



13 January 2021

My Lords,

Covert Human Intelligence Sources (Criminal Conduct) Bill – Territorial Extent.

During the Report Stage debate on Monday 11th January, I raised the ongoing discussions the Government has had with the Scottish Government regarding support for a Legislative Consent Motion for devolved provisions within the Bill. These discussions have been detailed and the Government has tried to accommodate requests from the Scottish Government to ensure the Bill applies UK-wide. This has included, for example, an agreement from operational agencies to discuss a memorandum of understanding with the Crown Office and Procurator Fiscal Service to provide the Lord Advocate with visibility of criminal conduct authorisations relating to activity in Scotland.

Subsequent to the debate on Monday, the Scottish Government have confirmed that despite these accommodations, they are unable to recommend consent.

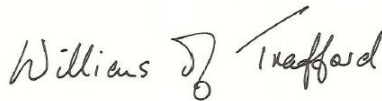
The Scottish Government require further amendment to the Bill in relation to limits to the conduct which can be authorised under the Bill. Noble Lords are aware of the Government's position on this issue; to create a checklist of prohibited conduct gives our adversaries a list to test suspect CHIS (Covert Human Intelligence Source) against, and a list that criminal gangs can seek to conduct initiation tests with for potential new recruits. These aren't just risks that the Government has identified; we are being led by the advice and expertise of operational partners. The decisions we have made throughout this Bill, but particularly on this issue, are based entirely on the reality that our operational partners experience in the field. The risks of placing limits on the face of the Bill have been strongly emphasised to us by all key operational partners from all parts of the UK.

Respecting the Sewel Convention, whereby the Government will not normally legislate on devolved matters without the consent of the Scottish Government, at Third Reading, I will bring forward amendments to remove from the Bill the ability to authorise participation in criminal conduct for devolved purposes in Scotland. Authorisations necessary for the purpose of national security or the economic well-being of the United Kingdom relate to reserved matters and relevant public authorities will still be able to grant authorisations for these purposes for activity in Scotland. An authorisation necessary for the purpose of preventing and detecting crime or preventing disorder is not in itself reserved. An authorisation granted for the purpose of preventing and detecting crime or preventing disorder may therefore relate to devolved matters and it will be these matters for which the Bill will not apply.

This means that for these authorisations in Scotland, public authorities will in the immediate term continue to rely on existing legal bases for an authorisation. Were that position to change in the future, it would be for the Scottish Government to bring forward legislation that places this conduct on a clear and consistent statutory basis.

The UK Government has worked with operational partners to minimise the immediate operational impact of the legislation not applying UK-wide. This remains vital legislation which provides a clear and consistent statutory basis for public authorities to keep the public safe. I am happy to discuss this matter with any Noble Lord in further detail or arrange for my officials to provide additional information.

I am copying this letter to the Advocate General for Scotland and the Secretary of State for Scotland.

A handwritten signature in black ink, reading "Williams of Trafford". The signature is written in a cursive style with a large, stylized initial 'W'.

Baroness Williams of Trafford