

Investigatory Powers Bill

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

The amendments have been marshalled in accordance with the Order of 10th October 2016, as follows –

Clauses 1 to 7	Clauses 81 to 93
Schedule 1	Clauses 205 to 219
Clauses 8 to 12	Schedule 7
Schedule 2	Clauses 220 to 223
Clauses 13 to 53	Clauses 128 to 204
Schedule 3	Clause 224
Clauses 54 to 57	Schedule 8
Clauses 94 to 101	Clauses 225 to 245
Schedule 6	Schedule 9
Clauses 102 to 127	Clause 246
Clauses 58 to 67	Schedule 10
Schedule 4	Clause 247
Clauses 68 to 80	Title.
Schedule 5	

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 58

EARL HOWE

- 96 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)”
- 97 Page 46, line 42, leave out paragraph (c)
- 98 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)”

Clause 58 - continued

99 Page 47, line 8, leave out sub-paragraph (ii)

100 Page 47, line 28, leave out “, (c)”

LORD PADDICK
BARONESS HAMWEE

100A★ Page 48, line 13, at end insert –

“() Communications data obtained for any of the purposes listed in subsection (1)(b)(ii) may not be used or disclosed other than for those purposes and must be destroyed as soon as possible after the data has been used for the purposes for which the data has been obtained.”

Clause 59

LORD ROSSER
BARONESS HAYTER OF KENTISH TOWN

100B Page 49, line 23, leave out “6” and insert “12”

Clause 64

LORD PADDICK
BARONESS HAMWEE

100C Leave out Clause 64

Clause 65

LORD PADDICK
BARONESS HAMWEE

100D Leave out Clause 65

Clause 66

LORD PADDICK
BARONESS HAMWEE

100E Leave out Clause 66

Schedule 4

EARL HOWE

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

Schedule 4 - continued

102 Page 222, line 19, at end insert –

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

Clause 71

EARL HOWE

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

105 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

106 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.”

After Clause 73

LORD LESTER OF HERNE HILL
LORD PANNICK
BARONESS HAMWEE

107 Insert the following new Clause –

“Commissioner approval for authorisations likely to relate to privileged communications

(1) Subsection (2) applies if –

(a) a designated senior officer has granted an authorisation in relation to the obtaining by a relevant public authority of communications data of a person who is or is likely to be a practising barrister, solicitor, advocate or legal executive, and

(b) the authorisation is not necessary because of an imminent threat to life.

(2) The authorisation is not to take effect until such time (if any) as a Judicial Commissioner has approved it.

After Clause 73 - continued

- (3) The relevant public authority for which the authorisation has been granted may apply to a Judicial Commissioner for approval of the authorisation.
- (4) The applicant is not required to give notice of the application to –
 - (a) any person to whom the authorisation relates, or
 - (b) that person’s legal representatives.
- (5) A Judicial Commissioner may approve the authorisation if, and only if, the Judicial Commissioner considers that –
 - (a) at the time of the grant, there were reasonable grounds for considering that the requirements of this Part were satisfied in relation to the authorisation, and
 - (b) at the time when the Judicial Commissioner is considering the matter, there are reasonable grounds for considering that the requirements of this Part would be satisfied if an equivalent authorisation were granted at that time.
- (6) In considering whether the position is as mentioned in subsection (5)(a) and (b), the Judicial Commissioner must, in particular have regard to –
 - (a) the public interest in individuals being able to consult legal representatives in confidence; and
 - (b) the need to ensure that any information which is subject to legal professional privilege is not obtained, used or disclosed in the absence of exceptional and compelling circumstances.
- (7) Where, on an application under this section, the Judicial Commissioner refuses to approve the grant of the authorisation, the Judicial Commissioner may quash the authorisation or impose restrictions on the use, retention or disclosure of the information.
- (8) Where subsection (1)(b) applies, the authorisation shall be referred to the Investigatory Powers Commissioner as soon as reasonably practicable who shall, applying the principles set out in subsection (6), consider whether to make an order restricting the further retention, use, disclosure or making available of the information.”

Clause 74

EARL HOWE

Clause 75

EARL HOWE

109 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

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

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

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

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

114 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

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

116 Page 66, line 6, after “if” insert “ –
(a) ”

117 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

LORD PADDICK
BARONESS HAMWEE

117A Page 66, line 9, at end insert –

“() A requirement shall not be considered necessary in the absence of a reasonable suspicion that a serious criminal offence has been, or is likely to be, committed.”

