

Investigatory Powers Bill

REVISED
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE

The amendments have been marshalled in accordance with the Instruction of 7th July 2016, as follows –

Clauses 1 to 7	Clauses 80 to 100
Schedule 1	Schedule 6
Clauses 8 to 12	Clauses 101 to 126
Schedule 2	Clauses 203 to 216
Clauses 13 to 53	Schedule 7
Schedule 3	Clauses 217 to 220
Clauses 54 to 57	Clauses 127 to 202
Clause 221	Clauses 232 to 241
Schedule 8	Schedule 9
Clauses 222 to 231	Clause 242
Clauses 58 to 66	Schedule 10
Schedule 4	Clause 243
Clauses 67 to 79	Title
Schedule 5	

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Before Clause 1

LORD PADDICK
BARONESS HAMWEE

1 Insert the following new Clause –

“Tests for the intrusion of privacy

In making decisions and taking actions under this Act a public authority must have regard to the following –

- (a) the rule of law,
- (b) necessity,
- (c) proportionality,
- (d) the need for restraint,
- (e) the need for effective oversight,

Before Clause 1 - continued

- (f) recognition of necessary secrecy,
- (g) the principle of minimal secrecy,
- (h) the need for transparency,
- (i) legislative clarity, and
- (j) multilateral collaboration.”

Clause 1

LORD PADDICK
BARONESS HAMWEE

2 Page 1, line 4, at end insert –

“() This Act provides certain new powers and applies certain safeguards in relation to the use of all powers relating to the interception of communications, equipment interference and the acquisition and retention of data.”

LORD JANVRIN

3 Page 1, line 4, at end insert –

“() This Act sets out the extent to which certain investigatory powers may be used to interfere with an individual’s privacy.”

EARL HOWE

4 Page 2, line 11, leave out “misfeasance” and insert “misconduct”

Clause 2

LORD PADDICK
BARONESS HAMWEE

5 Page 2, line 35, leave out from “authority” to end of line 46 and insert “takes any decision or undertakes any action under this Act.”

LORD PADDICK
BARONESS HAMWEE
LORD LESTER OF HERNE HILL

6 Page 2, line 46, at end insert –

“() The public authority must not use any of the powers listed in subsection (1) if what is sought to be achieved by the warrant, authorisation or notice could reasonably be achieved by other less intrusive means.”

LORD PADDICK
BARONESS HAMWEE

7 Page 2, line 47, after “have” insert “particular”

LORD PADDICK
BARONESS HAMWEE
LORD LESTER OF HERNE HILL

8 Page 3, line 1, leave out paragraph (a)

Clause 2 - continued

LORD PADDICK
BARONESS HAMWEE

- 9 Page 3, line 5, at end insert –
“() the requirements of the Human Rights Act 1998.”
- 10 Page 3, line 7, leave out from “context” to end of line 9 and insert –
“() The public authority must have regard to other considerations that are also relevant in the context.”
- 11 Page 3, line 10, leave out “may, in particular, include” and insert “are”
- 12 Page 3, line 12, at end insert “so far as the interests of economic well-being are relevant to the interests of national security,”
- 13 Page 3, line 19, leave out paragraph (d)

After Clause 2

LORD PADDICK
BARONESS HAMWEE

- 14 Insert the following new Clause –
“Privacy and Civil Liberties Board
The Secretary of State must make and bring into force regulations under section 46 of the Counter-Terrorism and Security Act 2015 (privacy and civil liberties board) prior to the day on which section 2 comes into force.”

Before Clause 3

LORD JANVRIN

- 15 Insert the following new Clause –
“Offence of unlawful use of investigatory powers
(1) A relevant person is guilty of an offence if –
(a) by way of conduct described in this Act, he or she knowingly or recklessly obtains or examines the communications, communications data, secondary data, equipment data or personal information of an individual, and
(b) the person does not have lawful authority to make use of the investigatory power concerned.
(2) Subsection (1) does not apply to a relevant person who shows that he or she acted in the reasonable belief that he or she had lawful authority to obtain the information referred to in subsection (1)(a).
(3) In this section “relevant person” means a person who holds an office, rank or position with a relevant public authority (within the meaning of Part 3).

Before Clause 3 - continued

- (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) The offence in this section shall have precedence over any other relevant offences in the Data Protection Act 1998, Wireless Telegraphy Act 2006, Computer Misuse Act 1990, and the common law offence of misconduct in public office.”

Clause 3

LORD PADDICK
 BARONESS HAMWEE
 BARONESS HAYTER OF KENTISH TOWN
 LORD ROSSER

- 16 Page 3, line 31, at end insert—
 “(iv) a private postal service,”

LORD STRASBURGER

- 17 Page 3, line 39, at end insert—
- “() Subsection (1) does not apply to the action of a person who shows—
- (a) that the conduct which would otherwise be an offence under subsection (1)—
 - (i) was necessary for the purpose of preventing or detecting crime, or
 - (ii) was required or authorised by or under any enactment, by any rule of law or by the order of a court;
 - (b) that he or she acted in the reasonable belief that he or she had in law the right to carry out that conduct;
 - (c) that he or she acted in the reasonable belief that he or she had relevant authority;
 - (d) that he or she acted in the reasonable belief that in the particular circumstances the conduct was justified as being in the public interest; or
 - (e) that in the particular circumstances the conduct was justified as being in the public interest.”

