



House of Commons

Tuesday 5 February 2013

PUBLIC BILL COMMITTEE

New Amendments handed in are marked thus ★

☆ *Amendments which will comply with the required notice period at their next appearance*

JUSTICE AND SECURITY BILL [*LORDS*]

NOTE

The Amendments have been arranged in accordance with the Order of the Committee [29 January 2013].

Clause 6.

Another Amendment (No. 55) proposed, in page 4, line 21, to leave out subsections (2) to (6) and insert—

‘(1B) The court may make such a declaration if it considers that the following two conditions are met.

5 (1C) The first condition, in a case where the court is considering whether to make a declaration on the application of the Secretary of State or of its own motion, is that—

10 (a) a party to the proceedings (whether or not the Secretary of State) would be required to disclose sensitive material in the course of the proceedings to another person (whether or not another party to the proceedings), or

(b) a party to the proceedings (whether or not the Secretary of State) would be required to make such a disclosure were it not for one or more of the following—

15 (i) the possibility of a claim for public interest immunity in relation to the material,

(ii) the fact that there would be no requirement to disclose if the person concerned chose not to rely on the material,

(iii) section 17(1) of the Regulation of Investigatory Powers Act 2000 (exclusion for intercept material),

20 (iv) any other enactment that would prevent the party from disclosing the material but would not do so if the proceedings were proceedings in relation to which there was a declaration under this section.

Justice and Security Bill [*Lords*], *continued*

- 25 (1D) The first condition, in a case where the court is considering whether to make a declaration on the application of a party to the proceedings (other than the Secretary of State), is that—
- (a) the applicant would be required to disclose sensitive material in the course of the proceedings to another person (whether or not another party to the proceedings), or
- 30 (b) the applicant would be required to make such a disclosure were it not for one or more of the following—
- (i) the possibility of a claim for public interest immunity in relation to the material,
- (ii) the fact that there would be no requirement to disclose if the applicant chose not to rely on the material,
- 35 (iii) section 17(1) of the Regulation of Investigatory Powers Act 2000 (exclusion for intercept material),
- (iv) any other enactment that would prevent the applicant from disclosing the material but would not do so if the proceedings were proceedings in relation to which there was a declaration under this section.
- 40 (1E) The second condition is that it is in the interests of the fair and effective administration of justice in the proceedings to make a declaration.
- (1F) The two conditions are met if the court considers that they are met in relation to any material that would be required to be disclosed in the course of the proceedings (and an application under subsection (1A)(a) need not be based on
- 45 all of the material that might meet the conditions).
- (1G) A declaration under this section must identify the party or parties to the proceedings who would be required to disclose the sensitive material (“a relevant person”).’—(*James Brokenshire*)

Question proposed, That the Amendment be made.

As Amendments to James Brokenshire’s proposed Amendment (No. 55):—

Dr Julian Huppert
Mike Crookart

Line 1, leave out ‘(6)’ and insert (4)’.

(a)

Mr Andy Slaughter

Line 2, leave out ‘two conditions are’ and insert ‘condition is’.

(d)

Mr Andy Slaughter

Line 4, leave out ‘first’.

(e)

Dr Julian Huppert
Mike Crookart

Line 4, leave out from ‘condition’ to ‘is’ in line 5.

(b)

Mr Andy Slaughter

Line 5, after ‘State’, insert ‘or a party’.

(f)

Justice and Security Bill [*Lords*], *continued*

Mr Andy Slaughter

(g)

Line 9, leave out from ‘proceedings),’ to end of line 46 and insert—

- ‘(b) such a disclosure would be damaging to the interests of national security,
- (c) the degree of harm to the interests of national security if the material is disclosed would be likely to outweigh the public interest in the fair and open administration of justice, and
- (d) a fair determination of the proceedings is not possible by any other means.

(1C) In deciding whether a party to the proceedings would be required to disclose material, the court must ignore—

- (a) section 17(1) of the Regulation of Investigatory Powers Act 2000 (exclusion for intercept material), and
- (b) any other enactment that would prevent the applicant from disclosing the material but would not do so if the proceedings were proceedings in relation to which there was a declaration under this section.

(1D) Before making an application under subsection (1), the Secretary of State must consider whether to make, or advise another person to make, a claim for public interest immunity in relation to the material on which the application would be based.

(1E) Before making a declaration under subsection (1), the court must consider whether a claim for public interest immunity could have been made in relation to the material.’.

Dr Julian Huppert
Mike Crookart

(c)

Leave out lines 23 to 40.

Dr Julian Huppert
Mike Crookart

52

Clause 6, page 5, line 3, leave out ‘subsection (2)’ and insert ‘this section’.

