



House of Commons

Tuesday 3 May 2016

PUBLIC BILL COMMITTEE

New Amendments handed in are marked thus ★

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

*Note: Some amendment numbers are missing from the numerical sequence.
This is due to duplication of material.*

INVESTIGATORY POWERS BILL

NOTE

This document includes all amendments remaining before the Committee and includes any withdrawn amendments at the end. The amendments have been arranged in accordance with the Order of the Committee [24 March 2016, as amended, 12 April 2016].

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

844

Clause **213**, page **165**, line **26**, leave out subsection (6) and insert—

“(6) The appropriate contribution shall represent the full amount of the relevant costs, subject to any audit process under subsection (4)”

Member’s explanatory statement

This amendment would ensure that the Government meets 100% of the compliance costs and that there is full cost recovery for Communication Service Providers (CSPs) implementing the legislation.

 Investigatory Powers Bill, *continued*

Keir Starmer
 Jo Stevens
 Christian Matheson
 Peter Kyle
 Stephen Kinnock
 Sue Hayman

853

Clause 216, page 166, line 36, after “State”, insert “following approval by a
 Judicial Commissioner”

Keir Starmer
 Jo Stevens
 Christian Matheson
 Peter Kyle
 Stephen Kinnock
 Sue Hayman

854

Clause 216, page 166, line 41, after “State”, insert “and a Judicial Commissioner”
Member’s explanatory statement
*Amendments 853 and 854 would require judicial authorisation for national security notices. This
 would also extend the “double lock” standard that is set in other parts of the Bill.*

Joanna Cherry
 Gavin Newlands

864

Page 166, line 35, leave out Clause 216
Member’s explanatory statement
This amendment would remove the provision for national security notices.

Keir Starmer
 Jo Stevens
 Christian Matheson
 Peter Kyle
 Stephen Kinnock
 Sue Hayman

845

Clause 217, page 167, leave out lines 20 and 21 and insert—
 “(1) The Secretary of State may, following approval by a Judicial Commissioner that
 the notice is justified, practicable, necessary and proportionate, give a relevant
 operator a notice (a “technical capability notice”)”
Member’s explanatory statement
*This amendment would require judicial authorisation for Clause 217 and bring the clause in line
 with other provisions within the bill that require judicial authorisation.*

Investigatory Powers Bill, *continued*

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

855

Clause 217, page 167, line 20, after “State”, insert “following approval by a Judicial Commissioner”

Member’s explanatory statement

This amendment would require judicial authorisation for technical capability notices. This would also extend the “double lock” standard that is set in other parts of the Bill.

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

846

Clause 217, page 168, line 8, at end insert—

“(4A) A notice may not impose upon the relevant operator any obligations relating to the removal of electronic protection applied by or on behalf of that operator to any communications or data unless the relevant operator or a person acting on its behalf retains the technical ability to remove the electronic protection from such communications or data.”

Member’s explanatory statement

This amendment would provide clarity and legal certainty for industry that the Government will not require back doors to be installed into products and services, is not seeking to weaken or restrict the use of encryption and that companies cannot be required to remove encryption if they do not have the means to do so at their disposal.

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

Joanna Cherry

Gavin Newlands

847

Clause 217, page 168, line 16, at end insert—

“(e) persons generally held to be representing users and privacy interests in order to assess the impact of any such Regulations on users.”

Member’s explanatory statement

This amendment would ensure that privacy protections form an overarching part of the Bill and apply across the full range of investigatory powers afforded to the security services.

 Investigatory Powers Bill, *continued*

Keir Starmer
 Jo Stevens
 Christian Matheson
 Peter Kyle
 Stephen Kinnock
 Sue Hayman

848

Clause 217, page 168, line 24, leave out subsection (8) and insert—

- “(8) A technical capability notice may only be given to persons outside the United Kingdom (and may require things to be done, or not to be done, outside the United Kingdom) where it would not cause the person to act contrary to any laws or restrictions under the law of the country or territory where it is established, for the provision of services.”

Member’s explanatory statement

This amendment would remove all provisions within the Bill that have extraterritorial reach and undermine the long term objective of creating a long term, international framework for law enforcement to gain access to data held overseas and resolves conflict of laws situations that may otherwise arise by providing the Secretary of State with the power to serve such notices without having to take account of domestic legal obligations to which the recipient is subject.

Keir Starmer
 Jo Stevens
 Christian Matheson
 Peter Kyle
 Stephen Kinnock
 Sue Hayman

Joanna Cherry

Gavin Newlands

857

Clause 217, page 168, line 30, at end insert—

- “(11) A person shall not be liable to have a technical capability notice served on him in accordance with regulations under this section by reason only that he provides, or is proposing to provide, to members of the public a telecommunications service the provision of which is or, as the case may be, will be no more than—
- (a) the means by which he provides a service which is not a telecommunications service; or
 - (b) necessarily incidental to the provision by him of a service which is not a telecommunications service.”

Member’s explanatory statement

This amendment would exclude (under powers in RIPA section 11(4)) those services that have a communications element, but are primarily not a communication service. This limits the very broad range of “telecommunication services” that could be required to build a technical capability under this Part.

Joanna Cherry
 Gavin Newlands

865

Page 167, line 19, leave out Clause 217

Member’s explanatory statement

This amendment would remove the provision for technical capability notices.

