

INVESTIGATORY POWERS BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Investigatory Powers Bill as brought from the House of Lords on 31 October 2016.
- 2 These Explanatory Notes have been prepared by the Home Office in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to Bill 40, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Lords Amendments 2 to 10, 16 to 73, 75 to 171, 173 to 189, 191 to 210, 212 to 245, 247 to 262, 264 to 266, 268 to 337, 340 to 345, and 348 to 377 were tabled in the name of the Minister.
- 6 Lords Amendment 74 was originally tabled in the name of the Minister, with the text of the amendment subsequently amended by Lord Rosser, with the support of the Government.
- 7 Lords Amendments 11 to 15 were tabled by Baroness Hollins and Baroness O'Neill of Bengarve, and were opposed by the Government.
- 8 Lords Amendments 1, 172, 190, 211, 246, 263, 267, 346 and 347 were tabled by Lord Butler of Brockwell, Lord Janvrin and the Marquess of Lothian, and were supported by the Government.
- 9 Lords Amendments 338 and 339 were tabled by Baroness Hollins and Baroness O'Neill of Bengarve, and the Government was neutral.
- 10 In the following Commentary, an asterisk(*) appears in the heading of any paragraph that deals with a non-Government amendment.

Commentary on Lords amendments

Lords Amendments to Clause 1: Overview of Act

Lords Amendment 1*

- 11 Lords Amendment 1* is self-explanatory.

Lords Amendment 2

- 12 Lords Amendment 2 corrects a reference to the offence of misconduct in public office in the 'privacy clause' added at Report Stage in the Commons.

Lords Amendments to Clause 2: General duties in relation to privacy

Lords Amendments 3 to 8

- 13 Lords Amendments 3 to 8 are technical amendments which would make clear that the privacy clause applies in respect of the role of public authorities, including the Judicial Commissioners, in relation to the exercise of all powers under the Bill which may result in an interference with privacy.

Lords Amendments 9 and 10

- 14 Lords Amendments 9 and 10 would make clear that public authorities must have regard to additional safeguards and other considerations which may apply when dealing with particularly sensitive information. Examples of sensitive information include but are not restricted to legally privileged material, confidential journalistic material, the identity of a journalist's source, and communications between a Parliamentarian and their constituent.

Lords Amendments to Clause 8: Civil liability for certain unlawful interceptions

Lords Amendments 11 to 14*

- 15 Lords Amendments 11 to 14 would amend the cause of action provided for in Clause 8. As originally drafted, Clause 8 provides a civil right of redress for individuals whose communications are intercepted on a private telecommunications system by a person who has the right to control the operation or use of the private telecommunications system.
- 16 Amendments 11, 13 and 14 would remove the provision of Clause 8 which restricts the cause of action to cases where the interception is carried out by or with the consent of a person who controls the private telecommunication system.
- 17 Amendment 12 would extend the cause of action to any interception which takes place without lawful authority on a public telecommunications system.

Lords Amendments after Clause 8

Lords Amendment 15*

- 18 Lords Amendment 15 would insert a new clause (Interception without lawful authority: award of costs) importing concepts from section 40 of the Crime and Courts Act 2013 which provide for costs consequences designed to encourage publishers to become members of an approved press regulatory body.

Lords Amendments to Clauses 21, 58, 83, 88, 96 to 98, 100, 146, 185 and 186

Lords Amendments 16, 73, 99, 106, 113 to 116, 174, 217 and 223

- 19 Lords Amendments 16, 73, 99, 106, 113 to 116, 174, 217 and 223 would make explicit that legitimate trade union activity would never be sufficient grounds, of itself, to render the exercise of an investigatory power under the Bill necessary for one of the statutory purposes. They replicate the provision in Clause 21(6) of the Bill in respect of interception warrants, which was tabled by the Opposition at Report stage in the Commons.

Lords Amendments to Clauses 24, 103, 166 and 189

Lords Amendments 17, 119, 193 and 228

- 20 Lords Amendments 17, 119, 193 and 228 would clarify that the decision by a Judicial Commissioner not to approve an urgent targeted interception, targeted or bulk equipment interference, or specific BPD warrant cannot be appealed to the Investigatory Powers Commissioner. Amendment 193 would also ensure that an urgent bulk equipment interference warrant that is not approved by a

Judicial Commissioner cannot be renewed.

Lords Amendments to Clauses 27 and 106: Items subject to legal privilege

Lords Amendments 18 to 24, and 120 to 125

- 21 Lords Amendments 19 and 121 would make clear that the Secretary of State (or Member of the Scottish Government) must, when deciding whether to issue a warrant the intention of which is to obtain legally privileged material, consider the public interest in maintaining the confidentiality of such material.
- 22 Lords Amendments 21 and 122 would provide that a targeted interception or targeted equipment interference warrant cannot be issued to obtain legally privileged material for the statutory purpose of protecting the economic well-being of the UK.
- 23 Lords Amendments 22 and 123 would create a minimum threshold for when there may be said to be exceptional and compelling circumstances making it necessary to obtain legally privileged material. They would make clear that the exceptional and compelling test can only be met: when the public interest in obtaining the information sought outweighs the public interest in maintaining the confidentiality of legally privileged material; where, in the case of a serious crime warrant, there is a threat to life or risk of significant injury; and when there are no other reasonable means of obtaining the required information.
- 24 Lords Amendments 24 and 125 relate to the ‘iniquity exception’. They set out that where an agency wishes to obtain communications or other information that would otherwise be privileged, were they not made in furtherance of a criminal purpose, the warrant application must set out the grounds for believing that the communications are being made with that intention. They also make clear that the issuing authority, in authorising such a warrant, can only do so if they consider that the material sought is likely to be made with the intention of furthering a criminal purpose.
- 25 Lords Amendments 18, 20, 23, 120, and 124 would be minor consequential drafting changes.

