

Covert Human Intelligence Sources (Criminal Conduct) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, have been ordered to be published as HL Bill 144 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Baroness Williams of Trafford has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Covert Human Intelligence Sources (Criminal Conduct) Bill are compatible with the Convention rights.

Covert Human Intelligence Sources (Criminal Conduct) Bill

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TO

Make provision for, and in connection with, the authorisation of criminal conduct in the course of, or otherwise in connection with, the conduct of covert human intelligence sources.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Criminal conduct authorisations

1 Authorisation of criminal conduct

- (1) Section 26 of the Regulation of Investigatory Powers Act 2000 (conduct to which Part 2 of that Act applies) is amended in accordance with subsections (2) and (3). 5
- (2) In subsection (1)—
- (a) omit the “and” at the end of paragraph (b);
 - (b) at the end of paragraph (c) insert “; and
 - (d) criminal conduct in the course of, or otherwise in connection with, the conduct of covert human intelligence sources”. 10
- (3) After subsection (8) insert—
- “(8A) In this Part references to criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source are references to any conduct that—
- (a) disregarding this Part, would constitute crime, and
 - (b) consists of, is in the course of, or is otherwise in connection with, the conduct of a covert human intelligence source.” 15
- (4) In section 29 of that Act (authorisation of covert human intelligence sources), after subsection (6) insert— 20
- “(6ZA) An authorisation for the conduct or the use of a covert human intelligence source does not authorise any criminal conduct in the

course of, or otherwise in connection with, the conduct of a covert human intelligence source (but see section 29B for provision for the authorisation of such conduct).”

(5) After section 29A of that Act insert –

- “29B Covert human intelligence sources: criminal conduct authorisations** 5
- (1) Subject to the following provisions of this Part, the persons designated for the purposes of this section each have power to grant criminal conduct authorisations.
- (2) A “criminal conduct authorisation” is an authorisation for criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source. 10
- (3) A criminal conduct authorisation may only be granted in relation to a covert human intelligence source after, or at the same time as, an authorisation under section 29 which authorises the conduct or the use of the covert human intelligence source concerned. 15
- (4) A person may not grant a criminal conduct authorisation unless the person believes –
- (a) that the authorisation is necessary on grounds falling within subsection (5);
 - (b) that the authorised conduct is proportionate to what is sought to be achieved by that conduct; and 20
 - (c) that arrangements exist that satisfy such requirements as may be imposed by order made by the Secretary of State.
- (5) A criminal conduct authorisation is necessary on grounds falling within this subsection if it is necessary – 25
- (a) in the interests of national security;
 - (b) for the purpose of preventing or detecting crime or of preventing disorder; or
 - (c) in the interests of the economic well-being of the United Kingdom. 30
- (6) In considering whether the requirements in subsection (4)(a) and (b) are satisfied, the person must take into account whether what is sought to be achieved by the authorised conduct could reasonably be achieved by other conduct which would not constitute crime.
- (7) Subsection (6) 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). 35
- (8) The conduct that is authorised by a criminal conduct authorisation is any conduct that –
- (a) is comprised in any activities – 40
 - (i) which involve criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source, and
 - (ii) are specified or described in the authorisation;
 - (b) consists in conduct by or in relation to the person who is so specified or described as the covert human intelligence source to whom the authorisation relates; and 45

- (c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.
- (9) If an authorisation under section 29, which authorises the conduct or the use of a covert human intelligence source to whom a criminal conduct authorisation relates, ceases to have effect, the criminal conduct authorisation also ceases to have effect so far as it relates to that covert human intelligence source (but this is without prejudice to whether the criminal conduct authorisation continues to have effect so far as it relates to any other covert human intelligence source). 5
- (10) The Secretary of State may by order – 10
- (a) prohibit the authorisation under this section of any such conduct as may be described in the order; and
- (b) impose requirements, in addition to those provided for by subsections (3) and (4), that must be satisfied before an authorisation is granted under this section for any such conduct as may be so described.” 15