 Investigatory Powers Bill, *continued*

Keir Starmer
 Jo Stevens
 Christian Matheson
 Peter Kyle
 Stephen Kinnock
 Sue Hayman

849

Clause 218, page 168, leave out lines 37 and 38, and insert—

“(3) Before giving a relevant notice, the Secretary of State must provide evidence that the notice is justified, necessary practicable and proportionate, having, among other matters, taken into account—”

Keir Starmer
 Jo Stevens
 Christian Matheson
 Peter Kyle
 Stephen Kinnock
 Sue Hayman

850

Clause 218, page 168, line 45, at end insert—

“(f) the effect on the privacy and human rights of people in the United Kingdom and outside the United Kingdom”

Member’s explanatory statement

Amendments 848 to 850 would make explicit the requirement on the Home Secretary to justify the use of a power as intrusive as a technical capability notice. It will also require the Home Secretary to take account of the full effects of such a notice, particularly on people and companies based overseas.

Keir Starmer
 Jo Stevens
 Christian Matheson
 Peter Kyle
 Stephen Kinnock
 Sue Hayman

Joanna Cherry

Gavin Newlands

858

Clause 218, page 169, line 7, leave out “A technical capability notice may be given to a person outside the United Kingdom” and insert “Where a technical capability notice is to be given to a person outside the United Kingdom, the notice shall be served at that person’s principal office outside the United Kingdom where it is established, for the provision of services. Where it is considered unfeasible or inappropriate in the circumstances”

Member’s explanatory statement

This amendment would require that a UK agency would only serve a notice on an overseas entity that is capable of providing assistance under the warrant.

 Investigatory Powers Bill, *continued*

Joanna Cherry
Gavin Newlands

866

Page 168, line 31, leave out Clause 218

Member's explanatory statement

Amendment consequent on the removal of national security and technical capability notices.

Mr John Hayes

734

Clause 219, page 170, line 8, at end insert “(and in the application of section 218(3) and (4) in relation to varying a relevant notice, references to the notice are to be read as references to the notice as varied).”

Joanna Cherry
Gavin Newlands

867

Page 169, line 38, leave out Clause 219

Member's explanatory statement

Amendment consequent on the removal of national security and technical capability notices.

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

851

Clause 220, page 170, line 31, leave out subsection (6) and insert—

“(6) The Board must consider the technical requirements and the consequences, for the person who has made the reference and for others likely to be affected, of the notice so far as referred.”

Member's explanatory statement

This amendment would require the Technical Advisory Board to look at more than just an implementation of cost measure and instead examine the full costs of the notice.

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

852

Clause 220, page 171, leave out lines 1 and 2 and insert—

“(9) The Secretary of State may, after considering the conclusions of the Board and the Commissioner, and with approval of a Judicial Commissioner—”

Member's explanatory statement

This amendment would require judicial authorisation for these clauses and bring them in line with other parts of the bill.

 Investigatory Powers Bill, *continued*

Keir Starmer
 Jo Stevens
 Christian Matheson
 Peter Kyle
 Stephen Kinnock
 Sue Hayman

859

Clause 220, page 171, line 4, at end insert—

“(9A) Any variation made under subsection (9) must be approved by a Judicial Commissioner.”

Member’s explanatory statement

This amendment would require judicial authorisation for the variation and revocation of national security and technical capability notices. This would also extend the “double lock” standard that is set in other parts of the Bill.

Joanna Cherry
 Gavin Newlands

868

Page 170, line 18, leave out Clause 220

Member’s explanatory statement

Amendment consequent on the removal of national security and technical capability notices.

Joanna Cherry
 Gavin Newlands
 Keir Starmer
 Jo Stevens
 Christian Matheson
 Peter Kyle

Stephen Kinnock

Sue Hayman

871

Page 171, line 33, leave out Clause 222.

Joanna Cherry
 Gavin Newlands

869

Clause 223, page 172, line 41, leave out sub-paragraph (i) and insert—

“(i) is about an entity to which a telecommunications service is provided by that telecommunications operator and relates to the provision of that service,”

Member’s explanatory statement

This amendment clarifies the definition of communications data, limiting requirements on organisations to be providing data about the services that they supply.

 Investigatory Powers Bill, *continued*

Keir Starmer
 Jo Stevens
 Christian Matheson
 Peter Kyle
 Stephen Kinnock
 Sue Hayman

80

Clause 225, page 176, line 44, at end insert “and for the purposes (and only the purposes) of this Act, including the application of paragraphs (a), (b) and (c), a “criminal purpose” includes the purpose of—

- (i) doing or facilitating anything involving an imminent threat of death or serious injury or an imminent and serious threat to national security, or
- (ii) concealing, or impeding the detection or prevention of, the doing or facilitation of any of those things;”.

Keir Starmer
 Jo Stevens
 Christian Matheson
 Peter Kyle
 Stephen Kinnock
 Sue Hayman

81

Clause 225, page 177, line 6, at end insert—

“presumptively subject to legal privilege”, in relation to an item, means that disregarding any question of criminal purpose, the item falls to be treated as subject to legal privilege;”.

Joanna Cherry
 Gavin Newlands

870

Clause 225, page 177, line 11, at end insert—

““professional legal advisor” means a person who is—

- (a) an advocate,
- (b) a barrister,
- (c) a solicitor.”

Member’s explanatory statement

This amendment provides a definition of a “professional legal adviser” relating to use of the term in clauses 25, 100, 135 and 171.

Mr John Hayes

634

Schedule 10, page 235, line 33, leave out paragraph 46

Member’s explanatory statement

This amendment omits the amendments of paragraph 19ZD of Schedule 3 to the Police Reform Act 2002. Paragraph 19ZD is to be repealed by the Policing and Crime Bill.

