

Session 2014-15

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Counter-Terrorism and Security Bill

Amendments
to be moved
in committee

[Supplementary to the Revised Marshalled List]

After Clause 17

LORD KING OF BRIDGWATER

LORD BLAIR OF BOUGHTON

LORD WEST OF SPITHEAD

LORD CARLILE OF BERRIEW

Insert the following new Clause—

“PART 3A

ENSURING OR FACILITATING AVAILABILITY OF DATA

Ensuring or facilitating availability

Power to ensure or facilitate availability of data

(1) The Secretary of State may by order—

(a) ensure that communications data is available to be obtained from telecommunications operators by relevant public authorities in accordance with Part 3B, or

(b) otherwise facilitate the availability of communications data to be so obtained from telecommunications operators.

(2) An order under this section may, in particular—

(a) provide for—

(i) the obtaining (whether by collection, generation or otherwise) by telecommunications operators of communications data,

(ii) the processing, retention or destruction by such operators of data so obtained or other data held by such operators,

(iii) the entering into by such operators of arrangements with the Secretary of State or other persons under or by virtue of which the Secretary of State or other persons engage in activities on behalf of the operators on a commercial or other basis for the purpose of enabling the operators to comply with requirements imposed by virtue of this section,

(b) impose requirements or restrictions on telecommunications operators or other persons or provide for the imposition of such

requirements or restrictions by notice of the Secretary of State.

(3) Requirements imposed by virtue of subsection (2) may, in particular, include—

(a) requirements (whether as to the form or manner in which the data is held or otherwise) which ensure that communications data can be disclosed without undue delay to relevant public authorities in accordance with Part 3B,

(b) requirements for telecommunications operators—

(i) to comply with specified standards,

(ii) to acquire, use or maintain specified equipment or systems, or

(iii) to use specified techniques,

(c) requirements which—

(i) are imposed on a telecommunications operator who controls or provides a telecommunication system, and

(ii) are in respect of communications data relating to the use of telecommunications services provided by another telecommunications operator in relation to the telecommunication system concerned.

(4) Nothing in this Part authorises any conduct consisting in the interception of communications in the course of their transmission by means of a telecommunication system.

(5) In this section—

“processing”, in relation to communications data, includes its reading, organisation, analysis, copying, correction, adaptation or retrieval and its integration with other data,

“relevant public authority” has the same meaning as in Part 3B.

(6) See—

(a) section (*Application of Parts 3A and 3B to postal operators and postal services*) for the way in which this Part applies to public postal operators and public postal services, and

(b) section (*Interpretation of Parts 3A, 3B and 3C*) for the definitions of “communications data” and “telecommunications operator” and for other definitions relevant to this Part.”

Insert the following new Clause—

“Consultation requirements

(1) Before making an order under section (*Power to ensure or facilitate availability of data*), the Secretary of State must consult OFCOM.

(2) Before making an order under section (*Power to ensure or facilitate availability of data*), the Secretary of State must consult—

(a) such persons appearing to be likely to be subject to the requirements or restrictions for which it provides,

(b) such persons representing persons falling within paragraph (a),
and

(c) such persons (other than OFCOM) with statutory functions in relation to persons falling within that paragraph, as the Secretary of State considers appropriate.

(3) Before making an order under section (*Power to ensure or facilitate availability of data*), the Secretary of State must consult the Technical Advisory Board.

(4) In this section “OFCOM” means the Office of Communications.

(5) In this Act “the Technical Advisory Board” means the Board established by section 13 of the Regulation of Investigatory Powers Act 2000.”

Insert the following new Clause—

“Data security and integrity

A telecommunications operator who holds communications data by virtue of this Part must—

(a) secure that the data is of the same quality and subject to the same security and protection as the data on any system from which it is derived, and

(b) protect the data against accidental or unlawful destruction, accidental loss or alteration, or unauthorised or unlawful retention, processing, access or disclosure.”

Insert the following new Clause—

“Period for which data is to be retained

(1) A telecommunications operator who holds communications data by virtue of this Part must retain the data until—

(a) the end of—

(i) the period of 12 months, or

(ii) such shorter period as may be specified in an order under section 1 or a notice given to the operator in pursuance of such an order, beginning with the date of the communication concerned, and

(b) any extension of that period under subsection (3).

(2) A public authority may, before the end of the period mentioned in subsection (1)(a), notify the telecommunications operator concerned that the data is, or may be, required for the purpose of legal proceedings.

(3) If such a notification has been given, the period mentioned in subsection (1)(a) is extended until the public authority notifies the operator that the data is not required for the purpose of legal proceedings.

(4) The public authority must, as soon as reasonably practicable after the authority becomes aware of the fact, notify the operator that the data is not required for the purpose of legal proceedings.

(5) A notification under section must be made in writing.”

Insert the following new Clause—

“Access to data

(1) A telecommunications operator who holds communications data by virtue of this Part must not disclose the data except—

(a) in accordance with the provisions of Part 3B, or

(b) otherwise as authorised by law.