Mr Andy Slaughter

68

Clause 6, page 5, line 3, leave out from ‘must’ to end of line 5 and insert—

- ‘(a) ensure that the material is disclosed to a special advocate,
- (b) determine whether a claim for public interest immunity could have been made in relation to any part of the material, and
- (c) order disclosure of any part of the material to which public interest immunity would not apply.

(6A) In making a determination pursuant to subsection 2(d), the court—

- (a) must not make such a determination solely by reason of the fact that such material would be excluded by the operation of the doctrine of public interest immunity; and
- (b) must only make such a determination if otherwise the proceedings would be struck out pursuant to any rule of law; and
- (c) must only make such a determination if the court is satisfied that the unfairness to the relevant person or the Secretary of State by not making a declaration under this section would be substantially greater than the unfairness to the other parties by making such a declaration.’.

Justice and Security Bill [Lords], continued

James Brokenshire

56

Clause 6, page 5, line 12, leave out ‘the Secretary of State’ and insert ‘a person’.

James Brokenshire

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Clause 6, page 5, line 15, after ‘section’, insert ‘or proceedings for or about such a declaration’.

James Brokenshire

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Clause 6, page 5, line 18, leave out ‘the Secretary of State’ and insert ‘a person’.

James Brokenshire

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Clause 6, page 5, line 19, leave out ‘(1)’ and insert ‘(1A)(a)’.

James Brokenshire

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Clause 6, page 5, line 19, leave out ‘Secretary of State’s’ and insert ‘person’s’.

James Brokenshire

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Clause 6, page 5, line 20, leave out ‘all of the parties’ and insert ‘every other person entitled to make such an application in relation’.

James Brokenshire

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Clause 6, page 5, line 22, leave out ‘Secretary of State’ and insert ‘applicant’.

James Brokenshire

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Clause 6, page 5, line 22, leave out from ‘inform’ to first ‘of’ in line 23 and insert ‘every other such person’.

Mr Andy Slaughter

69

Clause 6, page 5, line 32, at end add ‘except for proceedings which arise in connection with the claimant’s loss of liberty.’.

James Brokenshire

64

Clause 6, page 5, line 32, at end add—

“‘sensitive material’ means material the disclosure of which would be damaging to the interests of national security.’.

 Mr Andy Slaughter
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Clause 7, page 5, line 47, at end add ‘and that damage outweighs the public interest

Justice and Security Bill [*Lords*], *continued*

in the fair and open administration of justice.’.

Dr Julian Huppert
Mike Crockart

Clause 7, page 6, line 2, leave out ‘consider requiring’ and insert ‘require’.

1

Dr Julian Huppert
Mike Crockart

Clause 7, page 6, line 4, at end insert ‘sufficient to enable the party to whom the summary is provided to give effective instructions on the undisclosed material to their legal representatives and special advocates.’.

2

Dr Julian Huppert
Mike Crockart

Clause 7, page 6, line 5, after ‘ensure’, insert ‘so far as it is possible to do so’.

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Mr Andy Slaughter

Clause 7, page 6, line 16, leave out ‘authorised’ and insert ‘required’.

72

Mr Andy Slaughter

Clause 7, page 6, line 21, leave out ‘or’ and insert ‘and’.

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Mr Andy Slaughthter

Clause 8, page 6, line 28, leave out ‘may’ and insert ‘must’.

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Mr Andy Slaughter

Clause 8, page 6, line 40, at end insert—

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‘(4A) Rules of court relating to any relevant civil proceedings in relation to which there is a declaration under section 6 proceedings must secure—

- (a) that, where a party is excluded from such an application, his interests are represented by a special advocate appointed in advance of the court hearing such application and, if the application is granted, for the duration of the section 6 proceedings and related proceedings,
- (b) that the special advocate is afforded the opportunity to take instructions from the party whose interests he is appointed to represent.’.

Mr Andy Slaughter

Clause 10, page 7, line 16, leave out subsection (2) (b).

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Justice and Security Bill [*Lords*], *continued*

Mr Andy Slaughter

76

Clause 10, page 7, line 27, at end insert—

- ‘(2A) Rules of court relating to section 6 proceedings must make provision—
- (a) requiring the court concerned to notify relevant representatives of the media of proceedings in which an application for a declaration under section 6 has been made,
 - (b) providing for any person notified under paragraph (a) to intervene in the proceedings,
 - (c) providing for a stay or sist of relevant civil proceedings to enable anyone notified under paragraph (a) to consider whether to intervene in the proceedings,
 - (d) enabling any party to the proceedings or any intervener to apply to the court concerned for a determination of whether there continues to be justification for not giving full particulars of the reasons for decisions in the proceedings, and
 - (e) requiring the court concerned, on an application under paragraph (d), to publish such of the reasons for decision as the court determines can no longer be justifiably withheld.’