Lords Amendments after Clauses 27 and 106; and Lords Amendments to Clauses 31, 33, 34, 35, 36, 57, 109, 111, 112, 113, 114, 115, 126, 145 and 181

Lords Amendments 25, 26, 126 and 127

- 26 Lords Amendments 25 and 126 would provide that where the purpose of a targeted interception or equipment interference warrant is to obtain or to examine confidential journalistic information, the application for the warrant must contain an explicit statement to that effect. The Secretary of State, member of the Scottish Government, or law enforcement chief for law enforcement use of equipment interference, can only issue such a warrant where he or she is satisfied that specific handling arrangements are in place for confidential journalistic material.
- 27 Lords Amendments 26 and 127 would place protections on the face of the Bill in any case where the purpose or one of the purposes of a targeted interception or equipment interference warrant is to identify or confirm a journalist’s source. Any warrant application would have to set out that the purpose of the warrant is to identify or confirm a journalist’s source. The Secretary of State, member of the Scottish Government, or law enforcement chief can only issue such a warrant where he or she is satisfied that specific handling arrangements are in place for the material obtained.

Lords Amendments 34, 36, 38 to 40, 43 to 45, 64, 131, 133 to 139, 143, 151, 173 and 212

- 28 Lords Amendments 34, 36, 38 to 40, 43 to 45, 64, 131, 133 to 139, 143, 151, 173 and 212 are consequential amendments following amendments 25, 26, 126 and 127, providing additional

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protections for journalistic material in Part 2 and 5.

Lords Amendments to Clause 29: Requirements that must be met by warrants

Lords Amendments 27 to 30

- 29 Lords Amendments 27 to 29 would ensure that the requirement to specify the address, numbers, apparatus or other factors used for identifying communications in a targeted interception, targeted examination or mutual assistance warrant also applies to a warrant which authorises the obtaining of secondary data.
- 30 Lords Amendment 30 would align the wording (“person, organisation or premises”) in Clause 29, regarding requirements that must be met by warrants, with Clause 17 on the subject matter of warrants.

Lords Amendment 31

- 31 Lords Amendment 31 would clarify that the targeted interception provisions of the Bill include within their scope the situation where communications are not directly sent by, or intended for, a person or organisation but where they are communications from or for anything owned, controlled or operated by a person or organisation.

Lords Amendments to Clauses 31, 109, 135, 151, 171 and 194

Lords Amendments 32, 33, 35, 128, 130, 132, 156, 157, 180, 181, 196 to 198, 232, 233 and 235

- 32 Lords Amendments 32, 33, 35, 128, 130, 132, 156, 157, 180, 181, 196 to 198, 232, 233 and 235 ensure that a warrant issued under Part 2, 5, 6 or 7 of the Bill cannot be renewed more than 30 days before the warrant is due to expire.

Lords Amendment 129

- 33 Lords Amendment 129 would correct an inconsistency in language in relation to the renewal of equipment interference warrants.

Lords Amendment 158

- 34 Lords Amendment 158 would clarify the matters that must be taken into account by a Judicial Commissioner when deciding whether or not to approve a decision by the Secretary of State to renew a bulk interception warrant, to reflect the matters which were considered by the Secretary of State. Specifically, the amendment makes clear that the Judicial Commissioner would not be required to consider additional matters in respect of warrants affecting overseas operators, since those are only taken into account by the Secretary of State at the time the warrant was issued.

Lords Amendments to Clause 33: Persons who may make modifications

Lords Amendment 37

- 35 Lords Amendment 37 would remove the ability for the competent authority of an overseas country or territory to make minor modifications, or urgent major modifications, to a mutual assistance warrant.

Lords Amendments to Clause 34: Further provision about modifications

Lords Amendments 41 and 42

- 36 Lords Amendments 41 and 42 are minor and technical amendments concerning the modification of a targeted interception warrant. Amendment 41 would make clear that the Judicial

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Commissioner's role in relation to the decision to modify a warrant, where the modification would engage the protections for legally privileged material or Parliamentarians' communications, relates specifically to the modification being made.

Lords Amendments to Clauses 36, 114, 116, 137, 153, 173 and 196

Lords Amendments 46, 141, 144, 161, 184, 201 and 238

37 Lords Amendments 46, 141, 144, 161, 184, 201 and 238 would reduce the period within which a Judicial Commissioner must decide whether to approve a major modification to a warrant in an urgent case, and notify the issuing authority of this decision, from five to three working days. These amendments apply to targeted interception, targeted equipment interference, bulk interception, bulk acquisition and bulk equipment interference warrants and BPD warrants.

Lords Amendments 47, 142, 145, 162, 185, 202 and 239

38 Lords Amendments 47, 142, 145, 162, 185, 202 and 239 would clarify that there is no right of appeal for the Secretary of State to the Investigatory Powers Commissioner where a Judicial Commissioner refuses to approve an urgent modification.