(2) The operator must put in place adequate security systems (including management checks and controls) governing access to the data in order to protect against any disclosure of a kind which does not fall within subsection (1)(a) or (b).”

Insert the following new Clause—

“Destruction of data

(1) A telecommunications operator who holds communications data by virtue of this Part must destroy the data if the retention of the data ceases to be authorised by virtue of this Part and is not otherwise authorised by law.

(2) The requirement in subsection (1) to destroy data is a requirement to destroy the data in such a way that it can never be retrieved.

(3) It is sufficient for the operator to make arrangements for the destruction of the data to take place at such monthly or shorter intervals as appear to the operator to be convenient.”

Insert the following new Clause—

“Other safeguards

(1) A notice of the Secretary of State provided for by an order under section (*Power to ensure or facilitate availability of data*) must—

(a) be in writing,

(b) specify the person to whom it is given, and

(c) be given in such manner (whether by publication or otherwise) as the Secretary of State considers appropriate for bringing it to the attention of the person concerned.

(2) An order under section (*Power to ensure or facilitate availability of data*) must ensure that a person, to whom a notice of the kind mentioned in section (*Power to ensure or facilitate availability of data*) (2)(b) is given, can refer the notice to the Technical Advisory Board.

(3) Such an order must provide for—

(a) any such reference to the Board to be made before the end of such period as may be specified in the order,

(b) the Board to have a discretion, on such grounds as may be specified, to extend any period so specified,

(c) there to be no requirement (other than in the case of any notice specified in the order) to comply with a notice referred to the Board until proceedings on the reference are completed,

(d) the Board—

(i) to consider any technical matters relating to the notice referred to them and the financial consequences, for the person making the reference, of the notice, and

(ii) to report their conclusions on those matters to that person and to the Secretary of State,

(e) the Secretary of State, after considering the Board’s report, to be able to—

(i) withdraw the notice, or

(ii) give a further notice confirming its effect, with or without modifications,

(f) a further notice given by virtue of paragraph (e)(ii) not to be the subject of a further reference to the Board.

Insert the following new Clause—

“Enforcement and protection for compliance

(1) It is the duty of a telecommunications operator or other person on whom a requirement or restriction is imposed by—

(a) section (*Data security and integrity*), (*Period for which data is to be retained*)(1), (*Access to data*) or (*Destruction of data*), or

(b) a notice of the Secretary of State provided for by an order under section (*Power to ensure or facilitate availability of data*), to comply with the requirement or restriction concerned.

(2) That duty is enforceable by civil proceedings by the Secretary of State for an injunction, or for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or for any other appropriate relief.

(3) Conduct is lawful for all purposes if—

(a) it is conduct in which a person is authorised or required to engage by virtue of this Part, and

(b) the conduct is in accordance with, or in pursuance of, the authorisation or requirement.

(4) A person (whether or not the person so authorised or required) is not to be subject to any civil liability in respect of conduct that—

(a) is incidental to, or is reasonably undertaken in connection with, conduct that is lawful by virtue of subsection (3), and

(b) is not itself conduct for which an authorisation or warrant—

(i) is capable of being granted under any of the enactments mentioned in subsection (5), and

(ii) might reasonably have been expected to have been sought in the case in question.

(5) The enactments referred to in subsection (4)(b)(i) are—

(a) an enactment contained in Part 3B,

(b) an enactment contained in the Regulation of Investigatory Powers Act 2000,

(c) an enactment contained in Part 3 of the Police Act 1997 (powers of the police and of customs officers), or

(d) section 5 of the Intelligence Services Act 1994 (warrants for the intelligence services)”. ”.

Insert the following new Clause—

“PART 3B

REGULATORY REGIME FOR OBTAINING DATA

Authorisations for obtaining data

Authorisations by police and other relevant public authorities

(1) Subsection (2) applies if a designated senior officer of a relevant public authority believes in respect of communications data (“Part 3B data”)—

- (a) that it is necessary to obtain the data for a permitted purpose,
- (b) that it is necessary to obtain the data—
 - (i) for the purposes of a specific investigation or a specific operation, or
 - (ii) for the purposes of testing, maintaining or developing equipment, systems or other capabilities relating to the availability or obtaining of communications data, and
- (c) that the conduct authorised by the authorisation is proportionate to what is sought to be achieved.

(2) The designated senior officer may grant an authorisation for—

- (a) the designated senior officer, or
- (b) persons holding offices, ranks or positions with the same relevant public authority as the designated senior officer,

to engage in any conduct in relation to a telecommunication system, or data derived from a telecommunication system, for obtaining the Part 3B data from any person (“section ()(2) conduct”).

