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**Licence to Kill: the need for safeguards in authorising the criminal conduct of Covert Human Intelligence Sources**

This paper argues that the Covert Human Intelligence Sources (Criminal Conduct) Act 2021 ('CHIS Act') requires urgent reform. The Act gives rise to serious concerns for the rule of law per Lord Bingham's formulation,<sup>1</sup> as its provisions conflict with the principles of rule of law that he identified, including the apportionment of legal liability; equal application of the law; protection of human rights; and state compliance with the law.

A covert human intelligence source ('CHIS') is defined in section 26(8) of the Regulation of Investigatory Powers Act 2000 ('RIPA') on the basis of them establishing or maintaining a relationship with the person or group under investigation, in order to get information from them, or access to information via them. The CHIS then covertly discloses such information to their 'handler' and/or the investigating public authority. Such 'intelligence-led policing' is used in relation to a range of activity, including counter-terrorism<sup>2</sup> and human trafficking operations,<sup>3</sup> and, historically, surveillance of political groups.<sup>4</sup>

Although the courts have recognised that in the course of a CHIS's activity, they may be required to undertake pursuits that would constitute criminal conduct, case law suggests that this was not intended to create *carte blanche* for all criminal conduct. The Court of Appeal in the *Third Direction* case held that the source of the Government's power to

<sup>1</sup> Lord Bingham, "*The Rule of Law*" [2007] CLJ 66(1), 67 - 85

<sup>2</sup> UK Government, "CHIS Bill Factsheet" (11 January 2021) <https://www.gov.uk/government/publications/covert-human-intelligence-sources-draft-code-of-practice/covert-human-intelligence-sources-bill-factsheet-accessible-version> > accessed 19 October 2022

<sup>3</sup> Undercover Policing Inquiry, "National Crime Agency's Opening Statement to the Undercover Policing Inquiry", p7 [https://www.ucpi.org.uk/wp-content/uploads/2020/11/20201022-Opening\\_Statement-NCA.pdf](https://www.ucpi.org.uk/wp-content/uploads/2020/11/20201022-Opening_Statement-NCA.pdf) > accessed 17 October 2022

<sup>4</sup> Stefano Bonino et al, "*Preventing Political Violence in Britain: An Evaluation of over Forty Years of Undercover Policing of Political Groups Involved in Protest*" (2015), 815

authorise such conduct was from statute, and prior to then, the Royal Prerogative.<sup>5</sup> But this power did not constitute or confer immunity from legal proceedings arising from the authorised conduct.<sup>6</sup>

The CHIS Act amends section 26 RIPA to authorise:

*“criminal conduct in the course of, or otherwise in connection with, the conduct of covert human intelligence sources.”*<sup>7</sup>

Section 27 RIPA provides that relevant conduct shall be *“lawful for all purposes”* if there is a criminal conduct authorisation (‘CCA’) and the conduct is in accordance with the authorisation.<sup>8</sup>

The CHIS Act inserts a new subsection 29B RIPA, which defines a CCA as:

*“an authorisation for criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source.”*<sup>9</sup>

Taken together, these provisions effectively remove both civil and criminal liability from a CHIS who engages in *any* authorised criminal conduct over the course of their activities as

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<sup>5</sup> *Privacy International & Ors v Secretary of State for Foreign and Commonwealth Affairs* [2021] EWCA Civ 330, [2021] Q.B. 1087 [77 - 86]

<sup>6</sup> *Ibid*, [76 - 77]

<sup>7</sup> Covert Human Intelligence Sources (Criminal Conduct) Act 2021, s1(2)(b)

<sup>8</sup> Regulation of Investigatory Powers Act 2000, s27(1)

<sup>9</sup> CHIS Act 2021, s1(5)(29B)(2)

a CHIS.<sup>10</sup> This is the first time the exercise of such powers in the UK, with effectively full immunity, has been placed on a statutory footing.<sup>11</sup>

This paper will expand on the underlying detail of the Act to identify the risks arising from the authorisation of any and all criminal conduct; the potential for authorised breach of fundamental rights; little oversight of the power; and the lack of redress for victims. Corresponding reforms to the Act will be suggested.