Lords Amendments to Clause 38: Special rules for certain mutual assistance warrants

Lords Amendments 48 to 50

39 Lords Amendments 48 to 50 would correct inconsistencies in language, which might otherwise lead to an inference that something different is intended, in relation to certain mutual assistance warrants.

Lords Amendment 51

40 Lords Amendment 51 is a minor amendment which would simplify the definition of "the interception subject".

Lords Amendments to Clause 46: Interception by OFCOM in connection with wireless telegraphy

Lords Amendment 52

41 Lords Amendment 52 is a minor and technical amendment which would align the definition of interception when undertaken by OFCOM in the course of its regulatory activities with the general definition in Clause 4.

Lords Amendment 53

42 Lords Amendment 53 is consequential on amendment 30, clarifying that a communication can be between machines, here in the context of interception by OFCOM in connection with the regulation of wireless telegraphy.

Lords Amendments to Clause 50: Interception in accordance with overseas requests

Lords Amendments 54 to 57

43 Lords Amendments 54 to 57 would impose a requirement that an international agreement to which this clause applies must be designated by the Secretary of State in regulations. They would also introduce the requirement that, where a telecommunications operator is permitted to intercept communications in response to an overseas request in accordance with an international agreement, the person whose communications are intercepted must be, or be believed to be, outside the UK.

Lords Amendments to Clauses 51 and 121; and after Clauses 143 and 179

Lords Amendments 58, 146, 171 and 210

44 Lords Amendments 58, 146, 171 and 210 would provide that where confidential journalistic material is obtained by a public authority and it is intended to retain the material, the authority must notify the Investigatory Powers Commissioner as soon as is reasonably practicable. This requirement would apply when the material is obtained via a targeted interception or equipment interference warrant and when it is selected for examination having been collected in bulk.

Lords Amendments 59 and 147

45 Lords Amendments 59 and 147 would amend Clauses 51 and 121, by removing the requirement for the Investigatory Powers Commissioner to be notified when an agency wishes to retain legally privileged material, which is replaced by amendments 60 and 148.

Lords Amendments after Clauses 52 and 122

Lords Amendments 60 and 148

46 Lords Amendments 60 and 148 would insert new clauses to provide for safeguards that apply where legally privileged material is retained for a purpose other than destruction. The clauses would require that the Investigatory Powers Commissioner be informed as soon as reasonably practicable. The Commissioner would have to consider whether the public interest in retaining the material outweighs the public interest in the confidentiality of items subject to legal privilege, and whether retaining the item is necessary in the interests of national security or for the purpose of preventing death or significant injury. If that test is not met, the Commissioner would be required either to order that the item be destroyed or to impose conditions as to its use or disclosure. Even if the test is met, the Commissioner would have the power to impose such conditions.

47 The Investigatory Powers Commissioner may require the relevant public authority and the issuing authority to make representations about the destruction or restrictions imposed on the material, and the Commissioner is required to consider such representations.

Lords Amendments to Clauses 55 and 124: Section 54: meaning of "excepted disclosure" and Section 123: meaning of "excepted disclosure"

Lords Amendment 61

48 Lords Amendment 61 would amend Clause 55 so that the person to whom a mutual assistance warrant is addressed is not able to authorise a disclosure in relation to that warrant. The person referred to here would be a competent authority outside of the United Kingdom (such as a foreign law enforcement agency).

Lords Amendments 62 and 149

49 Lords Amendments 62 and 149 are minor amendments which would clarify the language in Clauses 55 and 124, to the effect that a disclosure of information made by a legal adviser in relation to a warrant is not an "excepted disclosure" where the intention is to further a criminal purpose.

Lords Amendments 63 and 150

50 Lords Amendments 63 and 150 would amend the regulation-making power by which the Secretary of State may provide for permitted disclosures of statistics in relation to warrants, to provide more flexibility as to what may be disclosed.

Lords Amendments to Clauses 58, 59, 61, 63, 64 and 80, after Clause 58, and to Schedule 9

Lords Amendments 65, 74*, 77 to 83 and 94

- 51 Lords Amendments 65, 74*, 77 to 83 and 94 would apply a threshold for the acquisition of internet connection records for the statutory purpose of the prevention and detection of crime, so that they can only be acquired for investigating offences for which an offender is capable of being sentenced to imprisonment for a term of twelve months or more. The effect would be to prohibit the obtaining of internet connection records for investigating offences which can only attract terms of imprisonment of less than twelve months. They would also allow for internet connection records to be acquired for the investigation of offences in relation to stalking, cyber bullying and harassment where the sending of a communication is an integral part of the offence; offences relating to breach of a person's privacy; and offences which can only be committed by a corporate body – for example corporate manslaughter – where a penalty of imprisonment does not apply.

Lords Amendments to Clause 58: Power to grant authorisations

Lords Amendments 66 to 70

- 52 Lords Amendments 66 to 70 would allow for one authorisation or notice permitting the acquisition of communications data to require both the disclosure of communications data that a designated senior officer believes the communications service provider has, and the obtaining and disclosure of the data if the provider does not have it but is able to obtain it. This avoids the need to obtain a second authorisation for data where the assessment of necessity and proportionality will be identical.

