

Covert Human Intelligence Sources (Criminal Conduct) Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

Clause 1

LORD PADDICK
BARONESS HAMWEE

Page 1, line 10, leave out “in the course of, or otherwise in connection with, the conduct of” and insert “by”

Member’s explanatory statement

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

Page 1, line 14, leave out “in the course of, or otherwise in connection with, the conduct of” and insert “by”

Member’s explanatory statement

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

Page 1, line 18, leave out “, is in the course of, or is otherwise in connection with,”

Member’s explanatory statement

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

Page 1, line 23, leave out “in the course of, or otherwise in connection with, the conduct of” and insert “by”

Member’s explanatory statement

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

LORD DUBS
BARONESS MASSEY OF DARWEN

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).

LORD PADDICK
BARONESS HAMWEE

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

Member’s explanatory statement

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

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

Member’s explanatory statement

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

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.

LORD DUBS
BARONESS MASSEY OF DARWEN

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

Member’s explanatory statement

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

LORD PADDICK
BARONESS HAMWEE

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

Member’s explanatory statement

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

Page 2, line 30, at end insert “so far as those interests are also relevant to the interests of national security”

Member’s explanatory statement

This would only allow a criminal conduct authorisation to be granted on economic grounds if it is also relevant to the interests of national security.

Page 2, line 30, at end insert –

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

Member’s explanatory statement

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

Page 2, line 30, at end insert –

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

(5B) Those tests are –

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

Member’s explanatory statement

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

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

Member’s explanatory statement

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

Page 2, line 33, leave out “reasonably”

Member’s explanatory statement

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

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

Member's explanatory statement

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

Page 2, line 37, at end insert –

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

Member's explanatory statement

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

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

Member's explanatory statement

This amendment would preclude immunity from prosecution for past conduct.

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

Member's explanatory statement

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

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

Member's explanatory statement

To probe the meaning of the phrase.

LORD HODGSON OF ASTLEY ABBOTTS

As an amendment to the amendment to page 3, line 2 in the name of Lord Rosser published on 12 November (HL Bill 144(a))

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

LORD PADDICK
BARONESS HAMWEE

Page 3, line 2, at end insert –

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

Member's explanatory statement

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

LORD DAVIES OF GOWER

Page 3, line 2, at end insert—

“(8A) A person may grant a criminal conduct authorisation to authorise criminal conduct that has already been committed if the following requirements are met—

- (a) the conduct by or in relation to the person who is specified or described as the covert human intelligence source to whom the authorisation relates was necessary on grounds falling within subsection (5), in the view of the person granting the authorisation, to avert or mitigate a threat to the physical safety of the person specified or described as the covert human intelligence source, or to avert or mitigate a threat to the physical safety of some other person engaged in the conduct;
- (b) the conduct was brought to the attention of the authorising officer immediately or at the first available opportunity, by the person who is specified or described as the covert human intelligence source to whom the authorisation relates;
- (c) the person granting the authorisation is satisfied that the threat to the physical safety of the person specified or described as the covert human intelligence source, or a threat to some other person engaged in the conduct, could not have reasonably been averted or sufficiently mitigated by other conduct which would not have constituted crime.

(8B) Subsection (8A)(c) is without prejudice to the need to take into account other matters so far as they are relevant (for example, the requirements of the Human Rights Act 1998).”

LORD PADDICK
BARONESS HAMWEE

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

Member’s explanatory statement

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

LORD DUBS
BARONESS MASSEY OF DARWEN

Page 3, line 16, at end insert—

“29C Approval for criminal conduct authorisations

- (1) This section applies where an authorisation has been granted under section 29B.
- (2) Unless the authorisation is an urgent authorisation, the authorisation has no effect until such time (if any) as a Judicial Commissioner has approved the grant of the authorisation.
- (3) If the authorisation is an urgent authorisation—
 - (a) it is effective when granted; but

Clause 1 - continued

- (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).”

LORD PADDICK
BARONESS HAMWEE

Page 3, line 16, at end insert—

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

Member’s explanatory statement

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

Clause 2

LORD PADDICK
BARONESS HAMWEE

Page 4, leave out line 16

Member's explanatory statement

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

Clause 4

LORD HUNT OF KINGS HEATH

Page 5, line 16, at end insert –

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

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

(13) The Investigatory Powers Commissioner must exclude anything from the information that the Commissioner considers –

- (a) would be against the interests of national security, or
- (b) might jeopardise the safety of any person.

(14) The local policing body must invite the chief officer of police to submit comments on the information to the body before such date as it may specify.

(15) The local policing body must prepare comments on the information and must arrange for –

- (a) its comments,
- (b) any comments submitted by the chief officer of police, and
- (c) any response which the body has to the comments submitted by the chief officer of police,

to be reported back to the Investigatory Powers Commissioner within a timescale set by the Commissioner.””

Clause 6

LORD PADDICK
BARONESS HAMWEE

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

Member's explanatory statement

This amendment is consequential.

Covert Human Intelligence Sources (Criminal Conduct) Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

18 November 2020