## I. Background to the Act

The CHIS Bill was introduced in Parliament in September 2020, following proceedings examining aspects of the regime by which the State uses undercover agents. These include the de Silva Review into the circumstances of the death of Patrick Finucane;<sup>12</sup> the Ellison Review's 'troubling' findings on the undercover operations of the Metropolitan Police Special Demonstration Squad ('MPS SDS') in the case of Stephen Lawrence;<sup>13</sup> and the Undercover Policing ('Spycops') Inquiry, which remains ongoing.<sup>14</sup>

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<sup>10</sup> Jacob Bindman, 'The Covert Human Intelligence Sources (Criminal Conduct) Bill 2020' (2020) <https://www.gardencourtchambers.co.uk/news/the-covert-human-intelligence-sources-criminal-conduct-bill-2020> > accessed 16 October 2022

<sup>11</sup> Tim Baldwin, 'Many more 'spying cops' without proper controls' (2021), <https://ials.blogs.sas.ac.uk/2021/05/21/many-more-spying-cops-without-proper-controls-the-covert-human-intelligence-sources-criminal-conduct-act-2021-chis-act/> > accessed 16 October 2022

<sup>12</sup> Sir Desmond de Silva QC, 'The Report of the Patrick Finucane Review' (2012), p367 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/246867/0802.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/246867/0802.pdf) > accessed 15 October 2022

<sup>13</sup> Mark Ellison QC, 'The Stephen Lawrence Independent Review: Summary of Findings' (2014) pp. 20 - 34 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/287030/stephen-lawrence-review-summary.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/287030/stephen-lawrence-review-summary.pdf) > accessed 16 October 2022

<sup>14</sup> Findings include that officers used deceased children's identities in constructing their false backgrounds: <https://www.ucpi.org.uk/wp-content/uploads/2016/07/160714-ruling-deceased-children.pdf> > accessed 16 October 2022

In 2019, the Investigatory Powers Tribunal's ('IPT') found that Kate Wilson, one of the 'Spycops' victims who was deceived into a relationship with an undercover police officer,<sup>15</sup> had suffered "a formidable list of Convention violations", including of her rights under Articles 3 and 14.<sup>16</sup>

The Security Service's authorisation of criminal conduct on the part of its agents was litigated in both the IPT<sup>17</sup> and the Court of Appeal in the *Third Direction* case. The case<sup>18</sup> concerned the legality of the Security Service's policy and internal guidance to authorise criminal conduct in its operations. Both the IPT and the Court of Appeal held that the Security Services Act 1989 contained an implied power to authorise unlawful (and *a fortiori* criminal) conduct on the part of a CHIS.<sup>19</sup> It was also held that, prior to statutory provisions, the source of this power was the Royal Prerogative.<sup>20</sup> Crucially, both courts noted that the authorisations granted pursuant to the guidance under challenge had no legal effect and conferred no immunity from prosecution.<sup>21</sup> As such, the guidance was not found to place the Security Service and its agents above the law.<sup>22</sup>

The CHIS Act received Royal Assent prior to the handing down of the judgment in the *Third Direction* appeal. It is uncanny that the seeming basis on which the judges found

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<sup>15</sup> Police Spies Out of Lives, "Kate's Story", <https://policespiesoutoflives.org.uk/our-stories/kates-story/> > accessed 15 October 2022

<sup>16</sup> *Wilson v Metropolitan Police Commissioner* [2021] UKIPTribIPT/11/167/H, [2021] 9 WLUK 354, [344]

<sup>17</sup> *Privacy International v Secretary of State for Foreign and Commonwealth Affairs* [2019] UKIPTrib IPT/17/186/CH, [2019] 12 WLUK 420, (*Privacy International* (IPT))

<sup>18</sup> On appeal in *Privacy International v SSFCA & Ors* [2021] EWCA Civ 330, [2021] Q.B. 1087, (*Privacy International* (CA)).

