

Investigatory Powers Bill

AMENDMENTS
TO BE MOVED
ON REPORT

Clause 2

EARL HOWE

Page 2, line 46, after “give” insert “or vary”

Page 2, line 46, after “under” insert “Part 4 or”

Page 2, line 46, leave out “or 229” and insert “, 229 or 233”

Page 2, line 46, at end insert—

“(ga) to approve the use of criteria under section 144, 180 or (*Additional safeguards for items subject to legal privilege: examination*),”

Page 2, line 46, at end insert—

“(gb) to give an authorisation under section 200(3)(b),
(gc) to approve a decision to give such an authorisation,”

Page 3, line 3, leave out “or (f)” and insert “, (f) or (gb)”

Page 3, line 6, at end insert—

“(aa) whether the level of protection to be applied in relation to any obtaining of information by virtue of the warrant, authorisation or notice is higher because of the particular sensitivity of that information,”

Page 3, line 24, at end insert—

“() For the purposes of subsection (2)(aa), examples of sensitive information include—

- (a) items subject to legal privilege,
- (b) any information identifying or confirming a source of journalistic information, and

Clause 2 - continued

- (c) relevant confidential information within the meaning given by paragraph 2(2) of Schedule 7 (certain information held in confidence and consisting of personal records, journalistic material or communications between Members of Parliament and their constituents).”

Clause 24

EARL HOWE

Page 19, line 29, at end insert –

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

Clause 27

EARL HOWE

Page 21, line 2, leave out “and (3)” and insert “to (3A)”

Page 21, line 14, at end insert –

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

Page 21, line 18, after “authorise” insert “or require”

Page 21, line 24, at end insert –

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

Page 21, line 24, at end insert –

“() For the purposes of subsection (3)(a), there cannot be exceptional and compelling circumstances that make it necessary to authorise or require the interception, or the selection for examination, of items subject to legal privilege unless –

- (a) the public interest in obtaining the information that would be obtained by the warrant outweighs the public interest in the confidentiality of items subject to legal privilege,
- (b) there are no other means by which the information may reasonably be obtained, and
- (c) in the case of a warrant considered necessary as mentioned in section 20(2)(b) or (3) or (as the case may be) 21(4), obtaining the information is necessary for the purpose of preventing death or significant injury.”

Page 21, line 30, leave out “and (3)” and insert “to (3A)”

Clause 27 - continued

Page 21, line 46, at end insert –

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

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

(7B) The application must –

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

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

After Clause 27

EARL HOWE

Insert the following new Clause –

“Confidential journalistic material

(1) This section applies if –

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

After Clause 27 - continued

- (ii) in the case of a targeted examination warrant, to authorise the selection for examination of journalistic material which the intercepting authority believes is confidential journalistic material.
- (2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is –
 - (a) in the case of a targeted interception warrant or mutual assistance warrant, to authorise or require the interception of communications which the intercepting authority believes will be communications containing confidential journalistic material, or
 - (b) in the case of a targeted examination warrant, to authorise the selection for examination of journalistic material which the intercepting authority believes is confidential journalistic material.
- (3) The person to whom the application is made may issue the warrant only if the person considers that the arrangements made for the purposes of section 51 or (as the case may be) section 141 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of communications containing confidential journalistic material.
- (4) For the meanings of “journalistic material” and “confidential journalistic material”, see section (*General definitions: “journalistic material” etc.*).

Insert the following new Clause –

“Sources of journalistic information

- (1) This section applies if –
 - (a) an application is made by or on behalf of an intercepting authority for a warrant under this Chapter, and
 - (b) the purpose, or one of the purposes, of the warrant is to identify or confirm a source of journalistic information.

(For the meaning of “source of journalistic information”, see section 239(1).)
- (2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is to identify or confirm a source of journalistic information.
- (3) The person to whom the application is made may issue the warrant only if the person considers that the arrangements made for the purposes of section 51 or (as the case may be) section 141 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of communications that identify sources of journalistic information.”

Clause 29

EARL HOWE

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

Clause 29 - *continued*

Page 23, line 16, at end insert –

“(ii) secondary data will or may be obtained under the warrant from communications from, or intended for, the person;”

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

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

Page 23, line 35, at end insert –

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

Clause 31

EARL HOWE

Page 25, line 3, leave out from “26” to “apply” and insert “to (*Sources of journalistic information*) (additional safeguards)”

Clause 33

EARL HOWE

Page 26, line 19, leave out “section 26 or 27” and insert “any of sections 26 to (*Sources of journalistic information*)”

Page 26, line 19, at end insert –

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

Clause 34

EARL HOWE

Page 27, line 21, leave out from “26” to “apply” in line 22 and insert “to (*Sources of journalistic information*) (additional safeguards)”

Page 27, line 28, after “27” insert “, (*Confidential journalistic material*) or (*Sources of journalistic information*)”

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

Clause 34 - continued

Page 27, line 47, leave out paragraph (c) and insert—

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

Page 28, line 3, leave out “section 26 or 27” and insert “any of sections 26 to (*Sources of journalistic information*)”

Clause 35

EARL HOWE

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

Clause 36

EARL HOWE

Page 28, line 38, after “27” insert “, (*Confidential journalistic material*) or (*Sources of journalistic information*)”

Page 29, line 16, leave out “fifth” and insert “third”

Page 29, line 34, at end insert—

“and, in a case falling within subsection (2) above, section 23(5) does not apply in relation to the refusal to approve the decision.”

Clause 38

EARL HOWE

Page 31, line 44, leave out from “organisation” to “to” in line 45

Clause 51

EARL HOWE

Page 40, line 9, at end insert—

“() Where—

- (a) a communication which has been intercepted in accordance with a targeted interception warrant or mutual assistance warrant is retained, following its examination, for purposes other than the destruction of the communication, and
- (b) it is a communication that contains confidential journalistic material or identifies a source of journalistic information,

the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.”

Clause 51 - continued

Page 40, line 10, leave out subsection (7)

After Clause 52

EARL HOWE

Insert the following new Clause—

“Additional safeguards for items subject to legal privilege

- (1) This section applies where an item subject to legal privilege which has been intercepted in accordance with a targeted interception warrant or mutual assistance warrant is retained, following its examination, for purposes other than the destruction of the item.
- (2) The person to whom the warrant is addressed must inform the Investigatory Powers Commissioner of the retention of the item as soon as is reasonably practicable.
- (3) The Investigatory Powers Commissioner may —
 - (a) direct that the item is destroyed, or
 - (b) impose conditions as to the disclosure or otherwise making available of that item.
- (4) The Investigatory Powers Commissioner —
 - (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (3), and
 - (b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).
- (5) Each of the following is an “affected party” for the purposes of subsection (4) —
 - (a) the person who decided to issue the warrant;
 - (b) the person to whom the warrant is or was addressed.”

