



BRIEFING PAPER

Number 7746, 1 November 2016

Investigatory Powers Bill: Lords amendments

By Joanna Dawson

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Summary

The Investigatory Powers Bill was introduced in the House of Commons in March 2016. The Bill would overhaul the framework governing the use of surveillance by the intelligence and security agencies and law enforcement to obtain the content of communications and communications data. It followed three major reports published in 2015, all of which concluded that the law in this area is unfit for purpose and in need of reform.

The Bill completed report stage in the House of Lords on 19 October. It had third reading on 31 October and will return to the Commons for ping pong on 1 November.

This paper is intended to complement Library Briefing Papers [Investigatory Powers Bill](#), which provides an analysis of the Bill as originally introduced in the Commons, and [Investigatory Powers Bill: Committee Stage Report](#). It provides an overview of significant Lords amendments to the Bill.

1. Introduction

1.1 Background

The Investigatory Powers Bill would overhaul the framework governing the use of surveillance by the intelligence and security agencies and law enforcement to obtain the content of communications and communications data.

Many of the capabilities for which the Bill provides have been in use for a number of years. Some are openly provided for in the *Regulation of Investigatory Powers Act 2000*, whereas others have been only recently avowed, having operated on the basis of provisions in legislation governing the general powers of the security, intelligence and law enforcement agencies.

The Bill would provide for the following capabilities:

- the interception of communications,
- the retention and acquisition of communications data,
- equipment interference, and
- the retention and examination of bulk personal datasets.

Interception, acquisition of communications data, and equipment interference powers are provided for both on a targeted basis and in bulk.

The Bill would also reform the oversight regime for the use of these powers, replacing the three existing Commissioners with a single body of Judicial Commissioners led by the Investigatory Powers Commissioner. These Commissioners would bring an element of judicial oversight to the process of issuing warrants to the intelligence services.

1.2 Lords stages

The Bill had its second reading in the House of Lords on 27 June 2016. Committee stage began on 11 July. There were six sittings, concluding on 12 September.

Report stage ran over three days concluding on 19 October. The Bill had its third reading on 31 October.

Bulk powers review

During committee stage, David Anderson QC, the Government's independent reviewer of terrorism legislation, published a review of the operational case for the bulk powers provided for by the Bill.¹ The review was set up in May 2016 in response to concerns raised in the Commons as to whether or not the Government had established an operational case for the most intrusive powers contained in the Bill. The timing of the review was intended to enable consideration of its conclusions in the Lords.

¹ David Anderson QC, [Report of the Bulk Powers Review](#), 7 August 2016

The report concluded that there is a proven operational case for three of the bulk powers, and that there is a distinct (though not yet proven) operational case for bulk equipment interference.

Amendments

The main amendments to the Bill focused on introducing new or strengthened safeguards with respect to the exercise of powers contained in the Bill or oversight thereof. In many instances Government amendments sought to address concerns expressed by the Opposition and the Intelligence and Security Committee in the Commons. In particular, amendments focussed on:

- Providing additional safeguards for communications subject to legal professional privilege and confidential journalistic material;
- Imposing restrictions on access to bulk personal datasets containing sensitive information;
- Providing further detail, and oversight, on the operational purposes for which warrants may be sought.

The Government suffered one defeat. Baroness Hollins tabled an amendment, with cross party support, seeking to implement a recommendation of the Leveson Inquiry concerning awards of costs in civil litigation. She made it clear that the purpose of the amendment was to exert pressure on the Government to commence section 40 of the *Crime and Courts Act 2013*, which would have similar effect.

This paper provides an overview of the most significant Lords amendments. It was updated on 1 November to reflect amendments made at [third reading](#) in the Lords (on 31 October 2016) and to make reference to amendment numbers in the [Lords Amendment paper](#) prepared prior to ping pong in the Commons.

2. General privacy protections

2.1 Report

An amendment to **clause 1 (Lords Amendment 1)** was tabled by Lord Janvrin on report on behalf of the Intelligence and Security Committee. The amendment would insert a new line at the beginning of clause 1 stating

This Act sets out the extent to which certain investigatory powers may be used to interfere with privacy.

Lord Janvrin explained it thus

When the ISC reported on the draft Bill, we recommended that privacy protection should form the backbone of the legislation, around which the exceptional, intrusive powers would then be built. This recommendation was to underline at the very outset of the Bill that a delicate balance must be struck between an individual's right to privacy and the exceptional powers needed by the intelligence agencies to ensure out safety and security.

