



INTELLIGENCE AND SECURITY COMMITTEE OF PARLIAMENT



Statement on the Covert Human Intelligence Sources (Criminal Conduct) Bill

The Intelligence and Security Committee of Parliament (ISC) welcomes the introduction of the Covert Human Intelligence Sources (Criminal Conduct) Bill to Parliament today. We strongly support the principle behind the legislation and will be scrutinising the detail it contains during the next stages in Parliament.

Covert Human Intelligence Sources (CHIS) – or agents – provide invaluable information to assist the security and intelligence Agencies in their investigations and play a significant, often critical, role in identifying and disrupting terrorist plots.

In order to maintain their cover and avoid being found out, and to maintain their access to crucial intelligence, CHIS may need to participate in criminal activity. In such circumstances MI5 is able to authorise its agents to participate in such activities. This is an area which falls within the Committee's oversight remit: our predecessors considered this matter last year during their Inquiry into Northern Ireland Related Terrorism and we will be publishing that report shortly.

In 2019, a case was brought to the Investigatory Powers Tribunal challenging the basis for this power (which is inferred from the Security Service Act 1989) and therefore MI5's ability to authorise agent participation in criminality. The Tribunal ruled in December 2019 that MI5 does have this implied power. However the Government has decided to introduce legislation now to provide a clear and express power to authorise this activity. The Bill, as drafted, does not seek to introduce new powers regarding the use of CHIS. Instead, it will place on an explicit statutory basis existing powers to authorise criminal conduct in certain, limited circumstances.

While there are, rightly, concerns that some criminal activity may be entailed, the need for such authorisations is clear and we support the principle of their use by MI5.

Nevertheless, such authorisations must be properly circumscribed, used only where necessary and proportionate, compatible with the requirements of the Human Rights Act, and subject to proper scrutiny (including by the Investigatory Powers Commissioner, and by this Committee). These checks and balances are essential both for the effective operation of the security and intelligence Agencies, and for maintaining public confidence in the use of these powers. It is these aspects which will now require careful scrutiny by Parliament.