Authorising authorities

2 Authorities to be capable of authorising criminal conduct

- (1) Section 30 of the Regulation of Investigatory Powers Act 2000 (persons entitled to grant authorisations under sections 28 and 29 of that Act) is amended in accordance with subsections (2) to (8). 20
- (2) In the heading, for “and 29” substitute “, 29 and 29B”.
- (3) In subsection (1), for “and 29” substitute “, 29 and 29B”.
- (4) In subsection (2)(a), for “or 29” substitute “, 29 or 29B”.
- (5) In subsection (3)(a), for “and 29” substitute “, 29 and 29B”. 25
- (6) In subsection (4) –
- (a) in paragraph (a), for “I or II” substitute “A1, 1 or 2”;
- (b) omit the “and” at the end of paragraph (a);
- (c) in paragraph (b), for “I” substitute “A1 or 1”;
- (d) at the end of paragraph (b) insert “; and” 30
- (c) in relation to section 29B if it is specified in Part A1 of that Schedule”.
- (7) In subsection (5) –
- (a) in paragraph (a), for “I or II” substitute “A1, 1 or 2”;
- (b) in paragraph (c), for “the other” substitute “another”. 35
- (8) In subsection (7) –
- (a) in paragraph (a), for “I or II” substitute “A1, 1 or 2”;
- (b) in paragraph (b), for the words from “from” to the end of that paragraph substitute “from –” 40
- (i) Part 1 or 2 to Part A1 of that Schedule, or
- (ii) Part 2 to Part 1 of that Schedule,”.

- (9) In Schedule 1 to that Act (relevant public authorities for the purposes of Part 2 of that Act), before Part 1 (relevant authorities for the purposes of sections 28 and 29 of that Act) insert—

“PART A1

RELEVANT AUTHORITIES FOR THE PURPOSES OF SS. 28, 29 AND 29B

Police forces etc

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A1 Any police force.

B1 The National Crime Agency.

C1 The Serious Fraud Office.

The intelligence services

D1 Any of the intelligence services.

10

The armed forces

E1 Any of Her Majesty’s forces.

Revenue and Customs

F1 Her Majesty’s Revenue and Customs.

Government departments

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G1 The Department of Health and Social Care.

H1 The Home Office.

I1 The Ministry of Justice.

Other bodies

J1 The Competition and Markets Authority.

20

K1 The Environment Agency.

L1 The Financial Conduct Authority.

M1 The Food Standards Agency.

N1 The Gambling Commission.”

Scotland

25

3 Corresponding provision for Scotland

Schedule 1 contains 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.

*Oversight by the Investigatory Powers Commissioner***4 Oversight by the Investigatory Powers Commissioner**

- (1) The Investigatory Powers Act 2016 is amended as follows.
- (2) In section 229 (main oversight functions), after subsection (4), insert—
- “(4A) In keeping matters under review in accordance with subsection (3)(e) or (g), the Investigatory Powers Commissioner must, in particular, keep under review the exercise of the power to grant authorisations under section 29B of the Regulation of Investigatory Powers Act 2000 or (as the case may be) section 7A of the Regulation of Investigatory Powers (Scotland) Act 2000 (criminal conduct authorisations).”
- (3) In section 234 (annual and other reports of the Investigatory Powers Commissioner), in subsection (2), after paragraph (b) insert—
- “(ba) information about the use of the power to grant authorisations under section 29B of the Regulation of Investigatory Powers Act 2000 or section 7A of the Regulation of Investigatory Powers (Scotland) Act 2000 (criminal conduct authorisations).”

*General and final provision***5 Consequential provision**

Schedule 2 contains consequential amendments.

6 Commencement and transitional provision

- (1) This section and section 7 come into force on the day on which this Act is passed.
- (2) The other provisions of this Act come into force on such day as the Secretary of State may by regulations appoint; and different days may be appointed for different purposes or areas.
- (3) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (4) The power to make regulations under subsection (3) includes power to make different provision for different purposes or areas.
- (5) Regulations under this section are to be made by statutory instrument.

7 Extent and short title

- (1) Subject to subsection (2), this Act extends to England and Wales, Scotland and Northern Ireland.
- (2) Any provision of this Act which amends or repeals an enactment has the same extent as the enactment amended or repealed.
- (3) In subsection (2), “enactment” includes an Act of the Scottish Parliament.
- (4) This Act may be cited as the Covert Human Intelligence Sources (Criminal Conduct) Act 2020.

SCHEDULES

SCHEDULE 1

Section 3

CORRESPONDING AMENDMENTS TO THE REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000

<i>Introductory</i>	5
1 The Regulation of Investigatory Powers (Scotland) Act 2000 (asp 11) is amended as follows.	
<i>Authorisation of criminal conduct</i>	
2 (1) Section 1 (conduct to which that Act applies) is amended as follows.	
(2) In subsection (1) –	10
(a) omit the “and” at the end of paragraph (b);	
(b) at the end of paragraph (c) insert “; and	
(d) criminal conduct in the course of, or otherwise in connection with, the conduct of covert human intelligence sources”.	15
(3) After subsection (7) insert –	
“(7A) In this Act references to criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source are references to any conduct that –	
(a) disregarding this Act, would constitute crime, and	20
(b) consists of, is in the course of, or is otherwise in connection with, the conduct of a covert human intelligence source.”	
3 In section 7 (authorisation of covert human intelligence sources), after subsection (5) insert –	
“(5A) An authorisation for the conduct or the use of a covert human intelligence source does not authorise any criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source (but see section 7A for provision for the authorisation of such conduct).”	25
4 After section 7 insert –	30
“7A Covert human intelligence sources: criminal conduct authorisations	
(1) Subject to the following provisions of this Act, the persons designated for the purposes of this section each have power to grant criminal conduct authorisations.	