... The Intelligence and Security Committee still feels that there is merit in placing a simple statement right at the forefront of the legislation to provide additional clarity that there should be no doubt that privacy protection remains a fundamental priority.²

The amendment was passed with the support of the Government.

The Government tabled amendments to **clause 2 (Lords amendments 3-10)**. Clause 2 would require public authorities including the Secretary of State and judicial commissioners to have regard to the human rights implications of interfering with communications. The amendments concern the acquisition of communications or communications data that are particularly sensitive, such as confidential journalistic material.

The Minister, Earl Howe, explained that

The amendments make explicit that in such situations the public authority must consider whether the sensitivity of the information to be acquired merits the application of a higher level of protection in exercising the power.³

Amendments were tabled by Baroness Hollins concerning civil liability for unlawful interception.

Amendments to **clause 8 (Lords amendments 11-14)** were aimed at ensuring that the statutory tort provided for by that clause would be applicable to victims of phone or email hacking by third parties. Further amendments would insert a new **clause 9 (Lords amendment 15)** into the Bill, which would provide for awards of costs in such cases.

Baroness Hollins explained the amendments thus

The primary purpose of Amendment 18 is to provide costs protection in court cases for claimants as well as for Leveson-regulated news publishers with respect to these claims. The protection intended is equivalent to that which would exist for such claims had the Government commenced section 40 of the

² [HL Deb 11 October 2016, c1789](#)

³ *Ibid*, c 1792

Crime and Courts Act 2013. There has been no explanation to Parliament as to why the former Culture Secretary announced last October at a meeting of newspaper editors that he was not minded to commence section 40. That represents a change of government policy, which both breaks the cross-party agreement and betrays promises made to both Houses and to press abuse victims.⁴

The amendments seek to give effect to recommendations of the Leveson Inquiry, that a new independent press regulator should be established, and that publishers should be incentivised to join that regulator through the threat of adverse cost awards.

Such provision already exists with respect to civil claims against publishers under section 40 of the *Crime and Courts Act 2013*. However, this provision has not yet been commenced and there are doubts as to whether the Government ever intend to do so. Baroness Hollins made clear that the amendments were intended to pressure the Government into commencing section 40 of the 2013 Act and that if assurance could be given to that effect, the amendments would not be pressed.

In response Earl Howe suggested that civil routes of redress already exist for victims of unlawful interception, for example through claims for misuse of private information. He further noted that the Government has commenced sections of the 2013 Act concerning the award of exemplary damages against unregulated publishers, and that no date for the commencement of section 40 was set. He stated that the matter was still under active consideration.

Baroness Hollins called a division and the amendments were passed by 282 votes to 180.⁵

⁴ Ibid, c 1802

⁵ A further amendment was tabled at Third Reading by Baroness Hollins in an attempt to address a shortcoming in the new clause highlighted by the Government in response on report. The Government resisted the amendment but it was passed by 226 votes to 186: [HL Deb 31 October 2016, cc433-441](#)

3. Part 2: Lawful interception of communications

3.1 Committee

The Government tabled amendments to **clause 50 (Lords amendment 55)**⁶ in committee. Clause 53 provides for the circumstances in which a telecommunications operator may intercept communications in response to a valid overseas request. These include circumstances where the interception is carried out in response to a request made in accordance with an international agreement with another country. The amendments would add further conditions to clarify that the Secretary of State must designate the international agreements to which the clause applies.

3.2 Report

The Government tabled a number of amendments on report to **clauses 27 (Lords amendments 18-24)** and **106 (Lords amendments 120-125)** to provide further safeguards with respect to communications that attract legal professional privilege (LPP). The amendments would provide that material subject to LPP could not be targeted by an interception warrant or equipment interference warrant solely on the grounds that it is necessary in the interests of the economic well-being of the UK. They would also provide a definition of the “exceptional and compelling circumstances” that would justify the targeting of such material. These would be that:

- a. The public interest in obtaining the information that would be obtained by the warrant outweighs the public interest in the confidentiality of items subject to legal privilege,
- b. There are no other means by which the information may reasonably be obtained, and
- c. In relevant cases, the information is required for the purpose of preventing death or serious injury.

