

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

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35th Report of Session 2017–19

**Draft Investigatory Powers  
(Codes of Practice and  
Miscellaneous Amendments)  
Order 2018**

**Regulation of Investigatory  
Powers (Juveniles) (Amendment)  
Order 2018**

Includes 5 Information Paragraphs on 7 Instruments

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### *Secondary Legislation Scrutiny Committee*

The Committee was established on 17 December 2003 as the Merits of Statutory Instruments Committee. It was renamed in 2012 to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee's terms of reference are set out in full on the website but are, broadly, to scrutinise—

- (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
- (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of these specified grounds:

- (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
- (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
- (c) that it may inappropriately implement European Union legislation;
- (d) that it may imperfectly achieve its policy objectives;
- (e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation;
- (f) that there appear to be inadequacies in the consultation process which relates to the instrument.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

### *Members*

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|----------------------------|---------------------------|-----------------------------------|
| Lord Chartres              | Lord Goddard of Stockport | Baroness O'Loan                   |
| Lord Cunningham of Felling | Lord Haskel               | Lord Sherbourne of Didsbury       |
| Lord Faulkner of Worcester | Rt Hon. Lord Janvrin      | Rt Hon. Lord Trefgarne (Chairman) |
| Baroness Finn              | Lord Kirkwood of Kirkhope |                                   |

### *Registered interests*

Information about interests of Committee Members can be found in the last Appendix to this report.

### *Publications*

The Committee's Reports are published on the internet at [www.parliament.uk/seclegpublications](http://www.parliament.uk/seclegpublications)

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

### *Information and Contacts*

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is [hseclegscrutiny@parliament.uk](mailto:hseclegscrutiny@parliament.uk).

# Thirty Fifth Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Draft Investigatory Powers (Codes of Practice and Miscellaneous Amendments) Order 2018

*Date laid: 13 June 2018*

*Parliamentary procedure: affirmative*

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

*Date laid: 13 June 2018*

*Parliamentary procedure: negative*

*Summary: This Order proposes to extend the period for which the use of a person under 18 years of age as a covert human intelligence source (CHIS) can be authorised from one month to four months. We were concerned, from the material presented in the original Explanatory Memorandum, that the change is founded on the premise of administrative convenience. The associated Code of Practice is very vague on how the welfare obligations indicated are to be fulfilled. We were unclear whether the risks to the CHIS would be different over the extended period and how the welfare of the young person in this situation would be protected. We asked the Home Office for a more detailed explanation. The correspondence, published in an appendix to our Report, is helpful but does not fully satisfy our concerns about the extent to which juveniles are being used for covert surveillance nor whether their welfare is sufficiently taken into account in practice.*

**This Order is drawn to the special attention of the House on the grounds that it gives rise to issues of policy interest and that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation.**

1. The Order is laid under the Regulation of Investigatory Powers Act 2000 by the Home Office and is accompanied by an Explanatory Memorandum (EM). At the same time, the Home Office has also laid the Draft Investigatory Powers (Codes of Practice and Miscellaneous Amendments) Order 2018 which brings into force three revised codes of practice relating to aspects of covert surveillance.<sup>1</sup> The draft revised Code of Practice on Covert Human Intelligence Sources (“the Code”) includes material on the use of juvenile covert human intelligence sources (CHIS).
2. This Order proposes to extend the period for which a person under 18 years of age can be used as a CHIS from one month to four months. While the Government state that the rationale for the change is that the one month authorisation for juvenile CHIS increases pressure on the CHIS and

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<sup>1</sup> Home Office, Draft Revised Codes of Practice on Covert Human Intelligence Sources, Covert Surveillance and Property Interferences and Investigation of Protected Electronic Information (all published June 2018).

their handlers to get results swiftly in order to justify the renewal of the authorisation, the predominant tone in the EM originally presented was about the administrative convenience of the authorities concerned.

*Administrative convenience?*

3. Because of the sparsity of the information given in the EM, we asked for clarification of why the extension to a four month period had been chosen. The Home Office replied:

“Over the past 18 months the Government has been conducting a review with operational partners of the CHIS authorisation legal framework, to consider whether it is working as effectively as it could.

