



Covert Human Intelligence Sources (Criminal Conduct) Bill Protecting Children and Vulnerable Adults from Criminal Exploitation

House of Commons

Briefing

Consideration of Lords amendments 27 January 2021

This Bill would allow certain public bodies to grant criminal conduct authorisations to CHIS, rendering their criminal acts 'lawful for all purposes' and providing them with immunity. This would apply equally to children and vulnerable individuals, who are deployed by law enforcement bodies as CHIS in dangerous contexts, not least county lines drug trafficking.

Our position is that the state should never use children and vulnerable individuals in this way, but if their use is continued to be permitted, there must be clear and meaningful safeguards set out in primary legislation. This is why we ask you to support Lords amendment no. 4 which creates meaningful safeguards that must be passed into law.

It is extremely disappointing that still no Child Rights Impact Assessment (CRIA) has been undertaken to establish the impact of this Bill on children to be used as CHIS, despite a CRIA template having been developed by the Department for Education in 2018. This would have provided lawmakers with the opportunity to give full consideration of the impact that the Bill will have on children.

Lords amendment no. 4 was a cross-party initiative led by Baroness Kidron (Crossbencher) and co-signed by Lord Young (Conservative), Baroness Hamwee (Liberal Democrat) and Lord Kennedy (Labour) which passed overwhelmingly in the Lords with a cross-party majority of 104, including 13 Conservative Peers and 79 Crossbenchers. This amendment was also endorsed by the Children's Commissioner in her briefing to peers in November 2020. As a result, the Government withdrew their proposed amendment, which failed to protect vulnerable individuals and victims of trafficking. Moreover, it would not have created any real safeguards for children, since it merely extended the already weak safeguards that currently exist in secondary legislation.

We ask that you support Lords amendment no. 4:

"29C [Regulation of Investigatory Powers Act 2000] 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.”

Purpose of Lords amendment no. 4

“The Children’s Commissioner remains to be convinced that there is ever an appropriate situation in which a child should be used as a CHIS. She is extremely concerned that this practice is not in the best interests of the child and that there are insufficient safeguards in place to protect these vulnerable children.”¹

The September 2020 revisions to the CHIS Code of Practice laid out stronger safeguards for children following the case taken forward by Just for Kids Law, including that “*juveniles should only be authorised to act as a CHIS in exceptional circumstances*”. However, these safeguards are inadequate as they are not as strong as the ones put forward in Lords amendment no. 4 and they would not be placed on a statutory footing. This means that future governments could amend or disregard such rights with ease should they wish. We remain concerned with a number of issues around the use of children and vulnerable people as CHIS and we will reply to the consultation on the Code of Practice once it is opened by the Home Office.

If the practice of granting criminal conduct authorisations passes into law with this Bill, we consider that the following safeguards, as provided in the Lords amendment no. 4, are essential to ensure the protection of children and vulnerable people:

- Criminal conduct authorisations must only be given to children and vulnerable people CHIS in truly ‘exceptional circumstances’, taking account of the welfare of the CHIS and in particular **ensuring the CHIS will not be at risk of any reasonably foreseeable physical or psychological harm**. Where a CHIS is under 18, it ensures that the criminal conduct authorisation remains compatible with and does not override the best interests of the child, in line with the UN Convention on the Rights of the Child (UNCRC), rather than relying on ad hoc developments in secondary legislation or guidance documents, such as the CHIS Code of Practice, neither of which are subject to an adequate level of parliamentary scrutiny.
- Current law on CHIS means 16- and 17- year-olds do not have a right to an appropriate adult being present during discussions with the state agency and nor do vulnerable adults. Given that Baroness Williams of Trafford has previously reported that most of the child CHIS were 17 years old, this means that the vast majority of child CHISes will not get appropriate adults under the Bill as introduced. This amendment redresses this – **having appropriate adults present would ensure that children and vulnerable adults are fully aware of the dangerous situations that they are being placed in** and is in line with our obligations under the UNCRC, which defines a child as all persons aged 17 years and under.
- We are concerned that many vulnerable adults are not always recognised as being vulnerable. Victims of modern slavery or trafficking should always be treated as a vulnerable source, especially in the case of criminal conduct authorisations, to ensure that their vulnerability to coercion and manipulation is not overlooked, which is why they have been explicitly included in the safeguards granted by this amendment.

¹ Briefing sent to Peers by the Children’s Commissioner for England ahead of the Committee stage in the House of Lords of the CHIS (Criminal Conduct) Bill, November 2020



- If the Bill is passed with the above Lords amendment, the CHIS Code of Practice will have to be further amended to reflect the strengthening of these safeguarding measures, thereby ensuring that these fundamental protections are in place.

Background

- Children and vulnerable adults, including victims of modern slavery or trafficking, are being used as CHIS in very dangerous and inappropriate circumstances, including for example staying in a drug gang or in a sexually exploitative situation. Baroness Williams of Trafford confirmed in October 2018 on behalf of the government that child CHISes had been used to provide information on serious crimes ranging from murder to high-level drug supply and that the vast majority were 17 years old with the youngest being 15 years old,² as illustrated by the harrowing case previously recounted by Baroness Hamwee:

"A young woman of 17, who was described to me as "on the edge of care", whose parents were separated and who had been between boroughs, was exploited by a man who—this is very common— she thought of as her boyfriend. He was selling a group of girls, including her, for sex. The police were looking for information on him and she was left in her situation so that she could provide information. In other words, she was exploited by him and continued to be exploited by him, and was, arguably, exploited by the police. Eventually, she witnessed a murder. She was drawn into it, and not just as a witness, as she was asked to dispose of clothes and other items afterwards. How was her consent to this tested? No significant adult in her life knew of her involvement, and we must ask ourselves what qualifies a police officer to make the assessment that is needed here."

