LEGISLATIVE CONSENT MEMORANDUM

INVESTIGATORY POWERS BILL

Background

1. This memorandum has been lodged by Michael Matheson, Cabinet Secretary for Justice, under Rule 9B.3.1(a) of the Parliament's Standing Orders. The Investigatory Powers Bill ("the Bill") was introduced in the House of Commons on 1 March 2016. The Bill was carried over from the 2015-16 session to the 2016-17 by the UK Parliament and received a second 1st reading in the House of Commons on 19 May 2016. The latest version of the Bill can be found at:

http://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0040/17040.pdf

2. The Bill aims to provide a framework to govern the use (by the security and intelligence agencies, law enforcement and other public authorities) of the following investigatory powers: the interception of communications, the retention and acquisition of communications data, equipment interference for obtaining (private) data, and the security and intelligence agencies' acquisition of bulk personal datasets. It will replace the existing statutory scheme; create statutory safeguards; and enhance communications data powers in order to reinstate capabilities that have been lost due to the changing way in which people communicate. It will not be lawful to exercise such powers other than as provided for by the Bill.

3. The Bill is in nine parts:

- Part 1 asserts the privacy of communications and provides for related offences.
- Part 2 provides for interception: acquiring the content of communications.
- Part 3 concerns authorisations for acquiring communications data.
- Part 4 covers the retention of communications data.
- Part 5 concerns equipment interference: interfering with equipment (such as computers or smartphones) to obtain communications, private information or equipment data.
- Part 6 contains powers for the security and intelligence agencies to intercept communications, conduct equipment interference and to obtain communications data in bulk.
- Part 7 provides additional safeguards in respect of the security and intelligence agencies' acquisition and use of Bulk Personal Datasets (BPD).
- Part 8 sets out new oversight regime arrangements which will replace the three existing commissioners (the Intelligence Services Commissioner, the Interception of Communications Commissioner and the Chief Surveillance Commissioner) with a single new commissioner, the Investigatory Powers Commissioner (IPC). Part 8 also sets out a domestic right of appeal from the Investigatory Powers Tribunal.
- Part 9 contains miscellaneous and general provisions.

Part	Title	Consent required as agreed by Scottish and UK Governments
Part 1	General privacy provisions	Yes
Part 2	Lawful interception of communications	Yes
Part 3	Authorisations for obtaining communications data	No
Part 4	Retention of communications data	No
Part 5	Equipment interference	Yes
Part 6	Bulk Warrants	No
Part 7	Bulk personal dataset warrants	No
Part 8	Oversight arrangements	Yes
Part 9	Miscellaneous and general provisions	Yes

4. Much of the Bill deals with matters which extend to Scotland but are reserved to the UK Parliament by schedule 5 of the Scotland Act 1998 and make no alteration to the executive competence of Scottish Ministers. Parts 3 and 4 of the Bill, which relate to authorisations for obtaining, and retention of, communications data, Part 6 which makes provision for bulk warrants and Part 7 which legislates for the use of bulk personal dataset warrants all fall outwith the scope of the legislative consent motion. There are other areas of the Bill which do alter the executive competence of the Scottish Ministers or legislate for matters within the competence of the Scottish Parliament.

Reason for requiring legislative consent – general

5. The Bill makes provision for matters which are within the legislative competence of the Scottish Parliament. It also makes provision to alter the executive competence of the Scottish Ministers. As such, it is a "relevant Bill" under Chapter 9B of the Standing Orders of the Scottish Parliament and consequently one requiring the consent of the Scottish Parliament.

6. Provisions of the Bill which apply to Scotland and do require the legislative consent of the Scottish Parliament are those which relate to the subject matter of Part III of the Police Act 1997, intercept made by or to persons within a place of detention, and amendments to devolved legislation such as the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A) (including repeal of the surveillance commissioners and amendment to the jurisdiction of the Investigatory Powers Tribunal). In addition, consent is required due to the establishment of a new oversight body and the creation of a domestic right of appeal from the Investigatory Powers Tribunal.

7. As well as legislating for matters which would be within the competence of the Scottish Parliament, the Bill alters the executive competence of the Scottish Ministers, including by the introduction of judicial oversight.

8. The following paragraphs provide the policy intent and background to the relevant Parts of the Bill for which consent is sought and the annex provides fuller detail of the individual clauses.

Part 1 – General Protections

Relevant Provisions: Clauses 2 and 14

Policy Intent

9. In general Part 1 of the Bill seeks to provide an overview of the privacy safeguards that apply throughout the Bill. It asserts the privacy of communications, defines interception and provides for related offences where actions are conducted unlawfully.

10. Clause 2 makes provision for general duties in relation to privacy which apply where a public authority is deciding to issue, renew or cancel a warrant under Parts 2, 5, 6 and 7 of the Bill.

11. Clause 14 creates a bespoke process by which law enforcement officers may obtain communications, private information or equipment data, so as to improve transparency and safeguards that apply to this action and to put equipment interference on an equivalent footing to interception.

Background

12. Clause 2 sets out the privacy considerations which apply to all public authorities who have powers to issue, renew or cancel a warrant under Parts 2, 5 , 6 and 7 of the Bill. It was inserted into the Bill at Report stage in the House of Commons, following recommendations from the Intelligence and Security Committee of Parliament whose report called for the inclusion of an overarching clause, the content of which dealt with privacy protections. The protections afforded by clause 2 are intended to underpin the exercise of functions under the Bill and ensure that public authorities consider whether what is sought to be achieved could be done by less intrusive means.

13. Under the current legal framework, law enforcement agencies can apply, under section 93 of the Police Act 1997 for authorisation to interfere with property for the purpose of prevention or detection of serious crime. This can be done in order to obtain communications, private information or equipment data. Certain authorisations are subject to an additional layer of approval, for example if the property specified is used wholly or mainly as a dwelling house or subject to legal privilege. The effect of clause 14 is to require a targeted equipment interference warrant to be sought, under Part 5 of the Bill instead of section 93 of the Police Act 1997, if sought for the purposes outlined above and if the applicant considers the conduct would (unless done with lawful authority), constitute one or more offences under section 1 to 3A of the Computer Misuse Act 1990. The power of law enforcement chiefs to authorise this conduct where the warrant is necessary for the purpose of preventing or detecting serious crime is retained, subject to the requirement that, unless there is an urgent need to issue the warrant, all decisions to issue are subject to judicial oversight and the person issuing the warrant must be satisfied that the arrangements are in force for ensuring the statutory safeguards relating to retention and disclosure of material are met.

Reason for requiring legislative consent

14. The subject matter of Part III of the Police Act 1997 (authorisation to interfere with property) is devolved and it would be within the competence of the Scottish Parliament to legislate to regulate its application. It is recommended that the Scottish Parliament agree to the UK Parliament regulating property interference where it is for the purpose of obtaining communications, private information or equipment data because it will ensure consistency across the UK both in terms of the regime under which law enforcement bodies operate and the oversight to which they are subject.

15. In addition, the overarching privacy considerations place obligations on those exercising functions under the Bill, including the Scottish Ministers, and in doing so alter the executive competence of the Scottish Ministers.

Part 2 – Lawful Interception of Communications

Relevant Provisions: Clauses 21-25, 27, 28, 31-37, 47, 48, 51, 52 and 54

Policy Intent

16. Part 2 of the Bill will repeal and replace existing interception laws, providing a single legislative basis under which intercept will be authorised. The intention is to provide a more transparent statutory basis for the existing interception agencies, including Police Scotland, to carry out interception. This includes ensuring clarity in terms of the scope of the powers and applicable safeguards. Part 2 also responds to recommendations made by David Anderson QC and the Royal United Services Institute (RUSI), introducing an additional safeguard in the form of the requirement for the approval by a Judicial Commissioner before the warrant can come into force, thus creating a 'double-lock' of executive and judicial approval. This applies to interception warrants issued by all issuing authorities, including the Scottish Ministers.

Background

17. The Bill responds to recommendations made by the Independent Reviewer of Terrorism Legislation, David Anderson QC[1], who recognises in his report, *'A Question of Trus*t' that 'Interception can be of vital importance for intelligence, for disruption, and for the detection and investigation of crime.' Interception of a communication in the course of

[1] The Bill responds to recommendations made by David Anderson, QC in his report: 'A Question of Trust,' Report of the Investigatory Powers Review, by David Anderson, QC, Independent reviewer of Terrorism legislation https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2015/06/IPR-Report-Print-Version.pdf;
The Bill also builds on the recommendations of the following reviews; Intelligence and Security Committee of Parliament, Report on the Draft Investigatory Powers Bill https://b1cba9b3-a-5e6631fd-s-sites.googlegroups.com/a/independent.gov.uk/isc/files/20160209_ISC_Rpt_IPBill%28web%29.pdf?attachauth=ANoY7coQyRz7FLqfY7RtE5hIRI8LIYvp266zeu0hrIwkCE8JOf5GZOtMLRIw-fbqBFhKhPH59stSDuLxbJ_wxY1VO8jjSuvP8D-XkxjL6W0ZVmXfw3o6bhqqXLdU1ylk83_iC1fQ0qj3_TQnBhio8ZICU7XxEVz33YZGqH275hkUunSM2JG5UmFSD-Or9FbZMX4HCMe-8WXnjsg8vfJnrLql0h6wBPPDEhd59DViPAj1daFuUZLIHYfhDIJ85AJGTBKHEATjO6Z8&attredirects=0; and the Panel of the Independent Surveillance Review convened by the Royal United Services Institute https://rusi.org/sites/default/files/20150714_whr_2-15_a_democratic_licence_to_operate.pdf

its transmission involves making some or all of the content available to someone who is not the sender or intended recipient of the communication. Although it is used for national security purposes, it is also important more widely, for example for the investigation of organised crime, murder investigations, child sexual exploitation, kidnapping and extortion, and human trafficking. Interception is an intelligence gathering tool and anything obtained as a result cannot be used in legal proceedings as it is considered that to do so would undermine the effectiveness of the tool in ensuring safety and security.

