Counter-Terrorism and Security Bill 2014-15- Parliamentary stages

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For full background on the Bill, see Research Paper 14/63 *Counter-Terrorism and Security Bill.* This Note examines the parliamentary scrutiny of the Bill until Lords amendments in the Commons on 10 February. The Bill has seven parts:

Part 1 would introduce two new powers to place temporary restrictions on travel, including the seizure of passports and new Temporary Exclusion Orders. Part 2 would amend the *Terrorism Prevention and Investigation Measures Act 2011*, to introduce relocation into the TPIM system and a tighter test on their use;

Part 3 would amend the *Data Retention and Investigatory Powers Act 2014.* Part 4 would allow the Secretary of State to introduce authority to carry schemes for aircraft, shipping and rail which would replace the current inbound arrangements with broader inbound and outbound arrangements;

Part 5 would put the Prevent Strategy on a statutory footing, Part 6 would amend Sections 15 to 18 of the *Terrorism Act 2000* (which criminalise instances of terrorist financing) to make clear that insurers may not reimburse ransom payments made to terrorists. Part 7 would create a Privacy and Civil Liberties Board. It would also amend the *Special Immigration Appeals Commission Act 1997.*

Government amendments made in the Lords

There were no non-Government amendments and no divisions. On the first day of Lords committee stage, on 19 January 2015 the Government moved a series of amendments to allow for **judicial oversight of the removal of passports and the imposition of a Temporary Exclusion Order.** Another amendment allowed for **civil legal aid to be made available** at hearings of applications to extend the 14 day time period in which an individual's travel documents may be retained in England and Wales The Government brought forward a new clause on **monitoring the universities sector** for compliance with statutory duties on Prevent on 28 January,

On Lords report on 2 February there was a Government amendment ensuring that the

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authority-to-carry scheme would be subject to the affirmative resolution procedure in both Houses.

On 4 February Government amendment 15D was passed which **required universities to 'have particular regard' to s43 of the *Education (no 2) Act 1986* on freedom of speech in the higher education sector.** There were also Government amendments to ensure that the guidance issued under Clause 28 would be subject to the affirmative resolution procedure. On 9 February on third reading a Government amendment made clear that the **principle of academic freedom** be explicitly referenced in the Bill.

Government amendments 16 to 21 inserted a **new clause extending the powers of the Independent Reviewer of Terrorism to other counter-terrorism legislation (Part 1 of *the Anti-terrorism, Crime and Security Act 2001* and Part 2 in relation to terrorism, *Counter-terrorism Act 2008* and Part 1 of the current Bill) and to ensure that the Privacy and Civil Liberties Board could support him in reviewing the operation of these laws**.[1] The current requirement to review annually all legislation within his scope was also removed, apart from the *Terrorism Act 2000* In respect of the Privacy and Civil Liberties Board*,* .the Independent Reviewer is given power to direct its work and a key role in appointments. A Government amendment on 9 February ensured that Northern Ireland would be brought within the scope of the amendment to allow civil legal aid for challenges to the temporary passport seizures power.

Scrutiny

In respect of committee scrutiny, the Independent Reviewer, David Anderson gave oral evidence on 27 November 2014 to the Joint Committee on Human Rights. The Committee also held oral evidence from James Brokenshire, Minister for Security and Immigration, on 3 December. The Home Affairs Select Committee took oral evidence from Metropolitan Police representatives, Shami Chakrabarti, Director, Liberty and David Anderson. The Lords Constitution Committee issued a report on 12 January 2015and the Joint Committee on Human Rights published their report on 7 January.

The first day in Commons committee (9 December) examined Parts 2 and 3. The Committee looked at Part 1 on 15 December and the remaining parts on 16 December. On 17 December four consultations on national security relevant to the Bill were published by the Home Office after Committee scrutiny had concluded.

Commons report stage and third reading took place on 6 and 7 January 2015. There were no major amendments. During the course of the debate the Minister, James Brokenshire said that he could "assure the House that the Government will look very carefully at the constructive suggestions from David Anderson [on judicial oversight of TEOs] and return to this issue in the other place" This commitment was repeated by Lord Bates on Lords second reading on 13 January.

The introduction of the so-called Snooper's Charter clauses was discussed on second day of committee on 26 January by Lord King of Bridgewater, with the likelihood of further debate on report. For background see Library Standard Note 6373 *Communications Data: The 2012 draft Bill and recent developments.* Committee stage was largely taken up by debate on the university sector.

[1] HL Deb 4 February 2015 c760

Lords report stage took place on 2 and 4 February 2015. On the first day, attempts by Lord King of Bridgewater to bring forward amendments relating to the draft communications data bill were not pressed to a vote, when the Conservative minister indicated that they would form a manifesto commitment for the party. There were no divisions on third reading on 10 February, but further Government amendments set out above.

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1 Commons stages

1.1 Second Reading 2 December

The Bill received a second reading on 2 December 2014. The Home Secretary, Theresa May, outlined the main aspects of the Bill.

Concerns were raised about the legality of the Temporary Exclusion Orders (TEOs) by Sir Menzies Campbell and others[2] The question of putting the Prevent strategy on a statutory basis also attracted attention.[3] Mrs May said that although counter-terrorism was a reserved matter, there were discussions about Prevent in Scotland and other devolved administrations.[4]

She indicated that the passage of the Bill would be likely to take a couple of months from introduction, before the relevant secondary legislation could be laid before the House before the election.[5]

The Shadow Home Secretary, Yvette Cooper, indicated that the Opposition would support the Bill, but would press for some specific amendments. Ms Cooper criticised the changes made to the Prevent programme by the Coalition Government, in particular involving the Department of Communities and Local Government. She also criticised the operation of TPIMs in practice as ineffective. She queried the detail of the TEOs. The former Attorney General Dominic Grieve QC, drew attention to the apparent overlap between TEOS and TPIMs and gave a cautious welcome to the Bill overall.[6] Later, the junior spokesperson, Diana Johnson said that Labour would table amendments to TEOs and examine clause 17 in particularl.[7]

The Chair of the Home Affairs Select Committee, Keith Vaz, complained that the committee had not been able to scrutinise the Bill before second reading and called for judicial scrutiny of TEOs.[8] Hazel Blear and others called for a broader deradicalisation strategy.[9] Martin Horwood noted that the initial proposals from David Cameron, the Prime Minister, had been refined and that they were acceptable to both Labour and Liberal Democrats.[10]

Pete Wishart, for the Liberal Democrats, expressed concern about TEOs, and argued that Scottish public bodies affected by the Prevent provisions should be fully consulted.[11] The Bill received a second reading without a vote.

The Programme motion allows for three days in Committee of the Whole House and two days for report and third reading

1.2 Select Committee hearings

The Independent Reviewer, David Anderson gave oral evidence on 27 November 2014 to the Joint Committee on Human Rights.[12] He was quoted as stating "The concern I have

2 HC Deb 2 December 2014 c211 and c235
3 HC Deb 2 December 2014 c216
4 HC Deb 2 December 2014 c216
5 HC Deb 2 December 2014 c218
6 HC Deb 2 December 2014 c231
7 HC Deb 2 December 2014 c266
8 HC Deb 2 December 2014 c232
9 HC Deb 2 December 2014 c243
10 HC Deb 2 December 2014 c250
11 HC Deb 2 December 2014 c259

about this [TEO] power and the central concern about it is: where are the courts in all of this?" [13]The Committee held oral evidence from James Brokenshire, Minister for Security and Immigration, on 3 December. He was questioned closely about all aspects of the Bill and promised that the Code of Practice to be used alongside Schedule 1(seizure of passports) would be published during the passage of the Bill (Q15).[14]

The Home Affairs Committee published a report into Counter Terrorism earlier in May 2014.

On 3 December 2014, it took oral evidence from Deputy Assistant Commissioner Helen Ball, Counter-terrorism Senior National Coordinator for Terrorist Investigations, Metropolitan Police, Shami Chakrabarti, Director, Liberty and David Anderson.[15]

1.3 Fact Sheets and Consultations on the Bill

The Home Office published a series of Factsheets on 3 December 2014. There are impact assessments for each aspect of the Bill. On 17 December four consultations on national security were published by the Home Office after Committee scrutiny had concluded. These were:

1. **Schedule 7 to the Terrorism Act 2000: draft code of practice;**
2. **Privacy and Civil Liberties Board;**
3. **Temporary seizure of travel documents;**
4. **Prevent duty;**

1.4 Committee of the Whole House

9 December 2014

The Commons debated amendments and new clauses and schedules for Parts 2 and 3 under the terms of the programme motion.

