

Covert Human Intelligence Sources (Criminal Conduct) Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

The amendments have been marshalled in accordance with the Order of 6th January 2021, 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

BARONESS CHAKRABARTI
BARONESS RITCHIE OF DOWNPATRICK
LORD PADDICK
BARONESS JONES OF MOULSECOOMB

1 Page 1, leave out line 17

Member’s explanatory statement

This amendment is linked to the amendment in name of Baroness Chakrabarti at page 1, line 19.

2 Page 1, line 19, at end insert –

“(3A) In section 27(1) of that Act (lawful surveillance etc.), at the beginning insert “Save for criminal conduct authorised under section 29B,”.

(3B) After section 27(2) of that Act, insert –

“(2A) If a person acts in accordance with a criminal conduct authorisation under section 29B, the nature of that authorisation and compliance with it shall be considered and deemed relevant to –

- (a) any decision as to whether prosecution for a criminal offence by that person is in the public interest;
- (b) any potential defences to charges of such criminal conduct; and
- (c) any potential civil liability on the part of that person, and the quantum of any damages.”

Member's explanatory statement

This amendment would preserve the current legal status quo whereby those authorised to engage in criminal conduct are not rendered immune from either civil or criminal liability. Instead, compliance with an authorisation will be relevant to any public interest consideration to prosecute, any existing legal defences, and any court considerations as to civil liability and/or damages.

LORD DUBS
BARONESS MASSEY OF DARWEN
LORD CORMACK

3 Page 1, line 19, at end insert –

- “(3A) Section 27 of that Act (lawful surveillance etc.) is amended in accordance with subsections (3B) and (3C).
- (3B) In subsection (1) after “applies” insert “, other than criminal conduct in the course of, or otherwise in connection with, the conduct of covert human intelligence sources,”.
- (3C) After subsection (2) insert –
- “(2A) Criminal conduct in the course of, or otherwise in connection with, the conduct of covert human intelligence sources is lawful for the purposes of the criminal law if –
- (a) a criminal conduct authorisation granted under section 29B confers an entitlement to engage in that criminal conduct on the person whose conduct it is; and
 - (b) his or her criminal conduct is in accordance with the authorisation.
- (2B) Where a criminal conduct authorisation is granted under section 29B, the relevant public authority must indemnify a person against civil liability (including reasonable costs) incurred by the person –
- (a) as a result of criminal conduct in which he or she was entitled to engage under the criminal conduct authorisation; or
 - (b) as a result of any conduct of his or hers that –
 - (i) is incidental to any criminal conduct authorised under the criminal conduct authorisation; and
 - (ii) is not itself conduct an authorisation or warrant for which is capable of being granted under a relevant enactment and might reasonably have been expected to have been sought in the case in question.
- (2C) In this section “relevant public authority” means, in respect of a criminal conduct authorisation granted under section 29B, the public authority for whose benefit the authorised criminal conduct is to take place.””

Member's explanatory statement

This amendment removes the immunity from civil liability for authorised criminal conduct and replaces it with a requirement to indemnify the person authorised to engage in criminal conduct against civil liability.

BARONESS JONES OF MOULSECOOMB
BARONESS CHAKRABARTI

4★ Page 1, line 19, at end insert—

“(3A) After section 27(2) of that Act, insert—

“(2A) But the provisions of the Proceeds of Crime Act 2002 apply to any property obtained by the person through conduct which would be unlawful but for the provisions of this Part.””

Member’s explanatory statement

This amendment seeks to ensure that any profits made in relation to criminal conduct authorised under this Bill are recoverable by the State under the Proceeds of Crime Act 2002.

LORD DUBS
BARONESS MASSEY OF DARWEN
LORD ROSSER
LORD CORMACK

5 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.

LORD PADDICK
BARONESS HAMWEE
LORD ANDERSON OF IPSWICH
LORD THOMAS OF CWMGIEDD

6 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

7 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.

8 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 serious disorder.