- (2) A “criminal conduct authorisation” is an authorisation for criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source.
- (3) A criminal conduct authorisation may only be granted in relation to a covert human intelligence source after, or at the same time as, an authorisation under section 7 which authorises the conduct or the use of the covert human intelligence source concerned. 5
- (4) A person may not grant a criminal conduct authorisation unless that person is satisfied –
- (a) that the authorisation is necessary for the purpose of preventing or detecting crime or of preventing disorder; 10
 - (b) that the authorised conduct is proportionate to what is sought to be achieved by that conduct; and
 - (c) that arrangements exist that satisfy such requirements as may be imposed by order made by the Scottish Ministers. 15
- (5) In considering whether the requirements in subsection (4)(a) and (b) are satisfied, the person must take into account whether what is sought to be achieved by the authorised conduct could reasonably be achieved by other conduct which would not constitute crime.
- (6) Subsection (5) 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). 20
- (7) The conduct that is authorised by a criminal conduct authorisation is any conduct that –
- (a) is comprised in any activities – 25
 - (i) which involve criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source, and
 - (ii) are specified or described in the authorisation;
 - (b) consists in conduct by or in relation to the person who is so specified or described as the covert human intelligence source to whom the authorisation relates; and 30
 - (c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.
- (8) If an authorisation under section 7, which authorises the conduct or the use of a covert human intelligence source to whom a criminal conduct authorisation relates, ceases to have effect, the criminal conduct authorisation also ceases to have effect so far as it relates to that covert human intelligence source (but this is without prejudice to whether the criminal conduct authorisation continues to have effect so far as it relates to any other covert human intelligence source). 35 40
- (9) The Scottish Ministers may by order –
- (a) prohibit the authorisation under this section of any such conduct as may be described in the order; and 45
 - (b) impose requirements, in addition to those provided for by subsections (3) and (4), that must be satisfied before an authorisation is granted under this section for any such conduct as may be so described.”

Authorising authorities

- 5 (1) Section 8 (persons entitled to grant authorisations under sections 6 and 7 of that Act) is amended as follows.
- (2) In the heading, for “and 7” substitute “to 7A”.
- (3) In subsection (1), for “and 7” substitute “to 7A”. 5
- (4) In subsection (2)(a), for “and 7” substitute “to 7A”.
- (5) After subsection (3) insert –
- “(3A) A public authority is a relevant public authority for the purposes of this section in relation to section 7A above if it is –
- (a) the Police Service; or 10
- (b) the Scottish Administration.”
- (6) In subsection (4) –
- (a) after “subsection (3)” insert “or (3A)”; 15
- (b) in paragraph (a) for “that subsection” substitute “the subsection concerned”.

Police authorisations

- 6 In section 11 (rules for grant of authorisations), in subsection (1), for “or 7” substitute “, 7 or 7A”.

General rules about grant, renewal, duration and cancellation

- 7 (1) Section 19 (general rules about grant, renewal and duration) is amended as follows. 20
- (2) In subsection (3)(b), after “source” insert “or is an authorisation under section 7A”.
- (3) In subsection (6), after “source” insert “or an authorisation under section 7A”. 25
- 8 (1) Section 20 (cancellation of authorisations) is amended as follows.
- (2) In subsection (1) –
- (a) in paragraph (a), after “7(2)(a) and (b)” insert “, 7A(4)(a) and (b)”; 30
- (b) omit the “or” at the end of that paragraph;
- (c) at the end of paragraph (b) insert “; or
- (c) in the case of an authorisation under section 7A, if satisfied that any arrangements for the source’s case required to satisfy any requirements mentioned in subsection (4)(c) of that section no longer exist”.
- (3) In subsection (2), for “either” substitute “any”. 35
- (4) In subsection (2A), for “either” substitute “any”.
- (5) In subsection (2B), for “either” substitute “any”.