18. At present, the two relevant legal frameworks governing interception are the Regulation of Investigatory Powers Act 2000 (RIPA) and the Wireless Telegraphy Act 2006 (WTA). Interception by law enforcement agencies and the intelligence services is predominantly carried out under RIPA, with the WTA being used for the interception of wireless telegraphy, such as military radio communications. The Bill will repeal and replace the existing interception powers in Part 1, Chapter 1 of RIPA with a new targeted interception power. It aims to clarify that in all circumstances, when law enforcement or the security and intelligence agencies wish to intercept the communications of a person believed to be in the UK, a targeted interception warrant must be sought. It also aims to provide for the targeted interception of communications for a limited number of interception agencies and limits their ability to seek interception warrants to three statutory purposes (in the interest of national security; for the purpose of preventing or detecting serious crime; or in the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security). The repeal and replacement of these existing laws brings with it a requirement for judicial approval of a decision to issue a warrant authorising intercept. It is considered this will provide an additional safeguard but in order not to jeopardise operations in urgent cases, the Bill allows a warrant to be issued without judicial authorisation, providing the decision is thereafter intimated to a Judicial Commissioner who has up to three working days to approve or reject the decision to authorise. The Bill creates specific safeguards for situations in which the Judicial Commissioner rejects the decision. It will also require that applications for targeted interception warrants specify a particular person, premises or operation.

19. Under this part of the Bill, there is also a duty conferred on persons, including those holding office under the Crown, not to make any unauthorised disclosures of matters relating to contents, details or existence of a warrant or steps taken in pursuance of the warrant or in relation to material obtained under the warrant.

20. The Scottish Ministers currently have powers to authorise interception where it is to be carried out in Scotland for the purposes of the prevention and detection of serious crime and this will continue under the Bill, subject to oversight provisions.

21. In addition, Part 2 regulates the manner in which intercept material can be kept and stored, and requires that it is destroyed when no longer necessary or likely to become necessary for an authorised purpose.

22. Part 2 of the Bill also makes provision for lawful interception in places of detention, those being prisons and psychiatric hospitals. This is because interception in places of detention is governed by separate legislative provision, for example, in relation to prisons, by rules made under the Prisons (Scotland) Act 1989. Without making provision for this, persons operating under those frameworks may risk committing the offence of ‘unlawful interception’ under the Bill. Although the Bill largely replicates RIPA in this regard, based

on the evidence of the Mental Welfare Commission for Scotland, to the Joint Committee on the draft Bill, the previous provision is now extended so that conduct under the Mental Health (Care and Treatment) (Scotland) Act 2003 is also authorised.

Reason for requiring legislative consent

23. Under schedule 5 of the Scotland Act 1998, interception of communications is reserved. There are certain exceptions to this reservation, including interception of communications to or by those in a place of detention, which is what clauses 47 and 48 legislate for. As this would be within the competence of the Scottish Parliament, consent is required. The effect of the provision is to ensure that persons operating under powers conferred by devolved legislation in Scotland are not inadvertently committing an offence of unlawful interception under the Bill. These provisions are necessitated by the fact that the Bill creates a new legislative regime for intercept and rather than legislating to alter policy which would otherwise be within devolved competence, the provisions legitimise the conduct, but do not seek to limit the scope of the relevant Scottish legislation which regulates interception in places of detention. It is recommended that, for these reasons, the Scottish Parliament consent to the UK Parliament legislating for this.

24. In addition to clauses 47 and 48, a legislative consent motion is required in relation to Part 2 to the extent that the executive competence of the Scottish Ministers is being altered. In some instances, discussed below, these are significant alterations. In others they largely replicate, with minor alterations, functions previously transferred to, or conferred on the Scottish Ministers and consent is now required due to their restatement in these new legislative provisions. The introduction of judicial oversight, which applies to all of the Scottish Ministers' functions represents a limitation on the executive competence of the Scottish Ministers, who, under previous regimes, were responsible, without additional oversight, for decisions to authorise intercept.

25. Additionally, the Bill, as drafted, confers power on the Scottish Ministers to authorise targeted examination warrants to security and intelligence agencies where those agencies wish to examine material obtained under bulk powers, for the purposes of prevention and detection of serious crime in Scotland. The Scottish Government is reserving its position on the authorisations of targeted examination warrants pending the publication of the report David Anderson QC, the Independent Reviewer of Terrorism Legislation, has been asked by the Home Secretary to produce addressing the operational case for the necessity of bulk collection powers. Consequently, the consent of the Scottish Parliament is not currently being sought in respect of the alteration of the executive competence of Scottish Ministers insofar as this relates to provisions in respect of targeted examination warrants.

Part 5 – Equipment Interference

Relevant clauses: 97, 99-104, 106, 107, 109-117 and 121-123

Policy Intent

26. The Bill aims to provide a new, more explicit equipment interference regime that will govern the use of Equipment Interference powers by law enforcement and the security and intelligence agencies, to keep pace with technological developments. Its content builds on recommendations made by David Anderson, QC, the Joint Committee on the draft

Investigatory Powers Bill, the Intelligence and Security Committee and the Science and Technology Committee.

Background

27. In order to keep pace with the development of modern technology, and the evolving ways in which people communicate with one another, it has been necessary to develop techniques to enable agencies to gain access to devices such as computers in order to gather intelligence. Equipment Interference (EI) allows law enforcement agencies, the security and intelligence agencies and armed forces to interfere with electronic equipment such as computers and smartphones in order to obtain data, such as communications, from a device. In this context, communications are stored communications, whereas those in the course of their transmission require to be authorised in accordance with Part 2 of the Bill as intercept. The Bill makes provision for combined warrants (discussed later) if both are required.

28. Operations vary from physical actions such as the use of a targets login details, to remotely installing software on a device. EI is sometimes referred to as computer network exploitation and is used to protect the public from matters such as cyber-attack, terrorism and other serious criminality. It is not a new power, but is one that is proving increasingly necessary in light of changes in technology.

29. EI can currently be authorised under section 93 of the Police Act 1997 (for law enforcement agencies) or sections 5 and 7 of the Intelligence Services Act 1994. A draft code of practice on EI was published in January 2016, outlining practice and procedure to be followed. The Bill replaces these powers where they are used by law enforcement to interfere with equipment to acquire communications, equipment data and other information. It also limits the use of EI to the same statutory purposes as interception and updates the legislation to require the assistance of telecommunications operators with implementation, where appropriate. Although the Bill does not repeal the provisions in the 1997 Act, it does create a new statutory framework for property interference which sits alongside the 1997 Act. Without this new provision, action could continue to be authorised under the 1997 Act.

30. Where necessary and proportionate, Police Scotland need to be able to access communications or other information held on, for example, computers, in order to gain valuable intelligence in serious crime investigations and to help gather evidence for use in criminal prosecutions. Equipment interference plays an important role in mitigating the loss of intelligence that may no longer be obtained through other techniques, such as interception, as a result of sophisticated encryption.

31. There may also be very rare occasions where the security and intelligence agencies require to apply to Scottish Ministers for authorisation to undertake EI for preventing or detecting serious crime and the Bill retains that possibility.

32. Additionally, as stated at paragraph 25 above, the Scottish Ministers will have powers to authorise targeted examination warrants to security and intelligence agencies where those agencies wish to examine material obtained under bulk powers, for the purposes of prevention and detection of serious crime in Scotland. The Scottish Government is reserving its position on the authorisations of targeted examination warrants pending the publication of the report David Anderson QC, the Independent

Reviewer of Terrorism Legislation, has been asked to produce addressing the case for the necessity of bulk collection powers.

Reasons for requiring legislative consent

33. As discussed, the subject matter (property interference) of Part III of the Police Act 1997 is devolved and is considered a distinct legislative field from intercept. Where Police Scotland are seeking authorisation to interfere with equipment for the purposes of the prevention and detection of crime, this would be within the legislative competence of the Scottish Parliament.

34. It is recommended that the Scottish Parliament consents to the UK Parliament legislating in this area because the Bill provides both a consistent framework throughout the UK and a consistent oversight process within which relevant law enforcement bodies operate.

35. Consent is also sought in respect of Part 5 to the extent that the new warranted authorisation regime for equipment interference is subject to approval by a Judicial Commissioner and to the extent that this alters the executive competence of Scottish Ministers, consent will be required.