- 9 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 allow a criminal conduct authorisation to be granted on economic grounds only if it is also relevant to the interests of national security, reflecting equivalent provisions in the Investigatory Powers Act 2016 and the Counter-Terrorism and Border Security Act 2019.

- 10 Page 2, line 30, at end insert –
 “(5A) For the purpose of subsection (5), “serious crime” has the meaning given by section 81 of the Regulation of Investigatory Powers Act 2000.”

Member’s explanatory statement

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

BARONESS CHAKRABARTI
 BARONESS RITCHIE OF DOWNPATRICK
 LORD PADDICK
 BARONESS JONES OF MOULSECOOMB

- 11 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 YOUNG OF COOKHAM
 BARONESS CHAKRABARTI
 BARONESS JONES OF MOULSECOOMB
 BARONESS HAMWEE

- 12 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.

- 13 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) –

Clause 1 - continued

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 MASSEY OF DARWEN

LORD DUBS

LORD CORMACK

THE LORD BISHOP OF DURHAM

14

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;
 - (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;

Clause 1 - continued

- (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 MASSEY OF DARWEN
LORD DUBS
LORD ROSSER
LORD PADDICK

15 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 HAIN
LORD BLUNKETT
LORD CORMACK
BARONESS WHEATCROFT

16 Page 3, line 2, at end insert—

- “() A criminal conduct authorisation may not be granted to a person unless—
- (a) a warrant has been issued by the Secretary of State, and
 - (b) the person is employed by the authorising authority.”

LORD PADDICK
BARONESS HAMWEE

17 Page 3, line 2, at end insert—

- “(8A) Where a criminal conduct authorisation has been granted, the covert human intelligence source so authorised cannot be deployed 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 considered the likely operational dividend against the likely intrusive effects, including the potential for collateral damage or injury, and 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.”

18 Page 3, line 2, at end insert—

- “() 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

This amendment provides that a criminal conduct authorisation would expire after four months, but could be renewed.

LORD CORMACK

19 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 16.”

Clause 1 - continued

20 Page 3, line 9, at end insert—

“() The Secretary of State must be informed of any proposed authorisation under this section.”

LORD ANDERSON OF IPSWICH
LORD PADDICK
LORD THOMAS OF CWMGIEDD
LORD FALCONER OF THOROTON

21★ Page 3, line 16, at end insert—

“() For the avoidance of doubt, nothing in this Part shall be taken to exclude—

- (a) the prosecution of a person or persons concerned in the granting of a criminal conduct authorisation for misconduct in public office in relation to the exercise of that function;
- (b) the prosecution of a person or persons for an offence authorised under this section, or for associated offences of conspiracy, encouragement or assistance, if and to the extent that the relevant criminal conduct authorisation has been declared to be a nullity by a competent court; or
- (c) the civil liability of a person or persons concerned in the granting of a criminal conduct authorisation, other than as provided in section 27(2).”

Member’s explanatory statement

This amendment clarifies that the Bill does not (a) exclude prosecution for misconduct in public office of those concerned in the grant of criminal conduct authorisations, (b) exclude prosecution relating to crimes authorised by a criminal conduct authorisation which has been declared to be a nullity, or (c) exclude those concerned in the grant of criminal conduct authorisations from civil liability.

22★ 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.”

Member’s explanatory statement

This amendment seeks to ensure that victims of violent crime are not rendered ineligible for criminal injuries compensation by reason of the fact that the crime was the subject of a criminal conduct authorisation.

LORD DUBS
BARONESS MASSEY OF DARWEN
LORD ROSSER

23 Page 3, line 16, at end insert—

“29C Approval for criminal conduct authorisations

Clause 1 - continued

- (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.
- (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).”

Clause 1 - continued

BARONESS KIDRON
 BARONESS HAMWEE
 LORD KENNEDY OF SOUTHWARK
 LORD YOUNG OF COOKHAM

24★ 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;

Clause 1 - continued

- (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.”