Clause 55

EARL HOWE

Page 43, line 37, at end insert —

- “() But subsection (2)(b) does not apply in the case of a mutual assistance warrant that is or was addressed to a person falling within section 18(1)(h) (competent authorities of overseas countries or territories).”

Page 44, line 16, leave out “a view to furthering any” and insert “the intention of furthering a”

Page 44, line 27, leave out sub-paragraph (ii) and insert —

- “(ii) consists of statistical information of a description specified in the regulations;”

Clause 57

EARL HOWE

Page 46, line 4, at end insert –

“section (*General definitions: “journalistic material” etc.*) (general definitions: “journalistic material” etc.),”

Clause 58

EARL HOWE

Page 46, line 40, leave out “to disclose it” and insert “or capable of obtaining it–

- (i) to obtain the data (if not already in possession of it), and
- (ii) to disclose the data (whether already in the person’s possession or subsequently obtained by that person)”

Page 46, line 42, leave out paragraph (c)

Page 47, line 5, leave out “to disclose the data” and insert “or capable of obtaining it–

- (a) to obtain the data (if not already in possession of it), and
- (b) to disclose the data (whether already in the operator’s possession or subsequently obtained by the operator)”

Page 47, line 7, leave out sub-paragraph (ii)

Page 47, line 28, leave out “, (c)”

Clause 71

EARL HOWE

Page 57, line 1, leave out first “a” and insert “the”

Page 57, line 2, after “agreement” insert “with the result that officers of the local authority are permitted to be granted authorisations by a designated senior officer of a subscribing authority”

Clause 73

EARL HOWE

Page 58, line 44, at end insert –

“() Nothing in this section prevents a person acting as a single point of contact from also applying for, or being granted, an authorisation or, in the case of a designated senior officer, granting an authorisation.”

Clause 74

EARL HOWE

Page 59, line 35, leave out subsection (8)

Clause 75

EARL HOWE

Page 60, line 25, at end insert –

- “() this Part has effect as if the designated senior officer of the supplying authority had the power to grant an authorisation to officers of the subscribing authority, and had other functions in relation to the authorisation, which were the same as (and subject to no greater or lesser restrictions than) the power and other functions which the designated senior officer of the subscribing authority who would otherwise have dealt with the authorisation would have had, and
- () section 72(1) applies to the authorisation as if it were granted by a designated senior officer of the subscribing authority.”

Clause 77

EARL HOWE

Page 61, line 24, after “agreement” insert “for the purposes of a collaborating police force’s functions under this Part”

Page 61, line 27, leave out “a” and insert “the”

Page 61, line 29, leave out second “a” and insert “the”

Page 61, line 30, leave out “a” and insert “the”

Page 61, line 46, at end insert –

- “(c) this Part has effect as if the designated senior officer of force 1 had the power to grant an authorisation to officers of the collaborating police force, and had other functions in relation to the authorisation, which were the same as (and subject to no greater or lesser restrictions than) the power and other functions which the designated senior officer of the collaborating police force who would otherwise have dealt with the authorisation would have had.”

Clause 84

EARL HOWE

Page 66, line 5, after “notice”)” insert “and subject as follows,”

Page 66, line 6, after “if” insert “–

(a) ”

Page 66, line 9, at end insert “, and

- (b) the decision to give the notice has been approved by a Judicial Commissioner.”

Clause 84 - continued

Page 66, line 29, at end insert –

- “(3A) A retention notice must not require an operator who controls or provides a telecommunication system (“the system operator”) to retain data which –
- (a) relates to the use of a telecommunications service provided by another telecommunications operator in relation to that system,
 - (b) is (or is capable of being) processed by the system operator as a result of being comprised in, included as part of, attached to or logically associated with a communication transmitted by means of the system as a result of the use mentioned in paragraph (a),
 - (c) is not needed by the system operator for the functioning of the system in relation to that communication, and
 - (d) is not retained or used by the system operator for any other lawful purpose,
- and which it is reasonably practicable to separate from other data which is subject to the notice.”

After Clause 85

EARL HOWE

Insert the following new Clause –

“Approval of retention notices by Judicial Commissioners

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

Clause 86

EARL HOWE

Page 68, line 14, leave out “the Investigatory Powers” and insert “a Judicial”

Page 68, line 31, at end insert –

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

After Clause 86

EARL HOWE

Insert the following new Clause –

“Approval of retention notices following review under section 86

- (1) In deciding whether to approve a decision to vary a retention notice as mentioned in section 86(10)(a), or to give a notice under section 86(10)(b) confirming the effect of a retention notice, the Investigatory Powers Commissioner must review the Secretary of State’s conclusions as to whether the requirement to be imposed by the notice as varied or confirmed to retain relevant communications data is necessary and proportionate for one or more of the purposes falling within paragraphs (a) to (j) of section 58(7).
- (2) In doing so, the Investigatory Powers Commissioner must –
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and
 - (b) consider the matters referred to in subsection (1) with a sufficient degree of care as to ensure that the Investigatory Powers Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
- (3) Where the Investigatory Powers Commissioner refuses to approve a decision to vary a retention notice as mentioned in section 86(10)(a), or to give a notice under section 86(10)(b) confirming the effect of a retention notice, the Investigatory Powers Commissioner must give the Secretary of State written reasons for the refusal.”

Clause 89

EARL HOWE

Page 69, line 26, after “unless” insert “–

(a) ”

Page 69, line 28, leave out from “58(7)” to end of line 29 and insert “, and

(b) subject to subsection (5A), the decision to vary the notice has been approved by a Judicial Commissioner.”

Clause 89 - continued

Page 69, line 34, at end insert –

“(5A) Subsection (4)(b) does not apply to a variation to which section 86(10A) applies.”

Page 69, line 38, after “84(3)” insert “, (3A)”

Page 69, line 42, at end insert “(and, accordingly, the references to the notice in section 85(1)(a) to (e) are to be read as references to the variation).”

Page 69, line 42, at end insert –

“(8A) Section (*Approval of retention notices by Judicial Commissioners*) applies in relation to a decision to vary to which subsection (4)(b) above applies as it applies in relation to a decision to give a retention notice (and, accordingly, the reference in subsection (1) of that section to the requirement to be imposed by the notice is to be read as a reference to the requirement to be imposed by the variation).”