117B Page 66, line 18, at end insert –

“() A retention notice may not require a telecommunications operator to retain or disclose third party data unless the operator retains it for its own business purposes.

() In this section “third party data” means communications data processed by the operator for the purposes of routing communications within an electronic communications network.”

EARL HOWE

118 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.”

LORD PADDICK
BARONESS HAMWEE

118A Page 67, line 26, leave out “therefore includes, in particular,” and insert “does not include”

After Clause 85

EARL HOWE

119 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

120 Page 68, line 14, leave out “the Investigatory Powers” and insert “a Judicial”**121** 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

122 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).

After Clause 86 - continued

- (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

- 123** Page 69, line 26, after “unless” insert “—
(a) ”
- 124** 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.”
- 125** Page 69, line 34, at end insert—
“(5A) Subsection (4)(b) does not apply to a variation to which section 86(10A) applies.”
- 126** Page 69, line 38, after “84(3)” insert “, (3A)”
- 127** 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).”
- 128** 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).”

Clause 89 - continued

129 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

130 Page 71, line 14, at end insert—

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

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

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

131 [*Withdrawn*]

Clause 205LORD PADDICK
BARONESS HAMWEE

131A Page 161, line 11, at end insert—

“() There shall be a body corporate known as the Investigatory Powers Commission comprising—

- (a) the Investigatory Powers Commissioner;
- (b) Judicial Commissioners; and
- (c) staff to support the Commissioners.”

EARL HOWE

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

Clause 205 - continued

LORD ROSSER
BARONESS HAYTER OF KENTISH TOWN

- 132A★** Page 161, line 37, at end insert –
“() the First Minister in Wales”

EARL HOWE

- 133** Page 162, line 7, at end insert –
“(8A) Subsection (8) does not apply to the function of the Investigatory Powers Commissioner of making a recommendation under subsection (4)(e) or making an appointment under section (*Members of the Panel*)(1).
(8B) The delegation under subsection (8) to any extent of functions by the Investigatory Powers Commissioner does not prevent the exercise of the functions to that extent by that Commissioner.
(8C) Any function exercisable by a Judicial Commissioner or any description of Judicial Commissioners is exercisable by any of the Judicial Commissioners or (as the case may be) any of the Judicial Commissioners of that description.
(8D) Subsection (8C) does not apply to –
(a) any function conferred on the Investigatory Powers Commissioner by name (except so far as its exercise by any of the Judicial Commissioners or any description of Judicial Commissioners is permitted by a delegation under subsection (8)), or
(b) any function conferred on, or delegated under subsection (8) to, any other particular named Judicial Commissioner.”

Clause 207

EARL HOWE

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

LORD PADDICK
BARONESS HAMWEE

- 134A** Page 164, line 26, at end insert –
“() The Investigatory Powers Commissioner may publish material expressing views as to or recording legal interpretations of the provisions of this Act.”

EARL HOWE

- 135** Page 164, line 40, leave out from “to” to end of line 2 on page 165 and insert “any of the following functions of a Judicial Commissioner –
(a) deciding –
(i) whether to serve, vary or cancel a monetary penalty notice under section 7 or paragraph 16 of Schedule 1, a notice of intent under paragraph 4 of that Schedule or an information notice under Part 2 of that Schedule, or
(ii) the contents of any such notice,

Clause 207 - *continued*

- (b) deciding whether to approve the issue, modification or renewal of a warrant,
- (c) deciding whether to direct the destruction of material or how otherwise to deal with the situation where—
 - (i) a warrant issued, or modification made, for what was considered to be an urgent need is not approved, or
 - (ii) an item subject to legal privilege is retained, following its examination, for purposes other than the destruction of the item,
- (d) deciding whether to—
 - (i) approve the grant, modification or renewal of an authorisation, or
 - (ii) quash or cancel an authorisation or renewal,
- (e) deciding whether to approve—
 - (i) the giving or varying of a retention notice under Part 4 or a notice under section 228 or 229, or
 - (ii) the giving of a notice under section 86(10)(b) or 233(9)(b),
- (f) participating in a review under section 86 or 233,
- (g) deciding whether to approve an authorisation under section 200(3)(b),
- (h) deciding whether to give approval under section (*Additional safeguards for items subject to legal privilege: examination*)(4),
- (i) deciding whether to approve the giving or varying of a direction under section 203(3),
- (j) making a decision under section 209(1),
- (k) deciding whether to order the destruction of records under section 103 of the Police Act 1997, section 37 of the Regulation of Investigatory Powers Act 2000 or section 15 of the Regulation of Investigatory Powers (Scotland) Act 2000,
- (l) deciding whether to make an order under section 103(6) of the Police Act 1997 (order enabling the taking of action to retrieve anything left on property in pursuance of an authorisation),
- (m) deciding—
 - (i) an appeal against, or a review of, a decision by another Judicial Commissioner, and
 - (ii) any action to take as a result.”