BARONESS HAMWEE
LORD PADDICK

25★ Page 3, line 16, at end insert –

“29C Criminal conduct authorisations: granting to vulnerable sources

- (1) This section applies when the source is –
 - (a) a vulnerable individual, as defined in subsection (5),
 - (b) 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 –

Clause 1 - continued

- (a) any person who has for the time being assumed responsibility for the source's welfare; or
 - (b) where no person falling within paragraph (a) 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, or exploitation as defined by section 3 of the Modern Slavery Act 2015.
- (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 source;
 - (b) where all other methods to gain information have been exhausted; and
 - (c) 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.”

After Clause 1

BARONESS WILLIAMS OF TRAFFORD

26

Insert the following new Clause –

“Criminal conduct authorisations: safeguards for juveniles

- (1) The Regulation of Investigatory Powers (Juveniles) Order 2000 (S.I. 2000/2793) is amended in accordance with subsections (2) to (7).
- (2) In article 2 (interpretation) –
 - (a) in the definition of “relevant investigating authority”, after “authority” insert “, in relation to an authorisation under section 29 of the 2000 Act,”;
 - (b) after that definition insert –
 - ““relevant investigating authority”, in relation to an authorisation under section 29B of the 2000 Act, means the public authority, or (as the case may be) one of the public authorities, for whose benefit the activities as a source of the source to whom the authorisation relates are to take place;
 - “relevant person”, in relation to an authorisation under section 29B of the 2000 Act, means a person holding an office, rank or position with a relevant investigating authority in relation to the authorisation;”.

After Clause 1 - continued

- (3) Before article 3 insert—

“Authorisations under section 29 of the 2000 Act”

- (4) In article 3 (sources under 16: prohibition), after “authorisation” insert “under section 29 of the 2000 Act”.
- (5) In article 5 (sources under 18: risk assessments etc.), after “An authorisation” insert “under section 29 of the 2000 Act”.
- (6) In article 6 (sources under 18: duration of authorisations), after “an authorisation” insert “under section 29 of the 2000 Act”.
- (7) After article 6 insert—

“Authorisations under section 29B of the 2000 Act

7 Sources under 16: prohibition

- (1) No authorisation under section 29B of the 2000 Act may be granted authorising criminal conduct in the course of, or otherwise in connection with, the conduct of a source if—
- (a) the source is under the age of 16; and
 - (b) the relationship to which the relevant conduct would relate is between the source and—
 - (i) the source’s parent, or
 - (ii) any person who has parental responsibility for the source.
- (2) “The relevant conduct” means the conduct of the source which the authorised conduct would be in the course of or otherwise in connection with.

8 Sources under 18: additional requirements

- (1) An authorisation under section 29B of the 2000 Act may not be granted or renewed in any case where the source to whom the authorisation relates is under the age of 18 at the time of the grant or renewal unless the person granting or renewing the authorisation—
- (a) has considered the relevant risks;
 - (b) believes that they have been properly explained to and understood by the source;
 - (c) has taken into account the need to safeguard and promote the best interests of the source as a primary consideration;
 - (d) has considered whether the relationship to which the relevant conduct would relate is between the source and—
 - (i) a relative or guardian of the source, or
 - (ii) a person who has for the time being assumed responsibility for the source’s welfare;
 - (e) where the relationship would so relate, has taken that fact into account as a particular consideration; and
 - (f) believes that there are exceptional circumstances which justify the authorisation.
- (2) For the purposes of paragraph (1)(f), “exceptional circumstances which justify the authorisation” means circumstances where—
- (a) having considered the relevant risks, and

After Clause 1 - continued

- (b) having taken into account the matters mentioned in paragraph (1)(c) and, where applicable, in paragraph (1)(e),
the person granting or renewing the authorisation believes that taking the relevant risks is justified.
- (3) For the purposes of paragraphs (1)(a) and (2), “the relevant risks” are the risks to the source identified in an appropriate risk assessment.
- (4) “An appropriate risk assessment” means an assessment made, and in the case of a renewal updated, by a relevant person which is sufficient to demonstrate that—
- (a) the nature and magnitude of any risk of physical injury to the source arising in the course of, or as result of, the conduct authorised by the authorisation have been identified and evaluated; and
 - (b) the nature and magnitude of any risk of psychological distress to the source arising in the course of, or as result of, the conduct authorised by the authorisation have been identified and evaluated.
- (5) In paragraph (1)(d) “the relevant conduct” has the same meaning as in article 7.