Investigatory Powers Bill, *continued**NEW CLAUSES*

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

NC1

To move the following Clause—

“Power of Secretary of State to certify warrants

- (1) The Secretary of State may certify a warrant in those cases where—
 - (a) The Secretary of State has reasonable grounds to believe that the conduct authorised by the warrant is necessary pursuant to section 18(2)(a) (national security) and relates to—
 - (i) the defence of the United Kingdom by Armed Forces; or
 - (ii) the foreign policy of the United Kingdom.
 - (b) The Secretary of State considers that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct.
- (2) A warrant certified by the Secretary of State under subsection (1) is subject to approval by a Judicial Commissioner.
- (3) In deciding whether to approve a warrant certified by the Secretary of State under subsection (1), the Judicial Commissioner must determine whether—
 - (a) the warrant is capable of certification by the Secretary of State under subsection (1); and
 - (b) in the opinion of the Judicial Commissioner, approving the warrant is necessary on relevant grounds under section 18(2)(a) and subsection (1)(a) or (b) of this section.
- (4) Where a Judicial Commissioner refuses to approve a warrant certified by the Secretary of State under this Section, the Judicial Commissioner must produce written reasons for that decision.
- (5) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a warrant under subsection (3), the Secretary of State, or any special advocate appointed may ask the investigatory Powers Commissioner to decide whether to approve the warrant.”

Member’s explanatory statement

This new clause is intended to replace existing Clause 21 and provides for the Secretary of State to certify warrants in cases concerning defence or foreign policy before they are considered by a judicial commissioner.

Investigatory Powers Bill, *continued*

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

NC2

To move the following Clause—

“Items subject to legal privilege

- (1) A warrant under this Chapter, or under Chapter 1 of Part 6, may not authorise conduct undertaken for the purpose of doing anything in relation to—
 - (a) a communication, insofar as the communication consists of matters subject to legal privilege; or
 - (b) related communications data, insofar as the data relate to the communication of matters subject to legal privilege.
- (2) For the purposes of subsection (1), legal privilege means—
 - (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
 - (b) communications between a professional legal adviser and his client or any person representing his client and any other person with or in contemplation of legal proceedings or for the purposes of such proceedings;
 - (c) items enclosed with or referred to in such communications and made—
 - (i) in connection with the giving of legal advice, or
 - (ii) in connection with the contemplation of legal proceedings or for the purposes of such proceedings.
- (3) Communications made with the intention of furthering a criminal purpose are not subject to legal privilege.
- (4) An application which contains a statement that the purpose of a warrant is to access communications made for the purpose of furthering a criminal purpose, but which would otherwise attract legal privilege must be considered by a Judicial Commissioner.
- (5) A Judicial Commissioner may issue a warrant sought under subsection (3), if satisfied that—
 - (a) there are reasonable grounds to believe that the communications are made with the intent of furthering a criminal purpose;
 - (b) that the material is likely to be of substantial value to the investigation in connection with which the application is made;
 - (c) that the material concerned is likely to be relevant evidence;
 - (d) other proportionate methods of obtaining the information have been tried without success or were not tried because they were bound to fail; and
 - (e) it is in the public interest that the warrant is granted, having regard to the—
 - (i) benefit likely to accrue to the investigation and prosecution if the information is accessed,
 - (ii) the importance of the prosecution, or
 - (iii) the importance of maintaining public confidence in the confidentiality of material subject to legal professional privilege.

Investigatory Powers Bill, *continued*

- (6) A code of practice issued under Schedule 6 must contain provision about—
- (a) the steps to be taken to minimise the risk of conduct undertaken pursuant to a warrant to which this section applies resulting in accidental acquisition of a communication, or communications data, falling within subsection (1); and
 - (b) the steps to be taken if it appears that such conduct has accidentally resulted in acquisition of such a communication or data.”

Member’s explanatory statement

This new clause is intended to replace existing clause 25 and seeks to clarify the approach to legal privilege in line with existing law.

Joanna Cherry
Gavin Newlands

NC3

To move the following Clause—

“Tort or delict of unlawful interception

Any interception of a communication which is carried out without lawful authority at any place in the United Kingdom by, or with the express or implied consent of, a person having the right to control the operation or the use of a private telecommunication system shall be actionable by the sender or recipient, or intended recipient, of the communication if it is either—

- (a) an interception of that communication in the course of its transmission by means of that private system; or
- (b) an interception of that communication in the course of its transmission, by means of a public telecommunication system, to or from apparatus comprised in that private telecommunication system.”

Member’s explanatory statement

This new clause creates a civil wrong of unlawful interception.

Joanna Cherry
Gavin Newlands

NC4

To move the following Clause—

“Tort or delict of unlawfully obtaining communications data

The collection of communications data from a telecommunications operator, telecommunications service, telecommunications system or postal operator without lawful authority shall be actionable as a civil wrong by any person who has suffered loss or damage by the collection of the data.”

Member’s explanatory statement

This new clause creates a civil wrong of unlawful obtaining of communications data.