(3) Section (*Authorisations by police and other relevant public authorities*)(2) conduct may, in particular, consist of an authorised officer—

- (a) obtaining the Part 3B data themselves from any person with the consent of that person,
- (b) asking any person whom the authorised officer believes is, or may be, in possession of the Part 3B data to disclose it to a person identified by, or in accordance with, the authorisation,
- (c) asking any person whom the authorised officer believes is not in possession of the Part 3B data but is capable of obtaining it, to obtain it and disclose it to a person identified by, or in accordance with, the authorisation, or
- (d) requiring by notice a telecommunications operator—

- (i) whom the authorised officer believes is, or may be, in possession of the Part 3B data to disclose the data to a person identified by, or in accordance with, the authorisation, or
 - (ii) whom the authorised officer believes is not in possession of the Part 3B data but is capable of obtaining the data, to obtain it and disclose it to a person identified by, or in accordance with, the authorisation.
- (4) An authorisation may, in particular, authorise any obtaining or disclosure of data by a person who is not an authorised officer, or any other conduct by such a person, which enables or facilitates the obtaining of Part 3B data.
- (5) An authorisation—
- (a) may not authorise any conduct consisting in the interception of communications in the course of their transmission by means of a telecommunication system, and
 - (b) may not authorise an authorised officer to ask or require, in the circumstances mentioned in subsection (3)(b), (c) or (d), a person to disclose the Part 3B data to any person other than—
 - (i) an authorised officer, or
 - (ii) a person holding an office, rank or position with the same relevant public authority as an authorised officer.
- (6) For the purposes of this section it is necessary to obtain communications data for a permitted purpose if it is necessary to do so—
- (a) in the interests of national security, or
 - (b) for the purpose of preventing or detecting serious crime.
- (7) See section (*Application of Parts 3A and 3B to postal operators and postal services*) for the way in which this Part applies to postal operators and postal services.”

Insert the following new Clause—

“Form of authorisation and authorised notices

- (1) An authorisation must specify—
 - (a) the conduct that is authorised, and
 - (b) the Part 3B data in relation to which the conduct is authorised.
- (2) An authorisation must specify—
 - (a) the matters falling within section (*Authorisations by police and other*

relevant public authorities)(6) by reference to which it is granted, and

(b) the office, rank or position held by the person granting it.

(3) An authorisation which authorises a person to impose requirements by notice on a telecommunications operator must specify the nature of the requirements that are to be imposed but need not specify the other contents of the notice.

(4) The notice itself—

(a) must specify—

(i) the office, rank or position held by the person giving it,

(ii) the requirements that are being imposed, and

(iii) the telecommunications operator on whom the requirements are being imposed, and

(b) must be given in writing or (if not in writing) in a manner that produces a record of its having been given.

(5) An authorisation must be granted in writing or (if not in writing) in a manner that produces a record of its having been granted.”

Insert the following new Clause—

“Duration and cancellation of authorisations

(1) An authorisation ceases to have effect at the end of the period of one month beginning with the date on which it is granted.

(2) An authorisation may be renewed at any time before the end of that period by the grant of a further authorisation.

(3) Subsection (1) has effect in relation to a renewed authorisation as if the period of one month mentioned in that subsection did not begin until the end of the period of one month applicable to the authorisation that is current at the time of the renewal.

(4) A designated senior officer who has granted an authorisation must cancel it if the designated senior officer is satisfied that the position is no longer as mentioned in section (*Authorisations by police and other relevant public authorities*)(1)(a), (b) and (c).

(5) The Secretary of State may by order provide for the person by whom any duty imposed by subsection (4) is to be performed in a case in which it would otherwise fall on a person who is no longer available to perform it.

(6) Such an order may, in particular, provide for the person on whom the duty is to fall to be a person appointed in accordance with the order.”

Insert the following new Clause—

“Duties of telecommunications operators in relation to authorisations

- (1) It is the duty of a telecommunications operator who is obtaining or disclosing communications data in response to a request or requirement for Part 3B data in pursuance of an authorisation to obtain or disclose the communications data in a way that minimises the amount of data that needs to be processed for the purpose concerned.
- (2) It is the duty of a telecommunications operator on whom a requirement is imposed by notice given in pursuance of an authorisation to comply with that requirement.
- (3) A person who is under a duty by virtue of subsection (1) or (2) is not required to do anything in pursuance of that duty that it is not reasonably practicable for that person to do.
- (4) The duty imposed by subsection (1) or (2) is enforceable by the Secretary of State by civil proceedings for an injunction, or for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or for any other appropriate relief.”

Insert the following new Clause—

“Filtering arrangements for obtaining data

- (1) The Secretary of State may establish, maintain and operate arrangements for the purposes of—
 - (a) assisting a designated senior officer to determine whether, in any case, the officer believes as mentioned in section (*Authorisations by police and other relevant public authorities*)(1)(a), (b) and (c) in relation to the grant of an authorisation in respect of communications data, or
 - (b) facilitating the lawful, efficient and effective obtaining of Part 3B data from any person by relevant public authorities in pursuance of an authorisation.
- (2) Arrangements under subsection (1) (“filtering arrangements”) may, in particular, involve the obtaining of Part 3B data in pursuance of an authorisation by means of—
 - (a) a request to the Secretary of State to obtain the data on behalf of an authorised officer, and
 - (b) the Secretary of State—
 - (i) obtaining the data or data from which the data may be

derived,

(ii) processing the data or the data from which it may be derived (and retaining data temporarily for that purpose), and

(iii) disclosing the Part 3B data to the person identified for this purpose by, or in accordance with, the authorisation.

