

# Covert Human Intelligence Sources (Criminal Conduct) Bill

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## MARSHALLED LIST OF MOTIONS TO BE MOVED ON CONSIDERATION OF COMMONS REASONS AND AMENDMENT

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*[The page and line references are to HL Bill 144 (Corrected), the bill as introduced in the Lords, or to the Lords Amendment]*

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### MOTION A

#### Clause 1

##### LORDS AMENDMENT 1

- 1** Page 2, line 17, after “person” insert “reasonably”

##### COMMONS REASON

*The Commons disagree to Lords Amendment 1 for the following Reason –*

- 1A** *Because the Commons consider that this amendment would cast doubt on whether belief need be reasonable for the purposes of other authorisations under Part 2 of RIPA.*

- A** **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 1, to which the Commons have disagreed for their Reason 1A.**

### MOTION B

#### Clause 1

##### LORDS AMENDMENT 2

- 2** Page 3, line 2, at end insert –

“(8A) A criminal conduct authorisation may not authorise any criminal conduct –

- (a) intentionally causing death or grievous bodily harm to an individual or being reckless as to whether such harm is caused;
- (b) involving an attempt in any manner to obstruct or pervert the course of justice;

- (c) amounting to an offence under the Sexual Offences Act 2003, the Sexual Offences (Scotland) Act 2009 or any offence listed in Schedule 3 to the Sexual Offences Act 2003;
- (d) subjecting an individual to torture or to inhuman or degrading treatment or punishment, within the meaning of Article 3 of Part 1 of Schedule 1 to the Human Rights Act 1998; or
- (e) depriving a person of their liberty, within the meaning of Article 5 of Part 1 of Schedule 1 to the Human Rights Act 1998.”

#### COMMONS REASON

*The Commons disagree to Lords Amendment 2 for the following Reason –*

**2A** *Because the Commons consider specifying types of conduct which criminal conduct authorisations could not authorise on the face of Part 2 of RIPA would place sources, and the wider public, at risk.*

**B** **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 2, to which the Commons have disagreed for their Reason 2A.**

**B1** **Baroness Chakrabarti to move, as an amendment to Motion B, leave out “not”.**

#### MOTION C

##### Clause 1

#### LORDS AMENDMENT 3

**3** Page 3, line 16, at end insert –

- “( ) Notwithstanding section 27, injury sustained by any person shall not be excluded from the scope of the Schemes provided for by the Criminal Injuries Compensation Act 1985 and the Criminal Injuries Compensation (Northern Ireland) Order 2002 by virtue of the fact that the conduct causing such injury was authorised under this section.”

#### COMMONS REASON

*The Commons disagree to Lords Amendment 3 for the following Reason –*

**3A** *Because the Commons consider it is inappropriate to create an exception to the effect of criminal conduct authorisations.*

**C** **Baroness Williams of Trafford to move, That this House do not insist on its Amendment 3 to which the Commons have disagreed for their Reason 3A, but do propose Amendment 3B in lieu –**

**After Clause 2**

**3B** Insert the following new Clause—

**“Criminal injuries compensation**

After section 27 of the Regulation of Investigatory Powers Act 2000 (lawful surveillance etc.) insert—

**“27A Section 27: criminal injuries compensation for s. 29B conduct**

For the purposes of—

- (a) the Criminal Injuries Compensation Act 1995,
- (b) the Scheme made under that Act,
- (c) the Criminal Injuries Compensation (Northern Ireland) Order 2002 (S.I. 2002/796 (N.I. 1)), and
- (d) the Scheme made under that Order,

section 27(1) has no effect in relation to conduct authorised under section 29B.””

**MOTION D****Clause 1****LORDS AMENDMENT 4**

**4** Page 3, line 16, at end 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), or
  - (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

- (c) where no person falling within paragraph (a) or (b) is available and deemed appropriate, 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 that Act (meaning of exploitation).
- (7) The “exceptional circumstances” in subsection (2) are circumstances –
  - (a) where authorisation of the criminal conduct authorisation is necessary and proportionate considering the welfare of the covert human intelligence source;
  - (b) where, if the covert human intelligence source is under 18, the relevant investigating authority has determined in its assessment that the criminal conduct authorisation remains compatible with and does not override the best interests of the covert human intelligence source;
  - (c) where all other methods to gain information have been exhausted; and
  - (d) where the relevant investigating authority has determined in its assessment that the source to whom subsection (1) applies will not be at risk of any reasonably foreseeable harm (whether physical or psychological) arising from the criminal conduct authorisation.
- (8) Where a person grants a criminal conduct authorisation to anyone specified in subsection (1), that person must give notice of that authorisation to the Investigatory Powers Commissioner.
- (9) A notice under subsection (8) 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 (10).
- (10) Where a person gives notice under subsection (8) 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 section 29B(4) are satisfied;
  - (b) the conduct that is, or is to be, authorised under section 29B(8); and
  - (c) the reasons for believing that “exceptional circumstances” as set out in subsections (2) and (7) apply.”