Investigatory Powers Bill, *continued*

Joanna Cherry
Gavin Newlands

NC5

To move the following Clause—

“Power of Secretary of State to certify warrants

- (1) The Secretary of State may certify an application for a warrant in those cases where the Secretary of State has reasonable grounds to believe that an application is necessary pursuant to section 18(2)(a) (national security) and involves—
 - (a) the defence of the United Kingdom by Armed Forces; or
 - (b) the foreign policy of the United Kingdom.
- (2) A warrant may be certified by the Secretary of State if—
 - (a) the Secretary of State considers that the warrant is necessary on grounds falling within section 18; and
 - (b) the Secretary of State considers that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct.
- (3) Any warrant certified by the Secretary of State subject to subsection (1) is subject to approval by a Judicial Commissioner.
- (4) In deciding to approve a warrant pursuant to this section, the Judicial Commissioner must determine whether—
 - (a) the warrant is capable of certification by the Secretary of State subject to subsection (1);
 - (b) the warrant is necessary on relevant grounds subject to section 18(2)(a) and subsection (1)(a) or (b); and
 - (c) the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct.
- (5) Where a Judicial Commissioner refuses to approve the person’s decision to approve a warrant under this section, the Judicial Commissioner must produce written reasons for the refusal.
- (6) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, approves or refuses to approve a warrant under this Section, the person, or any Special Advocate appointed, may ask the Investigatory Powers Commissioner to decide whether to approve the decision to issue the warrant.”

Joanna Cherry
Gavin Newlands

NC6

To move the following Clause—

“Items subject to legal privilege (No. 2)

- (1) A warrant under this Chapter, or under Chapter 1 of Part 6, may not authorise conduct undertaken for the purpose of doing anything in relation to—
 - (a) a communication, insofar as the communication consists of matters subject to legal privilege;
 - (b) related communications data, insofar as the data relate to the communication of matters subject to legal privilege.

Investigatory Powers Bill, *continued*

- (2) For the purposes of subsection (1), legal privilege means—
- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
 - (b) communications between a professional legal adviser and his client or any person representing his client and any other person with or in contemplation of legal proceedings or for the purposes of such proceedings;
 - (c) items enclosed with or referred to in such communications and made—
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with the contemplation of legal proceedings or for the purposes of such proceedings.
 - (d) communications made with the intention of furthering a criminal purpose are not subject to legal privilege.
- (3) An application which contains a statement that the purpose of a warrant is to access communications made for the purpose of furthering a criminal purpose, but which would otherwise attract legal privilege must be considered by a Judicial Commissioner.
- (4) A Judicial Commissioner may issue a warrant sought under subsection (3), if satisfied that—
- (a) there are reasonable grounds to believe that the communications are made with the intent of furthering a criminal purpose;
 - (b) that the material is likely to be of substantial value to the investigation in connection with which the application is made; and
 - (c) that the material concerned is likely to be relevant evidence;
 - (d) other proportionate methods of obtaining the information have been tried without success or were not tried because they were bound to fail;
 - (e) it is in the public interest that the warrant is granted, having regard to the—
 - (i) the benefit likely to accrue to the investigation and prosecution if the information is accessed;
 - (ii) the importance of the prosecution; and
 - (iii) the importance of maintaining public confidence in the confidentiality of material subject to legal professional privilege.
- (5) A code of practice issued under Schedule 6 must contain provision about—
- (a) the steps to be taken to minimise the risk of conduct undertaken pursuant to a warrant to which this section applies resulting in accidental acquisition of a communication, or communications data, falling within subsection (1);
 - (b) the steps to be taken if it appears that such conduct has accidentally resulted in acquisition of such a communication or data.”

Member's explanatory statement

This new clause clarifies the approach to legal professional privilege on the face of the Bill and brings it into line with the spirit of existing case-law, the common law and PACE.

Investigatory Powers Bill, *continued*

Keir Starmer
 Jo Stevens
 Christian Matheson
 Peter Kyle
 Stephen Kinnock
 Sue Hayman

Joanna Cherry

Gavin Newlands

NC7

To move the following Clause—

“Persons who may apply for issue of warrant

- (1) Each of the following organisations may apply for a communications data retention warrant—
- (a) a police force maintained under section 2 of the Police Act 1996,
 - (b) the Metropolitan Police Force,
 - (c) the City of London Police Force,
 - (d) the Police Service of Scotland,
 - (e) the Police Service of Northern Ireland,
 - (f) the British Transport Police Force,
 - (g) the Ministry of Defence Police,
 - (h) the Royal Navy Police,
 - (i) the Royal Military Police,
 - (j) the Royal Air Force Police,
 - (k) the Security Service,
 - (l) the Secret Intelligence Service,
 - (m) GCHQ, and
 - (n) the National Crime Agency.”
-

Joanna Cherry
 Gavin Newlands

NC8

To move the following Clause—

“Equipment interference: risk assessment

A person making an application for a warrant involving equipment interference must make a detailed assessment of—

- (a) the risk to the security or integrity of systems or networks that the proposed activity may involve;
 - (b) the risk to the privacy of those not being specifically targeted;
 - (c) the steps they propose to take to minimise the risks in subsection (a) and (b).”
-

Investigatory Powers Bill, *continued*

Joanna Cherry
Gavin Newlands

NC9

To move the following Clause—

“Critical national infrastructure: risk assessment

The person making an application for a warrant under this part must make a detailed assessment of the risks of the proposed activity to any critical national infrastructure.”

Joanna Cherry
Gavin Newlands

NC10

To move the following Clause—

“Requirements that must be met by warrants

- (1) A warrant issued under this Part must name or otherwise identify the person or persons, organisation, premises, or location to which the warrant relates.
- (2) A warrant issued under this Part must describe the investigation or operation to which the warrant relates..
- (3) A warrant issued under this Part must relate to one or more of the following purposes—
 - (a) in the interests of national security, or
 - (b) for the purpose of preventing or detecting serious crime, where there is reasonable suspicion that a serious criminal offence has been or is likely to be committed, or
 - (c) for the purpose of preventing death or injury.
- (4) A warrant may only be issued under this Part if there are reasonable grounds for believing that the material is likely to be of substantial value to the investigation or operation to which the warrant relates.”