<sup>19</sup> *Privacy International* (IPT) [60]; *Privacy International* (CA) [79 - 86]

<sup>20</sup> *Privacy International* (IPT) [49]; *Privacy International* (CA) [77 - 78]

<sup>21</sup> *Privacy International* (IPT) [71 - 73]; held in *Privacy International* (CA) [76]

<sup>22</sup> *Privacy International* (CA) [76 - 77, 104]

consistency between the Security Service's authorisation of criminal conduct and the rule of law - i.e. that such authorisation did not confer, or constitute, immunity from prosecution - was abandoned in both the Bill and the final Act.

## II. Issues

### II.i No express limits on crimes that can be authorised

Section 26(8A) of RIPA defines "*criminal conduct in the course of, or otherwise in connection with*" as any conduct that, notwithstanding the provision, would constitute a crime. The absence of express limits on crimes eligible for a CCA necessarily implies that the authorisation of such conduct would apply to the total range of criminal offences, including murder, torture, sexual assault, and human trafficking.

The lack of express limits is strikingly out of step with the legal regimes of a majority of the UK's partners in its key intelligence sharing network, 'Five Eyes'. The Joint Committee on Human Rights noted that the lack of express limits is not shared with Canada, the United States, or Australia, all of which have operational guidelines<sup>23</sup> and/or legislation<sup>24</sup> barring undercover agents from participating in acts of violence (except in 'self-defense' [*sic*]), at a minimum.<sup>25</sup> One would reasonably assume that the UK would aim for some level of

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<sup>23</sup> The Attorney General's Guidelines regarding the use of FBI Confidential Human Sources, Part V, section A(2), p30 <https://irp.fas.org/agency/doj/fbi/chs-guidelines.pdf> > accessed 19 October 2022

<sup>24</sup> House of Commons Library Briefing Paper, Covert Human Intelligence Sources (Criminal Conduct) Bill 2019 - 2021, p16 <https://researchbriefings.files.parliament.uk/documents/CBP-9012/CBP-9012.pdf> > accessed 17 October 2022

<sup>25</sup> Joint Committee on Human Rights Tenth Report of Session 2019 - 21, p13 <https://committees.parliament.uk/publications/3339/documents/32164/default/> > accessed 16 October 2022

similarity with its partners' intelligence gathering methods, if not harmonisation, to maintain commonly-held standards of intelligence obtained and shared,

Further, crimes such as torture, state authorisation of which would give rise to breach of the UK's treaty obligations under the the European Convention on Human Rights ('ECHR') and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('CAT'), have not been excluded from a grant of a CCA. Affirmation of the UK's commitment to its treaty obligations requires express exclusion of conduct that would otherwise give rise to breach.

Whilst the Bill was being scrutinised, the Government argued that providing a list of excluded crimes within the statute would result in Organised Crime Groups using such crimes to test if recruits were CHIS. <sup>26</sup> This argument does not hold, as the Government's obligations are a matter of public record from which one can logically deduce which crimes should not be authorised for a CCA. One can infer from the text of the Human Rights Act 1998 ('HRA') that the State is not able to authorise serious violent crime without risking breach of its Convention duties. Similarly, it is known that evidence obtained from torture is inadmissible in the UK's courts. <sup>27</sup> It is therefore not apparent as to why the concern for a published list of crimes excluded from a CCA grant only applies when the source of the proposed list is the CHIS Act, and not reasonably inferred from other publicly available material.

## II.ii Authorised violation of human rights

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<sup>26</sup> Government Response to the Committee's Tenth Report of Session 2019 - 21, p2 <https://committees.parliament.uk/publications/4177/documents/41645/default/> > accessed 16 October 2022

<sup>27</sup> 6th periodic report of the United Kingdom on CAT (2017), p34 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/663316/uk-6th-periodic-report-under-cat.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/663316/uk-6th-periodic-report-under-cat.pdf) > accessed 16 October 2022

The rights to life, freedom from torture, and prohibition of slavery are unqualified rights. It is therefore not apparent why serious offences such as murder, sexual assault and human trafficking, the authorisation of which would plainly risk breach of these rights, are not excluded from the remit of a CCA.

