

LORDS AMENDMENTS TO THE
INVESTIGATORY POWERS BILL

[The page and line references are to HL Bill 40, the bill as first printed for the Lords]

Clause 1

- 1 Page 1, line 5, at beginning insert –
“() This Act sets out the extent to which certain investigatory powers may be used to interfere with privacy.”
- 2 Page 2, line 11, leave out “misfeasance” and insert “misconduct”

Clause 2

- 3 Page 2, line 43, after “give” insert “or vary”
- 4 Page 2, line 43, after “under” insert “Part 4 or”
- 5 Page 2, line 43, leave out “or 226” and insert “, 226 or 230”
- 6 Page 2, line 43, at end insert –
“(ga) to approve the use of criteria under section 143, 179 or (*Additional safeguards for items subject to legal privilege: examination*),”
- 7 Page 2, line 43, at end insert –
“(gb) to give an authorisation under section 198(3)(b),
(gc) to approve a decision to give such an authorisation,”
- 8 Page 2, line 46, leave out “or (f)” and insert “, (f) or (gb)”
- 9 Page 3, line 2, at end insert –
“(aa) whether the level of protection to be applied in relation to any obtaining of information by virtue of the warrant, authorisation or notice is higher because of the particular sensitivity of that information,”

10 Page 3, line 20, at end insert—

- “() For the purposes of subsection (2)(aa), examples of sensitive information include—
- (a) items subject to legal privilege,
 - (b) any information identifying or confirming a source of journalistic information, and
 - (c) relevant confidential information within the meaning given by paragraph 2(2) of Schedule 7 (certain information held in confidence and consisting of personal records, journalistic material or communications between Members of Parliament and their constituents).”

Clause 8

11 Page 7, line 7, leave out “D” and insert “C”

12 Page 7, line 14, at end insert “, or

- () in the course of its transmission by means of a public telecommunication system.”

13 Page 7, line 15, leave out subsection (4)

14 Page 7, line 18, leave out “D” and insert “C”

After Clause 8

15 Insert the following new Clause—

“Interception without lawful authority: award of costs

- (1) This section applies where—
 - (a) a claim is made under section 8 (civil liability for certain unlawful interceptions) against a person (“the defendant”),
 - (b) the defendant was a relevant publisher at the material time, and
 - (c) the claim is related to the publication of news-related material.
- (2) If the defendant was a member of an approved regulator at the time when the claim was commenced (or was unable to be a member at that time for reasons beyond the defendant’s control or it would have been unreasonable in the circumstances for the defendant to have been a member at that time), the court must not award costs against the defendant unless satisfied that—
 - (a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator, or
 - (b) it is just and equitable in all the circumstances of the case to award costs against the defendant.
- (3) If the defendant was not a member of an approved regulator at the time when the claim was commenced (but would have been able to be a member at that time and it would have been reasonable in the circumstances for the defendant to have been a member at that time), the court must award costs against the defendant unless satisfied that—
 - (a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator (had the defendant been a member), or

- (b) it is just and equitable in all the circumstances of the case to make a different award of costs or make no award of costs.
- (4) This section is not to be read as limiting any power to make rules of court.
- (5) This section does not apply until such time as a body is first recognised as an approved regulator.
- (6) Subsections (2) and (3) shall apply to any claim issued after this section comes into force.
- (7) For the purposes of this section “approved regulator” shall have the same meaning as in section 42 of the Crime and Courts Act 2013, and “relevant publisher” shall have the same meaning as in section 41 of that Act.”

Clause 21

16 Page 17, line 31, at end insert –

- “() The fact that the information which would be obtained under a warrant relates to the activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary on grounds falling within subsection (4).”

Clause 24

17 Page 19, line 24, at end insert –

- “and section 23(5) does not apply in relation to the refusal to approve the decision.”

Clause 27

18 Page 20, line 41, leave out “and (3)” and insert “to (3A)”

19 Page 21, line 12, at end insert –

- “() In deciding whether to issue the warrant, the person to whom the application is made must have regard to the public interest in the confidentiality of items subject to legal privilege.”

20 Page 21, line 16, after “authorise” insert “or require”

21 Page 21, line 22, at end insert –

- “(3A) But the warrant may not be issued if it is considered necessary only as mentioned in section 20(2)(c).”

22 Page 21, line 22, at end insert –

- “() For the purposes of subsection (3)(a), there cannot be exceptional and compelling circumstances that make it necessary to authorise or require the interception, or the selection for examination, of items subject to legal privilege unless –
- (a) the public interest in obtaining the information that would be obtained by the warrant outweighs the public interest in the confidentiality of items subject to legal privilege,
- (b) there are no other means by which the information may reasonably be obtained, and

- (c) in the case of a warrant considered necessary as mentioned in section 20(2)(b) or (3) or (as the case may be) 21(4), obtaining the information is necessary for the purpose of preventing death or significant injury.”

23 Page 21, line 28, leave out “and (3)” and insert “to (3A)”

24 Page 21, line 44, at end insert –

“(7A) Subsections (7B) and (7C) apply if –

- (a) an application is made by or on behalf of an intercepting authority for a warrant under this Chapter,
- (b) the purpose, or one of the purposes, of the warrant is –
 - (i) in the case of a targeted interception warrant or mutual assistance warrant, to authorise or require the interception of communications that, if they were not made with the intention of furthering a criminal purpose, would be items subject to legal privilege, or
 - (ii) in the case of a targeted examination warrant, to authorise the selection of such communications for examination, and
- (c) the intercepting authority considers that the communications (“the targeted communications”) are likely to be communications made with the intention of furthering a criminal purpose.

(7B) The application must –

- (a) contain a statement that the purpose, or one of the purposes, of the warrant is to authorise or require the interception, or (in the case of a targeted examination warrant) the selection for examination, of communications that, if they were not made with the intention of furthering a criminal purpose, would be items subject to legal privilege, and
- (b) set out the reasons for believing that the targeted communications are likely to be communications made with the intention of furthering a criminal purpose.

(7C) The person to whom the application is made may issue the warrant only if the person considers that the targeted communications are likely to be communications made with the intention of furthering a criminal purpose.”

After Clause 27

25 Insert the following new Clause –

“Confidential journalistic material

(1) This section applies if –

- (a) an application is made by or on behalf of an intercepting authority for a warrant under this Chapter, and
- (b) the purpose, or one of the purposes, of the warrant is –
 - (i) in the case of a targeted interception warrant or mutual assistance warrant, to authorise or require the interception of communications which the intercepting authority believes will be communications containing confidential journalistic material, or

- (ii) in the case of a targeted examination warrant, to authorise the selection for examination of journalistic material which the intercepting authority believes is confidential journalistic material.
- (2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is –
 - (a) in the case of a targeted interception warrant or mutual assistance warrant, to authorise or require the interception of communications which the intercepting authority believes will be communications containing confidential journalistic material, or
 - (b) in the case of a targeted examination warrant, to authorise the selection for examination of journalistic material which the intercepting authority believes is confidential journalistic material.
- (3) The person to whom the application is made may issue the warrant only if the person considers that the arrangements made for the purposes of section 51 or (as the case may be) section 140 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of communications containing confidential journalistic material.
- (4) For the meaning of “journalistic material” and “confidential journalistic material”, see section (*General definitions: “journalistic material” etc.*.)”

26 Insert the following new Clause –

“Sources of journalistic information

- (1) This section applies if –
 - (a) an application is made by or on behalf of an intercepting authority for a warrant under this Chapter, and
 - (b) the purpose, or one of the purposes, of the warrant is to identify or confirm a source of journalistic information.
 (For the meaning of “source of journalistic information”, see section 235(1).)
- (2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is to identify or confirm a source of journalistic information.
- (3) The person to whom the application is made may issue the warrant only if the person considers that the arrangements made for the purposes of section 51 or (as the case may be) section 140 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of communications that identify sources of journalistic information.”

Clause 29

27 Page 23, line 14, after “warrant,” insert “ –
(i) ”

28 Page 23, line 16, at end insert –
“(ii) secondary data will or may be obtained under the warrant from communications from, or intended for, the person;”

29 Page 23, line 23, after “warrant,” insert “or the obtaining of secondary data from such communications,”

30 Page 23, line 32, after “person” insert “or organisation”

31 Page 23, line 35, at end insert –

“() In this section any reference to communications from, or intended for, a person or organisation includes communications from, or intended for, anything owned, controlled or operated by that person or organisation.”

Clause 31

32 Page 24, line 11, leave out “before the end of the relevant” and insert “during the renewal”

33 Page 24, line 34, at end insert –

“() “The renewal period” means –

(a) in the case of an urgent warrant which has not been renewed, the relevant period;

(b) in any other case, the period of 30 days ending with the day at the end of which the warrant would otherwise cease to have effect.”

34 Page 24, line 43, leave out from “26” to first “apply” in line 44 and insert “to (*Sources of journalistic information*) (additional safeguards)”

35 Page 24, line 46, at end insert –

““urgent warrant” is to be read in accordance with subsection (3) of that section.”

Clause 33

36 Page 26, line 9, leave out “section 26 or 27” and insert “any of sections 26 to (*Sources of journalistic information*)”

37 Page 26, line 9, at end insert –

“() Subsections (2)(d) and (e) and (3) do not apply in the case of a mutual assistance warrant addressed to a person falling within section 18(1)(h) (competent authorities of overseas countries or territories).”

Clause 34

38 Page 27, line 9, leave out from “26” to “apply” in line 10 and insert “to (*Sources of journalistic information*) (additional safeguards)”

39 Page 27, line 16, after “27” insert “, (*Confidential journalistic material*) or (*Sources of journalistic information*)”

40 Page 27, line 27, leave out “section 26 or 27” and insert “any of sections 26 to (*Sources of journalistic information*)”

41 Page 27, line 32, leave out “warrant as modified” and insert “modification”

42 Page 27, line 35, leave out paragraph (c) and insert –

“() subsection (3) of this section applied for the purposes of subsection (1) of that section as it applies for the purposes of subsection (1) of this section.”

43 Page 27, line 39, leave out “section 26 or 27” and insert “any of sections 26 to (*Sources of journalistic information*)”

Clause 35

- 44 Page 28, line 16, leave out “section 26 or 27” and insert “any of sections 26 to (*Sources of journalistic information*)”

Clause 36

- 45 Page 28, line 26, after “27” insert “, (*Confidential journalistic material*) or (*Sources of journalistic information*)”
- 46 Page 29, line 4, leave out “fifth” and insert “third”
- 47 Page 29, line 22, at end insert –
 “and, in a case falling within subsection (2) above, section 23(5) does not apply in relation to the refusal to approve the decision.”

Clause 38

- 48 Page 30, line 28, leave out “to which the warrant relates” and insert “authorised or required by the warrant”
- 49 Page 30, line 41, leave out “to which the warrant relates” and insert “authorised or required by the warrant”
- 50 Page 31, line 12, leave out “to which the warrant relates” and insert “authorised or required by the warrant”
- 51 Page 31, line 29, leave out from “organisation” to “to” in line 30

Clause 46

- 52 Page 36, line 1, at end insert “by means of a telecommunication system”
- 53 Page 36, line 4, after “communication” insert “(whether or not a person)”

Clause 50

- 54 Page 38, line 9, leave out “C” and insert “D”
- 55 Page 38, line 18, at end insert “and which is designated as a relevant international agreement by regulations made by the Secretary of State”
- 56 Page 38, line 18, at end insert –
 “() Condition C is that the interception is carried out for the purpose of obtaining information about the communications of an individual –
 (a) who is outside the United Kingdom, or
 (b) who each of the following persons believes is outside the United Kingdom –
 (i) the person making the request;
 (ii) the person carrying out the interception.”
- 57 Page 38, line 19, leave out “C” and insert “D”

Clause 51

58 Page 39, line 31, at end insert—

“() Where—

- (a) a communication which has been intercepted in accordance with a targeted interception warrant or mutual assistance warrant is retained, following its examination, for purposes other than the destruction of the communication, and
- (b) it is a communication that contains confidential journalistic material or identifies a source of journalistic information, the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.”

59 Page 39, line 32, leave out subsection (7)

After Clause 52

60 Insert the following new Clause—

“Additional safeguards for items subject to legal privilege

- (1) This section applies where an item subject to legal privilege which has been intercepted in accordance with a targeted interception warrant or mutual assistance warrant is retained, following its examination, for purposes other than the destruction of the item.
- (2) The person to whom the warrant is addressed must inform the Investigatory Powers Commissioner of the retention of the item as soon as is reasonably practicable.
- (3) Unless the Investigatory Powers Commissioner considers that subsection (5) applies to the item, the Commissioner must—
 - (a) direct that the item is destroyed, or
 - (b) impose one or more conditions as to the use or retention of that item.
- (4) If the Investigatory Powers Commissioner considers that subsection (5) applies to the item, the Commissioner may nevertheless impose such conditions under subsection (3)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.
- (5) This subsection applies to an item subject to legal privilege if—
 - (a) the public interest in retaining the item outweighs the public interest in the confidentiality of items subject to legal privilege, and
 - (b) retaining the item is necessary in the interests of national security or for the purpose of preventing death or significant injury.
- (6) The Investigatory Powers Commissioner—
 - (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (3), and
 - (b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).