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

137 Page 165, leave out lines 14 and 15

After Clause 208

LORD PADDICK
BARONESS HAMWEE

137A Insert the following new Clause—

“Notification by the Investigatory Powers Commissioner

- (1) The Investigatory Powers Commissioner shall notify the subject of a warrant (“P”) which is—
- (a) a targeted interception warrant issued under Part 2,
 - (b) a targeted examination warrant issued under Part 2,
 - (c) a targeted equipment interference warrant issued under Part 5, or
 - (d) a targeted examination warrant issued under Part 5,
- that P has been so subject, in accordance with this section.
- (2) Notification shall not be given if—
- (a) P is suspected of being involved in terrorism-related or other criminal activity,
 - (b) it might prejudice any continuing or anticipated investigation concerning P or any other person, or
 - (c) the Investigatory Powers Commissioner determines that it is in the interests of national security or the public interest in preventing or detecting serious crime that it is not given;

and in any event notification may be given only if the investigation to which the warrant relates has concluded and there is no suspicion that P is engaged in any unlawful activity.

- (3) The notification—
- (a) shall inform P of the provisions for the authorisation or warrant, but
 - (b) shall include no details of the methods used or any other matter which might hinder any future investigation into P or any other person, and
 - (c) shall be given in writing within 90 days after—
 - (i) the conclusion of the investigation (subject to subsection (2));
 - (ii) cancellation of the authorisation or warrant;
 - (iii) a determination that it may be given having regard to the matters referred to in subsection (2)(c).”

Clause 209

LORD PADDICK
BARONESS HAMWEE

137B Page 165, line 42, leave out “the Commissioner considers that”

137C Page 165, line 45, leave out paragraph (b)

137D Page 166, line 3, leave out “significant” and insert “or may cause”

137E Page 166, line 43, leave out paragraph (b)

Clause 209 - continued

- 137F** Page 166, line 46, at end insert “and include recommendations in reports made under section 212”

Clause 210

EARL HOWE

- 138** 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.”

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

Clause 211

EARL HOWE

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

Clause 212

EARL HOWE

- 141** 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,”

LORD JANVRIN

THE MARQUESS OF LOTHIAN

- 142** Page 169, line 33, at end insert –
- “() information about the following kinds of warrants issued, considered or approved during the year –

Clause 212 - continued

- (i) targeted interception warrants or targeted examination warrants of the kind referred to in section 17(2),
- (ii) targeted equipment interference warrants relating to matters within paragraph (b), (c), (e), (f), (g) or (h) of section 96(1), and
- (iii) targeted examination warrants under Part 5 relating to matters within any of paragraphs (b) to (e) of section 96(2),”

EARL HOWE

143 Page 169, line 36, at end insert –

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

144 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.”

LORD JANVRIN

THE MARQUESS OF LOTHIAN

145 Page 170, line 33, at end insert –

- “(11) Subsection (12) applies if the Prime Minister receives a report from the Investigatory Powers Commissioner under subsection (1) or (4) which relates to an investigation, inspection or audit carried out by the Commissioner following a decision to do so of which the Intelligence and Security Committee of Parliament was informed under section 214(2).
- (12) The Prime Minister must send to the Intelligence and Security Committee of Parliament a copy of the report so far as it relates to –
 - (a) the investigation, inspection or audit concerned, and
 - (b) the functions of the Committee falling within section 2 of the Justice and Security Act 2013.”

Clause 213

EARL HOWE

146 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

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

148 Page 172, line 4, at end insert –

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

Clause 216 - continued

“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.”