Explaining the amendments the Advocate General for Scotland, Lord Keen, stated

[T]hese amendments ... make clear that the Secretary of State, or the issuing authority in the case of a police equipment interference warrant, when deciding whether to issue a warrant where the intention is to obtain legally privileged material, must first consider the public interest in maintaining the confidentiality of such material [under clause 2]. They then must be satisfied that the circumstances are so exceptional and compelling – so critical to protecting life or the UK’s national security – that the public interest in obtaining the information is greater than the public interest in maintaining the confidentiality of privileged material. ...

⁶ [HL Deb 13 July 2016, c 260](#)

These amendments directly respond to calls from this House and the legal profession that the Bill must be clear as to what is meant by “exceptional and compelling”.⁷

The Government amendments were supported, but there were some suggestions that they should go further. In response to amendments tabled by Baroness Hamwee, Lord Lester, and Lord Pannick, the Minister agreed to give further consideration to the issue of what test should be applied by the Investigatory Powers Commissioner in circumstances where an agency unintentionally obtained privileged material, but then wished to retain it.⁸

Government amendments were also introduced to provide for safeguards for confidential journalistic material.⁹ New clauses¹⁰ were inserted into the Bill (**Lords amendments 25; 26; 126; & 127**), and would provide that where a relevant authority applies for a warrant the purpose of which is to authorise or require the obtaining of such material, it must include a statement making this clear. This would ensure that whomever was responsible for considering the application would be fully aware of this fact and would also need to be satisfied that there were specific arrangements in place for the handling, retention, use and destruction of the material.

Further Government amendments in relation to the bulk provisions would provide that where confidential journalistic material is obtained by a public authority which intends to retain it, the Investigatory Powers Commissioner must be notified (**Lords amendments 171 & 210**). The Minister explained that this would ensure that the Commissioner would be aware of the material held by the agencies and would be able to provide effect oversight of the handling arrangements for this type of material.

These amendments were welcomed and passed without opposition.

⁷ [HL Deb 11 October, c 1826](#)

⁸ The Government tabled further amendments at third reading to address this point. The amendments would provide that the Investigatory Powers Commissioner must order the destruction of LPP material or impose conditions on its use or retention unless the public interest in retaining the item outweighs the public interest in confidentiality. They also clarify that decisions as to the use and retention of the material are to be made solely by the commissioner: [HL Deb 31 October 2016, cc445 – 447](#) (**Lords amendments 60, 148, 170, 209, 245**)

⁹ Ibid, cc 1837-1838

¹⁰ New clauses 26 and 114 in HL66

4. Part 3: Authorisations for obtaining communications data

4.1 Committee

The Government tabled a series of amendments aimed at restricting access to internet connection records under Part 3. A new clause was inserted after clause 58¹¹ (**Lords amendment 74**). The new clause would introduce a threshold for obtaining internet connection records where the purpose is the prevention and detection of crime. The committee amendments set the threshold at offences for which an offender could be imprisoned for at least six months. The amendments would provide for exceptions to this threshold in certain cases:

- a. Where the offence is committed by a person who is not an individual (that is, offences committed by corporate bodies, where a penalty of imprisonment cannot apply); and
- b. Offences where the sending of a communication of breach of a person's privacy are an integral part (such as stalking, cyber bullying and harassment).

These amendments were based on Opposition proposals in the House of Commons.

Amendments were also made to **clause 59 (Lords amendments 75-77)** to reflect amendments put forward by the Intelligence and Security Committee (ISC). Clause 64 provides that an officer authorising the acquisition of communications data should be independent from the investigation for which it is required. This is subject to a number of exceptions, such as the interests of national security. The amendments seek to define this exception more narrowly, reflecting concerns raised by the ISC in the Commons.

4.2 Report

An amendment to the new clause reflected in **Lords amendment 74** tabled by Lord Rosser was passed with Government support. This amendment would increase the threshold at which an offence qualifies as "serious crime" from one with a possible six month sentence to one with a sentence of 12 months or more. Lord Rosser acknowledged that this would result in a number of offences being excluded from the scope of the provision, including motoring offences such as joyriding; criminal damage under £5000k; certain non-violent offences under the Public Order Act; certain immigration offences; and certain offences relating to the supply of drugs. He accepted that these offences could have significant consequences, but suggested that they could not be regarded as serious in the context of the purpose for which access to internet connection records is required.¹²

¹¹ [HL Deb 19 July 2016, c536-537](#)

¹² [HL Deb 17 October 2016, c 2126](#)

5. Part 4: Retention of communications data

5.1 Report

The Government introduced a number of amendments to Part 4 of the Bill, dealing with retention of communications data.

