

Investigatory Powers Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE

Clause 2

LORD PADDICK
BARONESS HAMWEE

Page 3, line 5, at end insert –

“() the requirements of the Human Rights Act 1998.”

Page 3, line 19, leave out paragraph (d)

Clause 4

LORD PADDICK
BARONESS HAMWEE

Page 4, line 23, leave out “, at a relevant time,”

Clause 17

LORD PADDICK
BARONESS HAMWEE

Page 13, line 31, leave out “or organisation”

Page 13, line 36, after “activity” insert “where each person is named or identified using a unique identifier”

Page 13, line 37, leave out “or organisation”

Page 13, line 39, after “operation” insert “where each person is named or identified using a unique identifier”

Page 13, line 40, leave out paragraph (c)

Page 13, line 41, leave out subsection (3)

Clause 23

LORD PADDICK
BARONESS HAMWEE

Page 18, line 28, leave out “review the person’s conclusions as to” and insert “determine”

Page 18, line 34, at end insert –

“(za) consider the reasons for the decision given by the person who made it,”

Page 18, line 35, leave out paragraph (a)

Page 18, line 35, at beginning insert “subject to paragraph (za),”

Clause 27

LORD PANNICK
LORD LESTER OF HERNE HILL

Page 21, line 6, after “items” insert “presumptively”

Page 21, line 11, after “items” insert “presumptively”

Page 21, line 15, leave out paragraph (a) and insert –

“(a) that compelling evidence indicates that the items in question consist of, or relate to, communications made for a criminal purpose such that it is necessary to authorise the interception, or (in the case of a targeted examination warrant) selection for examination, of those items, and”

Page 21, line 38, at end insert –

“() An application to which subsections (2) and (3), or (5) and (6), apply is to be made to and determined by a Judicial Commissioner; and accordingly, in relation to such an application and to any resulting warrant –

- (a) sections 19 to 21 (issue of warrants), 31 (renewal of warrants), 37 (cancellation of warrants) and 38 (certain mutual assistance warrants) apply as if references to the Secretary of State, the Scottish Ministers, and a senior official acting on behalf of, or designated by, the Secretary of State or the Scottish Ministers, in their respective decision-making capacities under those provisions, were references to a Judicial Commissioner,
- (b) section 28 (decisions to be taken personally by Ministers) does not apply, and
- (c) there is no requirement for approval of any such decision of a Judicial Commissioner.”

Clause 32

LORD PADDICK
BARONESS HAMWEE

Page 25, line 5, at end insert –

“() Any modification to a warrant must be authorised by a Judicial Commissioner.
“

Clause 33

LORD PADDICK
BARONESS HAMWEE

Page 25, line 30, leave out “made” and insert “requested”

Page 25, line 37, leave out “made” and insert “requested”

Page 25, line 44, leave out paragraphs (d) and (e)

Clause 34

LORD PANNICK
LORD LESTER OF HERNE HILL

Page 27, line 16, leave out subsection (6) and insert –

“(6) Any proposed modification of a warrant –
 (a) where section 27 applies to the making of the proposed modification,
 (b) in any other case where it appears to the person proposing to make the
 modification that any communications intercepted, or selected for
 examination, pursuant to the warrant as modified are likely to include
 items presumptively subject to legal privilege,
shall be referred to a Judicial Commissioner; and in a case falling within
paragraph (b), the Judicial Commissioner shall apply section 27 to the making
of the modification.”

Clause 36

LORD PADDICK
BARONESS HAMWEE

Page 29, line 6, leave out “As soon as is reasonably practicable” and insert “Within
forty-eight hours”

Clause 42

LORD PANNICK
LORD LESTER OF HERNE HILL

Page 34, line 18, at end insert –

“(3) But this section does not authorise interception of a communication containing
items presumptively subject to legal privilege.”

Clause 47

LORD PANNICK
LORD LESTER OF HERNE HILL

Page 36, line 27, at end insert –

- “() But nothing in this section, section 48 (interception in psychiatric hospitals, etc.) or in section 49 (interception in immigration detention facilities), authorises interception of a communication containing items presumptively subject to legal privilege.”