(3) Filtering arrangements may, in particular, involve the generation or use by the Secretary of State of information—

(a) for the purpose mentioned in subsection (1)(a), or

(b) for the purposes of—

(i) the support, maintenance, oversight, operation or administration of the arrangements, or

(ii) the functions of the Interception of Communications Commissioner mentioned in subsection (4).

(4) Filtering arrangements must involve the generation and retention of such information or documents as the Interception of Communications Commissioner considers appropriate for the purposes of the functions of the Commissioner in relation to the arrangements under section 57(2)(e) of the Regulation of Investigatory Powers Act 2000.”

Insert the following new Clause—

“Use of filtering arrangements in pursuance of an authorisation

(1) This section applies in relation to the use of the filtering arrangements in pursuance of an authorisation.

(2) The filtering arrangements may be used—

(a) to obtain and disclose Part 3B data in pursuance of an authorisation, only if the authorisation specifically authorises the use of the arrangements to obtain the data,

(b) to process data in pursuance of an authorisation (and to retain the data temporarily for that purpose), only if the authorisation specifically authorises processing data of that description under the arrangements (and their temporary retention for that purpose).

(3) The authorisation must record the designated senior officer’s decision as to—

(a) whether the Part 3B data to be obtained and disclosed in pursuance of the authorisation may be obtained and disclosed by use of the filtering arrangements,

(b) whether the processing of data under the filtering arrangements (and its temporary retention for that purpose) is authorised,

(c) if the processing of data under the filtering arrangements is authorised, the description of data that may be processed.

(4) A designated senior officer must not authorise—

(a) use of the filtering arrangements, or

(b) processing under the filtering arrangements, unless satisfied that what is authorised is proportionate in relation to what is sought to be achieved.”

Insert the following new Clause—

“Duties in connection with operation of filtering arrangements

(1) The Secretary of State must secure—

(a) that no authorisation data is obtained or processed under the filtering arrangements except for the purposes of an authorisation,

(b) that data which—

(i) has been obtained or processed under the filtering arrangements, and

(ii) is to be disclosed in pursuance of an authorisation or for the purpose mentioned in section (*Filtering arrangements for obtaining data*)(1)(a), is disclosed only to the person to whom the data is to be disclosed in pursuance of the authorisation or (as the case may be) to the designated senior officer concerned,

(c) that any authorisation data which is obtained under the filtering arrangements in pursuance of an authorisation is immediately destroyed in such a way that it can never be retrieved—

(i) when the purposes of the authorisation have been met, or

(ii) if at any time it ceases to be necessary to retain the data for the purposes or purpose concerned.

(2) The Secretary of State must secure that data (other than authorisation data) which is retained under the filtering arrangements is disclosed only—

(a) for the purpose mentioned in section (*Filtering arrangements for obtaining data*)(1)(a),

(b) for the purposes of support, maintenance, oversight, operation or administration of the arrangements,

(c) to the Interception of Communications Commissioner for the purposes of the functions of the Commissioner mentioned in section (*Filtering arrangements for obtaining data*)(4), or

(d) otherwise as authorised by law.

(3) The Secretary of State must secure—

(a) that only the Secretary of State and individuals authorised by the Secretary of State are permitted to read, obtain or otherwise process data for the purposes of support, maintenance, oversight, operation or administration of the filtering arrangements, and

(b) that no other persons are permitted to access or use the filtering arrangements except in pursuance of an authorisation or for the purpose mentioned in section (*Filtering arrangements for obtaining data*)(1)(a).

(4) The Secretary of State must—

(a) put in place and maintain an adequate security system to govern access to, and use of, the filtering arrangements and to protect against any abuse of the power of access, and

(b) impose measures to protect against unauthorised or unlawful data retention, processing, access or disclosure.

(5) The Secretary of State must—

(a) put in place and maintain procedures (including the regular testing of relevant software and hardware) to ensure that the filtering arrangements are functioning properly, and

(b) report, as soon as possible after the end of each calendar year, to the Interception of Communications Commissioner about the functioning of the filtering arrangements during that year.

(6) A report under subsection (5)(b) must, in particular, contain information about the destruction of authorisation data during the calendar year concerned.

(7) If the Secretary of State believes that significant processing errors have occurred giving rise to a contravention of any of the requirements of this Part, the Secretary of State must report that fact immediately to the Interception of Communications Commissioner.”