Page 70, line 3, at end insert –

“(9A) Section (*Approval of retention notices following review under section 86*) applies in relation to a decision under section 86(10) to vary or confirm a variation as it applies in relation to a decision to vary or confirm a retention notice (and, accordingly, the reference in subsection (1) of that section to the requirement to be imposed by the notice as varied or confirmed is to be read as a reference to the requirement to be imposed by the variation as varied or confirmed).”

Clause 91

EARL HOWE

Page 71, line 14, at end insert –

“() for section 83(3A) there were substituted –

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

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

Clause 91 - continued

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

Clause 104

EARL HOWE

Page 81, line 28, at end insert –

“and section 103(5) does not apply in relation to the refusal to approve the decision.”

Clause 107

EARL HOWE

Page 83, line 28, leave out “and (3)” and insert “to (3A)”

Page 83, line 40, at end insert –

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

Page 84, line 6, at end insert –

“(3A) But the warrant may not be issued if it is considered necessary only as mentioned in section 97(5)(c).”

Page 84, line 6, at end insert –

“() For the purposes of subsection (3)(a), there cannot be exceptional and compelling circumstances that make it necessary to authorise or require interference with equipment for the purpose of obtaining, or the selection for examination of, items subject to legal privilege unless –

- (a) the public interest in obtaining the information that would be obtained by the warrant outweighs the public interest in the confidentiality of items subject to legal privilege,
- (b) there are no other means by which the information may reasonably be obtained, and
- (c) in the case of a warrant considered necessary for the purposes of preventing or detecting serious crime or as mentioned in section 101(3)(a), obtaining the information is necessary for the purpose of preventing death or significant injury.”

Page 84, line 11, leave out “and (3)” and insert “to (3A)”

Page 84, line 25, at end insert –

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

- (a) an application is made for a warrant under this Part,
- (b) the purpose, or one of the purposes, of the warrant is –

Clause 107 - continued

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

After Clause 107

EARL HOWE

Insert the following new Clause—

“Confidential journalistic material

- (1) This section applies if an application is made for a warrant under this Part and the purpose, or one of the purposes, of the warrant—

After Clause 107 - continued

- (a) in the case of a targeted equipment interference warrant, to authorise or require interference with equipment for the purpose of obtaining communications or other items of information which the applicant for the warrant believes will be communications or other items of information containing confidential journalistic material, or
 - (b) in the case of a targeted examination warrant, to authorise the selection for examination of journalistic material which the applicant for the warrant believes is confidential journalistic material.
- (2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is –
- (a) in the case of a targeted equipment interference warrant, to authorise or require interference with equipment for the purpose of obtaining communications or other items of information which the applicant for the warrant believes will be communications or other items of information containing confidential journalistic material, or
 - (b) in the case of a targeted examination warrant, to authorise the selection for examination of journalistic material which the applicant for the warrant believes is confidential journalistic material.
- (3) The person to whom the application is made may issue the warrant only if the person considers that the arrangements made for the purposes of section 122 or (as the case may be) section 177 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of communications or other items of information containing confidential journalistic material.
- (4) For the meanings of “journalistic material” and “confidential journalistic material”, see section (*General definitions: “journalistic material” etc.*).

Insert the following new Clause –

“Sources of journalistic information

- (1) This section applies if an application is made for a warrant under this Part and the purpose, or one of the purposes, of the warrant is to identify or confirm a source of journalistic information.
- (For the meaning of “source of journalistic information”, see section 239(1).)
- (2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is to identify or confirm a source of journalistic information.
- (3) The person to whom the application is made may issue the warrant only if the person considers that the arrangements made for the purposes of section 122 or (as the case may be) section 177 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of communications or other items of information that identify sources of journalistic information.”

Clause 110

EARL HOWE

Page 88, line 23, leave out from “106” to “apply” in line 24 and insert “to (*Sources of journalistic information*) (additional safeguards)”

Clause 112

EARL HOWE

Page 89, line 39, leave out “sections 106 and 107” and insert “any of sections 106 to (*Sources of journalistic information*)”

Clause 113

EARL HOWE

Page 90, line 25, leave out from “106” to “apply” in line 26 and insert “to (*Sources of journalistic information*) (additional safeguards)”

Page 90, line 33, after “107” insert “, (*Confidential journalistic material*) or (*Sources of journalistic information*)”

Page 90, line 44, leave out “section 106 or 107” and insert “any of sections 106 to (*Sources of journalistic information*)”

Page 91, line 7, leave out “section 106 or 107” and insert “any of sections 106 to (*Sources of journalistic information*)”

Clause 114

EARL HOWE

Page 91, line 28, leave out “section 106 or 107” and insert “any of sections 106 to (*Sources of journalistic information*)”

Clause 115

EARL HOWE

Page 91, line 37, after “107” insert “, (*Confidential journalistic material*) or (*Sources of journalistic information*)”

Page 92, line 13, leave out “fifth” and insert “third”

Page 92, line 31, at end insert—

“and, in a case falling within subsection (2) above, section 103(5) does not apply in relation to the refusal to approve the decision.”

Clause 116

EARL HOWE

Page 94, line 3, leave out from “106” to “apply” in line 4 and insert “to (*Sources of journalistic information*) (additional safeguards)”

Clause 117

EARL HOWE

Page 94, line 32, leave out “fifth” and insert “third”

Page 94, line 42, at end insert –

“and section 103(5) does not apply in relation to the refusal to approve the decision.”

Clause 122

EARL HOWE

Page 99, line 21, at end insert –

“() Where –

- (a) material obtained under a targeted equipment interference warrant is retained, following its examination, for purposes other than the destruction of the material, and
- (b) it is material that contains confidential journalistic material or identifies a source of journalistic material,

the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.”

Page 99, line 22, leave out subsection (8)

After Clause 123

EARL HOWE

Insert the following new Clause –

“Additional safeguards for items subject to legal privilege

- (1) This section applies where an item subject to legal privilege is retained for purposes other than the destruction of the item following its examination under a warrant issued under this Part.
- (2) The person to whom the warrant is addressed must inform the Investigatory Powers Commissioner of the retention of the item as soon as is reasonably practicable.
- (3) The Investigatory Powers Commissioner may –
 - (a) direct that the item is destroyed, or
 - (b) impose conditions as to the disclosure or otherwise making available of that item.
- (4) The Investigatory Powers Commissioner –

After Clause 123 - continued

- (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (3), and
 - (b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).
- (5) Each of the following is an “affected party” for the purposes of subsection (4) –
- (a) the issuing authority (within the meaning given by section 122(11));
 - (b) the person to whom the warrant is or was addressed.”

