

Correspondence (including emails, attachments, typed or handwritten notes, letters, notes/records of phone calls, minutes of meetings, briefings or otherwise) between the UK Government and the Scottish Government regarding the Covert Human Intelligence Sources Bill. Please limit between 1 April 2020 and the present date. (13 November 2020).

1 – E-mail chain between Scottish Government and Home Office between 6 April and 13 May 2020

From: Redacted@homeoffice.gov.uk>
Sent: 13 May 2020 11:29
To: Redacted @gov.scot>
Subject: RE: CHIS (Criminal Conduct) Bill

Redacted

Thanks. Does Friday work for you – either 11.30, 13.30 or 14.00 for an hour?
I think from our side it will be **Redacted**.

I've discussed with colleagues here and we suggest an agenda of the below.
I've asked **Redacted** to try and speak to **Redacted** before Friday but his email is **Redacted** if **Redacted** wanted to reach out.

Let me know on timings,

Redacted

From: Redacted @gov.scot
Sent: 13 May 2020 11:13
To: Redacted @homeoffice.gov.uk
Subject: RE: CHIS (Criminal Conduct) Bill

Redacted

Sorry if that was a bit vague, but I'm unsighted on what **Redacted** were specifically wanting to discuss-I was just aware it was to happen. **Redacted** from COPFS is not in the office today but asked me to take steps to have the meeting arranged, Perhaps **Redacted** can confirm those specific items tomorrow-although I suspect **Redacted** are aware what they are likely to be.

Your team probably already have the contact details, but **Redacted** is on leave so **Redacted** will likely dial in.

I also believe **Redacted** would like to join the discussion.

If a slot can be found then perhaps we can leave to **Redacted** to identify the agenda items. As discussed I don't think this will allow us to finalise any position, but discussion on **Redacted** can hopefully help us move closer to that.

It would make sense for either myself or **Redacted** to dial in from policy to be aware of the discussion.

Redacted

From: Redacted@homeoffice.gov.uk>
Sent: 13 May 2020 09:54
To: Redacted@gov.scot>
Subject: RE: CHIS (Criminal Conduct) Bill

Hi yes

Can I ring you around 10.20?

Redacted

From: Redacted@gov.scot
Sent: 13 May 2020 09:53
To: Redacted@homeoffice.gov.uk>
Subject: RE: CHIS (Criminal Conduct) Bill

You free at some point later this morning for a 5 min call, bit of movement setting up a discussion.

Redacted

From: Redacted@homeoffice.gov.uk>
Sent: 04 May 2020 14:27
To: Redacted@gov.scot>
Subject: RE: CHIS (Criminal Conduct) Bill

Hi Redacted

Hope it's not too busy with you. A catch-up sounds sensible. Thursday a bit tricky for me but could do 10.30?

Hope you have nice socially distanced plans for special leave.

Redacted

From: Redacted@gov.scot
Sent: 04 May 2020 14:23
To: Redacted@homeoffice.gov.uk
Subject: RE: CHIS (Criminal Conduct) Bill

Redacted

Sorry I have not got back to you-been occupied with legislation on the other topics I deal with.

I know other discussions are taking on CHIS, but might be helpful to have a policy level chat. Unfortunately, I am on special leave Tuesday/Wednesday, but are you free for a catch up on Thursday? I'm free anytime apart from 10:30 to 11.

Redacted

From: Redacted@homeoffice.gov.uk
Sent: 28 April 2020 11:05
To: Redacted@gov.scot; Redacted
Subject: RE: CHIS (Criminal Conduct) Bill

Hi Redacted

I thought it might just be helpful to provide another update although unfortunately our progress has slowed somewhat due to wider COVID pressures.

We think we are looking at an introduction date for the legislation of June, although we are awaiting any real certainty for Cabinet Office on these timings as they navigate new processes.

Redacted – I think due to wider pressures on COVID-related work they are unlikely to get back to us until next week – I hope therefore to be able to discuss next week.

Redacted

In the interim I wanted to also check a couple of things;

- **Redacted**
- Conscious that it's been a while since we had a substantive discussion – is it helpful to chat at all, or are there any further documents it would be helpful to see. I've attached an updated version of the Bill as drafted.

Thanks

Redacted

From: Redacted
Sent: 15 April 2020 15:09
To: Redacted@gov.scot; Redacted @copfs.gov.uk>
Cc: Redacted

Hi Redacted,

I'm still standing – hope you are too. You just beat me to sending a proactive email updating you.

I think **Redacted** committed to updating **Redacted** on timings, so copying them both in here.

In short, you'll appreciate uncertainty in the Parliament timetable at present while we've also been slowed a bit by adjusting to the new world and availability of operational partners. I've spoken to Cabinet Office today who can't give me a firm date for introduction but I think we can assume not this month. **Redacted**. We think that means getting Royal Assent by the end of the year so we probably would be looking to introduce in May/June.

Redacted

Hope that's helpful and the timings work for you? Thank you for your patience over the past few weeks,

Redacted

From: Redacted @gov.scot
Sent: 15 April 2020 14:46
To: Redacted @homeoffice.gov.uk
Subject: RE: CHIS (Criminal Conduct) Bill

Hi Redacted

Hope you are well.

Just wondering if you have any update on timescales on the Bill.

A lot going on here on other areas of business we look after and just asking for resource planning purposes.

Redacted

From: Redacted @homeoffice.gov.uk
Sent: 06 April 2020 15:50
To: Redacted @gov.scot>
Cc: Redacted
Subject: RE: CHIS (Criminal Conduct) Bill

Hi Redacted

That's correct. Redacted

Redacted (copied) spoke to Redacted in COPFS about a week ago and is thinking through the positions at present to discuss with seniors.

Grateful for any readout from the paper that goes up

Redacted

From: Redacted @gov.scot
Sent: 06 April 2020 15:40
To: Redacted @homeoffice.gov.uk
Subject: RE: CHIS (Criminal Conduct) Bill

Hi Redacted

Just checking the latest version of the bill that we have 26 Feb is the latest one.

Redacted

2 - E-mail chain between Home Office, Scotland Office, Office of the Advocate General and the Scottish Government, 14 and 20 May 2020

From: Redacted @homeoffice.gov.uk>
Sent: 20 May 2020 17:24
To: Redacted @homeoffice.gov.uk Redacted @scotlandoffice.gov.uk Redacted Redacted @gov.scot Redacted
Cc: Redacted
Subject: RE: CHIS Criminal Conduct Bill - LCM discussion

Redacted

All,

Thank you for joining the discussion on this Bill last week. The action stemming from that meeting was for us to provide you with a note on why we think this Bill is necessary Redacted. Please find that note attached. **(Note Redacted)**

I think from this, you were going to consider your position and get back to us later this week. I understand it is a public holiday on Friday in Scotland – if you are able to provide any views tomorrow then that would be welcomed but I appreciate that may be difficult. We will be working on Friday but not on Monday/Tuesday so it would be good to have any views to consider on Wednesday.

Redacted

Please let me know if a further discussion would be helpful

Redacted

-----Original Appointment-----

From: Redacted
Sent: 14 May 2020 11:50
To: Redacted @scotlandoffice.gov.uk; Redacted; Redacted @gov.scot; Redacted
Cc: Redacted
Subject: CHIS Criminal Conduct Bill - LCM discussion
When: 15 May 2020 11:30-12:30 (UTC+00:00) Dublin, Edinburgh, Lisbon, London.
Where: Skype Meeting

All,

Redacted

Have set up through Skype but I think non HO colleagues will need to use the dial in phone details below.

