24 July 2018

Rt Hon Harriet Harman QC MP
Chairman of the Joint Committee on Human Rights
House of Commons

Regulation of Investigatory Powers (Juveniles) (Amendment) Order 2018
(SI 2018/ 715)

The Lords’ Secondary Legislation Scrutiny Committee, which I chair, recently considered this Order and reported on it in our 35th Report of this session (copy enclosed).

This Order extends from one month to four months the authorisation of the police and other authorities to use people under 18 as “covert human intelligence sources” (CHIS). Our Report criticised the sparse information provided by the Home Office in its Explanatory Memorandum to justify this change in policy. The Home Office could not tell us how many such juvenile sources were being used, nor how the degree of risk to their mental and physical welfare is assessed in these situations, which is a legal requirement of authorisation.

The Draft Revised Code of Practice on Covert Human Intelligence Sources, which was being updated at the same time does provide more detail about the process of commissioning and using covert sources. However, although the Code mentions monthly reviews and risk assessments, it was not clear to us whether the focus of those reviews is operational or the welfare of the young person. The impression of operational focus was underpinned by the list of interested groups consulted on the proposed change to the legislation which did not mention any organisations or professionals that might be expected to offer views on whether such an extension would increase the mental and physical risks to young people.

The more we looked into the various documents cited, the more we wondered how effective they would be at ensuring adequate assessments were made to ensure that the CHIS is properly supported both during and after the event. We were unclear how the officers designated as handlers or authorising officers would know how to identify and assess the mental risks to juveniles. Nor could we see how a consistent approach to such evaluations across different police forces is to be achieved.

Our correspondence with the Minister, also included in our report, increased our concern by providing examples of how such a juvenile CHIS might be used, citing involvement in terrorism, gang violence, drug offences and child sexual exploitation. These are serious, often violent, crimes and we have grave concerns about any child being exposed to such an environment.
The Order requires that CHIS under 16 should have an appropriate adult, “qualified to represent the interests of the source”, present at any meetings with their handler. The Home Office did not make clear how the interests of 16-18 year olds, also children in law, are to be protected.

Our concerns were reflected in a debate in Grand Committee on 18 July where a number of Peers, including a former Chief Surveillance Commissioner and a former senior Officer in the Metropolitan Police, also voiced concerns. Lord Paddick was so concerned that he has now put down a further regret motion on the Order.

The Committee has asked me to draw this Order to your Committee’s attention given the widespread concern about the human rights of juvenile CHIS. We would very much welcome your expert view on this matter.

Yours sincerely

David Trefgarne

Rt Hon. Lord Trefgarne PC
Chairman of the Secondary Legislation Scrutiny Committee

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35th Report of the SLSC