

All line references relate to the large font accessible version of the Bill



House of Commons

Thursday 15 October 2020

COMMITTEE OF THE WHOLE HOUSE

*New Amendments handed in are marked thus **

☆ Amendments which will comply with the required notice period at their next appearance

**COVERT HUMAN INTELLIGENCE SOURCES
(CRIMINAL CONDUCT) BILL**

NOTE

This document includes all amendments tabled to date and includes any withdrawn amendments at the end. The amendments have been arranged in the order in which they relate to the Bill.

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Mr Alistair Carmichael

20

Clause 1, page 5, line 23, at end insert—

“(3A) In section 27 (*Lawful surveillance etc.*), in subsection (1)—

(a) after “applies” insert “(other than conduct authorised under section 29B)”; and

(b) after “Part” insert “(other than conduct authorised under section 29B)”.”

Member’s explanatory statement

This amendment will ensure that victims of crimes authorised under this Bill can seek civil redress.

Keir Starmer

7

Clause 1, page 3, line 6, at end insert—

“(1A) The granting of criminal conduct authorisations under subsection (1) may not take place until a warrant has been issued by a judge.

(1B) An application to a judge under subsection (1A) shall be made in writing and be accompanied by an affidavit of the person granting the criminal conduct authorisation which sets out—

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- (a) the facts relied on to justify the belief, on reasonable grounds, that a warrant under this section is required;
- (b) the persons or classes of persons to whom the warrant is proposed to be directed;
- (c) a general description of the place where the warrant is proposed to be executed, if a general description of that place can be given;
- (d) the period, not exceeding sixty days or one year, as the case may be, for which the warrant is requested to be in force; and
- (e) any previous application made under subsection (1A) in relation to a person who is identified in the application for the warrant, the date on which each such application was made, the name of the judge to whom it was made and the judge's decision on it."

Ms Harriet Harman

25

Clause 1, page 3, line 6, at end insert—

“(1A) Authorisations granted under this section require approval in accordance with section 29C.”

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Mr Alistair Carmichael

14

Clause 1, page 3, line 18, after “person” insert “reasonably”

Member’s explanatory statement

This amendment would raise the standard for granting a criminal conduct authorisation from believing that it is necessary and proportionate to reasonably believing that it is necessary and proportionate.

Keir Starmer

11

Clause 1, page 3, line 23, at end leave out “; and” and insert “, taking into account—

- (i) balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or harm;
- (ii) explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
- (iii) whether the conduct to be authorised will have any implications for the privacy of others, and an explanation of why (if

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relevant) it is nevertheless proportionate to proceed with the operation;
(iv) evidence, as far as reasonably practicable, of what other methods had been considered and why they were not implemented, or have been implemented unsuccessfully; and
(v) whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the information sought.”

Bell Ribeiro-Addy

1

Clause 1, page 3, line 26, at end insert—

“(d) that the authorisation does not have a disproportionate impact on people with one or more protected characteristics within the meaning of the Equality Act 2010.”

Member’s explanatory statement

This amendment ensures that discrimination on the grounds of protected characteristics will be taken into account before the granting of a criminal conduct authorisation.

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Bell Ribeiro-Addy

3

Clause 1, page 4, line 2, leave out “or of preventing disorder”

Ms Harriet Harman

23

Clause 1, page 4, line 2, leave out from “; or” to end of line 4

Bell Ribeiro-Addy

4

Clause 1, page 4, line 3, leave out (c)

Mr Alistair Carmichael

15

Clause 1, page 4, line 4, after “Kingdom” insert—

“so far as those interests are also relevant to the interests of national security”

Member’s explanatory statement

This would only allow a criminal conduct authorisation to be granted on economic grounds if it is relevant to national security.

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Bell Ribeiro-Addy

5

Clause 1, page 4, line 4, at end insert—

“(5A) A criminal conduct authorisation cannot be granted with regard to the actions of a covert human intelligence source within trade unions.

(5B) In this section, “trade unions” is defined as in the Trade Union and Labour Relations (Consolidation) Act 1992.”

Bell Ribeiro-Addy

6

Clause 1, page 4, line 4, at end insert—

“(5A) A criminal conduct authorisation cannot be granted with regard to the actions of a covert human intelligence source engaged in blacklisting.”

Keir Starmer

10

Clause 1, page 4, line 4, at end insert—

“(5A) The circumstances in which a criminal conduct authorisation is necessary on grounds specified

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in subsection (5)(c) may not include the activities of trade unions.”

Keir Starmer

9

Clause **7**, page **10**, line **11**, at end insert—

“(7A) Information obtained by a CHIS may not be used to compile lists which—

(a) contain details of members of trade unions or persons who have taken part in the activities of trade unions, and

(b) are compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers.”