Clause 49

BARONESS HAMWEE
LORD PADDICK

Page 37, line 44, after “means” insert “, subject to subsection (3)”

Page 38, line 4, at end insert –

- “(3) Rules are only relevant rules for the purposes of this section if they have been designated as such in regulations made by the Secretary of State.
- (4) Regulations under subsection (3) must be made by statutory instrument and may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

Clause 50

LORD PANNICK
LORD LESTER OF HERNE HILL

Page 38, line 20, at end insert –

- “(5) But this section does not authorise interception of a communication containing items presumptively subject to legal privilege.”

Clause 51

LORD PANNICK
LORD LESTER OF HERNE HILL

Page 38, line 28, leave out “and (5) are met in relation” and insert “, (5), (7) and (7A) are met in relation to the execution of the warrant and”

Page 39, line 32, leave out subsection (7) and insert –

- “(7) The requirements of this subsection are that –
- (a) the risk that items subject to legal privilege are intercepted, examined, disclosed, copied or retained is minimised, and
- (b) the extent to which items presumptively subject to legal privilege are intercepted or examined is kept to the minimum necessary to ascertain whether the items are legally privileged.
- (7A) The requirements of this subsection in relation to the material obtained under a warrant are that –

Clause 51 - continued

- (a) where it appears to the person to whom the warrant is addressed that the material consists of, or includes, an item presumptively subject to legal privilege, that person must not examine (or further examine) the item but must immediately refer it to a Judicial Commissioner, and
- (b) on a reference under paragraph (a), unless compelling evidence indicates that the item consists of, or relates to, a communication made for a criminal purpose, the Judicial Commissioner must order the destruction of the item; and the person to whom the warrant is addressed must immediately comply with the order.”

Page 39, line 40, at end insert –

“but that subsection does not apply insofar as the material consists of, or includes, an item presumptively subject to legal privilege”

Clause 54

LORD PADDICK
BARONESS HAMWEE

Page 42, line 39, at end insert –

“() Disclosure of any matter referred to in subsection (2) or (4) shall not be unauthorised if made by the Secretary of State to Parliament to enable Parliament to carry out its functions.”

Clause 58

LORD PADDICK
BARONESS HAMWEE

Page 46, line 40, leave out “, in particular,” and insert “not”

Page 47, line 33, at end insert –

“() It shall not be regarded as necessary and proportionate to obtain data containing the medical records of an individual (other than anonymised records) except for the purposes falling within paragraphs (e), (g), (h) or (i) of subsection (7).”

Clause 59

LORD PADDICK
BARONESS HAMWEE

Page 48, line 1, after “the” insert “urgent”

Page 48, line 1, leave out from “security” to end of line 4 and insert –

“() Subsection (1) shall not apply in a particular case if the designated senior officer considers that the size of the relevant public authority is such that it is not practicable to have a designated senior officer who is not working on the investigation or operation concerned.”

Clause 63

LORD PADDICK
BARONESS HAMWEE

The above-named Lords give notice of their intention to oppose the Question that Clause 63 stand part of the Bill.

Clause 64

LORD PADDICK
BARONESS HAMWEE

The above-named Lords give notice of their intention to oppose the Question that Clause 64 stand part of the Bill.

Clause 65

LORD PADDICK
BARONESS HAMWEE

Page 52, line 42, leave out “significant”

The above-named Lords give notice of their intention to oppose the Question that Clause 65 stand part of the Bill.

Clause 67

LORD PADDICK
BARONESS HAMWEE

Page 53, line 38, leave out “add a public authority to, or”

Page 54, line 6, leave out “becoming, or”

Clause 69

LORD PADDICK
BARONESS HAMWEE

Page 54, line 40, at end insert –

“() representatives of local authorities.”

Clause 75

LORD PADDICK
BARONESS HAMWEE

Page 59, line 22, leave out subsection (5)

Clause 83

LORD PADDICK
BARONESS HAMWEE

Page 64, line 24, at end insert –

“() not require a telecommunications operator to retain any third party data, unless that data is retained by the telecommunications operator for its own business purposes.”

After Clause 95

LORD PADDICK
BARONESS HAMWEE

Insert the following new Clause –

“Security, integrity and privacy

The person making an application for a warrant under this Part must make a detailed assessment of –

- (a) the risk to the security or integrity of systems or networks that the proposed activity may involve;
- (b) the risk to the privacy of persons not being specifically targeted; and
- (c) the steps proposed to be taken to minimise these risks.”