Diana Johnson, for Labour, spoke to probing amendments to TPIMs, which were not formally moved.[16] She welcomed the relocation provision in TPIMs. Caroline Lucas indicated her opposition to TPIMs and their enhancement and Pete Wishart for the SNP added his support. In response Mr Brokenshire noted that TPIMS were working, with 10 introduced since the legislation took effect:

> The measures also follow the recommendations from David Anderson QC, the independent reviewer of terrorism legislation, in his most recent annual report on TPIMs. As he has said, however, there is no need to turn back the clock. Control orders were not working and were being struck down by the courts, whereas TPIMs have been consistently upheld and therefore provide a basis in law that is robust and has withstood the scrutiny of the courts. TPIMs have been endorsed by the courts, counter-terrorism reviewers, the police and the Security Service. This change enhances the powers available to manage TPIM subjects by moving them away from harmful associates and making it harder for them to engage in terrorism-related

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12 http://www.parliament.uk/documents/joint-committees/human-rights/Daivd_Anderson_Transcript_271114.pdf
13 "Concerns over counter terrorism plans" 27 November 2014 *BBC News*
14 http://www.parliament.uk/documents/joint-committees/human-rights/Counter-Terrorism-Bill-ev-031214.pdf
15 http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/counterterrorism-and-security-bill/oral/16038.html
16 HC Deb 9 December 2014 c784

> activity. That is why we judge, at this time against the threat picture we see, that it is appropriate to introduce these measures.[17]

The former Home Secretary, Kenneth Clarke, challenged him on the need for relocation powers, but Mr Brokenshire noted that the threat had changed:

> **James Brokenshire:** In large measure, it has been the changing nature of the threat picture. My right hon. and learned Friend will know from his time in government that in the past two years we have seen a very altered threat picture and, as he will no doubt recognise, a rise in the threat level earlier this year. The Government need to consider, in a responsible fashion, that changed threat picture and the advice we received from the independent reviewer of terrorism legislation. The proposals in the Bill are formed with that insight clearly in mind and David Anderson's specific recommendation on this point.[18]

The Commons then moved on to Part 3 of the Bill, with a debate on proposed new clauses associated with judicial oversight of retained data. Diana Johnson said that Labour broadly accepted the need for the extra category of data provided for in clause 17, but probed as to the exact definition of the new data required to ensure that it did not stretch beyond what was strictly necessary to link an IP address to a user.[19]

A number of other backbenchers spoke, including George Howarth from the Intelligence and Security Committee who noted that the number of intercepts under part 1 of RIPA stood[20] at 514,608 and drew attention to the international nature of the challenge. John McDonnell spoke to new clause 1 to add judicial oversight of threats to journalists' sources, on behalf of the Union of Journalists group in Parliament, following the enactment of the *Data Retention and Investigatory Powers Act* (DRIPA) in July 2014.

In response, Mr Brokenshire noted that the clause 17 provisions were time-limited to December 2016, and that Mr Anderson was conducting a review of DRIPA.[21] He announced that the Home Office was launching a consultation on two draft codes on the acquisition and disclosure of communications.. The code would be subject to the approval of both Houses.[22] Clause 17 was not amended.

The Commons then moved on to part 4, on authority to carry schemes on which no amendments were tabled. Mr Brokenshire explained the provisions as follows:

> **James Brokenshire:** As my hon. Friend will realise, provisions in the Bill overlap with other issues and provisions. He will be aware of sanctions that are already available and establish penalties for those who have no lawful authority to be in the UK, and of the checks that are obliged on people to ensure that appropriate visa or other requirements are in place. These measures build on that and there are established processes for the return of individuals who should not be here.
>
> The new transport security provisions in part 2 of schedule 2 build on existing powers and enhance our ability to respond effectively to transport-related terrorism threats. They amend transport security legislation to strengthen existing powers and require certain security measures to be implemented before an operator may operate into the

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17 Ibid c800
18 Ibid c800
19 HC Deb 9 December 2014 c806
20 Ibid c804
21 Ibid c826
22 Home Office Communications data codes of practice: acquisition, disclosure and retention

> UK or, in the case of ships, a UK port. The schedule makes similar provisions for services in the aviation, maritime and rail transport industries.
>
> The schedule inserts provisions into the respective aviation, rail and maritime statutes enabling faster collection of security related information from operators. It provides enabling powers to make regulations, imposing a wider range of methods for electronic service of security directions or requests for information, to ensure that security directions become effective in the shortest possible time. In addition, it inserts a power into the Aviation Security Act 1982 for the Secretary of State to make regulations to introduce civil sanctions for non-compliance by the aviation industry, with information requests or security directions subject to the affirmative procedure.[23]

15 December 2014

On this day, the Committee of the Whole House scrutinised part 1 of the Bill. David Hanson, for the Opposition, spoke to probing amendments on a sunset provision for **clause 1** (removal of travel documents) and on a right to appeal to the courts, should travel documents be removed.

Mr Hanson argued that the bill had been drafted speedily and so a sunset clause was appropriate to allow for full testing of the proposals on the seizure of travel documents, pointing out that time limited provisions were common in terrorism legislation.[24] He also argued that the right to appeal to a court was a reasonable right in law, especially in cases of mistaken identity. He was supported by the former Attorney General, Dominic Grieve. Lady Hermon and Mark Durkan drew attention to the complexities of seizing an Irish passport in the context of Northern Ireland.[25] Caroline Lucas argued that it would be simpler to amend s41 of the *Terrorism Act 2000* to require passport surrender for terrorism suspects.

In response, the Minister, James Brokenshire, noted how the exercise of the powers in clause 1 were circumscribed, and how judicial review was available:

> **James Brokenshire:** The hon. Gentleman leads me neatly to mention a number of protections in the Bill, and say how we will ensure that the exercise of this power is proportionate and suitably circumscribed by a range of stringent safeguards. Some of the points about the need for speed and assurances about the exercise of such powers have been well made. A powerful power is being advanced in schedule 1, and those who exercise it must be satisfied that it is necessary to retain the relevant documentation. The different mechanisms available to challenge a decision underscore why we regard current protections as proportionate to this power.
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> In essence, officers who might exercise the power would be governed by a specific code of practice that would specify how they are to use it. Paragraph 2 of schedule 1 states that the constable must have
>
> "reasonable grounds to suspect that the person is there—"
>
> in the port—
>
> "with the intention of leaving the United Kingdom for the purpose of involvement in terrorism-related activity".
>
> The officer then has to seek a further review by a senior police office of at least superintendent level to confirm that the power is appropriate in that case. There is a

[23] HC Deb 9 December 2014 c832

[24] HC Deb 15 December 2014 c1175

[25] HC Deb 15 December 2014 c1181

> further review by an officer of chief superintendent rank within 72 hours of the officer's findings, and that is referred to the chief constable who must remain satisfied with the case. Even from an administrative perspective there are a significant number of checks and balances to ensure that the power is being exercised effectively. If the documents are to be retained beyond the 14-day period, there is a court process and a review to consider how further oversight should be provided.
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> **Mr Geoffrey Cox (Torridge and West Devon) (Con):** I completely understand why the Government have decided that within the 14-day period there should be no appeal or review, but I cannot understand why paragraph 8 of schedule 1 prohibits or prevents the judge from considering whether there is a basis for the order or retention in the first place. All the judge can do is ensure that those who are considering the matter are doing so diligently. He is not able to look at the foundation and basis for the entire retention—at whether there are reasonable grounds for suspicion.
>
> **James Brokenshire:** My hon. and learned Friend highlights the mechanisms provided in paragraph 5 of schedule 1 on the manner in which the judge must be satisfied with the continued need to retain the documentation. His point is the basis or central tenet for the use of the power in the first place. Indeed, I think this relates to the point advanced by the right hon. Member for Delyn in one of his amendments. Judicial review is available to challenge the basis of the original decision. Therefore, there is a judicial right to question and challenge the basis on which the officer has used the power in the first place, as set out in paragraph 2 of schedule 1. We therefore believe there is a direct means to be able to challenge the underlying decision.[26]

When challenged on the basis that judicial review was an expensive and difficult route to justice, Mr Brokenshire said that the Government were considering whether to bring these proceedings into the scope of the legal aid scheme, subject to the statutory merits and means tests.[27] He said that a sunset clause would send out a message to jihadist travellers that the UK was not serious about the new power. He reassured Lady Hermon that the power could potentially be applied to Irish dissident republicans. He rejected Ms Lucas's proposals as allowing police bail, which would be inappropriate, and explained the Government's amendment 3 as technical. Mr Hanson pushed amendment 29 (sunset clause) to a vote and the amendment was lost by 301 votes to 220.[28] Amendment 17 on appeal to the courts was also lost by 301 votes to 222.

Theresa May opened the debate on **clause 2,** where a number of amendments and new clauses were tabled by the shadow Home Secretary, Yvette Cooper. She explained how the Temporary Exclusion Order (TEO) would operate:

> It may assist the Committee if I set out in more detail how the power will operate. I, as Secretary of State, can impose a TEO if I reasonably suspect that an individual is, or has been, involved in terrorism-related activity while outside the UK, and I consider that such an order is an appropriate tool to manage the threat he or she poses to the UK. Individuals subject to TEOs will have their British passports cancelled. They will be a class of passengers for whom authority to carry will have to be sought by carriers, under a new authority to carry scheme.
>
> The TEO will be imposed for two years, with the possibility of a new order being imposed following consideration after this time limit expires, but a person subject to an order will be allowed to return to the UK within a reasonable time frame if they make an

[26] HC Deb 15 December 2014 c1186
[27] HC Deb 15 December 2014 c1187
[28] HC Deb 15 December 2014 c1190

> application to do so or if they are deported by another country. To be clear on this point—because some might get confused about the two-year time frame in the Bill—that relates to the time the order remains extant and for which the terms of the order can be brought to bear on the individual. If the individual remains a threat at the end of that period, clause 2 allows for the imposition of a further order on the same individual.
>
> As I have said, these individuals will not be rendered stateless. They will not be left unable to return to the UK for an indefinite period. They must be issued a permit to return within a reasonable period if they apply for one, and attend an interview if required to do so. I should restate, to make this very clear to the Committee, that the policy is compliant with all our domestic and international legal obligations.[29]

In response to questions, she pointed out that an individual whose passport had been cancelled could still use consular services. Mrs May also maintained that it was right for the Home Secretary rather than the courts to impose a TEO, as she was best placed to make an informed judgement, as responsible for national security, and that the right to apply for judicial review remained.[30] She said that the Opposition amendments were unnecessary and that the Government proposals offered a more secure method of tracking terrorist suspects.

