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GENERAL COMMITTEES

Public Bill Committee

INVESTIGATORY POWERS BILL

Twelfth Sitting

Tuesday 26 April 2016

(Afternoon)

CONTENTS

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Saturday 30 April 2016

The Committee consisted of the following Members:

Chairs: †Albert Owen, Nadine Dorries

† Atkins, Victoria *(Louth and Horncastle)* (Con)
† Buckland, Robert *(Solicitor General)*
† Burns, Sir Simon *(Chelmsford)* (Con)
† Cherry, Joanna *(Edinburgh South West)* (SNP)
Davies, Byron *(Gower)* (Con)
† Fernandes, Suella *(Fareham)* (Con)
† Frazer, Lucy *(South East Cambridgeshire)* (Con)
† Hayes, Mr John *(Minister for Security)*
† Hayman, Sue *(Workington)* (Lab)
† Kinnock, Stephen *(Aberavon)* (Lab)
† Kirby, Simon *(Brighton, Kemptown)* (Con)
† Kyle, Peter *(Hove)* (Lab)
† Matheson, Christian *(City of Chester)* (Lab)
† Newlands, Gavin *(Paisley and Renfrewshire North)* (SNP)
† Starmer, Keir *(Holborn and St Pancras)* (Lab)
† Stephenson, Andrew *(Pendle)* (Con)
† Stevens, Jo *(Cardiff Central)* (Lab)
† Warman, Matt *(Boston and Skegness)* (Con)

Fergus Reid, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 26 April 2016

(Afternoon)

[Albert Owen *in the Chair*]

Investigatory Powers Bill

Clause 154

Bulk equipment interference warrants: general

2 pm

Question (this day) again proposed, That the clause stand part of the Bill.

Joanna Cherry (Edinburgh South West) (SNP): It is a pleasure to welcome you back to the Chair, Mr Owen. Before the Committee adjourned for lunch, I was addressing clause 154, which is the opening clause of chapter 3 of part 6 of the Bill and deals with bulk equipment interference warrants. I explained that the Scottish National party wishes to see these provisions removed until such a time as the Government have produced what we consider to be an adequate operational case.

Bulk equipment interference is often described colloquially as hacking or bulk hacking. The guide to powers that accompanied the draft Bill made it clear that bulk hacking is a significant step beyond conventional surveillance powers, and remarked that bulk equipment interference is

"used increasingly to mitigate the inability to acquire intelligence through conventional bulk interception and to access data from computers which may never otherwise have been obtainable."

Labelling mass interception powers as conventional is a bit odd when the Bill avows them for the very first time. The quote I just read out also underlines the fact that the Bill makes a considerable demand for unbridled access to all information. That is particularly worrying in the light of the very broad definition of "equipment" that is found in this part of the Bill. I am sure you will forgive me for skipping forward slightly, Mr Owen, but this does relate to clause 154. Clause 173 defines equipment as

"equipment producing electromagnetic, acoustic or other emissions or any device capable of being used in connection with such equipment".

That is very open-ended and could even include cars and aircraft, which relates to the analogy with fighter aircraft that I made earlier. We are concerned that the power is open to potential abuse—not necessarily, as I have said before, by the current Government, but possibly by future UK Governments, as well as by other states that will follow our lead in legislation—because there is such loose language.

Following scrutiny of the draft Bill, the Intelligence and Security Committee reported that

"the Committee has not been provided with sufficiently compelling evidence as to why the Agencies require Bulk Equipment Interference warrants"

and

"therefore recommends that Bulk Equipment Interference warrants are removed from the new legislation."

Before we adjourned this morning, I alluded to the fact that David Anderson QC had expressed concern about bulk equipment interference and said that he had not addressed the necessity and proportionality of such a power.

Despite what the ISC said, the power for bulk equipment interference warrants remains in the Bill. My argument is that that is rather concerning because bulk hacking, as I will call it, is by its very nature indiscriminate, as acknowledged in the draft Bill's explanatory notes, which state that

"bulk equipment interference is not targeted against particular person(s), organisation(s) or location(s) or against equipment that is being used for particular activities".

Instead, systems, services and software that have been carefully constructed to provide security are intentionally corrupted by bulk hacking to impose the eyes and ears of the intelligence agencies on every phone call, text message and web click.

To use an analogy from the offline world, granting this power would be equivalent to allowing the secret services to break into an innocent person's house, bug it and leave broken windows for anyone else to get in, without the person knowing it has happened. The problem with the digital world is that the data can be rich and revealing, as I said this morning on communications data. Most of us put everything online nowadays, and our equipment will therefore be like a filing cabinet, with diaries, calendars, video archives, photo albums, bookshelves, address books and correspondence files.

Digital forced entry entails not only intrusion into highly personal spaces but control over those spaces. The individual who has hacked into a piece of equipment can not only access what is stored on it but add or delete files, send messages from it masquerading as the person to whom it belongs, turn it on or off and covertly activate cameras and microphones. It really is quite extraordinarily intrusive.

We heard about that in evidence on 24 March, when Eric King referred to GCHQ's Optic Nerve programme, which involved hacking into webcams. Whatever one might think of it, many people use webcams for sex chat online. I am not talking about people who abuse children, which is obviously utterly reprehensible. Many consenting adults send indecent images to one another online using webcams. If they are doing that in the privacy of their own homes, and it is not illegal or hurting a child, I do not see any problem with it.

GCHQ's Optic Nerve programme broke into individuals' privacy. Such extraordinary power over the private lives of citizens fundamentally alters the relationship between citizen and state. If we allow this to go ahead without a proper operational case, it could breed distrust in law enforcement, which could have significant repercussions for the rule of law.

The equipment interference and bulk hacking envisaged in clause 154 have security repercussions. I alluded to those last week, so I will not go into detail. However, if we create a weakness in a piece of equipment in order to let the good guys—the security services—in, that weakness exists as a portal for the bad guys, as in criminals and terrorists, to get into the same equipment.

There are serious security concerns about bulk interference. This power is especially excessive, dangerous and potentially destructive. It is one of the most intrusive

powers in the Bill, and it jeopardises the privacy of ordinary, innocent people who live in these islands. SNP Members urge fellow members of this Committee and parliamentarians to follow the Intelligence and Security Committee's advice and remove these bulk equipment interference powers from the Bill until a convincing case has been made for not only their utility but their necessity and proportionality.

Keir Starmer (Holborn and St Pancras) (Lab): I, too, welcome you back to the chair, Mr Owen. This bulk power is, like the others, very wide. Equipment interference includes what is commonly known as hacking, which can be done remotely or by attaching monitoring devices to computers or communications equipment. As has been mentioned, equipment is defined very broadly, covering anything that produces electromagnetic or other emissions. The power is therefore very wide.

It is unsurprising that the ISC was initially sceptical and that David Anderson has raised a number of concerns. I will not repeat the points made by the hon. and learned Member for Edinburgh South West, who spoke for the SNP, but I want to draw attention to the relationship between this bulk power and thematic warrants, which was one of the concerns raised by David Anderson.

If one looks at the structure of clause 154(1), skipping for the moment subsections (2) and (3), and lays it alongside clause 88, the similarities in the description of the warrant are apparent. Part 5 deals with equipment interference and targeted warrants; chapter 3 of part 6 deals with bulk equipment interference warrants. Clauses 154 and 88 are very similar in structure and scope—the difference is that clause 90 qualifies clause 88. The difference we are discussing is that we have, in essence, the same power for equipment interference, but we do not have the qualification of the subject matter that is clause 90. We have already discussed clause 90 at some length and, for a targeted power, it is itself extremely wide.

The Minister for Security (Mr John Hayes): On the specific point made by the hon. and learned Gentleman in relation to the connection between clauses 90 and 88, in contrast with the matters we are now discussing, the whole point about clause 90 is that it deals with the particularity associated with warrants that are by their nature targeted, whether individually or thematically as a group some of which are known to the intelligence services. Bulk matters are by their nature less particular, so could not be subject to the same qualification.

Keir Starmer: I am not making the argument that those warrants should be subject to the same qualification. I am drawing attention to the fact that clause 90 is what, in essence, turns clause 88 into a targeted or thematic warrant, rather than a bulk warrant. The qualification is left out in connection with clause 154, which deals with a bulk power. I am not suggesting that one borrows clause 90 into this chapter, because otherwise we would simply be rewriting the same provision.

The point I am making is that the concern about clause 90 in relation to themed warrants was that it was a very wide provision in its own right. I think David Anderson went as far as to say that it was hard to see what could not, in truth, be caught within a thematic warrant under clause 90. We have a very wide power there, drawing attention to the breadth of the power under clause 154, which is everything over and above what is already a thematic warrant power under clause 90. That indicates why an operational case is so important in relation to the bulk power. One has a very wide bulk power that is distinguished from what is already a very wide thematic power. That reinforces the need for an independent evaluation of an operational purpose that makes the case for this even wider power.

As far as the safeguards are concerned, clause 156 is, in familiar terms, referencing necessity and proportionality, but to the wide national security grounds falling under subsection (2)—the familiar phrasing. It is the same scheme for these warrants. Then, skipping forward to clause 161, there are the same limits on operational cases, so one has a very wide necessity and proportionality test for the warrant in the first place, then a reference back, in essence, to the same test when getting to the requirements that must be met by warrants. I have made this case this morning and, I think, last Thursday, so I will not repeat it further.

I want to draw attention to the breadth of the power and to underscore why a better and evaluated operational case is needed when one is going on beyond what is already a very wide thematic warrant.

2.15 pm

Mr Hayes: We had a lengthy debate on these matters this morning, but it is worth repeating. It was Proust who said:

"A powerful idea communicates some of its strength to him who challenges it."

On that basis, I am hoping to communicate still more of the strength of my argument as a result of amplifying it, but with appropriate brevity, I hope. Let us be clear: bulk powers matter. They matter for the reasons I set out earlier, and that case is made—convincingly, in my judgment—in "Operational Case for Bulk Powers", which was published by the Government in response to the criticisms of those who considered these matters early on and felt there was a need for greater explanation of the case for them.

Bulk equipment interference is particularly addressed on page 6 of that document. It says:

"This involves the acquisition of communications and equipment data directly from computer equipment overseas. Historically, this data may have been available during its transmission through bulk interception".

This is the key point:

"The growing use of encryption has made this more difficult and, in some cases, equipment interference may be the only option for obtaining crucial intelligence. As with bulk interception this is an overseas collection capability."

We are here talking about a power that is used at present, and is of growing significance to our agencies in combating the threat that they face.

The Investigatory Powers Tribunal, has made clear that

"the requirement for a balance to be drawn between the urgent need of the Intelligence Agencies to safeguard the public and the protection of an individual's privacy and/or freedom of expression"

matters. It also stated:

"We are satisfied that with the new E I Code, and whatever the outcome of Parliamentary consideration of the IP Bill, a proper balance is being struck in regard to the matters we have been asked to consider."

[Mr John Hayes]

The evidence that we have before us suggests, and I use that judgment as an example, that those who oversee these matters gauge what is already happening, and what is proposed, to be appropriate. Having said that, it is important that we test those arguments closely in this Committee—that is part of the Committee's purpose, after all.

The hon. and learned Gentleman and the hon. and learned Lady drew attention to David Anderson's remarks. David Anderson asked why equipment interference warrants were required, given the possible breadth of targeted thematic warrants of the kind that have been discussed. I say this: clear and important distinctions between bulk equipment interference and targeted thematic operations are set out in paragraph 4.38 of the draft equipment interference of the code of practice.

Members will be able to study that code in detail, but for their convenience, bulk equipment interference includes the additional safeguards of the bulk regime and is an important capability in its own right. Both bulk equipment interference and targeted thematic equipment interference operations can take place at scale if the relevant criteria are met. However, targeted equipment interference warrants are limited by the need to assess proportionality at the outset. A bulk equipment interference warrant is likely to be required in circumstances where the Secretary of State is not able to assess the extent of every interference to a sufficient degree at the time of issuing the warrant. The additional access controls at the examination stage are required to ensure the necessity and proportionality of any interferences that cannot be assessed fully at the outset.

It seems to me that that is the essence of this argument. Both have their place, and both are subject to checks and balances, and to safeguards and protections. In terms of the effect of those safeguards, I think we can all conclude, based on the evidence before us and what we know is already happening and is proposed in the Bill, not only that what is happening now is proportionate and reasonable, but that the Bill goes even further in adding to those safeguards.