Part 8 – Oversight Arrangements

Relevant clauses – 203, 205, 207-212, 214, 215, 217, and 218

Policy Intent

36. The three earlier reports published by the Intelligence and Security Committee, David Anderson QC and the RUSI all agreed that oversight arrangements under existing law could be strengthened and that the current position, of three separate oversight bodies with overlapping responsibility is more confusing than a single body. As such, Part 8 of the Bill sets out a new oversight regime that will replace the Intelligence Services Commissioner, the Interception of Communications Commissioner and the Chief Surveillance Commissioner with a single new commissioner, the Investigatory Powers Commissioner (IPC). The IPC will be someone who holds, or has held, high judicial office and will be supported by Judicial Commissioners who will also hold or have held such a position. It is intended that the IPC will be a more visible body, with a high public profile and active media presence and with significantly greater powers and resources available to it to ensure law enforcement agencies and the security services are appropriately held to account in their use of investigatory powers. This will improve transparency and public confidence in the use of the powers in the Bill. Part 8 will also strengthens redress by providing a domestic right of appeal to the Courts from the Investigatory Powers Tribunal.

Background

37. At present, oversight of the use of investigatory powers is undertaken by a number of bodies, under different acts of Parliament, including RIPA and the Police Act 1997.

38. The three non–parliamentary oversight bodies currently provided for in legislation are:

- the Interception of Communications Commissioner, who oversees law enforcement agencies' and the security and intelligence agencies' interception and communications data powers under Part I of RIPA and the Telecommunications Act 1984;
- the Chief Surveillance Commissioner, who oversees law enforcement agencies' use of covert surveillance powers under RIPA and property interference under the Police Act 1997. In Scotland, under RIP(S)A, Scottish surveillance commissioners can be appointed, including a chief commissioner); and
- the Intelligence Services Commissioner who oversees intelligence agencies' use of powers available under Part II of RIPA and the Intelligence Services Act 1994.

39. These bodies, including the Scottish surveillance commissioners, will be abolished by the Bill and replaced with the single oversight body discussed above. The IPC will have a clear mandate to inform Parliament and the public about the use of and need for investigatory powers and will be required to prepare an annual report. The report prepared by the IPC will be laid before the Scottish Parliament.

40. In addition, the IPC will have power to inform individuals who have been the subject of serious errors by law enforcement, security and intelligence agencies and other public authorities using investigatory powers.

41. The Scottish Ministers will no longer have a power to appoint commissioners, but following a request from the Scottish Government, the Bill provides that a Memorandum of Understanding between the Scottish Government and UK Government will govern the means by which the Scottish Ministers will be consulted. There will also be a statutory requirement to consult the Lord President.

42. Another important part of the oversight regime has been, and will continue to be, the Investigatory Powers Tribunal (IPT), set up under RIPA. During the passage of RIPA, the Scottish Parliament gave its consent for the IPT's jurisdiction to extend to complaints arising out of conduct authorised under RIP(S)A, that being surveillance and the use of covert human intelligence sources. At that time, it was considered that this would allow the tribunal to build expertise in this sensitive and specialised area, which would be more difficult to do with the narrow base of cases likely to be generated in a smaller jurisdiction such as Scotland. The Bill now provides a domestic right of appeal from the Investigatory Powers Bill which has not, until now, been available. The relevant court in Scotland is the Court of Session but it will be a matter for the IPT itself to regulate where appeals are heard, having regard to regulations made under powers conferred by the Bill on the Secretary of State.

<u>Reasons for seeking a legislative consent motion</u>

43. Part 8 of the Bill requires the legislative consent of the Scottish Parliament to the extent that it provides oversight arrangements for devolved authorities and bodies exercising devolved functions; requires the IPC to inform persons of a relevant error relating to that person; alters the executive competence of Scottish Ministers, including removing powers to appoint Scottish surveillance commissioners; creates a domestic right

of appeal from the IPT, including for conduct authorised under RIP(S)A and Part III of the Police Act 1997; and gives the Secretary of State a regulation-making power to modify devolved matters in connection with the functions of the new Investigatory Powers Commissioner.

44. It is recommended that the Scottish Parliament consents to the UK Parliament legislating in or as regards Scotland for these provisions because it will provide for a single body of expertise. It will allow for a single oversight regime comprising of senior members of the judiciary from across the UK. It will allow for a level of consistency in approach to be adopted by a single oversight body across all investigatory powers, including not only those contained in the Bill, but also in the Police Act 1997 and RIP(S)A. It will allow the Scottish and UK Parliaments to receive a single report covering the execution and oversight of all investigatory powers.

Part 9 – Miscellaneous and General Provisions

Relevant clauses – 221, 242 and 243

45. Part 9 of the Bill contains miscellaneous provisions, including relating to obligations that may be placed on communications service providers to assist in giving effect to warrants and authorisations under the Bill. It also contains interpretation and extent provisions and, importantly for these purposes, clauses 221 and 242 introduce schedules 8 and 10 respectively. Schedule 8 regulates combination warrants, and schedule 10 makes minor and consequential amendments, which includes amendments to RIP(S)A.

46. Combination warrants are those which authorise different powers to be combined in the same warrant instrument, for example a targeted interception power and an equipment interference power. The procedure for the issue of combination warrants conforms to the issue of its constituent parts and so it can only be sought by a party who is eligible to apply for both parts.

Reasons for seeking a legislative consent motion

47. Schedule 8 requires the legislative consent of the Scottish Parliament to the extent that it alters the executive competence of the Scottish Ministers by conferring on them a power to issue combination warrants.

48. Schedule 10 requires the legislative consent of the Scottish Parliament to the extent that it amends devolved legislation to give effect to the provisions of the Bill. It is recommended that the Scottish Parliament consent to the UK Parliament legislating for the matters contained in schedule 10 for the purposes of ensuring the Bill is capable of being implemented to its full effect and that Scottish statutory provisions reflect the change in the investigatory powers framework so as they operate effectively.

Consultation

49. The Bill was drafted by the Home Office and built on three reviews undertaken throughout 2014/15. Those reviews were carried out by David Anderson QC, the independent reviewer of national security legislation, who produced the report, 'A Question of Trust'; a report by the Intelligence and Security Committee of the UK Parliament; and a panel convened by the RUSI.

50. The UK Government published the draft Investigatory Powers Bill for pre-legislative scrutiny in November 2015. The draft Bill was considered by the House of Commons Science and Technology Committee, the Intelligence and Security Committee, and by a Joint Committee of both Houses of Parliament convened to scrutinise the draft Bill.

51. Scottish Government officials have considered the legal and policy implications of all aspects of the Bill, and have liaised with policy and legal officials at the Home Office and Scotland Office.

Financial implications

52. No significant additional costs to the Scottish Government or any significant additional direct costs to the Scottish Criminal Justice Sector are envisaged as a result of the provisions within the Bill.

53. The Scottish Government currently operates a small budget of £100k which is used to pay costs and expenses of two of the surveillance commissioners (currently Lords Bonomy and MacLean). As discussed above, the Bill replaces three existing Commissions with a single Investigatory Powers Commissioner who will be supported by a number of Judicial Commissioners. The payments made to the surveillance commissioners are in recognition of the work undertaken with regards to authorisations made under the Regulation of Investigatory Powers (Scotland) Act 2000. The Scottish Government makes no payments in relation to the Interception of Communications Commissioner or the Intelligence Services Commissioner, and it is not anticipated that this basic financial arrangement will change in relation to the new oversight regime.

Conclusion

54. The Scottish Government supports law enforcement and security and intelligence agencies having access to the powers they require in order to keep our communities safe, but this must be balanced with strong protections for civil liberties.

55. The areas which are subject to the legislative consent motion are largely concerned with maintaining the status quo in terms of Police Scotland's ability to apply for the interception of communications, increasing and enhancing the level of independent judicial oversight and of updating the law in the area of equipment interference.

56. The most contentious areas of the Bill relate to reserved issues, namely the parts that deal with bulk collection warrants for the security and intelligence services and internet connection records.

57. Extending the relevant provisions of the Bill to Scotland will help ensure that the Scottish Government's aim of reducing the harm caused by serious organised crime and making Scotland a safer, fairer and more prosperous country.

Draft Legislative Consent Motion

58. The draft motion, which will be lodged by the Cabinet Secretary for Justice, is:

> "That the Parliament supports the principle of modernising the law in the area of investigatory powers, believes protection of civil liberties, transparency and independent oversight must be at the heart of this process; supports law

enforcement in having necessary powers to keep Scotland's communities safe, subject to the most stringent checks and safeguards; agrees that the relevant provisions of the Investigatory Powers Bill, introduced in the House of Commons on 1 March 2016, relating to the interception of communications in places of detention, decisions relating to the issue, renewal, modification, cancellation and approval of interception warrants and functions relating to mutual assistance warrants; the subject matter of Part III of the Police Act 1997 and other equipment interference provisions (other than in relation to provisions concerning targeted examination warrants); the safeguards relating to the use and retention of material obtained by investigative techniques under the Investigatory Powers Bill; oversight arrangements and functions; the functions of, and rights of appeal from, the Investigatory Powers Tribunal; and amendments to the Regulation of Investigatory Powers (Scotland) Act 2000 in consequence of the Investigatory Powers Bill; so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament; recognises that many of the provisions are necessary to ensure that law enforcement operates within an updated and robust legislative framework; supports powers that are demonstrably operationally necessary to counter terrorism and prevent and detect serious crime; notes that provisions in areas reserved to the UK Parliament in the areas of internet connection records and bulk data collection have the potential to impinge heavily on civil liberties and the privacy of individuals, and considers that further evidence should be scrutinised by the UK Parliament before significant new powers are created in these areas.".

Scottish Government

June 2016

Annex

Legislative Consent Memorandum

Investigatory Powers Bill

Provisions which relate to Scotland

1. The following paragraphs describe the specific provisions which apply to Scotland and for which consent is sought in terms of the Legislative Consent Motion.