SCHEDULE 2

Section 5

CONSEQUENTIAL AMENDMENTS

PART 1

REGULATION OF INVESTIGATORY POWERS ACT 2000

<i>Introductory</i>	5
1 The Regulation of Investigatory Powers Act 2000 is amended as follows.	
<i>Orders under section 30 for Northern Ireland</i>	
2 In section 31 (orders under section 30 for Northern Ireland), in subsection (1), after “authorisations” insert “under section 28 or 29”.	
<i>Police and Revenue and Customs authorisations</i>	10
3 (1) Section 33 (rules for grant of authorisations) is amended as follows.	
(2) In subsection (1), for “or 29” substitute “, 29 or 29B”.	
(3) In subsection (1ZB), for “or 29” substitute “, 29 or 29B”.	
(4) In subsection (1ZC)(b), for “or 29” substitute “, 29 or 29B”.	
(5) In subsection (1A), for “or 29” substitute “, 29 or 29B”.	15
(6) In subsection (2), for “or 29” substitute “, 29 or 29B”.	
4 (1) Section 33A (further provision about granting authorisations in cases where the National Crime Agency is party to a collaboration agreement) is amended as follows.	
(2) In subsection (2), for “or 29” substitute “, 29 or 29B”.	20
(3) In subsection (3), for “or 29” substitute “, 29 or 29B”.	
(4) In subsection (4), for “or 29” substitute “, 29 or 29B”.	
<i>General rules about grant, renewal, duration and cancellation</i>	
5 (1) Section 43 (general rules about grant, renewal and duration) is amended as follows.	25
(2) In subsection (3)(b), after “source” insert “or is an authorisation under section 29B”.	
(3) In subsection (6), after “source” insert “or an authorisation under section 29B”.	
6 (1) Section 45 (cancellation of authorisations) is amended as follows.	30
(2) In subsection (1) –	
(a) in paragraph (a), after “29(2)(a) and (b)” insert “, 29B(4)(a) and (b)”; (b) omit the “or” at the end of that paragraph;	

- (c) at the end of paragraph (b) insert “; or
 (c) in the case of an authorisation under section 29B, the person is satisfied that any arrangements for the source’s case required to satisfy any requirements mentioned in subsection (4)(c) of that section no longer exist”. 5
- (3) In subsection (2), for “either” substitute “any”.
- (4) In subsection (3), for “either” substitute “any”.
- 7 In section 46 (restrictions on authorisations extending to Scotland), in subsection (2)(d), after “conduct of” insert “or in relation to”. 10

Authorising authorities

- 8 (1) Part 1 of Schedule 1 (relevant authorities for the purposes of sections 28 and 29) is amended as follows.
- (2) In the heading of the Part, after “purposes” insert “only”.
- (3) Omit – 15
- (a) paragraph 1 (any police force);
 - (b) paragraph 2 (National Crime Agency);
 - (c) paragraph 4 (Serious Fraud Office);
 - (d) paragraph 5 (intelligence services) and the italic heading before it;
 - (e) paragraph 6 (armed forces) and the italic heading before it; 20
 - (f) paragraph 7 (Her Majesty’s Revenue and Customs) and the italic heading before it;
 - (g) paragraph 12 (Department of Health and Social Care);
 - (h) paragraph 13 (Home Office);
 - (i) paragraph 13ZA (Ministry of Justice); 25
 - (j) paragraph 18 (Environment Agency);
 - (k) paragraph 19 (Financial Conduct Authority);
 - (l) paragraph 20 (Food Standards Agency);
 - (m) paragraph 20A (Gambling Commission);
 - (n) paragraph 20B (Competition and Markets Authority). 30

PART 2

OTHER ENACTMENTS

Police Reform Act 2002

- 9 In section 19 of the Police Reform Act 2002 (use of investigatory powers by or on behalf of the Director General), after subsection (4) insert – 35
- “(5) But the reference in subsection (1)(b) to the conduct of covert human intelligence sources does not include conduct which may be authorised under section 29B of that Act (criminal conduct authorisations).”

Gambling Act 2005

- 10 In Schedule 16 to the Gambling Act 2005 (minor and consequential amendments), omit paragraph 14 and the italic heading before it.

Serious Crime Act 2007

- 11 In Schedule 12 to the Serious Crime Act 2007 (Revenue and Customs: regulation of investigatory powers), omit paragraph 28. 5

Crime and Courts Act 2013

- 12 The Crime and Courts Act 2013 is amended as follows.
- 13 In Schedule 1 (the National Crime Agency and its officers), in paragraph 6A, after sub-paragraph (3)(a)(ii) insert – 10
“(iia) section 29B (covert human intelligence sources: criminal conduct);”.
- 14 In Schedule 8 (minor and consequential amendments and repeals), omit paragraph 99.

Covert Human Intelligence Sources (Criminal Conduct) Bill

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To make provision for, and in connection with, the authorisation of criminal conduct in the course of, or otherwise in connection with, the conduct of covert human intelligence sources.

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