In essence, my argument is pentadactyl—it has five fingers. First, this power is necessary; secondly, it is already in existence; thirdly, those who oversee these things have gauged it to be necessary and proportionate; fourthly, the Government have responded to early scrutiny by tightening safeguards through the codes of practice and explaining them more fully; and fifthly, the Bill goes still further than all the existing good practice. That seems to me to be a persuasive argument.

Keir Starmer *rose—*

Mr Hayes: I give way to the hon. and learned Gentleman to explain why it is not.

Keir Starmer: My purpose is not to explain why it is not. That is not always the purpose of these interventions. We are probing the adequacy of the safeguards, which is the proper role of the Committee.

I had marked up that paragraph in the operational case, because, as the Minister has said, it makes the case that, at the outset, certain assessments of necessity and proportionality cannot be made. It says in terms:

> "The additional access controls at the examination stage are required to ensure the necessity and proportionality of any interference that cannot be assessed fully at the outset."

I know that I have said this before, but I really want to make it clear. At the outset, the test of necessity and proportionality is against the operational case and the operational case is specified in the terms in clause 161(5), which takes a familiar form: the operational case cannot be so general that it is merely national security, but it can be general. We have been around that circle, but that is the test at the outset and I have made my comments about that.

The problem is that the test is the same when it comes to examination. Under clause 170, which deals with the safeguards in relation to examination, selection is defined as proportional and necessary so far as it is in accordance with the test in clause 161. This point is central to what is said in the operational case. If the test were different at each stage, I would accept that the argument was logically right, but the test is in fact the same. I see that as a deficiency and I am probing for clarity.

Mr Hayes: I acknowledge that it is certainly true that much rests on the operational case. In all our sermocinations, it has been clear to me that the hon. and learned Gentleman has identified that as crucial in advancing his argument that we need to provide still more transparency. He has done so in a reasonable way, because he acknowledges that there is a line to be drawn between the explanation of that case and revealing what cannot reasonably be said publicly because it would compromise the work of the agencies. I acknowledge that.

Of course, what the hon. and learned Gentleman did not say, although he knows it—perhaps he felt that there was no need to say it—is that the warrant must be deemed to be necessary for one of the core reasons: national security, serious crime or, where it is linked to national security, economic wellbeing. Access to the data must be deemed to be necessary on the grounds of the operational purposes. There is a test at each stage of the process and, in my judgment, that test is robust, but I again acknowledge that there may be a virtue in being clearer about the operational case. I was making a point about existing power—that power is currently available through the Intelligence Services Act 1994. Therefore, it is not new, but the safeguards are. Drawing those together in a single place, and therefore allowing the more straightforward exploration of both their purpose and their effect, is certainly new.

Above and beyond that, the oversight that is given additional strength in the later part of the Bill is there to ensure that all that is done meets the test that we have set, in terms of protecting private interests and so on. I acknowledge the argument about the operational case being a powerful one, but I think the structure of what we have put together stands scrutiny.

There is another argument that has not been used much in the Committee. In a sense, I hesitate to explore it now because in doing so I may be opening a hornets' nest, but I am not a timid Minister, so why would I not want to face the stings that I might unleash? It is necessary to make the language future-proof, as far as one reasonably can. One of the criticisms of what we are doing—bringing the powers together in a single Bill, creating safeguards of the type we are building, trying

to be as comprehensive as we can in this legislation—is that, because of the rapidly changing character of technology and the resultant effect that that has on both the threat and our ability to counter it, this legislation may be relatively short-lived.

If we look, albeit with the benefit of hindsight, at what has happened previously, we see that the legislation that the Bill replaces has, for the most part, been iterative—it has been a response to that dynamism. The language in the Bill is designed to be as carefully constructed as possible to allow the Bill to stand the test of time. Central to that is the advent of the double-lock mechanism, which should ensure that the powers are not misused by a future Government. That relates to something the hon. and learned Member for Edinburgh South West said in a previous sitting of the Committee. I think she argued that I cannot bind the future, and I said, with some reluctance, that that was true.

Joanna Cherry: Jo Cavan from IOCCO—the Interception of Communications Commissioner's Office—told us on 24 March that the double lock and warrantry applies to only 2% of authorisations under the Bill. Does the Minister agree that he should be very cautious praying in aid the double lock as a safeguard when it applies only to such a small percentage of authorisations?

Mr Hayes: Yes, but the hon. and learned Lady knows well that the double lock applies to some of the most contentious parts of the process and, at the end of the day, is the involvement of the judiciary in a process that has been exercised at the sole discretion of the Executive up until now. The significance of that marriage between Executive authority and judicial involvement is considerable. All but the most mean-spirited of critics would want to warmly acknowledge that, and I see the warmth emanating from the hon. and learned Lady as she rises.

2.30 pm

Joanna Cherry: I am not going to be mean-spirited. I acknowledge that the Government have made a significant step in the right direction by introducing judges into the warrantry process. I have my reservations about the degree of the introduction—I would like to see full-blown judicial warrantry—but my point is about how far that double-lock process can be seen as a safeguard when it applies to only 2% of the authorisations under the Bill. My point is not that it is not a safeguard but that it applies to only 2% of authorisations.

Mr Hayes: The double lock applies to all the most intrusive powers. We can have a debate about whether—I do not want to put words into the hon. and learned Lady's mouth—she wanted to rob the Executive, rob the people's representatives, of all their authority. She may have felt that it was unnecessary for those accountable to the people—the personification, as I hope I am, of the people's will—to have any involvement in these matters, but I do not take that view. I believe in representative government and I think we have got absolutely right the marriage between Parliament and the judiciary—but we stray, I sense, from the precise detail of this part of the Bill.

My judgment is that we have reached the place that we need to get to in order to get the marriage between safeguard and effectiveness right, with the caveat that I have already introduced on the operational case, and in the knowledge that a bulk equipment interference warrant can be used to authorise the selection and examination of material obtained by the warrant and does not require a separate examination warrant and permits the disclosure of material acquired in the manner described in the warrant. I think that this is an important additional power and on that basis I hope that the Committee will agree to this part of the Bill.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 2.

Division No. 69|

AYES

Atkins, Victoria	Hayes, rh Mr John
Buckland, Robert	Kirby, Simon
Burns, rh Sir Simon	Stephenson, Andrew
Fernandes, Suella	Warman, Matt
Frazer, Lucy	

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 154 ordered to stand part of the Bill.

Clause 155

MEANING OF "EQUIPMENT DATA"

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 2.

Division No. 70|

AYES

Atkins, Victoria	Hayes, rh Mr John
Buckland, Robert	Kirby, Simon
Burns, rh Sir Simon	Stephenson, Andrew
Fernandes, Suella	Warman, Matt
Frazer, Lucy	

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 155 ordered to stand part of the Bill.

Clause 156

POWER TO ISSUE BULK EQUIPMENT INTERFERENCE WARRANTS

Keir Starmer: I beg to move amendment 695, in clause 156, page 122, line 34, leave out subsection (2)(b).

The Chair: With this it will be convenient to discuss the following:

Amendment 696, in clause 156, page 122, line 37, leave out subsection (3)

Amendment 697, in clause 156, page 122, line 47, at end insert—

"(6) Where an application for the issue of a bulk equipment interference warrant includes the activities set out in section 154(4)(b) it may only be issued if the Secretary of State

considers that selection for examination or disclosure is necessary for the purposes of—

(a) a specific investigation or a specific operation, or

(b) testing, maintaining or developing equipment, systems or other capabilities relating to the availability or obtaining of data."

Keir Starmer: These amendments are intended to tighten up clause 156. I will not take up a great deal of time on them. These amendments go to the intervention that I was making which was too lengthy to do justice to the point, but it was such an important point that I want to go through it one more time. If I am right about it, I hope that others will listen and take this away. If I am wrong about it, I will not repeat the argument. The proposition about which I am concerned is as follows. If one looks at subsection 156(1) then, as set out in the "Operational Case for Bulk Powers", the test that the Secretary of State is applying at the outset will be applied in some,

"circumstances where the Secretary of State or Judicial Commissioner is not able to assess the necessity and proportionality to a sufficient degree at the time of issuing the warrant."

So that is the test. To issue a bulk equipment interference warrant, the Secretary of State must be satisfied that it is to "obtain overseas-related communications", as set out in clause 156(1)(a); that it is necessary on the broad grounds—of which the Minister just reminded me—of national security, preventing crime and promoting economic wellbeing, as set out in paragraph (b); and, as paragraph (c) sets out, that it is proportionate. Clause 156(1)(d) continues the stages that the Secretary of State must carry out, and requires that the Secretary of State considers that,

"(i) each of the specified operational purposes (see section 161) is a purpose for which the examination of material obtained under the warrant is or may be necessary, and

(ii) the examination of such material for each such purpose is necessary on any of the grounds on which the Secretary of State considers the warrant to be necessary".

So at the outset the Secretary of State is considering necessity against the broad canvas of national security. She is also considering the operational purposes and asking herself whether such a warrant is necessary against those operational purposes, and going on to the examination of whether it is necessary on any of the grounds on which the Secretary of State considers the warrants to be necessary. The Secretary of State is taking into account the operational purposes and applying a necessity test to this. That is the test applied at the outset, and that is the test that the operational case understandably says may be difficult to apply in certain circumstances. I do not quarrel with that, and I understand why that might be the case.

Going on to clause 161, what are the operational purposes which the Secretary of State is to take into account and test necessity against? There the operational purposes are requirements of the warrant, and they go beyond the provisions in clause 156(1)(b) or (2) and may be general. So the Secretary of State has in mind a very broad national security issue, and then the operational purposes, and asks herself whether it comes under both of those heads. The second head can be a general one. We have quarrelled about that—or argued about it or made points about it—but those points remain as good or as bad as they were the last time they were made. The point I am seeking to make is that the "Operational Case" suggests—and this may indeed be the case in practice—that at the examination stage some higher or different test is applied, and that that adds a safeguard. Again, if there is something in that then I hope that somebody will take this away and think about it, and if there is not then I will not repeat it. My concern is that clause 170(1), on the safeguards relating to examination of materials, states:

"For the purposes of section 168, the requirements of this section are met in relation to the material obtained under a warrant if—"

which is followed by a number of requirements, including:

"(b) the selection of any of the material for examination is necessary and proportionate in all the circumstances".

Clause 170(2) states:

"The selection of material obtained under the warrant is carried out only for the specified purposes if the material is selected for examination only so far as is necessary for the operational purposes specified in the warrant in accordance with section 161".

So the test for selection for examination is curtailed by the provision in sub-paragraph (ii) that it is only so far as is necessary for the operational purposes specified in the warrant, as set out in clause 161. I accept that "specified" means the warrant at the time of selection of material, as set out underneath. For the record, I therefore acknowledge the possibility that the operational case may be differently described at the time of the second test. However, on the face of it, the same test is being applied at the examination stage as was applied by the Secretary of State. That is the cause of my concern and the reason why, in my argument, some further thought must be given to strengthening the threshold when it comes to the access provision. Because the only way that the operational case can be different at the point of selection of material from the point at which the Secretary of State is involved, is if it has been modified, which means it has not gone through the same procedure as the warrant in the first place. That is the real cause of concern. I have labelled it that but I do not think that on the intervention I made it as clear as I should have done.

If there is a material difference in the test, that ought to be spelled out in the Bill and it is not. The amendments are intended to tighten up the specifics in clause 156. I will not press them to a vote but I have read this into the record because it is a matter of concern. There is either an answer, which means I am wrong about this and should stop repeating my submission, or it is something that others need to take away and have a serious look at in terms of the test.

Mr Hayes: I am not sure that we need to rehearse the general arguments in respect of bulk again—they have been well covered in earlier considerations—except to say this. It is critically important that the agencies maintain the ability to use these powers for economic wellbeing, where, according to the Bill, these are tied to national security. That was a point that was made by my hon. and learned Friend the Member for South East Cambridgeshire at a very early stage on Second Reading.

On that basis alone, one would want to resist the proposed amendment. However, the hon. and learned Gentleman has made some more tailored arguments

that deserve an answer. Let us just deal with the tests. There are two tests. There is the test contained in clause 158, where the Secretary of State and the commissioner must be satisfied that it is necessary for data required under the warrant to be examined for specific and specified operational purposes.