149 Page 172, line 4, at end insert –

- “(5) The Investigatory Powers Commissioner or any other Judicial Commissioner may, to such extent as the Commissioner concerned may decide, delegate the exercise of functions of that Commissioner to any member of staff of the Judicial Commissioners or any other person acting on behalf of the Commissioners.
- (6) Subsection (5) does not apply to –
- (a) the function of the Investigatory Powers Commissioner of making a recommendation under section 205(4)(e) or making an appointment under section (*Members of the Panel*)(1),
 - (b) any function which falls within section 207(8), or
 - (c) any function under section 55(3) or 125(3) of authorising a disclosure,
- but, subject to this and the terms of the delegation, does include functions which have been delegated to a Judicial Commissioner by the Investigatory Powers Commissioner.
- (7) The delegation under subsection (5) to any extent of functions by the Investigatory Powers Commissioner or any other Judicial Commissioner does not prevent the exercise of the functions to that extent by the Commissioner concerned.”

Clause 218

EARL HOWE

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

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

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

153 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

Clause 218 - continued

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

154 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,”

155 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,”

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

157 [*Withdrawn*]

Schedule 7

EARL HOWE

158 Page 231, line 13, at end insert –

“() the Technology Advisory Panel,”

159 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).”

BARONESS HAMWEE

LORD PADDICK

160 Page 231, line 26, after “profession” insert “or in the case of personal records, is held by a health authority,”

Clause 220

EARL HOWE

161 Page 173, leave out line 23

Clause 220 - continued

162 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

163 Page 175, line 33, after “system;” insert –

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

164 Page 175, line 36, leave out “the Investigatory Powers Act 2016” and insert “that Act”

165 Page 175, line 40, leave out “or varying”

166 Page 175, line 41, after “or” insert “the issue, modification, renewal or service”

167 Page 175, line 49, after “Act;” insert –

- “(czd) conduct of a kind which may be required or permitted by a warrant under Part 5 or Chapter 3 of Part 6 of that Act (equipment interference);
- (cze) the issue, modification, renewal or service of a warrant under Part 5 or Chapter 3 of Part 6 of that Act;
- (czf) the issue, modification, renewal or service of a warrant under Part 7 of that Act (bulk personal dataset warrants);
- (czg) the giving of an authorisation under section 200(3)(b) (authorisation for the retention, or retention and examination, of material following expiry of bulk personal dataset warrant);
- (czh) the giving or varying of a direction under section 203 of that Act (directions where no bulk personal dataset warrant required);
- (czi) conduct of a kind which may be required by a notice under section 228 or 229 of that Act (national security or technical capability notices);
- (czj) the giving or varying of such a notice;
- (czk) the giving of an authorisation under section 143(5)(c) or 179(5)(c) of that Act (certain authorisations to examine intercepted content or protected material);
- (czl) any failure to –
 - (i) cancel a warrant under Part 2, 5, 6 or 7 of that Act, or an authorisation under Part 3 of that Act;
 - (ii) cancel a notice under Part 3 of that Act;
 - (iii) revoke a notice under Part 4, or section 228 or 229, of that Act; or
 - (iv) revoke a direction under section 203 of that Act;

Clause 221 - continued

(czm) any conduct in connection with any conduct falling within paragraph (c), (czb), (czd) or (czi);”

- 168 Page 175, line 49, at end insert –
 “() in subsection (6) (limitation for certain purposes of what is conduct falling within subsection (5)) –
 (i) after “on behalf of” insert “an immigration officer or”, and
 (ii) after paragraph (d) insert –
 “(dza) the Competition and Markets Authority;”
 () after subsection (6) insert –
 “(6A) Subsection (6) does not apply to anything mentioned in paragraph (d) or (f) of subsection (5) which also falls within paragraph (czd) of that subsection.””
- 169 Page 175, line 49, at end insert –
 “() in subsection (7) after “if” insert “it is conduct of a public authority and”,”
- 170 Page 176, line 8, leave out “(5)(cza) or (czc)” and insert “(5)(bb), (cza), (czc), (cze), (czf), (czg), (czh), (czj), (czk) or (czl) or (so far as the conduct is, or purports to be, the giving of a notice under section 49) subsection (5)(e)”
- 171 Page 176, line 14, after “Act;” insert –
 “(bb) a direction under section 203 of that Act;
 (bc) a notice under section 228 or 229 of that Act;”
- 172 Page 176, line 24, after “Act;” insert –
 “(azb) an order quashing or revoking a direction under section 203 of that Act;
 (azc) an order quashing or revoking a notice under section 228 or 229 of that Act;”
- 173 Page 176, line 31, after “2016” insert “or under section 228 or 229 of that Act or direction under section 203 of that Act”
- 174 Page 176, line 41, after second “section” insert “228 or”
- 175 Page 176, line 48, after “Act” insert “or a notice under section 228 or 229 of that Act”
- 176 Page 177, line 12, at end insert “or the Investigatory Powers Commissioner for Northern Ireland.”