David Hanson spoke to new clauses 4 and 5, enabling him to raise concerns about how TEOs would work in practice, particularly if British nationals were left in third countries. He argued for a more managed return process in addition to the powers being proposed by the Home Secretary.[31] He cited David Anderson's evidence to the Joint Committee on Human Rights on 26 November, suggesting that the imposition TEOs should be subject to court approval in the same way as a TPIM.

Dominic Grieve was supportive of TEOS, noting that the revocation of a passport was an exercise of the royal prerogative which was different in nature from TPIMs. He had concerns about the practicalities of removing passports and informing suspects that a TEO had been served and wondered whether there might be a role for the courts. Frank Dobson in turn argued that there were human rights implications about removing the right to return, exposing individuals to torture by other states. David Davis was concerned about the accretion of absolute powers being given to the Home Secretary in counter-terrorism policy.[32] Caroline Lucas questioned whether TEOs were in fact counter-productive, and that it would be better to design a scheme where British citizens were not trapped in another country with astrong jihadist presence. George Howarth pointed out that court proceedings would need to be closed to protect intelligence information and that young people could find themselves trapped in countries such as Syria, having set out with the best of intentions.

In response, Mrs May rejected comparisons between TEOS and TPIMS, arguing that the latter imposed far more restrictions. She considered the new power necessary and proportionate, but there would be an opportunity for further debate as the Bill progressed. None of the new clauses or amendments were pressed to a vote.[33]

16 December 2014

The main topic under scrutiny was the Prevent programme in part 5 of the Bill. Hazel Blears, the former Labour Communities Secretary, spoke to amendments designed to broaden the

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29 HC Deb 15 December 2014 c1206
30 HC Deb 15 December 2014 c1207
31 HC Deb 15 December 2014 c1214
32 HC Deb 15 December 2014 c1219
33 HC Deb 15 December 2014 c1233

powers to work with communities as well as individuals.[34] She questioned the level of resources being given to Prevent and Channel from the £130m announced by the Prime Minister. Caroline Lucas drew attention to the Danish programme Back on Track, and the German equivalent Hayat, both aimed at mentoring, and using family members.

Pete Wishart, for the SNP, set out the different focus of the Prevent programme in Scotland and noted that Scottish public authorities had been excluded from the list of public bodies in **schedules 3 and 4,** but asked for Scotland to be excluded from part 5 altogether.[35] Paul Blomfield raised concern about the impact of **clauses 21 to 27** on ex[36]isting university policies on free speech. He called for the publication of guidance on the use of the new powers. For the Opposition Diana Johnson suggested that the administration of Prevent by the coalition government had been flawed and underfunded. She drew attention to amendment 19 which would require the publication of draft guidance, She questioned the extent of consultation with devolved bodies. Lady Hermon questioned why part 5 did not extend to Northern Ireland.

In response Mr Brokenshire pointed out that the clause sought to give effect to the current Protect strategy and so Northern Ireland was not included within its scope. He explained in more detail how the strategy would be implemented in practice, chairing a Prevent oversight board:

> The hon. Member for Kingston upon Hull North (Diana Johnson), speaking for the Opposition, asked what challenge process there would be. In essence, there is an escalation process. The guidance will set out certain responsibilities for each of the different agencies and institutions. If an agency or institution is then not meeting that, the Government will seek to work with that body to put in place appropriate guidance and steps that may be necessary. I chair a Prevent oversight board—Lord Carlile is a member of it—which seeks to assess our delivery. It would seek to assess that process and perhaps make a recommendation to the Secretary of State in those circumstances. The Secretary of State then has to give a direction, which is open to challenge by way of judicial review. For the Secretary of State to enforce it, she would have to get the specific order from the court and the court would need to enforce it. So there is a clear escalation process. Reaching the end of it would be highly unlikely, but it is absolutely right that we reserve that ability to give directions in that way and provide that escalation process.
>
> That is an important point for the universities sector to understand, and it was certainly in the evidence I gave to the Joint Committee on Human Rights in highlighting some good practices. There is good guidance to be found among individual universities and in other sectors—indeed, I could cite the guidance of the National Union of Students. Many examples of good practice highlight where the duty needs to go, in ensuring that good practice is put in place and in sharing it. So a number of safeguards and limitations are built into these proposals to ensure that the powers are dealt with appropriately, with multiple layers of protection, including judicial oversight. It is important to restate that.[37]

In response to Hazel Blears, Mr Brokenshire argued that communities were a core strand of Prevent and promised to publish draft guidance under **clause 24** very shortly, open for consultation, which would set out a risk-based approach to the Prevent duty. He said that the

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[34] HC Deb 16 December 2014 c1307
[35] HC Deb 16 December 2014 c1330
[36] HC Deb 16 December 2014 c11340
[37] HC Deb 16 December 2014 c1342

Government would await the thoughts of the Delegated Powers and Regulatory Reform committee before deciding whether the guidance would be subject to the affirmative resolution procedure.

On the basis of the response, Ms Blears withdrew her amendment, but the Opposition pressed amendment 20 (affirmative resolution) to a vote which was lost by 299 votes to 216. New clause 12 moved by Caroline Lucas on a review of international best practice on deradicalisation was lost by 296 votes to 217.

The Committee next examined **clauses 34 and 35** on stand part which deal with insurance payments for terrorist related kidnaps. David Hanson raised a number of practical points relating to possible transfer of insurance business to other parts of the world. Mr Brokenshire said:

> **James Brokenshire:** ..We consulted leading representatives of the insurance industry and its regulators, the police and operational and international partners about the measure. We have had constructive discussions with the industry. This is a niche part of the wider insurance market and it makes up only a small part of the business of those insurers. Insurance companies have been clear that their policies exclude reimbursement of ransoms paid to proscribed groups in any case. The point of the measure is to make that absolutely clear and put it beyond doubt. Section 17 of the Terrorism Act 2000 centres on what constitutes arrangements and we are seeking to provide complete clarity. The measures are framed in the context of terrorism, although there are various insurance policies that operate in the market, because they are intended to prevent money going to terrorist groups.
>
> The right hon. Gentleman asked about extraterritorial jurisdiction. The measures are intended to govern insurance companies based in the UK, so that they cannot offshore those payments; if they have some other insurance company with links to the UK, that company will be caught by the measures. It is therefore important that the legislation is framed in that manner.[38]

The clauses were added to the Bill. Finally Diana Johnson spoke to probing amendments to **clause 36** (Privacy and Civil Liberties Board), designed to elicit more information about the operation of the Board. She drew attention to comments from David Anderson proposing to include other areas of counter-terrorism within his remit than the four statutes which he is required to monitor. She also queried the relationship between the Board and the reviewer and raised the need for the Board to have access to documents, to make recommendations suggested the name, apparently adapted from a similar board in the US, should be changed.

David Anderson made some detailed suggestions on his blog on 13 December.[39] He argued against a full time post, stating "If it is made full-time, it will lose its appeal to working Queen's Counsel and risks becoming, instead, the preserve of the quangocrat". He suggested instead assistance from a junior counsel, an annual work programme and a carefully defined relationship with the proposed Board, He identified helpful precedents in the legal framework applicable to the Independent Chief Inspector of Borders and Immigration in the UK, and suggested that the name of the board should be changed.

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38 HC Deb 16 December 2014 c1356

39 CT oversight: a time for decision

A consultation document was issued on the Privacy and Civil Liberties Board on 17 December, the day after the Commons debate.[40] It closes on 30 January 2015.

David Davis tabled a probing New Clause 3 on intercept evidence and its use in legal proceedings. He noted that the UK was unique among major Western powers in not allowing the use of intercept evidence in court, leading to greater difficulty in securing convictions. He argued that the intercept ban pushed intelligence agencies towards disruption rather than prosecution.[41]

John McDonnell supported the new clause but concentrated on the protection of journalists and the operation of the *Data Retention and Investigatory Powers Act 2014.* The Home Office consultation *Communications data codes of practice: acquisition, disclosure and retention* was issued on 9 December 2014, closing on 20 January 2015.

In response, Mr Brokenshire noted that the interception of communications commissioner would be carrying out a review in this area, to be completed by 31 January 2015. He also noted the imminent consultation on the Privacy and Civil Liberties Board, welcoming comments from the Home Affairs Select Committee and the viewpoint of the Intelligence and Security Committee, and stating that the responses from the consultation would inform the detail of the operation of the Board. He did not feel it appropriate to change the name of the Board and did pointed to numerous reviews on intercept evidence in response to Mr Davis. In response to points from Diana Johnson, he said that there had been consultations with devolved bodies. The Bill finished its Committee stage with technical amendments only.

1.5 Report and Third Reading

Report and third reading stage took place on 6 and 7 January 2015.

