

COVERT HUMAN INTELLIGENCE SOURCES (CRIMINAL CONDUCT) BILL: THE NEED FOR COMMON-SENSE LIMITS ON TORTURE, MURDER, AND SEXUAL VIOLENCE

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The Covert Human Intelligence Sources (Criminal Conduct) Bill hands MI5, MI6, and a host of other public bodies the power to authorise criminal conduct without any express limits. Our organisations are calling for common-sense limits to be placed on the crimes agents can be authorised to commit, ensuring this Bill cannot be used to authorise torture, murder, or sexual violence.

Without limits this Bill is wide open to abuse, and we urge Parliamentarians to oppose it in this form. Without express limits against the gravest crimes, even improved oversight would leave too great a scope for abuses. We urge Parliamentarians to prioritise amendments to introduce common-sense limits, ensuring that crimes such as murder or torture cannot be rendered 'lawful for all purposes'.

It can never be right for the state to authorise the gravest crimes such as torture. As the Joint Committee on Human Rights (JCHR) found, this Bill "raises the abhorrent possibility of serious crimes such as rape, murder or torture being carried out under an authorisation."¹

The Government has claimed that express limits will risk agents being 'tested' by groups they infiltrate, and asked to commit crimes such as torture, murder, or sexual violence to prove they are not a CHIS. But almost all the UK's 'Five Eyes' partners – the US,² Australia,³ and Canada⁴ – already place express limits on crimes CHIS can commit. As former Director of Public Prosecutions Lord Macdonald, has stated, "Ministers should peel their eyes away from The Sopranos and acknowledge that public confidence in official lawbreaking is a fragile thing that requires the reassurance of boundaries."⁵

The Government claims there is no need for limits because the HRA is a sufficient safeguard. But this argument is disingenuous, as the Government has argued in submissions to the Investigatory Powers Tribunal,⁶ as well as in a memorandum to Parliament,⁷ that it does not believe the HRA applies to abuses committed by its agents. This raises the deeply troubling prospect, as the Intelligence and Security Committee found regarding UK involvement in torture and rendition, of the agencies using CHIS for "simple outsourcing of action" they are "not allowed to undertake themselves."⁸

This is even more concerning for criminal conduct authorised overseas, where the Government argues the HRA applies even less – or not at all. As the JCHR found, "Relying on the Human Rights Act 1998 to prevent the authorisation of crimes that violate human rights is neither appropriate nor sufficient."

Without express limits at the authorising stage, we worry that even improved oversight would leave too great a scope for abuses. Even if a requirement was introduced for Criminal Conduct Authorisations to be approved by a judge or a regulator, experience in the surveillance sector suggests that a warrant system of this nature is wide open to abuse when conducted in secret. Notably, the Investigatory Powers Commissioner has himself conceded that MI5 systematically kept vital information from him to falsely justify surveillance warrants,⁹ and suggested that the agency is failing to reliably record the kinds of crime in which their agents become involved.¹⁰

We have very serious concerns about the Bill as a whole. We support amendments to ensure serious crimes cannot simply be rendered 'lawful for all purposes' and placed beyond the scope of prosecutors and the courts. We also support amendment to place

safeguards against the use of children to commit serious crimes, and amendments to ensure lawful organisations are not wrongly targeted.

But, at the very least, we believe that it is critical that the Bill be amended to introduce common-sense limits on the crimes that CHIS can be authorised to commit, ensuring that the gravest crimes such as torture, murder, or sexual violence will never be authorised.

¹ <https://committees.parliament.uk/publications/3339/documents/32164/default/>

² <https://www.csmonitor.com/USA/Justice/2013/0604/Whitey-Bulger-trial-and-the-FBI-How-have-rules-about-informants-changed>

³ <http://www.ilo.org/dyn/travail/docs/360/Crimes%20Act%201914.pdf>

⁴ <https://laws-lois.justice.gc.ca/eng/acts/c-23/page-8.html#docCont>

⁵ <https://www.thetimes.co.uk/article/government-must-not-give-green-light-to-lawbreaking-fpp3kwrhz>

⁶ https://privacyinternational.org/sites/default/files/2020-07/Tab%2011%20-%20Part%202_0.pdf

⁷ [https://publications.parliament.uk/pa/bills/cbill/58-01/0188/CHIS%20\(CC\)%20Bill%20-%20ECHR%20Memo%20FINAL.pdf](https://publications.parliament.uk/pa/bills/cbill/58-01/0188/CHIS%20(CC)%20Bill%20-%20ECHR%20Memo%20FINAL.pdf)
paragraph 16

⁸ <https://fas.org/irp/world/uk/isc-detainee.pdf>

⁹ <https://www.bbc.co.uk/news/uk-48597111>

¹⁰ <https://ipco.org.uk/docs/IPCO%20Annual%20Report%202018%20final.pdf>