

Counter-Terrorism and Border Security Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

The amendments have been marshalled in accordance with the Instruction of 22nd October 2018, as follows –

Clauses 1 to 12	Schedule 3
Schedule 1	Clause 22
Clauses 13 to 18	Schedule 4
Schedule 2	Clauses 23 to 27
Clauses 19 to 21	Title.

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 1

LORD ROSSER

LORD KENNEDY OF SOUTHWARK

1 Page 1, line 8, after “belief” insert “, as part of a pattern of behaviour,”

BARONESS JONES OF MOULSECOOMB

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

BARONESS HAMWEE

LORD PADDICK

3 Page 1, leave out lines 10 to 12 and insert –
“(b) in doing so intends to encourage support for a proscribed organisation.”

BARONESS JONES OF MOULSECOOMB

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

BARONESS HAMWEE

EARL ATTLEE

LORD PADDICK

5 Page 1, line 12, at end insert –
“(1B) It is not an offence under subsection (1A) to express an opinion that a proscribed organisation should cease to be proscribed.”

Clause 1 - continued

EARL ATTLEE
LORD ROSSER
LORD KENNEDY OF SOUTHWARK

6 Page 1, line 12, at end insert –

“(1B) It is not an offence under subsection (1A) if the opinion or belief was published or broadcast for the purposes of journalism.”

BARONESS HAMWEE
LORD PADDICK

The above-named Lords give notice of their intention to oppose the Question that Clause 1 stand part of the Bill.

Clause 2

BARONESS HAMWEE
LORD PADDICK

7 Page 1, line 15, leave out subsections (2) and (3)

BARONESS HAMWEE
BARONESS LAWRENCE OF CLARENDON
LORD PADDICK

8 Page 2, line 6, at end insert –

“(1C) A person does not commit an offence under subsection (1A) if there is a reasonable excuse for the publication of that image, such as historical research, academic research or family photographs, and where the publication of that image was not intended to support or further the activities of a proscribed organisation.”

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

9 Page 2, line 6, at end insert –

“(1C) A person does not commit an offence under subsection (1A) if –
(a) they have a reasonable excuse for the publication of the image including, but not limited to, historical research, academic research, family photographs or journalism, and
(b) publication of the image was not intended to support, encourage support for or further the activities of a proscribed organisation.”

10 Page 2, line 20, at end insert –

“(5) Before subsection (4) may come into force the Secretary of State must consult the Police Service of Northern Ireland and the Public Prosecution Service of Northern Ireland on the introduction of the power to seize an item of clothing or any other article in Northern Ireland.”

Clause 2 - continued

LORD MARKS OF HENLEY-ON-THAMES
LORD THOMAS OF GRESFORD

The above-named Lords give notice of their intention to oppose the Question that Clause 2 stand part of the Bill.

Clause 3

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

11 Page 2, line 27, after “accesses,” insert “as part of a pattern of behaviour,”

BARONESS HAMWEE
LORD PADDICK

12 Page 2, line 29, at end insert “and the person intends to commit or encourage acts of terrorism.”

13 Page 2, line 29, at end insert “and the person has viewed the material in a way which gives rise to a reasonable suspicion that the person is viewing that material with a view to committing a terrorist act.”

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

14★ Page 2, line 37, leave out from “which” to end of line 41 and insert—
 “(a) at the time of the person’s action or possession, the person did not know, and had no reason to believe, that the document or record in question contained, or was likely to contain, information of a kind likely to be useful to a person committing or preparing an act of terrorism,
 (b) the material in question was collected, recorded, possessed, viewed or otherwise accessed for the purposes of journalism,
 (c) the material in question was collected, recorded, possessed, viewed or otherwise accessed for the purposes of academic research”

BARONESS HAMWEE
LORD PADDICK
BARONESS LAWRENCE OF CLARENDON

15 Page 2, line 41, at end insert—
 “(3B) The Secretary of State must issue guidance on what constitutes a reasonable excuse for the purposes of subsection (3).”

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

16 Page 2, line 41, at end insert—
 “(3B) The Secretary of State must issue guidance on what constitutes a reasonable excuse for the purposes of subsection (3).”

Clause 3 - continued

- (3C) A reasonable excuse for the purposes of subsection (3) may include but is not limited to conduct outlined in guidance under subsection (3B)."

BARONESS HAMWEE
LORD PADDICK

The above-named Lords give notice of their intention to oppose the Question that Clause 3 stand part of the Bill.

