

Counter-Terrorism and Border Security Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

Clause 1

BARONESS JONES OF MOULSECOOMB

Page 1, line 8, leave out “is supportive of” and insert “supports”

Page 1, line 10, leave out “is reckless as to whether” and insert “intends that”

Clause 4

BARONESS JONES OF MOULSECOOMB

Page 3, line 11, at end insert –

- “() Notwithstanding the generality of subsection (2), a person shall have a reasonable excuse if they enter or remain in a designated area for the purpose of –
- (a) journalism,
 - (b) humanitarian aid or assistance, or
 - (c) environmental protection.”

EARL ATTLEE
BARONESS JONES OF MOULSECOOMB

Page 3, line 39, at end insert –

- “() The cases in which a person has a reasonable excuse for the purpose of subsection (2) include where a person enters or remains in a designated area for the purposes of journalism.”

Clause 6

BARONESS WILLIAMS OF TRAFFORD

Page 5, line 16, at end insert –

- “(cza) an offence under section 12(1) or (1A) of that Act (inviting or expressing support for proscribed organisation);”

After Clause 6

LORD FAULKS
LORD HODGSON OF ASTLEY ABBOTTS
LORD BETHELL

Insert the following new Clause—

“Treason: aiding a hostile State or organisation

- (1) A person commits a treason offence if, with intent to aid—
 - (a) a terrorist attack on the United Kingdom by any State or organisation, or
 - (b) any State or organisation that intends to mount a terrorist attack on the United Kingdom or is engaged in a process of planning or preparing for such an attack on the United Kingdom,
 they engage in conduct falling within subsection (2).
- (2) A person engages in conduct falling within this subsection if they do an act that is designed to—
 - (a) help carry out a terrorist attack or facilitate the carrying out of a terrorist attack on the United Kingdom, or
 - (b) help the planning of or preparation for a terrorist attack on the United Kingdom, or
 - (c) aid the military or intelligence operations of a State or organisation falling within subsection (1)(b).
- (3) This section applies—
 - (a) in the United Kingdom, to any person who enjoys the protection of the Crown, and
 - (b) outside the United Kingdom, to any British citizen or any person who is settled in the United Kingdom.
- (4) A person guilty of a treason offence shall be sentenced to imprisonment for life unless, given the circumstances of the offence and the offender, a sentence of imprisonment for life would be manifestly unjust.”

Clause 21

BARONESS WILLIAMS OF TRAFFORD

Page 22, line 4, leave out from “borders” to end of line 7

BARONESS JONES OF MOULSECOOMB

Baroness Jones of Moulsecoomb gives notice of her intention to oppose the Question that Clause 21 stand part of the Bill.

After Clause 21

BARONESS JONES OF MOULSECOOMB

Insert the following new Clause –

“Consultation on the impact of this Act on the right to protest etc

- (1) Within the period of one month beginning with the passing of this Act the Secretary of State must consult on the probable impact of the provisions of this Act on the right to protest and undertake peaceful, non-violent direct action.
- (2) As part of this consultation, the Secretary of State must consider whether to introduce –
 - (a) a statutory definition of “domestic extremism” and statutory criteria for designating individuals as “domestic extremists”; and
 - (b) independent judicial oversight of counter-terrorist operations relating to domestic extremism, including the designation of individuals as “domestic extremists”.
- (3) The Secretary of State must lay a report of the outcome of the consultation before both Houses of Parliament.”

Schedule 3

BARONESS JONES OF MOULSECOOMB

EARL ATTLEE

Page 39, line 41, at end insert –

- “() A person may refuse a request for documents or information under subparagraph (1) where –
- (a) the information or document in question consists of journalistic material within the meaning of either section 13 of the Police and Criminal Evidence Act 1984 or section 264(1) to (4) or (6) and (7) of the Investigatory Powers Act 2016; or
 - (b) the information or document in question is subject to legal privilege.”

