

Covert Human Intelligence Sources (Criminal Conduct) Bill

RUNNING LIST OF ALL
AMENDMENTS IN COMMITTEE OF THE WHOLE HOUSE

Tabled up to and including

18 November 2020

[Sheets HL Bill 144(*Corrected*)(a) to (e)]

Clauses 1 to 3
Schedule 1
Clauses 4 and 5

Schedule 2
Clauses 6 and 7
Title

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.

BARONESS CHAKRABARTI
LORD PADDICK
BARONESS RITCHIE OF DOWNPATRICK
BARONESS WARSI

Page 1, line 17, leave out paragraph (a)

Member’s explanatory statement

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

LORD PADDICK
BARONESS HAMWEE

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.

BARONESS CHAKRABARTI
LORD PADDICK
BARONESS RITCHIE OF DOWNPATRICK
BARONESS WARSI

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 PADDICK
BARONESS HAMWEE

Page 1, line 19, at end insert –

“(3A) In section 27(2) of that Act insert –

“(c) is not criminal conduct authorised in accordance with the Covert Human Intelligence Sources (Criminal Conduct) Act 2020.”

Member’s explanatory statement

This amendment will ensure that victims of crimes authorised under this Bill can seek civil redress.

BARONESS RITCHIE OF DOWNPATRICK

Page 1, line 19, at end insert –

“(3A) In section 27(3) of that Act (lawful surveillance etc.), after “Part” insert “(other than conduct authorised under section 29B)”.

Member's explanatory statement

The effect of this amendment is that criminal conduct authorisations would not be encompassed by the provisions of subsection 27(3) RIPA which expressly provides that "The conduct that may be authorised under this Part includes conduct outside the United Kingdom."

LORD PADDICK
BARONESS HAMWEE

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.

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

Page 2, line 11, at end insert –

- "(2A) The granting of criminal conduct authorisations under subsection (1) may not take place until a warrant has been issued by a judge.
- (2B) An application to a judge under subsection (2A) must be made in writing and be accompanied by an affidavit of the person granting the criminal conduct authorisation which sets out –
- (a) the facts relied on to justify the belief, on reasonable grounds, that a warrant under this section is required;
 - (b) the persons or classes of persons to whom the warrant is proposed to be directed;
 - (c) a general description of the place where the warrant is proposed to be executed, if a general description of that place can be given;
 - (d) the period, not exceeding sixty days or one year, as the case may be, for which the warrant is requested to be in force; and

Clause 1 - continued

- (e) any previous application made under subsection (2A) in relation to a person who is identified in the application for the warrant, the date on which each such application was made, the name of the judge to whom it was made and the judge's decision on it."

Member's explanatory statement

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

LORD HAIN
BARONESS KENNEDY OF THE SHAW
LORD CORMACK
BARONESS WHEATCROFT

Page 2, line 11, at end insert—

- “(2A) The granting of criminal conduct authorisations under subsection (1) may not take place until a warrant has been issued by the Secretary of State.”

LORD PADDICK
BARONESS HAMWEE

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

Member's explanatory statement

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

LORD ANDERSON OF IPSWICH

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 20, leave out “that”

Member's explanatory statement

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

LORD ROSSER
LORD KENNEDY OF SOUTHWARK
BARONESS JONES OF MOULSECOOMB

Page 2, line 21, after “conduct” insert “, taking into account—

- (i) balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or harm;

Clause 1 - continued

- (ii) explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
- (iii) whether the conduct to be authorised will have any implications for the privacy of others, and an explanation of why (if relevant) it is nevertheless proportionate to proceed with the operation;
- (iv) evidence, as far as reasonably practicable, of what other methods had been considered and why they were not implemented, or have been implemented unsuccessfully; and
- (v) whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the information sought;

Member's explanatory statement

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

LORD PADDICK
BARONESS HAMWEE

Page 2, line 22, leave out “that”

Member's explanatory statement

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

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

Member's explanatory statement

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

LORD HENDY
LORD HAIN

Page 2, line 27, leave out paragraphs (b) and (c) and insert—

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

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

Member's explanatory statement

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

LORD PADDICK
BARONESS HAMWEE

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

Member's explanatory statement

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

BARONESS JONES OF MOULSECOOMB

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

Member's explanatory statement

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

LORD DUBS

BARONESS MASSEY OF DARWEN

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.