The change which this SI is seeking to make is being made to address an issue that has been raised by law enforcement agency stakeholders, concerning the effect of the current requirement that a juvenile CHIS may only be authorised for a maximum of one month at a time. This time limit means that in practice law enforcement agencies are required to submit an application for renewal of the authorisation within a very short time of its commencement if they wish it to continue. For example, if the requirement to obtain intelligence is ongoing, or if the juvenile CHIS has not been able to complete the tasking within the initial one month period, then an application for renewal has to be made. This is difficult to manage for the law enforcement agency, but also has an unintended consequence of requiring them to try and complete the tasking quickly in order to avoid the need for renewal, or in order to demonstrate the value of the deployment if renewal is likely to be required.

This pressure to obtain results could be unhelpful to the juvenile CHIS and also to the law enforcement agency, in so far as it can make the deployment more difficult to manage given the imperative to ensure the safety and welfare of the young person, and could lead to the investigation progressing in a way that does not achieve the best long term result. In some circumstances this requirement can also act as a deterrent with law enforcement avoiding the use of juvenile CHIS where immediate results may not be obtained even if a longer term, carefully managed deployment could provide significant operational dividend.”

4. To offset the potential effects of the increased duration, the Order proposes to require the authorisation to be reviewed monthly to ensure that a suitable level of senior supervision of the deployment is maintained.<sup>2</sup> The Home Office states that:

“the monthly reviews will provide the same level of oversight of the welfare and safety of the young person as a renewal, but without the additional burden of providing an updated case for authorisation. As with all investigatory powers the conduct must be cancelled if it is no longer necessary and proportionate so this change will not lead to conduct extending longer than necessary. As an additional safeguard we are also strengthening the requirement for juvenile CHIS under 16 to be accompanied to meetings with the handlers in the public authority

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<sup>2</sup> See also paragraphs 4.2–4.3 of the revised code of practice: Home Office, *Covert Human Intelligence Sources: Draft Revised Code of Practice* [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/716459/CCS207\\_CCS0518665932-1\\_CHIS\\_Draft\\_Revised\\_CoP\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716459/CCS207_CCS0518665932-1_CHIS_Draft_Revised_CoP_Web_Accessible.pdf) [accessed 10 July 2018].

by a parent or other appropriate adult, to ensure that the appropriate adult will be someone who is suitably qualified for that role. We are also maintaining the existing position that a juvenile CHIS may not be deployed to obtain evidence against their parent or guardian.”

5. This impression of operational focus is underpinned by the list of interested groups consulted. The Home Office explained that their consultation was “with a range of practitioners through their membership of the Home Office CHIS Policy Working Group. This included representatives of the police, intelligence agencies, National Crime Agency, Crown Prosecution Service, College of Policing and the National Policing leads for CHIS and undercover policing.” This list does not mention consultation with organisations that might be expected to offer views on the mental and physical welfare of juveniles.

*Correspondence from the Minister*

6. The original EM did not give any context on how such sources would be used nor the numbers involved. Nor was sufficient reason given for choosing an extension to four months rather than two or three. It gave no information on what checks might be made on the welfare of the young person not only during the period of surveillance but also in the longer term. In consequence, the Committee wrote to the relevant Home Office Minister, Ben Wallace MP, seeking further clarification. The correspondence is included at Appendix 1.
7. The Minister’s reply gives some examples of how such a juvenile CHIS might be used, citing terrorism, gang violence and drug offences as well as child sexual exploitation. These are serious, violent crimes and we have grave concerns about any child being exposed to such an environment. He was unable however to give any information on the number of juveniles so authorised, a fact we find surprising given the ongoing review he mentions.
8. Although paragraph 5.33 of the Code states that “where necessary and practicable, the safety and welfare of the CHIS should continue to be taken into account after the authorisation has been cancelled”, the Home Office’s inability to provide numbers prompts us to wonder how closely this “very small” number of authorisations have been examined in order to understand the effects on the long-term safety and mental welfare of the juvenile CHIS used.
9. Paragraph 4.3 of the Code requires that “any deployment of a juvenile CHIS should be subject to the enhanced risk assessment process set out in the statutory instrument “[Regulation of Investigatory Powers (Juveniles) (Amendment) Order 2000<sup>3</sup>]”. There are, however, no instructions on what that assessment should include. Article 5 simply requires that the risks of physical injury and psychological distress to the young person should be evaluated. We therefore question how an adequate and consistent approach to such assessments is achieved across the many police forces in England, Wales and Northern Ireland to which the Order applies.
10. We also note that in the list of things to be taken into account when considering whether to authorise an application for the use of a CHIS, the risk assessment is not specifically mentioned. Among a number of operational and legal grounds for seeking authorisation, the list in paragraph 5.11 of the

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3 Regulation of Investigatory Powers (Juveniles) Order 2000 ([SI 2000/2793](#)), article 5.

