

Guidelines on the use of Agents who participate in Criminality (Official Guidance)

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Consult the Policy Lead with any
queries.

Policy
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Policy Aim

The aim of this policy is to provide guidance to agent-running sections on the use of agents who participate in criminality.

Audience

Agent handlers and their managers.

Principles

The guidance explains the circumstances in which agent-running sections may use agents who participate in criminality and sets out relevant procedures

Summary

These Guidelines are intended to provide guidance to agent-running sections on the use of agents who participate in criminality.

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Introduction

1. These Guidelines are intended to provide guidance to agent-running sections on the use of agents who participate in criminality.
2. Part II of the Regulation of Investigatory Powers Act 2000 ("RIPA") creates a regime for authorising the conduct and use of Covert Human Intelligence Sources ("CHISs"). This regime applies to the Service's use of agents, and the Service conducts its agent operations in accordance with RIPA, its subordinate legislation and the CHIS Code of Practice issued under it.
3. RIPA does not provide any immunity from prosecution for agents or others who participate in crime. Section 27 of RIPA provides that conduct specifically authorised under a CHIS authorisation is "lawful for all purposes" [REDACTED]
4. Subject to this, neither RIPA nor the Code of Practice provides for CHISs to be authorised to participate in criminality. However, the Service has established its own procedure for authorising the use of agents participating in crime, [REDACTED]
5. [REDACTED] the nature of the work of the Service is such that its agents are frequently tasked to report on sophisticated terrorist and other individuals and organisations whose activities may pose a threat to national security and/or involve the commission of serious offences. In those circumstances it may sometimes be necessary and proportionate for agents to participate in criminality in order to secure or maintain access to intelligence that can be used to save life or disrupt more serious criminality, or to ensure the agent's continued safety, security and ability to pass such intelligence.

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Authorisation of use of participating agent

6. An officer empowered to issue a CHIS authorisation under RIPA (an "authorising officer") may in appropriate cases authorise the use of an agent participating in crime [REDACTED]
- [REDACTED] *[The procedure applies to any situations involving the use of an agent participating in crime]*
7. [REDACTED] may authorise the use of the agent [REDACTED] if [REDACTED]
 - a. there is a real prospect that the agent will be able to provide information concerning serious crime [REDACTED]
 - b. the required information cannot readily be obtained by any other means; and
 - c. the need for the information that may be obtained by the use of the agent justifies his use notwithstanding the criminal activity in which the agent is or will be participating.
8. The criterion at paragraph 7(c) is not satisfied unless [REDACTED] the potential harm to the public interest from the criminal activity of the agent is outweighed by the benefit to the public interest from the information it is anticipated that the agent may provide and that the benefit is proportionate to the criminal activity in question.

Effect of an authorisation

9. An authorisation of the use of a participating agent has no legal effect and does not confer on either the agent or those involved in the authorisation process any immunity from prosecution. Rather, the authorisation will be the Service's explanation and justification of its decisions should the criminal activity of the agent come under scrutiny by an external body, e.g. the police or prosecuting authorities. In particular, the authorisation process and associated records may form the basis of representations by the Service to the prosecuting authorities that prosecution is not in the public interest. Accordingly, any such authorisation should, on its face, clearly establish that the criteria for authorisation are met, in terms which will be readily understood by a prosecutor.

Procedure

[An authorisation form is completed which records the Authorising Officer's decision.]

[REDACTED]

[REDACTED]

[REDACTED]

11. It is vital that full and accurate records are made of everything said to an agent on the subject of participation and of his response.

[REDACTED] it should be clearly explained to the agent that the authorisation process does not bestow on them any immunity from prosecution. [REDACTED]

[REDACTED]

[MIs officers involved in the authorisation process should understand that they may be called upon to account for their decisions and actions about the lawfulness of the agent's conduct.]

[REDACTED]

Agent handlers

13. No member of the Service shall encourage, counsel or procure the commission by an agent of a criminal offence, save and to the extent that the offence is covered by an authorisation issued under these Guidelines.