In clause 170, the analyst examining the data must be satisfied that the examination of a particular piece of data is necessary for a particular operational purpose. So there are two tests that are designed to be appropriate at different points in the process. That is why the list is written as it is. Does that satisfy the hon and learned Gentleman?

Keir Starmer: I hear what the Minister says and I will be brief. The only reference to operational purposes in clause 170 is to the operational purposes on the warrant. Therefore, they will be the same operational purposes as were before the Secretary of State, unless the warrant has been modified. Maybe I should just have said that in the first place and made it a lot shorter, but that is the nub of the problem as I see it.

Mr Hayes: Yes, the point of that further analysis is that the analyst must be confident that the particular work relates to those specified operational purposes. The reason that that further work is done down the line, as it were, is to ensure that there is no digression from the stated operational purposes, and that in that sense this is an important further safeguard.

Let me give an example to illustrate. The Secretary of State may consider that it is necessary for the data required under the warrant to be examined for two or three purposes. The analyst needs to say which particular purposes relate to a particular search. Therefore this is a refinement of the work of the analyst to ensure that it is true to the intention of the Secretary of State in authorising the process. This is an illustration of Committees of this House at their best: we are digging deep down, in very fine-grained detail. With those assurances, I hope that the hon. and learned Gentleman will be convinced by what we are trying to achieve.

2.45 pm

Keir Starmer: I will reflect on what the Minister has said and in the meantime will not press the amendment to a vote. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 2.

Division No. 71]

AYES

Atkins, Victoria	Hayes, rh Mr John
Buckland, Robert	Kirby, Simon
Burns, rh Sir Simon	Stephenson, Andrew
Fernandes, Suella	Warman, Matt
Frazer, Lucy	

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 156 ordered to stand part of the Bill.

Clause 157

APPROVAL OF WARRANTS BY JUDICIAL COMMISSIONERS

Keir Starmer: I beg to move amendment 698, in clause 157, page 123, line 3, leave out from "must" to end of line and insert "determine".

The Chair: With this it will be convenient to discuss amendment 699, in clause 157, page 123, line 15, leave out subsection (2).

Keir Starmer: Having tested the patience of the Committee on the point I was labouring on the last amendment—which I think is important, even if I am alone in that—I can indicate that these and the other amendments following in this chapter are all similar to previous amendments. I will deal with them quickly.

Amendments 698 and 699 deal with the test for the judicial commissioner. If it is helpful, I can indicate to the Solicitor General in advance that, having been round the track on this issue, I am not going to repeat the arguments or press them to a vote, because of the discussions we have been having.

The Solicitor General (Robert Buckland): I have nothing to add.

Keir Starmer: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 1.

Division No. 72]

AYES

Atkins, Victoria	Hayes, rh Mr John
Buckland, Robert	Kirby, Simon
Burns, rh Sir Simon	Stephenson, Andrew
Fernandes, Suella	Warman, Matt
Frazer, Lucy	

NOES

Cherry, Joanna

Question accordingly agreed to.

Clause 157 ordered to stand part of the Bill.

Clause 158

APPROVAL OF WARRANTS ISSUED IN URGENT CASES

Keir Starmer: I rise to speak to amendment 700, in clause 158, page 123, line 35, leave out from second "period" to second "the" in line 36 and insert "of 48 hours after".

The Chair: With this it will be convenient to discuss the following:

Amendment 701, in clause 158, page 123, line 35, leave out from second "period" to second "the" in line 36 and insert "of 24 hours after".

Amendment 704, in clause 162, page 125, line 32, leave out from "period" to third "the" in line 33 and insert "of 48 hours after".

Amendment 705, in clause 162, page 125, line 32, leave out from "period" to third "the" in line 33 and insert "of 24 hours after".

Amendment 706, in clause 162, page 125, line 35, leave out "6 months" and insert "1 month".

Amendment 710, in clause 165, page 128, line 24, leave out "ending with the fifth working day after the day on which" and insert "of 48 hours after".

Amendment 711, in clause 165, page 128, line 24, leave out "ending with the fifth working day after the day on which" and insert "of 24 hours after".

Keir Starmer: The amendments deal with the periods during which an urgent warrant is valid. They are serial in the sense that they are the same as the provisions I tabled for approval warrants in urgent cases for other bulk powers. I will not press the amendment.

The Chair: Amendment not moved.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 1.

Division No. 73]

AYES

Atkins, Victoria
Buckland, Robert
Burns, rh Sir Simon
Fernandes, Suella
Frazer, Lucy
Hayes, rh Mr John
Kirby, Simon
Stephenson, Andrew
Warman, Matt

NOES

Cherry, Joanna

Question accordingly agreed to.

Clause 158 ordered to stand part of the Bill.

Clause 159

FAILURE TO APPROVE WARRANT ISSUED IN URGENT CASE

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 1.

Division No. 74]

AYES

Atkins, Victoria
Buckland, Robert
Burns, rh Sir Simon
Fernandes, Suella
Frazer, Lucy
Hayes, rh Mr John
Kirby, Simon
Stephenson, Andrew
Warman, Matt

NOES

Cherry, Joanna

Question accordingly agreed to.

Clause 159 ordered to stand part of the Bill.

Clause 160

DECISIONS TO ISSUE WARRANTS TO BE TAKEN PERSONALLY BY SECRETARY OF STATE

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 1.

Division No. 75]

AYES

Atkins, Victoria
Buckland, Robert
Burns, rh Sir Simon
Fernandes, Suella
Frazer, Lucy
Hayes, rh Mr John
Kirby, Simon
Stephenson, Andrew
Warman, Matt

NOES

Cherry, Joanna

Question accordingly agreed to.

Clause 160 ordered to stand part of the Bill.

Clause 161

REQUIREMENTS THAT MUST BE MET BY WARRANTS

Keir Starmer: I rise to speak to amendment 689, in clause 161, page 125, line 9, after "describe", insert "precisely and explicitly"

The Chair: With this it will be convenient to discuss the following:

Amendment 690, in clause 161, page 125, line 10, at end insert "including the method and extent of the proposed intrusion and the measures taken to minimise access to irrelevant and immaterial information."

Amendment 691, in clause 161, page 125, line 11, after "specify", insert "by name or description the person, persons or single set of premises to which it relates and".

Amendment 702, in clause 161, page 125, line 15, leave out from "(2)" to end of subsection and insert

"and any specification must be in as much detail as is reasonably practicable".

Amendment 692, in clause 161, page 125, line 15, leave out

"but the purposes may still be general purposes"

and insert

"; the descriptions must specify—

(a) the basis for the reasonable suspicion that the target is connected to a serious crime or a specific threat to national security,

(b) the manner in which all less intrusive methods of obtaining the information sought have been exhausted or can be shown to be futile."

Amendment 703, in clause 161, page 125, line 17, leave out "may" and insert "must".

Keir Starmer: I have already drawn considerable attention to clause 161(5), to which these amendments pertain. I have made my submissions. In the same manner in which I did not press earlier amendments and notwithstanding the importance I attach to these issues, I will not press the amendment.

The Chair: Amendment not moved.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 1.

Division No. 76]

AYES

Atkins, Victoria	Hayes, rh Mr John
Buckland, Robert	Kirby, Simon
Burns, rh Sir Simon	Stephenson, Andrew
Fernandes, Suella	Warman, Matt
Frazer, Lucy	

NOES

Cherry, Joanna

Question accordingly agreed to.

Clause 161 ordered to stand part of the Bill.

Clause 162

DURATION OF WARRANTS

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 1.

Division No. 77]

AYES

Atkins, Victoria	Hayes, rh Mr John
Buckland, Robert	Kirby, Simon
Burns, rh Sir Simon	Stephenson, Andrew
Fernandes, Suella	Warman, Matt
Frazer, Lucy	

NOES

Cherry, Joanna

Question accordingly agreed to.

Clause 162 ordered to stand part of the Bill.

Clause 163

RENEWAL OF WARRANTS

The Solicitor General: I beg to move amendment 620, in clause 163, page 126, line 6, at end insert—

This drafting amendment is for consistency with clauses 127 and 143.

The Chair: With this it will be convenient to discuss Government amendment 621.

The Solicitor General: Briefly, these are minor drafting amendments that mirror drafting in an equivalent interception provision in clause 127. The amendment makes no changes to the bulk equipment interference regime itself. It is a minor discrepancy and we want to try to ensure drafting consistency as much as possible. We are mindful that the Committee has attached particular importance to that issue. Here is an instance of the Government making sure that in this example we are doing just as encouraged.

Amendment 620 agreed to.

Amendment made: 621, in clause 163, page 126, line 31, at end insert—

"This is subject to subsection (5)."—*(The Solicitor General.)*

This drafting amendment is for consistency with clauses 127 and 143

Question put, That the clause, as amended, stand part of the Bill.

The Committee divided: Ayes 9, Noes 1.

Division No. 78]

AYES

Atkins, Victoria	Hayes, rh Mr John
Buckland, Robert	Kirby, Simon
Burns, rh Sir Simon	Stephenson, Andrew
Fernandes, Suella	Warman, Matt
Frazer, Lucy	

NOES

Cherry, Joanna

Question accordingly agreed to.

Clause 163, as amended, ordered to stand part of the Bill.

Clause 164

MODIFICATION OF WARRANTS

Keir Starmer: I rise to speak to amendment 707, in clause 164, page 127, line 20, at end insert—

"(c) may only be made if the Secretary of State considers it proportionate to the operational purposes specified in the warrant."

The Chair: With this it will be convenient to discuss the following:

Amendment 708, in clause 164, page 127, line 34, at end insert—

'(8A) A minor modification—

(a) may be made only if the Secretary of State or a senior official acting on behalf of the Secretary of State considers that it is necessary on any of the grounds on which they consider the warrant to be necessary (see section 121(1)(b));

(b) may only be made if the Secretary of State considers that it is proportionate to the operational purposes specified in the warrant.

(8B) Except where the Secretary of State considers that there is an urgent need to make the modification, a minor modification has effect only if the decision to make the modification is approved by a Judicial Commissioner."

Amendment 709, in clause 164, page 127, line 34, at end insert—

'(8C) In a case where any modification is sought under this section to which Clause [NC2 Items subject to legal privilege] or Clause [NC11 Confidential and privileged material] applies section 97 (approval of warrants by Judicial Commissioners) applies to a decision to modify a warrant as it applies in relation to a decision to issue warrant (and accordingly any reference in that section to the person who decided to issue the warrant is to be read as a reference to the person who decided to modify it)."

Keir Starmer: I have tabled a number of amendments to modification provisions throughout the Bill. The Minister has indicated that the Government are considering how the modification provisions will work throughout the Bill. In the circumstances, I will not press the amendment.

The Chair: Amendment not moved.

Amendments made: 622, in clause 164, page 127, line 42, leave out "(urgent cases)"

This amendment is consequential on amendment 623.

Amendment 623, in clause 164, page 127, line 43, leave out from beginning to "the" in line 2 on page 128 and insert—

'( ) If it is not reasonably practicable for an instrument making a major modification to be signed by the Secretary of State, the instrument may be signed by a senior official designated by the Secretary of State for that purpose.

( ) In such a case, the instrument making the modification must contain a statement that—

(a) it is not reasonably practicable for the instrument to be signed by the Secretary of State, and

(b) "—*(Mr John Hayes.)*

This amendment enables an instrument making a major modification of a bulk equipment interference warrant to be signed by a senior official in any case where it is not reasonably practicable for the Secretary of State to sign it.

Question put, That the clause, as amended, stand part of the Bill.

The Committee divided: Ayes 9, Noes 1.

Division No. 79]

AYES

Atkins, Victoria
Buckland, Robert
Burns, rh Sir Simon
Fernandes, Suella
Frazer, Lucy
Hayes, rh Mr John
Kirby, Simon
Stephenson, Andrew
Warman, Matt

NOES

Cherry, Joanna

Question accordingly agreed to.

Clause 164, as amended, ordered to stand part of the Bill.

Clause 165

APPROVAL OF MAJOR MODIFICATIONS MADE IN URGENT CASES

3 pm

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 1.

Division No. 80]

AYES

Atkins, Victoria
Buckland, Robert
Burns, rh Sir Simon
Fernandes, Suella
Frazer, Lucy
Hayes, rh Mr John
Kirby, Simon
Stephenson, Andrew
Warman, Matt

NOES

Cherry, Joanna

Question accordingly agreed to.