Amendments to **clause 83 (Lords amendments 95-97 & 100)**¹³ would provide for the introduction of judicial approval for data retention notices. This would mean that when such notices are given or varied by the Secretary of State, they would also require the approval of a judicial commissioner.

A further amendments (**Lords amendment 98**) would prohibit the retention of third party data. Lord Keen explained the circumstances in which the provision would apply:

Where one telecommunications operator is able to see the communications data in relation to applications or services running over its network but where it does not use or retain that data for any purpose, then it is regarded as third-party data. ...

I am pleased to say that we have now produced a clause that prohibits the retention of third-party data. ... [T]he Bill essentially replicates the current position in RIPA, which is that data that already exist and could save a life or convict a criminal and so on can be accessed, but we are not insisting that data should be retained.¹⁴

¹³ [HL Deb 17 October 2016, c 2143-2144](#)

¹⁴ *Ibid*, c 2145

6. Part 6: Bulk warrants

6.1 Committee

The Government tabled a number of amendments to **clause 133 (Lords amendments 154-155)** and related clauses¹⁵ in committee concerning the operational purposes for which bulk warrants may be granted.

The Minister, Earl Howe, explained that

The amendments tabled by the Government add significant detail to the provisions in the Bill on operational purposes –that is, the purposes for which data collected under a bulk warrant may be selected for examination. Operational purposes are an important new safeguard and we are committed to ensuring that the Bill includes as much detail as possible about how they will operate in practice.¹⁶

They reflect amendments tabled by the ISC in the House of Commons.

The amendments would require that the heads of the intelligence services must maintain a list of operational purposes, which would be overseen by the Investigatory Powers Commissioner. Any addition to the list would have to be approved by the Secretary of State.

The amendments would also provide for additional oversight arrangements, namely:

- the list of operational purposes would be reviewed annually by the Prime Minister;
- the list would be provided to the Intelligence and Security Committee every three months;
- the Investigatory Powers Commissioner would be required to publish a summary of the use of operational purposes in his or her annual report.

6.2 Report

The Government tabled report stage amendments to insert a new clause after **clause 136 (Lords amendment 160)**,¹⁷ concerning judicial commissioner approval of major modifications to warrants issued under Parts 6 (bulk warrants) and 7 (bulk personal datasets) of the Bill.¹⁸ The Minister explained that the amendments would provide greater clarity about the matters that a commissioner must consider when determining whether to approve a modification to a bulk warrant. They would provide:

- That for major modifications to add or vary an “operational purpose”, a judicial commissioner must review the Secretary of

¹⁵ See clauses 149 & 169 concerning bulk acquisition warrants and bulk equipment interference warrants respectively. **Lords amendments: 178 & 179; 194 & 195**

¹⁶ [HL Deb 7 September 2016, c 1069](#)

¹⁷ And related new clauses after clauses 152, 172 & 195: , **see Lords Amendments 183, 200 & 237**

¹⁸ [HL Deb 19 October 2016, c 2346-2347](#)

State's conclusions as to whether the modification is necessary, applying the same principles as would be applied by a court on an application for judicial review and complying with the privacy duties set out in clause 2;

- That for a major modification to an equipment interference warrant, where the purpose is to add or vary a description of conduct, the judicial commissioner must also review the Secretary of State's conclusions as to whether the conduct authorised by the modification is proportionate to what is sought to be achieved by it;
- That when considering whether to authorise disclosure to overseas authorities of data acquired under the bulk powers in the Bill, the Secretary of State must be satisfied that the overseas authority has safeguards in place corresponding to those in the Bill in relation to the selection of data for examination.

Amendments were tabled by Lord Butler which would insert a new clause after **clause 143 (Lords amendment 172)**,¹⁹ providing for an offence of breaching safeguards relating to examination of material. Lord Butler explained the amendments thus

Amendment 195 introduces penalties for the wrongful examination of material collected under bulk interception; Amendment 203 for the wrongful examination of bulk collection of communications data; Amendment 217 for the wrongful examination of data obtained from bulk equipment interference; and Amendment 241 for the wrongful examination of datasets collected in bulk. I make it clear that I do not believe that these powers are needed to deal with current abuse of powers by the intelligence agencies, nor because I expect the agencies to abuse the powers in the Bill in the future. I know enough of the agencies to know that their standards in these matters are high.