Insert the following new Clause—

“Interpretation of Part 3B

(1) In this Part—

“authorisation” means an authorisation under section (*Authorisations by police and other relevant public authorities*),

“authorisation data”, in relation to an authorisation, means communications data that is, or is to be, obtained in pursuance of the authorisation or any data from which that data is, or may be, derived,

“authorised officer” means a person who—

(a) is authorised by an authorisation to engage in any section (*Authorisations by police and other relevant public authorities*)(2) conduct, and

(b) is the designated senior officer or holds an office, rank or position with the same relevant public authority as the designated senior officer,

“designated senior officers” means individuals holding such ranks, offices or positions with relevant public authorities as are specified by order of the Secretary of State,

“filtering arrangements” means any arrangements under section (*Filtering arrangements for obtaining data*)(1),

“GCHQ” has the same meaning as in the Intelligence Services Act 1994,

“intelligence service” means the Security Service, the Secret Intelligence Service or GCHQ,

“member of a police force”, in relation to the Royal Navy Police, the Royal Military Police or the Royal Air Force Police, does not include any member of that force who is not for the time being attached to, or serving with, that force or another of those forces,

“Part 3B data” has the meaning given by section (*Authorisations by police and other relevant public authorities*)(1),

“police force” means any of the following—

(a) any police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London),

(b) the metropolitan police force,

(c) the City of London police force,

(d) the Police Service of Scotland,

(e) the Police Service of Northern Ireland,

(f) the Ministry of Defence Police,

(g) the Royal Navy Police,

- (h) the Royal Military Police,
- (i) the Royal Air Force Police,
- (j) the British Transport Police,

“relevant public authority” means any of the following—

- (a) a police force,
- (b) the National Crime Agency,
- (c) any of the intelligence services,

“section (*Authorisations by police and other relevant public authorities*)(2) conduct” has the meaning given by section (*Authorisations by police and other relevant public authorities*)(2).

(2) In this Part references to crime are references to conduct that—

- (a) constitutes one or more criminal offences, or
- (b) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences.

(3) For the purposes of this Part detecting crime shall be taken to include—

- (a) establishing by whom, for what purpose, by what means and generally in what circumstances any crime was committed, and
- (b) the apprehension of the person by whom any crime was committed.

(4) References in this Part to an individual holding an office or position with a public authority include any member, official or employee of the authority.

(5) For the purposes of this Part information required for the purposes of supporting the filtering arrangements includes information which (to any extent) explains authorisation data.

(6) Other expressions are defined generally for the purposes of this Part: see section (*Interpretation of Parts 3A, 3B and 3C*).

(7) The Secretary of State may by order provide for a person who is a relevant public authority to cease to be a relevant public authority.

(8) The Secretary of State may by order make such amendments, repeals or revocations in this or any other enactment as the Secretary of State considers appropriate in consequence of an order under subsection (7).”

Insert the following new Clause—

“Application of Parts 3A and 3B to postal operators and postal services

- (1) Part 1 applies to public postal operators and public postal services as it applies to telecommunications operators and telecommunications services.
- (2) In its application by virtue of subsection (1), Part 3A has effect as if—
 - (a) any reference to a telecommunications operator were a reference to a public postal operator, and
 - (b) any reference to a telecommunications service were a reference to a public postal service.
- (3) Part 3B applies to postal operators and postal services as it applies to telecommunications operators and telecommunication systems.
- (4) In its application by virtue of subsection (3), Part 3B has effect as if—
 - (a) any reference to a telecommunications operator were a reference to a postal operator, and
 - (b) any reference to a telecommunication system were a reference to a postal service.
- (5) Nothing in this Act affects any power conferred on a postal operator by or under any enactment to open, detain or delay any postal packet (within the meaning given by section 125(1) of the Postal Services Act 2000) or to deliver any such packet to a person other than the person to whom it is addressed.”

Insert the following new Clause—

“Operators’ costs of compliance with Parts 3A and 3B

- (1) The Secretary of State must ensure that arrangements are in force for securing that telecommunications operators and postal operators, or telecommunications operators or postal operators of a particular description, receive an appropriate contribution in respect of such of their relevant costs as the Secretary of State considers appropriate.
- (2) In subsection (1) “relevant costs” means costs incurred, or likely to be incurred, by telecommunications operators or postal operators in engaging in activities permitted or required by virtue of Part 3A or 3B.
- (3) The arrangements may provide for payment of a contribution to be subject to conditions.
- (4) Such conditions may, in particular, include a condition on the telecommunications operator or postal operator concerned to comply with any audit that may reasonably be required to monitor the claim for costs.
- (5) The arrangements may provide for the Secretary of State to determine—

- (a) the scope and extent of the arrangements,
- (b) whether or not contributions should be made to particular operators falling within the ambit of the arrangements, and
- (c) the appropriate level of contribution (if any) which should be made in each case.

(6) For the purpose of complying with this section the Secretary of State may make arrangements for payments to be made out of money provided by Parliament.”