Thanks

Redacted

3 - E-mail chain between Home Office and Scottish Government, 10 June 2020

From: Redacted @homeoffice.gov.uk
Sent: 10 June 2020 13:41
To: Redacted @gov.scot
Cc: Redacted
Subject: RE: URGENT: CHIS BILL

Hi Redacted,

Jonathan Emmett is currently our acting Director. I'm copying in his Chief of Staff, Redacted, who should be able to sort something out.

Redacted

From: Redacted @gov.scot Redacted
Sent: 10 June 2020 12:56
To: Redacted @homeoffice.gov.uk>
Subject: URGENT: CHIS BILL
Importance: High

Hi Redacted

Can you give me the name of your Acting Director and contact details? Think our Director Joe Griffin may call them shortly.

Redacted

4 – Note of discussion between Cabinet Secretary for Justice and Minister of State for Security, 22 June 2020

Date: Mon, 22 Jun 2020 6:21:00 PM(UTC)

Sent: Mon, 22 Jun 2020 6:21:52 PM(UTC)

Subject: FEEDBACK: DISCUSSION WITH CSJ/JAMES BROKENSHIRE

From: **Redacted**

To: **Redacted**

Redacted

CSJ:

We work constructively with UK bodies and seeking the same end so want to work together.

Lord Advocate highlights our separate legal jurisdictions, issues, but also some other shared issues such as oversight that will stretch over all jurisdictions

Redacted

JB:

Grateful for constructive and ongoing engagement and wrestling with a sensitive issue and he absolutely recognises the role of the Lord Advocate and hope to find a way forward. Open to suggestions from us to secure agreement.

Redacted

Introduction now likely start of July and engagement with parliamentary colleagues this week.

Ministers tasked officials to discuss and find pragmatic solutions this week and Ministers to speak again later this week or early next (next Monday – preferred from CSJ).

CSJ

Redacted

JB

Redacted

CSJ

Redacted

5 - E-mail chain between Scottish Government and Home Office, 23 June 2020

From: Redacted
Sent: 23 June 2020 10:36
To: Redacted @homeoffice.gov.uk>
Cc: Redacted
Subject: RE: CHIS:IPCO

Thanks Redacted

Further question, this time around the CCA.

Redacted

Redacted

From: Redacted @homeoffice.gov.uk>
Sent: 23 June 2020 09:46
To: Redacted @gov.scot>
Cc: Redacted
Subject: RE: CHIS:IPCO

Hi Redacted,

We've been having regular conversations with IPCO to keep them up-to-date on Bill readiness. Redacted

Happy to discuss in more detail if helpful.

Redacted

Redacted

6 - E-mail – Note of telephone call between Cabinet Secretary for Justice and Minister of State for Security, 23 June 2020

Date: Tue, 23 Jun 2020 6:44:30 AM(UTC)

Sent: Tue, 23 Jun 2020 6:44:29 AM(UTC)

Subject: Phone call between CSJ and Security Minister - CHIS

From: **Redacted**

To: Nisbet H (Helen)<Helen.Nisbet@gov.scot>; Griffin J (Joe)Joe.Griffin@gov.scot

CC: **Redacted**

Morning Helen and Joe

Redacted and I dialled into the meeting last night between Mr Yousaf and Mr Brokenshire. **Redacted**.

Redacted

Officials have been asked to look at the matter with a view to providing Home Office with suggestions.

A further call between Ministers will be scheduled for next week.

Redacted

7 - E-mail from Scottish Government to Home Office, 24 June 2020

From: Redacted @gov.scot> **On Behalf Of** Cabinet Secretary for Justice

Sent: 24 June 2020 12:25

To: Redacted @homeoffice.gov.uk; Cabinet Secretary for Justice
<CabSecJustice@gov.scot>

Cc: Redacted

Subject: call between Scottish Justice Secretary and Minister for Security - CHIS Bill

Hi Redacted

As agreed on Monday, Mr Yousaf has asked me to arrange another call to follow up on his conversation with Mr Brokenshire. Would Monday 29th June at 6 pm again be suitable for this?

I look forward to hearing from you soon.

Many thanks,
Redacted

8 - Note - CHIS Bill update from call with Home Office, 25 June 2020

Points from discussion with Home Office 25 June

Bill introduced w/b 13 July, must have decision on RIP(S)A LCM by w/c 6 July.

Point 1: Oversight and Accountability

Redacted

Point 2: Errors

Redacted

Point 3: Defence

Redacted

Part 4: Multi-jurisdictions

Redacted made point need for UK bodies to consult with COPFS could be set out somewhere either MOU/Cop/SOP.

General Points:

Redacted made clear if prior judicial independent approval given the discussion n may move to another place.

Redacted pointed out we probably could not recommend LCM unless that was in Bill at introduction.

Redacted

25 June 2020

9 - E-mail between Scottish Government and Home Office, 29 June 2020

Redacted

It is clearly for Ministers to decide and the position will be clearer after their discussion (I understand the phone call may be delayed till Tuesday).

In terms of the position from officials:

Redacted

I have copied to **Redacted** for anything she wishes to add.

Redacted

From: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)

Sent: 29 June 2020 11:21

To: **Redacted** [@gov.scot](mailto:Redacted@gov.scot)

Cc: **Redacted**

Subject: CHIS Bill - next steps

Hi **Redacted**

We're looking to update the Security Minister on next steps following our meeting on Thursday and call on Friday.

I wanted to make sure I could accurately reflect your position. **Redacted**

Any chance I could get that for 3pm?

Cheers

Redacted

10 - E-mails between Scottish Government and Home Office, 1 July 2020

From: Redacted [@advocategeneral.gov.uk](mailto:Redacted@advocategeneral.gov.uk)
Sent: 01 July 2020 14:23
To: Redacted [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)>; Redacted
Subject: RE: CHIS (Criminal Conduct) Bill

Thanks Redacted, that's very helpful.

Redacted – there is an additional question in relation to the draft Bill that I was hoping you could help with.

Redacted

Thanks,

Redacted

From: Redacted [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Sent: 01 July 2020 09:50
To: Redacted [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk) Redacted [@advocategeneral.gov.uk](mailto:Redacted@advocategeneral.gov.uk)>
Cc: Redacted [@gov.scot](mailto:Redacted@gov.scot)>; Redacted
Subject: FW: CHIS (Criminal Conduct) Bill

Redacted

Scottish Government colleagues have now come back with comments on the RIP(S)A amendments – happy to discuss.

Redacted – I think this should now answer your questions (I've highlighted the two relevant sections in the chain below) but please let me know if you need anything further. Apologies for the delay in getting back to you on this.

Redacted

11 - E-mail chain between Scottish Government and Home Office between 2 June and 3 July

From: Redacted
Sent: 03 July 2020 16:16
To: Redacted @homeoffice.gov.uk Redacted
Cc: Redacted
Subject: OFFICIAL SENSITIVE: RE: CHIS (Criminal Conduct) Bill

Redacted

Hi Redacted

Redacted

I'm on leave next week, but **Redacted** is back and grateful if he confirm or otherwise comment on my thoughts on this on Monday.

Redacted

From: Redacted
Sent: 01 July 2020 10:59
To: Redacted
Cc: Redacted
Subject: RE: CHIS (Criminal Conduct) Bill

Hi Redacted,

This is really helpful, thank you.

I've passed this onto **Redacted** to consider but if **Redacted** has any advice on how we best include the Scottish Prison Service that would be really useful.

Redacted

From: Redacted @gov.scot
Sent: 30 June 2020 10:14
To: Redacted @homeoffice.gov.uk
Cc: Redacted
Subject: FW: CHIS (Criminal Conduct) Bill

Hi Redacted

Sorry for the delay responding to this.

Redacted

Paragraph 5 of schedule 2 amends section 8 of RIP(S)A. The amendments will only permit individuals holding prescribed offices, ranks or positions with Police Scotland to grant a CCA.

