

The Covert Human Intelligence Sources (CHIS) Bill

by Dr Shereen Fernandez and the Muslim Lawyers Action Group (13th November 2020)

For the first time ever, legislation has been drafted to make committing criminal offences legal in the United Kingdom. The insertion of section 29B to the CHIS Bill sets out the grounds on which criminal conduct authorisations can be granted to covert human intelligence sources. These are: national security, preventing or detecting crime, preventing disorder, and the economic well-being of the country. **The police, intelligence and security agencies claim that the ability of CHIS to commit criminal offences is an operational necessity. In other words, people must be allowed to commit crimes for the greater good. Such a claim deserves urgent scrutiny.**

The Bill contains no express limit on what type of criminal conduct can be authorised, which means that **murder, torture, abduction and sexual violence would all be lawful if authorised. In this Bill, ‘sources’ means ‘government agents’. ‘Sources’ can also be children, because children too are sometimes used in covert operations. This makes the lack of limitations on criminal activity particularly concerning.** The Home Office’s explanatory notes suggest that the rationale for not specifying the crimes that can be authorized under the Bill is that criminals might detect or suspect a covert agent through the kinds of criminal conduct they are prepared to engage in. This is unacceptable ‘logic’ in respect to both adults and children. Instead, **providing a clear framework would protect both the covert source and any of his/her potential victims from criminal conduct, and the Bill from gross abuse.**

Moreover, the potentially unlimited criminal conduct that can be sanctioned is not even restricted to the Security Services and police forces. Rather, under the Bill, such unrestrained power will also be available to agencies as wide-ranging as the Department of Health and Social Care, Food Standards Agency, the Environment Agency and the Gambling Commission, to list a few. In effect, they can all be granted license to commit terrible criminal offences. **The breadth of the Bill appears to take the ‘one size fits all’ approach to powers that have the potential for extremely grave consequences.**

Supporters of the Bill state that the European Convention on Human Rights is a safeguard as it imposes limits on the use of powers by public bodies. However, this reliance is seriously misguided and misleading for two reasons. Firstly, the government has made clear its intention to scrap the Human Rights Act 1998 (HRA) and leave the European Convention on Human Rights post-Brexit. Secondly, **the government’s reference to the HRA as a safeguard and oversight mechanism contradicts its own position: it has previously stated that the Act does not apply to its undercover agents.**

Overall, this Bill raises serious concerns by providing even wider powers not just to the security services and police forces but to public bodies who have no experience of operation and supervision of CHIS. **The Bill fails to address the concerns surrounding the powers already held by these agencies, which have led to serious breaches of UK laws and the ECHR, as recently exposed in the “Spycops” scandal. Consequently, the Bill is ineffective and provides no safeguards for those who may fall victim to the activities of CHIS. It should, therefore, categorically not be approved.**

The UK must act as an example for how states around the world should behave and having respect for the rule of law is paramount to this. **By not respecting the rule of law, this bill risks setting an example for abuses of power elsewhere. It is incumbent on all Lords to work towards limiting the harm that this Bill may cause.**

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