Page 40, line 42, at end insert –

- “() Information or documents given by a person in response to the exercise of powers under paragraph 1 or 2 may not be used in evidence in criminal proceedings where that material falls within the meaning of section 13 of the Police and Criminal Evidence Act 1984 or section 264(1) to (4) or (6) and (7) of the Investigatory Powers Act 2016.”

BARONESS WILLIAMS OF TRAFFORD

Page 43, line 29, at end insert “, other than an article in respect of which an authorisation is granted under paragraph 13A”

EARL ATTLEE

BARONESS JONES OF MOULSECOOMB

Page 44, leave out lines 20 and 21 and insert “journalistic material, within the meaning of section 13 of the Police and Criminal Evidence Act 1984 or section 264(1) to (4) or (6) and (7) of the Investigatory Powers Act 2016”

Schedule 3 - continued

BARONESS WILLIAMS OF TRAFFORD

Page 45, line 6, after “representations” insert “, before the end of whatever period the Commissioner may specify,”

Page 45, line 8, at end insert “before the end of that period”

Page 45, line 15, leave out from “constable” to end of line 21 and insert “, the responsible chief officer,”

Page 45, line 23, at end insert –

“() In sub-paragraph (3) “responsible chief officer” means –

- (a) in a case where the article was taken in connection with an investigation being conducted by a police force in England and Wales, the chief officer of police of that police force;
- (b) in a case where the article was taken in connection with an investigation being conducted by the Police Service of Scotland, the chief constable of the Police Service of Scotland;
- (c) in a case where the article was taken in connection with an investigation being conducted by the Police Service of Northern Ireland, the Chief Constable of the Police Service of Northern Ireland;
- (d) in any other case –
 - (i) where the examining officer is a constable of a police force in England and Wales, the chief officer of police of that police force,
 - (ii) where the examining officer is a constable of the Police Service of Scotland, the chief constable of the Police Service of Scotland, or
 - (iii) where the examining officer is a constable of the Police Service of Northern Ireland, the Chief Constable of the Police Service of Northern Ireland.”

Page 45, line 35, at end insert –

“() A requirement under this paragraph to invite representations from, or to provide information to, the person from whom an article was taken applies only so far as it is reasonably practicable to do so.”

Page 45, line 36, at end insert –

“13A(1) This paragraph applies where –

- (a) an article is retained by virtue of paragraph 11(2)(d) or (e), and
 - (b) the examining officer who retained the article considers that the urgency condition is met in relation to the article.
- (2) The urgency condition is met in relation to an article if –
- (a) there is an urgent need for the article to be examined or otherwise used for the purpose of preventing –
 - (i) the carrying out of a hostile act, or
 - (ii) death or significant injury,

Schedule 3 - continued

- or for the purpose of mitigating the risk of any such act, death or injury occurring, and
- (b) the time it would take for the requirements of paragraphs 12 and 13 to be complied with in relation to the article would not enable such use to take place with sufficient urgency.
- (3) The examining officer may apply to a senior officer for authorisation to continue to retain and use the article.
- (4) An application under sub-paragraph (3) in relation to an article may be made only to a senior officer who has not been directly involved in the exercise of any power under this Part of this Schedule to take the article or to question a person from whom the article was taken.
- (5) A senior officer may grant an authorisation under this paragraph for the retention and use of the article if satisfied –
- (a) that there are reasonable grounds for considering that the urgency condition is met in relation to the article, and
- (b) in the case of an article that consists of or includes confidential material, that –
- (i) arrangements are in place that are sufficient for ensuring that the material is retained securely, and
- (ii) the material will be used only so far as necessary and proportionate for a purpose mentioned in sub-paragraph (2)(a).
- (6) An authorisation under this paragraph –
- (a) must be recorded in writing;
- (b) may be granted subject to whatever conditions the senior officer thinks appropriate.
- (7) Paragraphs 13B and 13C contain further provision about authorisations granted under this paragraph.
- (8) In this paragraph –
- “confidential material” has the meaning given by paragraph 12(10) and (11);
- “senior officer” means –
- (a) where the examining officer is a constable, another constable of at least the rank of superintendent,
- (b) where the examining officer is an immigration officer, an immigration officer of a higher grade than the examining officer, and
- (c) where the examining officer is a customs officer, a customs officer of a higher grade than the examining officer.
- 13B If a senior officer grants an authorisation under paragraph 13A, the examining officer who applied for the authorisation must inform the Investigatory Powers Commissioner and each affected party of its grant.
- (1) The information required under sub-paragraph (1) must be given as soon as reasonably practicable and in any event within 24 hours after the grant of the authorisation.

