

Covert Human Intelligence Sources (Criminal Conduct) Bill

[This Provisional Marshalled List includes all amendments tabled for Day 2 onwards. A revised Marshalled List will be produced following the conclusion of proceedings on Day 2. Neither amendments nor members' names may be added between the two.]

PROVISIONAL THIRD
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

The amendments have been marshalled in accordance with the Instruction of 16th November 2020, as follows –

Clauses 1 to 3	Schedule 2
Schedule 1	Clauses 6 and 7
Clauses 4 and 5	Title

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 1

LORD DUBS
BARONESS MASSEY OF DARWEN
LORD JUDD

- 11** Page 2, line 8, at end insert –
“(1A) Authorisations granted under this section require judicial approval in accordance with section 29C.”

Member’s explanatory statement

This amendment imposes a requirement for prior judicial approval of CCAs (with provision for urgent cases), and relates to the amendment to Clause 1, page 3, line 16 in the name of Lord Dubs.

BARONESS KENNEDY OF THE SHAWS
BARONESS MCINTOSH OF PICKERING

- 12** Page 2, line 8, at end insert –
“(1A) Authorisations granted under this section require approval in accordance with section 29C.”

Member’s explanatory statement

This amendment would require that criminal conduct authorisations receive prior authorisation from a judicial commissioner, and relates to the amendment to Clause 1, page 3, line 16 in the name of Baroness Kennedy of The Shaws.

LORD PADDICK
BARONESS HAMWEE

- 13 Page 2, line 10, leave out “in the course of, or otherwise in connection with, the conduct of” and insert “by”

Member’s explanatory statement

This amendment is to probe why the criminal conduct cannot be described more simply; and how close must the connection be in order to fall within section 26.

LORD ROSSER
LORD KENNEDY OF SOUTHWARK
LORD JUDD

- 14 Page 2, line 11, at end insert—
- “(2A) The granting of criminal conduct authorisations under subsection (1) may not take place until a warrant has been issued by a judge.
- (2B) An application to a judge under subsection (2A) must be made in writing and be accompanied by an affidavit of the person granting the criminal conduct authorisation which sets out—
- (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 (2A) 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.”

Member’s explanatory statement

This would require prior judicial authorisation before a criminal conduct authorisation could be granted.

LORD HAIN
BARONESS KENNEDY OF THE SHAWS
LORD CORMACK
BARONESS WHEATCROFT

- 15 Page 2, line 11, at end insert—
- “(2A) The granting of criminal conduct authorisations under subsection (1) may not take place until a warrant has been issued by the Secretary of State.”

LORD PADDICK
BARONESS HAMWEE

- 16 Page 2, line 16, leave out “the person believes—
- (a) that”

Member's explanatory statement

This amendment ensures that there is an objective test rather than a subjective test for granting a criminal conduct authorisation.

LORD ANDERSON OF IPSWICH
BARONESS MCINTOSH OF PICKERING

17 Page 2, line 17, after “person” insert “reasonably”

Member's explanatory statement

This amendment would insert a requirement that belief in the necessity and proportionality of a criminal conduct authorisation, and in the existence of satisfactory arrangements, be reasonably held.

LORD PADDICK
BARONESS HAMWEE

18 Page 2, line 20, leave out “that”

Member's explanatory statement

Consequential to amendment to Clause 1, page 2, line 16.

LORD ROSSER
LORD KENNEDY OF SOUTHWARK
BARONESS JONES OF MOULSECOOMB
LORD JUDD

19 Page 2, line 21, after “conduct” 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 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;”

Member's explanatory statement

This would put the list of concerns that the Code of Practice advises should be considered when determining proportionality on the face of the bill.

BARONESS JONES OF MOULSECOOMB

19A Page 2, leave out lines 22 and 23

Clause 1 - continued

LORD PADDICK
BARONESS HAMWEE

20 Page 2, line 22, leave out “that”

Member’s explanatory statement

Consequential to amendment to Clause 1, page 2, line 16.

21 Page 2, line 23, after “imposed” insert “following consultation with such persons as are appropriate”

Member’s explanatory statement

This amendment is to require consultation by the Secretary of State before imposing requirements for the grant of an authorisation, and to probe the requirements that might be imposed.