James Brokenshire

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Clause 10, page 7, line 31, leave out subsections (4) and (5) and insert—

- ‘(4) The following proceedings are to be treated as section 6 proceedings for the purposes of sections 7 to 9, this section and section 11—
- (a) proceedings on, or in relation to, an application for a declaration under section 6;
 - (b) proceedings on, or in relation to, a decision of the court to make a declaration under that section of its own motion.
- (5) In proceedings treated as section 6 proceedings by virtue of subsection (4), a relevant person, for the purposes of sections 7 to 9, this section and section 11, is a person who would be required to disclose sensitive material in the course of the proceedings.’

Mr Andy Slaughter

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Clause 10, page 7, line 36, at end add—

- ‘(6) Rules of court relating to section 6 proceedings must make provision—
- (a) to ensure that the burden of proof in section 6 proceedings shall be on the relevant person and, where a party, the Secretary of State,
 - (b) to ensure that, upon the Secretary of State making an application under section 6(1), he shall be obliged to make full and frank unredacted disclosure to the court and special advocate of all material and information relevant to—
 - (i) the issues in the action,
 - (ii) the admissibility of any evidence in section 6 proceedings,
 - (iii) the reliability of any such evidence,
 - (iv) the existence of witnesses or lines of inquiry leading to the discovery of relevant material, or
 - (v) the appropriate court procedure for determining the issues in the claim,

Justice and Security Bill [Lords], continued

- (c) to ensure that any material which the special advocate represents may have been procured by torture or by cruel, inhumane or degrading treatment is ruled inadmissible unless the contrary is proved to a high degree of conviction,
- (d) to ensure that opinion evidence is ruled inadmissible unless provided by an independent expert,
- (e) to ensure that the court shall not without the consent of the special advocate admit any statement constituting hearsay evidence without—
 - (i) the source being identified to the court's satisfaction,
 - (ii) the court being satisfied that it is impracticable for the source to provide live evidence to the court by oral evidence or video-link and to be available for cross-examination, and
 - (iii) the court being satisfied that the words of the source are reported or recorded accurately and there is no risk of significant misquotation through multiple hearsay or otherwise,
- (f) to ensure that the costs of all the parties to any proceedings in which a declaration under section 6 is made shall be paid by the Secretary of State in any event,
- (g) to ensure that any judgement or decision of the court in any proceedings in which a section 6 declaration is sought shall be deemed to be an interlocutory judgement and any party excluded from such proceedings may at any time apply to the court to set aside such judgement or decision on the basis of relevant evidence not reasonably available to that party at the time of the section 6 proceedings.’.

James Brokenshire

Clause 11, page 8, line 10, leave out ‘(4)’ and insert ‘(1G)’.

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James Brokenshire

Clause 11, page 8, line 14, at end insert—

“‘sensitive material’ has the meaning given by section 6(9).”

67

Diana Johnson

Clause 14, page 11, line 14, at end insert ‘where that information relates to national security or the interests of the United Kingdom’.

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Diana Johnson

Clause 14, page 11, line 15, leave out ‘an’ and insert ‘a foreign’.

79

Diana Johnson

Clause 14, page 11, line 17, leave out ‘an’ and insert ‘a foreign’.

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Justice and Security Bill [Lords], continued

Diana Johnson

81

Clause 14, page 11, line 18, leave out paragraph (d).

James Brokenshire

49

Schedule 2, page 17, line 30, at end insert—

‘Data Protection Act 1998 (c. 29)

- 1A In section 63A of the Data Protection Act 1998 (application to Parliament)—
- (a) in subsection (2), after “Commons,” insert “other than where they are determined by or on behalf of the Intelligence and Security Committee of Parliament,” and
 - (b) in subsection (3), after “Lords,” insert “other than where they are determined by or on behalf of the Intelligence and Security Committee of Parliament,”.

James Brokenshire

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Schedule 2, page 18, line 4, at end insert—

‘Freedom of Information Act 2000 (c. 36)

- 3A (1) The Freedom of Information Act 2000 is amended as follows.
- (2) In section 23 (information supplied by, or relating to, bodies dealing with security matters), in subsection (3), at the end insert—
 - “(o) the Intelligence and Security Committee of Parliament.”
 - (3) In Part 1 of Schedule 1 (Public Authorities; General)—
 - (a) in paragraph 2, after paragraph (d) insert—
 - “(e) information held by the Intelligence and Security Committee of Parliament.”;
 - (b) in paragraph 3, after paragraph (d) insert—
 - “(e) information held by the Intelligence and Security Committee of Parliament.”.
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James Brokenshire

51

Schedule 3, page 21, line 22, after ‘Committee’, insert ‘of Parliament’.