Schedule 3 - continued

- (3) An affected party may make representations to the Commissioner about how the Commissioner should proceed under paragraph 13C in respect of an authorisation granted under paragraph 13A.
- (4) Representations under sub-paragraph (3) must be made in writing no later than the end of two working days beginning with the first working day after the day on which the authorisation is granted.
- (5) The information provided under sub-paragraph (1) must include an explanation of the right to make representations in writing and the time by which they must be made.
- (6) The Commissioner must have regard to any representations received before the end of the time mentioned in sub-paragraph (4) in determining how to proceed under paragraph 13C.
- (7) The requirement under this paragraph to provide information to the person from whom an article was taken applies only so far as it is reasonably practicable to do so.
- (8) In this paragraph and paragraph 13C –
 - “affected party” has the meaning given by paragraph 13(3);
 - “working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the authorisation is granted.

13C This paragraph applies after the Investigatory Powers Commissioner has

- (1) considered any representations made about an authorisation in accordance with paragraph 13B.
- (2) The Commissioner must –
 - (a) approve the grant of the authorisation, or
 - (b) cancel the authorisation.
- (3) A decision under sub-paragraph (2) must be made –
 - (a) after the end of the time for making representations referred to in paragraph 13B(4), and
 - (b) before the end of three working days beginning with the first working day after the day on which the authorisation is granted.
- (4) If the decision under sub-paragraph (2) is to approve the grant of the authorisation, the retention and use of the article may continue in accordance with the conditions on which the authorisation was granted (subject to any further conditions or variation of the existing conditions that the Commissioner specifies).
- (5) If the decision under sub-paragraph (2) is to cancel the authorisation, any further use of the article must stop as soon as possible.
- (6) If the Commissioner cancels the authorisation the Commissioner may direct that the article –
 - (a) is destroyed, or
 - (b) is returned to the person from whom it was taken,

Schedule 3 - continued

and the Commissioner may further direct that all reasonable steps are taken to secure that any information derived from the article is destroyed.

- (7) Sub-paragraphs (5) and (6) do not apply if the article is further retained under a power conferred by paragraph 11(2)(b) or (c).
- (8) The Commissioner must inform each affected party of the Commissioner's decision under sub-paragraph (2).
- (9) The requirement under this paragraph to provide information to the person from whom the article was taken applies only so far as it is reasonably practicable to do so.
- (10) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, exercises a function under this paragraph in relation to an article, an affected party may ask the Investigatory Powers Commissioner to decide whether to approve the way in which the function was exercised.
- (11) Nothing in this paragraph affects the lawfulness of –
 - (a) anything done under an authorisation before it is cancelled;
 - (b) if anything is in the process of being done under an authorisation when it is cancelled –
 - (i) anything done before that thing could be stopped, or
 - (ii) anything done which it is not reasonably practicable to stop.”

Page 46, line 15, at end insert “, other than a copy in respect of which an authorisation is granted under paragraph 15B”

Page 46, line 45, leave out sub-paragraph (10)

Page 47, leave out line 4

EARL ATTLEE

Page 47, line 6, at end insert –

- “() Before proceeding under this paragraph in relation to an article, the Commissioner –
- (a) must invite each affected party to make representations about how the Commissioner should proceed under this paragraph, and
 - (b) must have regard to any representations made by an affected party.”