LORD HENDY
LORD HAIN

22 Page 2, leave out lines 27 to 30 and insert –

“(b) for the purposes of preventing or detecting serious crime.

(5A) In subsection (5), “serious crime” means a crime triable only on indictment.”

Member’s explanatory statement

The amendment is intended to constrain the use of criminal conduct authorisations by precluding their use for the purpose of preventing or deterring minor criminal activities, non-serious disorder, or non-criminal damage to economic interests.

LORD PADDICK
BARONESS HAMWEE

23 Page 2, line 27, after “detecting” insert “serious”

Member’s explanatory statement

This amendment will limit the crime whose prevention or detection is the basis of a criminal conduct authorisation to serious crime.

BARONESS JONES OF MOULSECOOMB

24 Page 2, line 27, leave out “or of preventing disorder”

Member’s explanatory statement

This is a probing amendment to understand why preventing and detecting crime would not be sufficient on its own.

LORD DUBS
BARONESS MASSEY OF DARWEN
LORD JUDD

25 Page 2, line 27, leave out from “crime” to end of line 30

Member's explanatory statement

This amendment limits the use of criminal conduct authorisations to protecting national security and preventing crime.

LORD PADDICK
BARONESS HAMWEE

26 Page 2, line 28, after “preventing” insert “serious”

Member's explanatory statement

This amendment will limit the disorder whose prevention is the basis of a criminal conduct authorisation to riot as defined by the Public Order Act 1986.

27 Page 2, line 30, at end 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 also relevant to the interests of national security.

LORD ROSSER
LORD KENNEDY OF SOUTHWARK
BARONESS JONES OF MOULSECOOMB
BARONESS CLARK OF KILWINNING

28 Page 2, line 30, at end insert –

“(5A) The circumstances in which a criminal conduct authorisation is necessary on grounds specified in subsection (5)(c) may not include the activities of trade unions.”

Member's explanatory statement

This would provide that circumstances in which a criminal conduct authorisation is deemed necessary for the economic well-being of the UK may not include the activities of trade unions.

BARONESS CLARK OF KILWINNING
As an amendment to Amendment 28

29 After “trade unions” insert “or legitimate political activity”

LORD PADDICK
BARONESS HAMWEE

30 Page 2, line 30, at end insert –

“(5A) For the purposes of subsection (5) “serious disorder” has the same meaning as “riot” as provided by section 1 of the Public Order Act 1986.”

Member's explanatory statement

This amendment will limit the disorder whose prevention is the basis of a criminal conduct authorisation to riot as defined by the Public Order Act 1986.

31 Page 2, line 30, at end insert –

“(5A) For the purposes of subsection (5) “serious crime” means crime that satisfies the tests in subsection (5B).

Clause 1 - continued

(5B) Those tests are –

- (a) that the offence or one of the offences that is or would be constituted by the conduct is an offence for which a person who has attained the age of 21 and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more;
- (b) that the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.”

Member’s explanatory statement

This amendment defines serious crime as it is defined in the Regulation of Investigatory Powers Act 2000.

32 Page 2, line 31, at beginning insert “Without limitation to the provisions of subsection (4)(a) or (b),”

Member’s explanatory statement

This amendment would ensure that the necessity and proportionality tests are not weakened.

33 Page 2, line 33, leave out “reasonably”

Member’s explanatory statement

This amendment would ensure that the necessity and proportionality tests are not weakened.

34 Page 2, line 36, leave out “(for example, the requirements of the Human Rights Act 1998)”

Member’s explanatory statement

This amendment would provide that conduct in reach of the Human Rights Act could not be authorised.

LORD ROSSER

LORD KENNEDY OF SOUTHWARK

LORD HAIN

BARONESS JONES OF MOULSECOOMB

35 Page 2, line 37, at end insert –

- “(7A) Criminal conduct authorisation for a covert human intelligence source may not be given if its purpose is 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.”

Member’s explanatory statement

This would prevent information obtained by a CHIS being used for the purposes of blacklisting.