The test for a CCA grant is contained in section 29B(5) RIPA as amended by section 1 of the CHIS Act. The test is merely if the Authorising Officer ‘believes’ that the conduct would be proportionate and necessary for the purposes of ‘*protecting national security interests*’; ‘*preventing or detecting crime or disorder*’; or ‘*in the interests of economic well-being*’ of the UK.<sup>28</sup>

These grounds of necessity are drafted in broad terms.<sup>29</sup> The lack of specification as to what ‘interests of economic well-being’ require a CCA has been noted.<sup>30</sup> There is no qualifier as to what kinds of ‘disorder’ – for example, ‘serious’ or ‘violent’ - would warrant the grant of a CCA, nor any consideration of how this might engage individuals’ rights to freedom of thought, expression, and assembly. This gives rise to the potential for State authorisation of otherwise-unlawful interference with these rights, which could have a chilling effect on civic and democratic participation.<sup>31</sup>

The test of ‘reasonable belief’<sup>32</sup> sets a low threshold when considered in the context of decision-making that only assesses necessity and proportionality in relation to the

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<sup>28</sup> Section 29B(5) RIPA as amended by section 1 CHIS Act

<sup>29</sup> Paul F. Scott, “*Economic Well-being*” in *National Security law and Practice*, King’s Law Journal, pp.2, 6 - 7

<sup>30</sup> House of Lords, Covert Human Intelligence Sources (Criminal Conduct) Bill, 19th Report of Session 2019 - 21, p2 <https://committees.parliament.uk/publications/3564/documents/34430/default/> > accessed 18 October 2022

<sup>31</sup> Nathan Griffiths “*Everyone was questioning everything*”: *understanding the derailing impact of undercover policing on the lives of UK environmentalists*’ 463

<sup>32</sup> Home Office, “Draft Revised Code of Practice” (December 2021), paragraph 6.4, p36 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1040027/CHIS\\_Draft\\_Revised\\_Code\\_of\\_Practice\\_-\\_December\\_2021\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040027/CHIS_Draft_Revised_Code_of_Practice_-_December_2021_FINAL.pdf) > accessed 16 October 2022

objective of the criminal conduct. There is no requirement for a balancing assessment to be made in respect of the fundamental rights of the parties potentially affected by such authorised conduct, except impliedly by reference to section 6(1) HRA which makes it unlawful for the Government or its officers to act in a way which is incompatible with a Convention right.

Indeed, it is assumed that CCAs granted will *de facto* be human rights compliant by virtue of the requirement to have regard to s6(1) HRA. Case law, including the IPT's judgment in Kate Wilson's case, which found that the violation to her rights flowed from "*authorisations under RIPA [which] were fatally flawed*",<sup>33</sup> makes clear that authorisations granted cannot be taken to be HRA-compliant.

### II.iii Lack of judicial oversight

The involvement of a Judicial Commissioner pursuant to s6 of the CHIS Act arises only *after* they receive notice of a CCA grant.<sup>34</sup> Judicial oversight in the grant of a CCA is not included in the statute or the Code of Practice. This is troubling given the proposed balancing exercise such an authorisation should require: not only with respect to the proportionality of the conduct to be authorised to the objective to be achieved;<sup>35</sup> but also the public interest of scrutinising the CHIS's conduct and the private interests of persons affected by the conduct.

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<sup>33</sup> *Wilson v MPS* [2019], [344]

<sup>34</sup> RIPA, section 32C as amended by CHIS Act, section 6

<sup>35</sup> Para 3.10, Code of Practice, p38



The power to grant CCAs has - arguably inappropriately<sup>36</sup> - been granted to a wide range of public authorities, including the National Crime Agency, the Department of Health and Social Care, and the Food Standards Agency.<sup>37</sup> The grounds of necessity for a CCA grant are outlined in broad terms, and the test hinges on the 'reasonable belief' of the Authorising Officer.<sup>38</sup> The decision-making is largely closed, with decisions on the grant, renewal, cancellation and review of CCAs undertaken by Authorising Officers.<sup>39</sup> The power effectively provides full civil and criminal immunity for authorised conduct that would otherwise be criminal. Judicial oversight is plainly needed to act as an independent check against the misuse of this remarkable power.

#### II.iv Limited redress for victims

The Government's position is that "*the state, in tasking the CHIS...is not the instigator of that activity and cannot be treated as somehow responsible for it*".<sup>40</sup> This, coupled with the statute's effect in granting full immunity for CHIS, means that it is not apparent as to how a victim of the authorised conduct could make a claim where neither the CHIS or the State has liability. This effectively places CHIS and the State beyond the law's reach.