PART 1: GENERAL PRIVACY PROTECTIONS

Clause 2 General duties in relation to privacy

2. This was introduced to the Bill in order to provide an overarching clause detailing the privacy protections which exist and must be considered by public authorities exercising functions under the Bill. This includes Scottish Ministers. The clause requires that before decisions are made regarding the grant, renewal, modification or cancellation of a warrant, the public authority must consider whether what is sought to be achieved by the warrant could reasonably be achieved by other less intrusive means. Amongst other matters which must be considered are the requirements of the Human Rights Act 1998. It is intended that these considerations underpin all actions taken under the Bill.

Clause 14 Restriction on the use of section 93 of the Police Act 1997

3. The effect of this clause is to limit the situations in which an application may be made by law enforcement agencies for property interference under section 93 of the Police Act 1997, requiring the use of Part 5 of the Bill instead. As a result of clause 14, such applications must be made for a targeted equipment interference warrant under Part 5 of the Bill as opposed to section 93 of the Police Act 1997, where the purpose of the interference is to obtain communications, private information or equipment data. This restriction applies if the applicant believes that, if undertaken without lawful authority, the conduct would constitute an offence under sections 1 to 3A of the Computer Misuse Act 1990.

4. At present, any application by law enforcement agencies to authorise such conduct would require to be made under Part III of the Police Act 1997. Clause 14 does not remove or otherwise limit the ability for equipment interference to be authorised under the Police Act 1997 where the purpose of the interference is not to obtain communications, equipment data or any other information. Nor does this clause prohibit the use of other legislation to authorise conduct that may otherwise constitute a Computer Misuse offence. Finally, although a bespoke process is created to replace this particular use of section 93, the power to issue a targeted equipment interference warrant, on an application by a law enforcement officer, where it is necessary for the purposes of preventing or detecting serious crime, and proportionate to the aim sought to be achieved, will continue to rest with a law enforcement chief, meaning Police Scotland will retain authorisation powers.

PART 2: LAWFUL INTERCEPTION OF COMMUNICATIONS

Clause 21 Power of Scottish Ministers to issue warrants

5. Clause 21 provides a power for the Scottish Ministers to issue a targeted interception or targeted examination warrant under Part 2 of the Bill, for the lawful interception and examination of communications. This power is exercisable, in relation to a targeted interception or targeted examination warrant, if it necessary for the purpose of preventing or detecting serious crime and proportionate to what is sought to be achieved by the conduct. There is also a power in clause 21 to issue a mutual assistance warrant for giving effect to the provisions of an EU mutual assistance instrument or international mutual assistance agreement.

6. Interception takes place during the course of a communication's transmission with the effect of making any of the content of the communication available, while the communication is being transmitted or when it is stored, to a person who is not the sender or intended recipient of the communication This can include the words spoken in a telephone call, the words of a text message or email, or the content contained on a web page. The exercise of the power is limited to when it is in relation to a 'relevant Scottish application,' discussed below.

7. In accordance with clause 18, applications for interception may be made by:

(a) a person who is the head of an intelligence service;
(b) the Director General of the National Crime Agency;
(c) the Commissioner of Police of the Metropolis;
(d) the Chief Constable of the Police Service of Northern Ireland;
(e) the Chief Constable of the Police Service of Scotland;
(f) the Commissioner of Her Majesty's Revenue and Customs; and
(g) the Chief of Defence Intelligence.

8. The other effect of clause 21 is that, except where the Scottish Ministers consider there to be an urgent need to issue the warrant, warrants may only be issued once they have been approved by a Judicial Commissioner.

9. At present, the Scottish Ministers may authorise the interception of communications under the provisions in RIPA, without the need for judicial approval before the warrant is issued. The authority to do so was executively devolved by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2000. The Investigatory Powers Bill retains this arrangement, but creates the added statutory safeguard of judicial approval by a Judicial Commissioner being required before a warrant may be issued, creating a 'double lock.' Urgent applications are discussed at clause 24 below.

Clause 22 "Relevant Scottish applications"

10. The Scottish Ministers' powers to issue warrants under clause 21 is only exercisable in relation to 'relevant Scottish applications.' To be a relevant Scottish application, the application would require to meet one of three conditions. The first condition would be that the application relates to premises or persons in Scotland, or reasonably believed to be in Scotland at the time of the issue of the warrant. The other two categories relate to where a request is made for the issue of a mutual assistance warrant

made under an EU mutual assistance instrument or an international mutual assistance agreement. Such a request may be an outgoing request i.e. for an individual located outwith the UK, or an incoming request from a law enforcement agency from outwith the UK whose subject of interest is located in Scotland.

Clause 23 Approval of warrants by Judicial Commissioners

11. Clause 23 sets out the test that the Judicial Commissioners must follow when considering whether to approve a person's decision to issue a warrant under chapter 1 of the Bill. The Judicial Commissioner must consider the conclusions reached by the person making the decision, in terms of necessity and proportionality, applying the same principles as a court would apply on an application for judicial review. In doing so, the Judicial Commissioner must consider the matters of necessity and proportionality with a sufficient degree of care as to ensure that there is compliance with the general duties in relation to privacy, contained in clause 2. Where the decision of the Judicial Commissioner is to refuse to approve a decision, they must give the person who made the decision written reasons for this. Where a Judicial Commissioner refuses to authorise the decision to issue a warrant, the person who authorised the warrant can refer the matter to the Investigatory Powers Commissioner to decide whether to approve the decision to issue the warrant.

12. Under existing law, the process by which Scottish Ministers can authorise the interception of communications is overseen by way of bi-annual inspections by the Interception of Communications Commissioner. The inspection process includes a review of a selection of paperwork and face-to-face meetings with relevant officials and, normally, the Cabinet Secretary for Justice.

13. The involvement of a Judicial Commissioner introduces an additional stage in the process prior to a warrant being issued. As such, it is a safeguard which does not exist under current arrangements.

Clause 24 Approval of warrants issued in urgent cases

14. Clause 24 provides that where a person who decided to issue a warrant considers that there was an urgent need to issue the warrant and therefore issued the warrant without the prior approval of a Judicial Commissioner, the person who decided to issue the warrant must inform a Judicial Commissioner that it has been issued. In this case, the Judicial Commissioner must, within three working days of the warrant being issued, decide whether to approve its issue and notify the person who issued the warrant of their decision. If the Judicial Commissioner decides not to approve the decision the warrant ceases to have effect and may not be renewed.

15. The Bill does not define when a case will be urgent. It is likely, however, that where the circumstances involve an imminent event, the resolution of which would be jeopardised if the normal timescales were adhered to, this would be considered urgent. Such events will normally involve a threat to life or an opportunity to disrupt serious crime.

16. Under RIPA a warrant granted in an urgent case and not renewed, will cease to have effect at the end of the fifth working day following its issue. For urgent warrants issued under the Bill, and approved by the Judicial Commissioner, this duration is retained.

Clause 25 Failure to approve warrant issued in urgent case

17. Clause 25 sets out what must happen if a Judicial Commissioner refuses to approve the issue of an urgent warrant.

18. The person to whom the warrant has been issued must, as soon as possible, stop any activity that is taking place under the authority of the warrant. The Judicial Commissioner may require that any material obtained be destroyed, impose conditions on the retention or use of any material, and, in the case of a targeted examination warrant, impose conditions as to the use of any relevant content selected for examination. They may require representations to be made by the person who issued the warrant or the person to whom the warrant was addressed, about how to exercise these functions. There is a power in clause 25 for the person who issued the warrant to ask the Investigatory Powers Commissioner to review decisions made by another Judicial Commissioner under this clause. The Investigatory Powers Commissioner may confirm the Judicial Commissioner's decision or make a fresh determination. The lawfulness of any action taken prior to the warrant ceasing to have effect is preserved by clause 25.

Clause 27 Items subject to legal privilege

19. Clause 27 sets out the safeguards which apply when a targeted interception, mutual assistance or examination warrant is sought for the purpose of obtaining, or looking at, items which are subject to legal privilege, or where it is likely that legally privileged material will be obtained or examined. Items subject to legal privilege are communications between a professional legal advisor and their client, or communications made in connection with, or in contemplation of legal proceedings, which would be protected from disclosure in legal proceedings.

20. Applications must contain a statement that the purpose, or one of the purposes, of the warrant is to authorise or require interception or selection for examination, of items subject to legal privilege, or is likely to include items subject to legal privilege. A warrant for the purpose of requiring the interception or examination of items subject to legal privilege can only be issued if the person to whom the application is made considers there are exceptional and compelling circumstances that make it necessary to authorise the action. In all cases, the warrant can only be issued if the person issuing it considers there to be adequate safeguards in place for handling, retention, use and destruction of material. This applies to warrants that are to be issued by Scottish Ministers. The decision to make reference, on the face of the Bill, to safeguards for information subject to legal privilege represents a change from the regime under RIPA and responds to concerns expressed by the Joint Committee on Human Rights. As such, it is an element of the new regime which provides enhanced protection on the face of primary legislation.

Clause 28 Decisions to issue warrants to be taken personally by Ministers

21. The effect of clause 28 is that decisions to issue a warrant under chapter 1 of the Bill are, to be taken personally by the Secretary of State or in the case of warrants which are to be issued by the Scottish Ministers, to be taken personally by a member of the Scottish Government. They must be signed by the person who took the decision to issue. Where it is not reasonably practicable for the warrant to be signed by a member of the Scottish Government, a member of the Senior Civil Service who is designated by Scottish Ministers, and personally and expressly authorised, may sign the warrant.