After Clause 3

BARONESS HOLLINS
BARONESS O'NEILL OF BENGARVE
LORD DUBS
LORD BLENCATHRA

18 Insert the following new Clause—

“Interception without lawful authority to be actionable

- (1) Any interception of a communication which is carried out at any place in the United Kingdom shall be actionable at the suit or instance of the sender or recipient, or intended recipient, of the communication if it is without lawful authority and is either—
 - (a) an interception of that communication in the course of its transmission by means of that private system; or
 - (b) an interception of that communication in the course of its transmission, by means of a public telecommunication system, to or from apparatus comprised in that private telecommunication system.
- (2) In any action under subsection (1) 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 shall make a costs award in favour of the claimant, except where it is satisfied that the interests of justice in all the circumstances of the case require an alternative award or no award.
- (3) In any action under subsection (1) 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 it is satisfied that it is just and equitable in all the circumstances of the case to do so.
- (4) Subsections (2) and (3) shall apply to any claim issued after this section comes into force.
- (5) Subsections (2) and (3) shall only apply if the defendant is a relevant publisher as defined in section 41 of the Crime and Courts Act 2013, and in subsections (2) and (3) “approved regulator” shall have the same meaning as in section 42 of that Act.”

Clause 4

LORD PADDICK
BARONESS HAMWEE

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

Clause 6

LORD PADDICK
BARONESS HAMWEE

- 20 Page 6, line 14, at end insert “subject to any future Act of Parliament providing otherwise.”
- 21 Page 6, line 19, leave out “all purposes” and insert “the purposes of this Act”

Schedule 1

LORD PADDICK
BARONESS HAMWEE

- 22 Page 194, line 33, after “hearing” insert “(at which the person may be represented)”

Clause 13

LORD PADDICK
BARONESS HAMWEE

- 23 Page 10, line 16, leave out “the intelligence service considers that”

Clause 14

LORD PADDICK
BARONESS HAMWEE

- 24 Page 11, line 8, leave out “the applicant considers that”

After Clause 14

VISCOUNT COLVILLE OF CULROSS
LORD BLACK OF BRENTWOOD
LORD PADDICK
LORD STRASBURGER

- 25 Insert the following new Clause –

“Protection for journalistic sources, materials and activities

- (1) Save in the exceptional circumstances identified in subsection (2), the regimes provided for by Parts 2 to 7 may not be used to access, obtain, record, hold, consider, analyse, disclose or otherwise deal with information, material or data –
 - (a) of, or concerning, the activities relating to journalistic information, or
 - (b) if the purpose of so doing is to obtain information identifying a journalistic source.
- (2) The exceptional circumstances referred to in subsection (1) are –
 - (a) the case is one of great emergency,
 - (b) immediate action is necessary, and
 - (c) the relevant investigatory powers under the regimes provided by Parts 2 to 7 can be used lawfully having regard to those provisions.

After Clause 14 - continued

- (3) In any case where the regimes provided for by Parts 2 to 7 are disapplied by subsection (1), any person who could otherwise have sought to use one of the investigatory powers specified therein may apply to a judge for an order allowing that person to access, obtain, record, hold, consider, analyse, disclose or otherwise deal with such information, material or data in a way provided for by Parts 2 to 7.
- (4) An application for an order under subsection (3) shall be made on notice to the media organisation affected unless the judge determines that an application without such notice is required in order to avoid prejudice to the investigation.
- (5) Paragraphs 7 to 9 of Schedule 1 to the Police and Criminal Evidence Act 1984 shall apply in relation to the service of a notice of application for an order under subsection (1) as if the application were for an order under Schedule 1 to the Police and Criminal Evidence Act 1984.
- (6) Criminal Procedure Rules may make provision about proceedings under this section where the judge determines that an application without such notice is required.
- (7) A judge may only make an order under subsection (3) if the person making the application has convincingly established that –
 - (a) the order is directed towards one or more of the legitimate aims specified in Article 10.2 of the European Convention on Human Rights,
 - (b) there is an overriding public interest necessitating the order,
 - (c) reasonable alternative measures to the order do not exist or have been exhausted, and
 - (d) the order is proportionate to the legitimate aim or aims being pursued.
- (8) The costs of any application under subsection (3) and of anything done or to be done in pursuance of an order as a result of the application is to be at the discretion of the judge.”

LORD ROSSER
BARONESS HAYTER OF KENTISH TOWN

25A★ Insert the following new Clause –

“General public reporting

- (1) A person subject to a warrant or notice under Part 2, 3, 4, 5, 6, or 7 of this Act may publish and make publicly available a report including –
 - (a) the number of warrants or notices to which they have been subject;
 - (b) the number of accounts affected; and
 - (c) the number of warrants or notices they have complied with.
- (2) A person may make the disclosure under subsection (1) in relation to any warrants or notices received in the previous 180 days.”