- While we understand that the use of children as CHIS remains infrequent,³ it remains highly problematic that they continue to be used at all, or that any expansion of their use is contemplated.⁴ Indeed, given the apparent infrequency, we consider that enacting strict safeguards on their use as CHISes would not incur operational difficulties, and that law enforcement agencies could develop alternative strategies without their use if needed.
- In addition, the Government makes a counter-intuitive claim that the use of children as CHIS is, in fact, beneficial to their welfare. Baroness Williams has claimed that if "children cannot be asked to inform upon the criminal activities of those exploiting them, they become the perfect target for gangs".⁵ This assertion is both unevidenced and does not stand up to scrutiny. We do not suggest that children should not be able to inform on gangs and report them to the police. However, this should not require that they be sent back into such dangerous gangs or groups. First and foremost they must be extracted and their welfare protected. It is unacceptable that the Government should view children as an acceptable tool of law enforcement.
- There are many concerns around whether children and vulnerable adults can give informed

² Link to the debate: [https://hansard.parliament.uk/Lords/2018-10-16/debates/29DCE37B-3B6E-4D71-B066-A56A8C30F661/RegulationOfInvestigatoryPowers\(Juveniles\)\(Amendment\)Order2018?highlight=chis#contribution-DD80FCDE-DE23-4736-A281-BFEB90176B2E](https://hansard.parliament.uk/Lords/2018-10-16/debates/29DCE37B-3B6E-4D71-B066-A56A8C30F661/RegulationOfInvestigatoryPowers(Juveniles)(Amendment)Order2018?highlight=chis#contribution-DD80FCDE-DE23-4736-A281-BFEB90176B2E)

³The Investigatory Powers Commissioner has confirmed that "17 juvenile CHIS authorisations had been approved across 11 public authorities" between 2015 and 2018 – see Investigatory Powers Commissioner's Office, 'Annual Report 2018' (2018), paragraph 2.29 - <https://www.ipco.org.uk/docs/IPCO%20Annual%20Report%202018%20final.pdf>

⁴ 'Child spies should be recruited more often by MI5 and police, security minister says', the Telegraph (11 June 2019), see - <https://www.telegraph.co.uk/news/2019/06/11/child-spies-should-recruited-often-mi5-police-security-minister/>

⁵ 'The Covert Human Intelligence Sources Bill will help end the exploitation of children involved in criminal activity, not cause it', Politico, (11 January 2021), see - <https://www.politicshome.com/thehouse/article/the-government-is-working-to-ensure-every-protection-for-young-people-acting-as-informants-on-criminal-activity>



consent to being used as CHIS. Vulnerable adults, in particular victims of modern slavery or trafficking, may well find it harder to have a sense of choice in high-pressure situations, even more so when they are being asked to keep living in an exploitative environment as a CHIS by an authoritative body like the police.

- According to Dr. Eileen Vizard CBE, a leading child psychiatrist at UCL, the deployment of children as a CHIS could incur significant lasting physical and emotional damage to the child and could in fact engender the creation of new criminals by placing them in criminogenic environments. In addition, children are also not sufficiently mature to evaluate the consequences of their actions and may find it difficult to act consistently within the framework of a criminal conduct authorisation, which could further exacerbate any risk to their wellbeing. Children that are likely to be engaged as CHIS are inherently vulnerable and due attention must be given to their specific welfare needs, which would likely be heightened through being tasked as a CHIS.
- The youth justice system aims to prevent offending by children, which is at odds with the use of criminal conduct authorisations. Neil Woods, a former undercover police officer with experience of being a CHIS and handling CHISes, has explained that *“children recruited as informants are also highly likely to end up getting drawn back into criminality and feeling trapped in their situation”*.⁶

About Just for Kids Law

Just for Kids Law have been leading a campaign by way of judicial review against the use of children as spies. We launched a [crowdfunding campaign](#) to take the case and were supported by donations from members of the public. The case was due to be heard in the Court of Appeal in October 2020 but was withdrawn in light of the changes the Home Office committed to make to the Code of Practice in September 2020. However, we remain very concerned about this ongoing practice, especially in light of the new context of criminal conduct authorisations.

Just for Kids Law is a UK charity that works with and for children and young people to hold those with power to account and fight for wider reform by providing legal representation and advice, direct advocacy and support, and campaigning to ensure children and young people in the UK have their legal rights and entitlements respected and promoted and their voices heard and valued.

The Children's Rights Alliance for England (CRAE) merged into Just for Kids Law in 2015. It works with over 100 members to promote children's rights and monitor government implementation of the UN Convention on the Rights of the Child. CRAE fights for children's rights by listening to what children say, carrying out research to understand what children are going through and challenging those who violate children's rights.

About JUSTICE

JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.

⁶ Quote comes from press release of Just for Kids Law, <https://www.crowdjustice.com/case/children-as-spies/>

Standing up for kids

JUST FOR KIDS LAW



Children's
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