22. This represents a statutory restatement, in a new legislative regime, of existing arrangements under RIPA, where all warrants are signed by a member of the Scottish Government (i.e. a Cabinet Secretary, with the Cabinet Secretary for Justice being the main point of contact). Warrants issued under urgency arrangements may be signed by a designated member of the Senior Civil Service, but only in circumstances where it is not reasonably practicable for a Cabinet Secretary to sign a warrant, and only after receiving a Cabinet Secretary's authorisation to do so.

Clause 31 Renewal of warrants

23. Clause 31 provides that a warrant may be renewed by an instrument issued by the Scottish Ministers, so long as it continues to be necessary and proportionate for it to remain in place. Any decision to renew a warrant will require the approval of a Judicial Commissioner. Clause 23 (approval by Judicial Commissioners) is applicable to the renewal of warrants in the same way as it is applicable in relation to the initial decision to issue a warrant. Additional protections for members of Parliaments and assemblies, and for items subject to legal privilege apply to renewals as they apply to a decision to issue a warrant.

24. The arrangements being put in place under the Bill differ from those in RIPA in that they extend the period of duration for a serious crime warrant from three to six months, and the requirement for a Judicial Commissioner to approve a renewal is an additional step in the authorisation process, introduced in order to create a further layer of safeguard.

Clause 32 Modification of warrants
Clause 33 Persons who may make modifications
Clause 34 Further provisions about modifications
Clause 35 Notification of major modifications

25. Clause 32 makes provision for the modification of warrants which have been granted under Chapter 1 of the Bill. Modifications are separated into two types, 'major' or 'minor'. Whether something is a major or minor modification is relevant to who is authorised to grant it. Under clause 33, for warrants issued by the Scottish Ministers, major modifications can only be made by a member of the Scottish Government or a senior official. Where a major modification is urgent or where the modification is deemed minor, it can also be made by the person to whom the warrant is addressed or someone holding a senior position in the same public authority as the person to whom the warrant is addressed. As an example, in the case of a warrant addressed to the Chief Constable of the Police Service of Scotland, a person who holds a senior position is of the rank of, or higher than, superintendent.

26. Major modifications include, for example, varying the name of a person to which the warrant relates, whereas minor modifications may include specification of additional apparatus that will require to be used in the interception process. As is the case when the warrant is being issued, clause 34 provides that the person making the modification must be satisfied as to necessity and proportionality. Clause 35 requires that where a major modification is made, a Judicial Commissioner must be notified of this, and the reasons for making the modification, as soon as is reasonably practicable.

27. The same safeguards apply to legal privilege and the communications of Members of Parliament as apply when a decision is made to grant a warrant.

28. Under RIPA, the law makes no express distinction between ‘major’ or ‘minor’ modifications. Distinction is however made between modifications to scheduled and unscheduled parts of the warrant and urgent and non-urgent modifications. At present, in the majority of cases, modifications to Scottish warrants are made by application and authorised by a senior official acting on the Scottish Ministers’ behalf. Section 10 of RIPA makes it possible for the person to whom the warrant is addressed to make the modification in certain circumstances if there is an urgent requirement to do so.

Clause 36 Approval of major modifications made in urgent cases

29. Major modifications can be made in urgent circumstances by the person to whom the warrant is addressed, or a person holding a senior position in the same public authority as the person to whom the warrant is addressed, providing that the person who made the modification informs a designated senior official that the modification has been made. In the case of relevant Scottish applications, this will be a person who has been designated for this purpose by the Scottish Ministers. In terms of a safeguard, the designated senior official must, within 5 working days of the modification being made, decide whether to approve the decision to modify and, if they refuse, they must notify a member of the Scottish Government of the refusal. In this case the warrant has effect as if the modification was never made and any actions undertaken on the authority of the modification must cease. The lawfulness of activity conducted prior to this point is not affected.

Clause 37 Cancellation of warrants

30. Clause 37 requires that once a warrant is no longer necessary on the grounds for which it was authorised, or no longer proportionate to what is sought to be achieved, it is cancelled and all related activity stopped as soon as practicable.

31. As soon as a warrant ceases to be either necessary or proportionate, it must be cancelled. In the case of warrants issued by the Scottish Ministers, warrants may be cancelled by the Scottish Ministers or a senior civil servant acting on their behalf. The arrangements set out in clause 37 maintain the existing arrangements set out in RIPA.

32. This does not represent a significant change to current arrangements in respect of cancelling warrants, rather it is a restatement of functions by way of a new legislative regime.

Clause 47 Interception in prisons
Clause 48 Interception in psychiatric hospitals

33. The effect of clause 47 is to make clear the powers under which it is lawful to conduct interception in a prison. Clause 48 makes the same provision for interception in a psychiatric hospital. By virtue of clauses 47 and 48, it is lawful to carry out interception in a prison or psychiatric hospital, providing this is conducted in line with the relevant statutory provisions highlighted in these clauses. For example, clause 47 provides that in Scotland, intercept in prison is lawful if conducted in line with the Prison Rules, which are rules made under section 39 of the Prisons (Scotland) Act 1989.

34. The absence of these clauses would mean that anyone conducting intercept in prisons or psychiatric hospitals, under pre-existing statutory regimes which will not be

repealed by the Bill, would potentially be committing the offence of unlawful interception under the Bill. To some extent this is a restatement of the law as contained in RIPA. The provisions made for intercept in psychiatric hospitals, however, are extended beyond what was contained in RIPA, in order to capture conduct authorised by the Mental Health (Care and Treatment) (Scotland) Act 2003. This expansion was made based on a recommendation from Joint Committee on the Bill, following written evidence from the Mental Welfare Commission for Scotland.

Clause 51 Safeguards relating to retention and disclosure of material

35. This clause requires an authority issuing a warrant to ensure arrangements are in force for safeguarding material obtained under an interception warrant. Measures that should be taken to ensure the safeguarding requirements are met include limiting to the minimum necessary for the authorised purpose the number of persons to whom any material is disclosed or otherwise made available and the extent to which any material is copied and the number of copies made. The material must be kept in a secure manner and destroyed as soon as it is no longer necessary for an authorised purpose. Where an item subject to legal privilege is retained, the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as reasonably practicable.

36. At present, the responsibility, under RIPA, for ensuring arrangements are in force for securing that safeguards will be upheld is conferred on Scottish Ministers by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2000. Clause 51 puts Scottish Ministers responsibility for this on the face of the Bill and includes some adjustment, for example the obligation to inform the IPC if an item subject to legal privilege is retained.

Clause 52 Safeguards relating to disclosure of material overseas

37. Clause 52 provides for the safeguards which apply when disclosing intercept material and secondary data to an overseas authority. It requires the issuing authority, which includes the Scottish Ministers, to ensure that any material or copies of material obtained under a warrant, are only given to overseas authorities if arrangements are in force for securing that safeguards are place. These safeguards include those detailed in clause 51, to the extent that the issuing authority considers appropriate and ensuring that material is not disclosed in a way which would constitute unlawful disclosure in the United Kingdom.

Clause 54 Duty not to make unauthorised disclosures

38. Clause 54 requires that those to whom the clause applies, must not make an unauthorised disclosure of any of the following; the existence or contents of the warrant, the details of the issue of the warrant or any renewal or modification; the existence or contents of any requirement to provide assistance in giving effect to the warrant; steps taken in pursuance of such a requirement or any of the material obtained under the warrant. The clause applies to a number of persons, including those holding office under the Crown. Under the Bill it is an offence to make an unauthorised disclosure.

PART 5 EQUIPMENT INTERFERENCE

Clause 97 Power to issue warrants to intelligence services: the Scottish Ministers

39. This clause provides that when a targeted equipment interference warrant, or targeted examination warrant, for the purposes of the prevention or detection of serious crime, relates to interference with or examination of equipment believed to be in Scotland, it is the responsibility of the Scottish Ministers, rather than the Secretary of State to issue. This applies to applications made by the security and intelligence agencies. Law enforcement agencies will apply to their relevant law enforcement chief.

40. Considerations of necessity and proportionality apply to the decision of the Scottish Ministers and, except in urgent cases, warrants will require to be approved by a Judicial Commissioner before they may be issued.

41. Under The Scotland Act (Functions Exercisable In or as Regards Scotland) Order 1999/1748, there was executive devolution of powers to Scottish Ministers to authorise interference with property or wireless telegraphy in Scotland, for the purpose of the prevention or detection of serious crime.

Clause 99 Decision to issue warrants under sections 96 to 98 to be taken personally by Ministers

42. Clause 99 requires that the decision to issue a warrant under clause 97 must be taken personally by a member of the Scottish Government. Equivalent provision is made for warrants which are to be issued by the Secretary of State. This ensures executive accountability for the use of this power and provides the opportunity in all cases to ensure that its use is necessary and proportionate.

43. Where it is not reasonably practicable for Scottish Ministers (or, where relevant, the Secretary of State) to sign the warrant, an authorised senior official may sign the warrant. The Scottish Ministers are still the decision-maker in these instances and a member of the Scottish Government must personally and expressly authorise the issue of the warrant.