#### COMMONS REASON

*The Commons disagree to Lords Amendment 4 for the following Reason –*

**4A** *Because the Commons consider aspects of the safeguards for juveniles and vulnerable individuals provided for by this amendment to be unworkable.*

**D** **Baroness Williams of Trafford to move, That this House do not insist on its**

**Amendment 4 to which the Commons have disagreed for their Reason 4A, but do propose Amendments 4B, 4C, 4D, 4E, 4F, 4G, 4H and 4J in lieu –**

**4B** Page 3, line 14, after “(4)” insert “and sections 29C and 29D”

**After Clause 1**

**4C** Insert the following new Clause –

**“Criminal conduct authorisations: safeguards for juveniles**

(1) After section 29B of the Regulation of Investigatory Powers Act 2000 (inserted by section 1(5)) insert –

**“29C Criminal conduct authorisations: safeguards for juveniles**

- (1) This section applies in relation to the grant of a juvenile criminal conduct authorisation.
- (2) “A juvenile criminal conduct authorisation” is an authorisation under section 29B for criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source where that source is under the age of 18 (“the juvenile source”).
- (3) In addition to satisfying the requirements of section 29B, a person may grant a juvenile criminal conduct authorisation only if –
  - (a) the person has considered the results of an appropriate risk assessment;
  - (b) there are exceptional circumstances such that –
    - (i) it is not reasonably foreseeable in the circumstances as the person believes them to be that any harm to the juvenile source would result from the grant of the authorisation, and
    - (ii) the person believes the authorisation would be compatible with the need to safeguard and promote the best interests of the juvenile source; and
  - (c) the person believes that appropriate arrangements for meetings are in force.
- (4) For the purposes of subsection (3)(a), “an appropriate risk assessment” means an assessment which –
  - (a) identifies and evaluates the nature and magnitude of the risks of harm to the juvenile source arising in the course of, or as result of, the conduct authorised by the authorisation; and
  - (b) is carried out in accordance with provision made by the Secretary of State by regulations under this paragraph.
- (5) In subsections (3)(b)(i) and (4)(a), “harm” means –
  - (a) physical injury; or
  - (b) psychological distress.

- (6) For the purposes of subsection (3)(c), “appropriate arrangements for meetings” are such arrangements for the juvenile source’s case as are necessary for ensuring—
- (a) that, at all times when the juvenile source is under the age of 16, there will be a relevant person who will have responsibility for ensuring that an appropriate adult is present at all meetings in relation to the authorisation which take place between the source and a person representing a relevant investigating authority; and
  - (b) that, at all times when the juvenile source is 16 or 17 years old, there will be a relevant person who will have responsibility for—
    - (i) ensuring that an appropriate adult is present at all meetings in relation to the authorisation which take place between the source and a person representing a relevant investigating authority, other than any such meeting in relation to which a relevant person decides there are circumstances which justify the absence of an appropriate adult, and
    - (ii) maintaining a record of the reasons for each such decision that there are circumstances in relation to a meeting which justify the absence of an appropriate adult.

- (7) In subsection (6)—

“appropriate adult”, in relation to a juvenile source, means—

- (a) the parent or guardian of the juvenile source; or
- (b) any other person who—
  - (i) has for the time being assumed responsibility for the juvenile source’s welfare, or
  - (ii) is otherwise qualified to represent the interests of the juvenile source;

“relevant investigating authority”, in relation to a juvenile criminal conduct authorisation, means the public authority, or (as the case may be) one of the public authorities, for whose benefit the activities of the juvenile source as a covert human intelligence source are to take place;

“relevant person”, in relation to a juvenile criminal conduct authorisation, means a person holding an office, rank or position with a relevant investigating authority in relation to the authorisation;

and in this subsection, “guardian”, in relation to a juvenile source, has the same meaning as “guardian of a child” in the Children Act 1989 (see section 105 of that Act).

- (8) No provision made by or under this section affects the power to make additional provision by order under section 29B(4)(c) or (10) in relation to the grant of a juvenile criminal conduct authorisation.”

- (2) The Regulation of Investigatory Powers (Juveniles) Order 2000 (S.I. 2000/2793) is amended in accordance with subsections (3) to (8).

