



Joint Committee on Human Rights

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From Rt Hon. Harriet Harman MP, Chair

The Rt Hon. Ben Wallace MP
Minister of State for Security and Economic Crime
Home Office
2 Marsham Street
London, SW1A 4DF

16 August 2018

Dear Ben,

“Child spies” – Use of juveniles as Covert Human Intelligence Sources (CHIS)

I am writing to seek explanations about the use of children as Covert Human Intelligence Sources (CHIS) to gather information for public authorities. The House of Lords Secondary Legislation Scrutiny Committee (SLSC) has raised concerns about this, which the Joint Committee on Human Rights wishes to pursue with your department.

Legislative background and recent developments

We understand that the use of children as Covert Human Intelligence Sources (CHIS) is currently governed by the Regulation of Investigatory Powers (Juveniles) Order 2000.¹ In July of this year, the SLSC considered a Statutory Instrument that would amend the 2000 Order to change the duration and review process for the use of children as CHIS.² The SLSC also considered at that time a Statutory Instrument to amend the Code of Practice for CHIS (which covers the use of children as CHIS).³ The SLSC’s scrutiny of these instruments led it to become increasingly concerned about the regime as a whole. The Committee wrote to you seeking further information, and your response (and the revised Explanatory Memorandum), whilst helpful, increased the Committee’s concerns, as detailed in its report of 10 July.⁴ We note that the debate on 18 July demonstrated that the Committee’s concerns were shared by Peers more widely,⁵ and we note that Lord Paddick has tabled a regret motion that will be debated in the autumn.⁶

We understand that the changes to the duration and review process came into force on 20 July, and that the changes to the Code of Practice are coming into force on 15 August. Whilst the SLSC’s scrutiny has run its course, the Chair of the SLSC, Rt Hon. Lord Trefgarne, has raised this matter with me as Chair of the Joint Committee on Human Rights.

¹ Regulation of Investigatory Powers (Juveniles) Order 2000, SI No.2793

² Regulation of Investigatory Powers (Juveniles) (Amendment) Order 2018, SI No.715

³ Investigatory Powers (Codes of Practice and Miscellaneous Amendments) Order 2018, SI No.905

⁴ Secondary Legislation Scrutiny Committee, 35th Report of Session 2017–19

⁵ Hansard Volume 792, 18 July 2018

⁶ House of Lords Business Paper No. 175, 23 July 2018: Lord Paddick to move that this House regrets that organisations concerned with the human rights and welfare of children were not consulted about the decision to extend the maximum length of juvenile covert human intelligence sources authorisations from one month to four months, as provided for in the Regulation of Investigatory Powers (Juveniles) (Amendment) Order 2018 (SI 2018/715). *35th Report from the Secondary Legislation Scrutiny Committee*

We recognise that intelligence and law enforcement agencies face tremendous challenges, and must seek new methods of combatting threats. We want those methods to strike an appropriate balance between preventing wrongdoing and ensuring that those involved in assignments are given appropriate protections.

Article 3 of the UN Convention of the Rights of the Child (UNCRC) states that: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” *We ask you to demonstrate that the CHIS regime meets this obligation.*

(i) Dangerous nature of assignments

It is our understanding that the regime established by the 2000 Order was used for investigating minor crimes, for example whether shopkeepers would sell alcohol to children. However, in recent correspondence with the SLSC, you stated that: “Given that young people are increasingly involved, both as perpetrators and victims, in serious crimes including terrorism, gang violence, county lines drugs offences and child sexual exploitation, there is increasing scope for juvenile CHIS to assist in both preventing and prosecuting such offences.” *We would be grateful if you could explain whether these dangerous types of assignment were envisaged when the original legislation was introduced, and what impact assessment was undertaken (regarding the risks posed to children) before these types of assignments were introduced to the juvenile CHIS regime.*

(ii) Numbers of children used as CHIS

We note that the Home Office was unable to provide the SLSC with details of the number of children used as CHIS. The gathering of such data is important, in order to assist with monitoring the regime and to show the scale of any issues. We note that, in answer to a written question by Baroness Kennedy of Cradley, the Home Office stated that the Investigatory Powers Commissioner will start to collect statistics.⁷ *Please provide us with more details about what statistics will be gathered and how they will be used.*

The Committee would value seeing data about assignments to-date. We recognise that data about CHIS operations could potentially allow criminals to determine (or cause them to suspect) that a child has acted against them, posing a risk to children who have (or have not) undertaken assignments. *Insofar as this risk can be avoided, we ask that you gather the following information and provide it to the Committee:*

- *Number of public authorities that have used juvenile CHIS since the legislation was introduced.*
- *Number of juvenile CHIS used since the legislation was introduced, disaggregated by age range of child (under 16, and 16 and over), type of crime, and year.*

⁷ Written question - HL9741: Informers: Children. Asked on 20 July 2018 by Baroness Kennedy of Cradley, and answered on 2 August 2018 by Baroness Williams of Trafford.