Investigatory Powers Bill, *continued*

Joanna Cherry
 Gavin Newlands
 Keir Starmer
 Jo Stevens
 Christian Matheson
 Peter Kyle

Stephen Kinnock

Sue Hayman

NC11

To move the following Clause—

“Confidential and privileged material

- (1) Where any conduct under this Part will cover or is likely to cover special procedure material, or relates to individuals handling special procedure material, the application must contain—
 - (a) a statement that the conduct will cover or is likely to cover special procedure material, or relates to individuals handling special procedure material, and
 - (b) an assessment of how likely it is that the material is likely to cover special procedure material.
- (2) Where any conduct under this Part is likely to cover excluded procedure material, or relates to individuals handling excluded procedure material, the application must contain—
 - (a) a statement that the conduct will cover or is likely to cover excluded procedure material, or relates to individuals handling excluded procedure material, and
 - (b) an assessment of how likely it is that the material is likely to cover excluded procedure material.
- (3) Where a warrant issued under this Part will cover or is likely to cover special procedure material, or relates to individuals handling special procedure material, the procedure set out at section 5 below must be followed.
- (4) Where a warrant issued under this Part will cover or is likely to cover excluded procedure material, or relates to individuals handling excluded procedure material, the procedure set out at section 6 below must be followed.
- (5) Further to the requirements set out elsewhere in this part, the Judicial Commissioner may only issue a warrant if—
 - (a) there are reasonable grounds for believing that an indictable offence has been committed, and
 - (b) there are reasonable grounds for believing that the material is likely to be of substantial value to the investigation in connection to the offence at (a), and
 - (c) other proportionate methods of obtaining the material have been tried without success or have not been tried because they were assessed to be bound to fail, and
 - (d) it is in the public interest having regard to—
 - (i) the public interest in the protection of privacy and the integrity of personal data, and
 - (ii) the public interest in the integrity of communications systems and computer networks, and
 - (iii) the democratic importance of freedom of expression under article 10 ECHR to grant the warrant; or
 - (iv) the democratic interest in the confidentiality of correspondence with members of a relevant legislature; or

Investigatory Powers Bill, *continued*

- (v) the importance of maintaining public confidence in the confidentiality of material subject to legal professional privilege.
 - (6) Further to the requirements set out elsewhere in this part, the Judicial Commissioner may only issue a warrant in accordance with provisions made in Schedule 1 of the Police and Criminal Evidence Act and Schedule 5 of the Terrorism Act.
 - (7) An application for a warrant under this Part must not be granted where the information could be sought using a warrant under schedule 1 PACE, unless seeking this information under PACE would defeat the purpose of the investigation.
 - (8) Special procedure material means—
 - (a) special material as defined in section 14 of the Police and Criminal Evidence Act 1984;
 - (b) correspondence sent by or intended for a member of the relevant legislature.
 - (9) Excluded material procedure has the same meaning as in section 11 of the Police and Criminal Evidence Act 1984.
 - (10) A warrant under this Part may not authorise any conduct undertaken for the purpose of accessing any material relating to matters subject to legal privilege.
 - (11) For the purposes of subsection (10), “legal privilege” means—
 - (a) communications between a professional legal adviser and their client or any person representing their client made in connection with the giving of legal advice to the client;
 - (b) communications between a professional legal adviser and their client or any person representing their client and any other person with or in contemplation of legal proceedings or for the purposes of such proceedings;
 - (c) items enclosed with or referred to in such communications and made—
 - (i) in connection with the giving of legal advice, or
 - (ii) in connection with the contemplation of legal proceedings or for the purposes of such proceedings;
 - (d) communications made with the intention of furthering a criminal purpose are not subject to legal privilege.
 - (12) Where the purpose of the warrant is to conduct interference to obtain material that would normally be subject to legal privilege but that falls within subsection (11)(d), the interference and examination conduct authorised must relate—
 - (a) to the offence as specified under subsection (5)(a), or
 - (b) to some other indictable offence which is connected with or similar to the offence as specified under subsection (5)(a).”
-

Investigatory Powers Bill, *continued*

Joanna Cherry
Gavin Newlands

NC12

To move the following Clause—

“Warrants: notification by Judicial Commissioner

- (1) Upon completion of conduct authorised by a warrant under this Part, or the cancellation of a warrant issued under this Part, a Judicial Commissioner must notify the affected party, in writing, of—
 - (a) the conduct that has taken place, and
 - (b) the provisions under which the conduct has taken place.
- (2) The notification under subsection (1) must be sent within thirty days of the completion of the conduct or cancellation of the warrant.
- (3) A Judicial Commissioner may postpone the notification under subsection (1) beyond the time limit under subsection (2) if the Judicial Commissioner assesses that notification may defeat the purposes of an ongoing serious crime or national security investigation relating to the affected party.
- (4) A Judicial Commissioner must consult with the person to whom the warrant is addressed in order to fulfil an assessment under subsection (3).”

Member’s explanatory statement

This amendment would introduce a requirement that all equipment interference produces a verifiable audit trail. This will be particularly vital to the success and legitimacy of prosecutions. It is recommended that further provision for the independent verification of audit trails is included in Part 8 (Oversight Arrangements).