BARONESS WILLIAMS OF TRAFFORD

Page 47, line 6, at end insert –

- “15A(1) Before proceeding under paragraph 15 in relation to a copy, the Commissioner –
- (a) must invite each affected party to make representations, before the end of whatever period the Commissioner may specify, about how the Commissioner should proceed under that paragraph, and
 - (b) must have regard to any representations made by an affected party before the end of that period.

Schedule 3 - continued

- (2) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, exercises a function under paragraph 15 in relation to a copy, an affected party may ask the Investigatory Powers Commissioner to decide whether to approve the way in which the function was exercised.
- (3) Each of the following is an “affected party” for the purposes of this paragraph—
- (a) where the examining officer is a constable, the responsible chief officer,
 - (b) the Secretary of State, and
 - (c) the person from whom the article was taken from which the copy was made.
- (4) In sub-paragraph (3) “responsible chief officer” means—
- (a) in a case where the copy was made in connection with an investigation being conducted by a police force in England and Wales, the chief officer of police of that police force;
 - (b) in a case where the copy was made in connection with an investigation being conducted by the Police Service of Scotland, the chief constable of the Police Service of Scotland;
 - (c) in a case where the copy was made in connection with an investigation being conducted by the Police Service of Northern Ireland, the Chief Constable of the Police Service of Northern Ireland;
 - (d) in any other case—
 - (i) where the examining officer is a constable of a police force in England and Wales, the chief officer of police of that police force,
 - (ii) where the examining officer is a constable of the Police Service of Scotland, the chief constable of the Police Service of Scotland, or
 - (iii) where the examining officer is a constable of the Police Service of Northern Ireland, the Chief Constable of the Police Service of Northern Ireland.
- (5) Sub-paragraph (6) applies where—
- (a) a direction for the destruction of a copy is given under paragraph 15, or
 - (b) authorisation for the retention and use of a copy is granted under that paragraph.
- (6) The Commissioner must inform the person from whom the article was taken from which the copy was made that—
- (a) a direction to destroy the copy has been given, or
 - (b) (as the case may be) authorisation to retain and use the copy has been granted (and in this case the Commissioner must provide details of any conditions subject to which that authorisation was granted).
- (7) A requirement under this paragraph to invite representations from, or to provide information to, the person from whom an article was taken from which a copy was made applies only so far as it is reasonably practicable to do so.
- (8) Representations under sub-paragraph (1) must be made in writing.
- 15B(1) This paragraph applies where—

Schedule 3 - continued

- (a) a copy consisting of or including confidential material is retained by virtue of paragraph 14(3)(d) or (e), and
 - (b) the examining officer who retained the copy considers that the urgency condition is met in relation to the copy.
- (2) The urgency condition is met in relation to a copy if—
- (a) there is an urgent need for the copy to be examined or otherwise used for the purpose of preventing—
 - (i) the carrying out of a hostile act, or
 - (ii) death or significant injury,or for the purpose of mitigating the risk of any such act, death or injury occurring, and
 - (b) the time it would take for the requirements of paragraphs 15 and 15A to be complied with in relation to the copy would not enable such use to take place with sufficient urgency.
- (3) The examining officer may apply to a senior officer for authorisation to continue to retain and use the copy.
- (4) An application under sub-paragraph (3) in relation to a copy may be made only to a senior officer who has not been directly involved in the exercise of any power under this Part of this Schedule to make the copy or to question a person from whom the article was taken from which the copy was made.
- (5) A senior officer may grant an authorisation under this paragraph for the retention and use of a copy if satisfied that—
- (a) there are reasonable grounds for considering that the urgency condition is met in relation to the copy,
 - (b) arrangements are in place that are sufficient for ensuring that confidential material contained in the copy is retained securely, and
 - (c) the material will be used only so far as necessary and proportionate for a purpose mentioned in sub-paragraph (2)(a).
- (6) An authorisation under this paragraph—
- (a) must be recorded in writing;
 - (b) may be granted subject to whatever conditions the senior officer thinks appropriate.
- (7) Paragraphs 15C and 15D contain further provision about authorisations granted under this paragraph.
- (8) In this paragraph—
- “confidential material” has the meaning given by paragraph 12(10) and (11);
 - “senior officer” means—
 - (a) where the examining officer is a constable, another constable of at least the rank of superintendent,
 - (b) where the examining officer is an immigration officer, an immigration officer of a higher grade than the examining officer, and
 - (c) where the examining officer is a customs officer, a customs officer of a higher grade than the examining officer.