9 Sources under 18: arrangements regarding best interests of the source

Where the source to whom an authorisation under section 29B of the 2000 Act relates is under the age of 18, the arrangements referred to in section 29B(4)(c) of the 2000 Act must be such that there is at all times a relevant person who has responsibility for safeguarding and promoting the best interests of the source.

10 Sources under 18: arrangements for meetings

- (1) Where the source to whom an authorisation under section 29B of the 2000 Act relates is under the age of 18, the arrangements referred to in section 29B(4)(c) of the 2000 Act must be such that—
- (a) there is, at all times when the source is under the age of 16, a relevant person who has responsibility for ensuring that an appropriate adult is present at all meetings in relation to the authorisation which take place between the source and a person representing a relevant investigating authority; and
 - (b) there is, at all times when the source is 16 or 17 years old, a relevant person who has responsibility for—
 - (i) deciding, in the case of each meeting in relation to the authorisation which takes place between the source and a person representing a relevant investigating authority, whether an appropriate adult should be present at the meeting,
 - (ii) considering (among other matters), in reaching that decision, the maturity of the source and their ability to give informed consent, and

After Clause 1 - continued

- (iii) maintaining a record of the reasons for the decision in the case of each such meeting where the decision is that an appropriate adult should not be present.
- (2) In this article, “appropriate adult” means—
 - (a) the parent or guardian of the source; or
 - (b) any other person who—
 - (i) has for the time being assumed responsibility for the source’s welfare, or
 - (ii) is otherwise qualified to represent the interests of the source.

11 Sources under 18: duration of authorisations

In relation to an authorisation under section 29B of the 2000 Act where the source to whom the authorisation relates is under the age of 18 at the time the authorisation is granted or renewed, section 43(3) of the 2000 Act is to have effect as if the period specified in paragraph (b) of that subsection were four months instead of twelve months.”

- (8) The amendments made by this section to the Regulation of Investigatory Powers (Juveniles) Order 2000 (S.I. 2000/2793) are to be treated as having been made under section 29B(4)(c) or (10) or section 43(8) of the Regulation of Investigatory Powers Act 2000 as the case may be (and may be amended or revoked under those powers accordingly).”

Member’s explanatory statement

This new Clause amends the Regulation of Investigatory Powers (Juveniles) Order 2000 (S.I. 2000/2793) to add safeguards in relation to the grant or renewal of a criminal conduct authorisation under new section 29B of RIPA in relation to a covert human intelligence source who is under the age of 18. The provision made could otherwise be made by order under new section 29B(4)(c) or (10) or 43(8) of RIPA and the new clause therefore avoids the need for an initial order to be made under those powers.

Clause 2

LORD PADDICK
BARONESS HAMWEE

27★

Page 4, leave out lines 3 to 23 and insert—

“RELEVANT AUTHORITIES FOR THE PURPOSES OF S. 29B

Police forces etc

- A1 Any police force.
- B1 The National Crime Agency.
- C1 The Serious Fraud Office.

The intelligence services

- D1 Any of the intelligence services.”

Member’s explanatory statement

This amendment would limit the public authorities entitled to grant criminal conduct authorisations.

BARONESS MASSEY OF DARWEN
LORD DUBS
LORD PADDICK

28 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 PADDICK
BARONESS HAMWEE

29 Page 4, leave out line 11 and insert –

“Royal Military Police.

