

EXPLANATORY MEMORANDUM TO

THE REGULATION OF INVESTIGATORY POWERS (JUVENILES) (AMENDMENT) ORDER 2018

2018 No. 715

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The instrument makes amendments to the Regulation of Investigatory Powers (Juveniles) Order 2000 (S.I. 2000/2793) (“the 2000 Order”), strengthening the protections which are applicable to juvenile covert human intelligence sources (“CHIS”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The 2000 Order contains special provisions for the authorisation of CHIS who are under the age of eighteen. That Order was made using the powers in sections 29 and 43 of RIPA, which enable the Secretary of State to make orders specifying additional requirements that must be satisfied for the use or conduct of CHIS, prohibiting certain conduct or uses of a CHIS and setting out a shorter duration for certain types of authorisation. Those same powers are being used to make necessary amendments to the 2000 Order, clarifying safeguards and extending the length of authorisations.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England, Wales and Northern Ireland.
5.2 The territorial application of this instrument is England, Wales and Northern Ireland.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

What is being done and why

- 7.1 The purpose of this Order is to amend the special provisions for the authorisation of CHIS who are under the age of eighteen, contained in the 2000 Order.
- 7.2 The authorisation of CHIS under the age of 18 is subject to enhanced safeguards, reflecting the vulnerability of young people and the increased risk to them and to operations involving them. These safeguards are set out in the 2000 Order which includes a requirement that all meetings between the public authority and a juvenile CHIS take place in the presence of an appropriate adult, and also reduces the duration of a juvenile CHIS authorisation to one month (from 12 months for adult CHIS authorisations).
- 7.3 An unintended consequence of the shorter duration of authorisation for juvenile CHIS is that there is increased pressure on the CHIS and their handlers to get results as quickly as possible in order to justify the renewal of the authorisation. The order will therefore increase the maximum length of a juvenile CHIS authorisation from one month to four months, to alleviate this pressure. This will be accompanied by a requirement (set out in the code of practice) to review the authorisation at no less than monthly intervals, to ensure that it is maintained for no longer than necessary.
- 7.4 The Order will also amend the definition of an appropriate adult to prevent the role from being undertaken by a person who has no particular qualification for the role, and to enable a suitably qualified person to act as appropriate adult in circumstances where the young person's parent is available but may not themselves be suitable to act (e.g. if they support the ideology or criminal intentions of those against whom the juvenile CHIS may be deployed).
- 7.5 Other safeguards contained in the 2010 Order will remain in place, including a requirement to conduct an enhanced risk assessment for the deployment of a juvenile CHIS, and a provision preventing a young person under the age of 16 from being deployed to gather intelligence against their own parent or guardian.

8. Consultation outcome

- 8.1 There is no requirement to consult publicly on changes to the 2000 Order. However, a range of interested intelligence and law enforcement agencies have been consulted on development of the policy.

9. Guidance

- 9.1 The CHIS code of practice contains guidance about the deployment of juvenile CHIS. Additional guidance may be provided by the Investigatory Powers Commissioner, who has a statutory duty to oversee the authorisation of these techniques under the RIPA.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 This legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The government will keep under review the operation of this legislation, including through the independent inspection and oversight by the Investigatory Powers Commissioner.

13. Contact

13.1 Susan Wale at the Home Office Telephone: 020 7035 1216 or email: susan.wale@homeoffice.x.gsi.gov.uk can answer any queries regarding the instrument.