LORD PADDICK
BARONESS HAMWEE

36 Page 2, line 37, at end insert—

“() A criminal conduct authorisation may not authorise conduct which involves acting in a way incompatible with the Convention rights as defined by the Human Rights Act 1998; and for the purposes of this subsection the conduct of a covert human intelligence source shall be deemed to be the conduct of a public authority.”

Member’s explanatory statement

This amendment would provide that conduct in reach of the Human Rights Act could not be authorised.

37 Page 2, line 40, after “activities” insert “undertaken after the date of the authorisation”

Member’s explanatory statement

This amendment would preclude immunity from prosecution for past conduct.

38 Page 2, line 41, leave out “in the course of, or otherwise in connection with, the conduct of” and insert “by”

Member’s explanatory statement

This amendment is to probe why the criminal conduct cannot be described more simply; and how close must the connection be in order to fall within section 26.

BARONESS MASSEY OF DARWEN
LORD DUBS

39 Page 2, leave out lines 45 to 47 and insert—

“(b) consists in conduct—

- (i) by the person who is so specified or described as the covert human intelligence source to whom the authorisation relates, or
- (ii) by another person holding an office, rank or position within the public authority making the criminal conduct authorisation, which assists or encourages criminal conduct by the covert human intelligence source to whom the authorisation relates; and”

Member’s explanatory statement

This amendment clarifies who can be authorised to commit criminal offences.

LORD PADDICK
BARONESS HAMWEE

40 Page 2, line 45, leave out “or in relation to”

Member’s explanatory statement

To probe the meaning of the phrase.

BARONESS CHAKRABARTI
LORD PADDICK
BARONESS RITCHIE OF DOWNPATRICK
BARONESS WARSI

- 41 Page 3, line 2, at end insert “; and
(d) is not carried out for the primary purpose of—
(i) encouraging or assisting, pursuant to sections 44 to 49 of the Serious Crime Act 2007, the commission of an offence by, or
(ii) otherwise seeking to discredit, the person, people or group subject to the authorised surveillance operation.”

Member’s explanatory statement

This amendment would prohibit the authorisation of criminal conduct where the covert human intelligence source acts as an agent provocateur.

LORD CORMACK
LORD HAIN
BARONESS JONES OF MOULSECOOMB
LORD JUDD

- 42 Page 3, line 2, at end insert—
“() A criminal conduct authorisation may not authorise—
(a) murder, torture or rape, in any circumstances, or
(b) a person under the age of 18 to engage in criminal conduct.”

LORD YOUNG OF COOKHAM
BARONESS CHAKRABARTI
THE LORD BISHOP OF DURHAM
BARONESS BULL

- 43 Page 3, line 2, at end insert—
“() A criminal conduct authorisation may not be granted to a covert human intelligence source under the age of 18.”

Member’s explanatory statement

This amendment would prohibit the granting of criminal conduct authorisations to children.

LORD ROSSER
LORD KENNEDY OF SOUTHWARK
BARONESS JONES OF MOULSECOOMB
LORD JUDD

- 44 Page 3, line 2, at end insert—
“(8A) Nothing in this section authorises—
(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;

Clause 1 - continued

- (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.”

Member’s explanatory statement

This would put explicit limits on the face of the Bill on the types of criminal conduct that can be permitted.

LORD HODGSON OF ASTLEY ABBOTTS

As an amendment to Amendment 44

45 After “authorises” insert “acts in the United Kingdom or overseas”

Member’s explanatory statement

The purpose of this amendment is to explore whether the proposed regulatory regime provides adequate safeguards for operations carried out overseas.

LORD ANDERSON OF IPSWICH

LORD BUTLER OF BROCKWELL

LORD CARLILE OF BERRIEW

BARONESS MANNINGHAM-BULLER

46 Page 3, line 2, at end insert –

- “(8A) Where a person grants a criminal conduct authorisation, that person must give notice of that authorisation to the Investigatory Powers Commissioner.
- (8B) A notice under subsection (8A) 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 (8C).
- (8C) Where a person gives notice under subsection (8A) 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 subsection (4) are satisfied; and
 - (b) the conduct that is, or is to be authorised under subsection (8).
- (8D) Any notice that is required by subsection (8A) to be given in writing may be given, instead, by being transmitted by electronic means.”

