

# COVERT HUMAN INTELLIGENCE SOURCES (CRIMINAL CONDUCT) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Covert Human Intelligence Sources (Criminal Conduct) Bill as brought from the House of Commons on 19 October 2020 (HL Bill 144).

- These Explanatory Notes have been provided by the Home Office in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Bill amends Part II of the Regulation of Investigatory Powers Act 2000 (RIPA) to provide a statutory power for the security and intelligence agencies, law enforcement agencies and a limited number of other public authorities to authorise Covert Human Intelligence Sources (CHIS) to participate in criminal conduct where it is necessary and proportionate to do so for a limited set of specified purposes.
- 2 This is not new activity. It puts existing practice on a clear and consistent statutory footing.
- 3 Some public authorities use the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A) to authorise CHIS use and conduct in Scotland. The Bill therefore includes equivalent amendments to RIP(S)A.

## Policy background

- 4 CHIS are a core part of security, intelligence and policing work. A CHIS may be a police officer, someone holding a position in a public authority who is acting undercover, or a member of the public who is recruited by a public authority.
- 5 The use of CHIS is a key tactic in protecting national security and investigating serious crime. It allows investigators to gain an insight into the criminal and terrorist organisations, and hostile state actors, they are targeting.
- 6 For decades, CHIS have played a crucial part in preventing and safeguarding victims from many serious crimes including terrorism, drugs and firearms offences and child sexual exploitation. This has included helping to identify and disrupt many of the terrorist plots that agencies have stopped.
- 7 There will be occasions where CHIS may need to participate in criminal conduct. This may be necessary, for example, to maintain credibility or gain the trust of those under investigation. The circumstances in which CHIS participate in crime are carefully managed.
- 8 The activity that will be authorised under the Bill is not new activity. It is a continuation of existing practice that is currently authorised using a variety of legal bases.
- 9 In December 2019 the Investigatory Powers Tribunal (IPT) handed down judgment in a case which challenged MI5's policy regarding the use of CHIS who participate in crime, known as the "Third Direction" case. The Tribunal found in the government's favour on all counts, ruling there is a lawful basis for this activity and noting the importance of this tactic to the protection of national security. The Third Direction case is subject to appeal.
- 10 The Government has introduced the CHIS (Criminal Conduct) Bill which provides an express power for the authorisation of criminal conduct, providing certainty to public authorities utilising this critical tool.
- 11 The Bill will provide a clear and consistent legal basis for all public authorities that need to authorise this activity. It creates a single framework and enshrines uniform safeguards, including robust oversight by the Investigatory Powers Commissioner.
- 12 The regime will allow for the activity to be authorised where it is necessary on one of the specified grounds and proportionate to what is sought to be achieved by the authorised conduct.
- 13 The effect of a criminal conduct authorisation issued under the Bill regime will be to render the authorised conduct "lawful for all purposes". This is consistent with the effect of other

authorisations under the existing RIPA regime, and under other investigatory powers legislation.

- 14 The power is and will continue to be subject to a range of safeguards under the Bill, including the following:
  - CHIS will never be given carte blanche to commit any and all crimes; authorisations must be necessary, proportionate and specific;
  - All public authorities are bound by the Human Rights Act to act in a way that is compatible with the rights protected by the European Convention on Human Rights. Rights that are protected by the Convention include the right to life, and prohibition of torture or subjecting someone to inhuman or degrading treatment or punishment;
  - The Bill does not prevent the Crown Prosecution Service, Crown Office and Procurator Fiscal Service, or the Public Prosecution Service from considering a prosecution for any activity that falls outside the parameters of an authorisation issued under the Bill's regime;
  - All investigatory powers are overseen by the Investigatory Powers Commissioner, who sets the frequency of inspections of public authorities, and publishes an annual report on the findings from these inspections;
  - Any person or organisation is able to make a complaint to the Investigatory Powers Tribunal (IPT) with regards to any investigatory powers which will be independently considered by the IPT; and
  - Intelligence agencies are accountable to the UK Parliament via the cross-party Intelligence and Security Committee of Parliament (ISC), an independent body established under the Intelligence Services Act 1994 and reinforced in the Justice and Security Act 2014.
- 15 To ensure operational parity across the UK, this Bill also amends RIP(S)A, which provides the legislative framework for devolved CHIS activity in Scotland.