Redacted

I have copied to **Redacted** who helpfully considered the RIP(S)A amendments and who may have a view how we best include Scottish Prison Service as being able to authorise a CCA.

Redacted

From: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Sent: 12 June 2020 17:12
To: **Redacted** [@gov.scot](mailto:Redacted@gov.scot)
Cc: **Redacted**
Subject: RE: CHIS (Criminal Conduct) Bill

Hi **Redacted**,

Sorry I'm conscious I still owe you a response on your question below but in the meantime thought I would pass on the RIP(S)A amendments so that you have sight of them.

Redacted

Look forward to catching up next week – hope you have a good weekend.

Redacted

From: **Redacted** [@gov.scot](mailto:Redacted@gov.scot)
Sent: 08 June 2020 12:41
To: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Cc: **Redacted**
Subject: FW: CHIS (Criminal Conduct) Bill

Hi **Redacted**

Thanks for this, some thoughts from us.

On the specific question: **Redacted** Grateful for any thoughts you have?

In paragraph 23 in the amendment to section 8, the relevant public authorities who are able to grant authorisations for the purposes of the equivalent of new section 29B, should be limited to the Police Service. We will get back to confirm whether the Scottish Prison Service should be included at Introduction (or by way of order/regulation making power after the eventual Act is in force).

In the reference regarding the power in section 8. The approach taken to tweaking the equivalent power in RIPA in the Bill won't necessarily work for RIP(S)A given the different way the two Acts set out the lists of relevant public authorities. Section 8(4) of RIP(S)A will need tweaked in some way to extend it to alter the list of who can grant a CCA under RIP(S)A. **Redacted** You may wish to alert **Redacted** to that.

We have not yet seen the provision mentioned in para 24.

Redacted

From: Redacted @homeoffice.gov.uk
Sent: 05 June 2020 12:18
To: Redacted @gov.scot
Cc: Redacted
Subject: RE: CHIS (Criminal Conduct) Bill

Redacted

Thanks **Redacted**, that's really helpful.

Redacted. We've discussed that given the time constraints it would be worthwhile starting this work now, in case it is needed. However, we can still make other amendments depending on the outcome of ongoing discussions. We would be grateful for views on the instructions from both policy and legal colleagues in the Scottish Government.

Redacted

I've also included answers below to you questions but I'm very happy to discuss in more detail if helpful.

Redacted

From: Redacted @gov.scot
Sent: 05 June 2020 09:46
To: Redacted @homeoffice.gov.uk
Subject: FW: CHIS (Criminal Conduct) Bill

Redacted

We have found 2 SSIs made under section 7(4) of RIP(S)A.

- The Regulation of Investigatory Powers (Juveniles) (Scotland) Order 2002 (SSI 2002/206)
- The Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014 (SSI 2014/339)

Can I ask couple of other related points:

Redacted

We have been having regular discussions with IPCO but these have focussed on the internal authorisation version to date, and the prior approval version. We are hoping to have another discussion with them next week where we will discuss the notification version of the Bill and I can share their feedback. **Redacted**

- Have any discussions taken place with opposition spokespeople on the Bill.

Redacted

Redacted

From: Redacted gov.scot
Sent: 04 June 2020 17:25

To: Redacted @homeoffice.gov.uk
Subject: RE: CHIS (Criminal Conduct) Bill

Cheers

Sent with BlackBerry Work
(www.blackberry.com)

From: Redacted @homeoffice.gov.uk
Date: Thursday, 04 Jun 2020, 5:22 pm
To: Redacted @gov.scot>
Subject: RE: CHIS (Criminal Conduct) Bill

Hi **Redacted**,

Thanks - yes we are planning on including English prisons, under the banner of the Ministry of Justice.

Redacted

From: Redacted @gov.scot
Sent: 04 June 2020 16:47
To: Redacted @homeoffice.gov.uk
Subject: RE: CHIS (Criminal Conduct) Bill

Hi **Redacted**

Can you confirm if English prisons will be covered? Does that come under the Ministry of Justice or HO listing?

I'll get back on the SSI point- no further update to report yet.

Redacted

From: Redacted @homeoffice.gov.uk
Sent: 03 June 2020 16:06
To: Redacted @gov.scot
Subject: RE: CHIS (Criminal Conduct) Bill

That's helpful, thanks. I understand that section 8(4) confers a power on Scottish Ministers to amend the list of relevant public authorities and so it would be possible to add the Scottish Prison Service at a later date.

Sorry yes I should have specified the example – that's right I was referring to SSI 2014/339.

Redacted

From: Redacted @gov.scot
Sent: 03 June 2020 15:58
To: Redacted @homeoffice.gov.uk
Subject: RE: CHIS (Criminal Conduct) Bill

Hi **Redacted**

As well as Police Scotland we may include Scottish Prison Service. I need to do some follow up on that. It could be a drafting issue as I think Scottish Prison Service is covered under "Scottish Administration" so we would need to be careful we do not include SG or some agencies in that. If we do not include SPS now-we might want some power to add other bodies later.

Redacted

Redacted

From: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Sent: 03 June 2020 15:06
To: **Redacted** [@gov.scot](mailto:Redacted@gov.scot)
Subject: RE: CHIS (Criminal Conduct) Bill

Hi **Redacted**

I had two questions I wanted to ask you but I completely forgot to! These are in relation to us preparing to make amendments to RIP(S)A and are in a scenario where we can agree an LCM.

The first is whether you would just want the provisions to apply to the police or whether there are other public authorities?

The second is whether Scottish Ministers have to date exercised the power conferred by section 7(4) of RIP(S)A? We understand that they have but only on one occasion.

Thanks,

Redacted

From: **Redacted** [gov.scot](mailto:Redacted@gov.scot)
Sent: 03 June 2020 09:13
To: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Cc: **Redacted**
Subject: RE: CHIS (Criminal Conduct) Bill

Grand. I'll call you then.

From: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Sent: 02 June 2020 17:03
To: **Redacted** [@gov.scot](mailto:Redacted@gov.scot)
Cc: **Redacted**
Subject: RE: CHIS (Criminal Conduct) Bill

Thanks **Redacted** 14.00 works for me.

Redacted

From: **Redacted** [@gov.scot](mailto:Redacted@gov.scot)

Sent: 02 June 2020 16:10
To: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Cc: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Subject: RE: CHIS (Criminal Conduct) Bill

Hi **Redacted**

Unfortunately no further update yet, but I'm planning on giving you call tmrw. Shall we say 2pm?

Redacted

From: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)>
Sent: 02 June 2020 16:07
To: **Redacted** [@gov.scot](mailto:Redacted@gov.scot)
Cc: **Redacted**
Subject: CHIS (Criminal Conduct) Bill

Hi **Redacted**,

I just wanted to check whether you had any updates yet on the Bill or if not whether you think you are on track to provide something tomorrow?

And what time would work tomorrow to have a catch up - I could do between 9-10.00 or 12-15.00 if any of those times work?

Many thanks,
Redacted

12 – E-mail chain between Scottish Government and Home Office between 29 June and 3 July 2020

From: Redacted
Sent: 03 July 2020 11:58
To: Redacted [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Subject: RE: CHIS Bill - next steps

Redacted

Would be helpful for a chat. Also can you confirm if you are content us sharing the letter (or extracts of it) with Police Scotland.

Redacted

From: Redacted
Sent: 03 July 2020 08:30
To: Redacted
Cc: Redacted
Subject: RE: CHIS Bill - next steps

Hi Redacted

I wasn't on the call yesterday so copying Redacted or Redacted who will be up to speed.