Member’s explanatory statement

This amendment would introduce a requirement to notify the Investigatory Powers Commissioner as soon as reasonably practicable of the grant of a criminal conduct authorisation.

LORD PADDICK
BARONESS HAMWEE
As an amendment to Amendment 46

- 47 After subsection (8C) insert—
- “(8CA) The Commissioner must within seven days of receiving the notice inform the person whether the Commissioner considers the matters specified in subsection (4) to have been satisfied in respect of the conduct in question.
- (8CB) In the event the Commissioner considers the matters not to have been satisfied—
- (a) the conduct shall not be lawful for all purposes as provided by section 27, and
- (b) the person must report the matter to the head of the relevant public authority who must refer the matter to the Director of Public Prosecutions.
- (8CC) The Commissioner must report on notices given under this section in the annual report made under section 234 of the Investigatory Powers Act 2016.”

Member’s explanatory statement

This amendment would introduce a requirement to notify the Investigatory Powers Commissioner as soon as reasonably practicable of the grant of a criminal conduct authorisation.

BARONESS MCINTOSH OF PICKERING

- 48 Page 3, line 2, at end insert—
- “() Where criminal conduct authorisations under subsection (1) are granted in relation to covert human intelligence sources under the age of 18, the provisions of the United Nations Convention on the Rights of the Child apply.”

LORD PADDICK
BARONESS HAMWEE

- 49 Page 3, line 2, at end insert—
- “() A criminal conduct authorisation must be reviewed monthly by the person by whom it is granted.
- () A criminal conduct authorisation ceases to have effect on the date it provides, which must be no later than four calendar months after the date it is granted.”

Member’s explanatory statement

Under this amendment a criminal conduct authorisation would be reviewed monthly and expire after four months.

LORD DAVIES OF GOWER

- 50 Page 3, line 2, at end insert—
- “(8A) A person may grant a criminal conduct authorisation to authorise criminal conduct that has already been committed if the following requirements are met—

Clause 1 - continued

- (a) the conduct by or in relation to the person who is specified or described as the covert human intelligence source to whom the authorisation relates was necessary on grounds falling within subsection (5), in the view of the person granting the authorisation, to avert or mitigate a threat to the physical safety of the person specified or described as the covert human intelligence source, or to avert or mitigate a threat to the physical safety of some other person engaged in the conduct;
 - (b) the conduct was brought to the attention of the authorising officer immediately or at the first available opportunity, by the person who is specified or described as the covert human intelligence source to whom the authorisation relates;
 - (c) the person granting the authorisation is satisfied that the threat to the physical safety of the person specified or described as the covert human intelligence source, or a threat to some other person engaged in the conduct, could not have reasonably been averted or sufficiently mitigated by other conduct which would not have constituted crime.
- (8B) Subsection (8A)(c) is without prejudice to the need to take into account other matters so far as they are relevant (for example, the requirements of the Human Rights Act 1998).”

BARONESS MASSEY OF DARWEN
LORD DUBS
LORD JUDD

51

Page 3, line 2, at end insert –

- “(8A) A criminal conduct authorisation may not be granted or renewed in relation to a covert human intelligence source who is under the age of 18 unless prior approval has been obtained from a Judicial Commissioner.
- (8B) A Judicial Commissioner may only provide approval under subsection (8A) if he or she is satisfied –
- (a) that the grant or renewal of a criminal conduct authorisation in relation to a source who is under the age of 18 is necessary for an investigation or operation, specified in the authorisation, which is being conducted for the purpose of saving lives or preventing serious physical or mental harm;
 - (b) that the public authority granting the criminal conduct authorisation has made and, in the case of a renewal, updated a risk assessment sufficient to demonstrate that –
 - (i) the nature and magnitude of any risk of physical injury to the source arising in the course of, or as a result of, carrying out the criminal conduct described in the authorisation have been identified and evaluated; and
 - (ii) the nature and magnitude of any risk of psychological distress to the source arising in the course of, or as a result of, carrying out the criminal conduct described in the authorisation have been identified and evaluated;

