

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

House of Lords Committee
Briefing and Suggested Amendments
Committee Stage (day 2) 1 December 2020

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. Moreover, the Bill is silent as to protections for both groups.

Our position is that the state should never use children and vulnerable individuals in this way (1), but if their use is continued to be permitted, there must be clear and meaningful safeguards set out in statute (2).

It is extremely disappointing that no Child Rights Impact Assessment (CRIA) has been undertaken 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.

1. Complete prohibition

We support the following amendments to prohibit granting criminal conduct authorisations to children and vulnerable people being used as Covert Human Intelligence Sources (CHIS):

Amendment 43:

Amend clause 1 of the Bill with:

"() A criminal conduct authorisation may not be granted to a covert human intelligence source under the age of 18".

And

Amendment 54:

"(8A) A criminal conduct authorisation may not be granted in relation to a covert human intelligence source who is—
a. a vulnerable individual, or
b. victim of modern slavery or trafficking.

(8B) In subsection (8A)—

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 to protect themselves against significant harm or exploitation.

A “victim of modern slavery or trafficking” is a person who the relevant investigating authority believes is or may be a victim of trafficking as defined by section 2 of the Modern Slavery Act 2015 (human trafficking), or exploitation as defined by section 3 of the Modern Slavery Act 2015 (meaning of exploitation).”

Purpose of the amendments

- These amendments would bring legislation in line with existing child protection laws, including the Children Act 1989, and international law on children’s rights, including the UN Convention on the Rights of the Child (CRC), which state that children’s best interests must be a primary consideration in all decisions made which affect the child.
- Under the Children Act, if a parent were to place a child in a dangerous, criminal situation (encouraging them to purchase or traffic drugs), there would be strong grounds to remove them from such parents. It is therefore highly concerning that Parliament could, through this Bill, endorse giving the state the power to endanger a child in this manner.
- 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.
- While we understand that the use of children as CHIS remains infrequent,¹ it remains highly problematic that they continue to be used at all, or that any expansion of their use is contemplated.² Indeed, given the apparent infrequency, we consider that the prohibition of their use altogether would not incur operational difficulties, and that law enforcement agencies could develop alternative strategies without their use. We do not believe that using children or vulnerable individuals as spies can ever be justified or in their best interests.

2. Stronger safeguards

If Parliament decides not to prohibit granting criminal conduct authorisations to children and vulnerable individuals used as CHIS then, at a minimum, stronger safeguards must be introduced. In that instance, we would support the following amendment:

Amendment 60:

“Criminal conduct authorisations: Granting to children and vulnerable sources

¹The 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>

² ‘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/>

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

“29C Criminal conduct authorisations: Granting to children and vulnerable sources

(1) This section applies when the source is—

- (a) under the age of 18,*
- (b) a vulnerable individual, as defined in subsection (5),*
- (c) a victim of modern slavery or trafficking, as defined in subsection (6).*

(2) No criminal conduct authorisations may be granted for a source to whom subsection (1) applies unless the authorising officer believes that exceptional circumstances apply that necessitate the authorisation.

(3) Where a source is one 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 welfare; or*
- (c) where no person falling within paragraph (a) or (b) is available and deemed appropriate, any responsible person aged eighteen 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, or exploitation as defined by section 3 of the Modern Slavery Act 2015.

(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 CHIS; and*
- (b) where the CHIS 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 CHIS; and*
- (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.”*

Purpose of the amendment

The September 2020 revisions to the Code of Practice have 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, we do not think that relying on the safeguards in the Code of Practice is adequate as they are not as strong as the ones suggested in the amendments above and they would not be placed on a statutory footing. 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 once it is opened by the Home Office.

If the practice of granting criminal conduct authorisations passes into law, we consider that the Code of Practice, as revised in September 2020, does not go far enough and is not clear enough in some key respects. Crucial safeguarding measures must be set out:

- Criminal conduct authorisations must only be given to children and vulnerable people CHIS in 'exceptional circumstances', which must be exhaustively defined in legislation in order to ensure the fundamental protections owed to children and vulnerable adults.
- Where a CHIS is under 18, it would ensure that criminal conduct authorisation remains compatible with and does not override the best interests of the child in line with UNCRC and rather than relying on ad hoc developments in guidance documents such as the Code of Practice.
- Victims of modern slavery or trafficking must be explicitly included in the safeguards granted by this amendment.
- Current law means anyone who is aged 16 or 17 years old do not get an appropriate adult 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 CHIS will not get appropriate adults under the Bill as introduced. This amendment would redress 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 ages 17 years and under.
- If the Bill is passed with the above safeguarding amendment, the 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,³ as illustrated by the harrowing case previously recounted by Baroness Hamwee:

³ 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)

"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."

- There are many concerns around whether children and vulnerable adults can give informed 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 creation 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"*.⁴

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

⁴ Quote comes from press release of Just for Kids Law, <https://www.crowdjustice.com/case/children-as-spies/>



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.

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