to hold MI5, and any other public authority to account if they feel their record keeping is not sufficient.

14. ***The Bill must be amended to include a mechanism for prior judicial approval of CCAs (with appropriate provision for urgent cases). It is noted that Judicial Commissioners appointed under the Investigatory Powers Act 2016 carry out a prior approval function in respect of other covert investigatory activities. This function of Judicial Commissioners could be extended to cover the grant of CCAs.*** (Paragraph 100)

Prior judicial approval is not the only way to provide effective oversight of investigatory powers. It is important to find a way to provide oversight that is both meaningful and appropriate for the specific power in question. The Committee highlights the use of prior independent scrutiny for some other investigatory powers. The key difference between these examples and the authorisation of a CHIS to undertake criminal conduct is that they lack the human element that comes with running CHIS.

The use of CHIS is different to other powers such as interception or equipment interference. Put simply, human beings are more complex than phones or cameras. Any decision on how to use a CHIS has immediate real-world consequences for that CHIS and the people around them. Every one of these decisions which impact on the safe deployment of CHIS is made by experienced, highly trained professionals who know the CHIS as a human being, and not just an investigative asset. This understanding is built up over a considerable length of time working with the CHIS, and cannot easily be replicated by someone who does not know the CHIS or the context they are operating in.

The use of CHIS requires deep expertise and close consideration of the personal strengths and weaknesses of that CHIS, which enables very precise and safe tasking. These are not decisions that have the luxury of being remade—it is critical that these decisions are right and made at the right time. The Bill's current clarity of responsibility, and resulting operational control, is the best means of protecting CHIS, officers and the public. The Authorising Officer is experienced and highly trained in considering the necessity and proportionality of conduct, but is also able to best consider the operational specifics and safety of the CHIS.

As such, the Government does not feel that prior judicial approval is an appropriate or workable oversight mechanism for this Bill. However, the Government acknowledges that there is scope to further enhance the oversight regime for this Bill. The Government therefore intends to accept an amendment at Report stage that would put in place a notification regime for CCAs. This would require public authorities to notify IPCO of a CCA as soon as reasonably practicable, and in any event within seven days of it being granted. This amendment ensures the powers set out in this Bill will be subject to robust oversight, with Judicial Commissioners having sight of all authorisations in close to real time, while also ensuring it remains operationally workable for our public authorities.

16. ***The Government must explain why the existing policy on criminal responsibility, which retained prosecutorial discretion, has been altered in the Bill to a complete immunity. Victims' rights must be protected by amending the Bill to ensure that serious criminal offences cannot be authorised. In respect of civil liability, the Government must confirm that authorising bodies will accept legal responsibility for human rights breaches by CHIS or alter the Bill to provide that CHIS will be indemnified rather than made immune from liability.*** (Paragraph 113)

The primary purpose of this Bill has been to provide greater clarity and certainty to CHIS, their handlers, and public authorities who authorise CHIS to commit criminal conduct only where it is necessary and proportionate to do so. The current position, whereby a CHIS would still be committing a criminal offence, despite an authorisation, with it being for prosecutors to decide whether it is in the public interest to bring forward a prosecution, is unfair and may have a long-lasting impact on the CHIS capability.

It is unfair for the State to leave open the possibility of a CHIS being prosecuted for the very activity the State has tasked the CHIS to carry out. This tension has existed for many years; it is right that the Bill resolves this. One of the key objectives in legislating is to provide greater certainty and protection to CHIS where they are carrying out activity they have been authorised to undertake by a public authority. That is why the legislation has been drafted to render that conduct lawful. This approach is in keeping with other powers such as equipment interference, property interference, and elsewhere in RIPA.

By providing CHIS with the legal reassurance offered by this Bill, it is likely to help with the recruitment and retention of CHIS. As the Committee have noted, CHIS play a unique and vital role in protecting the public. We have a responsibility to protect CHIS who at times risk their lives, and sometimes the safety of their family, in the interests of safeguarding the public.

The Government has very carefully considered the impact of this Bill in the context of Northern Ireland and would not wish to do anything that could undermine the justice reforms of the Northern Ireland peace process. Both the Northern Ireland Office and PSNI have been consulted throughout the drafting and passage of this Bill.

Appropriate routes of redress remain available under the Bill to those that have been impacted by a CCA, where the authorisation is invalid or has been unlawfully granted. As with other investigatory powers, any person or organisation is able to make a complaint to the IPT, which will be independently considered by the Tribunal. The Tribunal is a judicial body that operates independently of the Government to provide a right of redress for anyone who believes they have been a victim of unlawful action by a public authority

using covert investigative techniques. The Tribunal is also the appropriate forum to consider complaints about any conduct by or on behalf of the intelligence agencies, as well as claims alleging the infringement of human rights by those agencies. Importantly, as the remit of the Tribunal is to deal with covert techniques and matters of national security, there is no requirement for the person making a complaint to provide evidence to support it, and it is free to make a complaint to the Tribunal. It also has wide powers to make remedial orders and awards of compensation. This includes stopping activity, quashing authorisations, ordering material to be destroyed and granting compensation.

There are obligations placed on the Tribunal to investigate all valid complaints. Public authorities and IPCO are under a statutory duty to provide the Tribunal with all necessary documents and information to assist in their investigations. They cannot hold anything back on the basis of secrecy or national security.

Another important safeguard is the obligation on the IPC to inform a person of a serious error that relates to them, where it is in the public interest. This would include situations where the Commissioner considers that the error has caused significant prejudice or harm to the person concerned. The Commissioner must also inform the person of any rights they have to apply to the IPT.

The Committee has specifically asked about the Criminal Injuries Compensation Scheme (CICS). The Government has considered this in detail and concluded that nothing in this Bill would frustrate a victim's ability to recover compensation for injury or loss through that scheme.

The Committee asks that authorising bodies accept legal responsibility for human rights breaches by CHIS. This is unnecessary as conduct that does not comply with the Human Rights Act cannot be authorised by a CCA. Conduct will be tightly bound and can only be authorised where it is necessary and proportionate to what is sought to be achieved. Wider risks to the deployment will be considered, which will ensure the risk to those who are not the intended subject of the operation is mitigated. Any criminality beyond the scope of the CCA would be open to prosecution in the usual way.

The Committee questions what would happen if a CHIS were to carry out authorised criminal conduct in an excessive or disproportionate manner. In order for a CCA to meet the requirement of proportionality, it must be drafted in a way that does not allow for the conduct that it authorises to be conducted in an excessive or disproportionate manner. It will be narrowly and specifically drafted. Therefore, if this were to happen, the CHIS would have breached the parameters of their CCA, which would have been clearly explained to him or her by their handler. Any criminality that strays beyond these strict parameters would be unauthorised conduct and therefore, depending on the facts, could be unlawful. The Bill does not prevent the prosecution authorities from considering a prosecution for any activity outside of the specific authorisation granted.