Clause 1 - continued

- (c) that at the time of granting or renewing the authorisation the person granting or renewing the authorisation –
 - (i) had considered the risk assessment and satisfied him or herself that any risks identified in it are justified and, if they are, that they have been properly explained to and understood by the source;
 - (ii) knew whether the relationship to which the conduct or use would relate is between the source and a relative, guardian or person who has for the time being assumed responsibility for the source's welfare, and, if it is, had given particular consideration to whether the authorisation is justified in the light of that fact; and
 - (d) that the nature and magnitude of any risk of physical injury or psychological distress to the source arising in the course of, or as a result of, carrying out the criminal conduct described in the authorisation are –
 - (i) proportionate to the purpose and likely outcome of the investigation or operation specified in the authorisation;
 - (ii) consistent with the Convention rights of the source; and
 - (iii) justified when taking into account the best interests of the source as a primary consideration.
- (8C) In subsection (8B) –
- “Convention rights” has the meaning given in section 1(1) of the Human Rights Act 1998;
 - “Judicial Commissioner” has the meaning given in section 227 of the Investigatory Powers Act 2016;
 - “source” means covert human intelligence source.”

Member's explanatory statement

This amendment prohibits the authorisation of criminal conduct by children without specific prior judicial approval.

BARONESS HAMWEE
LORD PADDICK
BARONESS DOOCEY

52

Page 3, line 2, at end insert –

- “(8A) An authorisation under this section may not be granted to –
- (a) a person under the age of 18;
 - (b) a person about whom a Competent Authority has made a “reasonable grounds” decision that they are a victim of slavery or servitude or forced or compulsory labour or of human trafficking or exploitation within the meaning of the Modern Slavery Act 2015;
 - (c) a person who has been assessed by an appropriately qualified independent person as likely to be unable to give informed consent to acting as a source;
 - (d) a person who has been assessed by an appropriately qualified independent person as likely to be adversely affected by being expected to undertake the authorised conduct.

Clause 1 - continued

- (8B) A person designated to grant criminal conduct authorisations must not grant such an authorisation to a person reasonably suspected of being a victim of slavery or servitude or forced or compulsory labour or of human trafficking or exploitation but must, with the person's consent, refer the person to the National Referral Mechanism."

Member's explanatory statement

This amendment would prohibit the granting of criminal conduct authorisations to children and other vulnerable people.

LORD SIKKA

53 Page 3, line 2, at end insert –

“() A criminal conduct authorisation may not be granted to a person unless that person is employed by the authorising authority.”

BARONESS JONES OF MOULSECOOMB

BARONESS BLOWER

54 Page 3, line 2, at end insert –

“(8A) A criminal conduct authorisation may not be granted in relation to a covert human intelligence source who is –

- (a) a vulnerable individual, or
- (b) a victim of modern slavery or trafficking.

(8B) In subsection (8A) –

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 to protect themselves against significant harm or exploitation;

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).”

Member's explanatory statement

This amendment would prohibit the granting of criminal conduct authorisations to vulnerable individuals or victims of modern slavery or trafficking.

BARONESS D'SOUZA

55 Page 3, line 2, at end insert –

“(8A) The following conduct may never be authorised by a criminal conduct authorisation –

- (a) causing death or grievous bodily harm to a person;
- (b) violating the sexual integrity of a person; or
- (c) torture or cruel, inhuman or degrading treatment or punishment.

(8B) Subsection (8A) does not prevent –

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

Clause 1 - continued

BARONESS MASSEY OF DARWEN
LORD DUBS
LORD JUDD

56 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.”

Member’s explanatory statement

This amendment establishes a prohibition on the authorisation of serious criminal offences, in similar terms to that appearing in the Canadian Security Intelligence Service Act 1985.

LORD PADDICK
BARONESS HAMWEE

56A Page 3, line 2, at end insert—

- “(8A) A criminal conduct authorisation may not be granted unless the conditions under subsection (8B) have been fulfilled.
- (8B) The conditions are that—
- (a) notification has been given to the Investigatory Powers Commissioner of—
 - (i) the purpose and extent of the deployment, and
 - (ii) the type of criminal activity it is anticipated the covert human intelligence source would participate in, and
 - (b) the Commissioner has approved the deployment.
- (8C) In the event of urgency, prior approval is not required but notification must be given to the Investigatory Powers Commissioner as soon as reasonably practicable and in any event not later than seven days after the deployment.
- (8D) A notification under subsection (8B) or (8C) must be given in writing or transmitted by electronic means.”