6 January 2015

The House considered a number of amendments connected to the temporary exclusion orders proposed in the Bill, particularly whether this measure should be subject to judicial oversight (as drafted, the Bill currently provides that the granting of such orders will fall under the powers of the Secretary of State). For example, David Hanson tabled a number of amendments to the Bill, on behalf of the Opposition, requiring the Secretary of State to first obtain permission from the courts for a temporary exclusion order (except where it was reasonably considered not to be appropriate due to the urgency of the matter), and setting out how the court should proceed with such an application.[42] Mr Hanson believed that such measures were appropriate to ensure "judicial oversight" of the Secretary of State's decisions, and highlighted the concerns of David Anderson QC in this regard.[43] Mr Hanson said:

> Those are key issues, because what the independent reviewer of terrorism legislation has said is that under the TPIM legislation designed by this Government, the Home Secretary has to go to court to get a TPIM before one can be imposed on an individual. A TPIM restricts severely an individual's movement in the UK and imposes a range of conditions on that individual. The TEO will have the same legislative impact, in that it will severely restrict an individual's movement. As I said, that restriction might well be perfectly valid—it may well be in the interests of terrorism prevention and be a positive measure to protect British citizens—but it needs to have judicial oversight to ensure

[40] Home Office consultation Privacy and Civil Liberties Board 17 December 2014

[41] HC Deb 16 December 2014 c1367

[42] HC *Hansard*, 6 January 2015, cols 165–70.

[43] ibid, cols 172–4.

> that an individual is able to challenge it without the right of judicial review. I agree with David Anderson QC and I want the Government to respond today to his concerns, as well as those of right hon. and hon. Members.[44]

The need for judicial oversight was backed by a number of MPs, including Dominic Grieve) and Sir Menzies Campbell However, the proposals were opposed by others in the debate, including Sir William Cash who stated that he trusted the Secretary of State's potential use of the power and that judicial oversight would be provided for through judicial review. He argued:

> There are very sound reasons why the Secretary of State should have the right to determine these questions, as she does in many other cases. I have already made the point that at every stage in conditions A to D the Secretary of State may take only such action that she "reasonably" considers appropriate under the circumstances. The Bill already takes account of the possibility of judicial review.[45]

Responding for the Government, James Brokenshire backed these views, stating that he believed the Secretary of State was best placed to make judgements as to whether to impose temporary exclusion orders and that judicial reviews would be an effective course of action to challenge any decisions. However, he also stated that the Government would continue to look at the issue in the light of the concerns of David Anderson QC:

> The House has not had the chance properly to consider the Opposition amendments. I hope they will be minded to withdraw them at this stage, and I can assure the House that the Government will look very carefully at the constructive suggestions from David Anderson and return to this issue in the other place.[46]

The new clause 3 tabled by David Hanson (which related to the court's handling of applications for temporary exclusion orders) was moved to a vote and was defeated by 315 votes to 230.

The next amendments moved by David Hanson related to the proposed powers to seize passports. The first of these amendments called for a sunset clause to be applied to the passport provisions in the Bill.[47] This would see these provisions repealed on 31 December 2016. He stated that this was necessary as the "powers are new and extensive and have not yet been subject to wide consultation". In response, the Minister, James Brokenshire, referred to the code of practice that would accompany the powers, the scrutiny role of senior police officers and the temporary nature of the powers to seize documents. He stated that:

> Introducing a sunset clause may send an inadvertent message to would-be jihadist travellers of our lack of intent to deal with the threat they pose […] Indeed, the proposal would inject an element of uncertainty into a measure that has been clearly framed and drafted, that is limited in scope and time, and that has clear oversight of police scrutiny measures and the court-related process set out in the Bill.[48]

The amendment was moved to a division and defeated by 311 votes to 228.

The second amendment in this group related to possible appeal provisions against decisions to seize passports. Speaking to the proposed amendment, David Hanson stated:

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44 ibid, cols 173–4.
45 ibid, col 192.
46 ibid, col 208.
47 ibid col 215–6.
48 ibid, cols 218–9.

> We need secure, targeted, intelligence-led activity to seize passports. That is what I expect and what I am reassured the Government will do. The purpose of our amendments is simply to provide that if someone feels aggrieved, mechanisms are in place for them to challenge the decision in court, should they so wish.[49]

> Again referring to the code of practice set to accompany the powers and the scrutiny role to be played by senior police officers, the Minister, James Brokenshire, opposed the amendments. He also expressed concerns about how the amendment would operate in practice.[50]

The amendment was moved to a division and defeated by 307 votes to 227.

The final Opposition amendment discussed during the first day of report stage related to the power to require communications service providers to retain data that could identify people through IP addresses. Speaking to her amendment, Diana Johnson sought reassurance from the Government that the powers would be limited so as to serve just this purpose.[51] Responding for the Government, James Brokenshire MP, stated:

> The hon Lady explained that her amendment seeks to limit the scope of the provision to the retention of data that are necessary to allow the identification of a user from a public internet protocol address. She is trying to restrict the provision and to gain clarity, and as I explained in Committee, I do not think there is any difference between us on the principle. It is important that the provision goes only so far as is necessary to ensure that communications service providers can be required to retain the data necessary to link the unique attributes of an internet connection to the person or device using it at any given time—in other words, to link person A to person B. At the moment, internet service providers might not be required to retain that level of information. That was the Government's clear intention when drafting the clause, so the provision is already limited in a way that I believe reflects what the hon. Lady intends.[52]

Diana Johnson welcomed the Minister's clarification, and did not move the amendment to a division.

7 January 2015

On the second day of report stage, the House of Commons passed a number of Government amendments in relation to the Bill. These amended the list of specified authorities referred to in Part 5 of the Bill, and amended clause 38 of the Bill so that the Secretary of State must consult relevant devolved administrations before making any regulations for consequential provisions. These amendments were agreed to without division.

The House of Commons also discussed two amendments tabled by Diana Johnson, on behalf of the Opposition, relating to Part 5 of the Bill (which covers the terrorism prevention roles of specified authorities and local authorities). The first of these amendments would have required the guidance published by the Government for specified authorities, in relation to their duties under the Prevent strategy, to be subject to affirmative resolution by both Houses of Parliament (a consultation document on the draft guidance was published by the Government on 17 December 2014). Diana Johnson reasoned that such approval was necessary due to the importance of the guidance, and to provide both Houses of Parliament full opportunity to debate it.[53] She also raised a number of concerns with the Government's

[49] ibid, col 225.
[50] ibid, cols 226–9.
[51] ibid, cols 234–5.
[52] ibid, cols 235–6.
[53] HC *Hansard*, 7 January 2015, cols 318–21.

consultation, particularly in relation to the content of the draft guidance and the "lack of evidence" to support what was in the consultation document. As such, she raised a number of questions about the guidance and the Prevent strategy as a whole.

The second amendment called for a greater role for the Home Secretary in supporting the role of local authorities' support panels (through the Channel programme), and would have required the publication of official guidance. Diana Johnson again raised a number of questions about the programme, and stated:

> As with Prevent, [the Channel programme] is a policy area of enormous importance, and the Opposition support efforts to strengthen it. Once again, however, the Government are placing obligations on local authorities without making provision to ensure that they will be properly and fully supported by central Government […]
>
> I therefore hope she will realise that the support the Home Office is providing on Prevent and Channel needs to be reviewed again and improved, and that the guidance that has been issued as a consultation document can be improved in many areas. I hope she will feel able to accept the amendments.[54]

Responding for the Government, Karen Bradley sought to respond to the concerns raised, and stated that the Government "do not believe that it is crucial for the guidance [for specified authorities] to be subject to additional parliamentary approval because we are conducting a wide-ranging consultation and, although the specified authorities must have regard to the guidance, they are not required to follow it in all cases".[55] Karen Bradley also stated that there were measures and guidance in place to monitor and assist the work of local support panels.[56]

The amendment was withdrawn and not moved to a division.

Diana Johnson also tabled a number of amendments in relation to the proposed Privacy and Civil Liberties Board. These covered the potential name of the board, along with its role, remit and functions. Speaking to the amendments, she referred to the Government's published terms of reference for the board, and stated that the amendments aimed to bring them within the Bill:

> The terms of reference published by the Government suggest a body that will support the independent reviewer of terrorism legislation in providing oversight of counter-terrorism legislation in the UK and investigating its operations. Broadly, we think that what is contained in the terms of reference is very sensible and that it would provide both capacity and openness to the oversight of counter-terrorism policy. […] However, what we see in the terms of reference does not match what we see in the Bill. The third version of the board is the one provided for by clause 36, a body that the Home Secretary may create in future if she wishes. In future she may decide on the body's procedures, membership, work plan and the publishing of its reports. If the body is created, it will have very limited statutory remit and powers. We do not think that is good enough, so amendments 2 to 5 address what we see as the Bill's shortcomings as currently drafted.[57]

Responding for the Government, Karen Bradley addressed each amendment in turn, and stated that the Government had recently published a public consultation on the board:

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54 ibid, cols 318–23.

55 ibid, col 326.

56 ibid, col 327.

57 ibid, cols 330–1.

> Given the exceptional nature of counter-terrorism powers, it is right that they should be subject to proper oversight and scrutiny. This country has been very well served by the very distinguished individuals who have been independent reviewers, not least the present incumbent, but it is right for us to keep our oversight arrangements under review and be prepared to change them when required. It is worthwhile creating a new board to support the work of the independent reviewer, providing greater capacity in this area and giving the public greater assurance that in framing our legislation we are striking the right balance between privacy and civil liberties. As I have said, the Government have published a full public consultation inviting comments on the proposals. We will seek to act on the points made in response to the consultation, which covers the composition and functions of the board. I believe that will address most of the issues covered by the amendments.[58]

The amendments were withdrawn and not moved to a division.