Clause 223

EARL HOWE

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

After Clause 223

EARL HOWE

178 Insert the following new Clause –

“Technology Advisory Panel

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

LORD PADDICK

BARONESS HAMWEE

[As an amendment to Amendment 178]

178A★ In subsection (1)(a), after “Commissioner,” insert “and safeguards on that exercise,”

[As an amendment to Amendment 178]

178B In subsection (1), after paragraph (a) insert –

“() the impact of changing technology on the interpretation of the law and any amendments to legislation required to ensure the application of the provisions of this Act to changing technologies,”

[As an amendment to Amendment 178]

178C★ After subsection (4) insert –

“() The Technology Advisory Panel must have regard to the matters to which public authorities are required to have regard in accordance with section 2(2) to (4).”

After Clause 223 - continued

EARL HOWE

179 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 137

EARL HOWE

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

After Clause 137

EARL HOWE

181 Insert the following new Clause—

“Approval of major modifications by Judicial Commissioners

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

After Clause 137 - continued

- (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

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

183 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

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

Clause 142

EARL HOWE

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

Clause 144

EARL HOWE

186 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.”

187 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 –

- (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

Clause 144 - continued

- (c) obtaining the information is necessary in the interests of national security or for the purpose of preventing death or significant injury.”

LORD LESTER OF HERNE HILL

LORD PANNICK

BARONESS HAMWEE

[As an amendment to Amendment 187]

188 In paragraph (a), after “examination” insert “clearly”

EARL HOWE

189 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.”

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

191 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.”

LORD LESTER OF HERNE HILL

LORD PANNICK

BARONESS HAMWEE

[As an amendment to Amendment 191]

192 In subsection (4A)(b), after “to” insert “the use of the item or”

[As an amendment to Amendment 191]

193 After subsection (4A) insert –

- “() The Investigatory Powers Commissioner must direct that an item be destroyed and take such other steps to prevent use or disclosure of the information contained in the item as he deems necessary where –
- (a) it has not previously been determined by the person issuing the warrant under which the item was obtained that there are exceptional and compelling circumstances that make it necessary to obtain the information subject to legal professional privilege; and
 - (b) the Investigatory Powers Commissioner does not consider that there are exceptional and compelling circumstances justifying the retention, use or, as the case may be, disclosure or making available of the item.”

After Clause 144

EARL HOWE

194 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.)”

After Clause 144 - continued

LORD BUTLER OF BROCKWELL
LORD JANVRIN
THE MARQUESS OF LOTHIAN

195 Insert the following new Clause—

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

- (1) A person commits an offence if—
 - (a) the person selects for examination any intercepted content or secondary data obtained under a bulk interception warrant,
 - (b) the person knows or believes that the selection of that intercepted content or secondary data for examination does not comply with a requirement imposed by section 143 or 144, and
 - (c) the person deliberately selects that intercepted content or secondary data for examination in breach of that requirement.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction in England and Wales—
 - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or
 - (ii) to a fine,
 or to both;
 - (b) on summary conviction in Scotland—
 - (i) to imprisonment for a term not exceeding 12 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (c) on summary conviction in Northern Ireland—
 - (i) to imprisonment for a term not exceeding 6 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.
- (3) No proceedings for any offence which is an offence by virtue of this section may be instituted—
 - (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
 - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.”

Clause 146

EARL HOWE

196 Page 117, line 21, at end insert—

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

Clause 147

LORD PADDICK
BARONESS HAMWEE

196A Page 118, line 48, at end insert –

“() A bulk acquisition warrant may not require data which relates to or includes internet connection records.”