(iii) Rationale for changes to duration and review periods

The 2018 Order increases from one month to four months the period for which the use of a person under 18 years of age as a CHIS can be authorised, subject to monthly reviews. The rationale for these changes is explained in the revised Explanatory Memorandum, namely so that the achievement of results is driven by the assignment rather than by the need to justify the next month's extension. We see the logic in this argument. But we are unclear about whether the changes place a limit on the overall duration of an assignment. *Please explain the limits placed on the overall duration of an assignment under the previous regime (i.e. how many times a one-month authorisation could be renewed) and under the revised regime (i.e. what extensions could be granted beyond a four-month authorisation).*

(iv) Consultation process

These changes were proposed after consultation with intelligence and law enforcement agencies. Whilst these practitioners do have experience of considering the welfare of child CHIS, their primary objective is to tackle crime, hence presenting a potential conflict of interest. The consultation does not seem to have heard from external experts in child welfare, or indeed from children. *Please provide us with more details of how the consultation considered the impact of the changes upon child CHIS.*

(v) Welfare of children used as CHIS

The welfare of the child must be a primary consideration, as stipulated by the UNCRC, but we have insufficient information to determine whether this is ensured. The Code of Practice, at a fundamental level, does not mention the UNCRC principle that the best interests of the child must be a primary consideration; and at an operational level it does not provide guidance about the welfare needs of children and how to meet these needs for child CHIS.⁸

We have been told that in dangerous assignments relating to terrorism, drugs, and child sexual exploitation, there is inevitably a risk to the physical and mental welfare of the child. Physical harm may result from being in a violent environment, or from punishment if discovered to be working covertly. Mental harm (which can be more pronounced because children's minds are still developing) may result from, for example, exposure to damaging behaviours, the pressures of having to 'live a lie', and the imbalance of power between the child and their handler.⁹

We understand that most of the children who undertake assignments are already involved in the criminal world.¹⁰ Whilst we recognise that the situations can be complex, we would highlight one aspect of concern, namely that these children are being asked to remain in situations that can perpetuate existing harm.

Also, there are fewer safeguards for CHIS aged 16-17 years (there need not be an appropriate adult present at meetings with their handler, and they can be tasked with an

⁸ See section 4.2, Covert Human Intelligence Sources – Draft Revised Code of Practice, Home Office, June 2018

⁹ This information is based on correspondence from the British Psychological Society.

¹⁰ Investigatory Powers (Codes of Practice and Miscellaneous Amendments) Order 2018, debated on 18 July 2018, Hansard Volume 792. "...these are not innocent teenagers who are being picked on by the police and told to go into gangs to act as covert human intelligence sources. What usually happens is that these are gang members who have been arrested and who volunteer, who offer to help the police by reporting back what is being said and done within that gang environment."

assignment involving their parents or guardians). There is a fundamental question as to whether this distinction is appropriate given that an individual is legally a child until the age of 18. Further, at an operational level, whilst the revised Explanatory Memorandum acknowledges the need to factor in their maturity, the Code of Practice provides no detail about how to assess maturity.

We would be grateful if you could explain the following:

- *how a child's welfare (physical and mental) is assessed, and what support they are given – before, during and after an assignment;*
- *the legal basis on which a child's welfare can be weighed-up against other considerations, and the types of circumstances under which it is deemed appropriate to prioritise other objectives above a child's welfare;*
- *how a child is consulted about their options (including whether their welfare is discussed and how trade-offs are presented), what advice a child (and their "appropriate adult", if applicable) is given about the risks and their rights, and what access they have to independent advice;*
- *the legal basis on which children are treated differently depending upon whether they are aged under 16 or aged 16 and over, and why it is deemed appropriate that children aged 16 and over are not given the safeguard of an "appropriate adult" at meetings with their handlers and can be given an assignment relating to their own parents or guardians;*
- *whether there is a consistent approach across all public authorities engaged in using children as CHIS to assessment, safeguarding and consultation with the child.*

We would be grateful for a response by Thursday 6th September.

I am copying this letter to Rt. Hon Lord Trefgarne, Chair of the SLSC; Lord Paddick; Lord Justice Fulford, Investigatory Powers Commissioner; Anne Longfield OBE, Children's Commissioner for England; Koulla Yiasouma, NI Commissioner for Children and Young People; Bruce Adamson, Children and Young People's Commissioner for Scotland; and Sally Holland, Children's Commissioner for Wales.

Yours sincerely



Rt Hon. Harriet Harman MP, Chair