Clause 17

LORD PADDICK
BARONESS HAMWEE

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

Clause 17 - continued

- 27 Page 13, line 36, after “activity” insert “where each person is named or identified using a unique identifier”
- 28 Page 13, line 37, leave out “or organisation”
- 29 Page 13, line 39, after “operation” insert “where each person is named or identified using a unique identifier”
- 30 Page 13, line 40, leave out paragraph (c)
- 31 Page 13, line 41, leave out subsection (3)

Clause 19

LORD PADDICK
BARONESS HAMWEE

- 32 Page 14, line 30, leave out “The Secretary of State” and insert “A Judicial Commissioner”
- 33 Page 14, line 33, leave out “the Secretary of State” and insert “a Judicial Commissioner”
- 34 Page 14, line 35, leave out “the Secretary of State” and insert “a Judicial Commissioner”
- 35 Page 14, line 38, leave out “the Secretary of State” and insert “a Judicial Commissioner”
- 36 Page 14, line 41, leave out paragraph (d)

Clause 20

LORD PADDICK
BARONESS HAMWEE

- 37 Page 16, line 11, at end insert –
“() A warrant may be considered necessary for the reasons given in subsection (2)(b) or (3) only where there is a reasonable suspicion that a serious criminal offence has been or is likely to be committed.”

Clause 21

EARL HOWE

38 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 23LORD PADDICK
BARONESS HAMWEE

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

40 Page 18, line 34, at end insert—

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

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

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

The above-named Lords give notice of their intention to oppose the Question that Clause 23 stand part of the Bill.

Clause 24LORD PADDICK
BARONESS HAMWEE

43 Page 19, line 19, leave out “working”

Clause 26

BARONESS JONES OF MOULSECOOMB

43A★ Page 20, line 23, leave out “Secretary of State” and insert “Judicial Commissioner”

43B★ Page 20, line 32, leave out subsection (2) and insert—

“(2) Further to the requirements set out in this Part, the Judicial Commissioner may only issue a warrant if—

- (a) there are reasonable grounds for believing that a serious criminal offence has been committed,
- (b) there are reasonable grounds for believing that the material is likely to be of substantial value to the investigation of the serious criminal offence,
- (c) other proportionate methods of obtaining the material have been tried without success or have not been tried because they were assessed to be bound to fail, and

Clause 26 - continued

- (d) it is in the public interest, having regard to the democratic interest in the confidentiality of the correspondence with members of a relevant legislature.”

LORD BEITH

- 44 Page 20, line 33, at end insert “who, at a time when he or she considers it compatible with the security of the country to do so, shall inform the relevant legislature that such a warrant or warrants has or have been issued”

LORD PADDICK
BARONESS HAMWEE

- 45 Page 20, line 33, at end insert “or, where the warrant relates to a member of the Scottish Parliament, the First Minister of Scotland”

Clause 27

LORD PANNICK
LORD LESTER OF HERNE HILL
BARONESS HAYTER OF KENTISH TOWN
LORD MACKAY OF CLASHFERN

- 46 Page 21, line 6, after “items” insert “presumptively”
- 47 Page 21, line 11, after “items” insert “presumptively”
- 48 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”

LORD PANNICK
LORD LESTER OF HERNE HILL
LORD MACKAY OF CLASHFERN

- 49 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

Clause 27 - continued

- (c) there is no requirement for approval of any such decision of a Judicial Commissioner.”

Clause 31

EARL HOWE

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

51 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.”

52 Page 24, line 46, at end insert –

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

Clause 32LORD PADDICK
BARONESS HAMWEE

53 Page 25, line 5, at end insert –

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

54 Page 25, line 19, leave out paragraphs (a) and (b) and insert –

- “(a) a modification correcting an error in the description of any item contained in a warrant, or removing any item or factor (but not varying it) is referred to as a “minor modification”, and
- (b) a modification which is not a minor modification is referred to as a “major modification”.”

Clause 33LORD PADDICK
BARONESS HAMWEE

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

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

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

Clause 33 - continued

The above-named Lords give notice of their intention to oppose the Question that Clause 33 stand part of the Bill.

Clause 34

LORD PANNICK
LORD LESTER OF HERNE HILL
LORD MACKAY OF CLASHFERN

- 58 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.”

EARL HOWE

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

LORD PADDICK
BARONESS HAMWEE

- 60 Page 27, line 39, leave out second “a” and insert “an urgent”

Clause 36

LORD PADDICK
BARONESS HAMWEE

- 61 Page 29, line 4, leave out “working”
- 62 Page 29, line 6, leave out “As soon as is reasonably practicable” and insert “Within forty-eight hours”

Clause 39

LORD ROSSER
BARONESS HAYTER OF KENTISH TOWN

- 63 Page 32, line 5, at end insert –
“() Subsection (4) is not applicable where the person outside the United Kingdom is established for the provision of services in a country or territory with which the United Kingdom has entered into an international mutual assistance agreement or is subject to a European Union mutual assistance instrument.”