Mr David Davis

13

Clause **1**, page **4**, line **14**, at end insert—

“(7B) The following conduct may never be authorised by a criminal conduct authorisation—

(a) causing death or serious bodily harm to a person;

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- (b) obstructing, perverting or interfering with the course of justice;
- (c) violating the sexual integrity of a person;
- (d) torture or cruel, inhuman or degrading treatment or punishment;
- (e) detention; or
- (f) causing the loss of, or any serious damage to, any property if doing so would endanger the safety of a person.

(7C) Subsection (7B) shall not prevent—

- (a) a decision not to prosecute in the public interest; or
- (b) the entry of a nolle prosequi.”

Keir Starmer

8

Clause 1, page 4, line 30, at end insert—

“(8A) Nothing in this section justifies—

- (a) causing, intentionally or by criminal negligence, death or bodily harm to an individual;
- (b) wilfully attempting in any manner to obstruct, pervert or defeat the course of justice;
- (c) violating the sexual integrity of an individual;

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- (d) subjecting an individual to torture or cruel, inhuman or degrading treatment or punishment, within the meaning of the Convention Against Torture;
- (e) detaining an individual; or
- (f) causing the loss of, or any serious damage to, any property if doing so would endanger the safety of an individual.”

Ms Harriet Harman

22

Clause 1, page 4, line 30, at end insert—

“(8A) A criminal conduct authorisation may not authorise any criminal conduct—

- (a) intentionally causing death or grievous bodily harm to an individual or being reckless as to whether such harm is caused;
- (b) involving an attempt in any manner to obstruct or pervert the course of justice;
- (c) amounting to an offence under the Sexual Offences Act 2003, the Sexual Offences (Scotland) Act 2009 or any offence listed in Schedule 3 to the Sexual Offences Act 2003;
- (d) subjecting an individual to torture or cruel, inhuman or degrading treatment or

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punishment, within the meaning of Article 3 of Part 1 of Schedule 1 to the Human Rights Act 1998; or

(e) depriving a person of their liberty, within the meaning of Article 5 of Part 1 of Schedule 1 to the Human Rights Act 1998.”

Bell Ribeiro-Addy

2

Clause 1, page 5, line 11, at end insert—

“(9A) The Investigatory Powers Commissioner or any affected person may apply for judicial review, in relation to the conduct of a relevant public authority.

(9B) For the purposes of subsection (1), a “relevant public authority” are those set out in section 2(9) of the Act.”

Member’s explanatory statement

This amendment ensures that the granting of criminal conduct authorisations are subject to judicial review.

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Mr Alistair Carmichael

18

Clause 1, page 5, line 21, at end insert—

“(11) A criminal conduct authorisation will not have effect unless and until the authorisation has been shared with—

(a) the Crown Prosecution Service, in respect of a criminal conduct authorisation relating to conduct taking place in England & Wales;

(b) the Crown Office and Procurator Fiscal Service, in respect of a criminal conduct authorisation relating to conduct taking place in Scotland; or

(c) the Public Prosecution Service, in respect of a criminal conduct authorisation relating to conduct taking place Northern Ireland.”

Member’s explanatory statement

This amendment will ensure that prosecutors can review crimes authorised under this Bill.

Chris Bryant

26

☆ Clause 1, page 3, line 16, at end insert—

“(11) Nothing in this section permits or authorises any criminal conduct by a covert human intelligence

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source in relation to investigation of any lawful activity by a member of the House of Commons, who has sworn or affirmed the oath prescribed by the Parliamentary Oaths Act 1866, or of the House of Lords, in the conduct of that member's parliamentary or representative duties unless—

(a) the criminal conduct by the covert human intelligence source has been personally authorised by the Prime Minister and the Secretary of State, and

(b) the Prime Minister and the Secretary of State have each made a written declaration that the proposed criminal conduct by the covert human intelligence source in relation to the member of Parliament concerned is both proportionate and necessary in order to preserve national security.

(12) The Secretary of State may by regulations make parallel provision to subsection (10) in respect of members of Senedd Cymru, the Northern Ireland Assembly and the Scottish Parliament.”

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Mr Alistair Carmichael

16

Clause 2, page 7, line 13, leave out from “services” to page 8, line 4

Member’s explanatory statement

This amendment would restrict the authorities that can grant criminal conduct authorisations to police forces, the National Crime Agency, the Serious Fraud Office and the intelligence services

Keir Starmer

12

Clause 4, page 8, line 18, at end insert—

“(4ZA) Those persons who have granted criminal conduct authorisations must inform the Investigatory Powers Commissioner within seven days of the granting of the authorisation.”

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Keir Starmer

NC1

To move the following Clause—

“Redress for innocent victims

- (1) Section 65 (5) of the Regulatory Powers Act 2000 (The Tribunal) is amended in accordance with subsection (2).
- (2) At the end of subsection (5) insert—
“(g) any conduct under Section 29B.””