Royal Navy Police.

Royal Air Force Police.”

Member's explanatory statement

This amendment would limit the parts of the armed forces entitled to grant criminal conduct authorisations.

30 Page 4, line 16, at end insert “for the purpose of preventing or detecting offences under the Modern Slavery Act 2015”

Member's explanatory statement

This amendment would limit the matters in respect of which the Home Office could grant a criminal conduct authorisation.

LORD CORMACK

31 Page 4, leave out lines 18 to 23

After Clause 2

LORD PADDICK
BARONESS HAMWEE

32 Insert the following new Clause –

“Redress for victims harmed by authorised conduct

(1) The Regulation of Investigatory Powers Act 2000 is amended as follows.

(2) In section 65(4), at the end insert –

“(c) to have been authorised by a public authority under section 29B.”

(3) In section 65(5), at the end insert –

“(g) any conduct authorised by a public authority under section 29B.”

(4) In section 69(1)(a), after “section 65” insert “(but may not limit the Tribunal’s power to make an award in respect of conduct authorised by a public authority under section 29B).”

Member's explanatory statement

This amendment would entitle a person harmed by CHIS granted a criminal conduct authorisation to apply to the Tribunal for an award under the Regulation of Investigatory Powers Act 2000.

LORD ANDERSON OF IPSWICH
LORD ROSSER
LORD BUTLER OF BROCKWELL
LORD MACKAY OF CLASHFERN

33 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.”

Member's explanatory statement

This new clause requires a person who grants or cancels a criminal conduct authorisation under new section 29B of the Regulation of Investigatory Powers Act 2000 to give notice to a Judicial Commissioner (appointed under the Investigatory Powers Act 2016). It provides for when and how the notice must be given and requires that it contains certain information. The references in the new clause to the grant of an authorisation include the renewal of an authorisation (see section 43(5) of the 2000 Act).

LORD THOMAS OF CWMGIEDD

As an amendment to Amendment 33

34★ At end insert—

“(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.”

Member’s explanatory statement

This amendment is to ensure that on a determination by a Judicial Commissioner that an authority should not have been granted, activities under the authorisation cease forthwith.

Clause 3

BARONESS WILLIAMS OF TRAFFORD

35 Page 4, line 26, leave out from “contains” to end of line 28 and insert “—

- (a) amendments to the Regulation of Investigatory Powers (Scotland) Act 2000 (asp 11) which correspond to those made by this Act to the Regulation of Investigatory Powers Act 2000, and
- (b) amendments to the Regulation of Investigatory Powers (Juveniles) (Scotland) Order 2002 (S.S.I. 2002/206) which correspond to those made by this Act to the Regulation of Investigatory Powers (Juveniles) Order 2000 (S.I. 2000/ 2793).”

Member’s explanatory statement

This amendment is consequential on the Government amendment to Schedule 1 which adds to that Schedule amendments to the Regulation of Investigatory Powers (Juveniles) (Scotland) Order 2002 (S.S.I. 2002/206).

Schedule 1

LORD PADDICK

BARONESS HAMWEE

LORD ANDERSON OF IPSWICH

LORD THOMAS OF CWMGIEDD

36 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 ROSSER
LORD BUTLER OF BROCKWELL
LORD MACKAY OF CLASHFERN

37 Page 8, line 18, at end insert –

“Notification to Judicial Commissioner

6A After section 17 insert –

“17A Notification of criminal conduct authorisations

- (1) This section applies where a person grants or cancels an authorisation under section 7A.
- (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 7A must –
 - (a) set out the grounds on which the person giving the notice is satisfied that the requirements of section 7A(4) are satisfied in relation to the authorisation; and
 - (b) specify the conduct that is authorised under section 7A 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.”