## Legal background

- 16 This activity is currently authorised using a variety of legal bases. The power used will vary depending on the organisation authorising the conduct and the circumstances in which that takes place. For example, there is an existing provision in RIPA for the authorisation of very limited criminal conduct, where it is incidental to the CHIS's use and conduct, whilst other public authorities rely on a combination of express, implied and common law powers.
- 17 Part II of RIPA has applied in this area since 2000, providing a framework for the authorisation of three different types of covert activity: directed surveillance, intrusive surveillance, and the use and conduct of CHIS. The effect of a valid authorisation under Part II is that authorised conduct is rendered "lawful for all purposes" by section 27(1).
- 18 Section 27(1) sets out a requirement for the conduct to be in accordance with an authorisation in order for it to be made lawful for all purposes. Therefore, where an authorisation under the Bill does not meet the requirements of new section 29B, or where the conduct goes beyond what is permitted by the authorisation, it will not be rendered lawful.

- 19 RIP(S)A provides a substantially similar framework for the authorisation of certain covert activity taking place in Scotland (section 5 of RIP(S)A is the equivalent provision to section 27 of RIPA).
- 20 This Bill relates only to CHIS. It does not apply to other types of covert activity regulated by RIPA.
- 21 Within Part II of RIPA, section 26 sets out that a person is a CHIS if –
- They establish or maintain a personal or other relationship with a person for the covert purpose of one of the two following activities;
  - They covertly use such a relationship to obtain information or to provide access to any information to another person; or
  - They covertly disclose information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.
- 22 Section 29 provides for the authorisation of the use and conduct of CHIS. An authorisation must be necessary for one of the specified statutory grounds and the conduct authorised must be proportionate to what is sought to be achieved by that conduct. There are various other requirements in section 29 about managing the CHIS and record-keeping.
- 23 The Bill provides a statutory power to authorise conduct connected to the conduct of a CHIS that would otherwise be criminal. It does this by amending section 26 of RIPA so that criminal conduct is one of the categories of conduct to which Part II applies. It also inserts a new section 29B (section 7A in RIP(S)A) which contains a power to issue a new “criminal conduct authorisation”. The effect of a valid “criminal conduct authorisation” is that authorised conduct that would otherwise be criminal is rendered lawful for all purposes as a result of section 27(1) of RIPA (and the equivalent provisions of RIP(S)A).

## Territorial extent and application

- 24 The Bill extends to the UK apart from the amendments to RIP(S)A which extend only to Scotland.
- 25 See the table in Annex B for a summary of the position regarding territorial extent and application in the United Kingdom.