1.6 Third Reading 7 January

Opening the third reading debate, the Home Secretary, Theresa May, stressed the importance of keeping the UK's terrorism laws under review in the face of the "grave and relentless" terrorist threat the country faced.[59] She commended the importance of the Bill, and believed it would give the police and intelligence agencies the powers they needed to combat terrorism:

> I have always been clear that we need to keep our terrorism laws and capabilities under review, and ensure that the police and intelligence agencies have the powers they need to do their job. That is why the Bill is so important. As I told the House on second reading, Parliament must have sufficient opportunity to consider the Government's proposals, and I believe that the House has had that opportunity […]
>
> The powers in the Bill should be used only when it is necessary and proportionate, and their use will be subject to the appropriate level of safeguards and oversight. The Bill represents a considered and targeted approach that strikes the right balance between civil liberties and security, but we must not delay. The threat from terrorism is ever present and evolving. We are in the midst of a generational struggle, and we must ensure that the police and the intelligence agencies have the powers they need to keep us safe. The Bill will help them to do that, and I commend it to the House.[60]

Responding for the opposition, Yvette Cooper, the Shadow Home Secretary, indicated Labour's support for the Bill.[61] However, she did indicate a number of areas where she believed the Bill would benefit from further scrutiny, such as over the possibility for greater judicial oversight of the temporary exclusion orders and on the extent of police powers to retain people's passports. She concluding by emphasising:

> [T]he need for vigilance and the need for us in Parliament to ensure that we defend and protect our democratic values. That means that we need to scrutinise any counter-terrorism legislation in great detail. We need to take seriously our responsibilities in this House to protect both the liberty and the security of which Britain has always been proud from extremists of any kind. On that basis, we support this Bill and its Third Reading and look forward to the further debates that will take place in the other place.[62]

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58 ibid, cols 334-5.
59 ibid, col 339.
60 ibid, cols 338–41.
61 ibid, cols 341–3.
62 ibid, col 343.

David Heath (Liberal Democrat) stated that, although he could not say he "welcomed the Bill", he did describe it as a "grim necessity":

> We should not welcome the fact of ever reducing our traditional rights and liberties other than to protect the rights and liberties of others […] However, where the necessity is there, where the checks and balances are sufficient and where we ensure that every single action taken by the Executive can be reviewed and checked to see whether it is reasonable and appropriate and based on good evidence, this House has a responsibility to act on behalf of people in this country.[63]

However, Mr Heath believed there were still some issues to resolve with the Bill, and outlined his hope that further thought would be given to the prospect of judicial oversight over temporary exclusion orders.

2 Lords stages

On 9 January David Anderson produced a briefing on Judicial Oversight of TEOs, available from his website. The specific recommendations he made were prompted by Mr Brokenshire's commitment to look at judicial oversight in the Lords:

> As the person entrusted both with oversight of the analogous asset-freezing and TPIM regimes and with informing the public and parliamentary debate on counter-terrorism law, I thought it might be helpful if I provided something more specific. So here, in a nutshell, are my thoughts on the form that judicial scrutiny needs to take.[64]

2.1 Joint Committee on Human Rights report

The Joint Committee published their fifth report on 7 January which examined the Bill. The Committee had concerns about several aspects of the Bill, summarised on the parliamentary website as follows:

> **Temporary exclusion orders**
>
> With regard to temporary exclusion orders, the Committee is concerned that there is a very real risk that the human rights of UK nationals, including the right to return to one's country of nationality, will be violated as a result of their imposition, and expresses its opposition in principle to any exclusion of UK nationals from the UK, even on a temporary basis. The Committee believes that the Government's objective of managed return could be achieved by a much simpler system requiring UK nationals who are suspects to provide advance notification of their return to the UK on pain of criminal penalty if they fail to do so and recommends that the Bill be amended accordingly.
>
> It recommends that the Bill be amended to provide for a judicial role prior to the making of such a **notification of return order**, and welcomes the Minister's indication that the Government will return to the issue of **judicial oversight** in the House of Lords.
>
> **The seizure of travel documents**
>
> The Committee accepts that the Government has demonstrated the necessity for a power to seize travel documents, including passports, in circumstances not covered by existing powers. However, it also believes that such a significant power to interfere with the right to leave the country must be carefully targeted, must be proportionate, and should include adequate procedural safeguards to ensure that it is not exercised disproportionately.

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63 ibid, cols 343–5.

64 Judicial Oversight of TEOs 8 January 2015 Independent Reviewer of Terrorism Legislation

The Committee recommends that the very limited judicial role currently provided by the Bill should be strengthened to make it a genuinely **judicial system** of “warrants of further retention”, and should be effective after 7 rather than 14 days.

The Committee also recommends

that the Bill should be amended to ensure that the district judge can only issue a warrant of further retention if satisfied not only that matters are being pursued diligently and expeditiously but that there are reasonable grounds to suspect that the person is intending to leave the country to become involved in terrorist-related activity abroad, and that it is necessary to extend the period of retention to enable steps to be taken towards deciding what should happen next;

that the person subject to the exercise of this power should also be informed of the reasons, should be represented by a **special advocate** in any closed material procedure, and should be able to receive **legal aid** for such a hearing; and

that Part 1 of the Bill be made subject to **a renewal requirement** to enable Parliament to consider the case for continuing these powers in the light of the Independent Reviewer’s report on their operation in practice

Academic freedom and the Prevent strategy

The Committee is concerned about the implications for both freedom of expression and academic freedom of the **new duty on universities** proposed in the Bill to have due regard, in the exercise of their functions, to the need to prevent people from being drawn into terrorism. Lack of legal certainty over the definitions of terms such as “extremism” referred to in the draft guidance on the use of this power means that universities will not know with sufficient certainty whether they risk being found to be in breach of the new duty and therefore subject to direction by the Secretary of State and, ultimately, a mandatory court order backed by criminal sanctions for contempt of court.

As this legal uncertainty will have a seriously inhibiting **effect on bona fide academic debate** in universities, and on freedom of association, the Committee recommends that the Bill be amended to remove universities from the list of specified authorities to which the new duty applies. Alternatively, the Committee recommends that the Bill be amended to add the exercise of an academic function to the list of functions which are exempted from the application of the duty.

TPIMs

The Committee also:welcomes the Government’s acceptance of almost all the recommendations concerning TPIMs made by the Independent Reviewer in his 2014 report, in particular the raising of the threshold for the imposition of a TPIM, and the slight narrowing of the scope of the definition of terrorism-related activity;

reluctantly accepts the Independent Reviewer’s judgment that the changing nature of the threat justifies the reintroduction of relocation, but looks to the Government to be proactive in bringing forward ideas to mitigate the alienation and resentment likely to be caused in some minority communities by this; and

recommends that the Bill be amended to make express provision to protect the privilege against self-incrimination when TPIMs subjects are required to attend appointments with specified people.

The Independent Reviewer of Terrorism Legislation and the Privacy and Civil Liberties Board

The Committee also recognises the high quality of the work undertaken by the current Independent Reviewer of Terrorism Legislation, David Anderson QC, and calls for his remit be extended beyond the four specific statutes that he currently reviews, to cover all terrorism legislation and other areas of law to the extent that they are applied for counter-terrorist purposes, such as immigration law and the prerogative power in relation to passports. The Committee also recommends that the proposed Privacy and Civil Liberties Board should not be chaired by the independent Reviewer, but should exist separately, and report on matter which may be of use to the Independent Reviewer in his work. It calls for him to be given the resources he says he requires to carry out his functions as effectively as possible.

2.2 Lords Constitution Committee report

This report was published on 12 January 2015. The summary for the parliamentary website stated:

> The bill is being "semi-fast tracked", in that the Lords will be asked to waive the recommended minimum intervals between the stages of the bill.
>
> There is a contrast between the time taken within Government to prepare the bill and the time given to Parliament to scrutinise it.
>
> The Lords may wish to consider carefully whether the Government has offered sufficient justification for the fast-tracking of each element of the bill.
>
> The Committee considers the bill's provisions which would allow the Secretary of State to require internet service providers to retain data that would allow the authorities to identify the individual or the device using a particular IP address at any given time. This change is made as an amendment to the Data Retention and Regulatory Powers Act 2014 ("the Drip Act").
>
> The Committee points out that the Drip Act was also fast-tracked, and thus a semi-fast-tracked bill is being used to amend sensitive and controversial provisions contained in earlier legislation that was also fast-tracked. Moreover, the Drip Act was fast-tracked on the express basis that it did 'not enhance data retention powers'. The Committee notes that the Lords may wish to consider whether the semi-fast-tracking of the bill allows Parliament sufficient time to scrutinise whether those enhanced powers are appropriate.
>
> Lord Lang of Monkton, Chairman of the Committee, said:
>
> "Temporary Exclusion Orders represent a significant new power for the state in relation to the individual citizen. To ban a UK citizen from returning to these shores for a period of up to two years will clearly have a huge impact on that person's life.
>
> "While the threat of terrorism posed by UK citizens returning from war zones in Syria and Iraq is a real one, the process of imposing TEOs should be overseen by judges to ensure that individuals have recourse to appeal this exercise of executive authority. We recommend that the bill be amended to include that protection.
>
> "We are also concerned that the Bill is being semi-fast-tracked through Parliament. It is important that where legislation will have a significant constitutional impact that there is adequate time to debate and amend that legislation."[65]

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[65] "Temporary Exclusion Orders should be subject to judicial oversight" Lords Constitution Committee 12 January 2015

2.3 Second reading 13 January 2015

For the Government, Lord Bates set out the main provisions of the Bill, indicating that amendments on judicial oversight would be considered at committee stage.[66]

Baroness Smith of Basildon, for the Opposition, asked a series of probing questions on the practical application of the Bill. Lord Lloyd of Berwick, the former Interception of Communications Commissioner expressed deep concern on the Bill's provisions.[67] In contrast, Baroness Neville-Jones argued that the provisions were necessary to deal with a dynamic situation.[68]

The former Director General of MI5, Lord Evans of Weardale said "The Bill provides in general for some fairly modest, practical and useful measures that will help the security agencies and the police to keep us safer, without unduly undermining civil liberties".