- (7) Each of the following is an “affected party” for the purposes of subsection (6) –
- (a) the person who decided to issue the warrant;
 - (b) the person to whom the warrant is or was addressed.”

Clause 55

- 61 Page 43, line 12, at end insert –
- “() But subsection (2)(b) does not apply in the case of a mutual assistance warrant that is or was addressed to a person falling within section 18(1)(h) (competent authorities of overseas countries or territories).”
- 62 Page 43, line 36, leave out “a view to furthering any” and insert “the intention of furthering a”
- 63 Page 44, line 1, leave out sub-paragraph (ii) and insert –
- “(ii) consists of statistical information of a description specified in the regulations;”

Clause 57

- 64 Page 45, line 26, at end insert –
- “section (*General definitions: “journalistic material” etc.*) (general definitions: “journalistic material” etc.),”

Clause 58

- 65 Page 46, line 7, at end insert –
- “(za) section (*Restrictions in relation to internet connection records*) (restrictions in relation to internet connection records),”
- 66 Page 46, line 18, leave out “to disclose it” and insert “or capable of obtaining it –
- () to obtain the data (if not already in possession of it), and
 - () to disclose the data (whether already in the person’s possession or subsequently obtained by that person)”
- 67 Page 46, line 20, leave out paragraph (c)
- 68 Page 46, line 26, leave out “to disclose the data” and insert “or capable of obtaining it –
- () to obtain the data (if not already in possession of it), and
 - () to disclose the data (whether already in the operator’s possession or subsequently obtained by the operator)”
- 69 Page 46, line 29, leave out sub-paragraph (ii)
- 70 Page 47, line 2, leave out “, (c)”
- 71 Page 47, line 7, leave out “and proportionate”
- 72 Page 47, line 8, leave out “and proportionate”

73 Page 47, line 33, at end insert –

“() The fact that the communications data which would be obtained in pursuance of an authorisation relates to the activities in the British Islands of a trade union is not, of itself, sufficient to establish that it is necessary to obtain the data for a purpose falling within subsection (7).”

After Clause 58

74 Insert the following new Clause –

“Restrictions in relation to internet connection records

- (1) A designated senior officer of a local authority may not grant an authorisation for the purpose of obtaining data which is, or can only be obtained by processing, an internet connection record.
- (2) A designated senior officer of a relevant public authority which is not a local authority may not grant an authorisation for the purpose of obtaining data which is, or can only be obtained by processing, an internet connection record unless condition A, B or C is met.
- (3) Condition A is that the designated senior officer considers that it is necessary, for a purpose falling within section 58(7), to obtain the data to identify which person or apparatus is using an internet service where –
 - (a) the service and time of use are already known, but
 - (b) the identity of the person or apparatus using the service is not known.
- (4) Condition B is that –
 - (a) the purpose for which the data is to be obtained falls within section 58(7) but is not the purpose falling within section 58(7)(b) of preventing or detecting crime, and
 - (b) the designated senior officer considers that it is necessary to obtain the data to identify –
 - (i) which internet communications service is being used, and when and how it is being used, by a person or apparatus whose identity is already known,
 - (ii) where or when a person or apparatus whose identity is already known is obtaining access to, or running, a computer file or computer program which wholly or mainly involves making available, or acquiring, material whose possession is a crime, or
 - (iii) which internet service is being used, and when and how it is being used, by a person or apparatus whose identity is already known.
- (5) Condition C is that –
 - (a) the purpose for which the data is to be obtained is the purpose falling within section 58(7)(b) of preventing or detecting crime,
 - (b) the crime to be prevented or detected is serious crime or other relevant crime, and

- (c) the designated senior officer considers that it is necessary to obtain the data to identify –
- (i) which internet communications service is being used, and when and how it is being used, by a person or apparatus whose identity is already known,
 - (ii) where or when a person or apparatus whose identity is already known is obtaining access to, or running, a computer file or computer program which wholly or mainly involves making available, or acquiring, material whose possession is a crime, or
 - (iii) which internet service is being used, and when and how it is being used, by a person or apparatus whose identity is already known.
- (6) In subsection (5) “other relevant crime” means crime which is not serious crime but where the offence, or one of the offences, which is or would be constituted by the conduct concerned is –
- (a) an offence for which an individual who has reached the age of 18 (or, in relation to Scotland or Northern Ireland, 21) is capable of being sentenced to imprisonment for a term of 12 months or more (disregarding any enactment prohibiting or restricting the imprisonment of individuals who have no previous convictions), or
 - (b) an offence –
 - (i) by a person who is not an individual, or
 - (ii) which involves, as an integral part of it, the sending of a communication or a breach of a person’s privacy.
- (7) In this Act “internet connection record” means communications data which –
- (a) may be used to identify, or assist in identifying, a telecommunications service to which a communication is transmitted by means of a telecommunication system for the purpose of obtaining access to, or running, a computer file or computer program, and
 - (b) comprises data generated or processed by a telecommunications operator in the process of supplying the telecommunications service to the sender of the communication (whether or not a person).”

Clause 59

- 75 Page 48, line 1, at beginning insert “the investigation or operation concerned is one where there is an exceptional need, in the interests of national security, to keep knowledge of it to a minimum,
- (ba) there is an opportunity to obtain information where –
 - (i) the opportunity is rare,
 - (ii) the time to act is short, and
 - (iii) the need to obtain the information is significant and in”
- 76 Page 48, line 2, leave out “being” and insert “is”
- 77 Page 48, line 5, leave out subsections (4) to (6)

Clause 61

- 78 Page 49, line 21, after “authorisation” insert “–
() may cancel it at any time, and
() ”
- 79 Page 49, line 22, leave out from second “the” to end of line 23 and insert “requirements of this Part would not be satisfied in relation to granting an equivalent new authorisation”
- 80 Page 49, line 25, leave out from beginning to end of line 26 and insert “function under subsection (4) is to be exercised where the person who would otherwise have exercised it is no longer available to do so”
- 81 Page 49, line 27, leave out “on whom the duty is to fall” and insert “by whom the function is to be exercised”

Clause 63

- 82 Page 50, line 18, leave out from “the” to “or” in line 19 and insert “requirements of this Part in relation to granting the authorisation are satisfied,”

Clause 64

- 83 Page 51, line 31, leave out from “the” to “considers” and insert “other requirements of this Part in relation to granting the authorisation are satisfied)”

Clause 70

- 84 Page 55, line 16, leave out first “a” and insert “the”
- 85 Page 55, line 17, after “agreement” insert “with the result that officers of the local authority are permitted to be granted authorisations by a designated senior officer of a subscribing authority”

Clause 72

- 86 Page 57, line 12, at end insert –
“() Nothing in this section prevents a person acting as a single point of contact from also applying for, or being granted, an authorisation or, in the case of a designated senior officer, granting an authorisation.”

Clause 73

- 87 Page 58, line 1, leave out subsection (8)

Clause 74

- 88 Page 58, line 35, at end insert—
- “() this Part has effect as if the designated senior officer of the supplying authority had the power to grant an authorisation to officers of the subscribing authority, and had other functions in relation to the authorisation, which were the same as (and subject to no greater or lesser restrictions than) the power and other functions which the designated senior officer of the subscribing authority who would otherwise have dealt with the authorisation would have had, and
 - () section 71(1) applies to the authorisation as if it were granted by a designated senior officer of the subscribing authority.”

Clause 76

- 89 Page 59, line 34, after “agreement” insert “for the purposes of a collaborating police force’s functions under this Part”
- 90 Page 59, line 37, leave out “a” and insert “the”
- 91 Page 59, line 39, leave out second “a” and insert “the”
- 92 Page 59, line 40, leave out “a” and insert “the”
- 93 Page 60, line 12, at end insert—
- “() this Part has effect as if the designated senior officer of force 1 had the power to grant an authorisation to officers of the collaborating police force, and had other functions in relation to the authorisation, which were the same as (and subject to no greater or lesser restrictions than) the power and other functions which the designated senior officer of the collaborating police force who would otherwise have dealt with the authorisation would have had.”

Clause 80

- 94 Page 62, line 32, leave out from beginning to “were” and insert “sections 58(3)(za) and (*Restrictions in relation to internet connection records*)”

Clause 83

- 95 Page 64, line 11, after “notice”)” insert “and subject as follows,”
- 96 Page 64, line 12, after “if” insert “—
- (a) ”
- 97 Page 64, line 15, at end insert “, and
- (b) the decision to give the notice has been approved by a Judicial Commissioner.”
- 98 Page 64, line 35, at end insert—
- “(3A) A retention notice must not require an operator who controls or provides a telecommunication system (“the system operator”) to retain data which—
 - (a) relates to the use of a telecommunications service provided by another telecommunications operator in relation to that system,

- (b) is (or is capable of being) processed by the system operator as a result of being comprised in, included as part of, attached to or logically associated with a communication transmitted by means of the system as a result of the use mentioned in paragraph (a),
- (c) is not needed by the system operator for the functioning of the system in relation to that communication, and
- (d) is not retained or used by the system operator for any other lawful purpose,

and which it is reasonably practicable to separate from other data which is subject to the notice.”

99 Page 65, line 20, at end insert –

“() The fact that the data which would be retained under a retention notice relates to the activities in the British Islands of a trade union is not, of itself, sufficient to establish that the requirement to retain the data is necessary for one or more of the purposes falling within paragraphs (a) to (j) of section 58(7).”

After Clause 84

100 Insert the following new Clause –

“Approval of retention notices by Judicial Commissioners

- (1) In deciding whether to approve a decision to give a retention notice, a Judicial Commissioner must review the Secretary of State’s conclusions as to whether the requirement to be imposed by the notice to retain relevant communications data is necessary and proportionate for one or more of the purposes falling within paragraphs (a) to (j) of section 58(7).
- (2) In doing so, the Judicial Commissioner must –
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and
 - (b) consider the matters referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
- (3) Where a Judicial Commissioner refuses to approve a decision to give a retention notice, the Judicial Commissioner must give the Secretary of State written reasons for the refusal.
- (4) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a decision to give a retention notice, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to give the notice.”

Clause 85

101 Page 66, line 18, leave out “the Investigatory Powers” and insert “a Judicial”

102 Page 66, line 35, at end insert –

“(10A) But the Secretary of State may vary the notice, or give a notice under subsection (10)(b) confirming its effect, only if the Secretary of State’s decision to do so has been approved by the Investigatory Powers Commissioner.”

After Clause 85

- 103** Insert the following new Clause –
- “Approval of retention notices following review under section 85**
- (1) In deciding whether to approve a decision to vary a retention notice as mentioned in section 85(10)(a), or to give a notice under section 85(10)(b) confirming the effect of a retention notice, the Investigatory Powers Commissioner must review the Secretary of State’s conclusions as to whether the requirement to be imposed by the notice as varied or confirmed to retain relevant communications data is necessary and proportionate for one or more of the purposes falling within paragraphs (a) to (j) of section 58(7).
 - (2) In doing so, the Investigatory Powers Commissioner must –
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and
 - (b) consider the matters referred to in subsection (1) with a sufficient degree of care as to ensure that the Investigatory Powers Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
 - (3) Where the Investigatory Powers Commissioner refuses to approve a decision to vary a retention notice as mentioned in section 85(10)(a), or to give a notice under section 85(10)(b) confirming the effect of a retention notice, the Investigatory Powers Commissioner must give the Secretary of State written reasons for the refusal.”
- Clause 88**
- 104** Page 67, line 31, after “unless” insert “ –
(a) ”
- 105** Page 67, line 33, leave out from “58(7)” to end of line 34 and insert “, and
(b) subject to subsection (4B), the decision to vary the notice has been approved by a Judicial Commissioner.”
- 106** Page 67, line 34, at end insert –
“(4A) The fact that additional relevant communications data which would be retained under a retention notice as varied relates to the activities in the British Islands of a trade union is not, of itself, sufficient to establish that the requirement to retain the data is necessary for one or more of the purposes falling within paragraphs (a) to (j) of section 58(7).”
- 107** Page 67, line 34, at end insert –
“(4B) Subsection (4)(b) does not apply to a variation to which section 85(10A) applies.”
- 108** Page 67, line 38, after “83(3)” insert “, (3A)”
- 109** Page 67, line 42, at end insert “(and, accordingly, the references to the notice in section 84(1)(a) to (e) are to be read as references to the variation)”

110 Page 67, line 42, at end insert—

“(7A) Section (*Approval of retention notices by Judicial Commissioners*) applies in relation to a decision to vary to which subsection (4)(b) above applies as it applies in relation to a decision to give a retention notice (and, accordingly, the reference in subsection (1) of that section to the requirement to be imposed by the notice is to be read as a reference to the requirement to be imposed by the variation).”

111 Page 68, line 3, at end insert—

“(8A) Section (*Approval of retention notices following review under section 85*) applies in relation to a decision under section 85(10) to vary or confirm a variation as it applies in relation to a decision to vary or confirm a retention notice (and, accordingly, the reference in subsection (1) of that section to the requirement to be imposed by the notice as varied or confirmed is to be read as a reference to the requirement to be imposed by the variation as varied or confirmed).”