Insert the following new Clause –

“Critical national infrastructure

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

Clause 102

LORD PADDICK
BARONESS HAMWEE

Page 78, line 13, leave out “review the person’s conclusions as to” and insert “determine”

After Clause 125

LORD PADDICK
BARONESS HAMWEE

Insert the following new Clause –

“Authorisations to interfere with property etc

- (1) The Secretary of State may by regulations made by statutory instrument amend the Police Act 1997 to provide that authorisations given under it for placing, using, maintaining or retrieving any equipment, apparatus or device which would enable the interception of any communication is subject to approval equivalent to the approval of warrants under this Part.

After Clause 125 - continued

- (2) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

Clause 203

LORD PADDICK
BARONESS HAMWEE

Page 155, line 17, after “The” insert “Lord Chief Justice of England and Wales following consultation with the”

Page 155, line 22, leave out subsection (2)

Page 155, line 26, leave out “Prime Minister” and insert “Lord Chief Justice of England and Wales”

Page 156, line 1, leave out subsection (7)

Page 156, line 2, after “decide,” insert “appoint as his or her deputy and”

Page 156, line 3, leave out “any” and insert “one”

Page 156, line 7, leave out from “Commissioner” to end of line 11

After Clause 203

LORD PADDICK
BARONESS HAMWEE

Insert the following new Clause—

“Eligibility of Commissioners

- (1) A person is not to be appointed as the Investigatory Powers Commissioner or as another Judicial Commissioner unless the person holds or has held high judicial office within the meaning of Part 3 of the Constitutional Reform Act 2005.
- (2) The Lord Chancellor shall make such recommendations for Orders in Council under sections 2 and 4 of the Senior Courts Act 1981 as the Lord Chancellor considers necessary to fill appointments under this Part without adversely affecting the operation of the Court of Appeal and the High Court.”

After Clause 206

LORD PADDICK
BARONESS HAMWEE

Insert the following new Clause –

“Notification by the Investigatory Powers Commissioner

- (1) The Investigatory Powers Commissioner is to notify the subject or subjects of the use of the investigatory functions mentioned in section 205(1) to (3), including –
 - (a) the interception or examination of communications,
 - (b) the retention, accessing or examination of communications data or secondary data,
 - (c) equipment interference,
 - (d) access or examination of data retrieved from a bulk personal dataset,
 - (e) covert human intelligence sources,
 - (f) entry or interference with property.
- (2) The Investigatory Powers Commissioner must only notify subjects of investigatory powers under subsection (1) upon completion of the relevant conduct or the cancellation of the authorisation or warrant.
- (3) The notification under subsection (1) must be sent by writing within 30 days of the completion of the relevant conduct or cancellation of the authorisation or warrant.
- (4) The Investigatory Powers Commissioner must issue the notification under subsection (1) in writing, including details of –
 - (a) the conduct that has taken place,
 - (b) the provisions under which the conduct has taken place, and
 - (c) any known errors that took place within the course of the conduct.
- (5) The Investigatory Powers Commissioner may postpone the notification under subsection (1) beyond the time limit under subsection (3) if the Commissioner assesses that notification may defeat the purposes of an ongoing serious crime or national security operation or investigation.
- (6) The Investigatory Powers Commissioner must consult the person to whom the warrant is addressed in order to fulfil an assessment under subsection (5).”

Clause 222

LORD PADDICK
BARONESS HAMWEE

Page 172, line 3, after “that” insert “, within three months, beginning with the day on which the first provisions of any of Parts 2 to 7 come into force,”

Page 172, line 4, leave out “an appropriate contribution in respect of such” and insert “payment of all”

Page 172, line 5, leave out “the Secretary of State considers” and insert “is”

Clause 227

LORD PADDICK
BARONESS HAMWEE

Page 175, line 34, after “State's” insert “reasons and”

Clause 232

LORD PADDICK
BARONESS HAMWEE

Page 179, line 21, leave out “5 years and 6 months” and insert “2 years”

Clause 233

LORD PADDICK
BARONESS HAMWEE

Page 180, line 27, after “provided” insert “by that operator”

Clause 235

LORD PANNICK
LORD LESTER OF HERNE HILL

Page 184, line 27, at end insert –

“and for the purposes of this Act only, including the application of paragraphs (a), (b) and (c) of this definition, a “criminal purpose” includes the purpose of –

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

Page 184, line 40, at end insert –

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

Clause 243

LORD PADDICK
BARONESS HAMWEE

Page 192, line 1, after “sections” insert “222, 223,”

Investigatory Powers Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE

6 July 2016