Clause 4

LORD ANDERSON OF IPSWICH
LORD JUDGE

17★ Page 3, leave out lines 9 to 11 and insert –

- “(2) A person does not commit an offence under this section if the person entered or remained in the designated area solely for one or more of the following reasons –
- (a) performing an official duty for the government of any country (including service in the armed forces of that government) where such performance would not otherwise contravene the law of the United Kingdom,
 - (b) performing an official duty for the UN or an agency of the UN,
 - (c) satisfying an obligation to appear before a court or other body exercising judicial power,
 - (d) providing support through a registered charity for humanitarian, peacebuilding or development purposes,
 - (e) making a news report of events in the area, where the person is working in a professional capacity as a journalist or is assisting another person working in a professional capacity as a journalist,
 - (f) visiting a dependent family member,
 - (g) such other reason as the Secretary of State may by regulations prescribe.”

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

18★ Page 3, line 10, leave out “prove” and insert “state”

BARONESS JONES OF MOULSECOOMB

19 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.”

Clause 4 - continued

EARL ATTLEE
BARONESS JONES OF MOULSECOOMB

20 Page 3, line 11, 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.”

BARONESS HAMWEE
LORD ROSSER
EARL ATTLEE
LORD PADDICK

21 Page 3, line 17, at end insert “, or

(c) the person has been granted authorisation by the Secretary of State to enter or remain in a designated area”

22 Page 3, line 17, at end insert –

“(3A) The Secretary of State shall set out in regulations provisions regarding authorisation under section (3)(c) including –
(a) the grounds for applying for an authorisation;
(b) the procedure for applying for an authorisation both by an individual and by an organisation on behalf of individuals;
(c) the timescales for determining an authorisation; and
(d) the rights of appeal against a decision.”

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

23★ Page 3, line 17, at end insert –

“(3A) Subsection (1) does not apply if the person enters, or remains in, the area solely for one or more of the following purposes –
(a) providing aid of a humanitarian nature or for peacebuilding and development purposes,
(b) working in the area in a professional capacity as a journalist or assisting another person working in a professional capacity as a journalist,
(c) making a bona fide visit to a family member,
(d) any other purpose prescribed in regulations.
(3B) The Secretary of State may prescribe, in regulations, additional purposes to be added to the exemption under subsection (3A).
(3C) Where a person enters or remains in an area for a purpose listed under subsection (3A) they may be required to provide evidence in relation to that matter.”

LORD ANDERSON OF IPSWICH
LORD JUDGE

24★ Page 3, line 43, leave out “condition is” and insert “conditions are”

Clause 4 - continued

- 25★** Page 3, line 44, leave out from beginning to end of line 2 on page 4 and insert—
- “(2) The conditions are that the Secretary of State is satisfied that—
- (a) an organisation listed in Schedule 2 to the Terrorism Act 2000 is engaging in armed conflict in that area; and
 - (b) it is necessary, for the purpose of protecting members of the public from a risk of terrorism, to restrict United Kingdom nationals and United Kingdom residents from entering, or remaining in, the area.”
- 26★** Page 4, line 6, after “must” insert “at least once in every calendar year, starting in the calendar year following its designation,”
- 27★** Page 4, leave out lines 7 to 12 and insert—
- “(a) review each designation then in effect,
 - (b) determine whether each designated area satisfies the conditions for designation in section 58C(1) to (3),
 - (c) decide in the case of each such designation whether to vary or revoke the designation or take no action with respect to it,
 - (d) publish each such decision, and
 - (e) lay a record of each such decision before Parliament.”

LORD ROSSER

LORD KENNEDY OF SOUTHWARK

- 28★** Page 4, line 12, at end insert—
- “() Regulations made under subsection (1) cease to have effect at the end of a period of 3 years beginning with the day on which the regulations come into force.”
- 29★** Page 4, line 14, at end insert—
- “(6) A Minister of the Crown may not table a motion to approve any regulations made under this section unless the Intelligence and Security Committee of Parliament have reviewed the regulations and have laid before both Houses of Parliament a report including a recommendation of whether or not the regulations should be approved.”

LORD ANDERSON OF IPSWICH

LORD JUDGE

- 30★** Page 4, line 14, at end insert—
- “(2A) In section 123 (orders and regulations), in the list of provisions in subsection (4), after paragraph (b) insert—
- “(ba) section 58B(2)(g);”.

BARONESS HAMWEE

LORD PADDICK

The above-named Lords give notice of their intention to oppose the Question that Clause 4 stand part of the Bill.