Clause 41

LORD ROSSER
BARONESS HAYTER OF KENTISH TOWN

- 64 Page 33, line 14, at end insert “which for a relevant operator outside the United Kingdom shall include—
- (a) any steps which would cause the operator to act contrary to any laws or restrictions under the law of the country or territory where it has its principal office for the provision of telecommunication services; or
 - (b) where a warrant could be served pursuant to an international mutual assistance agreement or subject to an EU mutual assistance instrument.”
- 65 Page 33, line 15, leave out subsection (5)
- 65A★ Page 33, line 23, at end insert—
- “(c) if the operator holds the relevant data but is not authorised to provide the information requested.”

Clause 42

LORD PADDICK
BARONESS HAMWEE

- 66 Page 34, line 10, after “consented” insert “in writing”

LORD PANNICK
LORD LESTER OF HERNE HILL
BARONESS HAYTER OF KENTISH TOWN
LORD MACKAY OF CLASHFERN

- 67 Page 34, line 18, at end insert—
- “() But this section does not authorise interception of a communication containing items presumptively subject to legal privilege.”

Clause 45

BARONESS HAYTER OF KENTISH TOWN
LORD ROSSER

- 68 Page 35, line 36, leave out paragraph (b)

Clause 46

EARL HOWE

- 69 Page 36, line 1, at end insert “by means of a telecommunication system”

Clause 47

LORD PANNICK
 LORD LESTER OF HERNE HILL
 BARONESS HAYTER OF KENTISH TOWN
 LORD MACKAY OF CLASHFERN

70 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 48

BARONESS HAMWEE
 LORD PADDICK

The above-named Lords give notice of their intention to oppose the Question that Clause 48 stand part of the Bill.

Clause 49

LORD PADDICK
 BARONESS HAMWEE

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

72 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.”

The above-named Lords give notice of their intention to oppose the Question that Clause 49 stand part of the Bill.

Clause 50

EARL HOWE

73 Page 38, line 9, leave out “C” and insert “D”

74 Page 38, line 18, at end insert “and which is designated as a relevant international agreement by regulations made by the Secretary of State”

75 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

Clause 50 - continued

- (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.”

76 Page 38, line 19, leave out “C” and insert “D”

LORD PANNICK
LORD LESTER OF HERNE HILL
BARONESS HAYTER OF KENTISH TOWN
LORD MACKAY OF CLASHFERN

77 Page 38, line 20, at end insert —

- “() 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
BARONESS HAYTER OF KENTISH TOWN
LORD MACKAY OF CLASHFERN

78 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”

79 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—
- (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.”

80 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.”

After Clause 53

LORD PADDICK
BARONESS HAMWEE

81 Insert the following new Clause –

“Evidence

- (1) The Secretary of State may make regulations enabling material obtained by interception by lawful authority to be put forward as evidence in court proceedings.
- (2) Regulations may not be made under subsection (1) unless the Secretary of State has consulted such persons as the Secretary of State considers appropriate.
- (3) Consultation must, in particular, address mechanisms relating to the disclosure of information on proceedings and their general conduct.”

Clause 54

LORD ROSSER
BARONESS HAYTER OF KENTISH TOWN

82 Page 42, line 14, after “not” insert “, without reasonable excuse,”

83 Page 42, line 31, at end insert –

- “() For the purposes of subsection (1) it is, in particular, a reasonable excuse if the disclosure is made with the permission of the person issuing the warrant or the person to whom it is issued.”

LORD PADDICK
BARONESS HAMWEE

84 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 55

LORD ROSSER
BARONESS HAYTER OF KENTISH TOWN

84A★ Page 43, line 43, leave out paragraph (a)

84B★ Page 44, line 5, leave out “Chapter 1 of this Part” and insert “section 54(2)(a)”

Schedule 8

EARL HOWE

85 Page 231, line 20, at end insert –

- “() the duties imposed by section 2 (general duties in relation to privacy);”

Clause 222

LORD PADDICK
BARONESS HAMWEE

- 86 Page 172, line 4, leave out “an appropriate contribution in respect of such” and insert “payment of all”
- 87 Page 172, line 5, leave out “the Secretary of State considers” and insert “is”
- 88 Page 172, line 6, at end insert –
“() No provision of Parts 2 to 7 may come into force until arrangements have been made under subsection (1).”

BARONESS HAYTER OF KENTISH TOWN
LORD ROSSER

- 89 Page 172, line 19, leave out subsection (6) and insert –
“(6) The appropriate contribution shall represent the full amount of the relevant costs, subject to any audit process under subsection (4).”

Clause 225

EARL HOWE

- 90 Page 174, line 6, leave out “this Act.” and insert “any of the following enactments –
(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).”
- 91 Page 174, line 10, after “230” insert “and (*Approval of notices following review under section 230*)”

LORD PADDICK
BARONESS HAMWEE

The above-named Lords give notice of their intention to oppose the Question that Clause 225 stand part of the Bill.

