

LORDS AMENDMENTS TO THE
COVERT HUMAN INTELLIGENCE SOURCES (CRIMINAL CONDUCT) BILL

[The page and line references are to HL Bill 144 (Corrected), the bill as introduced in the Lords]

Clause 1

- 1 Page 2, line 17, after “person” insert “reasonably”
- 2 Page 3, line 2, 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 to inhuman or degrading treatment or 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.”
- 3 Page 3, line 16, at end insert—
- “() Notwithstanding section 27, injury sustained by any person shall not be excluded from the scope of the Schemes provided for by the Criminal Injuries Compensation Act 1985 and the Criminal Injuries Compensation (Northern Ireland) Order 2002 by virtue of the fact that the conduct causing such injury was authorised under this section.”
- 4 Page 3, line 16, at end insert—
- “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), or
 - (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 criminal conduct authorisation is granted for a source 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.
- (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 or her welfare; or
 - (c) where no person falling within paragraph (a) or (b) is available and deemed appropriate, any responsible person aged 18 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 (human trafficking), or exploitation as defined by section 3 of that Act (meaning of exploitation).
- (7) The “exceptional circumstances” in subsection (2) are circumstances –
 - (a) where authorisation of the criminal conduct authorisation is necessary and proportionate considering the welfare of the covert human intelligence source;
 - (b) where, if the covert human intelligence source is under 18, the relevant investigating authority has determined in its assessment that the criminal conduct authorisation remains compatible with and does not override the best interests of the covert human intelligence source;
 - (c) where all other methods to gain information have been exhausted; and
 - (d) where the relevant investigating authority has determined in its assessment that the source to whom subsection (1) applies will not be at risk of any reasonably foreseeable harm (whether physical or psychological) arising from the criminal conduct authorisation.
- (8) Where a person grants a criminal conduct authorisation to anyone specified in subsection (1), that person must give notice of that authorisation to the Investigatory Powers Commissioner.
- (9) A notice under subsection (8) must –
 - (a) be given in writing;

- (b) be given as soon as reasonably practicable, and in any event within seven days of the grant; and
 - (c) include the matters specified in subsection (10).
- (10) Where a person gives notice under subsection (8) in respect of the granting of a criminal conduct authorisation, the notice must specify –
- (a) the grounds on which the person giving the notice believes the matters specified in section 29B(4) are satisfied;
 - (b) the conduct that is, or is to be, authorised under section 29B(8); and
 - (c) the reasons for believing that “exceptional circumstances” as set out in subsections (2) and (7) apply.”

After Clause 2

5 Insert the following new Clause –

“Notification to a Judicial Commissioner

After section 32B of the Regulation of Investigatory Powers Act 2000 insert –

“32C Notification of criminal conduct authorisations

- (1) This section applies where a person grants or cancels an authorisation under section 29B.
- (2) The person must give notice that the person has granted or cancelled the authorisation to a Judicial Commissioner.
- (3) A notice given for the purposes of subsection (2) must be given –
 - (a) in writing as soon as reasonably practicable and, in any event, before the end of the period of 7 days beginning with the day after that on which the authorisation to which it relates is granted or, as the case may be, cancelled; and
 - (b) in accordance with such arrangements made for the purposes of this paragraph by the Investigatory Powers Commissioner as are for the time being in force.
- (4) A notice under this section relating to the grant of an authorisation under section 29B must –
 - (a) set out the grounds on which the person giving the notice believes that the requirements of section 29B(4) are satisfied in relation to the authorisation; and
 - (b) specify the conduct that is authorised under section 29B by the authorisation.
- (5) Any notice that is required by this section to be given in writing may be given, instead, by being transmitted by electronic means.
- (6) If upon notification under subsection (3) a Judicial Commissioner determines that the authorisation should not have been granted, the person who granted the authorisation must be immediately informed and all further activities that will or might be undertaken pursuant to the authorisation must cease forthwith, subject to the power of the Judicial Commissioner to allow actions specified by the Judicial Commissioner to continue for the purpose of discontinuing the activities for which authorisation had been granted.””

Clause 3

6 Leave out Clause 3

Clause 4

7 Page 5, line 6, leave out “or (g)”

8 Page 5, line 9, leave out from beginning of line 9 to “(criminal conduct authorisations)” in line 10

9 Page 5, line 15, leave out from “2000” to “(criminal conduct authorisations)” in line 16

Clause 7

10 Page 5, line 36, leave out subsection (3)

Schedule 1

11 Leave out Schedule 1

Schedule 2

12 Page 9, line 9, at end insert—

“2A In the heading before section 32A (authorisations requiring judicial approval), after “approval” insert “or notification”.”

13 Page 10, line 10, at end insert—

“(b) after subsection (4) insert—

“(5) No person may grant or renew a section 29B(5)(b) authorisation if it appears to the person that all or some of the conduct authorised by the section 29B(5)(b) authorisation is likely to take place in Scotland.

(6) But subsection (5) does not apply if the grant or renewal of the section 29B(5)(b) authorisation is for a purpose relating to a reserved matter (within the meaning of the Scotland Act 1998).

(7) For the purposes of subsections (5) and (6), “a section 29B(5)(b) authorisation” means an authorisation under section 29B in so far as it is granted or, as the case may be, renewed on the grounds that it is necessary on grounds falling within section 29B(5)(b).”

14 Page 11, line 14, at end insert—

“*Coronavirus Act 2020*

15 (1) Sub-paragraph (2) applies to—

(a) section 22 of the Coronavirus Act 2020 (appointment of temporary Judicial Commissioners),

(b) regulation 3(1) of the Investigatory Powers (Temporary Judicial Commissioners and Modification of Time Limits) Regulations 2020 (S.I. 2020/360), and

- (c) any appointment which was made under that regulation and has effect immediately before the coming into force of this paragraph.
- (2) In section 22(1), regulation 3(1) or the appointment, references to functions conferred on Judicial Commissioners by –
 - (a) the Regulation of Investigatory Powers Act 2000, and
 - (b) the Investigatory Powers Act 2016,are to be read as including references to functions conferred on Judicial Commissioners by those Acts by virtue of amendments made by this Act.”

LORDS AMENDMENTS TO THE
**Covert Human Intelligence Sources
(Criminal Conduct) Bill**

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