Joanna Cherry
Gavin Newlands
Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle

Stephen Kinnock

Sue Hayman

NC13

To move the following Clause—

“Audit trail of equipment interference

Any conduct authorised under a warrant issued under this Part must be conducted in a verifiable manner, so as to produce a chronological record of documentary evidence detailing the sequence of activities (referred to hereafter as “the audit trail”).”

Investigatory Powers Bill, *continued*

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

NC14

To move the following Clause—

“Authorisations in relation to items subject to legal privilege

- (1) Subsections (2) and (3) apply if—
 - (a) an application is made by or on behalf of a relevant public authority for authorisation under this Part, and
 - (b) the purpose, or one of the purposes, of the authorisation is to obtain communications data which contains, or might tend to reveal the content of, items presumptively subject to legal privilege.
- (2) The application must contain a statement that the purpose, or one of the purposes, of the authorisation is to obtain communications data which contains, or might tend to reveal the content of, items presumptively subject to legal privilege.
- (3) The person to whom the application is made may grant the authorisation only if the person considers—
 - (a) that compelling evidence indicates that the items in question consist of, or relate to, communications made for a criminal purpose such that it is necessary to authorise the acquisition of the communications data in question, and
 - (b) that the relevant public authority has made arrangements of the kind described in section 46 (*safeguards relating to retention and disclosure of intercepted material*), including specific arrangements for the handling, retention, use and destruction of such items.
- (4) Subsections (5) and (6) apply if—
 - (a) an application is made by or on behalf of a relevant public authority for authorisation under this Part,
 - (b) the relevant public authority considers that the relevant communications data is likely to include communications data which contains, or might tend to reveal the content of, items subject to legal privilege, and
 - (c) subsections (2) and (3) do not apply.
- (5) The application must contain—
 - (a) a statement that the relevant public authority considers that the relevant communications data is likely to include communications data which contains, or might tend to reveal the content of, items subject to legal privilege, and
 - (b) an assessment of how likely it is that the relevant communications data will include communications data which contains, or might tend to reveal the content of, such items.
- (6) The person to whom the application is made may grant the authorisation only if the person considers that the relevant public authority has made arrangements of the kind described in section 46 (*safeguards relating to retention and disclosure of material*), including specific arrangements for the handling, retention, use and destruction of any communications data which contains, or might tend to reveal the content of, items subject to legal privilege.
- (7) Subsections (1) to (6) of section 68 (*commissioner approval for authorisations in relation to journalistic sources*) apply to an authorisation to which this section applies as they apply to an authorisation in relation to the obtaining by a relevant

Investigatory Powers Bill, *continued*

public authority of communications data for the purpose mentioned in subsection (1)(a) of that section.

- (8) In this section “relevant communications data” means any communications data the obtaining of which is authorised by the authorisation.”

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

NC15

To move the following Clause—

“Safeguards relating to items subject to legal privilege

- (1) Section [*Authorisations in relation to items subject to legal privilege*] applies, with the necessary modifications, in relation to an application for a bulk acquisition warrant as it applies in relation to an application for an authorisation under Part 3.
- (2) Section 135 [*additional safeguards for items subject to legal privilege*] applies, with the necessary modifications, to the selection for examination of communications data obtained under a bulk acquisition warrant as it applies to the selection for examination of intercepted content obtained under a bulk interception warrant.”

Keir Starmer
Jo Stevens
Chris Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

NC16

To move the following Clause—

“Review of Bulk Powers

Saving this section, Part 6 shall not come into force until—

- (a) the Secretary of State has established an independent review of the operational case for bulk powers contained in sections 119 to 173; and
- (b) the review has been published and a copy laid before each House of Parliament.”
-

Investigatory Powers Bill, *continued*

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

Joanna Cherry

Gavin Newlands

NC17

To move the following Clause—

“Remuneration or allowances for additional directed oversight functions

The Treasury shall make available such remuneration or allowances as necessary to meet the requirements of section 197 (*Additional directed oversight functions*).”

Joanna Cherry
Gavin Newlands

NC18

To move the following Clause—

“Notification by Intelligence and Surveillance Commissioner

- (1) The Intelligence and Surveillance Commissioner is to notify the subject or subjects of investigative or surveillance conduct relating to the statutory functions identified in section 196, subsections (1), (2) and (3), including—
 - (a) the interception or examination of communications,
 - (b) the retention, accessing or examination of communications data or secondary data,
 - (c) equipment interference,
 - (d) access or examination of data retrieved from a bulk personal dataset,
 - (e) covert human intelligence sources,
 - (f) entry or interference with property.
- (2) The Intelligence and Surveillance Commissioner must only notify subjects of surveillance under subsection (1) upon completion of the relevant conduct or the cancellation of the authorisation or warrant.
- (3) The notification under subsection (1) must be sent by writing within 30 days of the completion of the relevant conduct or cancellation of the authorisation or warrant.
- (4) The Intelligence and Surveillance Commissioner must issue the notification under subsection (1) in writing, including details of—
 - (a) the conduct that has taken place, and
 - (b) the provisions under which the conduct has taken place, and
 - (c) any known errors that took place within the course of the conduct.
- (5) The Intelligence and Surveillance Commissioner may postpone the notification under subsection (1) beyond the time limit under subsection (3) if the Commissioner assesses that notification may defeat the purposes of an on-going serious crime or national security investigation relating to the subject of surveillance.

Investigatory Powers Bill, *continued*

- (6) The Intelligence and Surveillance Commissioner must consult with the person to whom the warrant is addressed in order to fulfil an assessment under subsection (5).”