A number of Lords expressed support for judicial oversight in relation to Part 1 and scepticism about the value of the proposed Privacy and Civil Liberties Board. There was also interest in referring to 'managed return' rather than temporary exclusion, and concern about the proposals in relation to Prevent in higher education and in the wider public sector.

Lord Bates began his winding up speech at 10.40pm. He hinted at amendments in committee on judicial oversight:

> I was asked specifically about what is meant by "considering further action" and the judicial oversight of that process. The only language that I am able to use at present, which may not be satisfactory—noble Lords will have to read between the lines—is that we will visit this in Committee. Noble Lords understand how legislation works. I hope they will understand that that is more than a general statement; it is something of a statement of intent.[69]

Lord Bates said that the consultation on the Privacy and Civil Liberties Board was open until the end of January and that he was meeting university representatives to discuss the implications of making the Prevent strategy statutory.

Committee stage on the Bill is due on 20, 26 and 28 January 2015.

2.4 Committee stage 20 January 2015

Government amendments

There were a series of Government amendments to address points made in previous scrutiny. For the Government,

Lord Bates tabled Amendment 1 to provide for civil legal aid may be made available at hearings of applications to extend the 14 day time period in which an individual's travel documents may be retained in England and Wales.[70] The Opposition spokesman, Lord Rosser, welcomed the change of heart.

Lord Bates also moved Amendment 44 which included a new schedule, together with linked amendments explained as follows:

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66 HL Deb 13 January 2015 c663
67 HL Deb 13 January 2015 c673
68 HL Deb 13 January 2015 c688
69 HL Deb 13 January 2015 c771
70 HL Deb 20 January 2015 c1208

Lord Bates: My Lords, in moving Amendment 44, I shall speak also to the other amendments in the group.

As I have made clear to your Lordships, the Government are absolutely committed to the appropriate and proportionate use of the temporary exclusion power. As we indicated that we would, we have looked very carefully at the constructive suggestions from

David Anderson, the Independent Reviewer of Terrorism Legislation, on the matter of judicial oversight. Following this consideration, we have tabled amendments which seek to introduce oversight of the power in line with his recommendations. Specifically, the amendments propose the creation of a permission stage before imposition of the temporary exclusion order—also very much in line with the amendments tabled by the Opposition. In addition, they propose a statutory judicial review mechanism to consider both the imposition of the order and any specific in-country requirements. I will address each of the elements in turn.

For the permission stage, the court would be asked to consider whether the decision to impose the temporary exclusion order "is obviously flawed" using principles applicable under judicial review, and whether to grant permission for it to be imposed. There would also be a provision for retrospective reviews in urgent cases, where the Secretary of State has deemed the situation of such urgency that the order must be imposed without prior permission of the court. I must point out that this provision for a retrospective review is an additional safeguard which is absent in other amendments which have been tabled. The court would have the power to refuse permission for the order, where prior permission was being sought. In retrospective review cases, it would have the power to quash the order. I hope noble Lords will agree that this gives the courts a significant role in the imposition of a temporary exclusion order.

The second element of judicial oversight which the Government are seeking to introduce is a statutory judicial review mechanism. The in-country elements of a temporary exclusion order will not be imposed until the individual has returned back to the United Kingdom, allowing law enforcement partners to assess the most appropriate measures to manage the risk posed by the individual at that time. The statutory judicial review will ensure that the individual, if he or she applies for it on return to the UK, can challenge any in-country requirements placed on them. Of course, ordinary judicial review would always have been open to the individual, but putting it on a statutory footing in this way provides some additional structure which I hope will be reassuring to the House. Most importantly, the individual will not have to seek permission from the court for there to be a review.

The government amendment provides that the court would not only have the power to consider in detail—and quash—the specific in-country requirements placed on an individual, but it would also have the power to consider again whether the relevant conditions for imposing the temporary exclusion order were and, in respect of the ongoing necessity of the in-country measures, continue to be met, and again have the power to quash the whole order or direct the Secretary of State to revoke it. This is in line with David Anderson's recommendations and means that there is a further opportunity for judicial scrutiny of the imposition of the order as well as the in-country requirements.

The government amendments place considerable power with the courts in the temporary exclusion process, allowing effective judicial scrutiny of that power both before and after its use. I hope that this provides the reassurance the House seeks in respect of court oversight of this measure, and also in respect of the importance the

> Government place on an appropriate and proportionate use of this power. I beg to move.[71]

The Government amendments were broadly welcomed by the House and then clarified by Lord Bates.

Amendments not made

Attempts by Lord Rosser to move a sunset clause for two years on the seizure of passports and on the powers to create temporary exclusion orders were not accepted and he did not push the amendment to a vote.[72] Lord Bates argued that the current position was too fluid for the Government to set a fixed review period.[73] He said he would reflect on the points made before report stage. On this basis, the amendment was withdrawn.

There followed a series of probing amendments from the Opposition on others on the proposed operation of Part 1 of the Bill. Lord Bates responded in depth (cols 1238-1242) but Lord Rosser indicated that although the Opposition would not press Amendment 8 (requirement for intelligence evidence) to a vote, he was not satisfied with the Government response.[74]

Baroness Hamwee spoke to Amendment 9 on possession of travel documents, and in response Lord Ashton of Hyde, for the Government, referred to the consultation on the draft code of practice which is timed to conclude shortly before report stage.[75] The amendment was withdrawn.

Further probing amendments were proposed but not moved on the operation of part 1.Lord Bates noted that the code of practice for Part 1 would come into force the day after royal assent, using the affirmative procedure, but he was confident that the House would have a chance to debate the code before dissolution.[76]

Amendment 49 proposed by Baroness Smith of Basildon probed the standard of proof to be used by the Home Secretary in clause 2 to issue a TEO. The amendment was withdrawn.[77] Baroness Hamwee spoke to further probing amendments on revocation of TEOs and managed returns, and Baroness Smith of Basildon probed further on the operation of a TEO. In response, Lord Bates asserted the need for flexibility:

> **Lord Bates:** On the point raised by the noble Lord, Lord Judd, we are seeking to bring them back but in a safe way. We recognise that they are our responsibility. At the moment it is not quite—I have to be careful about saying this—a revolving door with people being able to come and go as they will but there needs to be structure, security and some action to seek to prevent people going and, where that has failed, a managed return. The situation is very dynamic, which the noble Baroness, Lady Hamwee, I am sure appreciates and the terms of the permit of return will change over time. We are in the process of beginning to engage with countries to work with them on these problems and to say how the process should work. If we become too prescriptive in putting down in primary or secondary legislation what that process should be, it does not allow us to be more flexible in the case of the individual or the country concerned.

[71] HL Deb 20 January 2015 c1260
[72] HL Deb 20 January 2015 c1209
[73] HL Deb 20 January 2015 c1217
[74] HL Deb 20 January 2015 c1242
[75] HL Deb 20 January 2015 c 1250
[76] HL Deb 20 January 2015 c1258
[77] HL Deb 20 January 2015 c1276

> That is why we are asking for a bit of flexibility but we are mindful that that requires judicial oversight. People are not stranded out there. They are given a permit to return. They are able to have a judicial review of the process and the actual permit or order has gone through an element of judicial scrutiny before it is made, so elements are there[78]

None of the probing amendments were moved.

2.5 Committee stage 26 January 2015

There were no Government amendments.

Amendments not made

The Lords considered the TPIM clauses, beginning with some probing amendments. Lord Brown of Eaton-under-Heywood[79] then spoke to amendment 75 introducing judicial oversight when a relocation order is made:

> I do not mind whether the Secretary of State makes a decision—as initially she is bound to do—by way of reasonable belief or as a conclusion on the balance of probabilities. What matters is that the decision of hers should then be subject to review or appeal by the court, not on the basis of judicial review but on the different basis of her having to establish to the satisfaction of the court, on the balance of probabilities, that the person concerned has been engaged in terrorism-related activity.[80]

Lord Bates, for the Government, promised to reflect on the debate before report. And possibly meet the peer. [81] Lord Brown noted that the amendment was likely to be presented again at report.

The Lords then addressed the data retention clause 17. After some probing amendments to the extent to which data other than IP addresses could be retained, Lord King of Bridgewater moved amendment 79 introducing a new clause designed to extend data-gathering and retention by the Security Services, along with an extensive set of amendments to the Bill, of 22 new clauses. Media reports suggested that this would be the re-introduction of the Snooper's Charter, or draft Communications Data Bill. For background see Library Standard Note 6373 *Communications Data: The 2012 draft Bill and recent developments*

Lord King emphasised that his amendments would not amount to all aspects of the Snooper's Charter, since powers would be limited to the security services or the police.[82] The changes would give the Home Secretary powers to require telecommunications operators to retain data and disclose it to "relevant public authorities". Telecommunications operators would be required to protect the data against accidental or unlawful destruction and ensure that it was retained for at least a year, or longer if it were required for a prosecution. The proponents argued that the measures were long over-due and that coalition disagreements were preventing action against terrorists, also that an accompanying sunset clause was include. Lord Blencathra argued against the amendments, on the basis they did not fully reflect the position of the Joint Committee on the draft Communications Data Bill which he had chaired[83] Supporters of the new clauses, such as Lord Carlile and Baroness Neville-

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78 HL Deb 20 January 2015 c1311
79 HL Deb 26 January 2015 c18
80 HL Deb 26 January 2015 c26
81 HL Deb 26 January 2015 c25
82 HL Deb 26 January 2015 c36
83 HL Deb 26 January 2015 c44

Jones, argued that action was necessary if there were no immediate Government plans for legislation. There was a substantial debate on the proposed amendments.