Code requires a description of what the CHIS conduct will be and why the authorisation is considered proportionate to what it seeks to achieve but no specific mention is made of the welfare of an individual source. Although article 5 of the Regulation of Investigatory Powers (Juveniles) (Amendment) Order 2000 specifically requires that for CHIS under 18 years of age “the person granting or renewing the authorisation has considered the risk assessment and has satisfied himself that any risks identified in it are justified and, if they are, that they have been properly explained to and understood by the source”, that requirement is not explicitly included in the list of items set out in paragraph 5.11 of the Code. This again prompts us to wonder how a consistent and legally compliant approach to such authorisations is to be achieved across many police forces, with varying levels of experience in covert surveillance.

### Conclusion

11. We are concerned that enabling a young person to participate in covert activity associated with serious crime for an extended period of time may increase the risks to their mental and physical welfare. While the EM alludes to a range of safeguards in place to monitor the young person’s welfare they are not explained in any detail and no view is given as to whether existing checks need to be enhanced as a result of such an extension.
12. 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 are unclear how the officers designated as handlers or authorising officers will know how to assess the mental risks to juveniles. **Nor can we see how a consistent approach to such evaluations across different police forces is to be achieved.** There may be further instructions available to these officers but this information is also omitted from the original EM.
13. **The original EM refers vaguely to requirements but does not explain how they will be fulfilled in practice. The EM also fails to explain how the authorising officer is supposed to weigh the intelligence benefits against the potential negative impact on the juvenile sources.** The correspondence from the Minister is helpful, but does not fully satisfy our concerns about the extent to which juveniles are being used for covert surveillance or how their welfare is taken into account, and how extending their period of operation may affect them. **The House may wish to seek reassurance from the Minister.**

## INSTRUMENTS OF INTEREST

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### Draft Data Retention and Acquisition Regulations 2018

14. These Regulations amend existing Investigatory Powers legislation in the light of two judgments by the European Court of Justice.<sup>4</sup> Accordingly, they revise the authorisation process so that most communications data requests by public authorities<sup>5</sup> will be authorised by the Investigatory Powers Commissioner, supported in the day to day work by the Office for Communications Data Authorisations. As stated in the well-structured Explanatory Memorandum, these Regulations also restrict data acquisition to “the prevention or detection of serious crime”, which is defined as all offences for which an adult may be sentenced to 12 months in prison or corporate crime where a breach of privacy or the sending of a communication is an integral part. Consequently, officers conducting certain categories of investigation will no longer be able to obtain data in this way, including those into matters of public health, tax collection or functions relating to the regulation of financial services and markets. The Regulations also bring into effect a Code of Practice<sup>6</sup> which sets out all the processes for obtaining data under the legislation. As required by the Divisional Court, these Regulations will take effect by 1 November 2018, although the Court has accepted that, due to the complexity of implementation, the requirement for independent authorisation of communications data requests will take until April 2019.

### Water Supply (Water Quality) (Amendment) Regulations 2018 (SI 2018/706)

### Private Water Supplies (England) (Amendment) Regulations 2018 (SI 2018/707)

15. The main purpose of these two Regulations is to update the current legislative framework for monitoring drinking water quality in England in the light of EU Directive (EU) 2015/1787 (“the Directive”). The Regulations introduce a new risk based approach to the monitoring of drinking water supplies which allows for a reduction in the frequency of sampling and analysis in line with current World Health Organisation principles. The new approach applies to both public and private water supplies.<sup>7</sup> While the responsibility for enforcement with regard to private water supplies lies with local authorities, the Drinking Water Inspectorate enforces the Regulations in relation to public water supplies. The Regulations exempt private water supplies to single households from the monitoring requirements but allow local authorities to recover fully the costs of their oversight duties in relation to all other private water supplies.
16. The Regulations have been laid more than eight months after the Directive’s transposition deadline of 27 October 2017, but there is no reference to or explanation of this delay in the Explanatory Memoranda (EM). The Committee received a submission from a member of the public about this, and

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4 C-203/15 Tele2 Sverige AB v Post – och telestyrelsen and Secretary of State for the Home Department v Tom Watson MP and Others: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62015CA0203> [accessed 10 July 2018].