Clause 153

EARL HOWE

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

After Clause 153

EARL HOWE

198 Insert the following new Clause –

“Approval of major modifications by Judicial Commissioners

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

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

200 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

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

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

After Clause 160

LORD BUTLER OF BROCKWELL

LORD JANVRIN

THE MARQUESS OF LOTHIAN

203 Insert the following new Clause—

“Offence of breaching safeguards relating to examination of data

- (1) A person commits an offence if—
 - (a) the person selects for examination any communications data obtained under a bulk acquisition warrant,
 - (b) the person knows or believes that the selection of that data for examination does not comply with a requirement imposed by section 160, and
 - (c) the person deliberately selects that data for examination in breach of that requirement.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction in England and Wales—
 - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or
 - (ii) to a fine,
 or to both;
 - (b) on summary conviction in Scotland—
 - (i) to imprisonment for a term not exceeding 12 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (c) on summary conviction in Northern Ireland—
 - (i) to imprisonment for a term not exceeding 6 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.
- (3) No proceedings for any offence which is an offence by virtue of this section may be instituted—
 - (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
 - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.”

Clause 163

LORD PADDICK
BARONESS HAMWEE

203A Leave out Clause 163

Clause 164

LORD PADDICK
BARONESS HAMWEE

203B Leave out Clause 164

Clause 165

LORD PADDICK
BARONESS HAMWEE

203C Leave out Clause 165

Clause 166

LORD PADDICK
BARONESS HAMWEE

203D Leave out Clause 166

Clause 167

EARL HOWE

204 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.”

LORD PADDICK
BARONESS HAMWEE

204A Leave out Clause 167

Clause 168

LORD PADDICK
BARONESS HAMWEE

204B Leave out Clause 168

Clause 169

LORD PADDICK
BARONESS HAMWEE

204C Leave out Clause 169

Clause 170

LORD PADDICK
BARONESS HAMWEE

204D Leave out Clause 170

Clause 171

LORD PADDICK
BARONESS HAMWEE

204E Leave out Clause 171

Clause 172

LORD PADDICK
BARONESS HAMWEE

204F Leave out Clause 172

Clause 173

EARL HOWE

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

LORD PADDICK
BARONESS HAMWEE

205A Leave out Clause 173

After Clause 173

EARL HOWE

206 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).

After Clause 173 - continued

- (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

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

208 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.”

LORD PADDICK
BARONESS HAMWEE

208A Leave out Clause 174

Clause 175

LORD PADDICK
BARONESS HAMWEE

208B Leave out Clause 175

Clause 176

LORD PADDICK
BARONESS HAMWEE

208C Leave out Clause 176

Clause 177

EARL HOWE

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

LORD PADDICK
BARONESS HAMWEE

209A Leave out Clause 177

Clause 178

EARL HOWE

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

Clause 178 - continued

LORD PADDICK
BARONESS HAMWEE

210A Leave out Clause 178

Clause 179

LORD PADDICK
BARONESS HAMWEE

210B Leave out Clause 179

Clause 180

EARL HOWE

211 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.”

212 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.”

213 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

Clause 180 - continued

(c) the person to whom the warrant is addressed considers that the communications or other items of information (“the targeted communications or other items of information”) are likely to be communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose.

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

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

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

215 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.”

LORD PADDICK
BARONESS HAMWEE

215A Leave out Clause 180

After Clause 180

EARL HOWE

216 Insert the following new Clause –

“Additional safeguard for confidential journalistic material

Where –

After Clause 180 - continued

(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.)”

LORD BUTLER OF BROCKWELL

LORD JANVRIN

THE MARQUESS OF LOTHIAN

217 Insert the following new Clause—

“Offence of breaching safeguards relating to examination of material

- (1) A person commits an offence if—
 - (a) the person selects for examination any material obtained under a bulk equipment interference warrant,
 - (b) the person knows or believes that the selection of that material does not comply with a requirement imposed by section 179 or 180, and
 - (c) the person deliberately selects that material in breach of that requirement.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction in England and Wales—
 - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or
 - (ii) to a fine,
 or to both;
 - (b) on summary conviction in Scotland—
 - (i) to imprisonment for a term not exceeding 12 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (c) on summary conviction in Northern Ireland—
 - (i) to imprisonment for a term not exceeding 6 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.
- (3) No proceedings for any offence which is an offence by virtue of this section may be instituted—
 - (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
 - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.”