Insert the following new Clause—

“Interpretation of Parts 3A, 3B and 3C

(1) In this Act—

“apparatus” includes any equipment, machinery or device and any wire or cable,

“civil proceedings” means any proceedings in or before any court or tribunal that are not criminal proceedings,

“communication”—

(a) in relation to a telecommunications operator, telecommunications service or telecommunication system, includes—

(a) anything comprising speech, music, sounds, visual images or data of any description, and

(b) signals serving either for the impartation of anything between persons, between a person and a thing or between things or for the actuation or control of any apparatus, and

(b) in relation to a postal operator or postal service (but not in the definition of “postal service” in this section), includes anything transmitted by a postal service,

“communications data”—

(a) in relation to a telecommunications operator, telecommunications service or telecommunication system, means traffic data, use data or subscriber data, and

(b) in relation to a postal operator or postal service, means—

(a) postal data comprised in or attached to a communication (whether by the sender or otherwise) for the purposes of a postal service by means of which it is being or may be transmitted,

(b) information about the use made by any person of a postal service (but excluding the contents of a communication (apart from information within sub-paragraph (i)),

(c) information not within sub-paragraph (i) or (ii) that is held or obtained by a person providing a postal service in relation to persons to whom the service is provided by that person,

“criminal proceedings” includes proceedings before a court in respect of a service offence within the meaning of the Armed Forces Act 2006,

“document” includes a map, plan, design, drawing, picture or other image,

“enactment” means an enactment whenever passed or made; and includes—

(a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978,

(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,

(c) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and

(d) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,

“interception” has the same meaning as in the Regulation of Investigatory Powers Act 2000 (see sections 2 and 81 of that Act),

“legal proceedings” means—

(a) civil or criminal proceedings in or before a court or tribunal, or

(b) proceedings before an officer in respect of a service offence within the meaning of the Armed Forces Act 2006,

“person” includes an organisation and any association or combination of persons,

“postal data” means data which—

(a) identifies, or purports to identify, a person, apparatus or location to or from which a communication is or may be transmitted,

(b) identifies or selects, or purports to identify or select, apparatus through which, or by means of which, a

communication is or may be transmitted,

(c) identifies, or purports to identify, the time at which an event relating to a communication occurs, or

(d) identifies the data or other data as data comprised in or attached to a particular communication, and for the purposes of this definition “data”, in relation to a postal item, includes anything written on the outside of the item,

“postal item” means—

(a) any letter, postcard or other such thing in writing as may be used by the sender for imparting information to the recipient, or

(b) any packet or parcel, “postal operator” means a person providing a postal service,

“postal service” means a service that—

(a) consists in the following, or in any one or more of them, namely the collection, sorting, conveyance, distribution and delivery (whether in the United Kingdom or elsewhere) of postal items, and

(b) has as its main purpose, or one of its main purposes, to make available, or to facilitate, a means of transmission from place to place of postal items containing communications,

“primary legislation” means—

(a) an Act of Parliament,

(b) an Act of the Scottish Parliament,

(c) a Measure or Act of the National Assembly for Wales, or

(d) Northern Ireland legislation,

“public authority” means a public authority within the meaning of section 6 of the Human Rights Act 1998, other than a court or tribunal,

“public postal operator” means a person providing a public postal service,

“public postal service” means a postal service that is offered or provided to the public or a substantial section of the public,

“specified”, in relation to an order, notice or authorisation, means specified or described in the order, notice or (as the case may be) authorisation (and “specify” is to be read accordingly),

“statutory”, in relation to a function, means a function conferred or

imposed by or under an enactment,

“subordinate legislation” means—

(a) subordinate legislation within the meaning of the Interpretation Act 1978, or

(b) an instrument made under an Act of the Scottish Parliament, Northern Ireland legislation or a Measure or Act of the National Assembly for Wales,

“subscriber data” has the meaning given by subsection (5),

“the Technical Advisory Board” has the meaning given by section 2(5),

“telecommunications operator” means a person who—

(a) controls or provides a telecommunication system, or

(b) provides a telecommunications service,

“telecommunication system” means a system (including the apparatus comprised in it) that exists (whether wholly or partly in the United Kingdom or elsewhere) for the purpose of facilitating the transmission of communications by any means involving the use of electrical or electro-magnetic energy,

“telecommunications service” means a service that consists in the provision of access to, and of facilities for making use of, a telecommunication system (whether or not one provided by the person providing the service),

“traffic data” has the meaning given by subsections (2) and (3),

“use data” has the meaning given by subsection (4).

(2) “Traffic data” means data—

(a) which is comprised in, attached to or logically associated with a communication (whether by the sender or otherwise) for the purposes of a telecommunication system by means of which the communication is being or may be transmitted, and

(b) which—

(i) identifies, or purports to identify, any person, apparatus or location to or from which the communication is or may be transmitted,

(ii) identifies or selects, or purports to identify or select, apparatus through which, or by means of which, the communication is or may be transmitted,

(iii) comprises signals for the actuation of apparatus used for the purposes of a telecommunication system for effecting (in

whole or in part) the transmission of the communication,

(iv) identifies, or purports to identify, the time at which an event relating to the communication occurs, or

(v) identifies data as comprised in, attached to or logically associated with the communication.