5 This does not include those made by the security services (see para 7.12 of the EM).

6 Home Office, *Data Acquisition: Codes of Practice* (June 2018): <https://www.gov.uk/government/consultations/investigatory-powers-act-2016> [accessed 11 July 2018].

7 Private water supplies are provided from, for example, a natural spring or a borehole and may be owned by private individuals, hospitals, schools or small businesses such as bed and breakfasts.

we asked the Department for Environment, Food and Rural Affairs (Defra) for an explanation. Defra has told us that the factors which contributed to the delay include the general election in June last year and an unprecedented number of consultation responses which needed to be considered. According to the EM, 24 responses were received in relation to SI 2018/706 and 201 responses in relation to SI 2018/707. Defra has also explained that because of the delay, the UK received a Letter of Formal Notice from the Commission in November 2017 which signalled the start of infraction proceedings. Defra has assured us that it has kept the Commission updated on progress since then and, as the UK has now transposed the Directive, it expects the infraction proceedings to be closed shortly with no lasting consequences for the UK. We are publishing our correspondence with Defra at Appendix 2.

17. **It is essential for effective Parliamentary scrutiny of secondary legislation that the EM explains fully any delays that may have occurred in transposing EU legislation. We are disappointed that Defra did not do this for these Regulations and have asked the Department to replace the EM, so that an explanation of the delay is publicly available.**

**Transmissible Spongiform Encephalopathies (England) Regulations 2018 (SI 2018/731)**

**Cattle Compensation (England) (Amendment) Order 2018 (SI 2018/754)**

18. These instruments update the arrangements that are in place in England to prevent, control and eradicate certain Transmissible Spongiform Encephalopathies (TSEs) in animals<sup>8</sup> and to compensate farmers for the slaughter of cattle affected by bovine tuberculosis (TB).
19. SI 2018/731, amongst other things, transfers the cost of taking samples for BSE testing from cattle that have died or been killed other than for human consumption from the Government to farmers, and streamlines compensation payments to farmers whose sheep or goats have been slaughtered because of scrapie. The Department for Environment, Food and Rural Affairs (Defra) says that the changes are needed to share costs more fairly between taxpayers and farmers. The instrument also relaxes certain controls in line with EU regulations to reflect a worldwide decline in BSE and a reduction in the risk posed by the disease. According to Defra, this will enable the English farming industry to trade on the same terms as businesses in other EU member States.
20. SI 2018/754 introduces full compensation payments for farmers who make their own arrangements for the slaughter of TB-affected cattle. It enables Defra to reduce compensation by 50% in cases where the Department arranges the slaughter, where farmers bring an animal in to a TB-affected herd and the animal is subsequently found to be TB positive, or where farmers fail to meet hygiene requirements for TB-affected cattle before slaughter. Defra says that the measures aim to encourage farmers to adopt practices that reduce the risk of TB, as part of the Government's commitment to eradicate the disease. According to Defra, bovine TB led to the slaughter of

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<sup>8</sup> TSEs are progressive and fatal conditions that affect the brain and nervous system of animals and humans. They include Bovine Spongiform Encephalopathy (BSE) in cattle and scrapie in sheep and goats.



more than 29,000 cattle and the payment of £30 million in compensation in England in 2015/16.

### **Police Super-complaints (Designation and Procedure) Regulations 2018 (SI 2018/748)**

21. Because the existing complaints system can only be used to complain about individual police officers or particular incidents, the Policing and Crime Act 2017 set up a new system for making super-complaints (that is, complaints relating to features of policing that apply to one or more police forces in England and Wales that appear to be significantly harming the interests of the public). This instrument sets out the first tranche of 16 organisations which have been approved for super-complainant status.<sup>9</sup> The instrument also sets out the procedure for making and handling a super-complaint and the duties on the three policing bodies—Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, the Independent Office for Police Conduct and the College of Policing—to investigate and respond to it.