Member’s explanatory statement

This amendment requires a person who grants or cancels a criminal conduct authorisation under new section 7A of the Regulation of Investigatory Powers (Scotland) Act 2000 to give notice to a Judicial Commissioner (appointed under the Investigatory Powers Act 2016). It provides for when and how the notice must be given and requires that it contains certain information. The references in the new clause to the grant of an authorisation include the renewal of an authorisation (see section 19(5) of the 2000 Act).

BARONESS WILLIAMS OF TRAFFORD

38 Page 8, line 37, at end insert –

“PART 2

CORRESPONDING AMENDMENTS TO THE REGULATION OF INVESTIGATORY POWERS
(JUVENILES) (SCOTLAND) ORDER 2002

- 9 The Regulation of Investigatory Powers (Juveniles) (Scotland) Order 2002 (S.S.I. 2002/206) is amended as follows.
- 10 In article 2 (interpretation) –
 - (a) in the definition of “relevant investigating authority”, after “authority” insert “, in relation to an authorisation under section 7 of the 2000 Act,”;

Schedule 1 - continued

(b) after that definition insert—

““relevant investigating authority”, in relation to an authorisation under section 7A of the 2000 Act, means the public authority, or (as the case may be) one of the public authorities, for whose benefit the activities as a source of the source to whom the authorisation relates are to take place;

“relevant person”, in relation to an authorisation under section 7A of the 2000 Act, means a person holding an office, rank or position with a relevant investigating authority in relation to the authorisation;”.

11 Before article 3 insert—

“Authorisations under section 7 of the 2000 Act”

12 In article 3 (sources under 16: prohibition), after “authorisation” insert “under section 7 of the 2000 Act”.

13 In article 5 (sources under 18: risk assessments etc.), after “An authorisation” insert “under section 7 of the 2000 Act”.

14 In article 6 (sources under 18: duration of authorisations), after “an authorisation” insert “under section 7 of the 2000 Act”.

15 After article 6 insert—

“Authorisations under section 7A of the 2000 Act

7 Sources under 16: prohibition

(1) No authorisation under section 7A of the 2000 Act may be granted authorising criminal conduct in the course of, or otherwise in connection with, the conduct of a source if—

(a) the source is under the age of 16; and

(b) the relationship to which the relevant conduct would relate is between the source and—

(i) the source’s parent, or

(ii) any person who has parental responsibility for the source.

(2) “The relevant conduct” means the conduct of the source which the authorised conduct would be in the course of or otherwise in connection with.

8 Sources under 18: additional requirements

(1) An authorisation under section 7A of the 2000 Act may not be granted or renewed in any case where the source to whom the authorisation relates is under the age of 18 at the time of the grant or renewal unless the person granting or renewing the authorisation—

(a) has considered the relevant risks;

(b) is satisfied that they have been properly explained to and understood by the source;

(c) has taken into account the need to safeguard and promote the best interests of the source as a primary consideration;

Schedule 1 - continued

- (d) has considered whether the relationship to which the relevant conduct would relate is between the source and—
 - (i) a relative or guardian of the source, or
 - (ii) a person who has for the time being assumed responsibility for the source’s welfare;
 - (e) where the relationship would so relate, has taken that fact into account as a particular consideration; and
 - (f) is satisfied that there are exceptional circumstances which justify the authorisation.
- (2) For the purposes of paragraph (1)(f), “exceptional circumstances which justify the authorisation” means circumstances where—
- (a) having considered the relevant risks, and
 - (b) having taken into account the matters mentioned in paragraph (1)(c) and, where applicable, in paragraph (1)(e),
- the person granting or renewing the authorisation is satisfied that taking the relevant risks is justified.
- (3) For the purposes of paragraphs (1)(a) and (2), “the relevant risks” are the risks to the source identified in an appropriate risk assessment.
- (4) “An appropriate risk assessment” means an assessment made, and in the case of a renewal updated, by a relevant person which is sufficient to demonstrate that—
- (a) the nature and magnitude of any risk of physical injury to the source arising in the course of, or as result of, the conduct authorised by the authorisation have been identified and evaluated; and
 - (b) the nature and magnitude of any risk of psychological distress to the source arising in the course of, or as result of, the conduct authorised by the authorisation have been identified and evaluated.
- (5) In paragraph (1)(d) “the relevant conduct” has the same meaning as in article 7.