44. In effect, clause 99 regulates how the powers described at clause 97 (see above) must be exercised.

Clause 100 Power to issue warrants to law enforcement officers

45. This clause creates a bespoke statutory scheme for the process and requirements to be followed for targeted equipment interference warrants that are applied for by law enforcement officers (eg police officers within Police Scotland) and issued by law enforcement chiefs (eg the Chief Constable of Police Scotland). At present, Police Scotland applications would be authorised under Part III of the Police Act 1997. Part III of the Police Act 1997 is not repealed by the Bill and will continue to be the relevant statutory framework for law enforcement officers intending to interfere with equipment, or property, where the primary purpose is not to acquire communications or private information.

46. A law enforcement chief may issue a targeted information warrant under this clause, if he or she believes that the warrant is necessary to prevent or detect serious crime and that the conduct authorised is proportionate to that aim.

47. Warrants may also be issued under this clause if considered necessary for the purpose of preventing death or any injury or damage to a person's physical or mental health, or of mitigating any injury or damage to a person's physical or mental health. In practice, this would permit certain law enforcement agencies to use equipment interference to locate and ensure the safety of vulnerable people, such as missing children.

48. All decisions to issue a warrant require the prior approval of a Judicial Commissioner, except where the law enforcement chief believes there is an urgent case to issue the warrant. In all cases, the law enforcement chief must consider that satisfactory arrangements are in place to safeguard the material obtained.

49. The law enforcement agencies that may apply for a warrant on these grounds is limited to the agencies named in the table in Schedule 6. The only two Scottish public authorities which will be able to apply are Police Scotland and the Police Investigations and Review Commissioner (PIRC). This is consistent with arrangements for property interference under the Police Act 1997 and intrusive surveillance under RIP(S)A. Immigration Officers, British Transport Police, the Police Investigations Review Commissioner and certain others have, until now, had equipment interference powers under the Police Act 1997 and they will continue to have powers under the Bill.

Clause 101 Restriction on issue of warrants to certain law enforcement officers

50. The effect of this clause is that certain law enforcement chiefs cannot issue a targeted equipment interference warrant under clause 100 unless they consider there to be a British Islands[2] connection. This applies to the issue of such warrants by, amongst others, the Chief Constable of the Police Service of Scotland.

51. This restriction applies to the Chief Constable of the Police Service of Scotland. This provision also extends to the issue of warrants, by the Director General of the National Crime Agency (NCA), to collaborative police forces.

52. A British Islands connection is established where:

- the proposed activity would take place in the British Islands (regardless of where the equipment to be interfered with is located); or
- any of the equipment which would or may be interfered with would, or may, be in the British Islands at some time while the interference is taking place. The computer equipment could be located in the British Islands or carried by someone transiting through the British Islands, for example, at the time the interference is taking place; or
- the purpose of the interference is to enable the acquisition of communications sent to or from a person believed to be in the British Islands and any associated equipment data or information relating to an individual whom is believed to be in the British Islands.

[2] As defined in the Interpretation Act 1978 the British Islands includes the UK, Channel Islands and Isle of Man

53. With the exception of the law enforcement chiefs listed in clause 101, which for Scottish purposes includes Police Scotland, other law enforcement officers are able to apply for an equipment interference warrant under clause 96 in circumstances where there is a connection to the British Islands and also where there is no connection to the British Islands. So, for example, the Director General of the NCA could authorise a warrant sought by a NCA officer.

Clause 102 Approval of warrants by Judicial Commissioners

54. Clause 102 sets out the role of a Judicial Commissioner in approving targeted equipment interference and targeted examination warrants. The requirement for approval is, to some extent, also required under the Police Act 1997. Under that regime, authorisation by the Surveillance Commissioners appointed under that Act is required in certain situations, such as where the property specified in the authorisation is used wholly or mainly as a dwelling. Clause 102 represents a strengthening of this safeguard, as the only situation in which authorisation is not required is when the application is made in an urgent case. The procedure for urgent cases is discussed below.

Clause 103 Approval of warrants issued in urgent cases

55. Clause 103 establishes the process for the approval of equipment interference warrants that have been issued in urgent cases, without the approval of a Judicial Commissioner. It applies to warrants issued by the Scottish Ministers and law enforcement chiefs. Urgent cases may include cases that demand very quick actions from the applicant that cannot wait until a Judicial Commissioner has approved the warrant. For example, an urgent warrant may be required if a law enforcement agency understands that a person's life is in immediate danger and equipment interference could obtain communications and information that may be used to prevent imminent harm The person issuing the warrant must inform the Judicial Commissioner of the warrant's issue and the Judicial Commissioner will have three working days to approve or refuse the issue of the warrant.

56. Should a Judicial Commissioner refuse to approve the decision to issue a warrant, the warrant ceases to have effect.

Clause 104 Failure to approve warrants issued in urgent cases

57. Where a warrant has been issued and is not approved by the Judicial Commissioner, clause 104 makes provision to regulate, amongst other things, anything in the process of being done under the warrant. In order to ensure that, in urgent cases, the recipient of the warrant can act appropriately and with confidence as soon as the warrant is issued, nothing which is done before a warrant ceases to have effect (by virtue of this clause) will be deemed unlawful.

Clause 106 Items subject to legal privilege (Equipment Interference)

58. By virtue of clause 106, additional safeguards are required where equipment interference is undertaken for the purpose of obtaining items subject to legal privilege or authorising the selection of material subject to legal privilege. The safeguards which apply when the purpose of a targeted equipment interference or examination warrant is to obtain

items which are subject to legal privilege are much the same as detailed above in relation to clause 27.

Clause 109 Renewal of warrants

59. Clause 109 provides that at any time before the warrant expires a renewal can be issued by the Scottish Ministers, or law enforcement chief where the renewal conditions are met. In either case a Judicial Commissioner will need to approve the renewal of the warrant. The renewal conditions include that the person renewing the warrant considers that the activity described in the warrant remains necessary and proportionate.

60. Decisions to renew require to be taken personally by the party who issued the warrant, which could include the Scottish Ministers or law enforcement chief (or appropriate delegate) where relevant and the renewal instrument must be signed by the person who took the decision. This provides the opportunity to review the necessity and proportionality of the action. The warrant will not be renewed if the action is no longer necessary or proportionate.

61. In the context of urgent warrants, renewals serve the purpose of allowing the Scottish Ministers, or law enforcement chief (or appropriate delegate) and a Judicial Commissioner to review the warrant and, should they consider it necessary and proportionate, extend the duration to 6 months.

Clause 110 Modification of warrants issued by the Secretary of State or the Scottish Ministers
Clause 111 Persons who may make modification under section 110
Clause 112 Further provisions about modifications under section 110
Clause 113 Notification of modifications
Clause 114 Approval of Modifications under section 104 made in urgent cases

62. Clause 110 – 114 make provision for the modification of warrants, to address the possibility that facts and circumstances may change, necessitating modification of what is authorised. For instance, a target of an investigation subject to an equipment interference warrant might acquire a new smartphone or a new subject of interest may become relevant to an investigation.

63. Only certain modifications are permitted and any modification must be relevant to a matter to which the warrant relates, or in relation to types of equipment included in the warrant. This ensures that modifications cannot be used to alter the existing scope of the warrant.

64. Modifications can also include the addition, variation or removal of subjects from a warrant, providing this it is still in relation to a matter to which the warrant relates. This may occur if, during the course of an operation, it is determined that one or more of the subjects under the warrant are no longer of intelligence interest, but other subjects under the warrant remain of interest. In this instance the warrant can be modified to remove the unnecessary subjects from the warrant, minimising any incursions into their privacy.

65. In the case of warrants granted under clause 97, modifications of this nature are to be made by the Scottish Ministers, or a senior official acting on their behalf, except in urgent circumstances. In urgent circumstances the person to whom the warrant is

addressed or a person who holds a senior position in the same public authority may make a modification.

66. Where a modification is made in urgent circumstances, it is competent for modifications to be made by a person to whom it is addressed, or a person who holds a senior position in the same public authority.

67. Clause 113 and 114 make provisions for effective oversight. Under clause 113, as soon as is reasonably practicable after a person makes a modification of a warrant, a judicial commissioner must be notified of the modification and the reason for making it. This is subject to certain exceptions, such as where the modification is to remove any matter, name or description included in the warrant. Further, where a senior official makes the modification, a member of the Scottish Government must be notified personally of this and the reasons for doing so.

68. Clause 114 requires that where modifications are made in an urgent situation, a designated senior official must be informed of the modification and is thereafter required to approve or refuse the decision. This must be communicated to the Judicial Commissioner and also to the Secretary of State or member of the Scottish Government for relevant Scottish applications. Provision is made to regulate procedure if a decision is made to refuse to approve the decision.

69. Modifications, other than those removing any matter, name or description must be considered both necessary on any relevant ground and proportionate to what is sought to be achieved by the person making the modification.

70. Provision is made in respect of safeguards for the modification of warrants which relate to Members of Parliament etc. or which are subject to legal privilege.

Clause 115 Modification of warrants issued by law enforcement chiefs
Clause 116 Approval of modifications under section 106 in urgent cases

71. Clause 115 permits modifications to be made to warrants issued by law enforcement chiefs. As with modifications made under clause 110, a modification cannot alter the existing scope of the warrant and again it is competent to use the modification process to remove a subject, in order to ensure intrusions into privacy are kept to a minimum.

72. Modifications of this nature may be made by the law enforcement chief or appropriate delegate that issued the warrant and, except in urgent circumstances, any modification must be approved by a Judicial Commissioner.