Clause 90

112 Page 69, line 14, after “changed,” insert—

“(de) for section 83(3A) there were substituted—

“(3A) A retention notice must not require an operator who provides a postal service (“the network operator”) to retain data which—

- (a) relates to the use of a postal service provided by another postal operator in relation to the postal service of the network operator,
- (b) is (or is capable of being) processed by the network operator as a result of being comprised in, included as part of, attached to or logically associated with a communication transmitted by means of the postal service of the network operator as a result of the use mentioned in paragraph (a),
- (c) is not needed by the network operator for the functioning of the network operator’s postal service in relation to that communication, and
- (d) is not retained or used by the network operator for any other lawful purpose,

and which it is reasonably practicable to separate from other data which is subject to the notice.””

Clause 96

113 Page 73, line 26, at end insert—

“() The fact that the information which would be obtained under a warrant relates to the activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary on grounds falling within subsection (5).”

Clause 97

114 Page 74, line 21, at end insert—

“() The fact that the information which would be obtained under a warrant relates to the activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary as mentioned in subsection (1)(b) or (2)(b).”

Clause 98

115 Page 74, line 38, at end insert—

“() The fact that the information which would be obtained under a warrant relates to the activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary as mentioned in subsection (1)(a).”

Clause 100

116 Page 75, line 28, at end insert—

“() The fact that the information which would be obtained under a warrant relates to the activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary as mentioned in subsection (1)(a).”

Clause 102

117 Page 78, line 19, after “must” insert “—

(a) ”

118 Page 78, line 20, at end insert “, and

() consider the matters referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).”

Clause 103

119 Page 79, line 11, at end insert—

“and section 102(5) does not apply in relation to the refusal to approve the decision.”

Clause 106

120 Page 81, line 12, leave out “and (3)” and insert “to (3A)”

121 Page 81, line 24, at end insert—

“() In deciding whether to issue the warrant, the person to whom the application is made must have regard to the public interest in the confidentiality of items subject to legal privilege.”

122 Page 81, line 35, at end insert—

“(3A) But the warrant may not be issued if it is considered necessary only as mentioned in section 96(5)(c).”

123 Page 81, line 35, at end insert—

- “() For the purposes of subsection (3)(a), there cannot be exceptional and compelling circumstances that make it necessary to authorise or require interference with equipment for the purpose of obtaining, or the selection for examination of, items subject to legal privilege unless—
- (a) the public interest in obtaining the information that would be obtained by the warrant outweighs the public interest in the confidentiality of items subject to legal privilege,
 - (b) there are no other means by which the information may reasonably be obtained, and
 - (c) in the case of a warrant considered necessary for the purposes of preventing or detecting serious crime or as mentioned in section 100(2)(a), obtaining the information is necessary for the purpose of preventing death or significant injury.”

124 Page 81, line 40, leave out “and (3)” and insert “to (3A)”

125 Page 82, line 9, at end insert—

- “(7A) Subsections (7B) and (7C) apply if—
- (a) an application is made for a warrant under this Part,
 - (b) the purpose, or one of the purposes, of the warrant is—
 - (i) in the case of a targeted equipment interference warrant, to authorise or require interference with equipment for the purpose of obtaining communications or other items of information that, if they were not communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose, would be items subject to legal privilege, or
 - (ii) in the case of a targeted examination warrant, to authorise the selection of such communications or other items of information for examination, and
 - (c) the applicant considers that the communications or the other items of information (“the targeted communications or other items of information”) are likely to be communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose.
- (7B) The application must—
- (a) contain a statement that the purpose, or one of the purposes, of the warrant is—
 - (i) to authorise or require interference with equipment for the purpose of obtaining communications or other items of information that, if they were not communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose, would be items subject to legal privilege, or
 - (ii) (in the case of a targeted examination warrant) to authorise the selection of such communications or other items of information for examination, and
 - (b) set out the reasons for believing that the targeted communications or other items of information are likely to be communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose.

- (7C) The person to whom the application is made may issue the warrant only if the person considers that the targeted communications or other items of information are likely to be communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose.”

After Clause 106

126 Insert the following new Clause –

“Confidential journalistic material

- (1) This section applies if an application is made for a warrant under this Part and the purpose, or one of the purposes, of the warrant –
 - (a) in the case of a targeted equipment interference warrant, to authorise or require interference with equipment for the purpose of obtaining communications or other items of information which the applicant for the warrant believes will be communications or other items of information containing confidential journalistic material, or
 - (b) in the case of a targeted examination warrant, to authorise the selection for examination of journalistic material which the applicant for the warrant believes is confidential journalistic material.
- (2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is –
 - (a) in the case of a targeted equipment interference warrant, to authorise or require interference with equipment for the purpose of obtaining communications or other items of information which the applicant for the warrant believes will be communications or other items of information containing confidential journalistic material, or
 - (b) in the case of a targeted examination warrant, to authorise the selection for examination of journalistic material which the applicant for the warrant believes is confidential journalistic material.
- (3) The person to whom the application is made may issue the warrant only if the person considers that the arrangements made for the purposes of section 121 or (as the case may be) section 176 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of communications or other items of information containing confidential journalistic material.
- (4) For the meaning of “journalistic material” and “confidential journalistic material”, see section (*General definitions: “journalistic material” etc.*)”

127 Insert the following new Clause –

“Sources of journalistic information

- (1) This section applies if an application is made for a warrant under this Part and the purpose, or one of the purposes, of the warrant is to identify or confirm a source of journalistic information.
(For the meaning of “source of journalistic information”, see section 235(1).)

- (2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is to identify or confirm a source of journalistic information.
- (3) The person to whom the application is made may issue the warrant only if the person considers that the arrangements made for the purposes of section 121 or (as the case may be) section 176 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of communications or other items of information that identify sources of journalistic information.”

Clause 109

- 128 Page 85, line 7, leave out “before the end of the relevant” and insert “during the renewal”
- 129 Page 85, line 13, after “the” insert “renewed”
- 130 Page 85, line 42, at end insert –
“() “The renewal period” means –
(a) in the case of an urgent warrant which has not been renewed, the relevant period;
(b) in any other case, the period of 30 days ending with the day at the end of which the warrant would otherwise cease to have effect.”
- 131 Page 86, line 11, leave out from “105” to “apply” in line 12 and insert “to (*Sources of journalistic information*) (additional safeguards)”
- 132 Page 86, line 14, at end insert –
““urgent warrant” is to be read in accordance with subsection (3) of that section.”

Clause 111

- 133 Page 87, line 25, leave out “sections 105 and 106” and insert “any of sections 105 to (*Sources of journalistic information*)”

Clause 112

- 134 Page 88, line 10, leave out from “105” to “apply” in line 11 and insert “to (*Sources of journalistic information*) (additional safeguards)”
- 135 Page 88, line 18, after “106” insert “, (*Confidential journalistic material*) or (*Sources of journalistic information*)”
- 136 Page 88, line 29, leave out “section 105 or 106” and insert “any of sections 105 to (*Sources of journalistic information*)”
- 137 Page 88, line 39, leave out “section 105 or 106” and insert “any of sections 105 to (*Sources of journalistic information*)”

Clause 113

- 138 Page 89, line 12, leave out “section 105 or 106” and insert “any of sections 105 to (*Sources of journalistic information*)”

Clause 114

- 139 Page 89, line 21, after “106” insert “, (*Confidential journalistic material*) or (*Sources of journalistic information*)”
- 140 Page 89, line 31, at end insert –
 ““designated senior official” means a senior official who has been designated by the Secretary of State or (in the case of warrants issued by the Scottish Ministers) the Scottish Ministers for the purposes of this section.”
- 141 Page 89, line 35, leave out “fifth” and insert “third”
- 142 Page 90, line 11, at end insert –
 “and, in a case falling within subsection (2) above, section 102(5) does not apply in relation to the refusal to approve the decision.”

Clause 115

- 143 Page 91, line 31, leave out from “105” to “apply” in line 32 and insert “to (*Sources of journalistic information*) (additional safeguards)”

Clause 116

- 144 Page 92, line 12, leave out “fifth” and insert “third”
- 145 Page 92, line 22, at end insert –
 “and section 102(5) does not apply in relation to the refusal to approve the decision.”

Clause 121

- 146 Page 96, line 48, at end insert –
 “() Where –
 (a) material obtained under a targeted equipment interference warrant is retained, following its examination, for purposes other than the destruction of the material, and
 (b) it is material that contains confidential journalistic material or identifies a source of journalistic material,
 the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.”
- 147 Page 97, line 1, leave out subsection (8)

After Clause 122

- 148 Insert the following new Clause –
“Additional safeguards for items subject to legal privilege
 (1) This section applies where an item subject to legal privilege which has been obtained under a targeted equipment interference warrant is retained, following its examination, for purposes other than the destruction of the item.

- (2) The person to whom the warrant is addressed must inform the Investigatory Powers Commissioner of the retention of the item as soon as is reasonably practicable.
- (3) Unless the Investigatory Powers Commissioner considers that subsection (5) applies to the item, the Commissioner must –
 - (a) direct that the item is destroyed, or
 - (b) impose one or more conditions as to the use or retention of that item.
- (4) If the Investigatory Powers Commissioner considers that subsection (5) applies to the item, the Commissioner may nevertheless impose such conditions under subsection (3)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.
- (5) This subsection applies to an item subject to legal privilege if –
 - (a) the public interest in retaining the item outweighs the public interest in the confidentiality of items subject to legal privilege, and
 - (b) retaining the item is necessary in the interests of national security or for the purpose of preventing death or significant injury.
- (6) The Investigatory Powers Commissioner –
 - (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (3), and
 - (b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).
- (7) Each of the following is an “affected party” for the purposes of subsection (6) –
 - (a) the issuing authority (within the meaning given by section 121(11));
 - (b) the person to whom the warrant is or was addressed.”

Clause 124

149 Page 99, line 16, leave out “a view to furthering any” and insert “the intention of furthering a”

150 Page 99, line 22, leave out sub-paragraph (ii) and insert –
“(ii) consists of statistical information of a description specified in the regulations;”

Clause 126

151 Page 100, line 37, at end insert –
“section (*General definitions: “journalistic material” etc.*) (general definitions: “journalistic material” etc.),”

Clause 131

152 Page 104, line 30, after “must” insert “ –
(a) ”

- 153 Page 104, line 31, at end insert “, and
() consider the matters referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).”

Clause 133

- 154 Page 105, line 10, leave out subsection (4) and insert –
“(4) The operational purposes specified in the warrant must be ones specified, in a list maintained by the heads of the intelligence services (“the list of operational purposes”), as purposes which they consider are operational purposes for which intercepted content or secondary data obtained under bulk interception warrants may be selected for examination.”
- 155 Page 105, line 14, leave out from “issued,” to end of line 16 and insert “are specified in the list of operational purposes.”
- (5A) An operational purpose may be specified in the list of operational purposes only with the approval of the Secretary of State.
- (5B) The Secretary of State may give such approval only if satisfied that the operational purpose is specified in a greater level of detail than the descriptions contained in section 129(1)(b) or (2).
- (5C) At the end of each relevant three-month period the Secretary of State must give a copy of the list of operational purposes to the Intelligence and Security Committee of Parliament.
- (5D) In subsection (5C) “relevant three-month period” means –
(a) the period of three months beginning with the day on which this section comes into force, and
(b) each successive period of three months.
- (5E) The Prime Minister must review the list of operational purposes at least once a year.”

Clause 135

- 156 Page 105, line 31, leave out “before it would otherwise cease to have effect” and insert “during the renewal period”
- 157 Page 106, line 10, at end insert –
“() “The renewal period” means the period of 30 days ending with the day at the end of which the warrant would otherwise cease to have effect.”
- 158 Page 106, line 16, at end insert “, but with the omission of paragraph (d) of subsection (1)”

Clause 136

- 159 Page 107, line 11, leave out subsection (6)

After Clause 136

160 Insert the following new Clause –

“Approval of major modifications by Judicial Commissioners

- (1) In deciding whether to approve a decision to make a major modification of a bulk interception warrant, a Judicial Commissioner must review the Secretary of State’s conclusions as to whether the modification is necessary on any of the grounds on which the Secretary of State considers the warrant to be necessary.
- (2) In doing so, the Judicial Commissioner must –
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and
 - (b) consider the matter referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
- (3) Where a Judicial Commissioner refuses to approve a decision to make a major modification under section 136, the Judicial Commissioner must give the Secretary of State written reasons for the refusal.
- (4) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a decision to make a major modification under section 136, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to make the modification.”

Clause 137

161 Page 108, line 12, leave out “fifth” and insert “third”

162 Page 108, line 21, at end insert –

“and section (*Approval of major modifications by Judicial Commissioners*)(4) does not apply in relation to the refusal to approve the decision.”

Clause 140

163 Page 110, line 46, after “(5)” insert “and section 142”

Clause 141

164 Page 111, line 24, after “(5)” insert “and section 142”

Clause 143

165 Page 113, line 29, at end insert –

- “() In deciding whether to give an approval under subsection (2) in a case where subsection (1)(b)(i) applies, a senior official must have regard to the public interest in the confidentiality of items subject to legal privilege.”