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

NC19

To move the following Clause—

“Funding, staff and facilities of Intelligence and Surveillance Commission

- (1) The Treasury must, after consultation with the Intelligence and Surveillance Commission as to number of staff and in light of the extent of the statutory and other functions of the Commission, provide the Commission with funds to cover—
- (a) such staff, and
 - (b) such accommodation, equipment and other facilities, as necessary for the carrying out of the Commissioners’ functions.
- (2) The staff of the Intelligence and Surveillance Commission must include—
- (a) independent technical experts, and
 - (b) independent legal experts.”

Member’s explanatory statement

This new clause would require the Treasury to provide the ISC with funds to cover its staff, facilities and accommodation. It would also require that the ISC staff include technical and legal experts.

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

Joanna Cherry

Gavin Newlands

NC20

To move the following Clause—

“Power to make declaration of incompatibility with a Convention right

- (1) Section 4 of the Human Rights Act 1998 is amended as follows.

Investigatory Powers Bill, *continued*

- (2) In subsection (5), after paragraph (f), insert—
 “(g) the Investigatory Powers Tribunal.””

Member’s explanatory statement

This new clause enables the IPT to make a declaration of incompatibility under the Human Rights Act.

Keir Starmer
 Jo Stevens
 Christian Matheson
 Peter Kyle
 Stephen Kinnock
 Sue Hayman

NC21

To move the following Clause—

“Openness and the Investigatory Powers Tribunal

- (1) Within 12 months of the coming into force of this Act, the Secretary of State must make arrangements for an independent review of the procedures of the Investigatory Powers Tribunal to be placed before Parliament.
- (2) The Treasury will provide such funds, remuneration or allowances as necessary for the Independent Reviewer appointed to produce his report pursuant to section (1).
- (3) The Independent Review in section (1) must consider—
 - (a) the capacity of the Tribunal to afford redress to individuals when compulsory powers are exercised unlawfully, including in a manner incompatible with Convention Rights protected by the Human Rights Act 1998, and
 - (b) the conduct of Tribunal hearings and the production of Tribunal decisions which are open, transparent and accessible, except in so far as can be justified in light of a serious risk to life or of physical injury of any person, seriously prejudicial to—
 - (i) national security, or
 - (ii) the prevention and detection of serious crime.”

Joanna Cherry
 Gavin Newlands

NC22

To move the following Clause—

“Retention of Communications data

An operator who has not been designated as the operator of an electronic communications network or service according to section 34 of the Communications Act 2003; or whose service has fewer than 50,000 subscribers,

Investigatory Powers Bill, *continued*

shall not be required to comply with a retention notice under section 78 of this Act.”

Member’s explanatory statement

This new clause excludes the providers of rural or community access communications services and small service providers from the obligation to collect and retain data.

Joanna Cherry
Gavin Newlands
Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle

Stephen Kinnock

Sue Hayman

NC23

To move the following Clause—

“Review of the Operation of this Act

- (1) The Secretary of State shall appoint an Independent Reviewer to prepare the first report on the operation of this Act within a period of six months beginning with the end of the initial period.
- (2) In subsection (1) “the initial period” is the period of four years and six months beginning with the day on which this Act is passed.
- (3) Subsequent reports will be prepared every five years after the first report in subsection (1).
- (4) Any report prepared by the Independent Reviewer must be laid before Parliament by the Secretary of State as soon as the Secretary of State is satisfied it will not prejudice any criminal proceedings.
- (5) The Secretary of State may, out of money provided by Parliament, pay a person appointed under subsection (1), both his expenses and also such allowances as the Secretary of State determines.”

Joanna Cherry
Gavin Newlands
Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle

Stephen Kinnock

Sue Hayman

NC24

To move the following Clause—

“Duration of this Act

- (1) This Act expires at the end of one year beginning with the day on which it is passed (but this is subject to subsection (2)).

Investigatory Powers Bill, *continued*

- (2) Her Majesty may by Order in Council provide that, instead of expiring at the time it would otherwise expire, this Act shall expire at the end of a period of not more than one year from that time.
- (3) Such an Order may not provide for the continuation of this Act beyond the end of the year 2022.
- (4) No recommendation may be made to Her Majesty in Council to make an Order under subsection (2) unless a draft of the Order has been laid before, and approved by a resolution of, each House of Parliament.”

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

Joanna Cherry

Gavin Newlands

NC25

To move the following Clause—

“Discharge of the powers, duties and functions: obligations

The discharge of the powers, duties and functions under this Act is subject to an obligation to have due regard to the following—

- (a) the public interest in protecting national security,
 - (b) the public interest in the prevention and detection of serious crime,
 - (c) the public interest in the protection of the privacy and the integrity of personal data,
 - (d) the public interest in the security and integrity of communications systems and networks,
 - (e) the principle of necessity,
 - (f) the principle of proportionality; and that no interference with privacy should be considered proportionate if the information which is sought could reasonably be obtained by other less intrusive means,
 - (g) the principle of due process, accountability and respect for the human rights of those affected by the exercise of powers under this Act, and
 - (h) the principle of notification and redress.”
-

Investigatory Powers Bill, *continued*

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

Joanna Cherry

Gavin Newlands

NC26

To move the following Clause—

“Discharge of the powers, duties and functions: protection of national security

The discharge of the powers, duties and functions under this Act is subject to an obligation to have due regard to the public interest in protecting national security.”