In response, Lord Bates emphasised that the Counter-terrorism and Security Bill was being semi fast-tracked through Parliament to give security services immediate extension of powers and that the current Prime Minister and Home Secretary were planning for legislation very early in the new Parliament.[84] David Anderson would be given access to the revised version of the draft Bill as part of his review, and he would consult as to possible access for the official Opposition. He went on:

> The noble Lord says we should not beat around the bush. The issue here is that we are contemplating measures at a fairly late stage in a Bill which contains a number of measures which we desperately want to make sure get on to the statute book. We do not want to risk this Bill and all the provisions in it at present, as we think they are vital. In fact, we consider that they are more vital than the simple addition of these amendments—as desirable as we may see them individually—to the Bill. We do not want to do anything which would jeopardise the process. There has to be a recognition that the other place—I am sure the noble Lord, as a distinguished former Member, would recognise this—would feel that it was being required to look at 21 amendments, running to some 19 pages in a 53-page Bill, on a fast track and with ping-pong between the two Houses on consideration of Lords amendments. It might feel, rightly from a constitutional point of view, that that would be a difficult thing for it to agree to. I am simply airing the issues.[85]

Lord King indicated that it was likely he would return to the issue on report.

The House went on to consider amendments to clause 18 (authority to carry schemes). In response, Lord Ashton of Hyde, for the Government, pointed out that the new scheme would also cover departures from the UK as well as arrivals. Any new scheme or amendments to it would be laid in Parliament as part of the affirmative resolution procedure.[86] Finally Lord West of Spithead spoke to a new clause on regulating drones in designated areas. The amendments was not formally moved.

2.6 Committee stage 28 January

Government amendments

Lord Bates, for the Government, moved a new clause after clause 25 to provide for a new monitoring authority to collect information from universities and colleges about compliance with their new statutory Prevent duties.[87]

> This is a serious step that we would not like to see taken unless it is strictly necessary. For that reason, the amendments allow for a monitoring authority—for example, when not satisfied that an institution has adequate provisions in place to comply with the duty—to request information about steps that the institution plans to take to ensure that it discharges its Prevent duty correctly. We expect this to be sufficient to avoid the use of direction in all but the most serious cases.
>
> If an institution has failed to provide adequate information about compliance with the duty in spite of repeated approaches by the monitoring authority, we would expect any direction necessary to be given by the appropriate Secretary of State. That means the

84 HL Deb 26 January 2015 c71
85 HL Deb 26 January 2015 c73
86 HL Deb 26 January 2015 c93
87 HL Deb 28 January 2015 c281

> Secretary of State for Business, Innovation and Skills in England, not the Home Secretary and, for institutions in Wales, we expect it to be the Secretary of State for Wales, in consultation with the relevant Welsh Ministers. The amendments allow for the relevant Secretary of State to undertake monitoring or to delegate the function. We do not envisage that the Secretary of State will actually undertake this function, but it is important to explain the technical reason for including this possibility.[88]

He said that the likelihood was that an existing body such as HEFCE would take on the role. The clause was added without debate and without a division.

Lord Bates made some other minor amendments outlined below, including some changes to clause 42 on commencement. [89] As detailed below, he signalled further Government consideration of the Prevent Strategy and universities and the powers of the Independent Reviewer of Terrorism.

Amendments not made

On the third day of committee, the focus was on the Prevent Strategy and Channel Strategy. Baroness Sharp of Guildford spoke to a probing amendment 103a and others to express concern from universities on the potential threat to autonomy and freedom of speech.(c98) Lord Harris of Haringey illustrated concerns from local authorities about resources available for the Strategy. Baroness Warsi said that a review of the Strategy was overdue and queried the definitions of extremism and terrorism used by the Government.

In response Lord Bates outlined the broad objective of the Prevent Strategy:

> Prevent aims to stop people becoming terrorists or supporting terrorism, and deals with all kinds of terrorism. It targets not just violent extremism but non-violent extremism, which can create an atmosphere conducive to terrorism and popularise views which terrorists exploit. Prevent activity in local areas relies on the co-operation of many organisations to be effective, but currently co-operation is not consistent across the country. We have seen people being radicalised sufficiently to want to travel to Syria and Iraq from many places which did not realise that radicalisation was an issue for them. New threats can also emerge quickly, and the steps which authorities take to comply with this duty will enable them to be spotted, and acted on, quickly. The new duty created by Chapter 1 of Part 5 will improve the standard of work on the Prevent programme across the country. This is particularly important where terrorism is a concern, but all areas need to understand the local threat and take action to address it. We will issue guidance setting out the type of activity that specified authorities should consider in fulfilling this duty.[90]

He argued that making the programme statutory would help improve the patchy nature of implementation. The new clause was agreed without a division (c284).

Baroness Lister of Burtersett moved amendment 104 and a series of amendments on behalf of the Joint Committee on Human Rights, excluding universities and higher education from the proposed statutory duties, as a threat to freedom of speech and cutting across other statutory duties. (c228) There was a long debate with contributions from many peers from an academic and legal background.

[88] HL Deb 28 January 2015 c282
[89] HL Deb 28 January 2015 c318
[90] HL Deb 28 January 2015 c218

Lord Bates said he would reflect on the points made.[91] He referred to a letter sent to peers on 28 January with further information on the proposed operation of the clauses. He explained the importance of including universities:

> Between 1999 and 2009, as I set out in my letter, around 30% of people convicted of al-Qaeda-associated terrorist offences had attended a higher education institution. I accept, as the noble Baroness, Lady Manningham-Buller, clearly put it, that many different groups are involved in terrorism—but nevertheless, that 30% had attended a higher education institution. Young people in the 18 to 24 age group make up 30% of terrorist-related convictions.
>
> Some students arrive at university already radicalised like some of those convicted of the "airline plot" in 2006, which the noble Lord, Lord Macdonald, who was Director of Public Prosecutions at the time, reflected on previously. Others are radicalised by external influences while at university, such as the terrorist who had studied here in the UK and who blew himself up in an attack in Stockholm in 2010, while some become influenced by non-violent extremism at university but later move on to violence, such as the terrorist responsible for the Detroit aircraft attack on Christmas Day 2009. The Prevent duty is designed to apply to sectors which can most effectively protect vulnerable people from radicalisation. There is no doubt that higher and further education is one of them.[92]

He said that there was evidence that some institutions were not taking their existing duties seriously and that universities were already balancing freedom of speech with duties in respect of equality. He promised to reflect further and possibly offer additional comfort at report.[93] Baroness Lister noted in response that the Government had not yet put forward marshalled evidence about the extent of existing noncompliance by universities.

A probing amendment from Lord Rosser provided an opportunity to discuss which type of authority would fall within Schedule 3.[94] Lord Bates moved some minor amendments to include extra types of authorities.

Baroness Hamwee spoke to an amendment to probe Clause 24 on guidance. She was joined by Baroness Brinton and others who sought to ensure the guidance was subject to the affirmative procedure in Parliament. In response, Lord Bates emphasised that the draft guidance had been available since mid December and was the subject of public consultation.[95]

After the new clause on monitoring had been added, Lord Philips of Sudbury spoke to an amendment on an impact assessment of the new statutory duty. Baroness Hamwee spoke to an amendment on the Channel programme for local authorities.[96] This enabled a longer debate on the practicality of referring young people to local panels. The amendments were withdrawn.[97] However, Baroness Hamwee indicated her intention to return to the issues on report. Lord Bates moved some further technical amendments.[98]

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[91] HL Deb 28 January 2015 c253
[92] HL Deb 28 January 2015 c256
[93] HL Deb 28 January 2015 c258
[94] HL Deb 28 January 2015 c266
[95] HL Deb 28 January 2015 c278
[96] HL Deb28 January 2015 c291
[97] HL Deb 28 January 2015 c298
[98] HL Deb 28 January 2015 c301

Baroness Berridge then spoke to a new clause on an enquiry into the funding of terrorism by the looting of cultural arterfacts (c301), but withdrew if after explanations from the junior minister, Lord Ashton of Hyde.

Lord Pannick moved amendment 118D to increase the statutory powers to review held by the Independent Reviewer of Terrorism. Lord Bates indicated Government movement before report:

> Nevertheless, I can see that there is some force to the argument that it is a little perverse that while the independent reviewer is able, and obliged, to look at certain Acts of counterterrorism legislation, other equally relevant pieces of counterterrorism legislation are outside his remit. The Government have reflected on this issue, and will continue to do so in the light of this evening's debate, to consider whether it might be possible to make some changes on Report to address this concern. Were we to expand the independent reviewer's remit, it would, of course, raise questions about the capacity of the independent reviewer. Even someone with such a voracious appetite for work as David Anderson, has limits. In part, the Privacy and Civil Liberties Board, which we are coming on to, is designed to increase the support and capacity of the independent reviewer. I will give further thought to whether it would be appropriate to give him greater flexibility to set his own work programme and concentrate on those areas which he believes are most deserving of scrutiny or most topical.
>
> I give your Lordships a very clear assurance that the Government will consider these points extremely carefully, and very urgently, and I hope that we may be able to find some way to meet the points which these amendments seek to address. I invite the noble Lord to reflect on those comments.[99]

Lord Pannick withdrew his amendment.