Redacted

From: Redacted [@gov.scot](mailto:Redacted@gov.scot)
Sent: 02 July 2020 17:24
To: Redacted [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Subject: RE: CHIS Bill - next steps

Redacted

Sent with BlackBerry Work
(www.blackberry.com)

From: Redacted [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Date: Monday, 29 Jun 2020, 11:21 am
To: Redacted [@gov.scot](mailto:Redacted@gov.scot)
Cc: Redacted
Subject: CHIS Bill - next steps

Hi Redacted,

We're looking to update the Security Minister on next steps following our meeting on Thursday and call on Friday.

I wanted to make sure I could accurately reflect your position. Are you able to send me a paragraph as to your current position in terms of supporting an LCM?

Any chance I could get that for 3pm?

Cheers

Redacted

13 - Note of discussion between Cabinet Secretary for Justice and Minister of State for Security, 2 July 2020

From: Redacted

Sent: 02 July 2020 16:24

To: Cabinet Secretary for Justice <CabSecJustice@gov.scot>

Cc: Griffin J (Joe) <Joe.Griffin@gov.scot>; Nisbet H (Helen) <Helen.Nisbet@gov.scot>;

Redacted French C (Craig) <Craig.French@gov.scot>; **Redacted**

Subject: OFFICIAL SENSITIVE FILE NOTE: DISCUSSION BETWEEN CSJ AND MR BROKENSHIRE

Redacted

Cabinet Secretary confirmed we are looking to have agreement on appropriate oversight, but if prior approval isn't provided we will hold that firm line and cannot recommend LCM consent.

Main Feedback Points from Mr Brokenshire:

Redacted

CSJ Response

CSJ thanked Mr Brokenshire and made 2 specific points:

Redacted

Next Steps:

Redacted

•That letter should issue today or tomorrow.

Redacted

Bill Introduction

Home Office still speaking to Parliamentary Business Managers about introduction.

Redacted

14 – E-mail from Scottish Government to Home Office, 13 July 2020

From: Redacted

Sent: 13 July 2020 16:22

To: Redacted (@homeoffice.gov.uk) **Subject:** CHIS Bill

Hi Redacted

I understand introduction has been put back until just after Westminster Recess.

I have a couple of queries re the Bill:

- **Redacted**
- Do you have a process map/flowchart on the intended authorisation procedure/practices that you can share?

Redacted

15 – E-mail chain between Scottish Government and Home Office, 13 and 14 July 2020

From: Redacted @homeoffice.gov.uk
Sent: 14 July 2020 10:18
To: Redacted @gov.scot; Redacted @homeoffice.gov.uk
Subject: RE: CHIS Bill

Hi **Redacted**,

That's right, we'll now be introducing after the summer.

Redacted

In terms of the authorisation process – do you mean for notification or for internal authorisation? Happy to talk through if easier.

Thanks,

Redacted

16 – E-mail from Home Office to Scottish Government. 28 July 2020

From: Redacted [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)

Sent: 28 July 2020 17:16

To: Redacted [@gov.scot](mailto:Redacted@gov.scot)

Cc Redacted

Subject: Updated CHIS Bill

Redacted

As discussed this morning, here is the latest version of the Bill which includes amendments to RIP(S)A.

Grateful if you and **Redacted** could have a look through it and let me know if you think any further changes are needed.

Many thanks,

Redacted

Redacted

17 – E-mail chain between Scottish Government and Home Office between 24 July and 3 August 2020

From: Redacted
Sent: 03 August 2020 13:29
To: Redacted [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Subject: RE: Catch-up next week

Yes, although think preference is to do so as soon as possible. There would be room for delay in exceptional circumstances.

Redacted struggling to make Friday. I think that would be ok as I see this being a policy catch up and discussion on the LA/Mr Brokenshire correspondence? But let me know if you think we need legals.

Redacted

From: Redacted
Sent: 03 August 2020 13:24
To: Redacted
Subject: RE: Catch-up next week

Thanks Redacted

Also – can you remind me – is it within 10 days of our Bill being introduced that you need to introduce the LCM in Scottish Parliament?

Thanks

Redacted

From Redacted [@gov.scot](mailto:Redacted@gov.scot)
Sent: 03 August 2020 12:18
To: Redacted [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Subject: RE: Catch-up next week

Hi Redacted

I'll check with others-hopefully that will be fine- I'd imagine a morning slot would best.

Redacted

From: Redacted [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Sent: 03 August 2020 12:03
To: Redacted [@gov.scot](mailto:Redacted@gov.scot)
Subject: RE: Catch-up next week

Hi Redacted

Could you do Friday?

Redacted

From: **Redacted** [gov.scot](mailto:Redacted@gov.scot)
Sent: 31 July 2020 09:57
To: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Cc: **Redacted**
Subject: RE: Catch-up next week

Hi **Redacted**

Sorry for delay getting back. Think it would be helpful for a catch up with SG/COPFS/**Redacted** towards the end of next week - Thursday would be ideal.

Think **Redacted** and **Redacted** are invited we can then arrange if anyone else at our end needs to be involved.

Feel free to discuss anything with me prior to that if it helps.

Redacted

From: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Sent: 27 July 2020 11:06
To: **Redacted** [@gov.scot](mailto:Redacted@gov.scot)
Cc: **Redacted**
Subject: RE: Catch-up next week

Thanks **Redacted** – does 11.00 tomorrow work to have a quick catch up?

Redacted

Redacted

From: **Redacted** [@gov.scot](mailto:Redacted@gov.scot)
Sent: 27 July 2020 10:48
To: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Cc: **Redacted**
Subject: RE: Catch-up next week

Redacted

I'm happy for any general discussion or catch up and I'm free this afternoon or tomorrow morning.

Redacted So I'm not sure there is value in a discussion with COPFS at this time, unless you have specific questions for them and SG.

Redacted

From: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Sent: 24 July 2020 12:45
To: **Redacted** [@gov.scot](mailto:Redacted@gov.scot)
Cc: **Redacted**
Subject: Catch-up next week

Hi **Redacted**

Are you and Crown Office colleagues around next week for a discussion on the Bill?

Redacted

I'm on leave Thurs and Fri but would Tues or Weds work on your side?

Redacted

18 – Note - CHIS Bill Notes CHIS Bill Discussion with James Brokenshire, 19 August 2020

CHIS BILL: DISCUSSION WITH JAMES BROKESHIRE 19 AUGUST: KEY POINTS

- James Brokenshire (JB) confirmed the Bill is likely to be introduced in first week in September.
- Both Ministers remain committed to finding a solution that would apply consistently across the UK basis. JB asked if anything else was needed to enhance the collaborative response and find a way through this.

Redacted

- JB asked if RIP(S)A provisions should be in the Bill. Officials will continue to liaise on that. JB appreciates collaborative and constructive approach and the shared endeavour to find a consistent arrangement.
- CSJ and JB agreed to speak again in late August and again before introduction of the Bill.

19 – E-mail chain between Scottish and Home Office between 21 and 24 August 2020

From: Redacted homeoffice.gov.uk
Sent: 24 August 2020 09:36
To: Redacted @gov.scot
Subject: RE: Latest Position on LCM

Hi Redacted

I think the Minister would like to speak to the Cabinet Secretary and follow up in writing, recognising the time pressures. I would expect the lines to be similar to what I've written below.

Happy to chat

Redacted

From: Redacted @gov.scot
Sent: 24 August 2020 09:34
To: Redacted @homeoffice.gov.uk
Cc: Redacted
Subject: RE: Latest Position on LCM

Good morning Redacted

I think on Friday we had agreed that a form of words would be provided that the Cabinet Secretary could consider. Has that agreement now changed?

Redacted

From: Redacted @homeoffice.gov.uk
Sent: 24 August 2020 09:26
To: Redacted @gov.scot
Cc: Redacted
Subject: RE: Latest Position on LCM

Redacted

Just by way of update, I think the Security Minister will look for a call with the Cabinet Secretary for Justice today.

