

Counter-Terrorism and Border Security Bill

FOURTH
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 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.

After Clause 21 - continued

- (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
 - (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

LORD ROSSER

LORD KENNEDY OF SOUTHWARK

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

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

63A Page 38, line 35, at end insert –

- “(3A) In order to inform a decision on whether to select a person for questioning under this paragraph an officer may approach a person and ask questions for screening purposes.
- (3B) Screening under sub-paragraph (3A) may include, but is not limited to –
- (a) asking questions to establish the identity, provenance and destination of a person;
 - (b) asking questions to establish the method of travel and purpose of travel of a person;
 - (c) scrutiny of a person’s travel document;
 - (d) a comparison of the holder against the image contained in the document;
 - (e) requesting additional documents from the person relevant to screening;
 - (f) checking personal information against records where there is no significant additional delay.
- (3C) It is not an offence for a person to refuse to answer questions asked for screening purposes or to refuse to otherwise engage with officers in the screening process.
- (3D) An officer must inform any person they approach for screening purposes that they are not obliged to answer questions or engage with the officer on the screening process.
- (3E) An examining officer must not exercise powers under this Schedule, with the exception of the power to approach a person for screening purposes under sub-paragraph (3A), in respect of any person unless that person has been notified that an examination under this Schedule has commenced.”

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 ROSSER
LORD KENNEDY OF SOUTHWARK

65A Page 38, line 38, at end insert –

- “() The decision by an examining officer to select a person to question –
- (a) must not be arbitrary, and
 - (b) must be informed by the threat from hostile activity to the United Kingdom and its interests posed by foreign States and hostile actors acting for, on behalf of, or otherwise in the interests of, those States, whether active in or outside the United Kingdom.”

Schedule 3 - continuedLORD 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)

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

67ZA Page 39, line 7, at end insert –

- “() The Investigatory Powers Commissioner (“the Commissioner”) must be informed when a person is stopped under the provisions of this paragraph.
- () The Commissioner must make an annual report on the use of powers under this paragraph in the border area.”

LORD MARLESFORD

67A Page 39, line 41, at end insert –

- “() give the examining officer on request a sample of P’s DNA.”

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
 - (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.”

LORD ROSSER
LORD KENNEDY OF SOUTHWARK

69A Page 43, line 27, at end insert –

- “11A(1) This paragraph applies where –
 - (a) an examining officer intends to retain an article under paragraph 11(2); and
 - (b) the person who owns or was carrying or transporting the article alleges that the article contains confidential material.

Schedule 3 - continued

- (2) Where sub-paragraph (1) applies, the examining officer –
 - (a) may not examine the article; and
 - (b) must immediately provide the article to the Investigatory Powers Commissioner (the “Commissioner”).
- (3) On receiving an article under sub-paragraph (2), the Commissioner must determine whether or not the article contains confidential material.
- (4) Where the Commissioner determines the article contains confidential material, the Commissioner may authorise the examination and retention of material in accordance with the provisions of paragraph 12(5).
- (5) Where the Commissioner determines the article does not contain confidential material, the Commissioner must return the article to the examining officer to determine whether the material should be retained under paragraph 11(2).”

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;

Schedule 3 - continued

- (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.”

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).

Schedule 3 - continued

- (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(1) 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.
- (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.

Schedule 3 - continued

- 13C(1) This paragraph applies after the Investigatory Powers Commissioner has 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,
- 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.”

Schedule 3 - continued

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

80 Page 47, leave out line 4

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,

Schedule 3 - continued

- (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 –
- (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,

Schedule 3 - continued

- (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
LORD ROSSER
LORD KENNEDY OF SOUTHWARK

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
LORD ROSSER
LORD KENNEDY OF SOUTHWARK

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.”

Clause 26 - *continued*

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.”

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