Clause 165 ordered to stand part of the Bill.

Clause 166

CANCELLATION OF WARRANTS

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 2.

Division No. 81]

AYES

Atkins, Victoria
Buckland, Robert
Burns, rh Sir Simon
Fernandes, Suella
Frazer, Lucy
Hayes, rh Mr John
Kirby, Simon
Stephenson, Andrew
Warman, Matt

NOES

Cherry, Joanna
Newlands, Gavin

Question accordingly agreed to.

Clause 166 ordered to stand part of the Bill.

Clause 167

IMPLEMENTATION OF WARRANTS

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 2.

Division No. 82]

AYES

Atkins, Victoria
Buckland, Robert
Burns, rh Sir Simon
Fernandes, Suella
Frazer, Lucy
Hayes, rh Mr John
Kirby, Simon
Stephenson, Andrew
Warman, Matt

NOES

Cherry, Joanna
Newlands, Gavin

Question accordingly agreed to.

Clause 167 ordered to stand part of the Bill.

Clause 168

SAFEGUARDS RELATING TO RETENTION AND DISCLOSURE OF MATERIAL

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 2.

Division No. 83]

AYES

Atkins, Victoria
Buckland, Robert
Burns, rh Sir Simon
Fernandes, Suella
Frazer, Lucy
Hayes, rh Mr John
Kirby, Simon
Stephenson, Andrew
Warman, Matt

NOES

Cherry, Joanna
Newlands, Gavin

Question accordingly agreed to.

Clause 168 ordered to stand part of the Bill.

Clause 169

SAFEGUARDS RELATING TO DISCLOSURE OF MATERIAL OR DATA OVERSEAS

Keir Starmer: I rise to speak to amendment 712, in clause 169, page 132, line 3, at end insert—

'(3A) Material obtained via a warrant under this Part may only be shared with overseas authorities in accordance with the terms of an international information sharing treaty."

This familiar amendment would ensure that data can be shared with overseas authorities only in accordance with the terms of an international information-sharing treaty. It is the same as an amendment I tabled to a similar clause, so I will not rehearse the arguments in favour of it. I will not press the amendment.

The Chair: Amendment not moved.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 2.

Division No. 84]

AYES

Atkins, Victoria	Hayes, rh Mr John
Buckland, Robert	Kirby, Simon
Burns, rh Sir Simon	Stephenson, Andrew
Fernandes, Suella	Warman, Matt
Frazer, Lucy	

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 169 ordered to stand part of the Bill.

Clause 170

SAFEGUARDS RELATING TO EXAMINATION OF MATERIAL ETC.

Mr Hayes: I beg to move amendment 624, in clause 170, page 132, line 7, leave out from beginning to "is" and insert "the selection of any of the material obtained under the warrant for examination".

This amendment makes a minor drafting correction.

The Chair: With this it will be convenient to discuss Government amendment 625.

Mr Hayes: These minor drafting amendments are self-explanatory.

Amendment 624 agreed to.

Amendment made: 625, in clause 170, page 132, line 14, after "warrant", insert "for examination"—*(Mr John Hayes.)*

This amendment makes a minor drafting correction.

Question put, That the clause, as amended, stand part of the Bill.

The Committee divided: Ayes 9, Noes 2.

Division No. 85]

AYES

Atkins, Victoria	Hayes, rh Mr John
Buckland, Robert	Kirby, Simon
Burns, rh Sir Simon	Stephenson, Andrew
Fernandes, Suella	Warman, Matt
Frazer, Lucy	

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 170, as amended, ordered to stand part of the Bill.

Clause 171

ADDITIONAL SAFEGUARDS FOR ITEMS SUBJECT TO LEGAL PRIVILEGE

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 2.

Division No. 86]

AYES

Atkins, Victoria	Hayes, rh Mr John
Buckland, Robert	Kirby, Simon
Burns, rh Sir Simon	Stephenson, Andrew
Fernandes, Suella	Warman, Matt
Frazer, Lucy	

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 171 ordered to stand part of the Bill.

Clause 172

APPLICATION OF OTHER RESTRICTIONS IN RELATION TO WARRANTS

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 2.

Division No. 87]

AYES

Atkins, Victoria	Hayes, rh Mr John
Buckland, Robert	Kirby, Simon
Burns, rh Sir Simon	Stephenson, Andrew
Fernandes, Suella	Warman, Matt
Frazer, Lucy	

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 172 ordered to stand part of the Bill.

Clause 173

CHAPTER 3: INTERPRETATION

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 2.

Division No. 88]

AYES

Atkins, Victoria	Hayes, rh Mr John
Buckland, Robert	Kirby, Simon
Burns, rh Sir Simon	Stephenson, Andrew
Fernandes, Suella	Warman, Matt
Frazer, Lucy	

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 173 ordered to stand part of the Bill.

Clause 174

BULK PERSONAL DATASETS: INTERPRETATION

Question proposed, That the clause stand part of the Bill.

Joanna Cherry: Part 7 of the Bill deals with bulk personal dataset warrants. In common with our position on other bulk powers in the Bill, the Scottish National party wishes the powers in part 7 to be removed from the Bill until such time as a convincing operational case has been made by the Government; that should be by way of an independent review of the necessity and proportionality of these powers.

The power to acquire bulk personal datasets does not currently exist. These are essentially databases held by either the private or the public sector. They are defined in the clause as,

"a set of information that includes personal data relating to a number of individuals"

where

"the nature of the set is such that the majority of the individuals are not, and are unlikely to become, of interest to the intelligence service".

This is where our concern lies. The powers in this part of the Bill will afford the opportunity and the power to recover huge amounts of personal information, largely relating to private citizens who are innocent and not under any suspicion whatsoever. Bulk personal datasets will cover both manual and electronic records. So, for example, they will cover medical records. The definition given of personal data is a broad one. It,

"has the same meaning as in the Data Protection Act 1998 except that it also includes data relating to a deceased individual".

The acquisition, retention and examination of these databases will be governed by a warrant system similar to the one we have just considered for bulk interception and bulk hacking. The warrants will be issued under the double-lock system. The Committee has had detailed submissions on the SNP's position on double-lock systems so I will not take time discussing that unnecessarily.

Part 7 talks about class warrants and specific bulk warrants. Class warrants concern applications for descriptions of personal data—for example, health data or travel data. Under the terms of the Bill that is the default type of bulk personal dataset warrant. Both the Joint Committee and the Intelligence and Security Committee recommended that class bulk personal datasets be removed from the Bill, yet they remain. The Intelligence and Security Committee reported that the acquisition, retention and examination of any bulk personal dataset is sufficiently intrusive that it should require a specific warrant, and I would say there is considerable force in that argument. It is instructive to look at what the Chair of the Intelligence and Security Committee said about part 7 and bulk personal datasets in his speech on Second Reading. It is sometimes represented as a full retreat from the position of the Intelligence and Security Committee, but that would be a misunderstanding. The right hon. and learned Member for Beaconsfield (Mr Grieve) said:

"The third issue is that the Committee expressed concern about the process for authorising the obtaining of bulk personal datasets. It is undoubtedly necessary and proportionate that agencies should have the power to obtain them"—

That is his view, not mine—

"because they can be vital to their work in helping to identify subjects of interest, but they largely contain private information on large numbers of people of no relevant or legitimate interest to the agencies at all".

There was an intervention at that stage, but he went on to say:

"Intrusiveness needs to be fully considered as part of the authorisation process, which was why the Committee recommended that that could be done far better if class-based authorisations were removed from the Bill and a requirement made that Ministers should authorise the obtaining and periodic retention of each dataset".—[*Official Report*, 15 March 2016; Vol. 607, c. 838-9.]

I have no doubt that the shadow Minister will have more to say about this aspect, but I draw attention to it at this stage because while my party's opposition is based on the fact that we would like to see this part of the Bill removed completely until a convincing operational case has been made, there are others who, although content with aspects of it, have expressed severe reservations about the class warrants.

3.15 pm

The other type of warrant is a specific bulk warrant that can be applied for when the requesting agency wants a bulk dataset that does not fall within a class described in a class bulk personal dataset warrant, or where it does fall within a class warrant but where the intelligence agency at any time considers that it would be appropriate to seek a specific bulk personal dataset warrant. Those specific bulk personal datasets may apply to the most sensitive type of databases, such as mental health hospital data or patient-identifiable female genital mutilation data.

The application must include a description of the dataset to which it relates and an explanation of the operational purposes for which the intelligence services wish to examine it. Specific bulk personal dataset warrants may also authorise obtaining, retaining and examining bulk personal datasets that do not exist at the time the warrant is issued but

"may reasonably be regarded as replacements for dataset A".

That is the dataset that has been sought.

I would argue that there is an unjustifiable lack of information about the nature of bulk personal datasets and the way in which the data are used. Despite the requirement of a warrant for human examination of the bulk personal datasets, the little information that we have available about these bulk personal datasets is that they are routinely electronically analysed, and that happens at the intermediary stage, described by Eric King in his evidence to the Committee, after a bulk warrant has granted authority for the bulk personal datasets to be obtained. Before there is any warrant for individual human examination, there are computer analytics on what is largely information pertaining to individual innocent citizens about whom there is no question of any suspicion.

The Home Office attempted to further its case for bulk personal datasets in supplementary written evidence to the Joint Committee on the draft Bill. It gave examples of the type of datasets obtained. One example was of firearms licences and also travel data, electoral roll and telephone directory datasets. It also gave examples of the purposes for which the datasets might be used, such as protecting major events, preventing terrorist access to firearms, identifying foreign fighters and targeting what were described as potential agents. The impact assessment for bulk personal datasets explains that they are analysed to identify subjects of interest.

I suggest that the examples given by the Home Office of the sort of datasets that are obtained are potentially misleading. For example, the electoral roll and the telephone directory are publicly available. I fully accept that it is rational that intelligence agencies have access to firearms licences, but that could be done by a consented procedure, whereby anybody who applies for a firearms licence has to consent to that information being available to the security services.

Similarly, in relation to travel data involving travel to conflict zones in the world, a potential route to consent would be for an application for any type of travel plans to any conflict zone to be available to the security services. I am a little unhappy about some of the examples that have been given. What has come up repeatedly in evidence before the Committee and in submissions to this Committee and the Joint Committee is a concern on the part of agencies and the public about medical records, in particular mental health records.

I am probing here. Is there any legitimate reason for the security services to require bulk access to the datasets of large numbers of innocent citizens' medical records? That could be counterproductive. I take the example of mental health. We are becoming increasingly aware of the reality of mental health problems in our society and of how many people suffer from them, but some stigma is still attached. We all know that mental health problems can be readily treated, but people fear that they might lose their job, or their status in their social, professional or family circle if it becomes known that they have a mental health problem. I am not suggesting that the security services will advertise the fact that people have mental health problems—I am sure they will try to deal with such matters sensitively—but if the public are aware that what they say to their doctor, psychiatrist or clinical psychologist, or to some sort of helpline, will no longer be completely confidential, they may be less likely to seek help. That is a grave concern.

The fact that the agencies are already acquiring bulk personal datasets was avowed by the Intelligence and Security Committee in March of last year. At that stage, in its report, the Committee disclosed only limited information about bulk personal datasets, but it said about their content and nature:

> "These datasets vary in size from hundreds to millions of records. Where possible, Bulk Personal Datasets may be linked together so that analysts can quickly find all the information linked to a selector"—

for example—

> "a telephone number or…from one search query"—

and the datasets—

> "may include significant quantities of personal information about British citizens".

Apparently, none of the agencies was able to provide statistics about the volume of personal information about British citizens included in the datasets. The director general of MI5 also cryptically explained to the Intelligence and Security Committee:

> "there are datasets that we deliberately choose not to reach for, because we are not satisfied that there is a case to do it, in terms of necessity and proportionality".

Such important decisions about necessity and proportionality should not be left to the individual discretion of persons within the security services, no matter how high up they are.

It also became clear in the Intelligence and Security Committee that sensitive information held in the datasets collected by the security services included things such as an individual's religion, racial or ethnic origin, political views, medical conditions, sexual orientation and legally privileged journalistic or otherwise confidential information, such as what whistleblowers or our constituents might impart to us as parliamentarians. The Intelligence and Security Committee also noted, in passing, that the agencies might share those datasets with what were described as "overseas partners".