Redacted

Happy to chat if helpful

Redacted

From: Redacted
Sent: 21 August 2020 15:50
To: Redacted @gov.scot

Cc: Redacted
Subject: RE: Latest Position on LCM

Redacted

Thanks for this confirmation. I'll suggest wording on Monday once agreed.

Redacted

From: Redacted @gov.scot>
Sent: 21 August 2020 15:46
To: Redacted @homeoffice.gov.uk
Subject: RE: Latest Position on LCM

Hi **Redacted**

Redacted

Redacted

From: Redacted @homeoffice.gov.uk>
Sent: 21 August 2020 15:24
To: Redacted @gov.scot
Subject: Latest Position on LCM

Hi **Redacted**,

Thanks for discussing earlier.

I mentioned the Minister's desire to make sure that the Bill is drafted such that you are able to support legislative consent.

We discussed that we would be unable to make further drafting changes to the Bill on introduction but could provide a form of words giving you reassurance needed to recommend support. I will share this when cleared on Monday.

Redacted

You are aware that we need to submit a final Bill on Monday or we miss our slot to introduce the Bill.

I will provide a form of words on Monday but to avoid any doubt, can you confirm in response your position and what you need to ensure legislative consent.

Redacted

Thanks
Redacted

20 - Email chain between the Scottish Government and Home Office between 20 and 24 August 2020

From: Redacted @homeoffice.gov.uk
Sent: 24 August 2020 17:26
To: Redacted @gov.scot
Cc: Redacted
Subject: CHIS (Criminal Conduct) Bill - Explanatory Notes

Redacted

I have shared the latest Explanatory Notes with COPFS colleagues. I just wanted to flag that we have included the RIP(S)A amendments in there – the commentary reflects what we have said for new section 29B RIPA but please let me know if any problems with what we've put.

Many thanks,

Redacted

From: Redacted
Sent: 24 August 2020 17:23
To: Redacted
Cc: Redacted @gov.scot;
Subject: RE: CHIS (Criminal Conduct) Bill - drafting options

Redacted

Many thanks for this. I have included some wording in the Explanatory Notes to try and provide some additional reassurance – in particular paras 17 and 36 (both highlighted) in the attached. I'd be grateful if Explanatory Notes aren't shared any further at this stage.

Redacted

Redacted

From: Redacted
Sent: 21 August 2020 15:12
To: Redacted
Cc: Redacted @gov.scot
Subject: RE: CHIS (Criminal Conduct) Bill - drafting options

Redacted

Thanks – I have shared these points with the Lord Advocate this morning. **Redacted**

I intend to provide the Lord Advocate with additional briefing on Monday on the points raised and the response to the Minister and will keep you updated.

Thanks

Redacted

From: Redacted @homeoffice.gov.uk
Sent: 20 August 2020 17:27
To: Redacted @gov.scot
Cc: Redacted
Subject: CHIS (Criminal Conduct) Bill - drafting options

Dear all,

We have now discussed possible drafting options with **Redacted** in relation to the two areas discussed with **Redacted** and **Redacted** this morning. **Redacted** highlighted that, because new section 29B / 7A are to be slotted into an existing framework, it is important to act consistently with the wider provisions of RIPA / RIPSAs. **Redacted** Drafting on the validity of the CCA to set out that if an authorisation doesn't meet the requirements of the Act, then it has no effect.

Redacted

27 Lawful surveillance etc.

- (1) Conduct to which this Part applies shall be lawful for all purposes if—
- (a) an authorisation under this Part confers an entitlement to engage in that conduct on the person whose conduct it is; and
 - (b) his conduct is in accordance with the authorisation.

Redacted
Redacted

From: Redacted
Sent: 20 August 2020 16:07
To: Redacted
Cc: Redacted @gov.scot
Subject: RE: CHIS Code of Practice - draft amendments

With apologies, I copied in the wrong **Redacted** earlier!

Now with **Redacted** included.

Thanks,

Redacted

From: Redacted
Sent: 20 August 2020 11:46
To: Redacted @cps.gov.uk Redacted
Cc: Redacted @gov.scot
Subject: CHIS Code of Practice - draft amendments

Redacted

Thanks very much for the helpful call earlier. I said I would you send you the draft amendments to the CHIS Code of Practice, with the caveat that it has not yet been cleared here or reviewed by **Redacted**.

Redacted

The intention is to publish the draft when the Bill is introduced. It will remain a draft and will be updated as we take the Bill through Parliament.

I also attach our draft new oversight clause for information.

We will get back to you on the other drafting points.

Many thanks,

Redacted

Redacted

21 – E-mail chain between Scottish Government and Home Office, 24 and 25 August 2020

From: Redacted @homeoffice.gov.uk>
Sent: 25 August 2020 12:39
To: Redacted @gov.scot
Cc: Redacted @homeoffice.gov.uk

Redacted

Thanks for this. Redacted

Separately, I hope to suggest language for public consumption and to go in the LCM letter we will send to you later today.

Redacted

From: Redacted @gov.scot
Sent: 25 August 2020 09:55
To: Redacted
Cc: Redacted
Subject: RE: Latest Position on LCM

Good morning

Redacted

Redacted

From: Redacted
Sent: 24 August 2020 15:41
To: Redacted
Subject: RE: Latest Position on LCM

Redacted,

Further to this is attached the Bill we expect to introduce next week and will be finalised cop today.

Redacted

If you've any questions, please give me (or Redacted who will certainly give you a clearer answer) a shout.

Thanks again

Redacted

From: Redacted
Sent: 24 August 2020 15:16
To: Redacted gov.scot

Cc: Redacted @homeoffice.gov.uk
Subject: RE: Latest Position on LCM

Hi **Redacted**,

We have nothing confirmed at this point. However, recognising that we seek to pass the legislation by the end of the year (because of the Third Direction litigation) we expect the Bill to pass quickly. The table below sets out the earliest we think different stages could happen (subject to decisions by Whips and any recess dates). In reality I expect a few weeks of slippage somewhere.

The final amending stage of the Bill would therefore be w/c 9th November at the earliest. The Bill would effectively become public at Commons introduction.

Happy to discuss how we best agree a form of words. I'll also send the final Bill print when we shortly receive that.

Redacted

Redacted

Redacted

From: Redacted @gov.scot
Sent: 24 August 2020 15:11
To: Redacted @homeoffice.gov
Cc: Redacted
Subject: RE: Latest Position on LCM

Redacted

Could someone provide me with a list of the relevant dates that you have at this stage. A couple of reading sessions were mentioned in the call. Also, could you let me know on which date the Bill effectively becomes a public document?

Thanks

Redacted

22 – E-mail chain between Scottish Government and Home Office, 25 and 26 August 2020

From: Redacted @homeoffice.gov.uk>
Sent: 26 August 2020 15:31
To: Redacted @gov.scot Redacted
Cc: Redacted
Subject: RE: Language around LCM consent

Redacted

Thanks. Happy with that addition.

Redacted
Redacted

From: Redacted @gov.scot
Sent: 26 August 2020 15:06
To: Redacted
Cc: Redacted
Subject: RE: Language around LCM consent

Hi **Redacted**

Sorry, been a busy day with other stuff happening.

I think the wording you've provide is helpful. **Redacted** If that could be included, then I think we are good to go on this front.

Redacted

From: Redacted
Sent: 25 August 2020 17:27
To: Redacted
Cc: Redacted
Subject: Language around LCM consent

Redacted

Following the call yesterday the Cabinet Secretary and Security Minister agreed that we should agree a form of words in relation to the LCM position on the Bill if asked publicly
Redacted

Let me know what you think and I'm happy to chat if easier.