### **Equine Identification (England) Regulations 2018 (SI 2018/761)**

22. These Regulations, laid by the Department for Environment, Food and Rural Affairs (Defra), update the system of identification for horses and other equines<sup>10</sup> in England in the light of updated EU regulations. The instrument clarifies existing requirements for all equines to be identified by way of a horse passport, which includes details of an animal’s veterinary treatment, and makes it compulsory for all equines to be microchipped regardless of age. Previously, only equines born after 2009 needed to be microchipped. Defra estimates that some 160,000 horses in England will be affected by the new rules at a cost of around £26 per horse. Under the Regulations, all horse passport issuing organisations will have to update their records in the Central Equine Database<sup>11</sup> within 24 hours of being notified of any changes to a horse’s details. Equines living wild or semi-wild in Dartmoor, Exmoor, the New Forest and Wicken Fen are exempt from the requirements, and breaches of the Regulations will be subject to civil sanctions. Defra says that the Regulations will help to ensure that horse meat is safe for human consumption and make it easier to trace animals during disease outbreaks and deal with cases of loss, theft or poor animal welfare.

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9 Organisations wishing to apply to become designated super-complainants must demonstrate that they fulfil nine criteria which are set out in the Police Super-Complaints (Criteria for the Making and Revocation of Designations) Regulations 2018 ([SI 2018/412](#)).

10 Equines under these Regulations are horses, ponies, donkeys and related animals, including zoo species like zebras.

11 EU legislation requires all Member States to operate a Central Equine Database (CED) that holds relevant identification data, such as species, unique life number and food chain status. In the UK, this database has been operational since March 2018 and is managed by Defra.

## **INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE**

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### **Draft instruments subject to affirmative approval**

Data Retention and Acquisition Regulations 2018

Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) (Amendment) Order 2018

Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018

Occupational Pension Schemes (Master Trusts) Regulations 2018

Third Parties (Rights Against Insurers) Act 2010 (Consequential Amendment of Companies Act 2006) Regulations 2018

### **Instruments subject to annulment**

SI 2018/706 Water Supply (Water Quality) (Amendment) Regulations 2018

SI 2018/707 Private Water Supplies (England) (Amendment) Regulations 2018

SI 2018/729 Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) Order 2018

SI 2018/730 Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2018

SI 2018/731 Transmissible Spongiform Encephalopathies (England) Regulations

SI 2018/734 Banking Act 2009 (Fees) Regulations

SI 2018/738 Hartpury College of Further Education (Designated Institution in Further Education) Order 2018

SI 2018/739 Environmental and Rural Affairs (Miscellaneous Revocations) Orders 2018

SI 2018/748 Police Super-complaints (Designation and Procedure) Regulations 2018

SI 2018/754 Cattle Compensation (England) (Amendment) Order 2018

SI 2018/755 National Health Service (Existing Liabilities Scheme) (England) Regulations 2018

SI 2018/756 National Health Service (Liabilities to Third Parties Scheme) (England) Regulations 2018

SI 2018/757 National Health Service (Property Expenses Scheme) (England) Regulations 2018

SI 2018/761 Equine Identification (England) Regulations 2018

SI 2018/764 Non-Road Mobile Machinery (Type-Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018

- SI 2018/769 Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 2018
- SI 2018/770 Coroners and Justice Act 2009 (Alteration of Coroner Areas) Order 2018
- SI 2018/788 Child Benefit, Tax Credits and Childcare Payments (Section 67 Immigration Act 2016 Leave) (Amendment) Regulations 2018

**APPENDIX 1: CORRESPONDENCE ON DRAFT INVESTIGATORY POWERS (CODES OF PRACTICE AND MISCELLANEOUS AMENDMENTS) ORDER 2018 AND REGULATION OF INVESTIGATORY POWERS (JUVENILES) (AMENDMENT) ORDER 2018**

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**Letter from Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to the Rt Hon. Ben Wallace MP, Minister of State for Security and Economic Crime at the Home Office**

I am writing as Chairman of the Secondary Legislation Scrutiny Committee which considered this Order at its most recent meeting.

The Order proposes to extend the period from one month to four months for which a person under 18 years of age can be used as a covert human intelligence source (CHIS). We are concerned, from the sparse information given in the Explanatory Memorandum (EM), that the change may be founded on administrative convenience as it does not make clear how the welfare of the young person in this situation will be taken into account.

The EM gives no context about how such surveillance “sources” might be used and what checks might be made on their welfare not only during the period of surveillance but also in the longer term.

The Draft Revised Code of Practice on Covert Human Intelligence Sources, being updated under an affirmative instrument also on this week’s agenda, coincidentally provides more detail about the process of commissioning and using covert sources. Although the Code mentions monthly reviews and risk assessments, it is not clear whether the focus of those reviews is operational or the welfare of the young person. It may be that this is set out in pre-existing guidance but in that case the EM to SI 2018/715 would benefit from providing a more complete picture of those protections.