The final series of amendments related to the Privacy and Civil Liberties Board where an amendment was proposed by Baroness Smith of Basildon to probe the powers of the new Board There was concern about the interaction with the Independent Reviewer (c309). Lord Bates promised that the Government would consider carefully the outcome of the public consultation on the remit of the Board and suggested some further information would be available on report.[100]

2.7 Report stage 2 and 4 February

Government amendments

A new clause was added on 2 February to ensure that an authority-to-carry scheme would come into force following regulations subject to the affirmative procedure, as recommended by the Delegated Powers and Regulatory Reform Committee.[101]

On 4 February the Government amendment 15D was passed which required universities to 'have particular regard' to s43 of the *Education (no 2) Act 1986* on freedom of speech in the higher education sector. In the debate, Lord Pannick queried whether it would apply to the duty to have regard to the guidance and whether it would apply to the monitoring body,[102]

In response, Lord Bates said:

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[99] HL Deb 28 January 2015 c307
[100] HL Deb 28 January 2015 c316
[101] HL Deb 2 February 2015 c517
[102] HL Deb 4 February 2015 c694

> My noble friend Lord Deben talked about the importance of debate. I hope that I have gone some way to reassure him that that is entirely consistent with our view. The guidance stipulates that and it is now stipulated in the Bill. The noble Lord, Lord Butler, asked about the Home Secretary. The Home Secretary can issue directions to universities and this makes a real difference. The power to issue directions will be subject to multiple layers of protection, including judicial oversight and that of the Prevent oversight board, on which my noble friend Lord Carlile provides independent representation. We agreed, following a discussion in Committee, to look again at this, and a direction will be issued only as a last resort.[103]

There were also Government amendments to ensure that the guidance issued under Clause 28 would be subject to the affirmative resolution procedure.

Government amendments 16 to 21 inserted a new clause extending the powers of the Independent Reviewer of Terrorism to other counter-terrorism legislation (Part 1 of *the Anti-terrorism, Crime and Security Act 2001* and Part 2 in relation to terrorism, *Counter-terrorism Act 2008* and Part 1 of the current Bill) and to ensure that the Privacy and Civil Liberties Board could support him in reviewing the operation of these laws.[104] The current requirement to review annually all legislation within his scope was also removed, apart from the *Terrorism Act 2000* In respect of the Privacy and Civil Liberties Board, .the Independent Reviewer is given power to direct its work and a key role in appointments.

David Anderson broadly welcomed the Government amendments:

> In short, the Government has listened to what I have been saying, and put forward changes which should significantly improve the ability of the Independent Reviewer to do an effective job. The content of the proposed Regulations, which has been the subject of consultation, remains to be seen.[105]

Amendments not made

On 2 February Baroness Hamwee began the debate by moving a series of amendments on Schedule 1. Amendment 1 would have required a summary of reasons to be given to a person whose passport was to be removed. In response, Lord Bates referred to robust oversight procedures and the Code of Practice as justification for not accepting the amendment.[106] Amendment 5 offered some probing on the potential impact for charities working for humanitarian reasons in terrorist held areas. In response, Lord Ashton of Hyde, for the Government, referred to planned amendments to the draft code of practice for officers exercising functions under Schedule 1 and to the planned amendments extending the remit of David Anderson. Lord Bates also rejected an amendment from Baroness Hamwee designed to allow a summary of reasons for a TEO.

Lord Brown of Eaton-under-Heywood spoke to amendments 10 and 11 on TPIMs on the extent of judicial oversight of the Home Secretary's decision on a TPIM order. Lord Howard of Lympne and Lord Tebbit argued that the decision should be for the Home Secretary not the courts. The Government did not accept the proposal, arguing that the standard of judicial review was appropriate.[107]

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[103] HL Deb 4 February 2015 c711
[104] HL Deb 4 February 2015 c760
[105] Independent Review and the PCLB 31 January 2015 Independent Reviewer of Terrorism
[106] HL Deb 2 February 2015 c466
[107] HL Deb 2 February 2015 c487

Lord King of Bridgwater spoke to a series of amendments to incorporate essential elements of the Draft Communications Data Bill into the Bill. He noted that the usual channels had agreed to the fast-tracking of the Bill on the understanding that there would be no substantial additions to the Bill. However, he argued that this had been prior to the Charlie Hebdo tragedy in Paris and that action was needed immediately to ensure that the security services could access social media as in France.[108]

Several speakers supported Lord King, including Lord Lloyd of Berwick who questioned why the Prime Minister had prioritised the Counter-terrorism and Security Bill rather than an updated version of the Data Communications Bill. Lord Carlile of Berriew asked why the Government was not prepared to publish an updated version, given that in committee it became clear that the Government had met a number of objections from the Joint Committee on the Bill. Lord Blencathra reiterated his objections to the amendments and pointed out that David Anderson had not yet reported on the powers.[109] Lord Paddick argued that the draft Bill would not offer much practical assistance to the security services, and a better approach would be negotiations with the US where many of the servers were based. Lord Harris of Haringey pointed out that with the general election imminent, it would be unlikely that there would be a swift legislative response by the new Government which had yet to test public opinion.

In response, Lord Bates noted that the Government had considered releasing an updated version of the draft Bill but it had decided that it was not possible at this stage.[110] He suggested that the current Prime Minister and Home Secretary would make the legislation an urgent matter in the new Parliament. Lord King noted that he hoped the debate would illustrate the strength of feeling for action on the issue and withdrew the amendments.[111] See also commentary from Mark D'Arcy of the BBC.[112]

On 4 February, the debate began with a series of proposed amendments on freedom of speech and universities. There was discussion about the definition of non-violent extremism, which Lord Bates set out.[113] Lord Hope of Craighead moved amendment 14 to subject the duty in clause 25 to the duty in s43 of the *Education (no 2) Act 1986* to uphold freedom of speech in higher education. He noted the difference between the consultation for Scotland and for England and Wales, where Scotland was much less prescriptive.[114] Several Vice-Chancellors participated in the debate. There was pressure for the guidance to be issued to be subject to the affirmative resolution procedure.[115] Lord Bates emphasised that the draft guidance was already being redrafted to meet a number of objections (c710). There was also debate about the need to consult students, where Lord Bates indicated agreement.[116]

On amendment 15A proposed by Baroness Lister of Burtersett on regard for academic freedom, there was concern that risk averse university administrations would inhibit

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[108] HL Deb 2 February 2015 c492
[109] HL Deb 2 February 2015 c498
[110] HL Deb 2 February 2015 c512
[111] HL Deb 2 February 2015 c516
[112] "What happened to the snoopers' charter?" Mark D'Arcy 3 February BBC
[113] HL Deb 4 February 2015 c674
[114] HL Deb 4 February 2015 c679
[115] HL Deb 4 February 2015 c695
[116] HL Deb 4 February 2015 c738

discussion of non-violent extremism. [117] Lord Bates undertook to reflect before third reading.[118] Debate then moved on to local panels under clause 34, and the potential cost.

Following Government amendments on the Independent Reviewer and the Privacy and Civil Liberties Board, there was a debate which ranged on the need for a statutory basis for access to secret material, to the value of the Board itself.[119]

2.8 Third reading 9 February

Lord Bates brought forward an amendment to ensure that Northern Ireland would also be included within the scope of civil legal aid to challenge a temporary seizure of passport, subject to the means and merits test.[120]

Following some technical amendments in relation to the Prevent duty, Lord Bates moved amendments 4 to 6 to clause 31 on academic freedom:

> A number of noble Lords, in particular the noble Baroness, Lady Lister of Burtersett, argued that we should add to that provision so that particular regard must also be given to the principle of academic freedom.
>
> As I set out at the time, the Government do not believe that such a reference is strictly necessary: the description of academic freedom in Section 202 of the Education Reform Act 1988 is essentially a subset of freedom of speech as set out in Section 43 of the Education (No. 2) Act 1986.
>
> However, your Lordships made the case that the principle of academic freedom itself should be explicitly referenced in the Bill. I committed to give this matter further consideration in order to provide reassurance. Therefore, I have tabled Amendments 5 and 6 to include “academic freedom” in Clause 31. This should provide unequivocal reassurance that the Prevent duty is not designed to undermine the principle of academic freedom. The Government have also tabled Amendment 4 to provide greater clarity as to which institutions the clause applies to. The new reference to Schedule 6 to the Education Reform Act 1988 makes it clear which higher education institutions are required to pay particular regard to freedom of speech and academic freedom when carrying out the Prevent duty. I trust that this provides greater clarity for your Lordships.[121]

The amendment was welcomed. In his summing up Lord Bates referred to the fact that there had been 40 amendments to the Bill overall.[122]

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[117] HL Deb 4 February 2015 c743
[118] HL Deb 4 February 2015 c750
[119] HL Deb 4 February 2015 c767
[120] HL Deb 9 February 2015 c1024
[121] HL Deb 9 February 2015 c1027
[122] HL Deb 9 February 2015 c1033