Clause 226

LORD PADDICK
BARONESS HAMWEE
LORD STRASBURGER

- 92 Page 175, line 8, leave out paragraph (c)

Clause 226 - continued

BARONESS HAYTER OF KENTISH TOWN
LORD ROSSER

93 Page 175, line 13, at end insert –

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

EARL HOWE

94 Page 175, line 22, after “must” insert “ –

(a) ”

95 Page 175, line 24, at end insert “, and

() may specify different periods in relation to different steps.”

96 Page 175, line 28, after “230” insert “and (*Approval of notices following review under section 230*)”

LORD PADDICK
BARONESS HAMWEE

The above-named Lords give notice of their intention to oppose the Question that Clause 226 stand part of the Bill.

Clause 227

LORD PADDICK
BARONESS HAMWEE

97 Page 175, line 34, leave out from “must” to end of line 35 and insert “determine”

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

99 Page 175, line 40, leave out subsection (3)

EARL HOWE

100 Page 175, line 40, after “must” insert “ –

(a) ”

101 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 228

LORD STRASBURGER

102 Page 176, line 19, at end insert –

“() A notice under section 225 or 226 may not impose obligations on a relevant operator relating to the removal of electronic protection.”

103 Page 176, line 20, leave out subsection (4)

LORD ROSSER

BARONESS HAYTER OF KENTISH TOWN

104 Page 176, line 43, at end insert “, except where the person is, at the time the notice is given, outside the United Kingdom and it is therefore not reasonably practicable for the person to comply with the notice”

105 Page 176, line 43, at end insert –

“() In determining for the purposes of subsection (9) whether it is reasonably practicable for a relevant operator outside the United Kingdom to take any steps in a country or territory outside the United Kingdom for giving effect to a relevant notice, the matters to be taken into account include the following –

(a) any requirements or restrictions under the law of that country or territory that are relevant to the taking of those steps, and

(b) the extent to which it is reasonably practicable to give effect to the warrant in a way that does not breach any of those requirements or restrictions.”

Clause 229

EARL HOWE

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

Clause 230

EARL HOWE

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

BARONESS HAYTER OF KENTISH TOWN

LORD ROSSER

108 Page 178, line 15, after “reference,” insert “and for others likely to be affected,”

109 Page 178, line 27, after “Commissioner” insert “and with the approval of a Judicial Commissioner”

EARL HOWE

110 Page 178, line 29, at end insert –

“() 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.”

After Clause 230

EARL HOWE

111 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.”

Before Clause 58

LORD PADDICK
BARONESS HAMWEE

112 Insert the following new Clause –

“Internet connection records

- (1) Nothing in this Act shall permit the retaining by a public authority of internet connection records.
- (2) 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

Before Clause 58 - continued

- (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 58

LORD PADDICK
BARONESS HAMWEE

- 113 Page 45, line 32, leave out from beginning to “considers” in line 33 and insert “A Judicial Commissioner may on application by a designated senior officer of a relevant public authority issue a communications data access authorisation if the Judicial Commissioner”

- 114 Page 46, line 1, leave out “designated senior officer” and insert “Judicial Commissioner”

EARL HOWE

- 115 Page 46, line 7, at end insert—
“(za) section (*Restrictions in relation to internet connection records*) (restrictions in relation to internet connection records),”

LORD PADDICK
BARONESS HAMWEE

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

EARL HOWE

- 117 Page 47, line 7, leave out “and proportionate”

- 118 Page 47, line 8, leave out “and proportionate”

LORD LUCAS

- 119 Page 47, line 12, at end insert—
“() for the purpose of suppressing less serious crimes perpetrated on a large scale using the internet,”

EARL HOWE

- 120 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).”

Clause 58 - continued

LORD PADDICK
BARONESS HAMWEE

121 Page 47, line 33, at end insert –

“() An authorisation may be considered necessary for the reasons given in subsection (7)(b) or (f) only where there is a reasonable suspicion that a serious criminal offence has been or is likely to be committed.”

122 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).”

After Clause 58

EARL HOWE

123 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

After Clause 58 - continued

- (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 6 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

EARL HOWE

Clause 59 - continued

- (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 the interests of national security,”

LORD PADDICK
BARONESS HAMWEE

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

126 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.”

EARL HOWE

127 Page 48, line 2, leave out “being” and insert “is”

LORD PADDICK
EARL HOWE
BARONESS HAMWEE

128 Page 48, line 5, leave out subsections (4) to (6)

BARONESS HAYTER OF KENTISH TOWN
LORD ROSSER

129 Page 48, line 32, at end insert—

- “() An “internet communications service” means a service which provides for communication by voice, e-mail or other message between two or more individuals (including an individual acting on behalf of an organisation) over the internet.”

Clause 61

EARL HOWE

130 Page 49, line 21, after “authorisation” insert “—

- () may cancel it at any time, and
- () ”

131 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.”

132 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”

Clause 61 - continued

- 133 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

LORD PADDICK
BARONESS HAMWEE

- 134 Page 50, line 15, after “may” insert “by regulations”

- 135 Page 50, line 15, leave out “, maintain and operate”

EARL HOWE

- 136 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,”

LORD PADDICK
BARONESS HAMWEE

- 137 Page 50, line 27, at end insert –
“() obtaining the approval of a Judicial Commissioner, ”

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

- 138 Page 51, line 17, at end insert –
“() An authorisation shall expire six months after it is granted.”