# Commentary on provisions of Bill

## Clause 1: Authorisation of criminal conduct

- 26 Clause 1(1) and (2) amend section 26 of RIPA to introduce a new category of conduct to which Part II applies: criminal conduct in the course of, or otherwise in connection with, the conduct of covert human intelligence sources.
- 27 Clause 1(3) inserts a new subsection (8A) into section 26. New subsection (8A) provides a definition of what is meant by “criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source”.
- 28 Clause 1(4) amends section 29 of RIPA; inserting new subsection (6ZA). New subsection (6ZA) provides that a section 29 authorisation can no longer be used to authorise any criminal conduct. The effect of the Bill is to require that an authorisation under new section 29B must instead be used to authorise criminal conduct.
- 29 Clause 1(5) inserts new section 29B into RIPA. New section 29B provides a power for a “criminal conduct authorisation” to be granted. New section 29B has several components.
- 30 Subsection (1) provides designated persons with the power to grant criminal conduct authorisations.
- 31 Subsection (2) provides a definition of “criminal conduct authorisation”.
- 32 Subsection (3) requires that a section 29 authorisation for the use and conduct of a CHIS must either already be in place before a criminal conduct authorisation is granted, or must be granted at the same time as the criminal conduct authorisation. The reason for that is that it is a bolt-on provision for criminal conduct and ensures that other requirements and safeguards that are already set out in section 29 of RIPA will apply to authorisations granted under new section 29B.
- 33 Subsection (4) sets out the test that must be satisfied before a criminal conduct authorisation may be granted: it must be necessary for one or more of the three specified grounds; it must be proportionate; and it must satisfy any requirements imposed by an order made by the Secretary of State. It is possible for a public authority to take a precautionary approach and grant a criminal conduct authorisation in circumstances in which the public authority is uncertain whether the conduct to be authorised would amount to a criminal offence. However, the criminal conduct authorisation will only have effect to the extent that the authorised conduct would constitute crime.
- 34 A designated person may not grant a criminal conduct authorisation unless he or she believes that the authorisation is necessary on one of the grounds listed in subsection (5).
- 35 Subsections (6) and (7) set out further considerations for the person granting the authorisation to take into account when deciding whether an authorisation is necessary and proportionate, where they are relevant. This includes the requirements of the Human Rights Act 1998.
- 36 Subsection (8) specifies the nature and limits of the grant of a criminal conduct authorisation. The authorisation must specify or describe the conduct being authorised. The criminal conduct that may be authorised is not limited to criminal conduct by a CHIS: a criminal conduct authorisation may authorise conduct by someone else “in relation to” a CHIS, namely those within a public authority that are involved in or affected by the authorisation.
- 37 The conduct that is authorised must relate to a CHIS who is specified or described in the authorisation. The conduct being authorised must also relate to an investigation or operation and that investigation or operation must be specified or described in the authorisation.

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- 38 If a criminal conduct authorisation is granted by a person, and the authorisation does not meet the requirements of new section 29B, the authorisation has no effect in relation to any criminal conduct.
- 39 Subsection (9) provides that a criminal conduct authorisation granted to a CHIS under section 29B ceases to have effect at the same time as the section 29 authorisation that relates to that CHIS.
- 40 Subsection (10) confers on the Secretary of State a power to make secondary legislation. This may be used either to prohibit the authorisation of specified conduct, or to impose additional requirements that must be satisfied for the authorisation of specified criminal conduct.
- 41 It is possible for a section 29B criminal conduct authorisation to relate to more than one CHIS (in the same way that it is possible for a section 29 use and conduct authorisation to relate to more than one CHIS). Where a section 29B criminal conduct authorisation relates to more than one CHIS, each individual CHIS would need to be specified or described in the authorisation, and the authorisation would need to relate to a particular investigation or operation. The section 29B authorisation could only be granted at the same time as, or after, a related section 29 authorisation had been granted in relation to the CHIS concerned.
- 42 It is possible that one criminal conduct authorisation may relate to multiple section 29 authorisations. Where a section 29 use authorisation ceases to have effect, the criminal conduct authorisation will cease to have effect in as much as it relates to that section 29 authorisation (and the CHIS to whom that section 29 authorisation relates) but will continue to have effect so far as it relates to any other section 29 authorisation(s) that have effect.
- 43 Where there is a section 29 CHIS authorisation in place that itself relates to multiple CHIS, a single criminal conduct authorisation could similarly cover all of those CHIS, provided that the circumstances are such that the CHIS are connected by a single operation or investigation.