The references in this subsection to a telecommunication system by means of which a communication is being or may be transmitted include, in relation to data comprising signals for the actuation of apparatus, any telecommunication system in which that apparatus is comprised.

(3) Data identifying a computer file or computer program access to which is obtained, or which is run, by means of the communication is not “traffic data” except to the extent that the file or program is identified by reference to the apparatus in which it is stored.

(4) “Use data” means information—

(a) which is about the use made by a person—

(i) of a telecommunications service, or

(ii) in connection with the provision to or use by any person of a telecommunications service, of any part of a telecommunication system, but

(b) which does not (apart from any information falling within paragraph (a) which is traffic data) include any of the contents of a communication.

(5) “Subscriber data” means information (other than traffic data or use data) held or obtained by a person providing a telecommunications service about those to whom the service is provided by that person.

(6) Nothing in any of the provisions of this Act by virtue of which conduct of any description is or may be authorised by an authorisation or notice or an order under section (*Power ensure or facilitate availability of data*), or by virtue of which information may be obtained in any manner, is to be read—

(a) as making it unlawful to engage in any conduct of that description which is not otherwise unlawful under this Act and would not be unlawful apart from this Act,

(b) as otherwise requiring—

(i) the grant, giving or making of such an authorisation, notice or order, or

(ii) the taking of any step for or towards obtaining the authority of such an authorisation, notice or order, before any such conduct of that description is engaged in, or

(c) as prejudicing any power to obtain information by any means not involving conduct that may be authorised under this Act.”

Insert the following new Clause—

“Orders

(1) Any power of the Secretary of State to make orders under Parts 3A, 3B and 3C is exercisable by statutory instrument.

(2) No such statutory instrument may be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

Insert the following new Clause—

“Expiry of Parts 3A, 3B and 3C

Sections (*Power to ensure or facilitate availability of data*) to (*Orders*) are repealed on 31 December 2016.”

After Clause 20

LORD WEST OF SPITHEAD

Insert the following new Clause—

“Unmanned aerial vehicles

(1) A person commits an offence if that person without lawful authority or reasonable excuse (the proof of which shall lie with him) operates or controls an unmanned aerial vehicle, if—

(a) for the purposes of terrorism, the vehicle is fitted with—

(i) any firearm,

(ii) any explosive (whether in the form of a bomb, grenade or otherwise, and whether a manufactured or adapted device),

(iii) any article (not falling within either of the preceding paragraphs) made or adapted for use for causing injury to or incapacitating a person or for destroying; or,

(b) he operates the vehicle within an area which the Secretary of State designates as restricted under this section.

(2) The Secretary of State may by regulations designate areas in which the

operation of unmanned aerial vehicles may be restricted or prohibited in order to reduce the risk of terrorism-related activities within the United Kingdom.

(3) Regulations under this section shall be made by statutory instrument; and any such statutory instrument may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(4) The Secretary of State must review the operation of this section and lay a report before each House of Parliament at least annually after the section comes into force, which must include a review of the use of unmanned aerial vehicles—

(a) in connection with terrorism-related activities, and

(b) by any public body or agent in connection with countering terrorism-related activities.

(5) In this section—

“unmanned aerial vehicle” means any unmanned aerial vehicle controlled or overseen by a human operator, and

“terrorism” has the same meaning as in Chapter 2 of Part 1.”

Clause 21

BARONESS LISTER OF BURTERSETT

BARONESS O’LOAN

Page 14, line 7, at end insert—

“(f) an academic function of a university or other further and higher education institution”

Page 14, line 9, at end insert—

“(6) The general duty under subsection (1) is subject to the duty in section 43(1) of the Education (No. 2) Act 1986 to ensure that freedom of speech within the law is secured in universities and other further and higher education institutions.”

Schedule 3

LORD BATES

Page 47, line 24, at beginning insert—

“A person who is authorised by virtue of an order made under section 70 of the Deregulation and Contracting Out Act 1994 to exercise a function specified in Schedule 36A to the Education Act 1996.”

BARONESS LISTER OF BURTERSETT

BARONESS O’LOAN

Page 48, line 8, leave out lines 8 and 9

LORD BATES

Page 48, line 20, at end insert—

“A person who is specified in a direction made in relation to the exercise of a local authority’s functions given by the Welsh Ministers under section 25 of the School Standards and Organisation (Wales) Act 2013 (anaw 1) (including that section as applied by section 50A of the Children Act 2004 or section 29 of the Childcare Act 2006).”

BARONESS LISTER OF BURTERSETT

BARONESS O’LOAN

Page 48, leave out lines 23 to 30

LORD PANNICK

LORD MACDONALD OF RIVER GLAVEN

Page 48, line 23, after “listed” insert “but excluding any university, or constituent college, school or hall or other institution of a university as defined in section 11(a) and (b) of the Higher Education Act 2004”

LORD BATES

Page 48, line 28, leave out “Assembly”

Clause 22

LORD PANNICK**LORD MACDONALD OF RIVER GLAVEN**

Page 14, line 26, at end insert—

“() any university, or constituent college, school or hall or other institution of a university as defined in section 11(a) and (b) of the Higher Education Act 2004 (qualifying institutions).”