EARL HOWE

- 139 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)”

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

140 Page 51, line 34, at end insert –

“() The Secretary of State shall in the exercise of his powers under sections 63 to 68 have regard to the matters referred to in section 2.”

LORD LUCAS

141 Page 51, line 37, at end insert –

“() that a full and detailed record is kept of all the authorisations granted under section 63 and of the uses made of them under section 64, including the names of all persons involved, the reasons for actions, and the results obtained,”

LORD PADDICK
BARONESS HAMWEE

142 Page 52, line 39, at end insert “and lay a report before each House of Parliament”

LORD LUCAS

143 Page 52, line 41, at end insert –

“() The Secretary of State must make provision for the independent inspection of the effectiveness and appropriateness of his or her actions under subsections (1) to (6).”

LORD PADDICK
BARONESS HAMWEE

144 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

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

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

Clause 69

LORD PADDICK
BARONESS HAMWEE

147 Page 54, line 40, at end insert –

“() representatives of local authorities.”

Clause 73

BARONESS HAYTER OF KENTISH TOWN
LORD ROSSER

148 Page 57, line 36, at end insert –

- “() there are exceptional and compelling circumstances that make it necessary to authorise the interception, and
- () 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 such items.”

Clause 75

LORD PADDICK
BARONESS HAMWEE

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

Clause 77

LORD PADDICK
BARONESS HAMWEE

150 Page 61, line 6, leave out from “(1)” to end of line 11

Clause 80

EARL HOWE

151 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 81

LORD ROSSER
BARONESS HAYTER OF KENTISH TOWN

152 Page 63, line 20, at end insert –

- “() The matters to be taken into account include if the individual is employed by the company which holds the relevant data but is not authorised to provide the information requested.”

Clause 83

LORD PADDICK
BARONESS HAMWEE

153 Page 64, line 15, at end insert –

- “() A requirement in a notice may be considered necessary only where there is a reasonable suspicion that a serious criminal offence has been or is likely to be committed.”

Clause 83 - continued

LORD PADDICK
 BARONESS HAMWEE
 BARONESS HAYTER OF KENTISH TOWN

154 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.”

EARL HOWE

155 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).”

LORD ROSSER
 BARONESS HAYTER OF KENTISH TOWN

156 Page 65, line 21, leave out subsection (9) and insert –

“() In this Part –

“relevant communications data” means –

- (a) communications data of the kind mentioned in the Schedule to the Data Retention (EC Directive) Regulations 2009 (SI 2009/859),
- (b) internet connection records, or
- (c) relevant internet data not falling within paragraph (a) or (b);

“relevant internet data” means communications data which may be used to identify, or assist in identifying, the sender of a communication (whether or not a person).”

Clause 88

EARL HOWE

157 Page 67, line 34, at end insert –

“() 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).”

Clause 89

LORD ROSSER
 BARONESS HAYTER OF KENTISH TOWN

158 Page 68, line 27, after “not” insert “, without reasonable excuse,”

After Clause 95

LORD PADDICK
BARONESS HAMWEE
BARONESS HAYTER OF KENTISH TOWN

159 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.”

160 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 96

LORD PADDICK
BARONESS HAMWEE

161 Page 73, line 21, at end insert –

“() A warrant may be considered necessary only where there is a reasonable suspicion that a serious criminal offence has been or is likely to be committed.”

EARL HOWE

162 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

EARL HOWE

163 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

BARONESS HAYTER OF KENTISH TOWN
LORD ROSSER

- 164 Page 74, line 33, leave out paragraph (c) and insert—
“(c) the Secretary of State considers that appropriate assessments for the purposes of sections (*security, integrity and privacy*) and (*protection for critical national infrastructure*) have been made and, having taken account of them, the warrant is proportionate, and”

EARL HOWE

- 165 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

EARL HOWE

- 166 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

LORD PADDICK
BARONESS HAMWEE

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

EARL HOWE

- 168 Page 78, line 19, after “must” insert “—
(a) ”

LORD PADDICK
BARONESS HAMWEE

- 168A★ Page 78, line 19, leave out from “must” to end of line 20 and insert “consider the reasons for the decision given by the person who made it.”

EARL HOWE

- 169 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 109

EARL HOWE

- 170 Page 85, line 7, leave out “before the end of the relevant” and insert “during the renewal”
- 171 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.”
- 172 Page 86, line 14, at end insert –
““urgent warrant” is to be read in accordance with subsection (3) of that section.”

Clause 114

EARL HOWE

- 173 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.”

Clause 123

LORD ROSSER

BARONESS HAYTER OF KENTISH TOWN

- 174 Page 98, line 2, after “not” insert “, without reasonable excuse,”
- 175 Page 98, line 3, at end insert –
“() For the purposes of subsection (1), it is, in particular, a reasonable excuse if the disclosure is made with the permission of the person issuing the warrant or the person to whom it is issued.”