LCM letter

I am grateful for the constructive engagement to date and we share a view that it is important that public authorities across the UK are able to authorise CHIS to participate in criminal conduct where this is necessary and proportionate. We are in agreement that there needs to be robust, retrospective oversight of this activity by the Investigatory Powers Commissioner (IPC) and I was grateful for your confirmation that subject to the

points highlighted below being reflected in the bill you could recommend legislative consent. The Bill explicitly sets out the requirement for the IPC to consider this activity and include information within his annual report. **Redacted** On this basis, the Bill is drafted to apply UK-wide and includes amendments to the Regulation of Investigatory Powers (Scotland) Act 2000, **Redacted** I also recognise that this is also subject to agreement with the Lord Advocate on a few points, but I am confident that we can provide the necessary reassurance as part of ongoing discussions.

Public Consumption

There have been constructive discussions between the UK Government and the Scottish Government with regards to this Bill. Both Governments recognise the importance of this activity for national security and the prevention and detection of crime and seek to ensure provisions in the Bill apply UK wide. Robust, independent oversight of the authorisation process is important and both the UK Government and Scottish Government support retrospective oversight by the Investigatory Powers Commissioner. Discussions are ongoing to provide reassurance that this **independent** oversight will occur soon after the authorisation has happened. **Redacted**

Thanks

Redacted

23– E-mails between Scottish Government and Home Office, 1 September 2002

From: Redacted @homeoffice.gov.uk
Sent: 01 September 2020 11:27
To: Redacted @gov.scot>
Cc: Redacted
Subject: RE: CATCH UP

Hi Redacted,

Very happy to have a catch-up, I'll give you a ring at 12.00.

In terms of our plans for the code – we are planning to publish a draft of the proposed amendments on gov.uk this week to coincide with the Bill's introduction. This is to give Parliamentarians an idea of the changes we are likely to make.

We aren't planning to formally lay the draft code or carry out a consultation until the Bill has completed its passage through parliament so that we consult on a more final version. Timings of that tbc but will likely be later on this year – happy to keep in touch on that.

Redacted

From: Redacted @gov.scot
Sent: 01 September 2020 08:16
To: Redacted
Cc: Redacted
Subject: CATCH UP

Hi Redacted

You around today for a quick catch up-in particular around Code of Practice, which is causing potential handling difficulties.

We would normally consult when we believe the Code is near finalised, but that is not the case if we expect significant amendments. We would normally be required to lay draft Codes in Parliament when they are being consulted on, but if there are further amendments we are required to lay in Parliament again.

Grateful for a steer on how you propose to handle the CoP and if you have any indicative timetables that would be very useful. We would normally aim to align timings with your consultation, but think that may be difficult to achieve.

I'm around between now and 10:30 and from 11-1:30.

Redacted

24 – E-mails between Scottish Government and Home Office, 28 August 2020

Hi Redacted,

Many thanks for spotting those errors! I have made the amendments.

Redacted

From: Redacted @gov.scot

Sent: 28 August 2020 08:54

To: Redacted

Subject: RE: Exp notes

Good morning

Have had a quick look through the ENs and thought I'd flag up a couple of points for consideration:

Redacted

I note that the Home Secretary is now making the statement under section 19 of the Human Rights Act 1998 that the Bill is compatible with the ECHR, rather than Mr Brokenshire. Out of interest (and possibly showing the extent of my ignorance), is this the normal Ministerial handling arrangement rather than an escalation of which Minister is leading on this?

Redacted

25 – E-mail from Home Office, 11 September 2020

Both

Hope you're well.

Latest on timings. We expect to introduce the Bill next Thursday (17th). Second Reading likely w/c 5th October, with other Commons stages to follow in October.

On that basis, I anticipate sending the LCM letter to the Cabinet Secretary for Justice early next week. You've cleared the text we will include in that letter.

Thanks

Redacted

26 - Document – Extract Letter from Minister for State for Security to the Cabinet Secretary for Justice, 15 September 2020

Rt Hon James Brokenshire MP
Minister of State for Security
2 Marsham Street, London SW1P 4DF
www.gov.uk/home-office

Humza Yousaf MSP
Cabinet Secretary for Justice
Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 1ED

15 September 2020

Dear Humza,

Covert Human Intelligence Sources (Criminal Conduct) Bill

I am writing regarding the Covert Human Intelligence Sources (Criminal Conduct) Bill ahead of its introduction to Parliament on Thursday 17 September 2020.

I am grateful to you and your officials for the constructive discussions we have had on this Bill. I am also grateful to the Lord Advocate and his officials for their engagement. I have attached a copy of the draft Bill and Explanatory Notes, which your officials have fed into. I would be grateful if these are held in confidence until the Bill is introduced.

Content of the Bill

As you know, this is a short, single issue Bill that provides an express power for a limited number of public authorities to authorise CHIS to participate in conduct which may otherwise be criminal. As you are aware, the activity that will be authorised under the Bill is not new activity, it is a continuation of existing practice.

The Bill does this by amending the Regulation of Investigatory Powers Act 2000 (RIPA) and the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) to create a new 'criminal conduct authorisation'. The effect of a criminal conduct authorisation is to provide that no offence is committed as a result of properly authorised conduct. It will not apply retrospectively.

The Bill will restrict, on the basis of operational necessity, the public authorities able to grant an authorisation for CHIS conduct that would otherwise constitute an offence, ensuring that it will only be used by public authorities that have demonstrated a clear operational need for the power.

A criminal conduct authorisation will be granted by a senior and experienced authorising officer within the public authority, where it is deemed to be both necessary and proportionate.

The exercise of the power will continue to have robust and independent oversight from the Investigatory Power's Commissioner.

The number of public authorities able to authorise this conduct has been restricted from those who can authorise the use and conduct of CHIS generally. Only the intelligence

agencies, NCA, Armed Forces, police, HMRC, and ten other public authorities will be able to authorise criminal conduct.

For authorisations under RIPSAs, this is the Scottish Police Service and the Scottish Administration (for the Scottish Prison Service).

Territorial Extent

The provisions of the Bill extend to the whole of the United Kingdom. A Criminal Conduct Authorisation may be granted where it is necessary for one of three purposes; national security, prevention or detection of crime or economic wellbeing. National security and economic wellbeing are reserved. We recognise that the prevention or detection of crime is generally a devolved matter in Scotland; and that the proposed amendments to RIPSAs, as well as those aspects of the amendments to RIPA that relate to prevention or detection of crime engage the legislative consent process.

Current position

Redacted

On this basis, the Bill is drafted to apply UK-wide and includes amendments to the Regulation of Investigatory Powers (Scotland) Act 2000, but I recognise that you will take a final decision on legislative consent once our ongoing discussions have concluded.

Redacted.

Subject to the conclusion of our ongoing discussions, I would be grateful if you could write to confirm whether you agree with this devolution analysis and indicate if you would be content, in principle, to begin the legislative consent process in the Scottish Parliament.

I am copying this letter to the Lord Advocate, the Secretary of State for Scotland, the Advocate General for Scotland and the Minister for the Cabinet Office.

**RT HON JAMES BROKENSHIRE
MINISTER OF STATE FOR SECURITY**

27 – E-mail chain between Scottish Government and Home Office, 15 and 16 September, 2020

Hi both,

See attached which went out last night. To confirm, we will be introducing the Bill tomorrow.

Redacted

From: **Redacted** @homeoffice.gov.uk

Sent: 15 September 2020 23:04

To: 'CabSecJustice@gov.scot' <CabSecJustice@gov.scot>

Cc: secretaryofstate@scotlandoffice.gov.uk; lordadvocate@gov.scot; privateoffice@advocategeneral.gov.uk; psmichaelgove@cabinetoffice.gov.uk

Subject: CHIS Bill letter - SG

Hello,

Redacted and explanatory notes, FAO Humza Yousaf, Scottish Cabinet Secretary for Justice.