Lords Amendments 71 and 72

- 53 Lords Amendments 71 and 72 remove the unnecessary use of the words “and proportionate”. Clause 58 will still provide that obtaining communications data can only be authorised when both necessary and proportionate.

Lords Amendments to Clause 59: Additional restrictions on grant of authorisations

Lords Amendments 75 and 76

- 54 Lords Amendments 75 and 76 narrow the circumstances in which the requirement for an officer authorising targeted acquisition of communications data to be independent of the relevant operation or investigation does not apply.

Lords Amendments to Clauses 70, 72, 74 and 76

Lords Amendments 84 to 86, and 88 to 93

- 55 Lords Amendments 84 to 86, and 88 to 93 would amend the collaboration agreement provisions which apply generally between public authorities as well as specifically to collaboration agreements between police forces. They are intended to ensure the provisions operate appropriately when one public authority collaborates with another. For example these amendments would ensure that restrictions on obtaining internet connection records and the requirement for local authorities to obtain judicial approval for any requests for communications data apply correctly when the authority is party to a collaboration agreement.

Lords Amendments to Clauses 73, 235 and 236

Lords Amendment 87, 320 and 332

- 56 Lords Amendments 87, 320 and 332 move the definition of a source of journalistic information from Part 3 of the Bill to Part 9 given that this definition now applies in other Parts of the Bill.

Lords Amendments to Clauses 83, 85, and 88, after Clauses 84 and 85, and to Schedule 9

Lords Amendments 95 to 97, 100 to 105, 107 to 111, and 358 to 360

- 57 Lords Amendments 95 to 97 and 100 would introduce Judicial Commissioner approval for data retention notices, so that notices authorised by the Secretary of State would in future also require the approval of a Judicial Commissioner. The amendments provide that the Commissioner must consider the Secretary of State's conclusions as to the necessity and proportionality of the requirement to be imposed by the notice. They make clear that in doing so the Judicial Commissioner must apply the same principles as would be applied by a court on an application for judicial review. The Secretary of State may appeal a Judicial Commissioner's refusal of approval to the Investigatory Powers Commissioner.
- 58 Lords Amendments 104, 105 and 107 to 111 would require that a Judicial Commissioner must also approve the Secretary of State's decision to vary a retention notice.
- 59 Lords Amendments 101 to 103 would make consequential changes to the procedure by which an operator can request a review of the retention notice, so that the Investigatory Powers Commissioner must confirm the Secretary of State's decision following the review.
- 60 Lords Amendments 358 to 360 would make transitional provision for retention notices granted in the period before the Investigatory Powers Commissioner and Judicial Commissioners are appointed.

Lords Amendments to Clauses 83 and 90: Powers to require retention of certain data and Application of Part 4 to postal operators and postal services

Lords Amendments 98 and 112

- 61 Lords Amendments 98 and 112 would prohibit the Secretary of State giving a retention notice which would require the retention of so-called 'third party data'. Where one telecommunications operator is able to see the communications data in relation to applications or services running over their network, but where they do not use or retain that data for any purpose, it is regarded as 'third party data'.
- 62 Amendment 98 would provide for this restriction on notices given to telecommunications operators, and Amendment 112 would provide for the same restriction on notices given to postal operators.

Lords Amendments to Clauses 102, 131, 147, 165, 188 and 227

Lords Amendments 117, 118, 152, 153, 176, 177, 191, 192, 225, 226, 307 and 308

- 63 Lords Amendments 117, 118, 152, 153, 176, 177, 191, 192, 225, 226, 307 and 308 would replicate the provision in Clause 23 of the Bill, inserted at Report stage in the Commons, throughout the other Parts of the Bill. The amendments make clear that, when deciding whether to approve a decision to issue a warrant or give a notice, a Judicial Commissioner must consider the Secretary of State's conclusions with sufficient care as to comply with the general privacy duties in Clause 2.

Lords Amendments to Clause 114: Approval of modifications under section 110 made in urgent cases

Lords Amendment 140

- 64 Lords Amendment 140 would insert a definition of a 'designated senior official' into Clause 114.

Lords Amendments to Clauses 133, 149, 169, 192 and 202

Lords Amendments 154, 155, 178, 179, 194, 195, 230, 231 and 249

65 Lords Amendments 154, 155, 178, 179, 194, 195, 230, 231 and 249 would make a number of changes to how operational purposes - the purposes for which data collected under a bulk warrant may be selected for examination - would operate on the face of the Bill. These include creating a requirement that the heads of the intelligence services must maintain a central list of all operational purposes. Any additions to that list must be approved by the Secretary of State, who would be able to do so only if satisfied that it contains more detail than the statutory grounds on which the warrant was issued. The list of operational purposes would have to be provided to the Intelligence and Security Committee of Parliament every three months, and the Prime Minister must review the list on an annual basis.

Lords Amendments to Clauses 136, 152, 172, and 195; and after Clauses 136, 152, 172, and 195

Lords Amendments 159, 160, 182, 183, 199, 200, 236 and 237

66 Lords Amendments 159, 160, 182, 183, 199, 200, 236 and 237 would clarify the tests that a Judicial Commissioner must apply when considering whether to approve a major modification to a bulk interception, bulk acquisition, bulk equipment interference or BPD warrant. The amendments would ensure that the matters the Commissioner is required to consider reflect the matters the person making the modification had to decide.