Member’s explanatory statement

This new clause ensures that innocent victims are able to seek redress from the Investigatory Powers Tribunal.

Keir Starmer

NC2

To move the following Clause—

“Equality Impact Assessment

- (1) The Secretary of State must prepare and publish an annual equality impact assessment on the use of criminal conduct authorisations on covert operations involving women, children and Black, Asian and minority ethnic communities.

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- (2) A Minister of the Crown must, not later than three months after the report has been laid before Parliament, make a motion in the House of Commons in relation to the report.”

Dr Julian Lewis

NC3

To move the following Clause—

“Oversight by the Intelligence and Security Committee of Parliament

- (1) At the end of each relevant twelve-month period the Secretary of State must make a report to the Intelligence and Security Committee of Parliament with information on the number of criminal conduct authorisations authorised by the intelligence services and the categories of conduct authorised.
- (2) In subsection (1) “relevant twelve-month period” means—
- (a) the period of twelve months beginning with the day on which this section comes into force, and
 - (b) each successive period of twelve months.”

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Member's explanatory statement

On behalf of the Intelligence and Security Committee of Parliament, to amend the Bill to ensure *that the ISC is kept informed of the use of criminal conduct authorisations by the intelligence services.*

Bell Ribeiro-Addy

NC4

To move the following Clause—

“Trade Unions

- (1) A criminal conduct authorisation shall not be granted in respect of the actions of a covert human intelligence source relating to a trade union or a member or officer of a trade union acting or proposing to act in contemplation or furtherance of any issue which is or could be—
- (a) the subject matter of collective bargaining within the meaning of section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992;
 - (b) the subject of a trade dispute within the meaning of section 244 of the Trade Union and Labour Relations (Consolidation) Act 1992; or

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(c) within the lawful objects of the trade union.

(2) In this section, “trade union” has the same meaning as in section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992.”

Member’s explanatory statement

This new clause lays out that a criminal conduct authorisation could not be applied to a trade union, thereby putting a limit on where such authorisations can apply.

Bell Ribeiro-Addy

NC5

To move the following Clause—

“Blacklisting

(1) A criminal conduct authorisation shall not be granted in respect of the actions of covert human intelligence source in relation to another person who—

(a) is a subject of a prohibited list or is suspected of being a subject of a prohibited list where the action of the covert human intelligence source is related to that fact or suspicion;

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(b) compiles, uses, sells, or supplies or proposes or attempts to compile, use, sell, or supplies a prohibited list; or

(c) supplies or proposes or attempts to supply to another information which he knows or can reasonably be expected to know will be used in the compilation or use of a prohibited list.

(2) In this section “prohibited list” has the same meaning as in Regulation 3(2) of the Employment Relations Act 1999 (Blacklists) Regulations 2010 SI 2010/493.”

Member’s explanatory statement

This new clause lays out that a criminal conduct authorisation could not be applied to a trade union, thereby putting a limit on where such authorisations can apply.

Joanna Cherry

NC6

To move the following Clause—

“Commissioner approval for authorisations to identify or confirm journalistic sources

(1) Subsection (2) applies if a designated person has granted a criminal conduct authorisation for the

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- purposes of identifying or confirming a source of journalistic information.
- (2) The authorisation is not to take effect until such time (if any) as a Judicial Commissioner has approved it.
 - (3) A Judicial Commissioner may approve the authorisation if, and only if, the Judicial Commissioner considers that—
 - (a) at the time of the grant, there were reasonable grounds for considering that the requirements of this Part were satisfied in relation to the authorisation, and
 - (b) at the time when the Judicial Commissioner is considering the matter, there are reasonable grounds for considering that the requirements of this Part would be satisfied if an equivalent new authorisation were granted at that time.
 - (4) In considering whether the position is as mentioned in subsection (3)(a) and (b), the Judicial Commissioner must, in particular, have regard to—
 - (a) the public interest in protecting a source of journalistic information, and
 - (b) the need for there to be another overriding public interest before a relevant public authority

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seeks to identify or confirm a source of journalistic information.

- (5) Where, on an application under this section, the Judicial Commissioner refuses to approve the grant of the authorisation, the Judicial Commissioner may quash the authorisation.
- (6) In this section—
“Journalistic material” means material created or acquired for the purposes of journalism.”