## Clause 2: Authorities to be capable of authorising criminal conduct

- 44 Clause 2 amends section 30 of RIPA in order to make provision for certain public authorities to be able to grant criminal conduct authorisations.
- 45 Clause 2(3) amends section 30(1) to bring criminal conduct authorisations within the scope of the power that is conferred on the Secretary of State by that provision. That power enables the Secretary of State to specify by order that persons holding such offices, ranks or positions within relevant public authorities, are designated to grant criminal conduct authorisations.
- 46 Clause 2(4) amends section 30(2) to bring criminal conduct authorisations within the scope of that provision. The effect is that where a criminal conduct authorisation is being granted in combination with an authorisation to carry out intrusive surveillance, the authorisation must be granted personally by the Secretary of State.
- 47 Clause 2(5) amends section 30(3) to bring criminal conduct authorisations within the scope of the power that is conferred on the Secretary of State by that provision. Subsection (3) enables the Secretary of State to restrict the authorisations that may be granted by persons holding particular ranks, offices or positions; or provide that authorisations given in such circumstances, or for such purposes, must be granted by persons holding specified rank, office or position within the relevant authority.
- 48 Clause 2(6) amends section 30(4), which makes provision for the public authorities that are relevant for the purposes of granting authorisations. A public authority is a relevant authority for these purposes if it is listed in new Part A1 of Schedule 1 to RIPA.
- 49 Clause 2(7) amends section 30(5), which confers a power on the Secretary of State to amend Schedule 1. The power enables the Secretary of State to add or remove public authorities from

Part A1, or make any consequential changes necessary as a result of the change in the name of a public authority that is listed in that Part.

- 50 Clause 2(8) makes corresponding changes to section 30(7), so that the exercise of the power to add public authorities to Part A1 will be subject to the approval of Parliament by way of the affirmative procedure.
- 51 Clause 2(9) inserts new Part A1 into Schedule 1 to RIPA, listing the following public authorities:
  - Any police force
  - The National Crime Agency
  - Any of the intelligence services
  - Any of Her Majesty's Forces
  - Her Majesty's Revenue and Customs
  - The Department of Health and Social Care
  - The Home Office
  - The Ministry of Justice
  - The Competition and Markets Authority
  - The Environment Agency
  - The Financial Conduct Authority
  - The Food Standards Agency
  - The Gambling Commission
  - The Serious Fraud Office

### Clause 3: Corresponding provision for Scotland

- 52 This Clause introduces Schedule 1 to the Bill which provides for corresponding amendments to be made to the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A). RIP(S)A and RIPA are drafted in substantially similar terms, and therefore the two sets of amendments largely mirror each other.

### Clause 4: Oversight by the Investigatory Powers Commissioner

- 53 Clause 4(1) amends the Investigatory Powers Act 2016 (IPA) to emphasise the oversight arrangements that will apply to the public authorities' use of the power to grant criminal conduct authorisations.
- 54 Clause 4(2) amends section 229 of the IPA to insert a requirement for the Investigatory Powers Commissioner, when keeping matters under review in accordance with section 229(3)(e) or (g), to pay particular attention to public authorities' use of the power to grant criminal conduct authorisations under new section 29B or (as the case may be) under new section 7A of RIP(S)A.
- 55 Clause 4(3) amends section 234 of IPA to require the Investigatory Powers Commissioner to include information about public authorities' use of criminal conduct authorisations in their

annual report. This will include information such as statistics on relevant public authorities' use of the power, the operation of safeguards in relation to authorisations, and errors. The requirement will be subject to the existing protections in the IPA for information that relates to matters such as national security and the prevention or detection of serious crime.

### Clause 5: Consequential provision

- 56 This Clause introduces Schedule 2 to the Bill, which contains consequential amendments. These amendments are explained later in the explanatory notes under 'Schedule 2'.

### Clause 6: Commencement and transitional provision

- 57 Clause 6(1) and (2) set out how the Act will be brought into force.
- 58 Clause 6(3), (4) and (5) provide the Secretary of State with a power to make transitional or saving provisions in relation to any provision in the Act, by statutory instrument.

### Clause 7: Extent and short title

- 59 Clause 7(1) provides that the Act extends to the whole of the United Kingdom. This is subject to Clause 7(2) which provides that a provision of the Bill that amends another enactment has the same territorial extent as that enactment.
- 60 Clause 7(4) gives the title by which the Act can be referred to.