LORD ROSSER

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

Page 2, line 30, at end insert—

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

Member's explanatory statement

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

LORD PADDICK
BARONESS HAMWEE

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.

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

Page 2, line 37, at end insert –

- “(7A) Criminal conduct authorisation for a covert human intelligence source may not be given if its purpose is to compile lists which –
- (a) contain details of members of trade unions, or persons who have taken part in the activities of trade unions, and
 - (b) are compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment, or in relation to the treatment of workers.”

Member’s explanatory statement

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

LORD PADDICK
BARONESS HAMWEE

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.

BARONESS CHAKRABARTI
LORD PADDICK
BARONESS RITCHIE OF DOWNPATRICK
BARONESS WARSI

Page 3, line 2, at end insert “; and

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

Member’s explanatory statement

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

LORD CORMACK
LORD HAIN
BARONESS JONES OF MOULSECOOMB

Page 3, line 2, at end insert —

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

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

Page 3, line 2, at end insert —

- “() A criminal conduct authorisation may not be granted to a covert human intelligence source under the age of 18”.

Member’s explanatory statement

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

LORD ROSSER
LORD KENNEDY OF SOUTHWARK
BARONESS JONES OF MOULSECOOMB

Page 3, line 2, at end insert —

- “(8A) Nothing in this section authorises—
 - (a) causing, intentionally or by criminal negligence, death or bodily harm to an individual;
 - (b) wilfully attempting in any manner to obstruct, pervert or defeat the course of justice;
 - (c) violating the sexual integrity of an individual;
 - (d) subjecting an individual to torture or cruel, inhuman or degrading treatment or punishment, within the meaning of the Convention Against Torture;
 - (e) detaining an individual; or

Clause 1 - continued

- (f) causing the loss of, or any serious damage to, any property if doing so would endanger the safety of an individual.”

Member’s explanatory statement

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

LORD HODGSON OF ASTLEY ABBOTTS

As an amendment to 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 ANDERSON OF IPSWICH

LORD BUTLER OF BROCKWELL

LORD CARLILE OF BERRIEW

BARONESS MANNINGHAM-BULLER

Page 3, line 2, at end insert –

- “(8A) Where a person grants a criminal conduct authorisation, that person must give notice of that authorisation to the Investigatory Powers Commissioner.
- (8B) A notice under subsection (8A) must –
- (a) be given in writing;
 - (b) be given as soon as reasonably practicable, and in any event within seven days of the grant; and
 - (c) include the matters specified in subsection (8C).
- (8C) Where a person gives notice under subsection (8A) in respect of the granting of a criminal conduct authorisation, the notice must specify –
- (a) the grounds on which the person giving the notice believes the matters specified in subsection (4) are satisfied; and
 - (b) the conduct that is, or is to be authorised under subsection (8).
- (8D) Any notice that is required by subsection (8A) to be given in writing may be given, instead, by being transmitted by electronic means.”

Member’s explanatory statement

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

BARONESS MCINTOSH OF PICKERING

Page 3, line 2, at end insert –

- “() Where criminal conduct authorisations under subsection (1) are granted in relation to covert human intelligence sources under the age of 18, the provisions of the United Nations Convention on the Rights of the Child apply.”

Clause 1 - continued

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 HODGSON OF ASTLEY ABBOTTS

Page 3, leave out lines 10 to 16

Member’s explanatory statement

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

LORD PADDICK
BARONESS HAMWEE

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
 - (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

Clause 1 - continued

“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.

After Clause 1

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

Insert the following new Clause –

“Criminal conduct authorisations: Granting to children and vulnerable sources

After section 29B of the Regulation of Investigatory Powers Act 2000 (inserted by section 1) 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),
 - (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

After Clause 1 - continued

- (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 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 the Modern Slavery Act 2015 (meaning of exploitation).
- (7) The “exceptional circumstances” in subsection (2) include—
 - (a) where the criminal conduct authorisation is necessary to protect life and limb, including in relation to the covert human intelligence source; and
 - (b) where the criminal conduct authorisation is necessary on the grounds of national security.”