Lords Amendments to Clauses 140, 141, 158, 176 and 177

Lords Amendments 163, 164, 188, 189, 203 and 204

67 Lords Amendments 163, 164, 188, 189, 203 and 204 would clarify that, where data obtained under a bulk interception, bulk acquisition or bulk equipment interference warrant, or a copy of such data, is shared with overseas authorities, the Secretary of State must be satisfied that the overseas authority will apply corresponding safeguards to those provided for in the Bill in relation to the selection of material for examination as well as the retention and disclosure of the data.

Lords Amendments to Clauses 143 and 179: Additional safeguards for items subject to legal privilege

Lords Amendments 165 to 170, and 205 to 209

68 Lords Amendments 165 to 170, and 205 to 209 would replicate protections for legally privileged material in Parts 2 and 5 of the Bill in the provisions regarding bulk interception and bulk equipment interference warrants.

69 They would set out requirements that must be satisfied before the ‘exceptional and compelling’ test, for material subject to privilege to be intentionally selected for examination, can be met; provide for the Investigatory Powers Commissioner to determine what happens to any material selected for examination which the agency wishes to retain; and require that the application for a warrant sets out the grounds for believing communications, that would otherwise be privileged, were made for a criminal purpose.

Lords Amendments after Clauses 143, 159, 179 and 200; and to Schedule 3

Lords Amendments 172, 190, 211, 246, 346 and 347*

70 Lords Amendments 172, 190, 211, and 246 would introduce an offence for the misuse of each of the bulk powers in the Bill. The offence would be committed where a person deliberately selects for examination data obtained under a bulk warrant, knowing or believing that the selection does not comply with the safeguards contained in the Bill.

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71 Lords Amendments 346 and 347 are consequential amendments of Schedule 3.

Lords Amendments to Clause 146: Power to issue bulk acquisition warrants

Lords Amendment 175

72 Lords Amendment 175 would clarify the wording of the conduct that may be authorised by a bulk acquisition warrant, changing a reference from ‘such data’ to ‘communications data obtained under the warrant’.

Lords Amendments to Clause 155: Implementation of warrants

Lords Amendment 186

73 Lords Amendment 186 would make a minor drafting change to the conduct that can be authorised by a bulk acquisition warrant.

Lords Amendments to Clause 156: Service of warrants

Lords Amendment 187

74 Lords Amendment 187 would correct a cross-reference, in relation to the service of bulk acquisition warrants, in order to be consistent with other clauses in the Bill.

Lords Amendments to Clauses 182, 186, 192, 194, 200 and 202; and after 184, 187 and 200

Lords Amendments 213 to 215, 220, 222, 224, 229, 234, 242 to 245 and 248

75 Lords Amendments 213, 214, 215, 220, 222, 224, 229, 234, 242 to 245, and 248 would provide additional safeguards for material which is the equivalent of the content of communications. Such material can occasionally be contained in bulk personal datasets. These amendments introduce the concept of protected data, and specify that if a bulk personal dataset contains such data it cannot be retained under a class BPD warrant. They also give the Secretary of State the power to impose additional conditions on searches in these datasets for individuals known to be in the UK. The conditions that may be imposed in such circumstances will be set out in more detail in the code of practice.

76 Lords Amendments 244 and 245 would provide additional safeguards for any such material which is subject to legal professional privilege, replicating the protections elsewhere in the Bill.

Lords Amendments to Clause 185, 186 and 200

Lords Amendments 216, 218, 219, 221 and 241

77 Lords Amendments 216, 218, 219, 221 and 241 would make minor drafting changes to the provisions concerning operational purposes and the selection of data for examination, including to make clear that examination need not be by the Agency which applied for the warrant.

Lords Amendments to Clause 189: Approval of specific BPD warrants issued in urgent cases

Lords Amendment 227

78 Lords Amendment 227 is a minor technical amendment which would bring the drafting of Clause 189 into line with wording in other equivalent provisions of the Bill.

Lords Amendments to Clauses 198 and 201: Non-renewal or cancellation of BPD warrants and Application of Part to bulk personal datasets obtained under this Act

Lords Amendments 240 and 247

79 Lords Amendments 240 and 247 would clarify the role of the Judicial Commissioner when deciding whether to approve a decision by the Secretary of State that material subject to an expired or cancelled BPD warrant may be retained, or a direction given by the Secretary of State under Clause 200. The amendments would provide consistency with other provisions of the Bill.

Lords Amendments to Clause 203: Investigatory Powers Commissioner and other Judicial Commissioners

Lords Amendments 250, 251 and 253

80 Lords Amendments 250, 251 and 253 provide that the Prime Minister may only appoint someone who has been recommended by the heads of the Judiciary and the Lord Chancellor to the position of Investigatory Powers Commissioner or Judicial Commissioner.

Lords Amendments to Clauses 203, 205, 209, 210, 215, 218 and 238, and Schedule 10

Lords Amendments 252, 255, 261, 266, 273 to 276, 295, 335, 374, 375 and 377

81 Lords Amendments 252, 255, 261, 266, 273 to 276, 295, 335, 374, 375 and 377 are consequential to the fact that the Northern Ireland Assembly has not given legislative consent for relevant provisions of the Bill. In the absence of such consent, the Investigatory Powers Commissioner can no longer take on the functions of the Investigatory Powers Commissioner for Northern Ireland. The Investigatory Powers Commissioner for Northern Ireland is a post that was established by the Regulation of Investigatory Powers Act 2000 to allow for the judicial oversight of investigatory powers conferred on devolved public authorities in Northern Ireland by Order made by the Office of the First Minister and deputy First Minister. The Amendment would provide for the Secretary of State, by regulations made with the consent of the Northern Ireland Assembly, to abolish that role and provide for the Investigatory Powers Commissioner to exercise those functions.

