

Covert Human Intelligence Sources (Criminal Conduct) Bill

RUNNING LIST OF ALL AMENDMENTS IN COMMITTEE OF THE WHOLE HOUSE

Tabled up to and including

16 November 2020

[Sheets HL Bill 144(a) to (c)]

Clauses 1 to 3
Schedule 1
Clauses 4 and 5

Schedule 2
Clauses 6 and 7
Title

Clause 1

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.

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 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
- (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 SHAWES
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

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

- (i) balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or harm;
- (ii) explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
- (iii) whether the conduct to be authorised will have any implications for the privacy of others, and an explanation of why (if relevant) it is nevertheless proportionate to proceed with the operation;
- (iv) evidence, as far as reasonably practicable, of what other methods had been considered and why they were not implemented, or have been implemented unsuccessfully; and

Clause 1 - continued

- (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 30, at end insert "in the event that national security is threatened"

Member's explanatory statement

This would only allow a criminal conduct authorisation to be granted on economic grounds if national security is threatened.

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

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 ROSSER
LORD KENNEDY OF SOUTHWARK
LORD HAIN

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.

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

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
BARONESS JONES OF MOULSECOOMB
THE LORD BISHOP OF DURHAM

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

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
 - (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 ANDERSON OF IPSWICH
LORD BUTLER OF BROCKWELL
LORD CARLILE OF BERRIEW

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 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.

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.

After Clause 1 - continued

- (3) Where a criminal conduct authorisation is granted for a source to whom subsection (1) applies, the arrangements referred to in section 29(2)(c) of this Act must be such that there is at all times a person holding an office, rank or position with a relevant investigating authority who has responsibility for ensuring that an appropriate adult is present at all meetings between the source and a person representing any relevant investigating authority.
- (4) In subsection (3) “appropriate adult” means—
 - (a) the parent or guardian of the source;
 - (b) any other person who has for the time being assumed responsibility for his or her welfare; or
 - (c) where no person falling within paragraph (a) or (b) is available, 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 11 to 24

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 16

Page 4, leave out lines 20 and 21

Page 4, leave out lines 23 and 24

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

Page 7, line 34, at end insert –

- “(7A) Where a person grants a criminal conduct authorisation, that person must give notice of that authorisation to the Investigatory Powers Commissioner.
- (7B) A notice under subsection (7A) must –
 - (a) be given in writing;
 - (b) be given as soon as 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

Schedule 1 - continued

- (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.”

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.

After Clause 4

BARONESS CLARK OF KILWINNING
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.

After Clause 4 - continued

- (5) Where, on an application under this section, the Judicial Commissioner refuses to approve the grant of the authorisation, the Judicial Commissioner may quash the authorisation.
- (6) In this section “journalistic material” means material created or acquired for the purposes of journalism.”

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

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.