- (3) In article 2 (interpretation) –
- (a) in the definition of “relevant investigating authority”, after “authority” insert “, in relation to an authorisation under section 29 of the 2000 Act,”;
  - (b) after that definition insert –
    - ““relevant investigating authority”, in relation to an authorisation under section 29B of the 2000 Act, means the public authority, or (as the case may be) one of the public authorities, for whose benefit the activities as a source of the source to whom the authorisation relates are to take place;
    - “relevant person”, in relation to an authorisation under section 29B of the 2000 Act, means a person holding an office, rank or position with a relevant investigating authority in relation to the authorisation;”.
- (4) Before article 3 insert –

*“Authorisations under section 29 of the 2000 Act”.*

- (5) In article 3 (sources under 16: prohibition), after “authorisation” insert “under section 29 of the 2000 Act”.
- (6) In article 5 (sources under 18: risk assessments etc.), after “An authorisation” insert “under section 29 of the 2000 Act”.
- (7) In article 6 (sources under 18: duration of authorisations), after “an authorisation” insert “under section 29 of the 2000 Act”.
- (8) After article 6 insert –

*“Authorisations under section 29B of the 2000 Act*

## **7 Sources under 16: prohibition**

- (1) No authorisation under section 29B of the 2000 Act may be granted authorising criminal conduct in the course of, or otherwise in connection with, the conduct of a source if –
- (a) the source is under the age of 16; and
  - (b) the relationship to which the relevant conduct would relate is between the source and –
    - (i) the source’s parent, or
    - (ii) any person who has parental responsibility for the source.
- (2) “The relevant conduct” means the conduct of the source which the authorised conduct would be in the course of or otherwise in connection with.

## 8 Sources under 18: additional requirements

- (1) An authorisation under section 29B of the 2000 Act may not be granted or renewed in any case where the source to whom the authorisation relates is under the age of 18 at the time of the grant or renewal unless the person granting or renewing the authorisation—
  - (a) has considered whether the relationship to which the relevant conduct would relate is between the source and—
    - (i) a relative or guardian of the source, or
    - (ii) a person who has for the time being assumed responsibility for the source’s welfare; and
  - (b) where the relationship would so relate, has taken that fact into account as a particular consideration.
- (2) In paragraph (1)(a), “the relevant conduct” has the same meaning as in article 7.

## 9 Sources under 18: arrangements regarding best interests of the source

Where the source to whom an authorisation under section 29B of the 2000 Act relates is under the age of 18, the arrangements referred to in section 29B(4)(c) of the 2000 Act must be such that there is at all times a relevant person who has responsibility for safeguarding and promoting the best interests of the source.

## 10 Sources under 18: duration of authorisations

In relation to an authorisation under section 29B of the 2000 Act where the source to whom the authorisation relates is under the age of 18 at the time the authorisation is granted or renewed, section 43(3) of the 2000 Act is to have effect as if the period specified in paragraph (b) of that subsection were four months instead of twelve months.”

- (9) The amendments made by subsections (3) to (8) to the Regulation of Investigatory Powers (Juveniles) Order 2000 (S.I. 2000/2793) are to be treated as having been made under section 29B(4)(c) or (10) or section 43(8) of the Regulation of Investigatory Powers Act 2000 as the case may be (and may be amended or revoked under those powers accordingly).”

4D Insert the following new Clause—

### “Criminal conduct authorisations: safeguards for vulnerable adults

After section 29C of the Regulation of Investigatory Powers Act 2000 (inserted by section (*Criminal conduct authorisations: safeguards for juveniles*)) insert—

#### “29D Criminal conduct authorisations: safeguards for vulnerable adults

- (1) This section applies in relation to the grant of a vulnerable adult criminal conduct authorisation.
- (2) “A vulnerable adult criminal conduct authorisation” is an authorisation under section 29B for criminal conduct in the course of, or otherwise in connection with, the conduct of a covert human intelligence source where that source is a vulnerable adult (“the vulnerable adult source”).

- (3) For the purposes of this section, a “vulnerable adult” is a person aged 18 or over who by reason of mental disorder or vulnerability, disability, age or illness, is or may be unable to take care of themselves or to protect themselves against significant harm or exploitation.
- (4) In addition to satisfying the requirements of section 29B, a person may grant a vulnerable adult criminal conduct authorisation only if the person—
- (a) has considered the results of an appropriate risk assessment;
  - (b) believes that the risks of harm identified by that risk assessment have been properly explained to and understood by the vulnerable adult source; and
  - (c) has taken into account the need to safeguard and promote the best interests of the vulnerable adult source.
- (5) “An appropriate risk assessment” means an assessment which—
- (a) identifies and evaluates the nature and magnitude of the risks of harm to the vulnerable adult source arising in the course of, or as result of, the conduct authorised by the authorisation; and
  - (b) is carried out in accordance with provision made by the Secretary of State by regulations under this paragraph.
- (6) For the purposes of subsections (3), (4)(b) and (5)(a), “harm” means—
- (a) physical injury; or
  - (b) psychological distress.
- (7) No provision made by or under this section affects the power to make additional provision by order under section 29B(4)(c) or (10) in relation to the grant of a vulnerable adult criminal conduct authorisation.””