Lords Amendments to Clauses 203 and 213: Investigatory Powers Commissioner and other Judicial Commissioners and Funding, staff and facilities

Lords Amendments 254 and 272

82 Lords Amendment 254 would provide further detail about the delegation by the Investigatory Powers Commissioner of his or her functions to other Judicial Commissioners.

83 Lords Amendment 272 is concerned with the delegation of functions from the Investigatory Powers Commissioner or other Judicial Commissioners to members of staff working for them. As the majority of oversight work will be performed by inspectors and experts rather than the Judicial Commissioners, this amendment would make explicit that those working on behalf of the Investigatory Powers Commissioner in this capacity will have delegated authority. Certain functions may not be delegated.

Lords Amendments to Clause 205: Main oversight functions

Lords Amendment 256

84 Lords Amendment 256 would amend the exceptions from the duty on Judicial Commissioners not to act in a way which is contrary to the public interest or that is prejudicial to national security, the prevention or detection of serious crime, or the economic well-being of the UK. Additionally they

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must not act in a way that jeopardises the success of an operation, compromises the safety of anyone or impedes operational effectiveness. This amendment would make clear that the Commissioner is exempt from this duty in any case where they are performing judicial functions.

Lords Amendment 257

85 Lords Amendment 257 would clarify that a Judicial Commissioner is not a judicial authority for the purposes of the Bill. This would make it clear that, for example, the Investigatory Powers Commissioner can review the decisions of a Judicial Commissioner.

Lords Amendments to Clause 208: Additional functions under this Part

Lords Amendments 259 and 260

86 Lords Amendment 259 would require that Judicial Commissioners must consult Scottish Ministers in addition to the Secretary of State before providing advice that might be prejudicial to activities by Scottish public authorities. Amendment 260 is a consequential change which would provide that the duty to consult the Scottish Ministers does not apply when advice is being provided to the Investigatory Powers Tribunal.

Lords Amendments to Clause 210: Annual and other reports

Lords Amendment 262

87 Lords Amendment 262 would require the Investigatory Powers Commissioner to include in each annual report information about the operation of the safeguards that apply to items subject to legal privilege, confidential journalistic material and sources of journalistic information.

Lords Amendment 263*

88 Lords Amendment 263* would require the Investigatory Powers Commissioner to include in their annual report information about the use of targeted thematic interception and equipment interference warrants.

Lords Amendment 264

89 Lords Amendment 264 would require the Investigatory Powers Commissioner to publish information about the use of operational purposes in each annual report.

Lords Amendment 267*

90 Lords Amendment 267* would require that the Intelligence and Security Committee of Parliament must receive a copy of any report from the Investigatory Powers Commissioner so far as it relates to any investigation, inspection or audit carried out following a referral from the Committee and so far as it falls within the remit of the Committee.

Lords Amendments to Clauses 210, 235 and 236, after Clause 220, and to Schedule 7

Lords Amendments 265, 297, 298, 322, 334 and 354

91 Lords Amendments 297 and 298 would create a Technology Advisory Panel to advise the Investigatory Powers Commissioner and Secretary of State on the impact of changes in technology.

92 Lords Amendments 265, 322, 334 and 354 are consequential on the creation of the Panel.

Lords Amendments to Clause 211: Investigation and information powers

Lords Amendment 268

93 Lords Amendment 268 would make clear that everyone who works for, or has worked for, a public

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authority is under a duty to provide assistance to the Investigatory Powers Commissioner.

Lords Amendments after Clause 211

Lords Amendment 269

94 Lords Amendment 269 would place a duty on the Investigatory Powers Commissioner to inform the Intelligence and Security Committee of Parliament of their decision as to whether to undertake any investigation, inspection or audit on an issue that the Committee has referred to the Commissioner.

Lords Amendments to Clause 213: Funding, staff and facilities

Lords Amendments 270 and 271

95 Lords Amendment 270 would provide that the Secretary of State must, in consultation with the Investigatory Powers Commissioner, supply the Commissioner with services in addition to staff, accommodation, equipment and other facilities.

96 Lords Amendment 271 would maintain the existing power of the Scottish Ministers to pay such allowances as they consider appropriate to Judicial Commissioners for carrying out work relating to the exercise of devolved functions by Scottish public authorities, as they currently do in relation to such work by the Surveillance Commissioners.

Lords Amendments to Clause 215: Abolition of existing oversight bodies

Lords Amendments 277 to 279

97 Lords Amendments 277 to 279 are minor clarifying amendments. Amendments 277 and 278 would provide a definition of the Chief and other Surveillance Commissioners which are abolished by the Bill, to be replaced by the Investigatory Powers Commissioner. Amendment 279 is consequential on this new definition.