Copies go to the Lord Advocate, Secretary of State for Scotland, the Advocate General for Scotland and the Minister for the Cabinet Office.

Grateful if you could acknowledge receipt.

Many thanks

Redacted

28 - E-mail chain between Scottish Government and Home Office between 4 and 24 September 2020

We would normally instruct **Redacted** on a Scottish Parliament Bill. However, for a Westminster Bill **Redacted** will as I understand it be **Redacted** on Scottish matters in the UK Bill.

Redacted

Redacted

From: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)>
Sent: 24 September 2020 13:04
To: **Redacted** [@gov.scot](mailto:Redacted@gov.scot)>
Subject: RE: Consequential amendments

Thanks **Redacted**.

I've been providing policy instructions to **Redacted** for them to draft our consequential amendments – does it work differently on your side or would you normally provide **Redacted** to do the same?

Redacted

From: **Redacted** [@gov.scot](mailto:Redacted@gov.scot)
Sent: 24 September 2020 12:54
To: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Subject: RE: Consequential amendments

Redacted

Sorry for the delay in responding.

We are of course happy to assist, however you really should be receiving legal advice from **Redacted** rather than from us or **Redacted**. That said, it would be helpful to know what provision is proposed so that we generally know and in case we have any particular insight.

Redacted

From: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Sent: 04 September 2020 16:31
To: **Redacted** [@gov.scot](mailto:Redacted@gov.scot)
Subject: Consequential amendments

Hi **Redacted**,

I'm just having a look at the consequential amendments we will need to make to secondary legislation to reflect changes made under the Bill.

We've identified that amendments are likely to be needed to the Police and Fire Reform Scotland Act 2012, just wanted to check that you were content to pick that up if you agree amendments are needed?

Thanks,

Redacted

29 - Document - Submission to Cabinet Secretary – CHIS Bill – Letter to James Brokenshire, 24 September 2020

Cabinet Secretary for Justice

COVERT HUMAN INTELLIGENCE SOURCES (CRIMINAL CONDUCT) BILL

Purpose

1. To provide you with a response to the Minister for Security’s, James Brokenshire MP, letter of 15 September, which confirms that the Covert Human Intelligence Sources (Criminal Conduct) Bill will be introduced on 24 September. The Bill engages the legislative consent process.

Priority

2. Routine.

Background

3. The letter from Mr Brokenshire sets out the content of the Bill and the effect of a Criminal Conduct Authorisation (CCA). It recognises that where a CCA is granted by a body provided for under the Regulation of Investigatory Powers Act 2000 (RIPA) for the prevention or detection of crime in Scotland, legislative consent is required. The Bill includes amendments to the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A).

Redacted

Recommendation

4. That you:

- Note the letter from Mr Brokenshire,
- Agree to issue the attached letter in response,
- Consider the suggested lines to take,
- Note that CSCL and LCM documents will be sent shortly.

Redacted

24 September 2020

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Community Safety Lord Advocate Solicitor General					

DG Education, Communities and Justice
Crown Agent
Joe Griffin
Helen Nisbet
Redacted

SUGGESTED LINES TO TAKE

- Scottish and UK Government ministers have been working constructively in order to agree provisions aimed at clarifying the law in this area.
- The Scottish Government's strong view is that the Investigatory Powers Commissioner's Office requires to have an enhanced role in the oversight of these particular matters.
- **Redacted.**

30 - Document – Letter from Cabinet Secretary for Justice to Minister of State for Security, 25 September 2020



CHIS Bill Letter to
James Brokenshire C

31 – E-mail chain between Scottish Government and Home Office: Thursday 10 September to 01 Oct 2020

Redacted

Committee and remaining Commons stages looking like Thursday 15th October.

Cheers

Redacted

From: Redacted

Sent: 29 September 2020 18:02

To: Redacted

Subject: RE: CHIS BILL

Hi **Redacted**,

Redacted agree that the prevention or detection of crime is generally a devolved matter in Scotland; and that the proposed amendments to RIPSAs, as well as those aspects of the amendments to RIPA that relate to prevention or detection of crime engage the legislative consent process.

Afraid no solid update on Committee yet. You'll hopefully have seen that Second Reading is scheduled for Monday coming. We anticipate Committee in mid-October but Whips still scheduling.

Redacted

Redacted

Sorry-one hopefully final thing before we submit our documentation- can you confirm the expected Royal Assent date if approved – end November or has this shifted now to pre-xmas?

Redacted

From Redacted @gov.scot

Sent: 29 September 2020 17:08

To: Redacted @homeoffice.gov.uk

Subject: RE: CHIS BILL

Redacted

We are firming up our related documentation re LCM.

Can you confirm re **Redacted** agreeing LCM is required and also do you have any proposed dates for Committee and amendment stage yet?

Redacted

From: Redacted
Sent: 10 September 2020 14:36
To: Redacted @homeoffice.gov.uk)
Subject: CHIS BILL

Hi Redacted

Any developments on introduction date?

An outstanding remnant point, but required for our documentation purposes. Can you confirm the Redacted have confirmed that a LCM is required for the purposes of authorisations granted by UK bodies operating in Scotland for a devolved purpose and agree for the amendments of RIP(S)A and in relation to the amendment of the Investigatory Powers Act 2016 (which concern oversight arrangements and reporting by the Investigatory Powers Commissioner).

Sure Redacted confirmed that previously for the first point, not sure about second, but we will need to confirm that Redacted or HO agreed the need for a LCM for those purposes.

Redacted

32 - E-mails between Scottish Government and Home Office: Wednesday 30 September

Hi Redacted

I'd work to pre-Xmas but; hopefully early December.
Just to flag I think Committee may be Thursday 15th but that's not confirmed.

Redacted

From: Redacted @gov.scot
Sent: 30 September 2020 15:02
To: Redacted @homeoffice.gov.uk

Redacted

Sorry-one hopefully final thing before we submit our documentation- can you confirm the expected Royal Assent date if approved –end November or has this shifted now to pre-xmas?

Redacted

33 - Emails between Scottish Government and Home Office, 6 and 7 October 2020

Redacted

I'll get back on this shortly- a more pressing matter is a letter to the Presiding Officer of the Scottish Parliament.

Redacted

34 – E-mails between Scottish Government and Home Office, 8 October 2020

Thanks **Redacted**

Redacted

Some example of the type of issues that may be raised further down the line and the value of the power are set out in SI 2000/2563 and SSI 2000/340.

Redacted. As I explained to **Redacted** our Cabinet Secretary is on leave next week and ideally be good to have that agreed by close this week.

Redacted

From: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)>
Sent: 08 October 2020 08:48
To: **Redacted** [@gov.scot](mailto:Redacted@gov.scot)
Cc: **Redacted**
Subject: RE: CHIS Bill - Notification clause

Redacted

Redacted

Copying in **Redacted**. Please can you let me know asap if you don't agree.

Redacted

From: **Redacted** [@gov.scot](mailto:Redacted@gov.scot)
Sent: 08 October 2020 08:36
To: **Redacted** [@homeoffice.gov.uk](mailto:Redacted@homeoffice.gov.uk)
Subject: RE: CHIS Bill - Notification clause

Redacted

Redacted

Redacted

35 - Email between Scottish Government and Home Office, 14 October 2020

Cheers.

From: Redacted @homeoffice.gov.uk
Sent: 14 October 2020 12:14
To: Redacted @gov.scot
Subject: RE: COMMONS COMMITTEE

Hi Redacted

Committee should commence at about 11.30, but depends on Urgent Questions/
Ministerial Statements so could be a bit later.