This impression of operational focus is underpinned by the list of interested groups consulted. Responses to the supplementary questions we asked stated that the consultation was limited to “the operational community”, “a range of practitioners through their membership of the Home Office CHIS Policy Working Group. This included representatives of the police, intelligence agencies, National Crime Agency, Crown Prosecution Service, College of Policing and the National Policing leads for CHIS and undercover policing.” This list does not mention any consultation with organisations or professionals that might be expected to offer views on the mental and physical welfare of juveniles. Please could you explain why not and whether such views have been included in some other way?

We would also be grateful if you would explain the rationale for differentiating the treatment of the individuals recruited according to their age. We note that this Order requires those sources under 16 to have an appropriate adult “qualified to represent the interests of the source” present at any meetings with their handler. How are the interests of 16-18 year olds, to be protected?

We are concerned that enabling a young person to participate in covert activity for an extended period of time may expose them to increased risks to their mental and physical welfare. While there may be a range of safeguards in place to monitor the young person’s welfare they are not explained in the EM and no view is given as to

whether existing checks need to be enhanced to deal with the different risks that might affect a young person acting in covert surveillance for an extended period of time. Please could you provide further clarification?

I cannot hide from you the Committee's considerable anxiety concerning the principle of employing young people—sometimes very young people—in this way. I or another member of the Committee may well decide to raise this matter in the House.

**27 June 2018**

### **Letter from Ben Wallace MP, to Lord Trefgarne**

Thank you for your letter seeking further background on the changes made by the Regulation of Investigatory Powers (Juveniles) (Amendment) Order 2018 (S.I.2018/715).

Covert human intelligence source (CHIS) have a vital role to play in investigations by public authorities and can provide crucial evidence that cannot be obtained by any other means.

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. They may have unique access to information about other young people who are involved in or victims of such offences. For example, it can be difficult to gather intelligence on gangs without penetrating their membership through the use of juvenile CHIS. As well as provide intelligence dividend in relation to a specific gang, juvenile CHIS can give investigators a broader insight into, for example, how young people in gangs are communicating with each other.

Much as investigators would wish to avoid the use of young people in such a role, it is possible that a carefully managed deployment of a young person could contribute to detecting crime and preventing offending. In particular their use could be of importance in preventing offending against or safeguarding other young people, for example, in county lines drugs gangs often young or vulnerable people are coerced into offending and being able to disrupt such activity could protect large numbers of young people.

Although statistics on the number of CHIS authorisations (published annually by the Investigatory Powers Commissioner—and previously the Surveillance Commissioner) do not distinguish between different age groups, we know from discussions with investigators that juvenile CHIS are authorised in very small numbers.

Over the past 18 months, at my instigation, the Government has been conducting a review with operational partners of the CHIS authorisation legal framework, to consider whether it is working as effectively as it could. The Regulation of Investigatory Powers (Juveniles) (Amendment) Order 2018 (S.I. 2018/715) is part of a wider package of changes being made to the covert investigatory powers regime.

As a result, the changes being made to the Juveniles Order should be considered alongside the relevant draft CHIS Code of Practice which has been laid before Parliament alongside the Regulation of Investigatory Powers (Codes of Practice

and Miscellaneous Amendments) Order 2018. The Code is being updated to, among other things, take account of the changes we are proposing to the safeguards around juvenile CHIS. It is no coincidence that these orders were published together.

I acknowledge that the explanatory memorandum laid before Parliament could have gone further to set out the background to the policy, the safeguards that are in place around Juvenile CHIS and how this change relates to other changes that we are bringing forward. Accordingly I intend to lay a revised explanatory memorandum to accompany this Order. I attach an updated draft which, subject to any further response from yourselves, I intend to lay as soon as possible.

We think these amendments will improve the operational effectiveness of the regime while also strengthening of the protections for young people in this area. I hope this letter and the revised explanatory Memorandum have provided you the reassurance you have sought on the use of juveniles as CHIS but I would be happy to answer any further questions that you or your fellow committee members may have.