Clause 125

EARL HOWE

Page 101, line 38, leave out “a view to furthering any” and insert “the intention of furthering a”

Page 101, line 44, leave out sub-paragraph (ii) and insert –

“(ii) consists of statistical information of a description specified in the regulations;”

Clause 127

EARL HOWE

Page 103, line 14, at end insert –

“section (*General definitions: “journalistic material” etc.*) (general definitions: “journalistic material” etc.),”

Clause 137

EARL HOWE

Page 110, line 4, leave out subsection (6)

After Clause 137

EARL HOWE

Insert the following new Clause –

“Approval of major modifications by Judicial Commissioners

- (1) In deciding whether to approve a decision to make a major modification of a bulk interception warrant, a Judicial Commissioner must review the Secretary of State’s conclusions as to whether the modification is necessary on any of the grounds on which the Secretary of State considers the warrant to be necessary.
- (2) In doing so, the Judicial Commissioner must –
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and

After Clause 137 - continued

- (b) consider the matter referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
- (3) Where a Judicial Commissioner refuses to approve a decision to make a major modification under section 137, the Judicial Commissioner must give the Secretary of State written reasons for the refusal.
- (4) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a decision to make a major modification under section 137, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to make the modification.”

Clause 138

EARL HOWE

Page 111, line 6, leave out “fifth” and insert “third”

Page 111, line 15, at end insert –

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

Clause 141

EARL HOWE

Page 113, line 41, after “(5)” insert “and section 143”

Clause 142

EARL HOWE

Page 114, line 21, after “(5)” insert “and section 143”

Clause 144

EARL HOWE

Page 116, line 26, at end insert –

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

Page 116, line 34, at end insert –

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

Clause 144 - continued

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

Page 116, line 34, at end insert –

“(3A) Subsection (3B) applies if, in a case where intercepted content obtained under a bulk interception warrant is to be selected for examination –

- (a) the selection of the intercepted content for examination meets any of the selection conditions in section 143(3)(a) to (c),
 - (b) the purpose, or one of the purposes, of using the criteria to be used for the selection of the intercepted content for examination (“the relevant criteria”) is to identify communications that, if they were not made with the intention of furthering a criminal purpose, would be items subject to legal privilege, and
 - (c) the person to whom the warrant is addressed considers that the communications (“the targeted communications”) are likely to be communications made with the intention of furthering a criminal purpose.
- (3B) The intercepted content may be selected for examination using the relevant criteria only if a senior official acting on behalf of the Secretary of State has approved the use of those criteria.
- (3C) A senior official may give an approval under subsection (3B) only if the official considers that the targeted communications are likely to be communications made with the intention of furthering a criminal purpose.”

Page 116, line 36, after “examination,” insert “for purposes other than the destruction of the item,”

Page 116, line 40, at end insert –

“(4A) The Investigatory Powers Commissioner may –

- (a) direct that the item is destroyed, or
 - (b) impose conditions as to the disclosure or otherwise making available of that item.
- (4B) The Investigatory Powers Commissioner –
- (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (4A), and
 - (b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).

Clause 144 - continued

- (4C) Each of the following is an “affected party” for the purposes of subsection (4B)–
- (a) the Secretary of State;
 - (b) the person to whom the warrant is or was addressed.”

After Clause 144

EARL HOWE

Insert the following new Clause–

“Additional safeguard for confidential journalistic material

Where–

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

(For provision about the grounds for retaining material obtained under a warrant, see section 141.)”

Clause 146

EARL HOWE

Page 117, line 21, at end insert–

“section (*General definitions: “journalistic material” etc.*) (general definitions: “journalistic material” etc.),”

Clause 153

EARL HOWE

Page 122, line 17, leave out subsection (6)

After Clause 153

EARL HOWE

Insert the following new Clause–

“Approval of major modifications by Judicial Commissioners

- (1) In deciding whether to approve a decision to make a major modification of a bulk acquisition warrant, a Judicial Commissioner must review the Secretary of State’s conclusions as to whether the modification is necessary on any of the grounds on which the Secretary of State considers the warrant to be necessary.
- (2) In doing so, the Judicial Commissioner must–
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and

After Clause 153 - continued

- (b) consider the matter referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
- (3) Where a Judicial Commissioner refuses to approve a decision to make a major modification under section 153, the Judicial Commissioner must give the Secretary of State written reasons for the refusal.
- (4) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a decision to make a major modification under section 153, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to make the modification.”

Clause 154

EARL HOWE

Page 123, line 15, leave out “fifth” and insert “third”

Page 123, line 24, at end insert –

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

Clause 159

EARL HOWE

Page 127, line 10, after “(5)” insert “and section 160”

Page 127, line 18, after “(5)” insert “and section 160”

Clause 167

EARL HOWE

Page 132, line 37, leave out “(unless already cancelled) ceases to have effect” and insert “–

- (a) ceases to have effect (unless already cancelled), and
- (b) may not be renewed;

and section 166(4) does not apply in relation to the refusal to approve the decision.”

Clause 173

EARL HOWE

Page 137, line 10, leave out subsection (7)

After Clause 173

EARL HOWE

Insert the following new Clause—

“Approval of major modifications by Judicial Commissioners

- (1) In deciding whether to approve a decision to make a major modification of a bulk equipment interference warrant, a Judicial Commissioner must review the Secretary of State’s conclusions as to the following matters—
 - (a) whether the modification is necessary on any of the grounds on which the Secretary of State considers the warrant to be necessary, and
 - (b) in the case of a major modification adding or varying any description of conduct authorised by the warrant, whether the conduct authorised by the modification is proportionate to what is sought to be achieved by that conduct.
- (2) In doing so, the Judicial Commissioner must—
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and
 - (b) consider the matters referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
- (3) Where a Judicial Commissioner refuses to approve a decision to make a major modification under section 173, the Judicial Commissioner must give the Secretary of State written reasons for the refusal.
- (4) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a decision to make a major modification under section 173, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to make the modification.”

Clause 174

EARL HOWE

Page 138, line 13, leave out “fifth” and insert “third”

Page 138, line 22, at end insert—

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

Clause 177

EARL HOWE

Page 141, line 4, after “(5)” insert “and section 179”

Clause 178

EARL HOWE

Page 141, line 28, after “(5)” insert “and section 179”

Clause 180

EARL HOWE

Page 143, line 29, at end insert –

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

Page 143, line 37, at end insert –

- “() For the purposes of subsection (3)(b), there cannot be exceptional and compelling circumstances that make it necessary to authorise the use of the relevant criteria unless –
- (a) the public interest in obtaining the information that would be obtained by the selection of the material for examination outweighs the public interest in the confidentiality of items subject to legal privilege,
 - (b) there are no other means by which the information may reasonably be obtained, and
 - (c) obtaining the information is necessary in the interests of national security or for the purpose of preventing death or significant injury.”