- 166 Page 113, line 37, at end insert –
- “() For the purposes of subsection (3)(b), there cannot be exceptional and compelling circumstances that make it necessary to authorise the use of the relevant criteria unless –
- (a) the public interest in obtaining the information that would be obtained by the selection of the intercepted content for examination outweighs the public interest in the confidentiality of items subject to legal privilege,
 - (b) there are no other means by which the information may reasonably be obtained, and
 - (c) obtaining the information is necessary in the interests of national security or for the purpose of preventing death or significant injury.”
- 167 Page 113, line 37, at end insert –
- “(3A) Subsection (3B) applies if, in a case where intercepted content obtained under a bulk interception warrant is to be selected for examination –
- (a) the selection of the intercepted content for examination meets any of the selection conditions in section 142(3)(a) to (c),
 - (b) the purpose, or one of the purposes, of using the criteria to be used for the selection of the intercepted content for examination (“the relevant criteria”) is to identify communications that, if they were not made with the intention of furthering a criminal purpose, would be items subject to legal privilege, and
 - (c) the person to whom the warrant is addressed considers that the communications (“the targeted communications”) are likely to be communications made with the intention of furthering a criminal purpose.
- (3B) The intercepted content may be selected for examination using the relevant criteria only if a senior official acting on behalf of the Secretary of State has approved the use of those criteria.
- (3C) A senior official may give an approval under subsection (3B) only if the official considers that the targeted communications are likely to be communications made with the intention of furthering a criminal purpose.”
- 168 Page 113, line 38, after “privilege” insert “which has been”
- 169 Page 113, line 39, after “examination,” insert “for purposes other than the destruction of the item,”
- 170 Page 113, line 43, at end insert –
- “(4A) Unless the Investigatory Powers Commissioner considers that subsection (4C) applies to the item, the Commissioner must –
- (a) direct that the item is destroyed, or
 - (b) impose one or more conditions as to the use or retention of that item.
- (4B) If the Investigatory Powers Commissioner considers that subsection (4C) applies to the item, the Commissioner may nevertheless impose such conditions under subsection (4A)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.

- (4C) This subsection applies to an item subject to legal privilege if—
 - (a) the public interest in retaining the item outweighs the public interest in the confidentiality of items subject to legal privilege, and
 - (b) retaining the item is necessary in the interests of national security or for the purpose of preventing death or significant injury.
- (4D) The Investigatory Powers Commissioner—
 - (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (4A), and
 - (b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).
- (4E) Each of the following is an “affected party” for the purposes of subsection (4D)—
 - (a) the Secretary of State;
 - (b) the person to whom the warrant is or was addressed.”

After Clause 143

171 Insert the following new Clause—

“Additional safeguard for confidential journalistic material

Where—

- (a) a communication which has been intercepted in accordance with a bulk interception warrant is retained, following its examination, for purposes other than the destruction of the communication, and
- (b) it is a communication containing confidential journalistic material, the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable. (For provision about the grounds for retaining material obtained under a warrant, see section 140.)”

172 Insert the following new Clause—

“Offence of breaching safeguards relating to examination of material under bulk interception warrants

- (1) A person commits an offence if—
 - (a) the person selects for examination any intercepted content or secondary data obtained under a bulk interception warrant,
 - (b) the person knows or believes that the selection of that intercepted content or secondary data for examination does not comply with a requirement imposed by section 142 or 143, and
 - (c) the person deliberately selects that intercepted content or secondary data for examination in breach of that requirement.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction in England and Wales—
 - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or
 - (ii) to a fine,

- or to both;
 - (b) on summary conviction in Scotland –
 - (i) to imprisonment for a term not exceeding 12 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (c) on summary conviction in Northern Ireland –
 - (i) to imprisonment for a term not exceeding 6 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.
- (3) No proceedings for any offence which is an offence by virtue of this section may be instituted –
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
 - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.”

Clause 145

- 173 Page 114, line 27, at end insert –
 “section (*General definitions: “journalistic material” etc.*) (general definitions: “journalistic material” etc.),”

Clause 146

- 174 Page 115, line 23, at end insert –
 “() The fact that the communications data which would be obtained under a warrant relates to the activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary in the interests of national security or on that ground and a ground falling within subsection (2).”
- 175 Page 115, line 39, leave out “such data” and insert “communications data obtained under the warrant”

Clause 147

- 176 Page 116, line 20, after “must” insert “ –
 (a) ”
- 177 Page 116, line 21, at end insert “, and
 (b) consider the matters referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).”

Clause 149

178 Page 117, line 1, leave out subsection (4) and insert –

“() The operational purposes specified in the warrant must be ones specified, in a list maintained by the heads of the intelligence services (“the list of operational purposes”), as purposes which they consider are operational purposes for which communications data obtained under bulk acquisition warrants may be selected for examination.”

179 Page 117, line 5, leave out from “issued,” to end of line 7 and insert “are specified in the list of operational purposes.

(5A) An operational purpose may be specified in the list of operational purposes only with the approval of the Secretary of State.

(5B) The Secretary of State may give such approval only if satisfied that the operational purpose is specified in a greater level of detail than the descriptions contained in section 146(1)(a) or (2).

(5C) At the end of each relevant three-month period the Secretary of State must give a copy of the list of operational purposes to the Intelligence and Security Committee of Parliament.

(5D) In subsection (5C) “relevant three-month period” means –

(a) the period of three months beginning with the day on which this section comes into force, and

(b) each successive period of three months.

(5E) The Prime Minister must review the list of operational purposes at least once a year.”

Clause 151

180 Page 117, line 22, leave out “before it would otherwise cease to have effect” and insert “during the renewal period”

181 Page 117, line 43, at end insert –

“() “The renewal period” means the period of 30 days ending with the day at the end of which the warrant would otherwise cease to have effect.”

Clause 152

182 Page 118, line 43, leave out subsection (6)

After Clause 152

183 Insert the following new Clause –

“Approval of major modifications by Judicial Commissioners

(1) In deciding whether to approve a decision to make a major modification of a bulk acquisition warrant, a Judicial Commissioner must review the Secretary of State’s conclusions as to whether the modification is necessary on any of the grounds on which the Secretary of State considers the warrant to be necessary.

- (2) In doing so, the Judicial Commissioner must –
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and
 - (b) consider the matter referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
- (3) Where a Judicial Commissioner refuses to approve a decision to make a major modification under section 152, the Judicial Commissioner must give the Secretary of State written reasons for the refusal.
- (4) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a decision to make a major modification under section 152, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to make the modification.”

Clause 153

184 Page 119, line 40, leave out “fifth” and insert “third”

185 Page 120, line 6, at end insert –
 “and section (*Approval of major modifications by Judicial Commissioners*)(4) does not apply in relation to the refusal to approve the decision.”

Clause 155

186 Page 121, line 13, leave out “obtained” and insert “as authorised or required”

Clause 156

187 Page 121, line 22, leave out “155(3)” and insert “155(2)”

Clause 158

188 Page 123, line 36, after “(5)” insert “and section 159”

189 Page 123, line 44, after “(5)” insert “and section 159”

After Clause 159

190 Insert the following new Clause –

“Offence of breaching safeguards relating to examination of data

- (1) A person commits an offence if –
 - (a) the person selects for examination any communications data obtained under a bulk acquisition warrant,
 - (b) the person knows or believes that the selection of that data for examination does not comply with a requirement imposed by section 159, and
 - (c) the person deliberately selects that data for examination in breach of that requirement.

- (2) A person guilty of an offence under this section is liable –
- (a) on summary conviction in England and Wales –
 - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or
 - (ii) to a fine,
 or to both;
 - (b) on summary conviction in Scotland –
 - (i) to imprisonment for a term not exceeding 12 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (c) on summary conviction in Northern Ireland –
 - (i) to imprisonment for a term not exceeding 6 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.
- (3) No proceedings for any offence which is an offence by virtue of this section may be instituted –
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
 - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.”

Clause 165

- 191** Page 128, line 23, after “must” insert “ –
- (a) ”
- 192** Page 128, line 24, at end insert “, and
- () consider the matters referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).”

Clause 166

- 193** Page 129, line 2, leave out “(unless already cancelled) ceases to have effect” and insert “–
- (a) ceases to have effect (unless already cancelled), and
 - (b) may not be renewed,
- and section 165(4) does not apply in relation to the refusal to approve the decision.”

Clause 169

- 194** Page 130, line 22, leave out subsection (5) and insert –
- “(5) The operational purposes specified in the warrant must be ones specified, in a list maintained by the heads of the intelligence services (“the list of operational purposes”), as purposes which they consider are operational purposes for which material obtained under bulk equipment interference warrants may be selected for examination.”
- 195** Page 130, line 26, leave out from “issued,” to end of line 28 and insert “are specified in the list of operational purposes.
- (6A) An operational purpose may be specified in the list of operational purposes only with the approval of the Secretary of State.
- (6B) The Secretary of State may give such approval only if satisfied that the operational purpose is specified in a greater level of detail than the descriptions contained in section 164(1)(b) or (2).
- (6C) At the end of each relevant three-month period, the Secretary of State must give a copy of the list of operational purposes to the Intelligence and Security Committee of Parliament.
- (6D) In subsection (6C), “relevant three-month period” means –
- (a) the period of three months beginning with the day on which this section comes into force, and
 - (b) each successive period of three months.
- (6E) The Prime Minister must review the list of operational purposes at least once a year.”

Clause 171

- 196** Page 131, line 13, leave out “before the end of the relevant” and insert “during the renewal”
- 197** Page 131, line 34, at end insert –
- “() “The renewal period” means –
- (a) in the case of an urgent warrant which has not been renewed, the relevant period;
 - (b) in any other case, the period of 30 days ending with the day at the end of which the warrant would otherwise cease to have effect.”
- 198** Page 132, line 8, at end insert –
- “() In this section –
- “the relevant period” has the same meaning as in section 170;
- “urgent warrant” is to be read in accordance with subsection (3) of that section.”

Clause 172

- 199** Page 132, line 40, leave out subsection (7)

After Clause 172

200 Insert the following new Clause –

“Approval of major modifications by Judicial Commissioners

- (1) In deciding whether to approve a decision to make a major modification of a bulk equipment interference warrant, a Judicial Commissioner must review the Secretary of State’s conclusions as to the following matters –
 - (a) whether the modification is necessary on any of the grounds on which the Secretary of State considers the warrant to be necessary, and
 - (b) in the case of a major modification adding or varying any description of conduct authorised by the warrant, whether the conduct authorised by the modification is proportionate to what is sought to be achieved by that conduct.
- (2) In doing so, the Judicial Commissioner must –
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and
 - (b) consider the matters referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
- (3) Where a Judicial Commissioner refuses to approve a decision to make a major modification under section 172, the Judicial Commissioner must give the Secretary of State written reasons for the refusal.
- (4) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a decision to make a major modification under section 172, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to make the modification.”

Clause 173

201 Page 133, line 41, leave out “fifth” and insert “third”

202 Page 134, line 6, at end insert –

“and section (*Approval of major modifications by Judicial Commissioners*)(4) does not apply in relation to the refusal to approve the decision.”

Clause 176

203 Page 136, line 38, after “(5)” insert “and section 178”

Clause 177

204 Page 137, line 16, after “(5)” insert “and section 178”

Clause 179

205 Page 139, line 17, at end insert –

“() In deciding whether to give an approval under subsection (2) in a case where subsection (1)(b)(i) applies, a senior official must have regard to the public interest in the confidentiality of items subject to legal privilege.”

206 Page 139, line 25, at end insert –

“() For the purposes of subsection (3)(b), there cannot be exceptional and compelling circumstances that make it necessary to authorise the use of the relevant criteria unless –

- (a) the public interest in obtaining the information that would be obtained by the selection of the material for examination outweighs the public interest in the confidentiality of items subject to legal privilege,
- (b) there are no other means by which the information may reasonably be obtained, and
- (c) obtaining the information is necessary in the interests of national security or for the purpose of preventing death or significant injury.”

207 Page 139, line 25, at end insert –

“(3A) Subsection (3B) applies if, in a case where protected material obtained under a bulk equipment interference warrant is to be selected for examination –

- (a) the selection of the material for examination meets any of the selection conditions in section 178(3)(a) to (c),
- (b) the purpose, or one of the purposes, of using the criteria to be used for the selection of the material for examination (“the relevant criteria”) is to identify communications or other items of information that, if they were not communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose, would be items subject to legal privilege, and
- (c) the person to whom the warrant is addressed considers that the communications or other items of information (“the targeted communications or other items of information”) are likely to be communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose.

(3B) The material may be selected for examination using the relevant criteria only if a senior official acting on behalf of the Secretary of State has approved the use of those criteria.

(3C) A senior official may give an approval under subsection (3B) only if the official considers that the targeted communications or other items of information are likely to be communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose.”