As I said in Committee last Thursday, however, the agencies have reported that they have disciplined and in some cases dismissed staff for inappropriately accessing personal information held in such datasets in recent years. I read excerpts from an article published in *The Guardian* last Thursday, although I do not propose to go into that again. On the one hand, it is good to know that the agencies are taking action to deal with such abuses, but on the other hand, the fact that such abuses have occurred, and in numbers, is indicative that the persons who work for the security agencies are like the rest of us, frail human beings open to temptation and inappropriate behaviour. We need to be careful to legislate in such a way that the risk of inappropriate interference with personal, private information of innocent British citizens is kept to an absolute minimum.

I am trying to say that putting on a firm legal footing the right of the security agencies to acquire bulk private and sensitive data of our United Kingdom population is a new and radical development. At present—I am sure I will be corrected if I am wrong—there is no legal authority for the agencies to acquire those datasets. The Intelligence and Security Committee put that rather diplomatically when it said:

> "the rules governing the use of Bulk Personal Datasets are not defined in legislation."

The Government tell us that, irrespective of this new legislation, the bulk personal datasets will continue to be acquired by the security services using the Security Service Act 1989 and the Intelligence Services Act 1994. This means that the Government use surveillance capabilities such as hacking and interception to obtain mass datasets from private companies or public bodies. There has also been some hint that there may actually be purchasing of mass datasets from the private sector.

The Government have not made a proper argument that it is necessary and proportionate to have and acquire bulk personal datasets, or that this has regard for our right to a "private and family life" under article 8 of the European convention on human rights. The Intelligence and Security Committee has informed us that the agencies have told them that bulk datasets are

"an 'increasingly important investigative tool' to 'enrich' information obtained through other techniques".

However, enriching information is not the same as obtaining information in a way that is necessary and proportionate. That is really the concern underlying the Scottish National party's opposition to part 7 of the Bill.

As a result of recent litigation, the organisation Privacy International received disclosure of internal documents which demonstrate the worrying way in which bulk personal datasets are being misused. Again, I refer to the *Guardian* article I mentioned last Thursday. For that and for the other reasons I have underlined, it is my party's position that part 7 should be removed from the Bill until such time as there is a compelling operational case for the agencies to collect, process and link these personal data for the entire UK population.

I remind hon. Members of the Committee that David Anderson said at paragraph 8(a) of his supplementary written evidence to the Joint Committee in January that his report, "A Question of Trust"

"contains no independent conclusions on the necessity for or proportionality of…the use of bulk personal datasets".

That was his position, so his report cannot be prayed in aid of a strengthened operational case. At present, I would argue that there is no operational case to justify such incredibly intrusive powers.

Keir Starmer: I endorse much of what the hon. and learned Lady said, and I will not repeat it. These are very wide powers. As she pointed out, they are probably the widest of the bulk powers, because the Bill makes it clear that the nature of the set is such that the majority of individuals are unlikely to become of interest to the intelligence service in the exercise of its functions. So we are talking about some of the widest powers. I acknowledge that this legislation would put existing powers on to a clear statutory footing, and that is welcome for the same reasons that I have outlined on other occasions. However, scrutiny is needed when powers that were not avowed in the past are first avowed and then put on to a statutory footing.

Clause 174(2) says:

"'personal data' has the same meaning as in the Data Protection Act 1998".

In that sense, it is consistent with the way in which personal data are dealt with in other legislation. The Information Commissioner's Office provides guidance on the meaning of personal data. Just so that this can be clear for all Committee Members and for the record, according to the guidance issued by the Information Commissioner's Office:

"Personal data means data which relate to a living individual who can be identified—

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual".

So it is the data themselves, and it is a wide range of data. It is any expression of opinion about that individual, and any indication of the intentions of the data controller.

One of the examples that the Information Commissioner gives is:

"A manager's assessment or opinion of an employee's performance during their initial probationary period will, if held as data, be personal data about that individual. Similarly, if a manager notes that an employee must do remedial training, that note will, if held as data, be personal data."

That is very wide-ranging. There is a tendency in these debates to think that data are simply numbers or locations—specific hard pieces of data—but here we are talking about opinions about individuals.

3.30 pm

For that reason, in the Data Protection Act, sensitive personal data—data dealing with the subject's racial or ethnic origin, political opinions, religious beliefs, trade union membership, physical or mental health or condition, sexual life, and whether he or she has committed an offence—are subject to special safeguards. In other words, because of the wide nature of personal data, the regime in the Data Protection Act distinguishes between ordinary personal data and sensitive personal data, with a fairly obvious list defining sensitive personal data.

One of the Bill's defects is that it does not take that graded approach to personal data. The question of health and mental health records has been raised on a number of occasions, including with witnesses who gave evidence, and I know it is a concern that is shared across the House. As I understand it, under the regime intended by the Bill, the security and intelligence agencies will take matters of sensitivity into account when they do their assessment. I say that for two reasons. Witnesses from those agencies told us in response to a question about mental health and health records that they currently apply internal guidelines about sensitive records, and paragraph 4.11 of the code of practice, under the heading "Intrusiveness of data", says:

"When considering whether to retain and examine"

bulk personal data,

"the Security and Intelligence Agencies will assess the degree or extent of the intrusiveness which retaining and examining the BPD would involve…Each dataset is assessed on a case-by-case basis, and in the round, having regard (amongst other things) to the following factors or indicators".

There is then a list of indicators:

"Is there an expectation of privacy?…Does the data consist of more than basic personal details…? Is there information on a person's activities or movements or travel? Does the data include 'sensitive personal data' within the meaning of section 2 of the Data Protection Act",

which I have just referred to, and

"To what degree does the data, by virtue of its quality, nature or size, mean that, when it is examined, there will be a significant degree of intrusion into the privacy of individuals not of intelligence interest?"

Those are all important factors that obviously must be taken into account. The problem is that at the moment those are simply put as guidance for the security and intelligence agencies as a set of factors that need to be taken into account in the round when they do their assessment.

My broad point is that the careful distinction in the Data Protection Act between basic personal data and sensitive data needs to be reflected in the Bill in some shape or form, either in clause 174 or later, in clause 177, to which I have tabled amendments dealing with medical records and mental health records. Those amendments are pretty self-evident. The first set seeks to exclude such records from the provisions of bulk personal datasets altogether, and the second would set a higher threshold for accessing health and mental health records.

Lucy Frazer (South East Cambridgeshire) (Con): I am conscious of people's sensitivity about their personal data, particularly sensitive data, but does the hon. and learned Gentleman think that we ought to consider this issue in the context of the legislation? These data are there to be used for a specific investigatory purpose, and only that purpose. They are not meant to be used for any other purpose. Indeed, if they are used and disclosed, there are very many provisions about unlawful disclosure and the serious criminal penalties for that, which we examined at the beginning. Is that not the safeguard for people that we need to distinguish the use and abuse of material that is collected?

Keir Starmer: I am grateful for that intervention. There is a particular sensitivity about health and mental health records. The very fact of their being retained, examined and filtered—because that is what will happen—is of huge concern to many people. That is why the amendments suggest that they be either excluded or subject to a higher test to prove that it is really necessary. Although it was not formal evidence, the Committee had a briefing session with the security and intelligence services where the question arose whether they do in fact access health records. In those exchanges, the answer was, "No we don't, at the moment." When I asked why, in those circumstances, it was necessary to have this power, the answer was: "Because we can't rule out that at some future date it might be necessary to get these records, in circumstances that we cannot foresee at the moment—so we would not want to restrict the ability to get them."

That was an honest answer about the way that these records are dealt with. In formal evidence, the answer was that the internal guidance does subject accessing mental health records to a higher threshold. In a sense, the agencies have thought this through for themselves. They have recognised the extra sensitivity of such records and have their own internal processes to make sure that they are applying a higher test. That is a good approach.

Joanna Cherry: I remember the evidence that the shadow Minister alluded to. Does he agree with me that, notwithstanding the fact that agencies are telling us that they take steps to be more sensitive in relation to mental health data, the very fact that mental health data are going to be scooped up and available to others may act as a disincentive to certain members of the public to seek assistance with their mental health problems?

Keir Starmer: I am grateful for that intervention. I am concerned about that issue; that is why we need to give particular care and attention to the operation of these bulk powers in relation to sensitive personal data—and mental health data are among the most sensitive. In a sense, the second set of modifications that we will come to later is aimed at putting in the Bill what is in fact current practice. Therefore it would not inhibit what the security and intelligence services are doing, but would make it clear to citizens that a safeguard is in place and reduce their anxiety about the extent of the use of these bulk powers.

I will say more about that when I get to the amendments, but they are issues that go to the breadth of the bulk personal datasets that we are now dealing with.

Mr Hayes: On the issue of medical records and the very sensitive data associated with them, and mindful of the remarks of the hon. and learned Lady and the hon. and learned Gentleman, we will be dealing with that issue when we discuss amendment 715. I do not want to spend too much time on it now, except to say that I, too, am aware of the obvious and profound issues associated with intrusion in that area. We will discuss them at greater length when we discuss the amendment, but I hear what is said. It is important that we study those matters with appropriate care, given that they are of such profound sensitivity.

Moving to the thrust of the argument and the content of the debate, the thrust of the argument is in two parts. First, why do we have this power and how is it used? Secondly, what are the safeguards—the measures in the Bill and those that already exist—that constrain the exercise of those powers, in the ways we all want, in the interests of good practice, privacy and so on? Let us deal with those in turn.

To deal with the first, it might be appropriate to start with the ISC, because it has been cited. It said in its privacy and security report that the powers in part 7 of the Bill are an

"increasingly important investigative tool for the Agencies".

It is important to point out that this part of the Bill does not provide any powers to the security and intelligence agencies. Bulk personal datasets may be acquired through investigatory powers such as interception and they may be shared by Government Departments or industry. The only purpose of part 7 is to ensure that where agencies hold bulk personal datasets, the data are subject to robust privacy safeguards as information acquired under the bulk powers in the Bill. That is an important new step and an important safeguard.

It is probably fair to say that, in that sense, this is not a power at all but a process. The powers are about the safeguards. The Bill introduces important new requirements in that sense, but it would be more accurate to describe bulk personal datasets as a matter of process and a matter of practice rather than as a power.

The reason that that information is stored in such a way is pretty clear. It can help to identify individuals who threaten our national security or may be of other

intelligence interest and, significantly, to eliminate suspicion of the innocent without using more intrusive techniques. As with so many of the bulk issues that we have debated, that is often about the use of techniques that are, by their nature, subject to stringent safeguards and that obviate the need to use more intrusive methods to reach the same destination. Of course, that can establish links between subjects of interest to better understand a subject of interest's behaviour and, in the course of an investigation, we can verify facts that lead us to identify those who seek to do us harm.

It is simply the case that the security and intelligence agencies would not be able to keep pace with the scale of events that are occurring in an increasingly interconnected world if we did not have access to those datasets. It would take longer to exploit lead intelligence and increase the risk of something being missed or misunderstood. It would lead to intelligence failures and, in the worst cases, to the loss of life.

It is unquestionably the case that curbing the use of bulk personal datasets would hinder the agencies, but I would go further. I think it is fair to say that doing so would endanger this country and its people. I know that that is not the intention of anyone on this Committee or anyone considering the Bill, but it is important to emphasise that these are powers for a purpose, and that purpose is the safety of the British people through the effectiveness of those missioned to keep them secure.

3.45 pm

If there is a strong case for the existence of these data, in the way that they are held, what are the safeguards? First, it is instructive to look at the draft code of practice, as the hon. and learned Member for Holborn and St Pancras suggested. Having done so, members of the Committee will see safeguards covered in part 7 of that document. They are extensive. Paragraph 7.5 on access and information states:

"In relation to information held in bulk personal datasets, each Security and Intelligence Agency should have in place the following additional measures".

It goes on at great length about what those measures look like. They deal with the people who can access the data and the qualifications for that examination. For example, the examination must be

"necessary for one or more of the operational purposes specified in the relevant class warrant".

The paragraph suggests that disclosing information can only be done on the basis of whether doing so is or is not "proportionate", that those involved in the process "should receive mandatory training" and that the whole process is closely monitored. It also makes it clear that

"Appropriate disciplinary action should be taken in the event of inappropriate behaviour being identified".

Guidance is available, and the agencies' internal procedures make it very clear that any inappropriate use of such information is regarded as an extremely serious disciplinary matter.