Clause 181

LORD PADDICK
BARONESS HAMWEE

217A Leave out Clause 181

Clause 182

EARL HOWE

218 Page 144, line 28, at end insert –

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

LORD PADDICK
BARONESS HAMWEE

218A Leave out Clause 182

Clause 186

EARL HOWE

219 Page 145, line 36, at end insert –

“(A1) 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

220 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).

After Clause 186 - continued

- (4) In this section, “private information” includes information relating to a person’s private or family life.”

Clause 187

EARL HOWE

- 221 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

- 222 Page 147, line 13, leave out “wishes” and insert “is seeking authorisation”
- 223 Page 147, line 18, leave out “wishes” and insert “is seeking authorisation”
- 224 Page 147, line 22, leave out “186(1)” and insert “186(A1), (1)”
- 225 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)”
- 226 Page 147, line 34, leave out “186(1)” and insert “186(A1), (1)”

After Clause 189

EARL HOWE

- 227 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

- 228 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

- 229 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

- 230 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

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

After Clause 197

EARL HOWE

- 232 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

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

234 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

235 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

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

237 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.”

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

After Clause 202

EARL HOWE

239 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.

After Clause 202 - continued

- (2) If the relevant criteria are referable to an individual known to be in the British Islands at the time of the selection, the data may be selected for examination using the relevant criteria only if the Secretary of State has approved the use of those criteria.
- (3) In any other case, the data may be selected for examination using the relevant criteria only if a senior official acting on behalf of the Secretary of State has approved the use of those criteria.
- (4) The Secretary of State may give approval for the purposes of subsection (2) only with the approval of a Judicial Commissioner.
- (5) Approval may be given under subsection (2) or (3) only if—
 - (a) the Secretary of State or (as the case may be) the senior official considers that the arrangements mentioned in section 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

After Clause 202 - continued

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

240

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.”

After Clause 202 - continued

LORD BUTLER OF BROCKWELL
LORD JANVRIN
THE MARQUESS OF LOTHIAN

241 Insert the following new Clause—

“Offence of breaching safeguards relating to examination of material

- (1) A person commits an offence if—
 - (a) the person selects for examination any data contained in a bulk personal dataset retained in reliance on a class BPD warrant or a specific BPD warrant,
 - (b) the person knows or believes that the selection of that data is in breach of a requirement specified in subsection (2), and
 - (c) the person deliberately selects that data in breach of that requirement.
- (2) The requirements specified in this subsection are that any selection for examination of the data—
 - (a) is carried out only for the specified purposes (see subsection (3)),
 - (b) is necessary and proportionate, and
 - (c) if the data is protected data, satisfies any conditions imposed under section (*Protected data: power to impose conditions*).
- (3) The selection for examination of the data is carried out only for the specified purposes if the data is selected for examination only so far as is necessary for the operational purposes specified in the warrant in accordance with section 194.

In this subsection, “specified in the warrant” means specified in the warrant at the time of the selection of the data for examination.

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

After Clause 202 - continued

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

Clause 203

EARL HOWE

242 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.”

Schedule 8

EARL HOWE

243 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.”

Clause 225LORD PADDICK
BARONESS HAMWEE**244** Page 178, line 12, leave out from “receive” to end of line 14 and insert “their relevant costs”**245** Page 178, line 18, leave out “of a contribution”**246** Page 178, line 26, at end insert –

“() In the event that the Secretary of State determines that the appropriate contribution shall not in all cases be the full amount of the relevant costs, he or she shall make regulations providing for the basis on which the relevant costs are to be calculated”.

Clause 228

EARL HOWE

247 Page 180, line 18, at end insert –

“() In a case where –

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

Clause 228 - continued

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

- 248** 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”
- 249** 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”
- 250** 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 229

LORD PADDICK
BARONESS HAMWEE

- 250A★** Page 180, line 46, at end insert –
- “(c) specifying the distinct service or product to which the notice applies”

LORD HARRIS OF HARINGEY
LORD PADDICK
BARONESS HAMWEE

- 251** Page 181, line 32, at end insert –
- “() For the purposes of this section, “electronic protection” does not include electronic protection applied directly by the communications device or operating system of the end user which has the effect of encrypting the communications data in transit such that the relevant telecommunications operator does not have a means to access the associated communications data or content.”