Clause 6

BARONESS HAMWEE
LORD PADDICK

31 Page 5, line 16, leave out subsection (3)

BARONESS WILLIAMS OF TRAFFORD

32 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);”

BARONESS HAMWEE
LORD ROSSER
LORD KENNEDY OF SOUTHWARK
LORD PADDICK

33 Page 5, line 23, at end insert –

“() After subsection (3) of that section of that Act insert –
“(4) An offence is only committed under paragraph (ca) of subsection (2) where –
(a) the relevant acts were an offence in the country where the acts took place; or
(b) the individual –
(i) is a British national; or
(ii) has been present in the United Kingdom for a continuous period of at least six months in the last ten years.””

After Clause 6

LORD FAULKS
LORD HODGSON OF ASTLEY ABBOTTS
LORD BETHELL

34 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).

After Clause 6 - continued

- (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 7

BARONESS HAMWEE
LORD ROSSER
LORD KENNEDY OF SOUTHWARK
LORD MARKS OF HENLEY-ON-THAMES

35 Page 5, line 31, leave out subsection (3)

LORD MARKS OF HENLEY-ON-THAMES
LORD PADDICK

The above-named Lords give notice of their intention to oppose the Question that Clause 7 stand part of the Bill.

Clause 8

LORD MARKS OF HENLEY-ON-THAMES
LORD THOMAS OF GRESFORD

The above-named Lords give notice of their intention to oppose the Question that Clause 8 stand part of the Bill.

Clause 9

LORD MARKS OF HENLEY-ON-THAMES
LORD THOMAS OF GRESFORD

The above-named Lords give notice of their intention to oppose the Question that Clause 9 stand part of the Bill.

Clause 10

LORD MARKS OF HENLEY-ON-THAMES
LORD THOMAS OF GRESFORD

The above-named Lords give notice of their intention to oppose the Question that Clause 10 stand part of the Bill.

Clause 11

LORD MARKS OF HENLEY-ON-THAMES
LORD THOMAS OF GRESFORD

The above-named Lords give notice of their intention to oppose the Question that Clause 11 stand part of the Bill.

Clause 12

LORD PADDICK
LORD MARKS OF HENLEY-ON-THAMES

36★ Page 13, line 27, at end insert –

“() For the purposes of this section the right to use a motor vehicle includes the right to use it as a borrower or by renting.”

BARONESS HAMWEE
LORD PADDICK
LORD ROSSER
LORD KENNEDY OF SOUTHWARK

37 Page 14, line 36, at end insert –

“() After section 53 (period for which notification requirements apply) insert –

“53A Review of the necessity and proportionality of notification

- (1) A person to whom the notification requirements apply may apply to the chief officer of police for the area in which that person resides for a determination that the person should no longer be subject to the notification requirements (“an application for review”).
- (2) An application for review may be made after a person has been subject to notification requirements for a period of 5 years and every 5 years thereafter, following a determination of the review.
- (3) The chief officer of police to whom an application for review is made shall review the necessity and proportionality of the notification requirements and shall make a decision as to whether that person should continue to be subject to the notification requirements.
- (4) Where a determination has been made under subsection (3) that the person should no longer be subject to the notification requirements, then that person is no longer subject to the notification requirements.
- (5) Where a determination has been made under subsection (3) that the person should continue to be subject to the notification requirements, the applicant has a full right of appeal to the Special Immigration Appeals Commission within 21 days of the date of decision.”

Schedule 1

LORD PADDICK
LORD MARKS OF HENLEY-ON-THAMES

38★ Page 27, line 15, after “holds” insert “or which they are entitled to operate”

Clause 13

BARONESS HAMWEE
LORD ROSSER
LORD KENNEDY OF SOUTHWARK
LORD PADDICK

- 39 Page 15, line 16, leave out from “assessing” to “and” in line 17 and insert “whether the person to whom the warrant relates is in breach of his or her notification requirements;”

BARONESS HAMWEE
LORD ROSSER
LORD KENNEDY OF SOUTHWARK

- 40 Page 15, line 25, at end insert –
“(ba) that there are reasonable grounds to believe that the person to whom the warrant relates is in breach of his or her notification requirements,”

BARONESS HAMWEE
LORD ROSSER
LORD KENNEDY OF SOUTHWARK
LORD PADDICK

- 41 Page 15, line 26, after “necessary” insert “and proportionate”