Ms Harriet Harman

NC7

To move the following Clause—

“29C Approval for criminal conduct authorisations

- (1) This section applies where an authorisation has been granted under section 29B.
- (2) The authorisation has no effect until such time (if any) as the Judicial Commissioner has approved the grant of the authorisation.
- (3) The Judicial Commissioner may give approval under this section to the granting of an authorisation under section 29B if, and only if, the Judicial Commissioner is satisfied that—

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(a) at the time of the grant the person granting the authorisation had reasonable grounds to believe that the requirements of 29B(4), and any requirements imposed by virtue of section 29B(10), were satisfied in relation to the authorisation;

(b) at the time when the Judicial Commissioner is considering the matter, there remain reasonable grounds for believing that the requirements of section 29B(4), and any requirements imposed by virtue of section 29B(10), are satisfied in relation to the authorisation; and

(c) the authorisation granted does not authorise conduct that is incompatible with any Convention rights.

(4) In this section—

“Convention rights” has the meaning given in section 1(1) of the Human Rights Act 1998; and

“Judicial Commissioner” has the meaning given in section 227 of the Investigatory Powers Act 2016.”

Member’s explanatory statement

This new clause is consequential on Amendment 25.

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Stella Creasy

NC8

To move the following Clause—

**Section 29C: Criminal conduct authorisations:
Granting to children and vulnerable sources**

- (1) This section applies when the source is—
 - (a) under the age of 18,
 - (b) a vulnerable individual, as defined in subsection (5),
 - (c) a victim of modern slavery or trafficking, as defined in subsection (6).
- (2) No criminal conduct authorisations may be granted for a source to whom subsection (1) applies unless the authorising officer believes that exceptional circumstances apply that necessitate the authorisation.
- (3) Where a source is one to whom subsection (1) applies the arrangements referred to in section 29(2)(c) of this Act must be such that there is at all times a person holding an office, rank or position with a relevant investigating authority who has responsibility for ensuring that an appropriate adult is present at all meetings between the source and a person representing any relevant investigating authority.

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- (4) In subsection (3) “appropriate adult” means—
- (a) the parent or guardian of the source;
 - (b) any other person who has for the time being assumed responsibility for his welfare; or
 - (c) where no person falling within paragraph (a) or (b) is available, any responsible person aged eighteen or over who is neither a member of nor employed by any relevant investigating authority.
- (5) A “vulnerable individual” is a person who by reason of mental disorder or vulnerability, other disability, age or illness, is or may be unable to take care of themselves, or unable to protect themselves against significant harm or exploitation.
- (6) A “victim of modern slavery or trafficking” is a person who the relevant investigating authority believes is or may be a victim of trafficking as defined by section 2 of the Modern Slavery Act 2015, or exploitation as defined by section 3 of the Modern Slavery Act 2015.
- (7) The “exceptional circumstances” in subsection (2) include—
- (a) where authorisation of the criminal conduct authorisation is necessary to protect life and limb, including in relation to the CHIS; and

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(b) where authorisation of the criminal conduct authorisation is necessary on the grounds of national security. “

Keir Starmer

NC9

To move the following Clause—

“Public Inquiry

Within three months of this Act receiving Royal Assent, the Secretary of State must set up a public inquiry into the policing of the National Union of Mineworkers picket at the Orgreave coking plant, South Yorkshire, on 18 June 1984, and related events.”

Mr Alistair Carmichael

21

Schedule 1, page 12, line 4, at end insert—

“(11) In section 27 (*Lawful surveillance etc.*), in subsection (1)—

(a) after “applies” insert “(other than conduct authorised under section 29B)”; and

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(b) after “Part” insert “(other than conduct authorised under section 29B)”.

Member’s explanatory statement

This amendment will ensure that victims of crimes authorised under this Bill can seek civil redress.

Mr Alistair Carmichael

19

Schedule 1, page 15, line 24, at end insert—

“(10) A criminal conduct authorisation will not have effect unless and until the authorisation has been shared with the Crown Office and Procurator Fiscal Service.”

Member’s explanatory statement

This amendment will ensure that prosecutors can review crimes authorised under this Bill.

Mr Alistair Carmichael

17

Schedule 2, page 20, line 21, leave out from “it” to end of line 20

Member’s explanatory statement

This amendment is consequential on amendment 16

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ORDER OF THE HOUSE [5 OCTOBER 2020]

That the following provisions shall apply to the Covert Human Intelligence Sources (Criminal Conduct) Bill:

Committal

1. The Bill shall be committed to a Committee of the whole House.

Proceedings in Committee, on Consideration and up to and including Third Reading

2. Proceedings in Committee, any proceedings on Consideration and any proceedings in legislative grand committee shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which proceedings in Committee of the whole House are commenced.

3. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.

4. Standing Order No. 83B (Programming committees) shall not apply to proceedings in Committee of the whole House, to any proceedings on Consideration or to other proceedings up to and including Third Reading.

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Other proceedings

5. Any other proceedings on the Bill may be programmed.

NOTICES WITHDRAWN

The following Notices were withdrawn on 13 October 2020:

24 (duplicate of 16)