### Schedule 1: Corresponding Amendments to the Regulation of Investigatory Powers (Scotland) Act

- 61 Schedule 1 makes corresponding amendments to RIP(S)A.
- 62 Paragraph 2(2) and (3) of Schedule 1 amends section 1 of RIP(S)A to introduce a new category of conduct to which RIP(S)A applies: criminal conduct in the course of, or otherwise in connection with, the conduct or the use of covert human intelligence sources.
- 63 Paragraph 2(3) inserts a new subsection (7A) into section 1. New subsection (7A) provides a definition of what is meant by "criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source".
- 64 Paragraph 3 amends section 7 of RIP(S)A, inserting new subsection (5A). New subsection (5A) provides that a section 7 authorisation can no longer authorise any criminal conduct. The effect of the Bill is to require that a section 7A authorisation must instead be used to authorise criminal conduct.
- 65 Paragraph 4 inserts new section 7A into RIP(S)A. New section 7A provides a power for a "criminal conduct authorisation" to be granted. New section 7A has several components.
- 66 Subsection (1) provides designated persons with the power to grant criminal conduct authorisations.
- 67 Subsection (2) provides a definition of a criminal conduct authorisation.
- 68 Subsection (3) requires that a section 7 authorisation for the use and conduct of a CHIS must either already be in place before a section 7A authorisation is granted or must be granted at the same time as the section 7A authorisation.
- 69 Subsection (4) sets out the test that must be satisfied before a criminal conduct authorisation may be granted. Authorisations may only be granted for the purposes of preventing or detecting crime or of preventing disorder.
- 70 It is possible for a public authority to take a precautionary approach and grant a criminal conduct authorisation in circumstances in which the public authority is uncertain whether the

conduct to be authorised would amount to a criminal offence. However, the criminal conduct authorisation will only have effect to the extent that the authorised conduct would constitute a criminal offence.

- 71 Subsections (5) and (6) set out further considerations for the person granting the authorisation to take into account when deciding whether an authorisation is necessary and proportionate, where they are relevant. This includes the requirements of the Human Rights Act 1998.
- 72 Subsection (7) specifies the nature and limits of the grant of a criminal conduct authorisation. The authorisation must specify or describe the conduct being authorised. The criminal conduct that may be authorised is not limited to criminal conduct by a CHIS: a criminal conduct authorisation may authorise conduct by someone else “in relation to” a CHIS, namely those within a public authority that are involved in or affected by the authorisation.
- 73 The conduct that is authorised must relate to a CHIS who is specified or described in the authorisation. The conduct being authorised must also relate to an investigation or operation and that investigation or operation must be specified or described in the authorisation.
- 74 If a criminal conduct authorisation is granted by a person, and the authorisation does not meet the requirements of new section 7A, the authorisation has no effect in relation to any criminal conduct.
- 75 Subsection (8) provides that a criminal conduct authorisation granted to a CHIS under section 7A ceases to have effect at the same time as the section 7 authorisation that relates to that CHIS.
- 76 Subsection (9) confers on the Scottish Ministers a power to make secondary legislation. This may be used either to prohibit the authorisation of specified conduct, or to impose additional requirements that must be satisfied before the authorisation of specified criminal conduct.
- 77 It is possible for a section 7A criminal conduct authorisation to relate to more than one CHIS (in the same way that it is possible for a section 7 use and conduct authorisation to relate to more than one CHIS). Where a section 7A criminal conduct authorisation relates to more than one CHIS, each individual CHIS would need to be specified or described in the authorisation, and the authorisation would need to relate to a particular investigation or operation. The section 7A authorisation could only be granted at the same time as, or after, a related section 7 authorisation had been granted in relation to the CHIS concerned.
- 78 It is possible that one section 7A criminal conduct authorisation may relate to multiple section 7 use and conduct authorisations. Where a section 7 use and conduct authorisation ceases to have effect, the section 7A criminal conduct authorisation will cease to have effect in as much as it relates to that section 7 authorisation (and the CHIS to whom that section 7 authorisation relates) but will continue to have effect so far as it relates to any other section 7 authorisation(s).
- 79 Where there is a section 7 CHIS authorisation in place that itself relates to multiple CHIS, a single section 7A criminal conduct authorisation could similarly cover all of those CHIS, provided that the circumstances are such that the CHIS are connected by a single operation or investigation.
- 80 Paragraph 5 amends section 8 of RIP(S)A in order to make provision for certain public authorities to be able to grant criminal conduct authorisations.
- 81 Paragraph 5(3) amends section 8(1) to bring criminal conduct authorisations within the scope of the power that is conferred on the Scottish Ministers by that provision. The effect is to enable the Scottish Ministers to specify by order that persons holding such offices, ranks or positions within relevant public authorities are designated to grant criminal conduct authorisations.