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<sup>36</sup> House of Lords, 19th Report of Session 2019 - 2021: CHIS Bill, p3 <https://committees.parliament.uk/publications/3564/documents/34430/default/> > accessed 20 October 2022

<sup>37</sup> RIPA 2000, Schedule 1, Part A1 as amended by CHIS Act

<sup>38</sup> Para 3.11 Code of Practice, p67

<sup>39</sup> Paras 6.11, 6.32, 6.38, and 6.44, Code of Practice, p37 - 41

<sup>40</sup> Reprieve et al, "Joint Briefing for Second Reading of the CHIS Bill" (2020), p3 <https://caj.org.uk/wp-content/uploads/2020/10/CHIS-Criminal-Conduct-Bill-Briefing-for-Second-Reading.pdf> > accessed 16 October 2022; and the Human Right's Memorandum to the CHIS Bill, p4 <https://publications.parliament.uk/pa/bills/cbill/58->

[01/0188/CHIS%20\(CC\)%20Bill%20-%20ECHR%20Memo%20FINAL.pdf](#) > accessed  
16 October 2022

Notwithstanding the issue of a potential lack of defendant, the Code of Practice states that the IPT has jurisdiction to investigate and determine complaints against public authority use of CCAs in relation to human rights.<sup>41</sup> It is doubtful whether providing recourse for 'complaints' - not claims - to the infamously secretive tribunal is in the interests of fair and open justice.<sup>42</sup>

Additionally, violations incurred by authorised criminal conduct could give rise to actions in public, tort, and criminal law, including claims of non-consensual sexual offences;<sup>43</sup> personal injury; and Given the limited jurisdiction of the IPT, the CHIS Act blocks a victim's access to sufficient redress.

### **III. Suggested Reforms**

#### III.i Delineate crimes excluded from authorisation

Section 1 of the CHIS Act, and corresponding sections in RIPA, should be amended to remove and replace language expressly or impliedly providing for 'any' conduct to be authorised under a CCA.

The CHIS Act should also be amended to provide for a new section 29C in RIPA. The below amendment should be included at this section:

#### **29C Conduct excluded from a grant of a criminal conduct authorisation**

<sup>41</sup> Para 11.2, Code of Practice, Chapter 11, p67

<sup>42</sup> Ian Cobain and Leila Haddou, "'Independent' court scrutinising MI5 is located inside the Home Office" (2014), <https://www.theguardian.com/politics/2014/mar/05/independence-ipt-court-mi5-mi6-home-office-secrecy-clegg-miliband> > accessed 21 October 2022

<sup>43</sup> Ben Fitzpatrick in Chris Ashford et al, *Legal Perspectives on State Power: Consent and Control*, p222

*(1) The conduct that is authorised by a criminal conduct authorisation does not include conduct amounting to*

*(a) violent crime, including murder and manslaughter;*

*(b) subjecting an individual to torture or cruel, inhuman or degrading treatment or punishment;*

*(c) holding another person in slavery, servitude, forced or compulsory labour, and/or human trafficking*

*(d) sexual offences; and*

*(e) offences against the person.*

*(2) In subsection (1b) the reference to torture is to be construed in accordance with Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*

*(3) In subsection (1c) the references to holding another person in slavery, servitude, forced or compulsory labour, and/or human trafficking are to be construed in accordance with sections 1 - 4 of the Modern Slavery Act 2015.*

The effect of this draft statutory amendment is to exclude particular crimes from the ambit of a grant of a CCA.

### III.ii Safeguarding human rights

The inclusion of the amendment contained in III.i, above, would have the effect of acting as safeguards against breach of rights under ECHR Articles 2, 3, 4, and 5, at a minimum.

Parliament should amend the statute to include additional safeguards to protect against the unlawful interference with the full range of fundamental rights. The grounds of necessity should be redrafted to include qualifiers specifying the circumstances in which a CCA may be deemed necessary; and the text should plainly outline the factors to be weighed in the balancing exercise required to justify interference with qualified rights.

