Conduct of Undercover Policing and Surveillance Operatives Bill

Second Reading

July 2026

Introduction

1. The framework regulating public authorities' ability to authorise people to commit crimes introduced by the Covert Human Intelligence Sources (Criminal Conduct) Act 2021 (the **"CHIS Act"**). The CHIS Act does not contain sufficient safeguards against covert human intelligence sources (**"CHIS"**) having intimate sexual relationships with persons that they are deployed to infiltrate and target or encounter during their deployment.

2. This briefing sets out how the Conduct of Undercover Policing and Surveillance Operatives Bill would serve to address this risk by prohibiting CHIS from entering into or maintaining intimate sexual relationships with persons who are the subject of surveillance or investigation.

The framework introduced by the Covert Human Intelligence Sources (Criminal Conduct) Act 2021

3. The CHIS Act amends Part II of the Regulation of Investigatory Powers Act 2000 ("**RIPA** 2000") to allow a range of public authorities to authorise CHIS to commit criminal acts in certain contexts.[1] Such acts are rendered *"lawful for all purposes"* provided they are *"in accordance with the authorisation"*.[2]

4. When an authorising authority issues a criminal conduct authorisation, the covert source is granted a forward-looking immunity from prosecution. Where a criminal act is "lawful for all purposes," no criminal offence takes place. The source who carried out the otherwise criminal act is not prosecuted, does not appear in court, and is not held criminally or civilly liable for their actions or any damage they may cause.[3]

5. The Home Office states that CHIS are *"crucial in preventing and safeguarding victims from many serious crimes including terrorism, drugs and firearms offences and child sexual*

[1] Section 29B(4) RIPA 2000 specifies that an authorisation may be granted if the person issuing it believes the authorisation is (i) necessary in the interests of national security, preventing or detecting crime or of preventing disorder, or the UK's economic well-being; and (ii) the authorised conduct is proportionate to what is sought to be achieved by that conduct; s.27(1) RIPA 2000 specifies that the effect of an authorisation is to render the authorised conduct "lawful for all purposes" provided it is "in accordance with the authorisation".

[2] Section 27 (1)(b) RIPA 2000

[3] Section 27(2) RIPA 2000.

exploitation."[4] Because criminal conduct is "an essential and inescapable feature of CHIS use", criminal conduct authorisations enable a CHIS to *"work their way into the heart of groups that would cause us harm, finding information and intelligence which other investigative measures may never detect."*[5]

RIPA 2000

6. An advance immunity framework model contains insufficient safeguards to control whether covert sources exceed the scope of their authorisation to engage in criminal acts. The risks of granting immunities to carry out criminal acts without controlling their scope are demonstrated by the events that preceded the case of *R v Barkshire*.[6]

7. In that case, Mark Kennedy, an undercover police officer, had infiltrated a group of climate change activists. While undercover, Kennedy was involved in activities which went *"much further than his authorisation"*[7] and played a *"significant role in assisting, advising and supporting…the very activity for which [the activists] were prosecuted."*[8] Arguably, the court noted, he appeared to act as *"an agent provocateur."*[9] The Investigatory Powers Tribunal later also found that Kennedy inflicted inhuman and degrading treatment on a female activist in breach of Article 3 European Convention on Human Rights by deceiving her into a long-term intimate and sexual relationship, a strategy he used on as many as ten other women during his deployment.[10]

8. It was only due to timely newspaper reporting that the true nature of Mark Kennedy's involvement was discovered, eventually leading to the group's convictions being quashed.[11] He was never personally prosecuted.

9. Kennedy was a police officer and passed several tests that allowed him to join a unit of officers conducting undercover surveillance.[12] However, CHIS need not be employed by a state agency or undergo any training; they can be members of the public. Their deployment therefore requires robust safeguards given some CHIS may be involved in extremism or criminal activities.

10. In practice, CHIS and criminal conduct authorisations are not meant to be overly broad and the CHIS Code, updated in 2022, states that a *"Criminal Conduct Authorisation will not render lawful criminal conduct that goes beyond what is authorised by it. Nor will a Criminal*

[4] Covert Human Intelligence Sources (Criminal Conduct) Bill

[5] Ibid.

[6] *David Robert Barkshire and others v The Queen* (Court of Appeal Criminal Division, unreported, 20 July 2011)

[7] Ibid, para.18.

[8] Ibid, para. 13.

[9] Ibid, para.19.

[10] Kate Wilson v (1) Commissioner Of Police Of The Metropolis (2) National Police Chiefs' Council IPT/11/167/H; Annex A; VICE, How a Married Undercover Cop Having Sex with Activists Killed a Climate Movement, 2022

[11] *R v Barkshire*, para 19.

[12] VICE, How a Married Undercover Cop Having Sex with Activists Killed a Climate Movement, 2022

Conduct Authorisation render lawful criminal conduct that is unrelated to the investigation or operation to which it relates."[13] Further, criminal conduct authorisations *"should be specific in nature and should contain clear parameters. The public authority must ensure that the CHIS is clear about the criminal conduct in which they are being tasked to participate and fully understands the extent of the conduct authorised by the Criminal Conduct Authorisation. Where appropriate, the CHIS must be made aware that criminal conduct which goes beyond the conduct authorised, or which is unrelated to the conduct authorised, will not be lawful and may result in criminal sanctions, including prosecution."*

11. Despite this, in practice, it is difficult to guarantee that CHIS and criminal conduct authorisations are specific due to the covert nature of the work, which limits direct oversight.

