

# Investigatory Powers Bill

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THIRD  
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 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.

**After Clause 137 - continued**

- (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 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”

BARONESS HAYTER OF KENTISH TOWN  
LORD ROSSER

185A Page 114, line 21, leave out “, to such extent (if any) as the Secretary of State considers appropriate,”

**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.”

**Clause 144 - continued**

**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
- (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,”

**Clause 144 - continued**

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)).
- (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

*After Clause 144 - continued*

(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.)”

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”

**Clause 154 - continued**

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.

**After Clause 160 - continued**

- (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

**After Clause 173 - continued**

- (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

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”

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 –

**Clause 180 - continued**

- (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.

(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 –

- (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 –

**After Clause 180 - 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 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

**After Clause 186 - continued**

- (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

- 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.

**After Clause 197 - continued**

- (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.
- (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

*After Clause 202 - continued*

- (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.
- (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

**After Clause 202 - continued**

- (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.”

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

**After Clause 202 - continued**

- (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—
- (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 225**LORD 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,

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 229 - continued**

LORD PADDICK  
BARONESS HAMWEE

**251A** Page 181, line 48, at end insert –

- “( ) A technical capability notice may not be given to a relevant operator in respect of a telecommunications service, or a proposed telecommunications service, which consists only of a telecommunications service which is –
- (a) the means by which a service is provided which is not a telecommunications service, or
  - (b) necessarily incidental to the provision of a service which is not a telecommunications service.”

**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 –
- (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)).
- (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,”

**Clause 236 - continued**

- 258B** Page 186, line 25, leave out “5” and insert “2”
- 258C★** Page 186, line 28, after “particular” insert –
- “(a) report on any review by the Investigatory Powers Commissioner on the compliance of –
- (i) officers of the Security Service, the Secret Intelligence Service and the Government Communications Headquarters, and
- (ii) members of the armed forces of the United Kingdom and officials of the Ministry of Defence so far as they engage in intelligence activities,
- with guidance from time to time issued on the detention and interviewing of detainees overseas and on the passing and receipt of intelligence relating to detainees; and
- (b) ”

**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,”
- 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,”

**Clause 239 - continued**

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—
- (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

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)”

274 Page 195, line 11, at end insert –

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

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

**Schedule 10 - continued**

- 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”.
  - (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”

## Schedule 10 - continued

292 Page 258, line 17, at end insert –

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

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

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THIRD  
MARSHALLED  
LIST OF AMENDMENTS  
TO BE MOVED  
ON REPORT

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*17 October 2016*

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