Lords Amendments to Clause 217: Right of appeal from Tribunal

Lords Amendments 280 and 281

98 Lords Amendments 280 and 281 would remove the Court of Appeal in Northern Ireland from the list of courts to which an appeal from the Investigatory Powers Tribunal would lie, in consequence of the Northern Ireland Assembly not having given legislative consent. The amendments provide that the Secretary of State may, by regulations made with the consent of the Northern Ireland Assembly, reinsert the Northern Ireland Court.

Lords Amendments to Clause 218: Functions of Tribunal in relation to this Act

Lords Amendments 282 to 294

99 Lords Amendments 282 to 294 would further amend sections 65, 67 and 68 of the Regulation of Investigatory Powers Act 2000, so that the Investigatory Powers Tribunal has jurisdiction in respect of claims or complaints relating to the powers in the Bill.

Lords Amendments to Clause 220: Technical Advisory Board

Lords Amendment 296

100 Lords Amendment 296 is a minor amendment which would clarify that, when making regulations providing for membership of the Technical Advisory Board, the Secretary of State must include provision to ensure that the membership of the Board includes persons who may be given a national security notice.

Lords Amendments to Clause 225: National security notices

Lords Amendments 299 to 303

101 Lords Amendments 299 to 302 would make clear that a national security notice cannot be used for the primary purpose of acquiring communications or data. The amendments would provide that in any circumstance where the taking of a step set out in the notice would involve the acquisition of private data, any interference with privacy must be authorised by an appropriate warrant or other authorisation under this Bill or another relevant statute, where it is available.

102 In addition, these amendments make clear that any conduct required under a notice is lawful for all purposes, providing reassurance for telecommunications operators that, where conduct is carried out in accordance with the requirements of a notice, the operator will not risk being found to be in breach of any other legal requirement.

103 Amendment 303 is consequential on Amendments 313, 314 and 316.

Lords Amendments to Clause 226: Technical capability notices

Lords Amendments 304 to 306

104 Lords Amendments 304 to 306 would make clear that, where appropriate, a technical capability notice may require different steps set out in the notice to be taken at different times.

Lords Amendments to Clause 229: Variation and revocation of notices

Lords Amendment 312

105 Lords Amendment 312 would clarify that when a national security notice is varied by the Secretary of State under Clause 229, the obligations in the notice as varied continue to have primacy over obligations imposed by Part 1, or Chapter 1 of Part 2, of the Communications Act 2003.

Lords Amendments to Clauses 229 and 230: Variation and revocation of notices and Review of notices by the Secretary of State

Lords Amendments 309 to 311, and 315

106 Lords Amendments 309 to 311 would require the Secretary of State to be satisfied that any new obligations imposed when a notice is varied are necessary and proportionate. Furthermore, amendment 311 would provide for Judicial Commissioner approval where a variation adds obligations or steps to the notice, and where the notice is varied so that it imposes obligations in relation to additional services provided by the operator to its customers. Amendment 315 is a consequential amendment to amendment 316.

Lords Amendments to Clause 230 and after Clause 230

Lords Amendments 313, 314 and 316

107 Lords Amendments 313, 314 and 316 would revise the review process provided for in Clause 230 to reflect the role of a Judicial Commissioner in authorising the giving of a national security notice or technical capability notice. During any review requested by a telecommunications or postal operator with regard to the obligations imposed on them in a notice, the Secretary of State must consult a Judicial Commissioner on proportionality grounds. Where the Secretary of State decides to confirm the effect of the notice or vary the notice, these amendments would provide that the Investigatory Powers Commissioner must approve that decision.

Lords Amendments to Clause 234: Postal definitions

Lords Amendment 317

108 Lords Amendment 317 would ensure consistency between the definitions of communications data

in the telecommunications and postal contexts.

Lords Amendments to Clauses 235 and 236: General definitions and Index of defined expressions

Lords Amendments 318 and 329

109 Lords Amendments 318 and 329 would remove the definition of “person”.

Lords Amendments 319 and 330

110 Lords Amendments 319 and 330 would define “premises” for the purposes of the Bill.

Lords Amendments 323 to 325

111 Lords Amendments 323 to 325 would make minor changes to the definition of identifying data.

Lords Amendments 258, 321 and 333

112 Lords Amendments 258, 321 and 333 would move the definition of 'statutory function' to Clause 235 of the Bill, since it applies more widely than Part 9.

Lords Amendments after Clause 235 and to Clause 236

Lords Amendments 326, 327 and 328

113 Lords Amendment 326 would insert a new clause providing a definition of journalistic material and confidential journalistic material, to make clear the circumstances in which the additional protections for confidential journalistic material in Parts 2 and 5 of the Bill apply.

114 Lords Amendments 327 and 328 are consequential on Amendment 326.

Lords Amendments to Clause 238: Regulations

Lords Amendment 336

115 Lords Amendment 336 would add to the list of regulations subject to the negative resolution procedure regulations designating a relevant international agreement for the purposes of Clause 50(3).

Lords Amendments to Clause 242 and Schedule 8: Minor and consequential provision and Combination of warrants and authorisations

Lords Amendments 337 and 357

116 Lords Amendments 337 and 357 would limit the scope of the power to make consequential provision by amending legislation, so that it can only be exercised in relation to primary legislation passed during the same Parliamentary session as this Bill. This was a recommendation of the Delegated Powers and Regulatory Reform Committee.

Lords Amendments to Clause 243: Commencement, extent and short title

Lords Amendments 338*, 339* and 340

117 Lords Amendments 338* and 339* would bring Clauses 8 and 9 into force on the day after the Bill receives Royal Assent.