12. The Investigatory Powers Commissioner's Office ("**IPCO"**), which oversees the use of covert investigator powers by more than 600 public authorities, has a statutory obligation to report his findings annually, including on CHISs and criminal conduct authorisations, pursuant to s.234 of the Investigatory Powers Act 2016. However, IPCO's reports are delayed, for instance, the Annual Report for 2023 was published only on 22 May 2025.[14] This makes public scrutiny in a timely manner very difficult.

Undercover Policing: Authorised Professional Practice

13. The Authorised Professional Practice ("**APP**") for undercover policing was published in October 2020 and applies to police forces in England and Wales with strong collaboration between wider law enforcement agencies across the United Kingdom.[15] The APP governs undercover law enforcement activity with the aim of ensuring that it is conducted legally, ethically and safely.[16]

14. Section 7.5 of the APP includes guidance on intimate and sexual relationships for undercover operatives ("**UCOs**"). The guidance contains inadequate safeguards, as whilst the APP states that it is never acceptable for a UCO to have an intimate sexual relationship with those that they are deployed to infiltrate and target or encounter during their deployment and that having an intimate sexual relationship must not be used as a tactic by a UCO, it also states that *"if a UCO engages in an intimate sexual relationship (for example, they perceive an immediate threat to themselves and/or others if they were not to do so) this activity will be restricted to the minimum conduct necessary to mitigate the threat."*[17]

15. Further, conduct may be authorised for communications of a sexual nature to take place e.g. online, where the Authorising Officer believes it is *"necessary and proportionate to*

[13] CHIS Code 6.46

[14] IPCO, Annual Reports

[15] Undercover policing - Authorised Professional Practice page 3.

[16] Ibid.

[17] Undercover policing - Authorised Professional Practice page 37: "if such conduct takes place, UCOs must record and report this to the cover officer and COM-UC immediately. The Authorising Officer ("AO") must be informed immediately by the COM-UC. The circumstances must be investigated and the facts reported to the AO. The AO must consider whether the operation should continue. Referral to oversight and governance bodies must be considered where appropriate."

achieve specific operational objectives, having taken into account any risk of collateral intrusion."[18] If the UCO engages in unauthorised communications of a sexual nature the APP states that this activity will be *"restricted to the minimum conduct necessary to mitigate the threat."*[19]

16. Police Spies Out of Lives, a campaigning support group working to end sexual and psychological abuse perpetrated by undercover police officers, have criticised the guidelines as inadequate as "it suggests there is enough grey area" for officers to commit such abuses and "risks enabling these abuses to continue."[20]

17. Police Spies Out of Lives also emphasise that the guidelines are insufficient to address the concerns arising from undercover policing practices, highlighting that "*many of the women, deceived by undercover officers into intimate sexual relationships, see the practice as tantamount to rape.*"[21] The group is advocating for legislative reform to strengthen safeguards against human rights infringements in undercover policing and to expressly prohibit undercover officers from engaging in deceptive intimate sexual relationships with members of the public.[22]

Conduct of Undercover Policing and Surveillance Operatives Bill

18. The Bill would make it a criminal offence for a CHIS operative to enter or maintain an intimate sexual relationship with any persons that they have been deployed to infiltrate and target or encounter during their deployment. The offence would have a maximum sentence of life imprisonment.

19. The Bill would also prevent the establishment and maintenance of an intimate sexual relationship from being authorised under section 29B of RIPA 2000 under a criminal conduct authorisation and prevents such conduct from being considered as lawful under section 27 of RIPA 2000.

20. The Bill includes a carve out for CHIS acting on behalf of the Security Service, the Secret Intelligence Service or GCHQ to retain anonymity if they are charged with an offence under the Bill.

21. Additionally, the Bill would ensure a duty of candour by requiring CHIS operatives and the authorities listed in section 1(2) of the Bill[23] and to: keep the conduct of CHIS operatives under review, ensure any intimate sexual relationships are avoided, and act with candour,

[18] Undercover policing - Authorised Professional Practice page 38: "Collateral intrusion is the risk of interference with the private or family life of persons who are not the intended subjects of the UCO activity. The parameters of the authorised conduct must be precisely documented by the AO, and must be subject to frequent and robust reviews."

[19] Ibid.

[20] Police Spies Out of Lives, New undercover guidelines contain absurd get-out-clause, 2016

[21] Ibid.

[22] Ibid.

[23] (a) any police force, (b) the National Crime Agency, (c) the Serious Fraud Office, (d) the Secret Service, (e) the Secret Intelligence Service, (f) GCHQ, (g) any of His Majesty's forces, (h) His Majesty's Revenue and Customs, or (i) any other government agency or body.

transparency and frankness in their dealings with inquiries and investigations into any offences alleged to have been committed under the Bill. The Bill requires authorities or CHIS operatives to notify the person leading an inquiry or investigation where they have grounds to believe that their acts were, are, or may be relevant to the inquiry or investigation, or they otherwise have information likely to be relevant. It further requires authorities or CHIS operatives to provide all such assistance as they can reasonably give to assist an inquiry or investigation to meet its objectives, where an authority is subject to these obligations.

22. As well as this, the Bill requires an authority, on the request of a person engaged at any time in a relationship with a CHIS, which is prohibited by this Bill, whether or not the CHIS operative has been convicted at that stage, and to provide that person information regarding the CHIS operative including their name and marital or family status.

23. The current legal and operational framework does not provide sufficiently robust safeguards against the abuse of intimate sexual relationships by CHIS. Police Spies Out of Lives have expressed their concerns that the current APP guidance remains inadequate given that it continues to permit undercover officers to engage in intimate sexual relationships in exceptional circumstances where this is considered necessary to mitigate an immediate threat.

24. The Conduct of Undercover Policing and Surveillance Operatives Bill would help to address this gap by providing clear limits on authorised conduct in legislation and providing a safeguard against the use of deceptive intimate sexual relationships in undercover policing.