208 Page 139, line 26, leave out from “privilege” to first “the” in line 27 and insert “which has been obtained under a bulk equipment interference warrant is retained following its examination, for purposes other than the destruction of the item,”

209 Page 139, line 31, at end insert –

- “(4A) Unless the Investigatory Powers Commissioner considers that subsection (4C) applies to the item, the Commissioner must –
- (a) direct that the item is destroyed, or
 - (b) impose one or more conditions as to the use or retention of that item.
- (4B) If the Investigatory Powers Commissioner considers that subsection (4C) applies to the item, the Commissioner may nevertheless impose such conditions under subsection (4A)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.
- (4C) This subsection applies to an item subject to legal privilege if –
- (a) the public interest in retaining the item outweighs the public interest in the confidentiality of items subject to legal privilege, and
 - (b) retaining the item is necessary in the interests of national security or for the purpose of preventing death or significant injury.
- (4D) The Investigatory Powers Commissioner –
- (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (4A), and
 - (b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).
- (4E) Each of the following is an “affected party” for the purposes of subsection (4D) –
- (a) the Secretary of State;
 - (b) the person to whom the warrant is or was addressed.”

After Clause 179

210 Insert the following new Clause –

“Additional safeguard for confidential journalistic material

Where –

- (a) material obtained under a bulk equipment interference warrant is retained, following its examination, for purposes other than the destruction of the material, and
 - (b) it is material containing confidential journalistic material,
- the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable. (For provision about the grounds for retaining material obtained under a bulk equipment interference warrant, see section 176.)”

211 Insert the following new Clause –

“Offence of breaching safeguards relating to examination of material

- (1) A person commits an offence if –
 - (a) the person selects for examination any material obtained under a bulk equipment interference warrant,

- (b) the person knows or believes that the selection of that material does not comply with a requirement imposed by section 178 or 179, and
 - (c) the person deliberately selects that material in breach of that requirement.
- (2) A person guilty of an offence under this section is liable –
- (a) on summary conviction in England and Wales –
 - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or
 - (ii) to a fine,
 or to both;
 - (b) on summary conviction in Scotland –
 - (i) to imprisonment for a term not exceeding 12 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (c) on summary conviction in Northern Ireland –
 - (i) to imprisonment for a term not exceeding 6 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.
- (3) No proceedings for any offence which is an offence by virtue of this section may be instituted –
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
 - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.”

Clause 181

- 212** Page 140, line 19, at end insert –
 “section (*General definitions: “journalistic material” etc.*) (general definitions: “journalistic material” etc.),”

Clause 182

- 213** Page 140, line 36, leave out “section” and insert “Part”

After Clause 184

- 214** Insert the following new Clause –
- “Restriction on use of class BPD warrants**
- (1) An intelligence service may not retain, or retain and examine, a bulk personal dataset in reliance on a class BPD warrant if the head of the intelligence service considers that the bulk personal dataset consists of, or includes, protected data.
 For the meaning of “protected data”, see section (*Meaning of “protected data”*).

- (2) An intelligence service may not retain, or retain and examine, a bulk personal dataset in reliance on a class BPD warrant if the head of the intelligence service considers—
 - (a) that the bulk personal dataset consists of, or includes, health records, or
 - (b) that a substantial proportion of the bulk personal dataset consists of sensitive personal data.
- (3) An intelligence service may not retain, or retain and examine, a bulk personal dataset in reliance on a class BPD warrant if the head of the intelligence service considers that the nature of the bulk personal dataset, or the circumstances in which it was created, is or are such that its retention, or retention and examination, by the intelligence service raises novel or contentious issues which ought to be considered by the Secretary of State and a Judicial Commissioner on an application by the head of the intelligence service for a specific BPD warrant.
- (4) In subsection (2)—
 - “health records” has the same meaning as in section 187;
 - “sensitive personal data” means personal data consisting of information about an individual (whether living or deceased) which is of a kind mentioned in section 2(a) to (f) of the Data Protection Act 1998.”

215 Insert the following new Clause—

“Meaning of “protected data”

- (1) In this Part, “protected data” means any data contained in a bulk personal dataset other than data which is one or more of the following—
 - (a) systems data;
 - (b) data which falls within subsection (2);
 - (c) data which is not private information.
- (2) The data falling within this subsection is identifying data which—
 - (a) is contained in the bulk personal dataset,
 - (b) is capable of being logically separated from the bulk personal dataset, and
 - (c) if it were so separated, would not reveal anything of what might reasonably be considered to be the meaning (if any) of any of the data which would remain in the bulk personal dataset or of the bulk personal dataset itself, disregarding any meaning arising from the existence of that data or (as the case may be) the existence of the bulk personal dataset or from any data relating to that fact.
- (3) For the meaning of “systems data” see section 235(4).
- (4) In this section, “private information” includes information relating to a person’s private or family life.”

Clause 185

216 Page 141, line 37, leave out from “service” to end of line 39 and insert “is seeking authorisation for the examination of bulk personal datasets of that class, the operational purposes which it is proposing should be specified in the warrant (see section 192)”

217 Page 142, line 23, at end insert –

“() The fact that a class BPD warrant would authorise the retention, or the retention and examination, of bulk personal datasets relating to activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary on grounds falling within subsection (3)(a).”

Clause 186

218 Page 142, line 30, leave out “wishes” and insert “is seeking authorisation”

219 Page 142, line 35, leave out “wishes” and insert “is seeking authorisation”

220 Page 142, line 38, after “but” insert “either –

(i) the intelligence service is prevented by section (*Restriction on use of class BPD warrants*)(1), (2) or (3) from retaining, or retaining and examining, the bulk personal dataset in reliance on the class BPD warrant, or

(ii) ”

221 Page 142, line 43, leave out from “service” to end of line 45 and insert “is seeking authorisation for the examination of the bulk personal dataset, the operational purposes which it is proposing should be specified in the warrant (see section 192)”

222 Page 142, line 45, at end insert –

“() Where subsection (3)(b)(i) applies, the application must include an explanation of why the intelligence service is prevented by section (*Restriction on use of class BPD warrants*)(1), (2) or (3) from retaining, or retaining and examining, the bulk personal dataset in reliance on a class BPD warrant.”

223 Page 143, line 22, at end insert –

“() The fact that a specific BPD warrant would authorise the retention, or the retention and examination, of bulk personal datasets relating to activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary on grounds falling within subsection (5)(a).”

After Clause 187

224 Insert the following new Clause –

“Protected data: power to impose conditions

Where the Secretary of State decides to issue a specific BPD warrant, the Secretary of State may impose conditions which must be satisfied before protected data retained in reliance on the warrant may be selected for examination on the basis of criteria which are referable to an individual known to be in the British Islands at the time of the selection.”

Clause 188

225 Page 144, line 39, after “must” insert “–

(a) ”

- 226 Page 144, line 40, at end insert “, and
() consider the matters referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).”

Clause 189

- 227 Page 145, line 5, leave out “believed” and insert “considered”
- 228 Page 145, line 16, at end insert –
“and section 188(4) does not apply in relation to the refusal to approve the decision.”

Clause 192

- 229 Page 147, line 7, at end insert “, and
(d) where the Secretary of State has imposed conditions under section (*Protected data: power to impose conditions*), specify those conditions.”
- 230 Page 147, line 8, leave out subsection (5) and insert –
“(5) The operational purposes specified in a class BPD warrant or a specific BPD warrant must be ones specified, in a list maintained by the heads of the intelligence services (“the list of operational purposes”), as purposes which they consider are operational purposes for which data contained in bulk personal datasets retained in reliance on class BPD warrants or specific BPD warrants may be selected for examination.”
- 231 Page 147, line 12, leave out from “issued,” to end of line 17 and insert “are specified in the list of operational purposes.
- (6A) An operational purpose may be specified in the list of operational purposes only with the approval of the Secretary of State.
- (6B) The Secretary of State may give such approval only if satisfied that the operational purpose is specified in a greater level of detail than the descriptions contained in section 185(3)(a) or (as the case may be) section 186(5)(a).
- (6C) At the end of each relevant three-month period, the Secretary of State must give a copy of the list of operational purposes to the Intelligence and Security Committee of Parliament.
- (6D) In subsection (6C), “relevant three-month period” means –
(a) the period of three months beginning with the day on which this section comes into force, and
(b) each successive period of three months.
- (6E) The Prime Minister must review the list of operational purposes at least once a year.
- (6F) In this Part, “the specified operational purposes”, in relation to a class BPD warrant or a specific BPD warrant, means the operational purposes specified in the warrant in accordance with this section.”

Clause 194

232 Page 147, line 43, leave out “before the end of the relevant” and insert “during the renewal”

233 Page 148, line 21, at end insert –

- “() “The renewal period” means –
- (a) in the case of an urgent specific BPD warrant which has not been renewed, the relevant period;
 - (b) in any other case, the period of 30 days ending with the day at the end of which the warrant would otherwise cease to have effect.”

234 Page 148, line 24, at end insert –

- “() Section (*Protected data: power to impose conditions*) (protected data: power to impose conditions) applies in relation to the renewal of a specific BPD warrant as it applies in relation to the issue of such a warrant (whether or not any conditions have previously been imposed in relation to the warrant under that section).”

235 Page 148, line 27, at end insert –

- “() In this section –
- “the relevant period” has the same meaning as in section 193;
 - “urgent specific BPD warrant” is to be read in accordance with subsection (3) of that section.”

Clause 195

236 Page 149, line 6, leave out subsection (6)

After Clause 195

237 Insert the following new Clause –

“Approval of major modifications by Judicial Commissioners

- (1) In deciding whether to approve a decision to make a major modification of a class BPD warrant or a specific BPD warrant, a Judicial Commissioner must review the Secretary of State’s conclusions as to whether the modification is necessary on any of the grounds on which the Secretary of State considers the warrant to be necessary.
- (2) In doing so, the Judicial Commissioner must –
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and
 - (b) consider the matter referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
- (3) Where a Judicial Commissioner refuses to approve a decision to make a major modification under section 195, the Judicial Commissioner must give the Secretary of State written reasons for the refusal.

- (4) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a decision to make a major modification under section 195, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to make the modification.”

Clause 196

- 238 Page 150, line 2, leave out “fifth” and insert “third”
- 239 Page 150, line 11, at end insert –
“and section (*Approval of major modifications by Judicial Commissioners*)(4) does not apply in relation to the refusal to approve the decision.”

Clause 198

- 240 Page 151, line 22, at end insert –
“() In deciding whether to give approval for the purposes of subsection (3)(b), the Judicial Commissioner must –
(a) apply the same principles as would be applied by a court on an application for judicial review, and
(b) consider the matter with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).”

Clause 200

- 241 Page 153, line 19, after “that” insert “arrangements are in force for securing that”
- 242 Page 153, line 28, at end insert –
“() The Secretary of State must also ensure, in relation to every specific BPD warrant which specifies conditions imposed under section (*Protected data: power to impose conditions*), that arrangements are in force for securing that any selection for examination of protected data on the basis of criteria which are referable to an individual known to be in the British Islands at the time of the selection is in accordance with the conditions specified in the warrant.”
- 243 Page 153, line 29, leave out “subsection (2)” and insert “this section”

After Clause 200

- 244 Insert the following new Clause –
“Additional safeguards for items subject to legal privilege: examination
(1) Subsections (2) and (3) apply if, in a case where protected data retained in reliance on a specific BPD warrant is to be selected for examination –
(a) the purpose, or one of the purposes, of using the criteria to be used for the selection of the data for examination (“the relevant criteria”) is to identify any items subject to legal privilege, or
(b) the use of the relevant criteria is likely to identify such items.

-
- (2) If the relevant criteria are referable to an individual known to be in the British Islands at the time of the selection, the data may be selected for examination using the relevant criteria only if the Secretary of State has approved the use of those criteria.
 - (3) In any other case, the data may be selected for examination using the relevant criteria only if a senior official acting on behalf of the Secretary of State has approved the use of those criteria.
 - (4) The Secretary of State may give approval for the purposes of subsection (2) only with the approval of a Judicial Commissioner.
 - (5) Approval may be given under subsection (2) or (3) only if—
 - (a) the Secretary of State or (as the case may be) the senior official considers that the arrangements mentioned in section 186(5)(d) include specific arrangements in respect of items subject to legal privilege, and
 - (b) where subsection (1)(a) applies, the Secretary of State or (as the case may be) the senior official considers that there are exceptional and compelling circumstances that make it necessary to authorise the use of the relevant criteria.
 - (6) In deciding whether to give an approval under subsection (2) or (3) in a case where subsection (1)(a) applies, the Secretary of State or (as the case may be) the senior official must have regard to the public interest in the confidentiality of items subject to legal privilege.
 - (7) For the purposes of subsection (5)(b), there cannot be exceptional and compelling circumstances that make it necessary to authorise the use of the relevant criteria unless—
 - (a) the public interest in obtaining the information that would be obtained by the selection of the data for examination outweighs the public interest in the confidentiality of items subject to legal privilege,
 - (b) there are no other means by which the information may reasonably be obtained, and
 - (c) obtaining the information is necessary in the interests of national security or for the purpose of preventing death or significant injury.
 - (8) In deciding whether to give approval for the purposes of subsection (4), the Judicial Commissioner must—
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and
 - (b) consider the matter with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
 - (9) Subsections (10) and (11) apply if, in a case where protected data retained in reliance on a specific BPD warrant is to be selected for examination—
 - (a) the purpose, or one of the purposes, of using the criteria to be used for the selection of the data for examination (“the relevant criteria”) is to identify data that, if the data or any underlying material were not created or held with the intention of furthering a criminal purpose, would be an item subject to legal privilege, and

- (b) the person to whom the warrant is addressed considers that the data (“the targeted data”) or any underlying material is likely to be data or underlying material created or held with the intention of furthering a criminal purpose.
- (10) If the relevant criteria are referable to an individual known to be in the British Islands at the time of the selection, the data may be selected for examination using the relevant criteria only if the Secretary of State has approved the use of those criteria.
- (11) In any other case, the data may be selected for examination using the relevant criteria only if a senior official acting on behalf of the Secretary of State has approved the use of those criteria.
- (12) Approval may be given under subsection (10) or (11) only if the Secretary of State or (as the case may be) the senior official considers that the targeted data or the underlying material is likely to be data or underlying material created or held with the intention of furthering a criminal purpose.
- (13) In this section, “underlying material”, in relation to data retained in reliance on a specific BPD warrant, means any communications or other items of information from which the data was produced.”