Page 143, line 37, at end insert –

- “(3A) Subsection (3B) applies if, in a case where protected material obtained under a bulk equipment interference warrant is to be selected for examination –
- (a) the selection of the material for examination meets any of the selection conditions in section 179(3)(a) to (c),
 - (b) the purpose, or one of the purposes, of using the criteria to be used for the selection of the material for examination (“the relevant criteria”) is to identify communications or other items of information that, if they were not communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose, would be items subject to legal privilege, and
 - (c) the person to whom the warrant is addressed considers that the communications or other items of information (“the targeted communications or other items of information”) are likely to be communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose.
- (3B) The material may be selected for examination using the relevant criteria only if a senior official acting on behalf of the Secretary of State has approved the use of those criteria.

Clause 180 - continued

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

Page 143, line 38, after “retained” insert “, for purposes other than the destruction of the item,”

Page 143, line 43, at end insert –

- “(4A) The Investigatory Powers Commissioner may –
- (a) direct that the item is destroyed, or
 - (b) impose conditions as to the disclosure or otherwise making available of that item.
- (4B) The Investigatory Powers Commissioner –
- (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (4A), and
 - (b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).
- (4C) Each of the following is an “affected party” for the purposes of subsection (4B)–
- (a) the Secretary of State;
 - (b) the person to whom the warrant is or was addressed.”

After Clause 180

EARL HOWE

Insert the following new Clause –

“Additional safeguard for confidential journalistic material

Where –

- (a) material obtained under a bulk equipment interference warrant is retained, following its examination, for purposes other than the destruction of the material, and
- (b) it is material containing confidential journalistic material,

the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.

(For provision about the grounds for retaining material obtained under a bulk equipment interference warrant, see section 177.)”

Clause 182

EARL HOWE

Page 144, line 28, at end insert –

“section (*General definitions: “journalistic material” etc.*) (general definitions: “journalistic material” etc.),”

Clause 186

EARL HOWE

Page 145, line 36, at end insert –

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

After Clause 186

EARL HOWE

Insert the following new Clause –

“Meaning of “protected data”

- (1) In this Part, “protected data” means any data contained in a bulk personal dataset other than data which is one or more of the following –
 - (a) systems data;
 - (b) data which falls within subsection (2);
 - (c) data which is not private information.
- (2) The data falling within this subsection is identifying data which –
 - (a) is contained in the bulk personal dataset,
 - (b) is capable of being logically separated from the bulk personal dataset, and
 - (c) if it were so separated, would not reveal anything of what might reasonably be considered to be the meaning (if any) of any of the data which would remain in the bulk personal dataset or of the bulk personal dataset itself, disregarding any meaning arising from the existence of that data or (as the case may be) the existence of the bulk personal dataset or from any data relating to that fact.
- (3) For the meaning of “systems data” see section 239(4).
- (4) In this section, “private information” includes information relating to a person’s private or family life.”

Clause 187

EARL HOWE

Page 146, line 21, leave out from “service” to end of line 23 and insert “is seeking authorisation for the examination of bulk personal datasets of that class, the operational purposes which it is proposing should be specified in the warrant (see section 194)”

Clause 188

EARL HOWE

Page 147, line 13, leave out “wishes” and insert “is seeking authorisation”

Page 147, line 18, leave out “wishes” and insert “is seeking authorisation”

Page 147, line 22, leave out “186(1)” and insert “186(A1), (1)”

Page 147, line 30, leave out from “service” to end of line 32 and insert “is seeking authorisation for the examination of the bulk personal dataset, the operational purposes which it is proposing should be specified in the warrant (see section 194)”

Page 147, line 34, leave out “186(1)” and insert “186(A1), (1)”

After Clause 189

EARL HOWE

Insert the following new Clause –

“Protected data: power to impose conditions

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

Clause 191

EARL HOWE

Page 150, line 19, at end insert –

“and section 190(4) does not apply in relation to the refusal to approve the decision.”

Clause 194

EARL HOWE

Page 152, line 9, at end insert “, and

(d) where the Secretary of State has imposed conditions under section (*Protected data: power to impose conditions*), specify those conditions.”

Clause 196

EARL HOWE

Page 154, line 3, at end insert –

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

Clause 197

EARL HOWE

Page 154, line 37, leave out subsection (6)

After Clause 197

EARL HOWE

Insert the following new Clause –

“Approval of major modifications by Judicial Commissioners

- (1) In deciding whether to approve a decision to make a major modification of a class BPD warrant or a specific BPD warrant, a Judicial Commissioner must review the Secretary of State’s conclusions as to whether the modification is necessary on any of the grounds on which the Secretary of State considers the warrant to be necessary.
- (2) In doing so, the Judicial Commissioner must –
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and
 - (b) consider the matter referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
- (3) Where a Judicial Commissioner refuses to approve a decision to make a major modification under section 197, the Judicial Commissioner must give the Secretary of State written reasons for the refusal.
- (4) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a decision to make a major modification under section 197, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to make the modification.”

Clause 198

EARL HOWE

Page 155, line 33, leave out “fifth” and insert “third”

Page 155, line 42, at end insert –

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

Clause 200

EARL HOWE

Page 157, line 7, at end insert –

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

Clause 202

EARL HOWE

Page 159, line 9, after “that” insert “arrangements are in force for securing that”

Page 159, line 18, at end insert –

- “() The Secretary of State must also ensure, in relation to every specific BPD warrant which specifies conditions imposed under section (*Protected data: power to impose conditions*), that arrangements are in force for securing that any selection for examination of protected data on the basis of criteria which are referable to an individual known to be in the British Islands at the time of the selection is in accordance with the conditions specified in the warrant.”

Page 159, line 19, leave out “subsection (2)” and insert “this section”

After Clause 202

EARL HOWE

Insert the following new Clause –

“Additional safeguards for items subject to legal privilege: examination

- (1) Subsections (2) and (3) apply if, in a case where protected data retained in reliance on a specific BPD warrant is to be selected for examination –
 - (a) the purpose, or one of the purposes, of using the criteria to be used for the selection of the data for examination (“the relevant criteria”) is to identify any items subject to legal privilege, or
 - (b) the use of the relevant criteria is likely to identify such items.
- (2) If the relevant criteria are referable to an individual known to be in the British Islands at the time of the selection, the data may be selected for examination using the relevant criteria only if the Secretary of State has approved the use of those criteria.
- (3) In any other case, the data may be selected for examination using the relevant criteria only if a senior official acting on behalf of the Secretary of State has approved the use of those criteria.
- (4) The Secretary of State may give approval for the purposes of subsection (2) only with the approval of a Judicial Commissioner.