Justice and Security Bill [*Lords*], *continued*

James Brokenshire

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Clause 17, page 14, line 1, leave out subsection (8).

*NEW CLAUSES**Review and revocation of declaration under section 6*

James Brokenshire

NC5

To move the following Clause:—

- ‘(1) This section applies where a court seised of relevant civil proceedings has made a declaration under section 6.
- (2) The court must keep the declaration under review, and may at any time revoke it if it considers that the declaration is no longer in the interests of the fair and effective administration of justice in the proceedings.
- (3) The court must undertake a formal review of the declaration once the pre-trial disclosure exercise in the proceedings has been completed, and must revoke it if it considers that the declaration is no longer in the interests of the fair and effective administration of justice in the proceedings.
- (4) The court may revoke a declaration under subsection (2) or (3)—
 - (a) on the application of—
 - (i) the Secretary of State (whether or not the Secretary of State is a party to the proceedings), or
 - (ii) any party to the proceedings, or
 - (b) of its own motion.
- (5) In deciding for the purposes of subsection (2) or (3) whether a declaration continues to be in the interests of the fair and effective administration of justice in the proceedings, the court must consider all of the material that has been put before it in the course of the proceedings (and not just the material on which the decision to make the declaration was based).
- (6) Rules of court must make provision—
 - (a) as to how a formal review is to be conducted under subsection (3);
 - (b) as to when the pre-trial disclosure exercise is to be considered to have been completed for the purposes of subsection (3).’

*Reporting and review*Dr Julian Huppert
Mike Crockart

NC1

To move the following Clause:—

- ‘(1) As soon as reasonably practicable after the end of every three-month period the Secretary of State must—

Justice and Security Bill [Lords], continued

- (a) prepare a report about his exercise of the powers conferred on him under this Part of this Act during that period; and
 - (b) lay a copy of that Report before Parliament.
 - (2) The person appointed by the Secretary of State to review the operation of the provisions of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006 must also carry out an annual review of the operation of the provisions of this Part of this Act.’.
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Annual renewal

Dr Julian Huppert
Mike Crockart

NC2

To move the following Clause:—

- ‘(1) The Secretary of State’s powers under Part 2 of this Act expire at the end of the period of one year beginning with the day on which this Act is passed.
 - (2) The Secretary of State may, by order made by statutory instrument, provide that the Secretary of State’s powers under Part 2 of this Act are not to expire at the time when they would otherwise expire under subsection (1) or in accordance with an order under this subsection but are to continue in force after that time for a period not exceeding one year.
 - (3) An order under this section may not be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.’.
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Criminal, civil and disciplinary proceedings and tribunals: disclosure of information held by the ISC

Dr Julian Lewis

NC3

To move the following Clause:—

‘Information held by the ISC in connection with the discharge of its functions under sections 1 to 4 and Schedule 1 may not be disclosed in any criminal, civil or disciplinary proceedings or tribunal.’.

Justice and Security Bill [Lords], continued*Publication or disclosure of information by the ISC*

Dr Julian Lewis

NC4

To move the following Clause:—

‘The ISC may not disclose or publish information if such a disclosure or publication by a person subject to the Official Secrets Act 1989 would be considered an offence for that person under that Act.’.

Access to special advocates: public interest immunity

Mr Andy Slaughter

NC6

To move the following Clause:—

‘In any proceedings where a relevant person or the Secretary of State successfully claims public interest immunity over any material on the grounds that its disclosure would damage the interests of national security—

- (a) any other party shall be entitled upon application to the court to have a special advocate appointed to inspect such material; and
 - (b) the special advocate shall be entitled to advise that party whether it would be in that party’s interests to apply for a declaration under this section.’.
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Open statements for closed judgements

Mr Andy Slaughter

NC7

To move the following Clause:—

‘Closed judgements must be accompanied by an open statement from the court, which shall include—

- (a) the reasons for the closed material procedure;
 - (b) any factors which would be particularly relevant in determining whether all or part of the closed judgement could be made open at a later date;
 - (c) the duration of open hearings and closed hearings;
 - (d) the number of witnesses heard in closed proceedings, and the nature of those witnesses;
 - (e) the length of a closed judgement;
 - (f) whether national security was an issue in the proceedings; and
 - (g) the date at which the closed status of the judgement should be reviewed, which must be no later than five years from the date of the judgement.’.
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Justice and Security Bill [Lords], continued*Recording of data relating to closed proceedings*