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

Joanna Cherry

Gavin Newlands

NC27

To move the following Clause—

“Discharge of the powers, duties and functions: prevention and detection of serious crime

The discharge of the powers, duties and functions under this Act is subject to an obligation to have due regard to the public interest in the prevention and detection of serious crime.”

Investigatory Powers Bill, *continued*

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

Joanna Cherry

Gavin Newlands

NC28

To move the following Clause—

“Discharge of the powers, duties and functions: protection of the privacy and integrity of personal data

The discharge of the powers, duties and functions under this Act is subject to an obligation to have due regard to the public interest in the protection of the privacy and the integrity of personal data.”

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

Joanna Cherry

Gavin Newlands

NC29

To move the following Clause—

“Discharge of the powers, duties and functions: security and integrity of communications systems and networks

The discharge of the powers, duties and functions under this Act is subject to an obligation to have due regard to the public interest in the security and integrity of communications systems and networks.”

Investigatory Powers Bill, *continued*

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

Joanna Cherry

Gavin Newlands

NC30

To move the following Clause—

“Discharge of the powers, duties and functions: necessity

The discharge of the powers, duties and functions under this Act is subject to an obligation to have due regard to the principle of necessity.”

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

Joanna Cherry

Gavin Newlands

NC31

To move the following Clause—

“Discharge of the powers, duties and functions: proportionality

- (1) The discharge of the powers, duties and functions under this Act is subject to an obligation to have due regard to the principle of proportionality.
 - (2) No interference with privacy should be considered proportionate if the information which is sought could reasonably be obtained by other less intrusive means.”
-

Investigatory Powers Bill, *continued*

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

Joanna Cherry

Gavin Newlands

NC32

To move the following Clause—

“Discharge of the powers, duties and functions: process, accountability and respect for the human rights

The discharge of the powers, duties and functions under this Act is subject to an obligation to have due regard to the principle of due process, accountability and respect for the human rights of those affected by the exercise of powers under this Act.”

Keir Starmer
Jo Stevens
Christian Matheson
Peter Kyle
Stephen Kinnock
Sue Hayman

Joanna Cherry

Gavin Newlands

NC33

To move the following Clause—

“Discharge of the powers, duties and functions: notification and redress

The discharge of the powers, duties and functions under this Act is subject to an obligation to have due regard to the principle of notification and redress.”

Investigatory Powers Bill, *continued*

ORDER OF THE HOUSE [15 MARCH 2016]

That the following provisions shall apply to the Investigatory Powers Bill:

Committal

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

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 5 May 2016.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

Proceedings on Consideration and up to and including Third Reading

4. Proceedings on Consideration and up to and including Third Reading shall be taken in two days in accordance with the following provisions of this Order.
5. Proceedings on Consideration and any proceedings in legislative grand committee 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 up to and including Third Reading.

Other proceedings

8. Any other proceedings on the Bill (including any proceedings on consideration of Lords Amendments or on any further messages from the Lords) may be programmed.

ORDER OF THE COMMITTEE [24 MARCH 2016, AS AMENDED, 12 APRIL 2016]

That—

- (1) the Committee shall (in addition to its first meeting at 11.30 am on Thursday 24 March) meet—
 - (a) at 2.00 pm on Thursday 24 March;
 - (b) at 9.25 am and 2.00 pm on Tuesday 12 April;
 - (c) at 11.30 am and 2.00 pm on Thursday 14 April;
 - (d) at 9.25 am and 2.00 pm on Tuesday 19 April;
 - (e) at 11.30 am and 2.00 pm on Thursday 21 April;
 - (f) at 9.25 am and 2.00 pm on Tuesday 26 April;
 - (g) at 11.30 am and 2.00 pm on Thursday 28 April;
 - (h) at 4.30 pm and 7.00 pm on Tuesday 3 May;
 - (i) at 11.30 am and 2.00 pm on Thursday 5 May;
- (2) the Committee shall hear oral evidence on Thursday 24 March in accordance with the following Table:

Investigatory Powers Bill, *continued*
TABLE

<i>Time</i>	<i>Witness</i>
Until no later than 12.00 pm	David Anderson Q.C., independent reviewer of terrorism legislation
Until no later than 12.30 pm	Don't Spy on Us; Liberty
Until no later than 1.00 pm	International Institute for Strategic Studies; Lord Evans of Weardale
Until no later than 2.30 pm	NSPCC; Mr Ray McClure
Until no later than 3.00 pm	BT
Until no later than 3.30 pm	National Crime Agency; HM Revenue and Customs
Until no later than 4.00 pm	National Anti-Fraud Network
Until no later than 4.30 pm	Lord Judge, Chief Surveillance Commissioner; Interception of Communications Commissioner's Office
Until no later than 5.00 pm	The Rt. Hon. the Lord Reid of Cardowan; The Rt. Hon. Charles Clarke

(3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 6; Schedule 1; Clauses 7 to 10; Schedule 2; Clauses 11 to 48; Schedule 3; Clauses 49 to 61; Schedule 4; Clauses 62 to 74; Schedule 5; Clauses 75 to 96; Schedule 6; Clauses 97 to 207; Schedule 7; Clauses 208 to 212; Schedule 8; Clauses 213 to 231; Schedule 9; Clause 232; Schedule 10; Clause 233; new Clauses; new Schedules; remaining proceedings on the Bill;

(4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 5 May.

NOTICES WITHDRAWN

The following Notices were withdrawn on 23 March 2016:

1

The following Notices were withdrawn on 13 April 2016:

163, 167