After Clause 202 - continued

- (5) Approval may be given under subsection (2) or (3) only if—
 - (a) the Secretary of State or (as the case may be) the senior official considers that the arrangements mentioned in section 188(6)(d) include specific arrangements in respect of items subject to legal privilege, and
 - (b) where subsection (1)(a) applies, the Secretary of State or (as the case may be) the senior official considers that there are exceptional and compelling circumstances that make it necessary to authorise the use of the relevant criteria.
- (6) In deciding whether to give an approval under subsection (2) or (3) in a case where subsection (1)(a) applies, the Secretary of State or (as the case may be) the senior official must have regard to the public interest in the confidentiality of items subject to legal privilege.
- (7) For the purposes of subsection (5)(b), there cannot be exceptional and compelling circumstances that make it necessary to authorise the use of the relevant criteria unless—
 - (a) the public interest in obtaining the information that would be obtained by the selection of the data for examination outweighs the public interest in the confidentiality of items subject to legal privilege,
 - (b) there are no other means by which the information may reasonably be obtained, and
 - (c) obtaining the information is necessary in the interests of national security or for the purpose of preventing death or significant injury.
- (8) In deciding whether to give approval for the purposes of subsection (4), the Judicial Commissioner must—
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and
 - (b) consider the matter with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
- (9) Subsections (10) and (11) apply if, in a case where protected data retained in reliance on a specific BPD warrant is to be selected for examination—
 - (a) the purpose, or one of the purposes, of using the criteria to be used for the selection of the data for examination (“the relevant criteria”) is to identify data that, if the data or any underlying material were not created or held with the intention of furthering a criminal purpose, would be an item subject to legal privilege, and
 - (b) the person to whom the warrant is addressed considers that the data (“the targeted data”) or any underlying material is likely to be data or underlying material created or held with the intention of furthering a criminal purpose.
- (10) If the relevant criteria are referable to an individual known to be in the British Islands at the time of the selection, the data may be selected for examination using the relevant criteria only if the Secretary of State has approved the use of those criteria.

After Clause 202 - continued

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

Insert the following new Clause –

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

- (1) Where an item subject to legal privilege is retained following its examination in reliance on a specific BPD warrant, for purposes other than the destruction of the item, the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.
- (2) The Investigatory Powers Commissioner may –
 - (a) direct that the item is destroyed, or
 - (b) impose conditions as to the disclosure or otherwise making available of that item.
- (3) The Investigatory Powers Commissioner –
 - (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (2), and
 - (b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).
- (4) Each of the following is an “affected party” for the purposes of subsection (3) –
 - (a) the Secretary of State;
 - (b) the person to whom the warrant is or was addressed.”

Clause 203

EARL HOWE

Page 160, line 11, at end insert –

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

Clause 205

EARL HOWE

Page 161, line 37, leave out paragraph (b)

Clause 207

EARL HOWE

Page 164, line 23, at end insert “or the Investigatory Powers Commissioner for Northern Ireland.”

Page 165, line 7, after “tribunal” insert “(but does not include a Judicial Commissioner)”

Page 165, leave out lines 14 and 15

Clause 210

EARL HOWE

Page 167, line 21, at end insert –

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

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

(3B) In subsection (3A) –

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

Page 167, line 22, leave out “Subsection (3) does” and insert “Subsections (3) and (3A) do”

Clause 211

EARL HOWE

Page 168, line 35, after second “Commissioner” insert “or the Investigatory Powers Commissioner for Northern Ireland”

Clause 212

EARL HOWE

Page 169, line 33, at end insert –

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

Clause 212 - continued

Page 169, line 36, at end insert –

“() information about the work of the Technology Advisory Panel,”

Page 170, line 25, leave out from “Ministers” to end of line 30 and insert “and the Scottish Ministers must lay the copy report and statement before the Scottish Parliament.”

Clause 213

EARL HOWE

Page 171, line 10, leave out “member of” and insert “person who holds, or has held, an office, rank or position with”

Clause 216

EARL HOWE

Page 172, line 2, after “facilities” insert “and services”

Clause 218

EARL HOWE

Page 172, line 19, leave out paragraph (c)

Page 172, line 29, leave out paragraph (c)

Page 172, line 33, leave out paragraph (e)

Page 172, line 37, at end insert –

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

(2B) The power to make regulations under subsection (2A) (including that power as extended by section 242(1)(c)) may, in particular, be exercised by modifying any provision made by or under an enactment (including this Act).

(2C) Regulations made by virtue of subsection (2B) may, in particular, repeal –

(a) section 61 of the Regulation of Investigatory Powers Act 2000 (the Investigatory Powers Commissioner for Northern Ireland), and

(b) the words “or the Investigatory Powers Commissioner for Northern Ireland” in section 207(4)(f) of this Act.”

Page 172, line 38, at end insert –

““the Chief Surveillance Commissioner” means the Chief Commissioner appointed under section 91(1)(a) of the Police Act 1997,”

Clause 218 - continued

Page 172, line 44, at end insert –

““the other Surveillance Commissioners” means –

the Commissioners appointed under section 91(1)(b) of the Police Act 1997, and

the Assistant Surveillance Commissioners appointed under section 63(1) of the Regulation of Investigatory Powers Act 2000,”

Page 173, line 2, leave out “that Act” and insert “the Regulation of Investigatory Powers (Scotland) Act 2000”

Clause 220

EARL HOWE

Page 173, leave out line 23

Page 173, line 23, at end insert –

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

Clause 221

EARL HOWE

Page 177, line 12, at end insert “or the Investigatory Powers Commissioner for Northern Ireland.”

Clause 223

EARL HOWE

Page 177, line 27, after “Part 4” insert “, national security notices under section 228”

After Clause 223

EARL HOWE

Insert the following new Clause –

“Technology Advisory Panel

(1) The Investigatory Powers Commissioner must ensure that there is a Technology Advisory Panel to provide advice to the Investigatory Powers Commissioner, the Secretary of State and the Scottish Ministers about –

- (a) the impact of changing technology on the exercise of investigatory powers whose exercise is subject to review by the Commissioner, and
- (b) the availability and development of techniques to use such powers while minimising interference with privacy.