After Clause 25**LORD BATES**

Insert the following new Clause—

“Monitoring of performance: further and higher education bodies

(1) In this section—

“monitoring authority” has the meaning given by subsection (4);

“relevant further education body” means the governing body or proprietor of an institution in England or Wales that—

(a) is subject to the duty imposed by section 21(1), and

(b) is subject to that duty because it is an institution at which more than 250 students are undertaking courses in preparation for examinations related to qualifications regulated by the Office of Qualifications and Examinations Regulation or the Welsh Government;

“relevant higher education body” means the governing body or proprietor of an institution in England or Wales that is subject to the duty imposed by section 21(1) because it is—

(a) a qualifying institution within the meaning given by section 11 of the Higher Education Act 2004, or

(b) an institution at which more than 250 students are undertaking courses of a description mentioned in Schedule 6 to the Education Reform Act 1988 (higher education courses).

(2) A relevant further education body or relevant higher education body must give to the monitoring authority any information that the monitoring authority may require for the purposes of monitoring that body’s performance in discharging the duty imposed by section 21(1).

(3) The information that the monitoring authority may require under subsection (2) includes information which specifies the steps that will be taken by the body in question to ensure that it discharges the duty imposed by section 21(1).

(4) The “monitoring authority” for a relevant further education body or a relevant higher education body is—

(a) the Secretary of State, or

(b) a person to whom the Secretary of State delegates the function under subsection (2) in relation to that body.

The Secretary of State must consult the Welsh Ministers before delegating the function under subsection (2) in relation to institutions in Wales.

(5) A delegation under subsection (4)(b) must be made by giving notice in writing to the person to whom the delegation is made if—

(a) that person is Her Majesty’s Chief Inspector of Education, Children’s Services and Skills or Her Majesty’s Chief Inspector of Education and Training in Wales, and the function is delegated in relation to relevant further education bodies;

(b) that person is the Higher Education Funding Council for England or the Higher Education Funding Council for Wales, and the function is delegated in relation to relevant higher education bodies.

(6) Otherwise, a delegation under subsection (4)(b) must be made by regulations.

(7) The Secretary of State must publish any notice given under subsection (5).

(8) Regulations under subsection (6) are to be made by statutory instrument; and any such instrument is subject to annulment in pursuance of a resolution of either House of Parliament.

(9) In this section—

(a) “institution in England” means an institution whose activities are carried on, or principally carried on, in England, and includes the Open University;

(b) “institution in Wales” means an institution whose activities are carried on, or principally carried on, in Wales.

Insert the following new Clause—

“Power to give directions: section (Monitoring of performance: further and higher education bodies)

(1) Where the Secretary of State is satisfied that a relevant further education body or a relevant higher education body has failed to comply with a requirement under section (*Monitoring of performance: further and higher education bodies*)(2), the Secretary of State may give directions to the body for the purpose of enforcing compliance.

(2) A direction under this section may be enforced, on an application made on behalf of the Secretary of State, by a mandatory order.

(3) The Secretary of State must consult the Welsh Ministers before giving directions under subsection (1) in relation to institutions in Wales.

(4) In this section “relevant further education body”, “relevant higher education body” and “institution in Wales” have the same meaning as in section (*Monitoring of performance: further and higher education bodies*).”

BARONESS LISTER OF BURTERSETT

BARONESS O’LOAN

Insert the following new Clause—

“Academic freedom

When exercising the powers to issue guidance under section 24 and to give directions under section 25 in relation to universities and other higher education institutions, the Secretary of State shall have due regard to the principle of academic freedom and to the matters specified in section 202(2) of the Education Reform Act 1988 (the university Commissioners).”

Schedule 4

LORD BATES

Page 50, line 5, at end insert—

“A person who is authorised by virtue of an order made under section 70 of the Deregulation and Contracting Out Act 1994 to exercise a function specified in Schedule 36A to the Education Act 1996.”

Page 50, line 44, at end insert—

“A person who is specified in a direction made in relation to the exercise of a local authority’s functions given by the Welsh Ministers under section 25 of the School Standards and Organisation (Wales) Act 2013 (anaw 1) (including that section as applied by section 50A of the Children Act 2004 or section 29 of the Childcare Act 2006).”

Page 51, line 6, leave out “Assembly”

Clause 42

LORD BATES

Page 25, line 6, leave out paragraph (a) and insert—

“(a) sections 28 to 30 and 32;”

Page 25, line 12, leave out “Part 2” and insert “Paragraphs 12 to 14”

Page 25, line 12, leave out “that Part” and insert “those paragraphs”

Page 25, line 13, leave out paragraph (d) and insert—

“(d) sections 21 and 24 to 26;”

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