3.46 pm

Sitting suspended for Divisions in the House.

4.28 pm

On resuming—

Before we were interrupted, I set out the two elements of my argument. The first was a justification of why this work matters; collection of the data lies at the heart of our consideration. The second was to begin to consider the safeguards. I said that a breach of proper practice was regarded as a serious disciplinary issue inside the agencies; I can now describe that in more detail.

The Intelligence Services Commissioner, Sir Mark Waller, made clear that the agencies take these matters very seriously indeed. He said,

"I review the possible misuse of bulk personal"

datasets

"and how this is prevented."

He reported:

"The agencies take any deliberate misuse of the system seriously and sanctions include dismissal, revocation of security clearance and possible criminal prosecution."

Furthermore he noted:

"Unacceptable uses are few in number".

The agencies also make an assessment of whether a specific warrant is required, and the statutory code sets out clear guidance in that respect. All the datasets are subject to oversight by the commissioner in the way that I described. Going forward, the Bill provides very clear, robust safeguards, including a requirement for warrants to authorise the retention and examination of bulk personal datasets. The safeguards are comparable to those provided in relation to other powers under the Bill, and oversight is similar too.

4.30 pm

In this brief debate we have been able to establish that some of the concerns about the storage of this kind of data are exaggerated, others are based on misunderstanding and some, sadly I have to say, are based on misinformation. I do not think that applies to any members of the Committee. The hon. and learned Member for Edinburgh South West described some of what the Government have said as misleading. I think, without putting words into her mouth, she might have better put it that it was insufficient in her estimation, rather than misleading, for I do not think she is one of those critics who, framed by doubt and shaped by guilt, is always ready to criticise what our Government do in our national interest. It seems to me that her scrutiny is, rather like that of the hon. and learned Member for Holborn and St Pancras, about trying to get the Bill in the best place it can be and trying to ensure the safeguards are adequate to protect privacy. I have already mentioned what she and the hon. and learned Gentleman said about medical records, for example.

We do need to be extremely cautious about how we access, store and use some sensitive data, but it would be very difficult indeed for the agencies were they not able to store that kind of data at all.

The Bill is certainly in the business of protecting citizens' interests, but the protection of citizens' interests has at its heart the defence of their safety and security. Of course, in an increasingly complicated and challenging set of circumstances, made so by the changes in the way people share, exchange and use information, it is right that the intelligence agencies should use the collection of this kind of data as part of the response to the challenges that we face.

The Committee will want to know that the Government are absolutely clear that the oversight should include the ability to study these matters in great detail. I have already mentioned the work that the ISC has done; but in dealing with warrants, the ISC, having seen further evidence, made clear, in the form of its Chairman, that it understood the significance of bulk powers. Class bulk personal dataset warrants provide an appropriate means of authorising the retention and use of datasets that are similar in nature and in the level of intrusiveness to the other measures. With such warrants, for example, not only would the judicial commissioner consider the collection of information, but the use of that information would be considered as well.

The draft code of practice, which was published alongside the Bill, provides clear factors that the security and intelligence agencies will need to consider in determining whether it is appropriate to use a class warrant, or whether it would be more appropriate to apply for a specific bulk personal dataset warrant—that was a point raised by the hon. and learned Lady. The argument was essentially, "Why use one when you could use the other?" The factors include whether the nature or provenance of the dataset raises particularly novel or contentious issues, whether it contains a significant component of intrusive data—she will have heard what I said about the sensitivity of that—and whether it contains a significant component of confidential information relating to members of sensitive professions.

In respect of that part of the argument made by the hon. and learned Gentleman and the hon. and learned Lady, when we were considering the previous clause on bulk powers, the Government have made it clear—although I do so again—that we are mindful of the circumstances of particular professions, including members of the legal profession, journalists and Members of Parliament. It is certainly true that the protection of those with whom they have contact—journalists' sources, lawyers' clients and MPs' constituents—needs to be at the core of our considerations. It would be absolutely wrong to compromise any of those professionals in a way that undermines their credibility in the eyes of those who come to them with information, seeking advice, and so on.

We have gone some way down the road of satisfying critics who felt that the original proposals were not sufficient in that respect, but we are happy to look again at what steps could be taken to be confident about what we have done across the Bill.

Lucy Frazer: Does my right hon. Friend think that sometimes putting tests in very specific terms in primary legislation gives a certain rigidity, whereas greater flexibility would be possible if they were in a code of practice? As we heard—as the hon. and learned Member for Holborn and St Pancras said—the test is already being carried out in practice. Does my right hon. Friend agree that to create additional rigidity by putting the test in primary legislation might hamper the security services in due course?

Mr Hayes: With a certain power of prophecy, I made it known at the beginning of our considerations that it was likely that there would be a continuing debate that would have at its heart, considerations about what should be on the face of the Bill and what should be in supporting documentation. I did so perhaps not so much as a prophet as an experienced Member of this House, because I have never served, either as a shadow Minister or as a Minister, on any Bill Committee where that has not been a matter of debate. How far one goes in putting specific matters on the face of legislation is always a matter of fine judgment. Hon. Members know the argument very well.

Sir Simon Burns (Chelmsford) (Con): My right hon. Friend raises a very important point. All too often, too many people have a tendency to put things on the faces of Bills that are not altogether relevant and which could be done by secondary legislation. His point, therefore, is extremely valid.

Mr Hayes: My right hon. Friend, who is a distinguished Member of this House, a former Minister of note, a sagacious figure now on the Back Benches, bringing that experience and quality to our considerations—what a delight it is to have him join us on this Committee—is right.

I was responding to my hon. and learned Friend the Member for South East Cambridgeshire accordingly that the debate about whether material is put in the Bill or in supporting documentation comes down to this point: those who wish to place things in the Bill do so because they want to firm them up, to make them more sure and certain. Of course, for much of what we wish to do it is vital that we pursue that course. Those who argue for material in supporting documentation do so on the basis exactly as my right hon. Friend says: that it allows greater flexibility. In an area as dynamic as this—I hinted at this earlier, but will make the point once more—I would have thought the argument for flexibility holds a great deal of water.

The last thing I want is to pass the Bill into law and for it to become an Act of which we can all be justly proud—every member of the Committee will deserve a certain credit—only to find that events have moved on and we are stuck with an excessively rigid Act incapable of being changed easily as needed.

Keir Starmer: Just to put this in context, when we talk about legal professional privilege, journalistic material and MPs' correspondence, it is absolutely clear the Government have thought this through and put it on the face of the Bill, where they think it is relevant. We cannot get away with it—nobody can backslide into an argument that, in other areas, it is more flexible to put the measures in statutory instruments. Things like legal professional privilege have been thought through. Moves have been made by the Government—and I have acknowledged them—and it should be on the face of the Bill. I think the Minister knows that, because he has put it in the Bill in other areas and that is the right way to deal with that sort of material. Of course, it is more flexible, but in the end we would have a very thin, short, one section Act if we really wanted full flexibility. That is not the way forward.

Mr Hayes: The hon. and learned Gentleman is right. I do not want to be patronising in any way. I think for a beginner he has made a very promising start. That has been in part characterised by the consistency of his

argument. One of the arguments he has used since we began this consideration is that the Bill needs, throughout its clauses, to be consistent. He is right in saying that, while we have made considerable progress in considering and dealing with the issue of the legal profession, there may be more work to do in respect of journalists and Members of Parliament.

With that thought—I do not want to exhaust the patience of the Committee any longer—I will sit down.

Question put, that the clause stand part of the Bill.

The Committee divided: Ayes 7, Noes 2.

Division No. 89]

AYES

Buckland, Robert	Kirby, Simon
Burns, rh Sir Simon	Stephenson, Andrew
Frazer, Lucy	
Hayes, rh Mr John	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 174 ordered to stand part of the Bill.

Clause 175

REQUIREMENT FOR AUTHORISATION BY WARRANT: GENERAL

4.45 pm

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 7, Noes 2.

Division No. 90]

AYES

Buckland, Robert	Kirby, Simon
Burns, rh Sir Simon	Stephenson, Andrew
Frazer, Lucy	
Hayes, rh Mr John	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 175 ordered to stand part of the Bill.

Clause 176

EXCEPTIONS TO SECTION 175(1) AND (2)

Amendments made: 626, in clause 176, page 136, line 4, after "Sections", insert "181(7A),".

This amendment and amendments 627 and 628 clarify that there is no breach of Clause 175(1) and (2) where a bulk personal dataset is retained or examined in accordance with conditions imposed by a Judicial Commissioner under Clause 181(3) (following a decision by the Judicial Commissioner not to approve the issue of a warrant in an urgent case under Part 7).

Amendment 627, in clause 176, page 136, line 5, after "with", insert—

"cases where a Judicial Commissioner refuses to approve a specific BPD warrant,".—*(Mr John Hayes.)*

See the explanatory statement for amendment 626.

Question put, That the clause, as amended, stand part of the Bill.

The Committee divided: Ayes 7, Noes 2.

Division No. 91]

AYES

Buckland, Robert	Kirby, Simon
Burns, rh Sir Simon	Stephenson, Andrew
Frazer, Lucy	
Hayes, rh Mr John	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 176, as amended, ordered to stand part of the Bill.

Clause 177

CLASS BPD WARRANTS

Keir Starmer: I beg to move amendment 721, in clause 177, page 136, line 21, leave out subsection (3)(a)(iii).

The Chair: With this it will be convenient to discuss amendment 722, in clause 178, page 137, line 25, leave out subsection (5)(a)(iii).

Keir Starmer: I foreshadowed these amendments when we were discussing clause 174. The way we have sought to deal with records—"patient information", as it is defined under the National Health Service Act 2006—is to take them out of consideration altogether, which would prevent a warrant that would cover those records being issued. Amendment 721 simply leaves out subsection (3)(a)(iii) and amendment 722 removes the corresponding subsection in clause 178. There is very little I can add to the argument that I put before in relation to those. I will say more when we get to the second group of amendments about the test that is to be applied.

Mr Hayes: The hon. and learned Gentleman may take it, in the spirit that I made my earlier remarks, that the Government are always happy to consider these matters carefully. All of this section of the Bill requires us to be mindful of the sensitivity of the material with which we are dealing, and I think the purpose of the amendment is to explore that sensitivity—I understand that. While I am not minded to accept the amendments, I am clear that in gauging all of those things, we are open to argument, willing to listen and determined to frame a Bill that reflects the considerations of the Committee, that is capable of uniting this House in a shared purpose, that is credible with the wider public, and that provides those missioned to keep us safe with the powers they need. With that reassurance, I hope the hon. and learned Gentleman will withdraw his amendment.

Keir Starmer: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Keir Starmer: I beg to move amendment 715, in clause 177, page 136, line 43, at end insert—

"(5) No warrant shall be issued under this section for material relating to "patient information" as defined in section 251(10) of the National Health Service Act 2006, or relating to "mental health", "adult social care", "child social care", or "health services" as defined by the Health and Social Care Act 2012."

The Chair: With this it will be convenient to discuss the following:

Amendment 718, in clause 177, page 136, line 43, at end insert—

"(5) Subsection (6) applies where a warrant application under this section relates to 'patient information' as defined in section 251(10) of the National Health Service Act 2006, or relating to 'mental health', 'adult social care', 'child social care', or 'health services' as defined by the Health and Social Care Act 2012.

(6) The Secretary of State may issue the warrant only if they consider that—

(a) there are exceptional and compelling circumstances that make it necessary to authorise the retention, or (as the case may be) the examination, of material referred to in subsection (5); and

(b) specific arrangements have been made for the handling, retention, use, destruction and protection against unauthorised disclosure of such material."

Amendment 716, in clause 178, page 138, line 2, at end insert—

"(8) No warrant shall be issued under this section for material relating to "patient information" as defined in section 251(10) of the National Health Service Act 2006, or relating to "mental health", "adult social care", "child social care", or "health services" as defined by the Health and Social Care Act 2012."

Amendment 719, in clause 178, page 138, line 2, at end insert—

"(8) Subsection (6) applies where a warrant application under this section relates to 'patient information' as defined in section 251(10) of the National Health Service Act 2006, or relating to 'mental health', 'adult social care', 'child social care', or 'health services' as defined by the Health and Social Care Act 2012.