After Clause 125

LORD PADDICK

BARONESS HAMWEE

- 176 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

BARONESS JONES OF MOULSECOOMB

176A★ Page 155, line 16, at end insert –

- “() There shall be a body corporate known as the Investigatory Powers Commission, which shall have such powers and duties as are specified in this Act.”

LORD PADDICK
BARONESS HAMWEE

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

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

EARL HOWE

179 Page 155, line 25, at end insert –

- “() 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.
- () 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.”

LORD PADDICK
BARONESS HAMWEE

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

EARL HOWE

181 Page 155, leave out lines 28 to 30

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

Clause 203 - continued

LORD PADDICK
BARONESS HAMWEE

- 183 Page 156, line 1, leave out subsection (7)
- 184 Page 156, line 2, after “decide,” insert “appoint as his or her deputy and”
- 185 Page 156, line 3, leave out “any” and insert “one”
- 186 Page 156, line 7, leave out from “Commissioner” to end of line 11

After Clause 203

LORD PADDICK
BARONESS HAMWEE

- 187 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.”

Clause 204

LORD PADDICK
BARONESS HAMWEE

- 188 Page 156, line 43, at end insert—
“(e) the Commissioner is unfit to hold out office by reason of inability, neglect of duty or misbehaviour”
- 189 Page 156, line 43, at end insert—
“() Before removing a Judicial Commissioner the Prime Minister must consult—
(a) the Lord Chief Justice of England and Wales,
(b) the Lord President of the Court of Session,
(c) the Lord Chief Justice of Northern Ireland,
(d) the Scottish Ministers, and
(e) the First Minister and Deputy First Minister in Northern Ireland.”

Clause 205

EARL HOWE

- 190 Page 158, line 44, leave out paragraphs (b) and (c) and insert—
- “(b) dealing with the situation where a warrant issued, or modification made, for what was considered to be an urgent need is not approved,
 - (c) reviewing any decisions taken in dealing with the situation mentioned in paragraph (b),
 - (d) deciding whether to approve the giving of a notice under section 225 or 226, or
 - (e) participating in a review under section 230 or deciding whether to give approval under that section.”

After Clause 206

LORD PADDICK
BARONESS HAMWEE

- 191 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 210

EARL HOWE

192 Page 163, line 28, at end insert –

“() information about the operational purposes specified during the year in warrants issued under Part 6 or 7,”

After Clause 211

EARL HOWE

193 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.”

LORD JANVRIN

194 Insert the following new Clause –

“Referrals by the Intelligence and Security Committee of Parliament

- (1) Subsections (2) and (3) apply 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.
- (3) The Investigatory Powers Commissioner must, subject to the provisions of paragraph 4 of Schedule 1 to the Justice and Security Act 2013 (access to information), provide the Intelligence and Security Committee of Parliament with the outcome of any investigation, inspection or audit which is carried out.”

Clause 131

EARL HOWE

195 Page 104, line 30, after “must” insert “–

(a) ”

196 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

EARL HOWE

- 197** 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.”
- 198** 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

EARL HOWE

- 199** Page 105, line 31, leave out “before it would otherwise cease to have effect” and insert “during the renewal period”
- 200** 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.”
- 201** Page 106, line 16, at end insert “, but with the omission of paragraph (d) of subsection (1)”

After Clause 142

LORD BUTLER OF BROCKWELL

- 201A★** Insert the following new Clause –
- “Offence of unauthorised examination of material**
- (1) A relevant person who, without lawful authority, knowingly or recklessly fails to comply with the safeguards referred to in section 142 is guilty of an offence.

After Clause 142 - continued

- (2) In this section “relevant person” means a member of the intelligence services.
- (3) Subsection (1) does not apply to a relevant person who shows that he or she acted in the reasonable belief that he or she had lawful authority to engage in the activity to which subsection (1) relates.
- (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),
 - (ii) to a fine, or
 - (iii) to both;
 - (b) on summary conviction in Scotland –
 - (i) to imprisonment for a term not exceeding 12 months,
 - (ii) to a fine not exceeding the statutory maximum, or
 - (iii) to both;
 - (c) on summary conviction in Northern Ireland –
 - (i) to imprisonment for a term not exceeding 6 months,
 - (ii) to a fine not exceeding the statutory maximum, or
 - (iii) to both;
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.”

Clause 146

LORD LUCAS

202 Page 115, line 16, at end insert –

“() for the purpose of suppressing less serious crimes perpetrated on a large scale using the internet,”

EARL HOWE

203 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).”

LORD LUCAS

204 Page 115, line 36, at end insert –

“() where speed is of the essence, to collaborate with a person specified in the warrant to source and analyse data in real time,”

Clause 147

EARL HOWE

205 Page 116, line 20, after “must” insert “ –

(a) ”

Clause 147 - continued

- 206 Page 116, line 21, 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 149

EARL HOWE

- 207 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.”
- 208 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

EARL HOWE

- 209 Page 117, line 22, leave out “before it would otherwise cease to have effect” and insert “during the renewal period”
- 210 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.”