The reason for introducing these clauses is that the Bill gives exceptional powers, and the powers in respect of bulk collection have given rise to the greatest public concern. There are already specific offences for the misuse of other powers in the Bill; for example, targeted interception and access to communications data. Penalties for the misuse of equipment interference are covered by other legislation; for example, the Computer Misuse Act. However, at present there is no specific offence on powers which cause most concern to the public – the powers for bulk collection. For misuse of these powers, reliance would have to be placed on the general purposes in the Data Protection Act, on internal discipline or on the very general offence of misconduct in public office. There is clearly an unevenness here. The misuse of information collected under bulk powers should be subject to specific penalties like the misuse of other powers in the Bill.²⁰

The amendments reflect concerns raised by the ISC and would apply only to deliberate misuse of powers. They were passed with the support of the Government.

¹⁹ See also new clauses after 159; 179; 200. **Lords amendments 190; 211; 246**

²⁰ [HL Deb 11 October 2016, c 1849](#)

7. Part 7: Bulk personal datasets

7.1 Committee

The Government tabled amendments to Part 7 of the Bill in Committee, giving effect to a commitment to provide further restrictions on the use of class bulk personal dataset (BPD) warrants.²¹

A new clause inserted after **clause 184 (Lords amendment 214)** would provide that a class BPD warrant cannot be used to access a dataset that consists of health records or if a substantial proportion of the dataset consists of sensitive personal data. Use of a class BPD warrant would also be prohibited if a dataset raised novel or contentious issues that ought to be considered by the Secretary of State and a judicial commissioner.

7.2 Report

The Government tabled further amendments to Part 7 of the Bill on report (reflected in **Lords amendments 214 & 215**), which would impose additional restrictions on the use of bulk personal datasets.²²

The Minister explained that the amendments responded to recommendations made by David Anderson in his review of bulk powers. Mr Anderson suggested that, on the basis that some BPDs may contain material that is comparable to the content of communications, and occasionally material subject to legal professional privilege, further safeguards should be added to the Bill and Code of Practice.

The amendments would provide that a class BPD warrant may not be used to retain or examine a BPD that contains “protected data”. Protected data would include the contents of letters, emails or other documents.

Further amendments would introduce additional safeguards for items subject to legal professional privilege in BPDs. New **clauses (Lords amendment 244 & 245)** would provide for safeguards when protected data subject to LPP are selected for examination, and when such material is retained following examination. These would ensure consistency with the safeguards provided for in Part 6 relating to LPP material obtained under a bulk warrant.

²¹ [HL Deb 7 September 2016, c1110-1111](#)

²² [HL Deb 19 October 2016, c 2377-2378](#)

8. Part 8: Oversight arrangements

8.1 Committee

A number of Government and Opposition amendments were tabled to **clause 203** which were aimed at altering the role of the Prime Minister and others in the appointment of the Investigatory Powers Commissioner and judicial commissioners. Government amendments (**Lords amendments 250-254**) were passed which would provide that the Investigatory Powers Commissioner would be appointed by the Prime Minister following a joint recommendation from the Lord Chancellor and the heads of the judiciary. Additionally, the Investigatory Powers Commissioner would be involved in recommending candidates for appointment as judicial commissioners.

Lord Keen explained that the amendment

significantly strengthens the role of the heads of the judiciary and the Lord Chancellor in appointments. It will mean that the Prime Minister can only appoint an individual who has been recommended and will help to ensure that the very best candidates are selected to perform these crucial roles. It will also ensure that the running of Her Majesty's Courts & Tribunals Service is not unduly affected by these appointments.²³

8.2 Report

The Government tabled further amendments at report stage to the oversight arrangements provided for in Part 8 of the Bill.

Amendments to **clause 203**,²⁴ (**Lords amendment 254**) under which the Investigatory Powers Commissioner and other judicial commissioners are appointed, would clarify how functions may be delegated.

Amendments to **clause 205 (Lords amendment 256)** responded to concerns raised by the Joint Committee on the draft Bill that duties placed on judicial commissioners, for example not to act in a way that is prejudicial to national security, or that might jeopardise an operation, might interfere with the performance of judicial functions. The amendments make clear that the duties imposed by clause 203(6) and (7) do not apply to judicial commissioners when carrying out judicial functions.