73. Once an urgent modification has been made by a law enforcement chief or an appropriate delegate, a Judicial Commissioner must be informed, for the purposes of oversight. The Judicial Commissioner's role, much as in the other oversight provisions throughout the Bill, will be to decide whether to approve or refuse the decision to modify. As with the other clauses relevant to judicial oversight, the lawfulness of any action taken prior to a refusal is not affected.

Clause 117 Cancellation of warrants

74. In order to ensure that equipment interference is not on-going for longer than is necessary, clause 117 provides a power to cancel any warrant issued under Part 5 of the Bill at any time, and the warrant must be cancelled if the warrant would no longer meet the necessity and proportionality tests. For warrants issued by the Scottish Ministers, these can be cancelled by a member of the Scottish Government or a senior official.

Clause 121 Safeguards relating to retention and disclosure of material
Clause 122 Safeguards relating to disclosure of material overseas

75. Clause 121 places a duty on an issuing authority to ensure safeguards are in place for any material acquired by the activity permitted through a targeted equipment interference warrant. The number of persons to whom the material is disclosed; the extent to which any material is disclosed or otherwise made available; the extent to which material is copied and the number of copies made must all be kept to the minimum necessary for authorised purposes. Additionally, material must be destroyed as soon as there are no longer grounds for its retention and must be stored, for as long as it is retained, in a secure manner.

76. Something is necessary for the purposes of this clause if it is necessary:

- on one of the relevant grounds, including prevention and detection of serious crime or the interests of national security;
- for the Scottish Ministers or warrant recipient to carry out their functions under this Bill;
- for the Investigatory Powers Commissioner or Investigatory Powers Tribunal to carry out their functions in relation to this Bill; or
- for the purpose of legal proceedings; or is necessary for the performance of any person by or under any enactment.

77. Under clause 122, the issuing authority must be sure, before handing to overseas authorities any material or copies of material obtained under a targeted equipment interference warrant, that arrangements are in force for ensuring the same safeguards as outlined in clause 121 are met.

78. The intention is to protect the privacy of anyone affected by a warrant and maintain the integrity of the operations to which the warrants relate.

Clause 123 Duty not to make unauthorised disclosures

79. As with clause 54 above, clause 123 creates a duty not to make unauthorised disclosures in respect of equipment interference warrants. The restrictions are the same as detailed in relation to clause 54 and again apply to persons holding office under the Crown. Again, it is an offence under the Bill to make an unauthorised disclosure.

PART 8 OVERSIGHT ARRANGEMENTS

Clause 203 Investigatory Powers Commissioner and other Judicial Commissioners

80. Clause 203 establishes the office of the Investigatory Powers Commissioner, who will be supported in fulfilling their functions by other Judicial Commissioners. The office of the IPC represents a change in that it is intended to be a single oversight body with responsibility for the full spectrum of Investigatory powers, whereas there were previously three bodies with responsibility for overseeing the use of different powers.

81. The power to appoint the IPC and the Judicial Commissioners will now rest with the Prime Minister, as provided for in clause 203, whereas previously Scottish Ministers had power to appoint Scottish Surveillance Commissioners. In order to be appointed as the Investigatory Powers Commissioner or as a Judicial Commissioner, a person must hold, or have held, a judicial position at least as senior as a high court judge.

82. The Prime Minister must consult with the Lord Chief Justice of England and Wales, the Lord President of the Court of Session, the Lord Chief Justice of Northern Ireland, the Scottish Ministers, and the First Minister and deputy First Minister in Northern Ireland before appointments are made. In response to a request from the Scottish Government and due to the removal of the appointment functions of Scottish Ministers, the Prime Minister must have regard to a memorandum of understanding agreed between the Prime Minister and Scottish Ministers when consulting with Scottish Ministers regarding appointments.

Clause 205 Main oversight functions

83. By virtue of clause 205, the IPC will have responsibility for oversight of the full range of investigatory powers: interception, acquisition of communications data; equipment interference, the acquisition of secondary data or related systems data, and the use of surveillance and covert human intelligence sources (which, in Scotland, are provided for under the Regulation of Investigatory Powers (Scotland) Act 2000). It will also be for the IPC to keep under review matters including acquisition, retention and use of bulk personal datasets.

84. The Investigatory Powers Commissioner will undertake, with the assistance of their office, the functions currently undertaken by the Intelligence Services Commissioner, the Interception of Communications Commissioner and the Surveillance Commissioners. The Investigatory Powers Commissioner will now also have statutory oversight responsibility for the exercise of functions under sections 1 to 4 of the Prisons (Interference with Wireless Telegraphy) Act 2012.

85. The Investigatory Powers Commissioner and other Judicial Commissioners will have discretion as to how they must fulfil their functions, but this must include audits, inspections and investigations. At present, oversight by the bodies listed involves (depending on the power being utilised) a mixture of retrospective inspection and real-time approval.

86. In order to prevent inefficiency and duplication of oversight, the Investigatory Powers Commissioner will not oversee particular areas that are already subject to oversight by other individuals or bodies. This includes decisions by other judicial

authorities or where information is obtained through a search warrant or production order issued by a judicial authority. The Investigatory Powers Commissioner will not oversee matters which are overseen by the Information Commissioner.

87. Under clause 205 the Judicial Commissioner will be expected to ensure that, in exercising their functions, they do not act in a way which is contrary to the public interest or prejudicial to national security, prevention or detection of serious crime or the economic well-being of the UK.

88. The result of such wide-ranging oversight means the IPC and the Judicial Commissioners will have oversight of a number of areas in which the Scottish Ministers and the Police Service of Scotland exercise functions. In addition, oversight will also extend to areas currently under the remit of the Office of Surveillance Commissioners (the use of covert surveillance and covert human intelligence sources) who are appointed under RIP(S)A at present.

Clause 207 Error reporting

89. Clause 207 requires the IPC to inform a person of any relevant error relating to that person of which the Commissioner is aware. This applies to those errors that the IPC considers to be serious, determined by whether it has caused significant prejudice or harm to the person concerned, and whether it is in the public interest to inform the person of this error.

90. A relevant error means any error made by a public authority in complying with any requirements which are imposed on it by the Bill or other enactment and which are subject to review by the Investigatory Powers Commissioner and of a description identified for this purposes in a code of practice. As a result, it could apply to decisions of the Scottish Ministers and others (such as senior officials or officers of the Police Service of Scotland).

91. In reaching this decision the Commissioner must balance the seriousness of the error and the impact on the person concerned, with the extent to which disclosing the error would be contrary to the public interest or prejudicial to national security, the prevention and detection of serious crime, the economic wellbeing of the UK, or the ability of the intelligence agencies to carry out their functions.

92. If the Investigatory Powers Commissioner decides that the person should be informed, that person must also be informed of any right they may have to bring a claim to the Investigatory Powers Tribunal. The person must also be provided with the details necessary to bring such a claim, to the extent that disclosing information is in the public interest.

93. In order to ensure accountability, the Investigatory Powers Commissioner's annual report (discussed below) must include details regarding errors, including for example the number of times a person is informed of an error.

94. This clause was amended following pre-legislative scrutiny, to enable direct error reporting to the person affected, without the need for the prior agreement of the Investigatory Powers Tribunal. This was based on the recommendation of the Joint Committee on the draft Investigatory Powers Bill, who noted that the requirement for agreement from the tribunal was cumbersome.

Clause 208 Additional functions under this Part

95. Clause 208 requires the Judicial Commissioners to give the IPT any documents, information and assistance the IPT may ask for, including Commissioner's opinion on anything the IPT has to decide. This allows the IPT to receive the benefit of the Investigatory Powers Commissioner's expertise and the expertise of his office when reaching a decision, which is beneficial given the specialised nature of the work that is undertaken by the IPC and the IPT.

96. The Investigatory Powers Commissioner is authorised to provide advice and information to both public authorities and the general public. If the Commissioner thinks that providing such information or advice might be contrary to the public interest or be damaging to one of the things listed, including national security, the Commissioner must consult with the Secretary of State first. The Commissioner does not have to consult the Secretary of State before providing information to the IPT.

Clause 209 Functions under other Parts and other enactments

97. Clause 209 amends the Police Act 1997, RIPA, RIP(S)A and the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013 (2013/2788). The effect of these amendments is to replace reference to previous oversight bodies with reference to the Investigatory Powers Commissioner. This provides a legal basis enabling them to carry out the functions previously undertaken by the Interception of Communications Commissioner, the Surveillance Commissioners and the Intelligence Services Commissioner.

98. For devolved interests, under existing arrangements, the Office of Surveillance Commissioners has a role in providing oversight for a number of Scottish public authorities under the provisions contained in the Police Act 1997 and the Regulation of Investigatory Powers (Scotland) Act 2000. The amendments to both of those Acts in this clause transfer those oversight functions to the Investigatory Powers Commissioners and the Judicial Commissioners.

Clause 210 Annual and other reports

99. In order to ensure accountability for the use of Investigatory Powers, Clause 201 requires that the Investigatory Powers Commissioner must report to the Prime Minister on an annual basis about the carrying out of their functions and the functions of the Judicial Commissioners. Matters which must be included in the report are detailed in clause 210 and include statistics on the use of investigatory powers, information about the results of such use, information on errors, funding, staffing and other resources and details of public engagements undertaken by the Judicial Commissioners or their staff. It is open to the Investigatory Powers Commissioner to include further information in their annual report and the Investigatory Powers Commissioner's report can include any recommendations the Commissioner thinks are appropriate.