118 Lords Amendment 340 would provide for subsection (4) of Clause 242 to come into force on Royal Assent along with subsections (2) and (3) of that clause.

Lords Amendments 341 and 343 to 345

119 Lords Amendments 341 and 343 to 345 are technical amendments which would clarify the extent

of the provisions of the Bill. They would enable the Bill to be extended by Order in Council (with or without modifications) to the Isle of Man, and would provide a more limited extent provision for the Channel Islands, simply ensuring that any amendments made by the Bill to the provisions of another Act (such as the consequential amendments detailed at Schedule 10) may be extended to the Channel Islands by Order in Council, if that Act contains such a power.

[Lords Amendment 342](#)

120 Lords Amendment 342 is a technical amendment to the extent provisions, for clarity.

Lords Amendments to Schedule 3: Exceptions to section 53

[Lords Amendments 348 to 350](#)

121 Lords Amendments 348 and 349 would clarify those persons who may be present at a hearing of an inquiry (under the Inquiries Act 2005) when intercept evidence is discussed or disclosed.

122 Lords Amendment 350 defines the term ‘intercepted material’ for the purpose of these paragraphs of Schedule 3. Intercepted material is not a term used elsewhere in the Bill.

Lords Amendments to Schedule 4: Relevant public authorities and designated senior officers

[Lords Amendments 351 to 353](#)

123 Lords Amendment 351 would correct an error in the description of the Designated Senior Officer for the Competition and Markets Authority.

124 Lords Amendment 352 would add the Department for Communities in Northern Ireland to Schedule 4, allowing them to acquire communications data for the purpose of preventing or detecting crime or preventing disorder where a person holding the rank of Deputy Principal and acting as a Designated Senior Officer authorises it. This is necessary because the Bill repeals the power the authority currently uses to acquire communications data.

125 Lords Amendment 353 would amend the Designated Senior Officer position in the Police Investigations and Review Commissioner in Scotland. This reflects an organisational restructure.

Lords Amendments to Schedule 7: Codes of practice

[Lords Amendment 355](#)

126 Lords Amendment 355 relates to paragraph 2 of Schedule 7 and would require that the Interception and Equipment Interference Codes of Practice must provide further detail of what is meant by ‘exceptional and compelling’ circumstances. It would also require that the language in the Code on this point must be kept under review by the Investigatory Powers Commissioner.

Lords Amendments to Schedule 8: Combination of warrants and authorisation

[Lords Amendment 356](#)

127 Lords Amendment 356 would make clear that the duties imposed by Clause 2 apply to combined warrants as appropriate.

Lords Amendments to Schedule 9: Transitional, transitory or saving provision

[Lords amendments 331 and 361](#)

128 Lords Amendment 361 would make transitional provision concerning the definition of serious crime. The Criminal Justice and Courts Services Act 2000 amended the equivalent definition in the Regulation of Investigatory Powers Act 2000, but that amendment has not yet been brought into

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force. Lords Amendment 331 would make a consequential amendment to Clause 236.

Lords Amendment 362

129 Lords Amendment 362 would clarify the saving provision regarding the activity of postal operators by explicitly linking the reference to postal operators to the definition in the Postal Services Act 2011.

Lords Amendments to Schedule 10: Minor and consequential provision

Lords Amendment 363

130 Lords Amendment 363 would amend the consequential amendments to the Regulation of Investigatory Powers Act 2000, so that the current definition of “communication” in that Act also applies in relation to postal communications.

Lords Amendment 364

131 Lords Amendment 364 would substitute references to the Regulation of Investigatory Powers Act 2000 in the Immigration Act 2016 with references to the Bill so that prohibited disclosures under the Bill are not authorised by the Immigration Act 2016.

Lords Amendments 365 to 367

132 Lords Amendments 365 to 367 would make consequential amendments to the Intelligence Services Act 1994, the Security Service Act 1989 and the Police Act 1997 arising from the changes to targeted interception provisions being made by the Bill.

Lords Amendment 368

133 Lords Amendment 368 would amend the Regulation of Investigatory Powers Act 2000 to make clear that a notice served under Part 3 of that Act, in relation to the investigation of electronic data protected by encryption, can apply to an interception warrant that has the main purpose only of obtaining secondary data rather than the interception of communications content.

Lords Amendments 369 and 370

134 Lords Amendment 369 is a technical drafting amendment which would provide additional clarity on consequential amendments to the Regulation of Investigatory Powers Act 2000. Amendment 370 is a further consequential amendment to the Regulation of Investigatory Powers Act 2000 in consequence of the provisions of the Bill.

Lords Amendments 371 and 372

135 Lords Amendments 371 and 372 would remove incorrect references to Chapter 3 of Part 6 of the Bill, which are not applicable in this context.

Lords Amendment 373

136 Lords Amendment 373 would allow the Investigatory Powers Commissioner to report certain matters to the Scottish Ministers at any time, rather than just in their annual report.

Lords Amendment 376

137 Lords Amendment 376 would repeal a now unnecessary provision in the Anti-terrorism, Crime and Security Act 2001 in consequence of an amendment made by the Bill.

INVESTIGATORY POWERS BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

These Explanatory Notes relate to the Lords Amendments to the Investigatory Powers Bill as brought from the House of Lords on 31 October 2016.

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