245

Insert the following new Clause –

“Additional safeguards for items subject to legal privilege: retention following examination

- (1) Where an item subject to legal privilege is retained following its examination in reliance on a specific BPD warrant, for purposes other than the destruction of the item, the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.
- (2) Unless the Investigatory Powers Commissioner considers that subsection (4) applies to the item, the Commissioner must –
 - (a) direct that the item is destroyed, or
 - (b) impose one or more conditions as to the use or retention of that item.
- (3) If the Investigatory Powers Commissioner considers that subsection (4) applies to the item, the Commissioner may nevertheless impose such conditions under subsection (2)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.
- (4) This subsection applies to an item subject to legal privilege if –
 - (a) the public interest in retaining the item outweighs the public interest in the confidentiality of items subject to legal privilege, and
 - (b) retaining the item is necessary in the interests of national security or for the purpose of preventing death or significant injury.
- (5) The Investigatory Powers Commissioner –
 - (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (2), and
 - (b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).

- (6) Each of the following is an “affected party” for the purposes of subsection (5) –
- (a) the Secretary of State;
 - (b) the person to whom the warrant is or was addressed.”

246

Insert the following new Clause –

“Offence of breaching safeguards relating to examination of material

- (1) A person commits an offence if –
 - (a) the person selects for examination any data contained in a bulk personal dataset retained in reliance on a class BPD warrant or a specific BPD warrant,
 - (b) the person knows or believes that the selection of that data is in breach of a requirement specified in subsection (2), and
 - (c) the person deliberately selects that data in breach of that requirement.
- (2) The requirements specified in this subsection are that any selection for examination of the data –
 - (a) is carried out only for the specified purposes (see subsection (3)),
 - (b) is necessary and proportionate, and
 - (c) if the data is protected data, satisfies any conditions imposed under section (*Protected data: power to impose conditions*).
- (3) The selection for examination of the data is carried out only for the specified purposes if the data is selected for examination only so far as is necessary for the operational purposes specified in the warrant in accordance with section 192.
 In this subsection, “specified in the warrant” means specified in the warrant at the time of the selection of the data for examination.
- (4) A person guilty of an offence under this section is liable –
 - (a) on summary conviction in England and Wales –
 - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or
 - (ii) to a fine,
 or to both;
 - (b) on summary conviction in Scotland –
 - (i) to imprisonment for a term not exceeding 12 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (c) on summary conviction in Northern Ireland –
 - (i) to imprisonment for a term not exceeding 6 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.
- (5) No proceedings for any offence which is an offence by virtue of this section may be instituted –
 - (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;

- (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.”

Clause 201

247 Page 154, line 20, at end insert –

- “() In deciding whether to give approval for the purposes of subsection (7), the Judicial Commissioner must apply the same principles as would be applied by a court on an application for judicial review.”

Clause 202

248 Page 155, line 3, at end insert –

““personal data” has the meaning given by section 182(2);”

249 Page 155, line 7, at end insert –

““the specified operational purposes” has the meaning given by section 192(6F);”

Clause 203

250 Page 155, line 25, at end insert –

- “(2A) A person is not to be appointed as the Investigatory Powers Commissioner unless recommended jointly by –
- (a) the Lord Chancellor,
 - (b) the Lord Chief Justice of England and Wales,
 - (c) the Lord President of the Court of Session, and
 - (d) the Lord Chief Justice of Northern Ireland.
- (2B) A person is not to be appointed as a Judicial Commissioner under subsection (1)(b) unless recommended jointly by –
- (a) the Lord Chancellor,
 - (b) the Lord Chief Justice of England and Wales,
 - (c) the Lord President of the Court of Session,
 - (d) the Lord Chief Justice of Northern Ireland, and
 - (e) the Investigatory Powers Commissioner.”

251 Page 155, leave out lines 28 to 30

252 Page 155, line 32, leave out paragraph (e)

253 Page 155, line 33, leave out subsection (4)

254 Page 156, line 4, at end insert –

- “(7A) Subsection (7) does not apply to the function of the Investigatory Powers Commissioner of making a recommendation under subsection (2B)(e) or making an appointment under section (*Members of the Panel*)(1).
- (7B) The delegation under subsection (7) to any extent of functions by the Investigatory Powers Commissioner does not prevent the exercise of the functions to that extent by that Commissioner.

- (7C) Any function exercisable by a Judicial Commissioner or any description of Judicial Commissioners is exercisable by any of the Judicial Commissioners or (as the case may be) any of the Judicial Commissioners of that description.
- (7D) Subsection (7C) does not apply to—
- (a) any function conferred on the Investigatory Powers Commissioner by name (except so far as its exercise by any of the Judicial Commissioners or any description of Judicial Commissioners is permitted by a delegation under subsection (7)), or
 - (b) any function conferred on, or delegated under subsection (7) to, any other particular named Judicial Commissioner.”

Clause 205

- 255 Page 158, line 23, after “Commissioner” insert “or the Investigatory Powers Commissioner for Northern Ireland”
- 256 Page 158, line 40, leave out from “to” to end of line 46 and insert “any of the following functions of a Judicial Commissioner —
- (a) deciding—
 - (i) whether to serve, vary or cancel a monetary penalty notice under section 7 or paragraph 16 of Schedule 1, a notice of intent under paragraph 4 of that Schedule or an information notice under Part 2 of that Schedule, or
 - (ii) the contents of any such notice,
 - (b) deciding whether to approve the issue, modification or renewal of a warrant,
 - (c) deciding whether to direct the destruction of material or how otherwise to deal with the situation where—
 - (i) a warrant issued, or modification made, for what was considered to be an urgent need is not approved, or
 - (ii) an item subject to legal privilege is retained, following its examination, for purposes other than the destruction of the item,
 - (d) deciding whether to—
 - (i) approve the grant, modification or renewal of an authorisation, or
 - (ii) quash or cancel an authorisation or renewal,
 - (e) deciding whether to approve—
 - (i) the giving or varying of a retention notice under Part 4 or a notice under section 225 or 226, or
 - (ii) the giving of a notice under section 85(10)(b) or 230(9)(b),
 - (f) participating in a review under section 85 or 230,
 - (g) deciding whether to approve an authorisation under section 198(3)(b),
 - (h) deciding whether to give approval under section (*Additional safeguards for items subject to legal privilege: examination*)(4),
 - (i) deciding whether to approve the giving or varying of a direction under section 201(3),
 - (j) making a decision under section 207(1),

- (k) deciding whether to order the destruction of records under section 103 of the Police Act 1997, section 37 of the Regulation of Investigatory Powers Act 2000 or section 15 of the Regulation of Investigatory Powers (Scotland) Act 2000,
- (l) deciding whether to make an order under section 103(6) of the Police Act 1997 (order enabling the taking of action to retrieve anything left on property in pursuance of an authorisation),
- (m) deciding—
 - (i) an appeal against, or a review of, a decision by another Judicial Commissioner, and
 - (ii) any action to take as a result.”

257 Page 159, line 3, after “tribunal” insert “(but does not include a Judicial Commissioner)”

258 Page 159, leave out lines 10 and 11

Clause 208

259 Page 161, line 16, at end insert —

“(3A) In addition to consulting the Secretary of State under subsection (3), the Judicial Commissioner must also consult the Scottish Ministers if it appears to the Commissioner that providing the advice or information might be prejudicial to—

- (a) the prevention or detection of serious crime by a Scottish public authority, or
- (b) the continued discharge of any devolved functions of a Scottish public authority whose activities include activities that are subject to review by the Investigatory Powers Commissioner.

(3B) In subsection (3A)—

“devolved function” means a function that does not relate to reserved matters (within the meaning of the Scotland Act 1998), and
 “Scottish public authority” has the same meaning as in the Scotland Act 1998.”

260 Page 161, line 17, leave out “Subsection (3) does” and insert “Subsections (3) and (3A) do”

Clause 209

261 Page 162, line 31, after second “Commissioner” insert “or the Investigatory Powers Commissioner for Northern Ireland”

Clause 210

262 Page 163, line 28, at end insert —

“() information about the operation of the safeguards conferred by this Act in relation to items subject to legal privilege, confidential journalistic material and sources of journalistic information,”

- 263 Page 163, line 28, at end insert –
 “() information about the following kinds of warrants issued, considered or approved during the year –
 (i) targeted interception warrants or targeted examination warrants of the kind referred to in section 17(2),
 (ii) targeted equipment interference warrants relating to matters within paragraph (b), (c), (e), (f), (g) or (h) of section 95(1), and
 (iii) targeted examination warrants under Part 5 relating to matters within any of paragraphs (b) to (e) of section 95(2),”
- 264 Page 163, line 28, at end insert –
 “() information about the operational purposes specified during the year in warrants issued under Part 6 or 7,”
- 265 Page 163, line 29, at end insert –
 “() information about the work of the Technology Advisory Panel,”
- 266 Page 164, line 18, leave out from “Ministers” to end of line 23 and insert “and the Scottish Ministers must lay the copy report and statement before the Scottish Parliament.”
- 267 Page 164, line 26, at end insert –
 “(11) Subsection (12) applies if the Prime Minister receives a report from the Investigatory Powers Commissioner under subsection (1) or (4) which relates to an investigation, inspection or audit carried out by the Commissioner following a decision to do so of which the Intelligence and Security Committee of Parliament was informed under section (*Referrals by the Intelligence and Security Committee of Parliament*)(2).
 (12) The Prime Minister must send to the Intelligence and Security Committee of Parliament a copy of the report so far as it relates to –
 (a) the investigation, inspection or audit concerned, and
 (b) the functions of the Committee falling within section 2 of the Justice and Security Act 2013.”

Clause 211

- 268 Page 165, line 2, leave out “member of” and insert “person who holds, or has held, an office, rank or position with”

After Clause 211

- 269 Insert the following new Clause –
“Referrals by the Intelligence and Security Committee of Parliament
 (1) Subsection (2) applies if the Intelligence and Security Committee of Parliament refers a matter to the Investigatory Powers Commissioner with a view to the Commissioner carrying out an investigation, inspection or audit into it.
 (2) The Investigatory Powers Commissioner must inform the Intelligence and Security Committee of Parliament of the Commissioner’s decision as to whether to carry out the investigation, inspection or audit.”

Clause 213

270 Page 165, line 29, after “facilities” insert “and services”

271 Page 165, line 31, at end insert –

“(3) The Scottish Ministers may pay to the Judicial Commissioners such allowances as the Scottish Ministers consider appropriate in respect of the exercise by the Commissioners of functions which relate to the exercise by Scottish public authorities of devolved functions.

(4) In subsection (3)–

“devolved function” means a function that does not relate to reserved matters (within the meaning of the Scotland Act 1998), and

“Scottish public authority” has the same meaning as in the Scotland Act 1998.”

272 Page 165, line 31, at end insert –

“(5) The Investigatory Powers Commissioner or any other Judicial Commissioner may, to such extent as the Commissioner concerned may decide, delegate the exercise of functions of that Commissioner to any member of staff of the Judicial Commissioners or any other person acting on behalf of the Commissioners.

(6) Subsection (5) does not apply to –

(a) the function of the Investigatory Powers Commissioner of making a recommendation under section 203(2B)(e) or making an appointment under section (*Members of the Panel*)(1),

(b) any function which falls within section 205(8), or

(c) any function under section 55(3) or 124(3) of authorising a disclosure,

but, subject to this and the terms of the delegation, does include functions which have been delegated to a Judicial Commissioner by the Investigatory Powers Commissioner.

(7) The delegation under subsection (5) to any extent of functions by the Investigatory Powers Commissioner or any other Judicial Commissioner does not prevent the exercise of the functions to that extent by the Commissioner concerned.”

Clause 215

273 Page 166, line 5, leave out paragraph (c)

274 Page 166, line 15, leave out paragraph (c)

275 Page 166, line 19, leave out from beginning to “and” in line 20

276 Page 166, line 23, at end insert –

“(2A) The Secretary of State may by regulations, with the consent of the Northern Ireland Assembly, provide for the abolition of the office of the Investigatory Powers Commissioner for Northern Ireland.

(2B) The power to make regulations under subsection (2A) (including that power as extended by section 238(1)(c)) may, in particular, be exercised by modifying any provision made by or under an enactment (including this Act).

- (2C) Regulations made by virtue of subsection (2B) may, in particular, repeal—
- (a) section 61 of the Regulation of Investigatory Powers Act 2000 (the Investigatory Powers Commissioner for Northern Ireland), and
 - (b) the words “or the Investigatory Powers Commissioner for Northern Ireland” in section 205(4)(f) of this Act.”