Procedural safeguards should include a requirement that Authorising Officers undertake a balancing exercise to consider if the aim to be achieved by the conduct is proportionate to the interference with rights resulting from such conduct. The list of information to include in applications for a CCA, as set out in the Code of Practice,<sup>44</sup> should be amended to include a record of this balancing exercise.

### III.iii Judicial oversight in the grant of a CCA

Judicial Commissioners are notified of the grant of a CCA *after* the fact. A more effective means of balancing this power would be for the Judicial Commissioner to provide judicial authorisation for each grant of a CCA by an Authorising Officer, with the CCA not coming into effect without the approval of the Judicial Commissioner. Making applications for a grant of a CCA subject to judicial approval would ensure that the Authorising Officer's analysis is in accordance with the law and therefore does not infect the CCA grant with unlawfulness.

This is not a novel suggestion. Under section 23 of the Investigatory Powers Act 2016 ('IPA'), where an intercepting authority or the Secretary of State seeks to issue a warrant to intercept communications, a Judicial Commissioner must approve the decision to issue by undertaking necessity and proportionality tests, and applying the same principles as for

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<sup>44</sup> Para 6.22, Code of Practice, p38

judicial review.<sup>45</sup> If a Judicial Commissioner refuses to approve the issue of a warrant, the matter can be reviewed by the Investigatory Powers Commissioner ('IPC').<sup>46</sup> If the IPC refuses the decision, the warrant must not be issued.<sup>47</sup>

The system for issuing a warrant to intercept communications provides a measure of accountability for this power. Given that the nature, scope and effect of the power to grant CCAs is arguably on par with, if not in excess of, the power to issue a warrant under s23 IPA, the same system of oversight by a Judicial Commissioner should be implemented. This system should be introduced in both the text of the CHIS Act and in the Code of Practice.

#### III.iv Provide recourse to criminal and civil redress and a CHIS defence

The statutory provision that a CCA makes the authorised conduct '*lawful for all purposes*' should be removed. Amendments expressly providing for criminal liability for conduct authorised under a CCA should be inserted into the statute.

The statute should also be amended to insert terms expressly providing for civil liability in respect of the conduct authorised under a CCA. In order to provide practical legal recourse for pursuit of claims concerning civil liability, statutory amendments should also be inserted to provide that victims of such authorised conduct are able to make private civil claims against both the CHIS, and the State, in all of the relevant courts.

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<sup>45</sup> Investigatory Powers Act 2016, s23(1) and (2)

<sup>46</sup> Ibid, s23(5)

<sup>47</sup> Home Office, "Communications Data: Code of Practice" (November 2018), paragraphs 17.22 - 17.23, pp. 103 - 104 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/757850/Communications\\_Data\\_Code\\_of\\_Practice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/757850/Communications_Data_Code_of_Practice.pdf) > accessed 16 October 2022

Given the purpose of the power, a statutory CHIS defence could also be included to provide protection for CHIS in respect of liability incurred in the course of their conduct as a CHIS. It is suggested that a CHIS defence should consist of qualifying circumstances for eligibility to mount such a defence, and a test balancing the public interest for prosecution against the public interest served by the conduct under challenge.<sup>48</sup> Such a CHIS defence would be available for all conduct authorised under a CCA, save for the offences excluded in the draft amendment at III.i above, which it is contended should always carry civil and criminal liability.

#### **IV. Conclusion**

The purportedly unavoidable need for undercover agents to undertake criminal conduct in the course of their work is not licence to grant such powers, as enacted in the CHIS Act, without robust safeguards. The current lack of express exclusion of crimes that can be authorised under a CCA; lack of protections for human rights; insufficient judicial oversight; and limited redress for victims of conduct granted a CCA, require urgent fixing. Far from hampering the defence of the realm, these reforms would enhance the legitimacy of such operations. Additionally, in mitigating against the erosion of the rule of law and fundamental rights, these safeguards are of the same constitutional importance.

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<sup>48</sup> See Sir John Donaldson M.R.'s comments, *Attorney-General v Guardian Newspapers Ltd* (No. 2) (C.A.) [1990] 1 AC 109, pp. 189 - 190