After Clause 159

LORD BUTLER OF BROCKWELL

210A★ Insert the following new Clause –

“Offence of unauthorised examination of data

- (1) A relevant person who, without lawful authority, knowingly or recklessly fails to comply with the safeguards referred to in section 159 is guilty of an offence.
- (2) In this section “relevant person” means a member of the intelligence services.
- (3) Subsection (1) does not apply to a relevant person who shows he or she acted in the reasonable belief that he or she had lawful authority to engage in the activity to which subsection (1) relates.
- (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),
 - (ii) to a fine, or
 - (iii) to both;
 - (b) on summary conviction in Scotland –
 - (i) to imprisonment for a term not exceeding 12 months,
 - (ii) to a fine not exceeding the statutory maximum, or
 - (iii) to both;
 - (c) on summary conviction in Northern Ireland –
 - (i) to imprisonment for a term not exceeding 6 months,
 - (ii) to a fine not exceeding the statutory maximum, or
 - (iii) to both;
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.”

Clause 165

EARL HOWE

211 Page 128, line 23, after “must” insert “–

(a) ”

212 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 169

EARL HOWE

- 213** 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.”
- 214** 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

EARL HOWE

- 215** Page 131, line 13, leave out “before the end of the relevant” and insert “during the renewal”
- 216** 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.”
- 217** 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 182

EARL HOWE

218 Page 140, line 36, leave out “section” and insert “Part”

After Clause 184

EARL HOWE

219 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 –
 - (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.
- (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 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.
- (3) In subsection (1) –
 - “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.”

Clause 185

EARL HOWE

220 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

EARL HOWE

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

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

Clause 186 - continued

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) or (2) 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).”

Clause 188

EARL HOWE

224 Page 144, line 39, after “must” insert “ –
(a) ”

225 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

EARL HOWE

226 Page 145, line 5, leave out “believed” and insert “considered”

Clause 192

EARL HOWE

227 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.”

228 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.

Clause 192 - continued

- (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

EARL HOWE

- 229** Page 147, line 43, leave out “before the end of the relevant” and insert “during the renewal”
- 230** 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.”
- 231** 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.”

After Clause 200

LORD BUTLER OF BROCKWELL

- 231A★** Insert the following new Clause—
- “Offence of unauthorised examination of bulk personal datasets**
- (1) A relevant person who, without lawful authority, knowingly or recklessly fails to comply with the safeguards referred to in section 200 is guilty of an offence.
 - (2) In this section “relevant person” means a member of the intelligence services.

After Clause 200 - continued

- (3) Subsection (1) does not apply to a relevant person who shows that he or she acted in the reasonable belief that he or she had lawful authority to engage in the activity to which subsection (1) relates.
- (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),
 - (ii) to a fine, or
 - (iii) to both;
 - (b) on summary conviction in Scotland –
 - (i) to imprisonment for a term not exceeding 12 months,
 - (ii) to a fine not exceeding the statutory maximum, or
 - (iii) to both;
 - (c) on summary conviction in Northern Ireland –
 - (i) to imprisonment for a term not exceeding 6 months,
 - (ii) to a fine not exceeding the statutory maximum, or
 - (iii) to both;
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.”

Clause 202

EARL HOWE

232 Page 155, line 3, at end insert –
 ““personal data” has the meaning given by section 182(2);”

233 Page 155, line 7, at end insert –
 ““the specified operational purposes” has the meaning given by section 192(6F);”

Clause 232LORD PADDICK
BARONESS HAMWEE

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

Clause 233LORD PADDICK
BARONESS HAMWEE

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

Clause 235

LORD PANNICK
 LORD LESTER OF HERNE HILL
 BARONESS HAYTER OF KENTISH TOWN
 LORD MACKAY OF CLASHFERN

- 236** 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,”

BARONESS JONES OF MOULSECOOMB

- 236A★** Page 184, line 36, at end insert –
 ““national security” means the protection of the existence of the nation and its territorial integrity, or political independence against force or the threat of force,”

LORD PANNICK
 LORD LESTER OF HERNE HILL
 BARONESS HAYTER OF KENTISH TOWN
 LORD MACKAY OF CLASHFERN

- 237** 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 236

EARL HOWE

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

Clause 238

LORD PADDICK
 BARONESS HAMWEE

- 239** Page 189, line 7, at end insert –
 “() section (*Evidence*),

- 240** Page 189, line 7, at end insert –
 “() section 63,”

EARL HOWE

- 241** Page 189, line 26, at end insert –
 “() regulations under section 50(3),”

Schedule 9

EARL HOWE

242 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.”

Schedule 10

EARL HOWE

243 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”.

Clause 243

LORD PADDICK
BARONESS HAMWEE

244 Page 191, line 38, after “and (3)” insert “and section 222(1A)”

245 Page 192, line 1, after “Sections” insert “222, 223,”

BARONESS HOLLINS
BARONESS O'NEILL OF BENGARVE
LORD DUBS
LORD BLENCATHRA

246 Page 192, line 2, at end insert –

“() Section (*Interception without lawful authority to be actionable*) comes into force on the day following that on which this Act is passed.”

Investigatory Powers Bill

REVISED
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE

8 July 2016