Clause 231

LORD PADDICK
BARONESS HAMWEE

- 252** Page 183, line 1, after “State” insert –
- “(a) may not require removal which has the effect of making any communications or data less secure, and
- (b) ”

LORD STRASBURGER

- 252A★** Page 183, line 1, after “State” insert –
- “(a) may not require removal of electronic protection which has the effect of –

Clause 231 - continued

- (i) weakening the security measures employed by the operator, or
- (ii) threatening or harming the operator's business operations, or
- (iii) placing non-targeted customers or users at additional security risk; and

(b) ”

LORD PADDICK
BARONESS HAMWEE

253 Page 183, line 2, at end insert –

“(4A) The Secretary of State may not give a technical capability notice which prevents or restricts a person from introducing new levels or types of encryption which make communications or data more secure.”

254 Page 183, line 2, at end insert –

“(4B) Subject to –

- (a) subsections (2), (3), (4) and (4A), and
- (b) a person not being required to make any alteration which may make any communications or data more vulnerable to unauthorised access,

the Secretary of State may require a person to provide technical assistance to enable interpretation or deciphering by the Secretary of State.”

Clause 232

EARL HOWE

255 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) ”

256 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)).

Clause 232 - continued

(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.”

257 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

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

Clause 236

LORD PADDICK
BARONESS HAMWEE

258A Page 186, line 24, after “period,” insert “and thereafter at least once during each Parliament,”

258B Page 186, line 25, leave out “5” and insert “2”

Clause 238

EARL HOWE

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

Clause 239

EARL HOWE

260 Page 191, leave out lines 46 and 47

261 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),”

262 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,”

Clause 239 - continued

- 263 Page 192, line 19, at end insert –
 ““statutory”, in relation to any function, means conferred by virtue of this Act or any other enactment,”
- 264 Page 192, line 28, at end insert –
 ““the Technology Advisory Panel” means the panel established in accordance with section (*Technology Advisory Panel*)(1),”
- 265 Page 192, line 35, after “identify” insert “, or assist in identifying,”
- 266 Page 192, line 36, after “identify” insert “, or assist in identifying,”
- 267 Page 192, line 39, after “identify” insert “, or assist in identifying,”

After Clause 239

EARL HOWE

- 268 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 –

After Clause 239 - continued

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

Clause 240

EARL HOWE

269 Page 193, line 27, at end insert –

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

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

272 Page 194, line 33, at end insert –

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

Clause 240 - continued

274 Page 195, line 11, at end insert –
 “Statutory (in relation to any function) |Section 239(1)”

275 Page 195, line 14, at end insert –
 “Technology Advisory Panel |Section 239(1)”

Clause 242

EARL HOWE

276 Page 196, line 20, at end insert –
 “() section 218(2A),”

Schedule 9

EARL HOWE

277 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)”

278 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.”

279 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.”

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

Clause 246

EARL HOWE

- 281 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.”

Schedule 10

EARL HOWE

- 282 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”.”
- 283 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).”.
- 284 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”.”
- 285 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.””
- 286 Page 252, line 37, leave out from “(1)” to 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”.”

Schedule 10 - continued

- 287 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
 (iii) Part 5, or Chapter 3 of Part 6, of the Investigatory Powers Act 2016 (equipment interference).”
 59C(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.””
- 288 Page 254, line 8, leave out “, or Chapter 3 of Part 6,”
- 289 Page 255, line 8, leave out from “dismissed)” to end of line 9 and insert “omit “under section 107(2),””
- 290 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”.

Schedule 10 - continued

- (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).”

291 Page 255, line 36, after “substitute “” insert –
“(bza) the Investigatory Powers Commissioner for Northern Ireland carrying out functions under this Act”

292 Page 258, line 17, at end insert –

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

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

Clause 247

BARONESS HOLLINS
BARONESS O'NEILL OF BENGARVE
LORD WALLACE OF TANKERNESS
LORD FALCONER OF THOROTON

294 Page 199, line 5, leave out “(2) and” and insert “(1A) to”

295 Page 199, line 7, at end insert –

“(1A) Sections (*civil liability for certain unlawful interceptions*) and (*interception without lawful authority: awards of costs*) come into force on the day following that on which this Act is passed.”

EARL HOWE

296 Page 199, line 12, leave out “and (6)” and insert “to (6A)”

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

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

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

300 Page 199, line 18, at end insert –

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

Investigatory Powers Bill

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

13 October 2016