Member’s explanatory statement

This amendment seeks to ensure that a criminal conduct authorisation may only be granted, other than in an urgent case, after the nature and extent of the deployment have been approved by the Investigatory Powers Commissioner.

LORD HODGSON OF ASTLEY ABBOTTS

57 Page 3, leave out lines 10 to 16

Member's explanatory statement

This amendment is tabled to discuss the extent to which the operation of criminal conduct authorisations can be amended by regulation.

LORD PADDICK
BARONESS HAMWEE

58 Page 3, line 10, after “may” insert “following consultation with such persons as are appropriate”

Member's explanatory statement

This amendment would require consultation by the Secretary of State before imposing requirements for the grant of an authorisation, and to probe the requirements that might be imposed.

LORD DUBS
BARONESS MASSEY OF DARWEN
LORD JUDD

59 Page 3, line 16, at end insert –

“29C Approval for criminal conduct authorisations

- (1) This section applies where an authorisation has been granted under section 29B.
- (2) Unless the authorisation is an urgent authorisation, the authorisation has no effect until such time (if any) as a Judicial Commissioner has approved the grant of the authorisation.
- (3) If the authorisation is an urgent authorisation –
 - (a) it is effective when granted; but
 - (b) the authorisation ceases to have effect if it is not approved by a Judicial Commissioner in accordance with this section within 48 hours of being granted.
- (4) A 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 –
 - (a) at the time of the grant the person granting the authorisation had reasonable grounds to believe that the requirements of section 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.

Clause 1 - continued

- (5) A Judicial Commissioner may only give approval to the granting of an urgent authorisation if the Judicial Commissioner is also satisfied that at the time of the grant the person granting the authorisation had reasonable grounds to believe the authorisation must be granted immediately to avoid loss of life or to avoid the investigation or operation referred to in section 29B(8)(c) being jeopardised.
- (6) In this section—
- “Convention rights” has the meaning given in section 1(1) of the Human Rights Act 1998;
- “Judicial Commissioner” has the meaning given in section 227 of the Investigatory Powers Act 2016; and
- “urgent authorisation” means an authorisation under section 29B that the person granting it believes must be granted immediately to avoid loss of life or to avoid the investigation or operation referred to in section 29B(8)(c) being jeopardised (unless the need for the authorisation to be granted immediately has arisen as a result of fault by the authorising public authority).”

BARONESS YOUNG OF HORNSEY
 THE LORD BISHOP OF DURHAM
 LORD KENNEDY OF SOUTHWARK
 BARONESS HAMWEE

60

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.

Clause 1 - continued

- (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 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.”

BARONESS KENNEDY OF THE SHAWS

LORD JUDD

BARONESS MCINTOSH OF PICKERING

61

Page 3, line 16, at end insert—

“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—
 - (a) at the time of the grant the person granting the authorisation had reasonable grounds to believe that the requirements of section 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

Clause 1 - continued

(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 inserted section is consequential on the amendment to Clause 1, page 2, line 8 in the name of Baroness Kennedy of The Shaws.

LORD PADDICK
BARONESS HAMWEE

62 Page 3, line 16, at end insert –

“(6) In section 78(4A) after “under” insert “section 29B or”.”

Member’s explanatory statement

This amendment would require an order under section 29B(4)(c) to be subject to the affirmative procedure.

Clause 2

LORD PADDICK
BARONESS HAMWEE
BARONESS MASSEY OF DARWEN
LORD DUBS

63 Page 4, leave out lines 10 to 23

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.

LORD CORMACK

64 Page 4, leave out line 15

LORD PADDICK
BARONESS HAMWEE

65 Page 4, leave out line 16

Member’s explanatory statement

To probe the authorisations that might be granted by the Home Office, and by whom.

LORD CORMACK

66 Page 4, leave out lines 19 and 20

Clause 2 - continued

BARONESS MCINTOSH OF PICKERING

67 Page 4, leave out line 20

68 Page 4, leave out line 22

LORD CORMACK

69 Page 4, leave out lines 22 and 23

LORD SIKKA

70 Page 4, line 23, at end insert –

“(10) A Minister of the Crown may not amend the list contained in Part A1 of Schedule 1 to that Act (as inserted by subsection (9)) by statutory instrument.”