It's Committee of the Whole House so all MPs on the floor of the Commons.

Redacted

From: Redacted @gov.scot
Sent: 14 October 2020 12:11
To: Redacted @homeoffice.gov.uk
Subject: COMMONS COMMITTEE

Redacted

Are you able to confirm timings for Committee tomorrow and which Committee is hearing this?

Redacted

36 – Email chain between the Scottish Government and the Home Office between 15 and 29 October 2020

Hi Redacted

Thank you for sending this. It is really useful to have the Cab Sec's written views on the LCM.

We have also sent this to the Bill team (they hadn't yet received it yet as the machinery can take slightly longer in the bigger departments).

Best,

Redacted

From: Redacted @gov.scot
Sent: 29 October 2020 09:35
To: Redacted @scotlandoffice.gov.uk
Cc: Redacted
Subject: RE: Covert Human Intelligence Sources Bill

Hi Redacted

I attach a letter issued from Cab Sec Justice to Mr Brokenshire yesterday in case you have not had sight. Happy to discuss.

Redacted



CSJ JB 28 OCTOBER
Document 1.pdf

From: Redacted @scotlandoffice.gov.uk
Sent: 19 October 2020 10:37
To: Redacted @gov.scot
Cc: Redacted
Subject: RE: Covert Human Intelligence Sources Bill

Hi Redacted

I understand from HO that the Ministers had a discussion as you mentioned. HO intend to table their amendment in the House of Lords and their Minister told Mr Yousaf this

Redacted

HO officials noted they are engaging with Redacted and Redacted in SG who are aware of timings and plans, but that the exact timings for the Bill's stages aren't yet known.

Best,

Redacted

From: Redacted @scotlandoffice.gov.uk
Sent: 16 October 2020 18:26

To: Redacted [@gov.scot](mailto:Redacted@gov.scot)
Cc: Redacted
Subject: RE: Covert Human Intelligence Sources Bill

Hi Redacted

I am sorry the delay, I know Redacted is checking the position with Home Office and will get back to you

Best

Redacted

From: Redacted [@gov.scot](mailto:Redacted@gov.scot)
Sent: 15 October 2020 16:22
To: Redacted [scotlandoffice.gov.uk](mailto:Redacted@scotlandoffice.gov.uk)
Cc: Redacted
Subject: Covert Human Intelligence Sources Bill

Redacted

I understand that Mr Brokenshire and Mr Yousaf had further discussion on the above Bill this morning and note that Commons consideration will conclude this afternoon.

Redacted Happy to discuss.

Many thanks

Redacted

37 - E-mails between the Scottish Government and the Home Office, 30 October 2020

From: Redacted@homeoffice.gov.uk
Sent: 30 October 2020 14:21
To: Redacted@gov.scot
Cc: Redacted@homeoffice.gov.uk
Subject: RE: Notification - 7 days

Hi Redacted

Redacted

Thanks

Redacted

From: Redacted@gov.scot
Sent: 30 October 2020 13:32
To: Redacted@homeoffice.gov.uk
Cc: Redacted@homeoffice.gov.uk
Subject: RE: Notification - 7 days

Redacted

Redacted

From: Redacted@homeoffice.gov.uk
Sent: 30 October 2020 11:22
To: Redacted@gov.scot
Cc: Redacted@homeoffice.gov.uk
Subject: Notification - 7 days

Hi Redacted

As trailed, some text below on why we have gone for a 7 day notification;

Redacted
Thanks

Redacted

Redacted

38 - Briefing - Briefing for Cabinet Secretary of Justice re: Ministerial 'phone call, 9 November 2020

BRIEFING: CALL WITH JAMES BROKENSHERE 9 NOVEMBER 2020

The call from James Brokenshire may be in response to the letter from CSJ on 28 October and/or as a result of Home Office officials being informed last week that our position of not recommending consent of the LCM to the Scottish Parliament was becoming firmer without suitable amendments.

Scottish Position

- **Redacted**

Deadline of Agreeing to Amendments

- Officials are still discussing, but I think it would be sensible if we could agree a deadline by which we agree or disagree with the terms of the Bill.

Redacted

- **It would be useful to know what if any further amendments UKG may introduce.**

ECHR: Limit of Permitted Conduct

Redacted

Trade Unions: Blacklisting

Redacted

39 - Note of discussion between Cabinet Secretary for Justice and Minister of State for Security, 10 November 2020

From: Redacted

Sent: 10 November 2020 07:10

To: Cabinet Secretary for Justice <CabSecJustice@gov.scot>

Cc: Nisbet H (Helen) <Helen.Nisbet@gov.scot>; Griffin J (Joe) <Joe.Griffin@gov.scot>;

Redacted French C (Craig) <Craig.French@gov.scot>; **Redacted**

Subject: UK CHIS Bill - Note of telephone call - 9/11/20

NOTE OF TELEPHONE CALL BETWEEN CABINET SECRETARY FOR JUSTICE AND MINISTER FOR SECURITY

Mr Yousaf set out three main areas of concern:

Redacted

Mr Brokenshire summarised where things currently lay and expects each of the issues to be debated during the Lords stage. He said that he understands the need for a contingency arrangement of a Scottish Bill but hopes that a 4-nations approach can still be found.

Action for officials:

- Tie down the critical dates around amendments by which decisions either way will require to be made

Redacted

40 – E-mails between Scottish Government and Home Office, 10 and 11 November 2020

From: Redacted @gov.scot>
Sent: 11 November 2020 10:05
To: Redacted @homeoffice.gov.uk Redacted
Cc: Nisbet H (Helen) <Helen.Nisbet@gov.scot>
Subject: RE: CHIS Bill

Hi Redacted

Thanks for this.

On your last point, any vote on consent should be taken before the last amending stage. If you are planning on tabling amendments at Report Stage then we should plan on that basis.

What is most relevant is when UKG amendments we are seeking may be tabled. It is the tabling of Government amendments rather than waiting for them being agreed that allows for an LCM to be lodged.

Clearly still a risk if in the Lords the amendments are not accepted, but presumably in that scenario there would be scope to rectify up to or during ping pong?

Redacted

From: Redacted @homeoffice.gov.uk
Sent: 10 November 2020 09:54
To: Redacted @gov.scot
Cc: Redacted @gov.scot>
Subject: RE: CHIS Bill

Morning,

It's Section 232 of the IPA on your last point.

On timings, the last substantive amending stage of the Bill is Lords Report. We anticipate this will take place in mid-December or early January [dependent on any EU transition legislation]. Redacted

It's also the stage whereby amendments to the Bill will be voted on Redacted wouldn't take place until this same stage, which is where sequencing gets a bit tricky. However, at Committee, which is late-November/early December [we think either 24th November or 1st December], amendments are tabled but not voted on. Redacted

Redacted I'll check that with Scotland Office and confirm before Friday.

Redacted

From: Redacted @gov.scot
Sent: 10 November 2020 07:57
To: Redacted @homeoffice.gov.uk

Cc: Redacted@gov.scot
Subject: CHIS Bill

Morning Redacted

Redacted

Redacted

41 - E-mail from Home Office to Scottish Government, 13 November 2020

From: Redacted @homeoffice.gov.uk
Sent: 13 November 2020 17:24
To: Redacted @gov.scot
Cc: Redacted @homeoffice.gov.uk
Subject: CHIS Bill - top lines

Redacted,
Good to speak to you earlier. **Redacted**

Can I also draw your attention to this page
<https://www.gov.uk/government/publications/covert-human-intelligence-sources-draft-code-of-practice>
This contains a link to the revised Code, but also factsheets on limits, safeguards, which might prove useful.

Let me know if I can help with anything further and if there is anything we can do to support briefing MSPs if this might help with LCM handling.

Redacted

Redacted