Clause 16

LORD PADDICK
LORD MARKS OF HENLEY-ON-THAMES

- 42★ Page 20, line 2, after “controls)” insert –
“(a) in paragraph 2(4) leave out “whether or not” and insert “if”,
(b) in paragraph 3 at end insert “if he has reasonable grounds for suspecting that the person falls within section 40(1)(b),
(c) ”
- 43★ Page 20, line 9, at end insert “committed on the occasion on which the person was questioned”
- 44★ Page 20, leave out lines 11 to 13
- 45★ Page 20, leave out lines 14 to 19
- 46★ Page 20, line 25, at end insert –
“() In Schedule 7 to the Terrorism Act 2000 (port and border controls), in paragraph 6(1) at the end insert “if he has reasonable grounds to suspect the person or, in the case of stopping a vehicle, a person in the vehicle is a person falling within section 40(1)(b).”

Schedule 2

BARONESS HAMWEE
LORD PADDICK

- 47 Page 29, line 5, leave out paragraph 2
- 48 Page 29, line 29, leave out sub-paragraph (4)
- 49 Page 32, line 3, leave out sub-paragraph (4)
- 50 Page 33, line 3, leave out sub-paragraph (4)
- 51 Page 34, line 32, leave out sub-paragraph (4)
- 52 Page 36, line 4, leave out sub-paragraph (4)
- 53 Page 37, line 28, leave out paragraph 19

Clause 19

BARONESS HOWE OF IDLICOTE

- 54★ Page 21, line 19, at end insert –
- “(4A) Section 37 (membership and proceedings of panel) is amended in accordance with subsections (4B) and (4C).
- (4B) At the end of subsection (1)(b) insert “, unless they are the person who referred the particular identified individual for an assessment under section 36, in which case they must appoint an alternative person to represent them on the panel in accordance with subsections (2) and (2A).”
- (4C) After subsection (2) insert –
- “(2A) The representative appointed under subsection (2) must not be the person who referred the particular identified individual for an assessment under section 36.””

LORD PADDICK
LORD STUNELL

- 55★ Page 21, line 19, at end insert –
- “() After subsection (3) insert –
- “(3A) The Secretary of State must ensure the collection and annual release of statistics on –
- (a) the religion, and
- (b) the ethnicity,
- of identified individuals referred under subsection (2).””
- 56★ Page 21, line 19, at end insert –
- “() In subsection (5), after paragraph (d) insert –
- “(e) any other matters relevant to safeguarding the identified individual.””

Clause 19 - continued

BARONESS HAMWEE
 BARONESS JONES OF MOULSECOOMB
 LORD STUNELL
 BARONESS LAWRENCE OF CLARENDON

57 Page 21, line 25, at end insert –

“() After section 40 (indemnification), insert –

“40A Independent review of preventing people being drawn into terrorism and support for those vulnerable to being drawn into terrorism

- (1) The Secretary of State must make arrangements for an independent review of the Government’s Prevent strategy for preventing people from being drawn into terrorism and for supporting those vulnerable to being drawn into terrorism within 6 months of this provision entering into force.
- (2) The Secretary of State must report on the findings of the review. This report must be laid before both Houses of Parliament within 18 months of this provision entering into force.”

LORD PADDICK
 LORD STUNELL

The above-named Lords give notice of their intention to oppose the Question that Clause 19 stand part of the Bill.

After Clause 20

LORD MARLESFORD

58 Insert the following new Clause –

“Review: national identity numbers

- (1) Within the period of 2 years beginning with the day on which this Act is passed, the Secretary of State must lay a report before both Houses of Parliament reviewing the case for the introduction of national identity numbers to assist in countering terrorism and ensuring border security.
- (2) The review must consider whether unique national identity numbers should be linked to a secure and central database containing biometric data to assist with establishing and verifying the identity of possible terrorism suspects or those engaged in hostile state activity, accessible by the relevant national authorities.”

LORD ANDERSON OF IPSWICH
 BARONESS MANNINGHAM-BULLER
 LORD JUDGE

59★ Insert the following new Clause –

“Review of proscription

- (1) Section 3 of the Terrorism Act 2000 is amended as follows.
- (2) After subsection (6), insert –

After Clause 20 - continued

- “(6A) In respect of each organisation listed in Schedule 2, the Secretary of State must at least once in every calendar year, starting in the calendar year following its listing –
- (a) review the activities of that organisation,
 - (b) determine whether that organisation satisfies the conditions for proscription in subsections (5) to (6),
 - (c) decide whether to vary or revoke the listing or to take no action with respect to it,
 - (d) publish each such decision, and
 - (e) lay a record of such decision before Parliament.”