Member’s explanatory statement

This new Clause would provide additional safeguards for children or vulnerable people who are operating as CHIS, including the use of appropriate adults and a higher threshold for the granting of criminal conduct authorisations.

Clause 2

LORD PADDICK
BARONESS HAMWEE

Page 4, leave out lines 10 to 23

Member’s explanatory statement

This amendment would restrict the authorities that can grant criminal conduct authorisations to police forces, the National Crime Agency, the Serious Fraud Office and the intelligence services.

LORD CORMACK

Page 4, leave out line 15

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.

LORD CORMACK

Page 4, leave out lines 19 and 20

Clause 2 - continued

BARONESS MCINTOSH OF PICKERING

Page 4, leave out line 20

Page 4, leave out line 22

LORD CORMACK

Page 4, leave out lines 22 and 23

BARONESS MCINTOSH OF PICKERING

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

After Clause 2

LORD ROSSER

LORD KENNEDY OF SOUTHWARK

Insert the following new Clause—

“Redress for innocent victims

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

Member’s explanatory statement

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

Schedule 1

LORD ANDERSON OF IPSWICH

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

Member’s explanatory statement

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

LORD ANDERSON OF IPSWICH

LORD BUTLER OF BROCKWELL

LORD CARLILE OF BERRIEW

BARONESS MANNINGHAM-BULLER

Page 7, line 34, at end insert—

- “(7A) Where a person grants a criminal conduct authorisation, that person must give notice of that authorisation to the Investigatory Powers Commissioner.

Schedule 1 - continued

- (7B) A notice under subsection (7A) must—
- (a) be given in writing;
 - (b) be given as soon as reasonably practicable, and in any event within seven days of the grant; and
 - (c) include the matters specified in subsection (7C).
- (7C) Where a person gives notice under subsection (7A) in respect of the granting of a criminal conduct authorisation, the notice must specify—
- (a) the grounds on which the person giving the notice believes the matters specified in subsection (4) are satisfied; and
 - (b) the conduct that is, or is to be authorised under subsection 7.
- (7D) Any notice that is required by subsection (7A) to be given in writing may be given, instead, by being transmitted by electronic means.”

LORD HODGSON OF ASTLEY ABBOTTS

Page 7, leave out lines 43 to 49

Member’s explanatory statement

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

Clause 4

LORD ROSSER

LORD KENNEDY OF SOUTHWARK

Page 5, line 10, at end insert—

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

Member’s explanatory statement

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

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—

Clause 4 - continued

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

After Clause 4

BARONESS CLARK OF KILWINNING
 BARONESS WHITAKER
 BARONESS JONES OF MOULSECOOMB

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, on an application under this section, the Judicial Commissioner refuses to approve the grant of the authorisation, the Judicial Commissioner may quash the authorisation.

After Clause 4 - continued

- (6) In this section “journalistic material” means material created or acquired for the purposes of journalism.”

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

Insert the following new Clause—

“Equality Impact Assessment

- (1) The Secretary of State must prepare and publish an annual equality impact assessment on the use of criminal conduct authorisations on covert operations involving women, children and Black, Asian and minority ethnic communities.
- (2) A Minister of the Crown must, not later than three months after the report has been laid before Parliament, move a motion in the House of Commons in relation to the report.”

Member’s explanatory statement

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

Schedule 2

LORD PADDICK
BARONESS HAMWEE

Page 10, leave out lines 20 to 30

Member’s explanatory statement

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

Clause 6

BARONESS JONES OF MOULSECOOMB

Page 5, line 25, at end insert—

- “() Regulations may not be made under this section until—
- (a) the Undercover Policing Inquiry has published its final report, and
- (b) the Secretary of State has laid before both Houses of Parliament a paper detailing actions that will be taken in response to the Inquiry's report with regard to criminal conduct authorisations in relation to covert human intelligence sources.”

Member’s explanatory statement

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

LORD PADDICK
BARONESS HAMWEE

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

Member's explanatory statement
This amendment is consequential.