9 Sources under 18: arrangements regarding best interests of the source

Where the source to whom an authorisation under section 7A of the 2000 Act relates is under the age of 18, the arrangements referred to in section 7A(4)(c) of the 2000 Act must be such that there is at all times a relevant person who has responsibility for safeguarding and promoting the best interests of the source.

10 Sources under 18: arrangements for meetings

- (1) Where the source to whom an authorisation under section 7A of the 2000 Act relates is under the age of 18, the arrangements referred to in section 7A(4)(c) of the 2000 Act must be such that—

Schedule 1 - continued

- (a) there is, at all times when the source is under the age of 16, a relevant person who has responsibility for ensuring that an appropriate adult is present at all meetings in relation to the authorisation which take place between the source and a person representing a relevant investigating authority; and
- (b) there is, at all times when the source is 16 or 17 years old, a relevant person who has responsibility for –
 - (i) deciding, in the case of each meeting in relation to the authorisation which takes place between the source and a person representing a relevant investigating authority, whether an appropriate adult should be present at the meeting,
 - (ii) considering (among other matters), in reaching that decision, the maturity of the source and their ability to give informed consent, and
 - (iii) maintaining a record of the reasons for the decision in the case of each such meeting where the decision is that an appropriate adult should not be present.
- (2) In this article, “appropriate adult” means –
 - (a) the parent or guardian of the source;
 - (b) any other person who has for the time being assumed responsibility for the source’s welfare; or
 - (c) where no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is neither a member of, nor employed by, a relevant investigating authority.

11 Sources under 18: duration of authorisations

In relation to an authorisation under section 7A of the 2000 Act where the source to whom the authorisation relates is under the age of 18 at the time the authorisation is granted or renewed, section 19(3) of the 2000 Act is to have effect as if the period specified in paragraph (b) of that subsection were 1 month instead of 12 months.”

- 16 The amendments made by this Part to the Regulation of Investigatory Powers (Juveniles) (Scotland) Order 2002 (S.S.I. 2002/206) are to be treated as having been made under section 7A(4)(c) or (9) or 19(8) of the Regulation of Investigatory Powers (Scotland) Act 2000 as the case may be (and may be amended or revoked under those powers accordingly).”

Member’s explanatory statement

This amendment makes amendments to the Regulation of Investigatory Powers (Juveniles) (Scotland) Order 2002 (S.S.I. 2002/206) to add safeguards in relation to the grant or renewal of a criminal conduct authorisation under new section 7A of RIP(S)A in relation to a covert human intelligence source who is under the age of 18. The provision made could otherwise be made by order under new section 7A(4)(c) or (9) or 19(8) of RIP(S)A and the new clause therefore avoids the need for an initial order to be made under those powers.

Clause 4

BARONESS WILLIAMS OF TRAFFORD

39 Page 5, line 7, after “grant” insert “or renew”

Member’s explanatory statement*This amendment extends new section 229(4A) of the Investigatory Powers Act 2016 to ensure that it also covers review of the exercise of the power to renew criminal conduct authorisations.*

40 Page 5, line 10, at end insert –

“(4B) In keeping under review the exercise of the powers mentioned in subsection (4A), the Investigatory Powers Commissioner must, in particular, keep under review whether public authorities are complying with any requirements imposed on them by virtue of –

- (a) Part 2 of the Regulation of Investigatory Powers Act 2000, or
- (b) the Regulation of Investigatory Powers (Scotland) Act 2000,

in relation to juvenile criminal conduct authorisations.

- (4C) For the purposes of subsection (4B), “a juvenile criminal conduct authorisation” is an authorisation under section 29B of the Regulation of Investigatory Powers Act 2000 or section 7A of the Regulation of Investigatory Powers (Scotland) Act 2000 where the covert human intelligence source to whom the authorisation relates is under the age of 18.”

