Covert Human Intelligence Sources (Criminal Conduct) Act 2021

2021 CHAPTER 4

Criminal conduct authorisations

2 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.

Changes to legislation: *There are currently no known outstanding effects for the Covert Human Intelligence Sources (Criminal Conduct) Act 2021, Section 2. (See end of Document for details)*

(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).

Commencement Information

I1 S. 2 in force at 10.8.2021 for specified purposes by S.I. 2021/605, **reg. 2(a)**

I2 S. 2 in force at 15.9.2021 for specified purposes by S.I. 2021/605, **reg. 2(b)**

I3 S. 2 in force at 30.9.2021 in so far as not already in force by S.I. 2021/605, **reg. 2(c)**

Changes to legislation:
There are currently no known outstanding effects for the Covert Human Intelligence Sources (Criminal Conduct) Act 2021, Section 2.