After Clause 223 - continued

- (2) The Technology Advisory Panel must provide advice to the Investigatory Powers Commissioner about such matters falling within subsection (1)(a) or (b) as the Commissioner may direct.
- (3) Subject to this, the Panel may provide advice to the Investigatory Powers Commissioner about such matters falling within subsection (1)(a) or (b) as it considers appropriate (whether or not requested to do so).
- (4) The Panel may provide advice to the Secretary of State or the Scottish Ministers about such matters falling within subsection (1)(a) or (b) as it considers appropriate (whether or not requested to do so) but such advice to the Scottish Ministers may only relate to matters for which the Scottish Ministers are responsible.
- (5) The Panel must, as soon as reasonably practicable after the end of each calendar year, make a report to the Investigatory Powers Commissioner about the carrying out of the functions of the Panel.
- (6) The Panel must, at the same time, send a copy of the report to the Secretary of State and (so far as relating to matters for which the Scottish Ministers are responsible) the Scottish Ministers.”

Insert the following new Clause—

“Members of the Panel

- (1) The Investigatory Powers Commissioner must appoint such number of persons as members of the Technology Advisory Panel as the Commissioner considers necessary for the carrying out of the functions of the Panel.
- (2) Subject as follows, each member of the Panel holds and vacates office in accordance with the member’s terms and conditions of appointment.
- (3) A member of the Panel must not act in a way which the member considers to be contrary to the public interest or prejudicial to—
 - (a) national security,
 - (b) the prevention or detection of serious crime, or
 - (c) the economic well-being of the United Kingdom.
- (4) A member of the Panel must, in particular, ensure that the member does not—
 - (a) jeopardise the success of an intelligence or security operation or a law enforcement operation,
 - (b) compromise the safety or security of those involved, or
 - (c) unduly impede the operational effectiveness of an intelligence service, a police force, a government department or Her Majesty’s forces.
- (5) Section 213(2) and (7) (information powers) apply to a member of the Panel as they apply to a Judicial Commissioner.”

Clause 228

EARL HOWE

Page 180, line 18, at end insert—

- “() In a case where—

Clause 228 - continued

- (a) a national security notice would require the taking of any steps, and
- (b) in the absence of such a notice requiring the taking of those steps, the taking of those steps would be lawful only if a warrant or authorisation under a relevant enactment had been obtained,

the notice may require the taking of those steps only if such a warrant or authorisation has been obtained.”

Page 180, line 19, leave out from “But” to “to” in line 20 and insert “the Secretary of State may not give any telecommunications operator a national security notice the main purpose of which is to require the operator”

Page 180, line 20, leave out “is required under any of the following enactments” and insert “under a relevant enactment is required.

- () In this section “relevant enactment” means”

Page 180, line 29, at end insert –

- “() Conduct required by a national security notice is to be treated as lawful for all purposes (to the extent that it would not otherwise be so treated).”

Clause 232

EARL HOWE

Page 184, line 2, leave out “only if” and insert “given to a person only if –

- (a) the Secretary of State considers that the variation is necessary in the interests of national security,
- (b) ”

Page 184, line 4, at end insert “, and

- (c) if the variation would impose further requirements on the person, the decision to vary the notice has been approved by a Judicial Commissioner (but see subsection (4B)).

(4A) The Secretary of State may vary a technical capability notice given to a person only if –

- (a) the Secretary of State considers that the variation is necessary for securing that the person has the capability to provide any assistance which the person may be required to provide in relation to any relevant authorisation (within the meaning of section 229,
- (b) the Secretary of State considers that the conduct required by the notice as varied is proportionate to what is sought to be achieved by that conduct, and
- (c) if the variation would impose further requirements on the person, the decision to vary the notice has been approved by a Judicial Commissioner (but see subsection (4B)).

(4B) The condition in subsection (4)(c) or (as the case may be) subsection (4A)(c) does not apply in the case of a variation to which section 233(10) applies.”

Clause 232 - continued

Page 184, line 7, at end insert –

- “() Section 230 (approval of notices by Judicial Commissioners) applies in relation to a decision to vary a relevant notice (other than a decision to which section 233(10) applies) as it applies in relation to a decision to give a relevant notice, but as if –
- (a) the reference in section 230(2)(a) to the notice were to the variation, and
 - (b) the reference in section 230(2)(b) to the notice were to the notice as varied.”

Clause 233

EARL HOWE

Page 185, line 13, after “section” insert “or section 234”

Clause 238

EARL HOWE

Page 189, line 31, after “be” insert “or is capable of being”

Clause 239

EARL HOWE

Page 191, leave out lines 46 and 47

Page 191, line 49, at end insert –

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

Page 192, line 16, at end insert –

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

Page 192, line 19, at end insert –

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

Page 192, line 28, at end insert –

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

Page 192, line 35, after “identify” insert “, or assist in identifying,”

Clause 239 - continued

Page 192, line 36, after “identify” insert “, or assist in identifying,”

Page 192, line 39, after “identify” insert “, or assist in identifying,”

After Clause 239

EARL HOWE

Insert the following new Clause—

“General definitions: “journalistic material” etc.

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

Journalistic material

- (2) “Journalistic material” means material created or acquired for the purposes of journalism.
- (3) For the purposes of this section, where—
- (a) a person (“R”) receives material from another person (“S”), and
 - (b) S intends R to use the material for the purposes of journalism,
- R is to be taken to have acquired it for those purposes.

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

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

Confidential journalistic material

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

After Clause 239 - continued

- (b) the person holds it subject to a restriction on disclosure or an obligation of secrecy contained in an enactment.”

Clause 240

EARL HOWE

Page 193, line 27, at end insert –

“Confidential journalistic material	Section (General definitions: “journalistic material” etc.)(6) and (7)”
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Page 194, line 20, at end insert –

“Journalistic material	Section (General definitions: “journalistic material” etc.)(2) to (5)”
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Page 194, leave out line 27

Page 194, line 33, at end insert –

“Premises	Section 239 (1)”
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Page 195, line 9, leave out “74(8)” and insert “239(1)”

Page 195, line 11, at end insert –

“Statutory (in relation to any function)	Section 239(1)”
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Page 195, line 14, at end insert –

“Technology Advisory Panel	Section 239(1)”
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Clause 240 - continued**Clause 242**

EARL HOWE

Page 196, line 20, at end insert –

“() section 218(2A),”

Clause 246

EARL HOWE

Page 199, line 2, at end insert –

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

Clause 247

EARL HOWE

Page 199, line 14, after “revocation” insert “made by this Act”

Page 199, line 14, after “extent” insert “within the United Kingdom”

Page 199, line 17, after second “to” insert “the Isle of Man or”

Page 199, line 18, at end insert –

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

Schedule 3

EARL HOWE

Page 218, line 25, leave out from “if” to end of line 27 and insert “restrictions imposed under section 19 of that Act are in force prohibiting attendance at the proceedings by any person who is not –

- (a) a member of the panel of the inquiry,
- (b) a person appointed as legal adviser to the inquiry,
- (c) a person who is a relevant party to the proceedings,
- (d) a person representing such a person for the purposes of the proceedings, or
- (e) a person performing functions necessary for the proper functioning of the proceedings.”

