

# Covert Human Intelligence Sources (Criminal Conduct) Bill

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RUNNING LIST OF ALL  
AMENDMENTS ON REPORT  
Tabled up to and including

**5 January 2021**

[Sheets HL Bill 144(Corr) – R(a) to (c)]

## Clause 1

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

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.*

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

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.*

LORD DUBS  
BARONESS MASSEY OF DARWEN  
LORD ROSSER  
LORD CORMACK

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

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

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.*

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.*

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.*

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

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

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.*

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 MASSEY OF DARWEN  
LORD DUBS  
LORD CORMACK

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;
  - (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;

**Clause 1 - continued**

“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

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

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

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.

**Clause 1 - continued**

- (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.”

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

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.”

Page 3, line 9, at end insert—

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

LORD DUBS  
BARONESS MASSEY OF DARWEN  
LORD ROSSER

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—

**Clause 1 - continued**

- (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).”

**After Clause 1**

BARONESS WILLIAMS OF TRAFFORD

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,”;



**After Clause 1 - continued**

(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;”.

(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;

**After Clause 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) 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
  - (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—

**After Clause 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; 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**

BARONESS MASSEY OF DARWEN  
LORD DUBS  
LORD PADDICK

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

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.*

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

Page 4, leave out lines 18 to 23

**After Clause 2**

LORD PADDICK  
BARONESS HAMWEE

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.”

**After Clause 2 - continued**

- (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

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).*

**Clause 3**

BARONESS WILLIAMS OF TRAFFORD

Page 4, line 26, leave out from “contains” to the 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).*

**Clause 4**

BARONESS WILLIAMS OF TRAFFORD

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.*

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.*

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

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.
- (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).

**After Clause 4 - continued**

- (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.”

LORD PADDICK  
BARONESS HAMWEE

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.*



**Clause 6**

LORD PADDICK  
BARONESS HAMWEE

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".*

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

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).*

**Schedule 1**

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

Page 7, line 9, 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 ANDERSON OF IPSWICH  
LORD ROSSER  
LORD BUTLER OF BROCKWELL  
LORD MACKAY OF CLASHFERN

Page 8, line 18, at end insert—

*“Notification to Judicial Commissioner*

6A After section 17 insert—

**Schedule 1 - continued****“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

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,”;
  - (b) after that definition insert—

**Schedule 1 - continued**

““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;
- (d) has considered whether the relationship to which the relevant conduct would relate is between the source and—

**Schedule 1 - continued**

- (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 –
- (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 –

**Schedule 1 - continued**

- (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.*

## Schedule 2

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

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.*

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.*