- 82 Paragraph 5(4) amends section 8(2) to bring criminal conduct authorisations within the scope of the power that is conferred on the Scottish Ministers by that provision. Subsection (2) enables the Scottish Ministers to restrict the authorisations that may be granted by persons holding particular ranks, offices or positions; or provide that authorisations given in such circumstances, or for such purposes, must be granted by persons holding specified rank, office or position within the relevant authority.
- 83 Paragraph 5(5) amends section 8(3); which makes provision for the public authorities that are relevant public authorities for the purposes of granting authorisations. The public authorities that may grant criminal conduct authorisations are the Police Service and the Scottish Administration.
- 84 Paragraph 5(6) amends section 8(4), which confers a power on the Scottish Ministers to amend section 8(3). The power enables the Scottish Ministers to add or remove public authorities from subsection (3), or make any consequential changes necessary as a result of the change in the name of a public authority that is listed in that provision.
- 85 Paragraphs 6 to 8 amend other provisions of RIP(S)A to extend their requirements to criminal conduct authorisations: including section 11 (rules for granting authorisations); section 19 (general rules about grant, renewal and duration); and section 20 (cancellation of authorisations).

## Schedule 2: Consequential Amendments

- 86 Part 1 of Schedule 2 makes minor and consequential amendments to RIPA.
- 87 Paragraph (2) amends Section 31 of RIPA so that the power of the First Minister and deputy First Minister in Northern Ireland to make an order under section 30 of RIPA applies only to authorisations under section 28 (directed surveillance) and section 29 (CHIS) and does not apply in relation to CHIS criminal conduct authorisations.
- 88 Paragraphs (4) to (7) amend other provisions to extend their requirements to section 29B authorisations, including section 33 (rules for granting authorisations), and section 33A (NCA authorisations where they are party to a collaboration agreement), section 43 (general rules about grant, renewal and duration), and section 45 (cancellation of authorisations).
- 89 Paragraph (8) amends Part 1 of Schedule 1 to provide the relevant public authorities that can grant a criminal conduct authorisation.
- 90 Schedule 2 Part 2 makes minor and consequential amendments to other enactments.

## Commencement

- 91 The commencement date will be determined by the Secretary of State and the Act will be brought into force through secondary legislation.

## Financial implications of the Bill

- 92 This is a short, single issue Bill which seeks to put existing capability onto an express statutory footing for a small number of public authorities. Once the legislation is in force, the operational practices of those public authorities are expected to broadly stay the same and the existing independent oversight attached to the regime to continue. However, when the legislation comes into force there may be some costs associated with:

- Public authorities familiarising themselves with the new legislation;

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- Training and administration to support public authorities' implementation of the legislation; and
- Short term costs in relation to transferring existing authorisations to the new regime.

## Parliamentary approval for financial costs or for charges imposed

93 A money resolution is not required for the Bill as there are no significant financial implications associated with it. A ways and means resolution is also not required as the Bill does not authorise new charges on the people, broadly speaking, via new taxation or other similar charges.

## Compatibility with the European Convention on Human Rights

- 94 The Government considers that the Covert Human Intelligence Sources (Criminal Conduct) Bill is compatible with the European Convention on Human Rights. Baroness Williams of Trafford has made a statement under section 19(1)(a) of the Human Rights Act 1998 to that effect.
- 95 The Government has published a separate ECHR memorandum containing its assessment of the compatibility of the Bill's provisions with the Convention rights.