Clause 21

BARONESS WILLIAMS OF TRAFFORD

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

BARONESS JONES OF MOULSECOOMB

LORD PADDICK

LORD MARKS OF HENLEY-ON-THAMES

The above-named Lords give notice of their intention to oppose the Question that Clause 21 stand part of the Bill.

After Clause 21

LORD MARLESFORD

61 Insert the following new Clause –

“Review: dual passports

- (1) Within the period of 12 months beginning with the day on which this Act is passed, the Secretary of State must lay a report before both Houses of Parliament evaluating the case for requiring dual nationality British citizens to declare the nationality of their other passport or passports in order to assist with border security.
- (2) The review must consider whether information on dual or multiple passport holders should be made available to border security staff and other relevant national authorities via a centralised database.”

BARONESS JONES OF MOULSECOOMB

62 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

After Clause 21 - continued

- (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.”

LORD MARKS OF HENLEY-ON-THAMES
LORD PADDICK

63★ Insert the following new Clause –

“Access to a solicitor

- (1) Schedule 8 to the Terrorism Act 2000 is amended as follows.
- (2) In paragraph 7(1) leave out “paragraphs 8 and 9” and insert “paragraph 8”.
- (3) In paragraph 7A –
 - (a) leave out sub-paragraph (3);
 - (b) in sub-paragraph (6) leave out from second “would” to the end and insert “create an immediate risk of physical injury to any person”;
 - (c) in sub-paragraph (7) at the end insert “provided the consultation is in private”;
 - (d) leave out sub-paragraph (8).
- (4) Leave out paragraph 9.”

Schedule 3

BARONESS HAMWEE
LORD PADDICK

64 Page 38, line 36, leave out from “may” to “grounds” in line 37 and insert “only exercise the powers under this paragraph where there are reasonable”

65 Page 38, line 38, at end insert “and where it is necessary and proportionate to do so”

LORD ANDERSON OF IPSWICH
LORD JUDGE

66★ Page 38, line 41, leave out “hostile act” and insert “serious crime”

67★ Page 39, line 4, leave out sub-paragraph (6)

BARONESS JONES OF MOULSECOOMB
EARL ATTLEE

68 Page 39, line 41, at end insert –

- “() A person may refuse a request for documents or information under sub-paragraph (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

Schedule 3 - continued

(b) the information or document in question is subject to legal privilege.”

69 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

70 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

71 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”

BARONESS WILLIAMS OF TRAFFORD

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

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

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

75 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

Schedule 3 - continued

- (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.”

76 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.”

77 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,
 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.

Schedule 3 - continued

- (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
- (1) 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 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—

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- (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,
- 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.”

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

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

80 Page 47, leave out line 4

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EARL ATTLEE

81 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

82 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.
- (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

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- (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 –
- (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,

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- (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.
- 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);

Schedule 3 - continued

“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).
 - (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.”

Schedule 3 - continued

BARONESS HAMWEE
LORD PADDICK

83 Page 49, line 19, at end insert –
“() The detainee shall be informed of the rights in sub-paragraph (1) when first detained.”

84 Page 49, line 43, leave out paragraph (b)

85 Page 50, line 29, leave out paragraph 26

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

86 Page 50, line 31, leave out “and hearing” and insert “but not hearing”

BARONESS HAMWEE
LORD PADDICK

87 Page 53, line 12, at end insert –
“() The detainee shall be informed of the rights in sub-paragraph (1) when first detained.”

88 Page 54, line 12, leave out paragraph 32

BARONESS JONES OF MOULSECOOMB
LORD PADDICK
LORD MARKS OF HENLEY-ON-THAMES

The above-named Lords give notice of their intention to oppose the Question that Schedule 3 be the Third Schedule to the Bill.

Clause 26

BARONESS HOWE OF IDLICOTE

89★ Page 25, line 30, at beginning insert “Subject to subsection (2A), ”

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

90 Page 25, line 37, at end insert –
“() Section 2(4) comes into force after the Secretary of State has performed the duty to consult under section 2(5) or two months after the passing of this Act, whichever is the later.”

BARONESS HOWE OF IDLICOTE

91★ Page 25, line 37, at end insert –

“(2A) Before any of the provisions of this Act other than those which come into force on its passing can come into force, the Secretary of State must revise the existing guidance and strategies relating to counter-terrorism activities, including guidance issued under section 29 of the Counter-Terrorism and Security Act 2015, and lay all sets of the revised guidance before both Houses of Parliament.”

Counter-Terrorism and Border Security Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

25 October 2018