BARONESS MCINTOSH OF PICKERING

Baroness McIntosh of Pickering gives notice of her intention to oppose the Question that Clause 2 stand part of the Bill.

After Clause 2

LORD ROSSER

LORD KENNEDY OF SOUTHWARK

LORD JUDD

71 Insert the following new Clause –

“Redress for innocent victims

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

Member’s explanatory statement

This would ensure that innocent victims affected by the authorisation of criminal conduct under this Act are able to seek redress from the Investigatory Powers Tribunal.

Schedule 1

LORD ANDERSON OF IPSWICH

BARONESS MCINTOSH OF PICKERING

72 Page 7, line 9, after “is” insert “reasonably”

Member’s explanatory statement

This amendment would insert a requirement that belief in the necessity and proportionality of a criminal conduct authorisation, and in the existence of satisfactory arrangements, be reasonably held.

LORD ANDERSON OF IPSWICH
 LORD BUTLER OF BROCKWELL
 LORD CARLILE OF BERRIEW
 BARONESS MANNINGHAM-BULLER

73 Page 7, line 34, at end insert –

- “(7A) Where a person grants a criminal conduct authorisation, that person must give notice of that authorisation to the Investigatory Powers Commissioner.
- (7B) A notice under subsection (7A) 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 (7C).
- (7C) Where a person gives notice under subsection (7A) 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 subsection (4) are satisfied; and
 - (b) the conduct that is, or is to be authorised under subsection 7.
- (7D) Any notice that is required by subsection (7A) to be given in writing may be given, instead, by being transmitted by electronic means.”

LORD HODGSON OF ASTLEY ABBOTTS

74 Page 7, leave out lines 43 to 49

Member’s explanatory statement

This amendment is tabled to discuss the extent to which the operation of criminal conduct authorisations can be amended by regulation.

Clause 4

LORD ROSSER
 LORD KENNEDY OF SOUTHWARK
 LORD JUDD

75 Page 5, line 10, at end insert –

- “(4B) Those persons who have granted criminal conduct authorisations under section 29B of the Regulation of Investigatory Powers Act 2000 or section 7A of the Regulation of Investigatory Powers (Scotland) Act 2000 must inform the Investigatory Powers Commissioner within seven days of the granting of the authorisation.”

Member’s explanatory statement

This would require the Investigatory Powers Commissioner to be informed of a criminal conduct authorisation within seven days of it being granted.

BARONESS JONES OF MOULSECOOMB

75A Page 5, line 10, at end insert –

“(4B) Where the Investigatory Powers Commissioner becomes aware of any potentially unlawful or improper conduct undertaken in connection with a criminal conduct authorisation, which is not authorised by the criminal conduct authorisation, the Commissioner must refer the matter to the police for investigation.”

Member’s explanatory statement

This amendment would introduce a requirement for the Investigatory Powers Commissioner to refer potentially unlawful or improper conduct undertaken through a criminal conduct authorisation to the police for investigation.

75B Page 5, line 10, at end insert –

“(4B) Where the Investigatory Powers Commissioner becomes aware of any potentially unlawful or improperly granted criminal conduct authorisation, the Commissioner must refer the matter to the relevant oversight body of the authorising authority.”

Member’s explanatory statement

This is a probing amendment, which seeks to understand the consequences for authorizing authorities where the Investigatory Powers Commissioner finds potentially unlawful or improperly granted criminal conduct authorisations.

LORD HODGSON OF ASTLEY ABBOTTS

75C Page 5, line 16, after “authorisations)”, insert “including –

- (i) information on the number and types of criminal conduct authorisations requested and the number granted;
- (ii) whether these authorisations produced any operational benefits;
- (iii) any material damage or civilian harm incurred as a result of acts authorised”

Member’s explanatory statement

This amendment is intended to probe the adequacy of information provided to Parliament on criminal conduct authorisations, and to probe how the efficacy of these authorisations will be evaluated.