## Related documents

- 96 The following documents are relevant to the Bill and can be read at the stated locations:
- [ECHR Memorandum](#)
  - [Delegated Powers Memorandum](#)
  - [Investigatory Powers Act 2016](#)
  - [Regulation of Investigatory Powers Act 2000](#)
  - [Draft Revised CHIS Code of Practice \(published September 2020\)](#)
  - [Factsheets on key background to the Bill \(published September 2020\)](#)
  - [The 'Third Direction' Judgment](#)

## Annex A – Glossary

Affirmative procedure	Statutory instruments that are subject to the draft “affirmative procedure” must be approved by both the House of Commons and House of Lords to become law.
CHIS	Covert Human Intelligence Source
RIPA	Regulation of Investigatory Powers Act 2000
RIP(S)A	Regulation of Investigatory Powers (Scotland) Act 2000
The Code	Covert Human Intelligence Sources Revised Code of Practice, August 2018
UK	United Kingdom of Great Britain and Northern Ireland
Participation	Participation in criminal conduct
Relevant criminal conduct	Criminal conduct in the course of, or otherwise in connection with, the conduct or the use of a CHIS
Third Direction Case	Privacy International Reprieve Committee on the Administration of Justice Pat Finucane Centre -v- Secretary of State for Foreign and Commonwealth Affairs Secretary of State for the Home Department Government Communications HQ Security Service

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## Annex B – Territorial extent and application in the United Kingdom

97 The provisions in this Act form part of the law of England, Wales, Northern Ireland and Scotland. The Bill extends to the UK apart from the amendments to RIP(S)A which extend only to Scotland. Subject to that the Bill will apply UK-wide.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	Yes	Yes	No	In part	No	Yes
Clause 2	Yes	Yes	Yes	Yes	No	In part	No	Yes
Clause 3	No	No	Yes	No	No	Yes	No	Yes
Schedule 1	No	No	Yes	No	No	Yes	No	Yes
Clause 4	Yes	Yes	Yes	Yes	No	In part	No	Yes
Clause 5	Yes	Yes	Yes	Yes	No	In part	No	Yes
Schedule 2	Yes	Yes	Yes	Yes	No	In part	No	Yes
Clause 6	Yes	Yes	Yes	Yes	No	No	No	No
Clause 7	Yes	Yes	Yes	Yes	No	No	No	No

## Subject matter and legislative competence of devolved legislatures

98 The provisions of the Bill relating to RIPA deal with the authorisation of criminal conduct by covert human intelligence sources, for the prevention and detection of crime or of preventing disorder, for national security, or for the economic well-being of the United Kingdom. The provisions of the Bill relating to RIP(S)A deal with the authorisation of criminal conduct for the purposes of preventing or detecting crime or of preventing disorder.

99 The Bill amends provisions of RIPA which apply to England and Wales, Scotland and Northern Ireland.

100 In respect of Scotland, national security is a reserved matter, as is the economic well-being of the United Kingdom. The function of preventing and detecting crime or preventing disorder is not reserved.

101 Some devolved public authorities in Scotland authorise CHIS under RIP(S)A. The Scottish Parliament has competence to amend RIP(S)A.

102 National security is an excepted matter in relation to Northern Ireland and the subject matter of Part II of RIPA is reserved so far as relating to the prevention or detection of crime or the prevention of disorder. It is considered that the economic well-being of the UK is an aspect of national security and is thus excepted.

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103 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. The Government is of the view that a Legislative Consent Motion is required from the Scottish Parliament on the basis that the Bill amends provisions of RIPA which apply to Scotland and which may be considered to relate to a devolved purpose; and makes amendments to RIP(S)A, which is an Act of the Scottish Parliament.

# **COVERT HUMAN INTELLIGENCE SOURCES (CRIMINAL CONDUCT) BILL**

## **EXPLANATORY NOTES**

These Explanatory Notes relate to the Covert Human Intelligence Sources (Criminal Conduct) Bill as brought from the House of Commons on 19 October 2020 (HL Bill 144).

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