

COVERT HUMAN INTELLIGENCE SOURCES (CRIMINAL CONDUCT) BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

1. These Explanatory Notes relate to the Lords Amendments to the Covert Human Intelligence Sources (Criminal Conduct) Bill as brought from the House of Lords on 21 January 2020 (Bill 243).
2. These Explanatory Notes have been prepared by the Home Office in order to assist the reader of the Bill and the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
3. These Explanatory Notes, like the Lords Amendments themselves, refer to HL 144 (Corrected), the bill as first introduced in the Lords.
4. These Explanatory Notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not intended to be, a comprehensive description of the Lords Amendments.
5. Lords Amendment 1 was tabled by Lord Paddick and was opposed by the Government.
6. Lords Amendment 2 was tabled by Baroness Massey of Darwen and was opposed by the Government.
7. Lords Amendment 3 was tabled by Lord Anderson and was opposed by the Government.
8. Lords Amendment 4 was tabled by Baroness Kidron and was opposed by the Government.
9. Lords Amendment 5 was tabled by Lord Anderson and was amended by Lord Thomas of Cwmgiedd to insert subsection 6. The Government supported Lords Amendment 5 as unamended but opposed the insertion of subsection 6.
10. Lords Amendments 12 and 14 were tabled by Lord Anderson and were supported by the Government.
11. Lords Amendments 6, 7, 8, 9, 10, 11 and 13 were tabled in the name of the Minister.
12. In the following Commentary, an asterisk(*) appears in the heading of any paragraph that deals with a non-Government amendment.

Commentary on Lords Amendments

Lords Amendments to clause 1: Criminal conduct authorisations

Lords Amendment 1*

- 1 Lords Amendment 6 would amend clause 1 subsection 4 to explicitly require the person granting a criminal conduct authorisation to hold a 'reasonable' belief that an authorisation is both necessary and proportionate.

Lords Amendment 2*

- 2 Lords Amendment 15 would amend clause 1 subsection 8 to place explicit limits on the conduct that can be authorised under the Bill. It would prevent an authorisation from being granted where authorisation involved such conduct.

Lords Amendment 3*

- 3 Lords Amendment 22 would amend clause 1 to ensure that any person who has been the victim of a crime under a criminal conduct authorisation would remain eligible to claim compensation under the Criminal Injuries Compensation Scheme or the Northern Ireland Criminal Injuries Compensation Scheme.

Lords Amendment 4*

- 4 Lords Amendment 24 would put in place additional safeguards for juvenile and vulnerable CHIS where they were being authorised to participate in criminal conduct. It would prevent criminal conduct authorisations from being granted for juvenile and vulnerable CHIS unless there are specified exceptional circumstances in place which necessitate the authorisation.

Lords Amendments after clause 2

Lords Amendment 5*

- 5 Lords Amendment 5 would require all criminal conduct authorisations to be notified to Judicial Commissioners (as appointed by the Investigatory Powers Act 2016) as soon as reasonably practicable and within 7 days of being granted. It also sets out what should be included in the notification and how it should be transmitted.
- 6 It would also provide Judicial Commissioners with the power to cancel an authorisation if they determined that it should not have been granted. It would require activity to stop immediately, except for where to Judicial Commissioner had allowed specific activities to continue for the purpose of discontinuing the authorisation.

Lords Amendments to clause 3: corresponding provision for Scotland

Lords Amendment 6

- 7 Lords Amendment 6 removes clause 3 (which inserted Schedule 1 to the Bill which made various changes to the Regulation of Investigatory Powers (Scotland) Act 2000) in order to carve out devolved activity relating to Scotland.

Lords Amendments to clause 4: oversight by the Investigatory Powers Commissioner

Lords Amendments 7 and 8

- 8 Lords Amendments 7 and 8 amend clause 4(2) of the Bill (which inserted new subsection 229(4A) in the Investigatory Powers Act 2016) to remove references to the Regulation of Investigatory Powers (Scotland) Act 2000.

Lords Amendment 9

- 9 Lords Amendment 9 amends clause 4(3) (which inserted subsection 234(2)(ba) into the Investigatory Powers Act 2016) to remove reference to the Regulation of Investigatory Powers (Scotland) Act 2000.

Lords Amendments to clause 7: extent and short title

Lords Amendment 10

- 10 Lords Amendment 10 removes clause 7(3) which provided that the definition of enactment in the Bill included an Act of the Scottish Parliament. Such provision was no longer necessary since the Bill no longer referred to such Acts.

Lords Amendments to Schedule 1: corresponding amendments to the Regulation of Investigatory Powers (Scotland) Act 2000

Lords Amendment 11

- 11 Lords Amendment 11 removes Schedule 1 (which made various changes to the Regulation of Investigatory Powers (Scotland) Act 2000) in order to carve out devolved activity relating to Scotland from the Bill.

Lords Amendments to Schedule 2: consequential amendments

Lords Amendment 12*

- 12 Lords Amendment 12 is in consequence of Lords Amendment 5.

Lords Amendment 13

- 1 Lords Amendment 13 amends paragraph 7 of Schedule 2 to the Bill which has the effect of inserting new subsections (5) to (7) into section 46 of the Regulation of Investigatory Powers Act 2000 in order to carve out devolved activity relating to Scotland.

Lords Amendment 14*

- 2 Lords Amendment 14 is in consequence of Lords Amendment 13. It allows for functions conferred on Judicial Commissioners by virtue of the Bill to be performed by temporary Judicial Commissioners appointed under regulations made under section 22 of the Coronavirus Act 2020.

Financial Effects of Lords Amendments

- 3 The Department does not consider that any of the Lords Amendments give rise to any significant expenditure.

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Ordered by The House of Commons to be printed, 21 January 2021

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