(9) The Secretary of State may issue the warrant only if they consider that—

(a) there are exceptional and compelling circumstances that make it necessary to authorise the retention, or (as the case may be) the examination, of material referred to in subsection (5); and

(b) specific arrangements have been made for the handling, retention, use, destruction and protection against unauthorised disclosure of such material."

Amendment 717, in clause 192, page 147, line 36, at end insert—

"(5A) A direction under subsection (3) may not be made for material relating to 'patient information' as defined in section 251(10) of the National Health Service Act 2006, or relating to 'mental health', 'adult social care', 'child social care', or 'health services' as defined by the Health and Social Care Act 2012."

Amendment 720, in clause 192, page 147, line 36, at end insert—

"(5A) A direction under subsection (3) may only be made for material relating to 'patient information' as defined in s.251(10) of the National Health Service Act 2006, or relating to 'mental health', 'adult social care', 'child social care', or 'health services' as defined by the Health and Social Care Act 2012 if the Secretary of State considers that—

(a) there are exceptional and compelling circumstances that make it necessary to authorise the retention, or (as the case may be) the examination, of such material; and

(b) that specific arrangements have been made for the handling, retention, use, destruction and protection against unauthorised disclosure of such material."

Keir Starmer: These amendments are on material relating to patient information as defined in section 251(10) of the National Health Service Act 2006 or to mental health, adult social care, child social care or health services as defined by the Health and Social Care Act 2012. They would subject material in those categories to the higher test set out in amendment 718. We have had interventions on what the test should be, why people should be concerned and so on.

A number of Committee members will have had the opportunity—I have, in my work—to see mental health records, adult social care records, child social care records and health service records. Those records often contain highly confidential material and information. I will take an example from child social care. A child may be reporting and having recorded some of the most grotesque offences that have happened to them, in an environment where it is hoped that the right relationship will be built up through the process of child social care—in other circumstances, adult social care—so that they obtain the best care possible. Persuading people into that sort of relationship, so that they can get the support they need, is not easy, as anyone who has experience in this area will know.

Unless those who are most vulnerable see protection for them on the face of the Bill, there is a real likelihood that they will not feel sufficiently protected to even come forward. Getting children to engage with child social care is the devil's own business in many difficult cases. There are many reasons why children do not engage. If children, vulnerable adults and those with mental health problems cannot see clear protection on the face of the Bill that applies to them—not in a flexible way—it would be a retrograde step in relation to all the good work going on in other parts of the forest on offences such as child sexual exploitation.

To be clear, the amendments are not intended to prevent the security and intelligence services from accessing those records if, in certain circumstances, they are needed. The amendments require that a higher threshold is applied and that a better case is made for the circumstances being exceptional and compelling. As I am sure the Minister for Security and Solicitor General have observed, the language in the amendments is borrowed from the protection in the Bill elsewhere for legally privileged material. I therefore hope the test is workable and applicable to this sensitive information.

I stress just how sensitive the material within some of these records will be and how important it is that people see on the face of the Bill protection for them. I have heard the way the Minister for Security and Solicitor General have dealt with this, and I will listen to what they say now, but I do not think that what is said about this protection in the code of practice is either in the right place or sufficient. Paragraph 4.11 is very general in its guidance, even in the code of practice. In my argument, the test should be set out in the Bill and then the code of practice would give guidance as to how the test is to be applied on a day-to-day basis as and when it arises.

Mr Hayes: The amendments relate to the question of whether warrants under this part of the Bill should ever allow the retention or examination of bulk personal

datasets relating to various forms of medical information. The hon. and learned Gentleman qualified that to some degree by saying that he could see how there might be occasions on which health data were relevant to an investigation, but he rightly asked whether the safeguards were adequate and whether constraints on storage and use of that kind of information were in place.

Let us look first at the safeguards that are already contained in the Bill. These safeguards already ensure that no bulk personal datasets would be retained or examined unless it was appropriate to do so. Specifically, under the Bill, the security and intelligence agencies may retain and examine a bulk personal dataset only for the statutory purposes outlined in the Bill. Each warrant is subject to the double lock, and so must be approved by both a Secretary of State and a judicial commissioner. Each retention of a bulk personal dataset by the intelligence agencies is considered individually based on a strict consideration of necessity and proportionality. The Investigatory Powers Commissioner will also oversee the acquisition, retention, use or disclosure of bulk personal datasets by the agencies. The draft code of practice, as the hon. and learned Gentleman has said, makes clear that, when considering whether to retain and examine bulk personal datasets, the agencies will assess the degree or extent of the intrusiveness which retaining and examining the datasets would involve—that is to say, the degree or extent of interference with individuals' right to privacy.

The draft code says more than that, though. It also makes clear that when considering whether to apply for a warrant in this class, agencies must consider factors such as whether the nature or the provenance of the dataset raises particularly novel or contentious issues, or whether it contains a significant component of intrusive data—I mentioned this in an earlier discussion. An agency would need to apply for a specific bulk personal dataset warrant if it sought to retain such a dataset comprised of medical records. None the less, notwithstanding those safeguards, which I felt it was important to outline, I can see why this matter warrants careful consideration. Before I go into that consideration, however, I want to say the following. I am prepared in this specific instance to confirm that the security and intelligence agencies do not hold a bulk personal dataset of medical records. Furthermore, I cannot currently conceive of a situation where, for example, obtaining all NHS records would be either necessary or proportionate.

That is where my note so far prepared ends, but I want to go further. Before I do, in order to build anticipation and excitement, I give way to the hon. and learned Lady.

Joanna Cherry: The Minister may be about to answer this question, but I am very interested, as I am sure all hon. members of the Committee and people outwith this room will be very interested, in what he has just said—that the security agencies do not currently hold a bulk personal dataset in relation to medical information. As the Bill stands, unamended, does he not agree that there is nothing in it to prevent them acquiring such a bulk personal dataset in future, if they were able to make a case for it?

Mr Hayes: I may fall foul of my officials, which I would never choose or seek to do, except where I felt that it was right in the national interest, with the benefit of the wisdom of the Committee—enhanced, as I have said it is, with the addition of my right hon. Friend the Member for Chelmsford—and where I feel that the public expect us to go further. The hon. and learned Lady is right that we need to go further. Let me rehearse some of the ways in which we might do that—I will commit to none today, but I offer them to the Committee for further thought.

5 pm

We could look again at the code of practice, as the hon. and learned Member for Holborn and St Pancras invited me to do, and whether it needs to be strengthened or have parts of it incorporated into the Bill, although he knows of my hesitancy about that, given what I said about rigidity and flexibility. I certainly think—I am going well beyond my prepared brief, by the way—that we might want to ask the Investigatory Powers Commissioner to report regularly, perhaps annually, on the extent to which personal datasets hold medical records, notwithstanding what I said earlier. I think the hon. and learned Member for Edinburgh South West is right: although what I have said today was said in good faith and, given the information that I have received, is in my judgment an accurate reflection of the present circumstances, she is right—she said it previously and it pains me that she has repeated it—that I cannot bind those who hold office in the future, so it is important that we put additional protections in place.

We might go even further and look at the amendments. Although they are imperfectly drafted, their sense appears to be persuasive none the less—to get any Minister to say that an Opposition amendment is persuasive is quite an achievement, as you know, Mr Owen. We might want to build in some kind of exceptional and compelling test, some additional words that obliged applicants to jump through a further hoop or surmount a further barrier. That will be a variation on the existing amendments.

Beyond that, I want to look again at the specifics of the difference between health data and medical records—they are qualitatively different. "Health data" can mean all kinds of things. If, for example, an individual has travelled abroad and booked a wheelchair to get to the aeroplane, that is a piece of health data. A person's treatment history is a medical record, and by its nature considerably more intimate. We might want, in the code of practice or elsewhere, to be clear about the difference between those two kinds of medical record or data.

In essence, what I am saying is that we can go further. I am prepared to go further than the advice that I have so far received. I invite Members of both the Opposition parties present to reflect on that, to see if as a Committee we can over the course of the passage of the Bill—perhaps during its later stages—agree on the appropriate tests to guarantee the protection of personal privacy, while not ruling out, as the hon. and learned Gentleman said, the possibility that some kinds of health data might be helpful or even essential in the investigative process. If we can get to that point, we may be able to move forward with a measure of agreement that was unexpected by Opposition Members before I rose and unexpected by many in the Home Office who advise me.

Keir Starmer: I am grateful to the Minister and glad he finds the amendment persuasive, although I suspect not persuasive enough to vote for it. I will therefore

withdraw it, but I appreciate the spirit in which he makes his submissions in this important and sensitive area. I will withdraw it with a view to working with the Minister to see whether—

Mr Hayes: I think the hon. and learned Gentleman has said this, but just for the record, I think he agrees with me—I am delighted he is going to withdraw his amendment—that it is conceivable that there are circumstances in which access to some health data might be helpful to the agencies. We can agree that as a baseline against which we can chart the rest of this process.

Keir Starmer: From memory, the services could not at the moment envisage a circumstance in which they would need it, but they would not want to rule out the possibility that it might arise at a future date.

The Solicitor General: An example could be a group of terrorists who are involved in an explosion and sustain burns. Medical evidence about where they attended—the fact that they had attended a local A&E—could be relevant to that particular operation. That is the sort of category that we are thinking of.

Keir Starmer: That may well be. I listened carefully to the answer that was given—

Joanna Cherry: On the example that the Solicitor General has just given, does the hon. and learned Gentleman agree that such information could be obtained with a far more targeted warrant?

Keir Starmer: It may well be that it could be dealt with in a more targeted way. As a general proposition, where targeted powers can be used they should be used. That is a theme that goes through the Bill and the code.

The Solicitor General: I can clarify: let us imagine a scenario where there is an unidentified individual or we do not know the identities of the people. We know that an atrocity has taken place, but we do not have names, so targeting is more difficult. It is an exceptional case, but there is that possibility.

Keir Starmer: These are all hypotheticals. I think the services themselves have said that they have not needed such powers yet, and we can speculate as to what the situation might be. However, I accept as a general proposition that the focus ought to be on the threshold test for accessing information. For the record, in relation to adult and child social care, there would be a concern not only for the vulnerable adult and child but among those providing the care, because they will be expressing their opinions in these reports and they would be concerned that that remained confidential. That highlights why we need to work on this position. However, for the time being, I look forward to that work and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 2.

Division No. 92]

AYES

Buckland, Robert	Hayes, rh Mr John
Burns, rh Sir Simon	Kirby, Simon
Fernandes, Suella	Stephenson, Andrew
Frazer, Lucy	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 177 ordered to stand part of the Bill.

Clause 178

SPECIFIC BPD WARRANTS

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 2.

Division No. 93]

AYES

Buckland, Robert	Hayes, rh Mr John
Burns, rh Sir Simon	Kirby, Simon
Fernandes, Suella	Stephenson, Andrew
Frazer, Lucy	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 178 ordered to stand part of the Bill.

Clause 179

APPROVAL OF WARRANTS BY JUDICIAL COMMISSIONERS

Keir Starmer: I rise to speak to amendment 723, in clause 179, page 138, line 5, leave out from "must" to "the" in line 6 and insert "determine".

The Chair: With this it will be convenient to discuss the following:

Amendment 724, in clause 179, page 138, line 22, leave out subsection (2).

Amendment 534, in clause 179, page 138, line 23, at end insert

"but a Judicial Commissioner may not approve a warrant unless he is satisfied that there are reasonable grounds for believing that it is both necessary and proportionate to do so".

This amendment would clarify the judicial review process by ensuring that both the process and underlying facts of an interception of communications warrant are considered by a Judicial Commissioner.

Keir Starmer: These familiar amendments deal with the judicial test, which crops up on a number of occasions in the Bill. In the light of our ongoing discussion about the test, I do not intend to press the amendments.

The Chair: The amendment is not moved.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 2.

Division No. 94]

AYES

Buckland, Robert	Kirby, Simon
Fernandes, Suella	Stephenson, Andrew
Frazer, Lucy	
Hayes, rh Mr John	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 179 ordered to stand part of the Bill.

Clause 180

APPROVAL OF SPECIFIC BPD WARRANTS ISSUED IN URGENT CASES

Keir Starmer: I rise to speak to amendment 725, in clause 180, page 138, line 41, leave out from second "period" to second "the" in line 42 and insert "of 48 hours after".

The Chair: With this it will be convenient to discuss the following:

Amendment 726, in clause 180, page 138, line 41, leave out from second "period" to second "the" in line 42 and insert "of 24 hours after".