Schedule 3 - continued

- 15C(1) If a senior officer grants an authorisation under paragraph 15B, the examining officer who applied for the authorisation must inform the Investigatory Powers Commissioner and each affected party of its grant.
- (2) The information required under sub-paragraph (1) must be given as soon as reasonably practicable and in any event within 24 hours after the grant of the authorisation.
 - (3) An affected party may make representations to the Commissioner about how the Commissioner should proceed under paragraph 15D in respect of an authorisation granted under paragraph 15B.
 - (4) Representations under sub-paragraph (3) must be made in writing no later than the end of two working days beginning with the first working day after the day on which the authorisation is granted.
 - (5) The information provided under sub-paragraph (1) must include an explanation of the right to make representations in writing and the time by which they must be made.
 - (6) The Commissioner must have regard to any representations made before the end of the time mentioned in sub-paragraph (4) in determining how to proceed under paragraph 15D.
 - (7) The requirement under this paragraph to provide information to the person from whom an article was taken from which the copy was made applies only so far as it is reasonably practicable to do so.
 - (8) In this paragraph and paragraph 15D –
 - “affected party” has the meaning given by paragraph 15A(3);
 - “working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the authorisation is granted.
- 15D(1) This paragraph applies after the Investigatory Powers Commissioner has considered any representations made about an authorisation in accordance with paragraph 15C.
- (2) The Commissioner must –
 - (a) approve the grant of the authorisation, or
 - (b) cancel the authorisation.
 - (3) A decision under sub-paragraph (2) must be made –
 - (a) after the end of the period for making representations referred to in paragraph 15C(4), and
 - (b) before the end of three working days beginning with the first working day after the day on which the authorisation is granted.
 - (4) If the decision under sub-paragraph (2) is to approve the grant of the authorisation, the retention and use of the copy may continue in accordance with the conditions on which the authorisation was granted (subject to any further conditions or variation of the existing conditions that the Commissioner specifies).

Schedule 3 - continued

- (5) If the decision under sub-paragraph (2) is to cancel the authorisation, any further use of the copy must stop as soon as possible.
- (6) If the Commissioner cancels the authorisation the Commissioner may direct that—
 - (a) the copy is destroyed, and
 - (b) all reasonable steps are taken to secure that any information derived from the copy is also destroyed.
- (7) Sub-paragraphs (5) and (6) do not apply if the copy is further retained under a power conferred by paragraph 14(3)(b) or (c).
- (8) The Commissioner must inform each affected party of the Commissioner's decision under sub-paragraph (2).
- (9) The requirement under this paragraph to provide information to the person from whom the article was taken from which the copy was made applies only so far as it is reasonably practicable to do so.
- (10) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, exercises a function under this paragraph in relation to a copy, an affected party may ask the Investigatory Powers Commissioner to decide whether to approve the way in which the function was exercised.
- (11) Nothing in this paragraph affects the lawfulness of—
 - (a) anything done under an authorisation before it is cancelled;
 - (b) if anything is in the process of being done under an authorisation when it is cancelled—
 - (i) anything done before that thing could be stopped, or
 - (ii) anything done which it is not reasonably practicable to stop.”

BARONESS JONES OF MOULSECOOMB

Baroness Jones of Moulsecoomb gives notice of her intention to oppose the Question that Schedule 3 be the Third Schedule to the Bill.

Counter-Terrorism and Border Security Bill

AMENDMENTS
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IN COMMITTEE OF THE WHOLE HOUSE

24 October 2018