LORD HUNT OF KINGS HEATH

LORD BACH

76 Page 5, line 16, at end insert –

“(4) In section 234 (annual and other reports of the Investigatory Powers Commissioner), after subsection (11) insert –

“(12) The Investigatory Powers Commissioner must arrange for any information in a report prepared under this section, which relates to a police force and has been included in the report by virtue of subsection (2)(ba) (“the information”), to be sent to the local policing body maintaining the police force to which the information relates and to the chief officer of police of that police force.

Clause 4 - continued

- (13) The Investigatory Powers Commissioner must exclude anything from the information that the Commissioner considers –
- (a) would be against the interests of national security, or
 - (b) might jeopardise the safety of any person.
- (14) The local policing body must invite the chief officer of police to submit comments on the information to the body before such date as it may specify.
- (15) The local policing body must prepare comments on the information and must arrange for –
- (a) its comments,
 - (b) any comments submitted by the chief officer of police, and
 - (c) any response which the body has to the comments submitted by the chief officer of police,
- to be reported back to the Investigatory Powers Commissioner within a timescale set by the Commissioner.”

After Clause 4

BARONESS CLARK OF KILWINNING
 BARONESS WHITAKER
 BARONESS JONES OF MOULSECOOMB
 LORD MARLESFORD

77

Insert the following new 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 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 seeks to identify or confirm a source of journalistic information.

After Clause 4 - continued

- (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.”

LORD ROSSER
LORD KENNEDY OF SOUTHWARK
LORD JUDD

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

Member’s explanatory statement

This would require an annual impact assessment on the use of criminal conduct authorisations on covert operations involving women, children and Black, Asian or minority ethnic communities.

LORD PADDICK
BARONESS HAMWEE

79 Insert the following new Clause—

“Review of criminal conduct authorisations

- (1) The Secretary of State must arrange for a review by a judge of the High Court of England and Wales or of greater seniority of the matters listed in subsection (2).
- (2) The matters are—
 - (a) the grant of criminal conduct authorisations in relation to covert human intelligence sources including (without limitation) persons under the age of 18 and persons who may be considered vulnerable or to lack capacity;
 - (b) the criminal conduct of covert human intelligence sources and conduct which would be criminal in the absence of a criminal conduct authorisation;
 - (c) the oversight and monitoring of, and reporting on, such conduct;
 - (d) the oversight of persons entitled under section 30 of the Regulation of Investigatory Powers Act 2000 to give authorisations under section 29B of that Act and the sanctions available in the event of misuse of those powers; and
 - (e) such other related matters as the judge considers appropriate.

After Clause 4 - continued

- (3) The review must be commenced within six months after the day on which this Act is passed.
- (4) The Secretary of State must, within the period of three months beginning with the day on which this Act is passed, lay before Parliament a statement providing further details about the review.”

Member’s explanatory statement

This amendment would provide for the review by a senior judge of the use of criminal conduct authorisations.

Schedule 2

LORD PADDICK
BARONESS HAMWEE

80 Page 10, leave out lines 20 to 30

Member’s explanatory statement

This amendment is consequential on amendment to Clause 2, page 4, line 10.

Clause 6

LORD PADDICK
BARONESS HAMWEE

81 Page 5, leave out line 25 and insert “the purpose of providing that different bodies are relevant authorities under Part A1 of Schedule 1 to the Regulation of Investigatory Powers Act 2000.”

Member’s explanatory statement

This amendment would restrict the power to bring different provisions into force at different times and in different areas since all the safeguards provided by the Bill must always apply.

BARONESS JONES OF MOULSECOOMB

82 Page 5, line 25, at end insert –

“() Regulations may not be made under this section until –

- (a) the Undercover Policing Inquiry has published its final report, and
- (b) the Secretary of State has laid before both Houses of Parliament a paper detailing actions that will be taken in response to the Inquiry's report with regard to criminal conduct authorisations in relation to covert human intelligence sources.”

Member’s explanatory statement

This is a probing amendment to find out how the Government intends to respond to the Undercover Policing Inquiry.

LORD PADDICK
BARONESS HAMWEE

83 Page 5, line 28, leave out subsection (4)

Member's explanatory statement
This amendment is consequential.

Covert Human Intelligence Sources (Criminal Conduct) Bill

PROVISIONAL THIRD
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

30 November 2020