Amendment 730, in clause 184, page 141, line 10, leave out from "period" to end of line and insert

"of 48 hours after the".

Amendment 731, in clause 184, page 141, line 10, leave out from "period" to end of line and insert

"of 24 hours after the".

Amendment 732, in clause 184, page 141, line 12, leave out "6 months" and insert "1 month".

Amendment 713, in clause 187, page 143, line 29, leave out from second "period" to second "the" in line 30 and insert "of 48 hours after".

Amendment 714, in clause 187, page 143, line 29, leave out from second "period" to second "the" in line 30 and insert "of 24 hours after".

Keir Starmer: In the light of our discussions about the urgent provisions, which are similar throughout the Bill. I will not press the amendments.

The Chair: Amendment not moved.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 2.

Division No. 95]

AYES

Buckland, Robert	Hayes, rh Mr John
Burns, rh Sir Simon	Kirby, Simon
Fernandes, Suella	Stephenson, Andrew
Frazer, Lucy	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 180 ordered to stand part of the Bill.

Clause 181

FAILURE TO APPROVE SPECIFIC BPD WARRANT ISSUED IN URGENT CASE

Keir Starmer: I rise to speak to amendment 727, in clause 181, page 139, line 10, leave out "may" and insert "must".

Again, I will not press this amendment as it is in a similar form to an amendment to another part of the Bill.

The Chair: The amendment is not moved.

Amendment made: 628, in clause 181, page 139, line 32, at end insert—

'(7A) An intelligence service is not to be regarded as in breach of section 175(1) or (2) where it retains or (as the case may be) examines a bulk personal dataset in accordance with conditions imposed under subsection (3)(b).'—*(Mr John Hayes.)*

See the explanatory statement for amendment 626.

Question put, That the clause, as amended, stand part of the Bill.

The Committee divided: Ayes 8, Noes 2.

Division No. 96]

AYES

Buckland, Robert	Hayes, rh Mr John
Burns, rh Sir Simon	Kirby, Simon
Fernandes, Suella	Stephenson, Andrew
Frazer, Lucy	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 181, as amended, ordered to stand part of the Bill.

Clause 182

DECISIONS TO ISSUE WARRANTS TO BE TAKEN PERSONALLY BY SECRETARY OF STATE

5.15 pm

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 2.

Division No. 97]

AYES

Buckland, Robert	Hayes, rh Mr John
Burns, rh Sir Simon	Kirby, Simon
Fernandes, Suella	Stephenson, Andrew
Frazer, Lucy	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 182 ordered to stand part of the Bill.

Clause 183

REQUIREMENTS THAT MUST BE MET BY WARRANTS

Keir Starmer: I rise to speak to amendment 728, in clause 183, page 140, line 35, leave out from "178(5)(a)" to end of line and insert

"and the purposes must be specified in as much detail as is reasonably practicable".

The Chair: With this it will be convenient to discuss amendment 729, in clause 183, page 140, line 36, leave out "may" and insert "must".

Keir Starmer: The amendments, like earlier amendments, would require more specific operational purposes. In light of the discussions and exchanges we had earlier, I will not move the amendment.

The Chair: Amendment not moved.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 2.

Division No. 98]

AYES

Buckland, Robert	Hayes, rh Mr John
Burns, rh Sir Simon	Kirby, Simon
Fernandes, Suella	Stephenson, Andrew
Frazer, Lucy	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 183 ordered to stand part of the Bill.

Clause 184

DURATION OF WARRANTS

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 2.

Division No. 99]

AYES

Buckland, Robert	Hayes, rh Mr John
Burns, rh Sir Simon	Kirby, Simon
Fernandes, Suella	Stephenson, Andrew
Frazer, Lucy	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 184 ordered to stand part of the Bill.

Clause 185

RENEWAL OF WARRANTS

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 2.

Division No. 100]

AYES

Buckland, Robert	Hayes, rh Mr John
Burns, rh Sir Simon	Kirby, Simon
Fernandes, Suella	Stephenson, Andrew
Frazer, Lucy	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 185 ordered to stand part of the Bill.

Clause 186

MODIFICATION OF WARRANTS

Keir Starmer: I rise to speak to amendment 733, in clause 186, page 142, line 31, at end insert—

"(c) may be made only if the Secretary of State considers that it is necessary for the purposes of the warrant".

The Chair: With this it will be convenient to discuss amendment 527, in clause 186, page 143, line 16, at end insert—

"(12) Any modification which constitutes the adding or varying any matter must be approved by a Judicial Commissioner in accordance with section 179.".

This amendment adds the requirement to obtain approval from a Judicial Commissioner for any modification which constitutes the adding or varying (but not removing) any matter for each type of warrant.

Keir Starmer: We are in the familiar territory of modifications; the provisions of clause 186 are very similar to others that we have covered in great detail. For those reasons, I shall not move the amendment.

The Chair: The amendment is not moved.

The Solicitor General: I beg to move amendment 629, in clause 186, page 143, line 9, leave out "(urgent cases)".

This amendment is consequential on amendment 630.

The Chair: With this it will be convenient to discuss Government amendment 630.

The Solicitor General: The amendments will make it possible for an instrument that makes a major modification to a bulk personal dataset warrant, to add or vary an operational purpose, to be signed by a senior official as a provision for situations in which it is not reasonably practicable for the Secretary of State to sign it. The amendments are very similar to others we have made. Obviously the Secretary of State will make the decision,

but in his or her absence an official will be authorised to sign the instrument. I therefore commend the amendment to the Committee.

Amendment 629 agreed to.

Amendment made: 630, in clause 186, page 143, line 10, leave out from beginning to "the" in line 15 and insert—

"( ) If it is not reasonably practicable for an instrument making a major modification to be signed by the Secretary of State, the instrument may be signed by a senior official designated by the Secretary of State for that purpose.

( ) In such a case, the instrument making the modification must contain a statement that—

(a) it is not reasonably practicable for the instrument to be signed by the Secretary of State, and

(b) ".—*(The Solicitor General.)*

This amendment enables an instrument making a major modification of a warrant under Part 7 to be signed by a senior official in any case where it is not reasonably practicable for the Secretary of State to sign it.

Question put, That the clause, as amended, stand part of the Bill.

The Committee divided: Ayes 8, Noes 2.

Division No. 101]

AYES

Buckland, Robert	Hayes, rh Mr John
Burns, rh Sir Simon	Kirby, Simon
Fernandes, Suella	Stephenson, Andrew
Frazer, Lucy	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 186, as amended, ordered to stand part of the Bill.

Clause 188

CANCELLATION OF WARRANTS

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 2.

Division No. 102]

AYES

Buckland, Robert	Hayes, rh Mr John
Burns, rh Sir Simon	Kirby, Simon
Fernandes, Suella	Stephenson, Andrew
Frazer, Lucy	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 188 ordered to stand part of the Bill.

Clause 189

NON-RENEWAL OR CANCELLATION OF BPD WARRANTS

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 2.

Division No. 103]

AYES

Buckland, Robert	Hayes, rh Mr John
Burns, rh Sir Simon	Kirby, Simon
Fernandes, Suella	Stephenson, Andrew
Frazer, Lucy	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 189 ordered to stand part of the Bill.

Clause 190

INITIAL EXAMINATIONS: TIME LIMITS

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 2.

Division No. 104]

AYES

Buckland, Robert	Hayes, rh Mr John
Burns, rh Sir Simon	Kirby, Simon
Fernandes, Suella	Stephenson, Andrew
Frazer, Lucy	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 190 ordered to stand part of the Bill.

Clause 191

SAFEGUARDS RELATING TO EXAMINATION OF BULK PERSONAL DATASETS

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 2.

Division No. 105]

AYES

Buckland, Robert	Hayes, rh Mr John
Burns, rh Sir Simon	Kirby, Simon
Fernandes, Suella	Stephenson, Andrew
Frazer, Lucy	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 191 ordered to stand part of the Bill.

Clause 192

APPLICATION OF PART TO BULK PERSONAL DATASETS OBTAINED UNDER THIS ACT

The Solicitor General: I beg to move amendment 631, in clause 192, page 147, line 37, after "that", insert "—

(a) ”

This amendment is consequential on amendment 632.

The Chair: With this it will be convenient to discuss Government amendments 632 and 633.

The Solicitor General: I will deal as succinctly as possible with the amendments, which I think will gain Members' support. They will ensure that a direction by the Secretary of State that is approved by a judicial commissioner cannot disapply the prohibition on the disclosure of an intercept warrant or any intercepted material. The clause relates to bulk personal datasets obtained by a security and intelligence agency using a capability for which a warrant or other authorisation was issued or given up under another part of the Bill: for example, via the intercept provisions.

The clause provides that, in such cases, the intelligence agency can apply to the Secretary of State for a direction, which has the effect of applying this part—part 7—to the bulk personal dataset. For example, if an agency intercepts an email that has a bulk personal dataset attached and the agency wants to retain and examine that information as a bulk personal dataset, it can apply for a direction to that effect to the Secretary of State. The judicial commissioner must then approve that before it takes effect.

Subsection (6) as drafted states that it is not possible to disapply clause 48, which excludes material identifiable as intercept, from legal proceedings, unlike schedule 3, which provides exceptions to that exclusion. Therefore, a bulk personal dataset that is acquired by interception will always be subject to those provisions, even if a direction is given to apply the safeguards in part 7. The amendments make it explicit that it is not possible to disapply clauses 49 to 51 in such circumstances, either. The clauses together mean that it is an offence to make unauthorised disclosure of the existence of an intercept warrant or any intercepted material.

The clauses relating to the restrictions around the disclosure of material obtained under interception warrants have already been considered by the Committee. The amendments ensure that the restrictions continue to be mandatory, where applicable, to a bulk personal dataset that is subject to a clause 192 direction. Although without the amendments the Secretary of State could choose not to disapply the restrictions on a case-by-case basis, we believe that it is appropriate that that is mandatory, given that they relate to authorised disclosures and criminal liability for such a disclosure.

The clause also allows the Secretary of State the power to vary directions given under the clause, but as drafted it does not explicitly require judicial commissioner approval of such a variation. We are therefore tidying that up and making it explicit that a double lock of judicial commissioner approval will apply to the varying of a direction as well as the original direction. Therefore, once again we are paying close attention and ensuring that the safeguards on the Bill are robust in every possible respect.

Amendment 631 agreed to.

Amendments made: 632, in clause 192, page 147, line 40, at end insert—

“(b) where sections49 to51 applied in relation to the bulk personal dataset immediately before the giving of the direction, they continue to apply in relation to it with the modification that the reference in section50(6)(a) to the provisions of Part 2 is to be read as including a reference to the provisions of this Part.”

This amendment provides that, where the Secretary of State gives a direction under Clause 192(3) with the effect that Part 7 applies to a bulk personal dataset obtained under a warrant issued under Part 2 of the Bill, the direction must ensure that clauses 49 to 51 of that Part continue to apply in relation to the disclosure of the bulk personal dataset (with a modification to ensure that certain disclosures made in connection with the giving of legal advice about Part 7 are excepted disclosures for the purposes of Clause 49).

Amendment 633, in clause 192, page 148, line 8, at end insert—

‘(10A) Subsections (7) to (9) apply in relation to the variation of a direction under subsection (3) as they apply in relation to the giving of a direction under that subsection.” *—(The Solicitor General.)*

This amendment provides that a direction under Clause 192(3) may be varied by the Secretary of State only with the approval of a Judicial Commissioner.

Question put, That the clause, as amended, stand part of the Bill.

The Committee divided: Ayes 8, Noes 2.

Division No. 106]

AYES

Buckland, Robert	Hayes, rh Mr John
Burns, rh Sir Simon	Kirby, Simon
Fernandes, Suella	Stephenson, Andrew
Frazer, Lucy	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 192, as amended, ordered to stand part of the Bill.

Clause 193

INTERPRETATION OF PART

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 8, Noes 2.

Division No. 107]

AYES

Buckland, Robert	Hayes, rh Mr John
Burns, rh Sir Simon	Kirby, Simon
Fernandes, Suella	Stephenson, Andrew
Frazer, Lucy	Warman, Matt

NOES

Cherry, Joanna	Newlands, Gavin

Question accordingly agreed to.

Clause 193 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Simon Kirby.)*

5.30 pm

Adjourned till Thursday 28 April at half-past Eleven o'clock.