Mr Andy Slaughter

NC8

To move the following Clause:—

‘Rules of court relating to closed material proceedings under this Act, and applications for them, must make provision—

- (a) ensuring that key data is centrally recorded for all proceedings, including:
 - (i) the duration of open and closed proceedings,
 - (ii) the number of witnesses heard in closed proceedings and the nature of those witnesses,
 - (iii) the length of a closed judgement,
 - (iv) whether the claimant, defendant and/or intervener applied for closed material proceedings, and
 - (v) whether the claimant, defendant and/or intervener contested the application for closed proceedings.
 - (b) ensuring that centrally recorded data is available to the independent person appointed by the Secretary of State to review the operation of the provisions of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006, and
 - (c) ensuring that centrally recorded data is subject to the provisions of the Freedom of Information Act 2000.’.
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Disclosure judge

Mr Andy Slaughter

NC9

To move the following Clause:—

- ‘(1) The jurisdiction of the court in section 6 proceedings shall be exercised by a judge designated by the Lord Chief Justice for such purposes.
 - (2) A judge so designated shall be referred to as the “disclosure judge”.
 - (3) The disclosure judge shall not be the trial judge of the relevant civil proceedings.’.
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Further provision about section 6 proceedings

Mr Andy Slaughter

NC10

To move the following Clause:—

The judge at trial of the relevant civil proceedings may not take into account in determining the issues between the parties any material placed before him in

Justice and Security Bill [*Lords*], *continued*

section 6 proceedings which would not be relevant and admissible evidence in an open hearing.’.

Expiry and renewal

Mr Andy Slaughter

NC11

To move the following Clause:—

- ‘(1) The Secretary of State’s powers under sections 6 to 11 of this Act expire at the end of the period of one year beginning with the day on which this Act is passed.
 - (2) The Secretary of State may, by order made by statutory instrument, provide that the Secretary of State’s powers under part 2 of this Act are not to expire at the time when they would otherwise expire under subsection (1) or in accordance with an order under this subsection but are to continue in force after that time for a period not exceeding one year.
 - (3) An order under this section may not be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.’.
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Reporting and review

Mr Andy Slaughter

NC12

To move the following Clause:—

- ‘(1) As soon as reasonably practicable after the end of every three month period the Secretary of State must—
 - (a) prepare a report about his exercise of the powers conferred on him, and the exercise of the powers and rights conferred on others, under clauses 6 to 11 of this Act during that period; and
 - (b) lay a copy of that report before Parliament.
 - (2) The person appointed by the Secretary of State to review the operation of the provision of the Terrorism Act 2000 and part 1 of the Terrorism Act 2006 must also carry out an annual review of the operation of the provisions of this part of this Act.’.
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ORDER OF THE HOUSE [18 DECEMBER 2012]

That the following provisions shall apply to the Justice and Security Bill [*Lords*]:

Committal

1. The Bill shall be committed to a Public Bill Committee.

Justice and Security Bill [Lords], continued*Proceedings in Public Bill Committee*

2. Proceedings in the Public Bill Committee shall (so far as not previously concluded) be brought to a conclusion on Thursday 14 February 2013.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

Consideration and Third Reading

4. Proceedings on Consideration and Third Reading shall be taken in two days in accordance with the following provisions of this Order.
5. Proceedings on Consideration shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the second day.
6. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on the second day.
7. Standing Order No. 83B (Programming committees) shall not apply to proceedings on Consideration and Third Reading.

Other proceedings

8. Any other proceedings on the Bill (including any proceedings on consideration of any message from the Lords) may be programmed.
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ORDER OF THE COMMITTEE [29 JANUARY 2013]

That—

- (1) the Committee shall (in addition to its first meeting at 8.55 am on Tuesday 29 January) meet—
 - (a) at 2.00 pm on Tuesday 29 January;
 - (b) at 11.30 am and 2.00 pm on Thursday 31 January;
 - (c) at 8.55 am and 2.00 pm on Tuesday 5 February;
 - (d) at 11.30 am and 2.00 pm on Thursday 7 February;
 - (e) at 8.55 am and 2.00 pm on Tuesday 12 February; and
 - (f) at 11.30 am and 2.00 pm on Thursday 14 February;
 - (2) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clause 1; Schedule 1; Clauses 2 to 16; Schedules 2 and 3; Clause 17; new Clauses; new Schedules; remaining proceedings on the Bill;
 - (3) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 14 February.
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