Amendments to **clause 208 (Lords amendment 259)** were tabled by the Government to ensure that the Scottish Government will be provided with the means to engage with the work of the judicial commissioners relating to devolved powers in Scotland. Clause 208 allows a judicial commissioner to provide advice and information to any person in relation to his or her responsibilities. However, they are required to first consult the Secretary of State before providing any advice or information that might be contrary to the public interest or prejudicial to national security. The amendments would require that the judicial commissioners also consult the Scottish Ministers before

²³ HL Deb, 19 July 2016, c633

²⁴ [HL Deb 17 October 2016, cc 2177-2180](#)

providing advice or information to a public authority or person that might be prejudicial to the prevention or detection of serious crime in Scotland, or the continued discharge of any devolved functions of a public authority.

Lord Janvrin tabled two amendments to **clause 210 (Lords amendment 263)** on behalf of the Intelligence and Security Committee which were accepted by the Government. He explained that the first amendment concerned the use of thematic warrants under the Bill –

The Intelligence and Security Committee has considered that thematic warrants have the theoretical potential to intrude upon the privacy of a great many people and there have been concerns as to the widespread intrusion they might theoretically be used to authorise. In the committee's report on the draft Bill, we recommended that such warrants should be subject to greater constraints. In seeking to address this in the other place, the chairman of the ISC explored, first, whether the duration of these warrants could be limited or, secondly, whether the grounds on which they could be authorised could be drawn more narrowly.

In response, the Government presented the committee with convincing classified evidence regarding the use of these forms of warrants across a number of real operations, involving serious threats to our security. This evidence was reassuring in demonstrating that these operations, enabled by the so-called thematic warrants, intruded only on small and defined groups of people, not on the hundreds or even thousands of people that some perhaps feared might be the case. Nevertheless, the ISC believes that some form of additional constraint is justified and has therefore been exploring options with the Government over recent months. The conclusion is that we might best achieve this aim by strengthening the scrutiny given to these warrants.²⁵

The amendment would require the Investigatory Powers Commissioner to report on thematic warrants as part of the annual reporting requirements provided for by clause 210.

The second amendment would provide that, where the ISC refers a matter to the Investigatory Powers Commissioner for consideration, any subsequent report on the issue should be shared with the ISC (**Lords amendment 267**).

Another Government amendment would insert a new clause after **clause 220 (Lords amendment 297)** into the Bill to give effect to a recommendation made by David Anderson in his review of the bulk powers contained in the Bill. Mr Anderson recommended that the Bill should be amended to provide for a Technology Advisory Panel, appointed by and reporting to the Investigatory Powers Commissioner, to advise on the impact of changing technology on the exercise of investigatory powers.

Lord Keen explained

Following careful consideration of this recommendation, we agree with Mr Anderson's assessment that those authorising, approving and overseeing the exercise of bulk powers must be alert to the impact of technological change on those powers' utility and

²⁵ Ibid, c 2193

impact. These amendments therefore give effect to Mr Anderson's recommendation in full.²⁶

The amendments would provide for the establishment of the panel, and for its role – namely, to advise on the impact of changing technology on the exercise of investigatory powers and the availability and development of techniques to use such powers while minimising interference with privacy.

The panel would have the same right of access to information as judicial commissioners and would be required to produce an annual report to the Investigatory Powers Commissioner.

A number of opposition amendments sought to expand the remit of the Panel, but the Government amendments were ultimately accepted without objection.

²⁶ Ibid, c 2182

9. Part 9: Miscellaneous and general provisions

9.1 Report

The Government tabled amendments to **clause 225²⁷ (Lords amendments 299-303)** relating to National Security Notices. Clause 225 enables the Secretary of State to give a National Security Notice to a telecommunications operator in the UK requiring it to take specified steps in the interests of national security. The type of steps that might be required could include providing services or facilities which would help the intelligence agencies to safeguard the security of their personnel and operations, for example.

The Minister explained that the amendments sought to clarify the activity that can be authorised by a national security notice in order to provide greater reassurance to telecommunications operators to whom such a notice may be given.

The amendments would make it clear that these notices could not be used for the primary purpose of acquiring communications or data, and that in any circumstances where this might be a consequence of steps taken, any interference with privacy would need to be authorised by an appropriate warrant.

Amendments to **clause 229 (Lords amendments 309-312)** would extend certain safeguards to the process for varying or revoking National Security Notices and Technical Capability Notices. Amendments made in the Commons provided for an explicit necessity and proportionality test to be applied before the Secretary of State could give a notice, and required a judicial commissioner to approve the decision. The amendments would provide that these safeguards apply to a decision to vary or revoke a notice, as well as one to issue one in the first place.

²⁷ [HL Deb 19 October 2016, cc 2391-2393](#)

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