277 Page 166, line 24, at end insert—
 ““the Chief Surveillance Commissioner” means the Chief Commissioner appointed under section 91(1)(a) of the Police Act 1997,”

278 Page 166, line 30, at end insert—
 ““the other Surveillance Commissioners” means—

- (a) the Commissioners appointed under section 91(1)(b) of the Police Act 1997, and
- (b) the Assistant Surveillance Commissioners appointed under section 63(1) of the Regulation of Investigatory Powers Act 2000,”

279 Page 166, line 32, leave out “that Act” and insert “the Regulation of Investigatory Powers (Scotland) Act 2000”

Clause 217

280 Page 167, leave out line 16

281 Page 167, line 16, at end insert—

- “() The Secretary of State may by regulations, with the consent of the Northern Ireland Assembly, amend subsection (3) so as to add the Court of Appeal in Northern Ireland to the list of courts mentioned there.”

Clause 218

282 Page 169, line 19, after “system;” insert—

- “(bb) the issue, modification, renewal or service of a warrant under Part 2 or Chapter 1 of Part 6 of the Investigatory Powers Act 2016 (interception of communications);”

283 Page 169, line 22, leave out “the Investigatory Powers Act 2016” and insert “that Act”

284 Page 169, line 26, leave out “or varying”

285 Page 169, line 27, after “or” insert “the issue, modification, renewal or service”

286 Page 169, line 35, after “Act;” insert—

- “(czd) conduct of a kind which may be required or permitted by a warrant under Part 5 or Chapter 3 of Part 6 of that Act (equipment interference);
- (cze) the issue, modification, renewal or service of a warrant under Part 5 or Chapter 3 of Part 6 of that Act;
- (czf) the issue, modification, renewal or service of a warrant under Part 7 of that Act (bulk personal dataset warrants);

- (czg) the giving of an authorisation under section 198(3)(b) (authorisation for the retention, or retention and examination, of material following expiry of bulk personal dataset warrant);
- (czh) the giving or varying of a direction under section 201 of that Act (directions where no bulk personal dataset warrant required);
- (czi) conduct of a kind which may be required by a notice under section 225 or 226 of that Act (national security or technical capability notices);
- (czj) the giving or varying of such a notice;
- (czk) the giving of an authorisation under section 142(5)(c) or 178(5)(c) of that Act (certain authorisations to examine intercepted content or protected material);
- (czl) any failure to –
 - (i) cancel a warrant under Part 2, 5, 6 or 7 of that Act, or an authorisation under Part 3 of that Act;
 - (ii) cancel a notice under Part 3 of that Act;
 - (iii) revoke a notice under Part 4, or section 225 or 226, of that Act; or
 - (iv) revoke a direction under section 201 of that Act;
- (czm) any conduct in connection with any conduct falling within paragraph (c), (czb), (czd) or (czi);”

- 287** Page 169, line 35, at end insert –
- “() in subsection (6) (limitation for certain purposes of what is conduct falling within subsection (5)) –
 - (i) after “on behalf of” insert “an immigration officer or”, and
 - (ii) after paragraph (d) insert –
 - “(dza) the Competition and Markets Authority;”,
 - () after subsection (6) insert –
 - “(6A) Subsection (6) does not apply to anything mentioned in paragraph (d) or (f) of subsection (5) which also falls within paragraph (czd) of that subsection.”;
- 288** Page 169, line 35, at end insert –
- “() in subsection (7) after “if” insert “it is conduct of a public authority and”;
- 289** Page 169, line 43, leave out “(5)(cza) or (czc)” and insert “(5)(bb), (cza), (czc), (cze), (czf), (czg), (czh), (czj), (czk) or (czl) or (so far as the conduct is, or purports to be, the giving of a notice under section 49) subsection (5)(e)”
- 290** Page 169, line 49, after “Act;” insert –
- “(bb) a direction under section 201 of that Act;
 - (bc) a notice under section 225 or 226 of that Act;”
- 291** Page 170, line 10, after “Act;” insert –
- “(azb) an order quashing or revoking a direction under section 201 of that Act;
 - (azc) an order quashing or revoking a notice under section 225 or 226 of that Act;”

- 292 Page 170, line 17, after “2016” insert “or under section 225 or 226 of that Act or direction under section 201 of that Act”
- 293 Page 170, line 27, after second “section” insert “225 or”
- 294 Page 170, line 34, after “Act” insert “or a notice under section 225 or 226 of that Act”
- 295 Page 170, line 46, after second “Commissioner” insert “or the Investigatory Powers Commissioner for Northern Ireland”

Clause 220

- 296 Page 171, line 15, after “Part 4” insert “, national security notices under section 225”

After Clause 220

- 297 Insert the following new Clause –

“Technology Advisory Panel

- (1) The Investigatory Powers Commissioner must ensure that there is a Technology Advisory Panel to provide advice to the Investigatory Powers Commissioner, the Secretary of State and the Scottish Ministers about –
 - (a) the impact of changing technology on the exercise of investigatory powers whose exercise is subject to review by the Commissioner, and
 - (b) the availability and development of techniques to use such powers while minimising interference with privacy.
- (2) The Technology Advisory Panel must provide advice to the Investigatory Powers Commissioner about such matters falling within subsection (1)(a) or (b) as the Commissioner may direct.
- (3) Subject to this, the Panel may provide advice to the Investigatory Powers Commissioner about such matters falling within subsection (1)(a) or (b) as it considers appropriate (whether or not requested to do so).
- (4) The Panel may provide advice to the Secretary of State or the Scottish Ministers about such matters falling within subsection (1)(a) or (b) as it considers appropriate (whether or not requested to do so) but such advice to the Scottish Ministers may only relate to matters for which the Scottish Ministers are responsible.
- (5) The Panel must, as soon as reasonably practicable after the end of each calendar year, make a report to the Investigatory Powers Commissioner about the carrying out of the functions of the Panel.
- (6) The Panel must, at the same time, send a copy of the report to the Secretary of State and (so far as relating to matters for which the Scottish Ministers are responsible) the Scottish Ministers.”

- 298 Insert the following new Clause –

“Members of the Panel

- (1) The Investigatory Powers Commissioner must appoint such number of persons as members of the Technology Advisory Panel as the Commissioner considers necessary for the carrying out of the functions of the Panel.

- (2) Subject as follows, each member of the Panel holds and vacates office in accordance with the member's terms and conditions of appointment.
- (3) A member of the Panel must not act in a way which the member considers to be contrary to the public interest or prejudicial to—
 - (a) national security,
 - (b) the prevention or detection of serious crime, or
 - (c) the economic well-being of the United Kingdom.
- (4) A member of the Panel must, in particular, ensure that the member does not—
 - (a) jeopardise the success of an intelligence or security operation or a law enforcement operation,
 - (b) compromise the safety or security of those involved, or
 - (c) unduly impede the operational effectiveness of an intelligence service, a police force, a government department or Her Majesty's forces.
- (5) Section 211(2) and (7) (information powers) apply to a member of the Panel as they apply to a Judicial Commissioner."

Clause 225

- 299** Page 174, line 3, at end insert—
- “() In a case where—
- (a) a national security notice would require the taking of any steps, and
 - (b) in the absence of such a notice requiring the taking of those steps, the taking of those steps would be lawful only if a warrant or authorisation under a relevant enactment had been obtained,
- the notice may require the taking of those steps only if such a warrant or authorisation has been obtained.”
- 300** Page 174, line 4, leave out from “But” to “to” in line 5 and insert “the Secretary of State may not give any telecommunications operator a national security notice the main purpose of which is to require the operator”
- 301** Page 174, line 5, leave out “is required under this Act” and insert “under a relevant enactment is required.
- () In this section “relevant enactment” means—
- (a) this Act;
 - (b) the Intelligence Services Act 1994;
 - (c) the Regulation of Investigatory Powers Act 2000;
 - (d) the Regulation of Investigatory Powers (Scotland) Act 2000 (2000 asp 11).”
- 302** Page 174, line 9, at end insert—
- “() Conduct required by a national security notice is to be treated as lawful for all purposes (to the extent that it would not otherwise be so treated).”
- 303** Page 174, line 10, after “230” insert “and (*Approval of notices following review under section 230*)”

Clause 226

- 304 Page 175, line 22, after “notice” insert “–
(a) ”
- 305 Page 175, line 24, at end insert “, and
() may specify different periods in relation to different steps.”
- 306 Page 175, line 28, after “230” insert “and (*Approval of notices following review under section 230*)”

Clause 227

- 307 Page 175, line 40, after “must” insert “–
(a) ”
- 308 Page 175, line 41, at end insert “, and
() consider the matters referred to in subsection (2) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).”

Clause 229

- 309 Page 177, line 23, leave out “only if” and insert “given to a person only if–
(a) the Secretary of State considers that the variation is necessary in the interests of national security,
(b) ”
- 310 Page 177, line 25, at end insert “, and
(c) if the variation would impose further requirements on the person, the decision to vary the notice has been approved by a Judicial Commissioner (but see subsection (4B)).
- (4A) The Secretary of State may vary a technical capability notice given to a person only if–
(a) the Secretary of State considers that the variation is necessary for securing that the person has the capability to provide any assistance which the person may be required to provide in relation to any relevant authorisation (within the meaning of section 226),
(b) the Secretary of State considers that the conduct required by the notice as varied is proportionate to what is sought to be achieved by that conduct, and
(c) if the variation would impose further requirements on the person, the decision to vary the notice has been approved by a Judicial Commissioner (but see subsection (4B)).
- (4B) The condition in subsection (4)(c) or (as the case may be) subsection (4A)(c) does not apply in the case of a variation to which section 230(9A) applies.”

311 Page 177, line 28, at end insert –

- “() Section 227 (approval of notices by Judicial Commissioners) applies in relation to a decision to vary a relevant notice (other than a decision to which section 230(9A) applies) as it applies in relation to a decision to give a relevant notice, but as if –
- (a) the reference in section 227(2)(a) to the notice were to the variation, and
 - (b) the reference in section 227(2)(b) to the notice were to the notice as varied.”

312 Page 177, line 40, leave out “(11)” and insert “(12)”

Clause 230

313 Page 178, line 13, leave out “the Investigatory Powers” and insert “a Judicial”

314 Page 178, line 29, at end insert –

- “(9A) But the Secretary of State may vary the notice, or give a notice under subsection (9)(b) confirming its effect, only if the Secretary of State’s decision to do so has been approved by the Investigatory Powers Commissioner.”

315 Page 178, line 33, after first “section” insert “or section (*Approval of notices following review under section 230*)”

After Clause 230

316 Insert the following new Clause –

“Approval of notices following review under section 230

- (1) In this section “relevant notice” means –
 - (a) a national security notice under section 225, or
 - (b) a technical capability notice under section 226.
- (2) In deciding whether to approve a decision to vary a relevant notice as mentioned in section 230(9)(a), or to give a notice under section 230(9)(b) confirming the effect of a relevant notice, the Investigatory Powers Commissioner must review the Secretary of State’s conclusions as to the following matters –
 - (a) whether the relevant notice as varied or confirmed is necessary as mentioned in section 225(1)(a) or (as the case may be) section 226(1)(a), and
 - (b) whether the conduct required by the relevant notice, as varied or confirmed, is proportionate to what is sought to be achieved by that conduct.
- (3) In doing so, the Investigatory Powers Commissioner must –
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and
 - (b) consider the matters referred to in subsection (2) with a sufficient degree of care as to ensure that the Investigatory Powers Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).

- (4) Where the Investigatory Powers Commissioner refuses to approve a decision to vary a relevant notice as mentioned in section 230(9)(a), or to give a notice under section 230(9)(b) confirming the effect of a relevant notice, the Investigatory Powers Commissioner must give the Secretary of State written reasons for the refusal.”

Clause 234

- 317 Page 182, line 23, after “be” insert “or is capable of being”

Clause 235

- 318 Page 184, leave out lines 37 and 38

- 319 Page 184, line 40, at end insert –

““premises” includes any land, movable structure, vehicle, vessel, aircraft or hovercraft (and “set of premises” is to be read accordingly),”

- 320 Page 185, line 6, at end insert –

““source of journalistic information” means an individual who provides material intending the recipient to use it for the purposes of journalism or knowing that it is likely to be so used,”

- 321 Page 185, line 9, at end insert –

““statutory”, in relation to any function, means conferred by virtue of this Act or any other enactment,”

- 322 Page 185, line 18, at end insert –

““the Technology Advisory Panel” means the panel established in accordance with section (*Technology Advisory Panel*)(1),”

- 323 Page 185, line 25, after “identify” insert “, or assist in identifying,”

- 324 Page 185, line 26, after “identify” insert “, or assist in identifying,”

- 325 Page 185, line 29, after “identify” insert “, or assist in identifying,”

After Clause 235

- 326 Insert the following new Clause –

“General definitions: “journalistic material” etc.

- (1) The definitions in this section have effect for the purposes of this Act.

Journalistic material

- (2) “Journalistic material” means material created or acquired for the purposes of journalism.

- (3) For the purposes of this section, where –

(a) a person (“R”) receives material from another person (“S”), and

(b) S intends R to use the material for the purposes of journalism,

R is to be taken to have acquired it for those purposes.