Member’s explanatory statement*This amendment requires that the Investigatory Powers Commissioner must in particular keep under review whether public authorities are complying with any requirements imposed on them by virtue of Part 2 of RIPA or RIP(S)A in relation to the grant or renewal of juvenile criminal conduct authorisations.*

41 Page 5, line 13, after “grant” insert “or renew”

Member’s explanatory statement*This amendment extends new section 234(2)(ba) of the Investigatory Powers Act 2016 to ensure that it also covers the reporting of information about the use of the power to renew criminal conduct authorisations.***After Clause 4**

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

42 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.

After Clause 4 - continued

- (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.
- (5) Where the Judicial Commissioner refuses to approve the grant of the authorisation, the Judicial Commissioner may quash the authorisation.
- (6) This subsection applies to all authorisations pertaining to sensitive journalistic information, material or communications data, other than when the authorising officer has a reasonable belief that any delay in the authorisation would cause an immediate threat to life, in which case the authorisation may only be granted—
 - (a) by an official at a senior level in the agency concerned, and
 - (b) where appropriate safeguards relating to the handling, retention, use and disclosure of the material are in place.
- (7) The Secretary of State may by regulations made by statutory instrument determine the appropriate agency under subsection (6)(a).
- (8) A statutory instrument containing regulations under subsection (7) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (9) Any authorisation granted under subsection (6) must be reported to the Investigatory Powers Commissioner within seven days, specifying any sensitive journalistic information, material or communications data that has been obtained, or retained other than for purposes of destruction.
- (10) In this section “journalistic material” means material created or acquired for the purposes of journalism.”

After Clause 4 - continued

LORD PADDICK
BARONESS HAMWEE

43 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.
- (3) 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.
- (4) The review must –
 - (a) be commenced within the period of six months beginning with the day on which this Act is passed; and
 - (b) be published within two months of completion.”

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 ANDERSON OF IPSWICH
LORD ROSSER
LORD BUTLER OF BROCKWELL
LORD MACKAY OF CLASHFERN

44 Page 9, line 9, at end insert –

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

Member's explanatory statement

This amendment is in consequence of the new clause which inserts section 32C of the Regulation of Investigatory Powers Act 2000 on judicial notification.

LORD PADDICK
BARONESS HAMWEE

45★ Page 10, line 12, leave out paragraph 8

Member's explanatory statement

This amendment is consequential to the amendment limiting the number of authorities which can authorise criminal conduct authorisations.

LORD ANDERSON OF IPSWICH
LORD ROSSER
LORD BUTLER OF BROCKWELL
LORD MACKAY OF CLASHFERN

46 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,
- (b) the Regulation of Investigatory Powers (Scotland) Act 2000, and
- (c) 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.”

Member's explanatory statement

This amendment 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.

Clause 6

LORD PADDICK
BARONESS HAMWEE

47 Page 5, line 21, leave out “section 7” and insert “sections (*Review of criminal conduct authorisations*) and 7”

Member's explanatory statement

This amendment is consequential on the new clause "Review of criminal conduct authorisations".

- 48 Page 5, line 23, after “day” insert “after the publication of the review provided for by section (*Review of criminal conduct authorisations*)”

Member’s explanatory statement

This amendment is consequential on the new clause "Review of criminal conduct authorisations".

Clause 7

BARONESS WILLIAMS OF TRAFFORD

- 49 Page 5, line 36, after “Parliament” insert “or an instrument made under such an Act”

Member’s explanatory statement

This amendment is consequential on the Government amendment to Schedule 1 which adds to that Schedule amendments to the Regulation of Investigatory Powers (Juveniles)(Scotland) Order 2002 (S.S.I. 2002/206).

Covert Human Intelligence Sources (Criminal Conduct) Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

6 January 2021