**3 July 2018**

## APPENDIX 2: WATER SUPPLY (WATER QUALITY) REGULATIONS 2018 (SI 2018/647)

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### Further information from the Department for Environment, Food and Rural Affairs

*Q1: The Water Supply (Water Quality) Regulations 2018 (SI 2018/647) were laid before the National Assembly for Wales and the UK Parliament on 25 and 30 May 2018 respectively. The EM for that instrument explained that the Regulations were necessary to transpose the requirements of Commission Directive (EU) 2015/1787 and that the transposition deadline of 27 October 2017 had not been met. Our understanding is that SI 2018/706 makes the same changes as SI 2018/647, but with regard to England, rather than Wales. Does it mean that SI 2018/706 has also missed the transposition deadline for Directive 2015/1787? There does not appear to be any reference to this in the EM.*

A1: SI 2018/706 (along with SI 2018/707) transposes the requirements of Commission Directive (EU) 2015/1787, which made changes to the Drinking Water Directive 98/83/EC and which had a transposition deadline of 27 October 2017. Laying the SIs occurred later than anticipated due to a number of factors, including the snap general election in June/July 2017 and the unprecedented number of responses to the consultation that the Department received.

*Q2: If the deadline has been missed, are there any consequences? For example, will there be any infraction proceedings against the UK as a result?*

A2: The UK received a Letter of Formal Notice from the Commission in November last year. This LFN alleged non-notification of our legislation transposing Directive 2015/1787 and signalled the start of infraction proceedings. Since then, we have kept the Commission updated on progress in making the SIs and, to date, it has taken no further steps in proceedings. As the whole of the UK (including Gibraltar) has now transposed the Directive, we expect that the Commission will close the infraction shortly with no lasting consequences to the UK.

*Q3: Our understanding is that SI 2018/707 also implements requirements of Directive 2015/1787, so we assume that the transposition deadline has been missed for this instrument as well. Again, there does not seem to be any mentioning of this in the EM, IM or Transposition Note. Is our understanding correct that this instrument is delayed, and will there be any consequences?*

A3: Both SIs 2018/706 and 2018/707 transpose Directive 2015/1787, the former in respect of public water supplies and the latter in respect of private water supplies. As mentioned above, the whole of the UK has now transposed the Directive, and we expect that the Commission will close infraction proceedings shortly with no lasting consequences to the UK.

*Q4: Paragraph 10.1 of the EM of SI 2018/706 mentions a Regulatory Triage Assessment and suggests that this can be found online but no link is given. Would you be able to provide this link and/or the Assessment?*

A4: The Regulatory Triage Assessment has been uploaded onto Citizen Space (where the consultation was held) [https://consult.defra.gov.uk/water-quality/drinking-water-regulations-2017/supporting\\_documents/Water%20Supply%20Water%20Quality%20Regulatory%20Triage%20Assessment.pdf](https://consult.defra.gov.uk/water-quality/drinking-water-regulations-2017/supporting_documents/Water%20Supply%20Water%20Quality%20Regulatory%20Triage%20Assessment.pdf). It is within an Impact Assessment template but this was for consultation purposes.

*Q5: It would be helpful to have Defra's view on the concern that has been expressed in the submission that we have received that because of Defra's delay, Welsh Ministers, when implementing the Regulations for Wales, have been left with a breach of EU law that they appear to believe was not their own fault.*

A5: SI 2018/647 applies to public water supplies that are wholly or mainly in Wales. It followed a similar timetable to that for SI 2018/706, which applies to public water supplies in England, so that the two regimes could align as much as possible when the new legislation came into force. Notwithstanding, it was not essential for the laying of both SIs to coincide, and the Welsh Government was able to make its legislation earlier. This it did in the case of both SIs 2018/647 and 2017/1041 (the latter of which concerned private water supplies in Wales).

**27 June 2018**



### APPENDIX 3: INTERESTS AND ATTENDANCE

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 10 July 2018, Members declared the following interests:

#### **Banking Act 2009 (Fees) Regulations (SI 2018/734)**

Lord Janvrin

*Senior Adviser, HSBC Private Bank (UK) Ltd*

#### **Private Water Supplies (England) (Amendment) Regulations 2018 (SI 2018/707)**

Lord Cunningham of Felling

*Private water supply at residence*

#### **Attendance:**

The meeting was attended by Lord Chartres, Lord Cunningham of Felling, Lord Faulkner of Worcester, Baroness Finn, Lord Haskel, Lord Janvrin, Lord Kirkwood of Kirkhope, Lord Sherbourne of Didsbury and Lord Trefgarne.