Accordingly, a communication sent by S to R containing such material is to be regarded as a communication containing journalistic material.

- (4) For the purposes of determining whether a communication contains material acquired for the purposes of journalism, it does not matter whether the material has been acquired for those purposes by the sender or recipient of the communication or by some other person.
- (5) For the purposes of this section—
- (a) material is not to be regarded as created or acquired for the purposes of journalism if it is created or acquired with the intention of furthering a criminal purpose, and
 - (b) material which a person intends to be used to further such a purpose is not to be regarded as intended to be used for the purposes of journalism.

Confidential journalistic material

- (6) “Confidential journalistic material” means—
- (a) in the case of material contained in a communication, journalistic material which the sender of the communication—
 - (i) holds in confidence, or
 - (ii) intends the recipient, or intended recipient, of the communication to hold in confidence;
 - (b) in any other case, journalistic material which a person holds in confidence.
- (7) A person holds material in confidence for the purposes of this section if—
- (a) the person holds it subject to an express or implied undertaking to hold it in confidence, or
 - (b) the person holds it subject to a restriction on disclosure or an obligation of secrecy contained in an enactment.”

Clause 236

327 Page 186, line 19, at end insert—

| | |
|-------------------------------------|--|
| “Confidential journalistic material | Section (<i>General definitions: “journalistic material” etc.</i>)(6) and (7)” |
|-------------------------------------|--|

328 Page 187, line 13, at end insert—

| | |
|------------------------|---|
| “Journalistic material | Section (<i>General definitions: “journalistic material” etc.</i>)(2) to (5)” |
|------------------------|---|

329 Page 187, leave out line 20

330 Page 187, line 26, at end insert—

| | |
|-----------|-----------------|
| “Premises | Section 235(1)” |
|-----------|-----------------|

331 Page 187, line 33, at end insert “(and paragraph 4A of Schedule 9)”

332 Page 187, line 34, leave out “73(8)” and insert “235(1)”

333 Page 188, line 3, at end insert—

| | |
|--|-----------------|
| “Statutory (in relation to any function)” | Section 235(1)” |
|--|-----------------|

334 Page 188, line 6, at end insert –

| | |
|-------------------------------|-----------------|
| “Technology Advisory Panel | Section 235(1)” |
|-------------------------------|-----------------|

Clause 238

335 Page 189, line 10, at end insert –

“() section 215(2A),”

336 Page 189, line 26, at end insert –

“() regulations under section 50(3),”

Clause 242

337 Page 191, line 35, at end insert –

“(4) In subsection (3) “enactment” does not include any primary legislation passed or made after the end of the Session in which this Act is passed.”

Clause 243

338 Page 191, line 38, leave out “(2) and” and insert “(1A) to”

339 Page 191, line 40, at end insert –

“(1A) Sections 8 and (*Interception without lawful authority: award of costs*) come into force on the day following that on which this Act is passed.”

340 Page 192, line 1, leave out “and (3)” and insert “to (4)”

341 Page 192, line 5, leave out “and (6)” and insert “to (6A)”

342 Page 192, line 7, after “revocation” insert “made by this Act”

343 Page 192, line 7, after “extent” insert “within the United Kingdom”

344 Page 192, line 10, after second “to” insert “the Isle of Man or”

345 Page 192, line 11, at end insert –

“(6A) Any power under an Act to extend any provision of that Act by Order in Council to any of the Channel Islands may be exercised so as to extend there (with or without modifications) any amendment or repeal of that provision which is made by or under this Act.”

Schedule 3

346 Page 205, line 4, leave out “or 56” and insert “, 56 or (*Offence of breaching safeguards relating to examination of material under bulk interception warrants*)”

347 Page 209, line 1, leave out “or 56” and insert “, 56 or (*Offence of breaching safeguards relating to examination of material under bulk interception warrants*)”

- 348 Page 211, line 25, leave out from “if” to end of line 27 and insert “restrictions imposed under section 19 of that Act are in force prohibiting attendance at the proceedings by any person who is not—
- (a) a member of the panel of the inquiry,
 - (b) a person appointed as legal adviser to the inquiry,
 - (c) a person who is a relevant party to the proceedings,
 - (d) a person representing such a person for the purposes of the proceedings, or
 - (e) a person performing functions necessary for the proper functioning of the proceedings.”

- 349 Page 211, line 29, at end insert —

“() In this paragraph “relevant party”, in relation to any proceedings of an inquiry, means —

- (a) any person making a disclosure to the panel of the inquiry, or to a person appointed as legal adviser to the inquiry, in accordance with paragraph 22(1);
- (b) any person giving evidence to the inquiry in circumstances where, in the absence of sub-paragraph (1), the prohibition imposed by section 53(1) would be breached;
- (c) any person whose conduct is the interception-related conduct (within the meaning of section 53) to which the disclosure or evidence relates (whether or not that conduct has in fact occurred);
- (d) any other person to whom the subject-matter of the disclosure or evidence has been lawfully disclosed in accordance with section 55.

() Any reference in this paragraph to a person appointed as legal adviser to an inquiry is to be read in accordance with paragraph 22(3).”

- 350 Page 212, line 9, at end insert —

“() In sub-paragraph (3) “intercepted material” means —

- (a) any content of an intercepted communication (within the meaning of section 53), or
- (b) any secondary data obtained from a communication.”

Schedule 4

- 351 Page 215, line 16, leave out “and” and insert “or”

- 352 Page 215, line 19, at end insert —

| | | | |
|---|---------------------|-----|------|
| “Department for Communities in Northern Ireland | Deputy Principal | All | (b)” |
|---|---------------------|-----|------|

- 353 Page 216, line 10, leave out “Investigations” and insert “Operations”

Schedule 7

- 354 Page 224, line 13, at end insert –
 “() the Technology Advisory Panel,”
- 355 Page 224, line 23, at end insert –
 “(1A) A code about the exercise of functions conferred by virtue of Part 2, Part 5 or Chapter 1 or 3 of Part 6 must also contain provision about when circumstances are to be regarded as “exceptional and compelling circumstances” for the purposes of any provision of that Part or Chapter that restricts the exercise of functions in relation to items subject to legal privilege by reference to the existence of such circumstances.
- (1B) The Investigatory Powers Commissioner must keep under review any provision included in a code by virtue of sub-paragraph (1A).”

Schedule 8

EARL HOWE

- 356 Page 231, line 20, at end insert –
 “() the duties imposed by section 2 (general duties in relation to privacy);”
- 357 Page 235, line 7, at end insert –
 “() In sub-paragraph (1) “enactment” does not include any primary legislation passed or made after the end of the Session in which this Act is passed.”

Schedule 9

- 358 Page 235, line 26, leave out “section 85(1) to (11)” and insert “sections 83(1)(b), (3A) and (7)(e), (*Approval of retention notices by Judicial Commissioners*), 85(1) to (11), (*Approval of retention notices following review under section 85*), 88(4)(b), (4B), (7A) and (8A) and 90(2)(de)”
- 359 Page 236, line 3, at end insert –
 “but this is without prejudice to the continued operation of section 89(2) to (5) in relation to the notice.”
- 360 Page 236, line 18, at end insert –
 “3A (1) Sub-paragraph (2) applies if any power to give, vary or confirm a retention notice under section 83 of this Act (excluding any power to vary a notice which has effect as such a notice by virtue of paragraph 3(1)) is brought into force without any requirement for approval by a Judicial Commissioner of the decision to give, vary or (as the case may be) confirm the notice.
- (2) The notice as given, varied or confirmed ceases to have effect (so far as not previously revoked) at the end of the period of three months beginning with the day on which the requirement for approval comes into force.”

361 Page 236, line 29, at end insert –

“Definitions of “other relevant crime” and “serious crime”

4A (1) The definitions of –

(a) “other relevant crime” in section (*Restrictions in relation to internet connection records*)(6), and

(b) “serious crime” in section 235(1),

are to be read, until the appointed day, as if for the words “the age of 18 (or, in relation to Scotland or Northern Ireland, 21)” there were substituted “the age of 21”.

(2) In sub-paragraph (1), “the appointed day” means the day on which the amendment made to section 81(3)(a) of the Regulation of Investigatory Powers Act 2000 by paragraph 211 of Schedule 7 to the Criminal Justice and Court Services Act 2000 comes into force.”

362 Page 236, line 31, after “operator” insert “(within the meaning given by section 27(3) of the Postal Services Act 2011)”

Schedule 10

363 Page 238, line 17, leave out sub-paragraph (3) and insert –

“(3) In paragraph (a) of the definition of “communication” omit “(except in the definition of “postal service” in section 2(1))”.”

364 Page 243, line 5, at end insert –

“Immigration Act 2016

In section 7(2)(b) of the Immigration Act 2016 (information gateways: supplementary) for “Part 1 of the Regulation of Investigatory Powers Act 2000” substitute “any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016”.”

365 Page 243, line 7, at end insert –

“Security Service Act 1989

In section 1(5) of the Security Service Act 1989 (meaning of “prevention” and “detection”) for the words from “the provisions” to the end substitute “that Act”.”

366 Page 243, line 18, at end insert –

“Intelligence Services Act 1994

In section 11(1A) of the Intelligence Services Act 1994 (meaning of “prevention” and “detection”) for the words from “apply” to the end substitute “apply for the purposes of this Act as it applies for the purposes of that Act, except that for the purposes of section 3 above it shall not include a reference to gathering evidence for use in any legal proceedings (within the meaning of that Act).””

367 Page 243, line 42, at end insert –

“Police Act 1997

In section 133A of the Police Act 1997 (meaning of “prevention” and “detection”) for the words from “the provisions” to the end substitute “that Act”.”

368 Page 244, line 21, at end insert –

- “ (1) Section 49 (investigation of electronic data protected by encryption etc: powers under which data obtained) is amended as follows.
- (2) In subsection (1)(b) after “communications” insert “or obtain secondary data from communications”.
- (3) After subsection (9) insert –
- “(9A) In subsection (1)(b) the reference to obtaining secondary data from communications is to be read in accordance with section 16 of the Investigatory Powers Act 2016.””

369 Page 245, line 27, leave out from “(1)” to end of line 28 and insert “–

- (a) for “23A” substitute “71 of the Investigatory Powers Act 2016”, and
- (b) for “or 32A” substitute “or section 32A of this Act”.”

370 Page 246, line 23, at end insert –

“Regulation of Investigatory Powers Act 2000

58A The Regulation of Investigatory Powers Act 2000 is amended as follows.

58B In section 48 (interpretation of Part 2), in subsection (3)(c)–

- (a) omit the “or” at the end of sub-paragraph (i);
- (b) after sub-paragraph (ii) insert “; or
- (iii) Part 5, or Chapter 3 of Part 6, of the Investigatory Powers Act 2016 (equipment interference).”

58C (1) Paragraph 2 of Schedule 2 (persons having the appropriate permission where data obtained under warrant etc) is amended as follows.

- (2) In sub-paragraph (1)–
- (a) omit the “or” at the end of paragraph (a);
- (b) after paragraph (b) insert “; or
- (c) a targeted equipment interference warrant issued under section 100 of the Investigatory Powers Act 2016 (powers of law enforcement chiefs to issue warrants to law enforcement officers).”
- (3) In sub-paragraph (5), at the end insert “or under a targeted equipment interference warrant issued under section 100 of the Investigatory Powers Act 2016.”
- (4) In sub-paragraph (6)–
- (a) omit the “and” at the end of paragraph (b);

- (b) after paragraph (c) insert “; and
 (d) in relation to protected information obtained under a warrant issued under section 100 of the Investigatory Powers Act 2016, means the person who issued the warrant or, if that person was an appropriate delegate in relation to a law enforcement chief, either that person or the law enforcement chief.”

(5) After sub-paragraph (6) insert –

“(6A) In sub-paragraph (6)(d), the references to a law enforcement chief and to an appropriate delegate in relation to a law enforcement chief are to be read in accordance with section 100(4) of the Investigatory Powers Act 2016.”

- 371** Page 246, line 29, leave out “, or Chapter 3 of Part 6,”
- 372** Page 246, line 34, leave out “, or Chapter 3 of Part 6,”
- 373** Page 248, line 1, leave out from “dismissed)” to end of line 2 and insert “omit “under section 107(2),””
- 374** Page 248, line 24, at end insert –
- “ (1) Section 64 (delegation of Commissioners’ functions) is amended as follows.
- (2) In the heading for “Commissioners’ functions” substitute “functions of the Investigatory Powers Commissioner for Northern Ireland”.
- (3) In subsection (1) –
- (a) omit “or any provision of an Act of the Scottish Parliament”, and
- (b) for “a relevant Commissioner” substitute “the Investigatory Powers Commissioner for Northern Ireland”.
- (4) Omit subsection (2).”
- 375** Page 248, line 29, after “substitute “” insert –
- “(bza) the Investigatory Powers Commissioner for Northern Ireland carrying out functions under this Act”
- 376** Page 251, line 12, at end insert –
- | | |
|--|------------------|
| “Anti-terrorism, Crime and Security Act 2001 | Section 116(3).” |
|--|------------------|
- 377** Page 253, line 11, leave out “and (3)”

LORDS AMENDMENTS TO THE
INVESTIGATORY POWERS BILL

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