Schedule 3 - continued

Page 218, line 29, at end insert –

- “() In this paragraph “relevant party”, in relation to any proceedings of an inquiry, means –
 - (a) any person making a disclosure to the panel of the inquiry, or to a person appointed as legal adviser to the inquiry, in accordance with paragraph 22(1);
 - (b) any person giving evidence to the inquiry in circumstances where, in the absence of sub-paragraph (1), the prohibition imposed by section 53(1) would be breached;
 - (c) any person whose conduct is the interception-related conduct (within the meaning of section 53) to which the disclosure or evidence relates (whether or not that conduct has in fact occurred);
 - (d) any other person to whom the subject-matter of the disclosure or evidence has been lawfully disclosed in accordance with section 55.
- () Any reference in this paragraph to a person appointed as legal adviser to an inquiry is to be read in accordance with paragraph 22(3).”

Schedule 4

EARL HOWE

Page 222, line 16, leave out “and” and insert “or”

Page 222, line 19, at end insert –

“Department for Communities in Northern Ireland	Deputy Principal	All	(b)”
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Page 223, line 10, leave out “Investigations” and insert “Operations”

Schedule 7

EARL HOWE

Page 231, line 12, leave out second “or”

Page 231, line 13, at end insert –

“() the Technology Advisory Panel,”

Schedule 7 - continued

Page 231, line 23, at end insert –

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

Schedule 8

EARL HOWE

Page 242, line 7, at end insert –

- “() In sub-paragraph (1) “enactment” does not include any primary legislation passed or made after the end of the Session in which this Act is passed.”

Schedule 9

EARL HOWE

Page 242, line 26, leave out “section 86(1) to (11)” and insert “sections 84(1)(b), (3A) and (7)(e), (*Approval of retention notices by Judicial Commissioners*), 86(1) to (11), (*Approval of retention notices following review under section 86*), 89(4)(b), (5A), (8A) and (9A) and 91(2)(de)”

Page 243, line 3, at end insert –

- “but this is without prejudice to the continued operation of section 90(2) to (5) in relation to the notice.”

Page 243, line 18, at end insert –

- “(1) Sub-paragraph (2) applies if any power to give, vary or confirm a retention notice under section 84 of this Act (excluding any power to vary a notice which has effect as such a notice by virtue of paragraph 3(1)) is brought into force without any requirement for approval by a Judicial Commissioner of the decision to give, vary or (as the case may be) confirm the notice.
- (2) The notice as given, varied or confirmed ceases to have effect (so far as not previously revoked) at the end of the period of three months beginning with the day on which the requirement for approval comes into force.”

Page 243, line 42, after “operator” insert “(within the meaning given by section 27(3) of the Postal Services Act 2011)”

Schedule 10

EARL HOWE

Page 250, line 17, at end insert –

“Security Service Act 1989

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

Page 250, line 28, at end insert –

“Intelligence Services Act 1994

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

Page 251, line 13, at end insert –

“Police Act 1997

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

Page 251, line 34, at end insert –

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

Page 252, line 37, leave out the words from “subsection (1)” to the end of line 38 and insert “–

- (a) for “23A” substitute “72 of the Investigatory Powers Act 2016”, and
- (b) for “or 32A” substitute “or section 32A of this Act”.

Page 253, line 34, at end insert –

“Regulation of Investigatory Powers Act 2000

59A The Regulation of Investigatory Powers Act 2000 is amended as follows.

59B In section 48 (interpretation of Part 2), in subsection (3)(c) –

- (a) omit the “or” at the end of sub-paragraph (i);
- (b) after sub-paragraph (ii) insert “; or

Schedule 10 - continued

- (iii) Part 5, or Chapter 3 of Part 6, of the Investigatory Powers Act 2016 (equipment interference).”
- 59(1) Paragraph 2 of Schedule 2 (persons having the appropriate permission where data obtained under warrant etc) is amended as follows.
- (2) In sub-paragraph (1) –
 - (a) omit the “or” at the end of paragraph (a);
 - (b) after paragraph (b) insert “; or
 - (c) a targeted equipment interference warrant issued under section 101 of the Investigatory Powers Act 2016 (powers of law enforcement chiefs to issue warrants to law enforcement officers).”
 - (3) In sub-paragraph (5), at the end insert “or under a targeted equipment interference warrant issued under section 101 of the Investigatory Powers Act 2016.”
 - (4) In sub-paragraph (6) –
 - (a) omit the “and” at the end of paragraph (b);
 - (b) after paragraph (c) insert “; and
 - (d) in relation to protected information obtained under a warrant issued under section 101 of the Investigatory Powers Act 2016, means the person who issued the warrant or, if that person was an appropriate delegate in relation to a law enforcement chief, either that person or the law enforcement chief.”
 - (5) After sub-paragraph (6) insert –

“(6A) In sub-paragraph (6)(d), the references to a law enforcement chief and to an appropriate delegate in relation to a law enforcement chief are to be read in accordance with section 101(5) of the Investigatory Powers Act 2016.””

Page 254, line 8, leave out “, or Chapter 3 of Part 6,”

Page 255, line 8, leave out from “dismissed)” to end of line 9 and insert “omit “under section 107(2),””

Page 255, line 31, at end insert –

- “ (1) Section 64 (delegation of Commissioners’ functions) is amended as follows.
- (2) In the heading for “Commissioners’ functions” substitute “functions of the Investigatory Powers Commissioner for Northern Ireland”.
 - (3) In subsection (1) –
 - (a) omit “or any provision of an Act of the Scottish Parliament”, and
 - (b) for “a relevant Commissioner” substitute “the Investigatory Powers Commissioner for Northern Ireland”.
 - (4) Omit subsection (2).”

Schedule 10 - *continued*

Page 255, line 36, after “substitute “” insert –

“(bza) the Investigatory Powers Commissioner for Northern Ireland
carrying out functions under this Act”

Page 258, line 17, at end insert –

“Anti-terrorism, Crime and Security Act | Section 116(3).”
2001

Page 260, line 14, leave out “and (3)”

Investigatory Powers Bill

AMENDMENTS
TO BE MOVED
ON REPORT

4 October 2016