#### Clause 4

**4E** Page 5, line 7, after “grant” insert “or renew”

**4F** Page 5, line 10, insert—

- “(4B) In keeping under review the exercise of the power mentioned in subsection (4A), the Investigatory Powers Commissioner must, in particular, keep under review whether public authorities are complying with any requirements imposed on them by virtue of Part 2 of the Regulation of Investigatory Powers Act 2000 in relation to juvenile criminal conduct authorisations and vulnerable adult criminal conduct authorisations.
- (4C) For the purposes of subsection (4B)—
- (a) “a juvenile criminal conduct authorisation” is an authorisation under section 29B of the Regulation of Investigatory Powers Act 2000 where the covert human intelligence source to whom the authorisation relates is under the age of 18; and

- (b) “a vulnerable adult criminal conduct authorisation” is an authorisation under section 29B of the Regulation of Investigatory Powers Act 2000 where the covert human intelligence source to whom the authorisation relates is a vulnerable adult within the meaning of section 29D(3) of that Act.”

4G Page 5, line 13, after “grant” insert “or renew”

### Schedule 2

- 4H Page 10, line 1, leave out “; or” and insert “—
- “(ba) in the case of an authorisation under section 29B where the source is under the age of 18 (“the juvenile source”), the person—
- (i) becomes aware of circumstances in which it is reasonably foreseeable that harm, within the meaning of section 29C(5), to the juvenile source would result from the authorisation,
  - (ii) is satisfied that the authorisation would no longer be compatible with the need to safeguard and promote the best interests of the juvenile source, or
  - (iii) is satisfied that arrangements for the juvenile source’s case that satisfy the requirements of subsection (3)(c) of section 29C no longer exist; or”

4J Page 10, line 2, leave out “an” and insert “any”

## MOTION E

### After Clause 2

#### LORDS AMENDMENT 5

5 Insert the following new Clause—

#### “Notification to a Judicial Commissioner

After section 32B of the Regulation of Investigatory Powers Act 2000 insert—

#### “32C Notification of criminal conduct authorisations

- (1) This section applies where a person grants or cancels an authorisation under section 29B.
- (2) The person must give notice that the person has granted or cancelled the authorisation to a Judicial Commissioner.
- (3) A notice given for the purposes of subsection (2) must be given—
  - (a) in writing as soon as reasonably practicable and, in any event, before the end of the period of 7 days beginning with the day after that on which the authorisation to which it relates is granted or, as the case may be, cancelled; and

- (b) in accordance with such arrangements made for the purposes of this paragraph by the Investigatory Powers Commissioner as are for the time being in force.
- (4) A notice under this section relating to the grant of an authorisation under section 29B must –
  - (a) set out the grounds on which the person giving the notice believes that the requirements of section 29B(4) are satisfied in relation to the authorisation; and
  - (b) specify the conduct that is authorised under section 29B by the authorisation.
- (5) Any notice that is required by this section to be given in writing may be given, instead, by being transmitted by electronic means.
- 27 (6) If upon notification under subsection (3) a Judicial Commissioner determines that the authorisation should not have been granted, the person who granted the authorisation must be immediately informed and all further activities that will or might be undertaken pursuant to the authorisation must cease forthwith, subject to the power of the Judicial Commissioner to allow actions specified by the Judicial Commissioner to continue for the purpose of discontinuing the activities for which authorisation had been granted.””
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## COMMONS AMENDMENT

*The Commons agree with the Lords in their Amendment 5 and propose Amendment 5A as an amendment thereto –*

**5A** Leave out lines 27 to 35

**E** **Baroness Williams of Trafford to move, That this House do agree with the Commons in their Amendment 5A.**

**E1** **Lord Paddick to move, as an amendment to Motion E, leave out from “House” to end and insert “do disagree with the Commons in their Amendment 5A and do propose Amendment 5B in lieu –**

**5B★** Leave out lines 27 to 35 and insert –

- “(6) If upon notification under subsection (3) a Judicial Commissioner determines that the authorisation should not have been granted –
  - (a) the person who granted the authorisation must be immediately informed,
  - (b) the Director of Public Prosecutions and the Director of Public Prosecutions for Northern Ireland must be immediately informed, and
  - (c) all further activities that will or might be undertaken pursuant to the authorisation are not “lawful for all purposes” under section 27(1).””

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