100. Upon receipt of an annual report from the Investigatory Powers Commissioner the Prime Minister must publish that report and lay it before Parliament. It is also to be sent to Ministers within the devolved administrations and therefore will be received by the Scottish Ministers, who will be required to lay the report in the Scottish Parliament. The Prime Minister, in consultation with the Investigatory Powers Commissioner, and for those parts

relating to the Part III of the Police Act 1997, the Scottish Ministers, may redact information from the report if it is considered that the information would be damaging to national security or operational effectiveness.

101. In addition to the annual report, the IPC is required to make any report to the Prime Minister which has been requested by the Prime Minister and may also report to the Prime Minister at any time on any matter the Commissioner has oversight of. If requested to do so by the Prime Minister, the IPC may publish these reports, or parts thereof.

102. Under the current framework, the Office of the Surveillance Commissioners and the Intelligence Services Commissioner produce annual reports and the Interception of Communications Commissioner produces bi-annual reports. These reports are currently laid before the Scottish Parliament. They can, and sometimes do, produce ad hoc reports, which will be encouraged under the new regime.

Clause 211 Investigation and information powers

103. Clause 211 enables the IPC to carry out investigations, inspections and audits as they consider appropriate for the purposes of the fulfilling their functions, and ensures that the Investigatory Powers Commissioner has access to the information necessary to carry out the Commissioner's oversight role effectively.

104. The clause does this by requiring people, including members of public authorities, telecommunications operators and those to whom warrants are addressed, to provide the Judicial Commissioners with all the information, documents and access to technical systems that the Commissioner may need for the purposes of exercising their functions. They must also provide the Commissioner, or anyone assisting the Commissioner with the performance of their statutory functions, with any assistance they may need. The persons to whom these obligations apply include public authorities and also telecommunications and postal operators who are subject to obligations under this Bill.

105. The three existing oversight commissioners have undertaken extensive retrospective audit of investigatory powers, and it is hoped that these powers will be used by the Investigatory Powers Commissioner to ensure this continues. It is expected that the IPC will also use these powers proactively, to investigate any public authority's use of investigatory powers where they believe these need scrutiny.

Clause 214 Power to modify functions

106. Clause 214 confers on the Secretary of State power to modify the functions of the Investigatory Powers Commissioner or other Judicial Commissioners, by Regulation.

107. This would require a draft to be laid and approved by a resolution of each House of Parliament. The ability to change the function allows a level of flexibility about the role of the Commissioner to ensure that it can be modified and adapted to fit with the work that needs to be overseen. The scope of this power is limited in that it cannot be used to modify any function to approve, quash or cancel an authorisation or warrant or the variation or renewal of an authorisation or warrant. There is nothing, however, to restrict the Secretary of State from modifying functions in respect of the Commissioner's responsibility for devolved matters such as equipment interference.

Clause 215 Abolition of existing oversight bodies

108. Clause 215 repeals a number of provisions in pre-existing investigatory powers regimes for the purpose of abolishing the offices of the existing oversight Commissioners. This includes the abolition of the Chief Surveillance Commissioner and Assistant Surveillance Commissioners, including those appointed by the Scottish Ministers for the purposes of overseeing the Regulation of Investigatory Powers (Scotland) Act 2000.

Clause 217 Right of appeal from Tribunal

109. Currently those who wish to bring an appeal against a decision of the Investigatory Powers Tribunal must bring it to the European Court of Human Rights. This clause amends RIPA to introduce a domestic right of appeal against final or interim decisions and determinations of the Investigatory Powers Tribunal, on a point of law. Leave to appeal can be granted by the IPT or the appellate court where it is considered that the appeal would raise an important point of principle or practice, or there is another compelling reason to grant leave to appeal, such as being in the wider public interest.

110. The court which will hear the appeal will be either the Court of Appeal in England and Wales, the Court of Session in Scotland or the Court of Appeal in Northern Ireland. It is for the Tribunal to determine which of these courts is most appropriate, having regard to regulations made by the Secretary of State which will detail the criteria to be considered by the Investigatory Powers Tribunal in making this determination.

111. Where there is a point of law, the decision on whether to grant permission to appeal will be taken by the Investigatory Powers Tribunal in the first instance. If the Tribunal refuses to grant permission to appeal, this decision may be reviewed by the appeal court.

112. The clause also amends RIPA to clarify that the Investigatory Powers Tribunal must notify the respondent, person complained about or any public authority to whom a reference relates when they have reached a decision or determination, including decisions on permission to appeal, except where they are prevented from doing so by the procedure rules governing the IPT.This is an extension of the position under RIPA, where only the complainant is required to be informed.

113. This new domestic right of appeal will apply to conduct authorised by devolved legislation such as RIP(S)A. The Scottish Parliament previously gave its consent, during the passage of RIPA, to the IPT having jurisdiction to hear such matters, on the basis that it would enable cases to be dealt with by a specialist body who could build up expertise that may not be possible if a tribunal were only to hear cases arising in Scotland. It is considered that it will increase public confidence that those using investigatory powers are held to account. Further, the ability to appeal against an interim decision is intended to prevent time and resource being wasted by a requirement to proceed to a full decision before an appeal can be taken.

Clause 218 Functions of Tribunal in relation to this Act

114. Clause 218 amends sections 65, 67 and 68 of RIPA, in order to update the functions of the Investigatory Powers Tribunal as a consequence of the Bill, to give the Tribunal jurisdiction over this new investigatory powers framework. This will include jurisdiction over matters which fall within devolved competence, for example equipment

interference warrants granted under Part 5 of the Bill and complaints arising out of conduct authorised by the Scottish Ministers. Since the Investigatory Powers Tribunal was established, it has had jurisdiction over devolved areas. As previously indicated, this was as a result of consent being given by the Scottish Parliament. As such, this does not represent a change in policy intention, it simply ensures the Tribunal will be able to operate effectively following the introduction of a new statutory framework for investigatory powers.

PART 9 MISCELLANEOUS AND GENERAL PROVISIONS

Clause 221 Combination of warrants and authorisations

SCHEDULE 8 COMBINATION OF WARRANTS AND AUTHORISATIONS

115. Clause 221 gives effect to Schedule 8 of the Bill which allows for warrants authorising different powers to be combined in the same instrument.

116. It is possible that a single operation or investigation will involve conduct that requires to be authorised under different warrants or authorisations. Whilst there is no obligation to apply for a combination of warrants if the applicant considers individual warrants would be more operationally efficient, this schedule enables a single application to be made for the authorisations and warrants required.

117. The Secretary of State has powers to issue combined warrants, as do the Scottish Ministers. The Scottish Ministers' powers under Schedule 8 enable them to issue a warrant to intelligence services that combines a targeted interception warrant which they have powers to issue, with a targeted examination warrant, a targeted equipment interference warrant, a targeted examination warrant or warrants under section 5 of the Intelligence Services Act 1994. The caveat to this is that they must be warrants which the Scottish Ministers have powers to issue under the Bill if they were applied for individually.

118. The Scottish Ministers also have powers to issue a combination of warrants on an application by or on behalf of the chief constable of the Police Service of Scotland, including RIP(S)A authorisations, or to other intercepting authorities, including the Director General of the NCA. This power allows a targeted interception warrant to be issued with a targeted equipment interference warrant, authorisations under section 93 of the Police Act 1997 and section 28 and 32 of RIPA. In addition, they can issue a targeted equipment interference in combination with any warrant which a law enforcement chief has power to authorise, this includes under RIP(S)A.

119. Schedule 8 additionally confers powers on the Scottish Ministers to issue a warrant which combines those detailed above with a targeted equipment interference warrant.

120. Combined warrants will still contain all the information that would be required should the constituent parts be applied for individually. The protections and safeguards that apply to material gathered under a combination warrant will apply as they would to the constituent parts. Persons can only apply for combined warrants if they could have applied for the component parts individually. Further detailed rules regulating procedure for combined warrants is contained in schedule 8.

121. The power to issue a combined warrant is a new power which alters the executive competence of Scottish Ministers. It has the advantage of avoiding unnecessary

duplication. It also means that the person making the decision to issue the warrant, and the Judicial Commissioner reviewing that decision, has sight of all of the conduct that is being authorised.

Clause 242 and SCHEDULE 10

122. Clause 242 gives effect to Schedule 10, which makes minor and consequential amendments to a number of enactments in order to give effect to the Bill.

123. The schedule makes amendments in consequence of the Bill in the following main areas; lawful interception of communications, acquisition of communications data, retention of communications data, equipment interference and in relation to Judicial Commissioners. It also makes some general amendments. Consequential amendments are made to a wide range of enactments and although predominantly relating to reserved matters, some of these provisions would require the consent of the Scottish Parliament. In particular provisions relating to judicial oversight and to equipment interference will require consent. The schedule also amends legislation made by the Scottish Parliament, including Marine (Scotland) Act 2010 and the Public Finance and Accountability (Scotland) Act 2000 to replace reference to RIPA with reference to the Investigatory Powers Bill for the purposes of regulating data sharing and the disclosure of information.

124. Part 5 of Schedule 10 amends section 24 of RIP(S)A, to confer a power on the Scottish Ministers to issue and revise codes of practice in respect of equipment interference under the Bill, so far as it relates to Police Scotland or PIRC. Any such code of practice issued by the Scottish Minsters would require to be laid in draft in the Scottish Parliament under section 24(4) of RIP(S)A.

125. Additionally, Part 6 of the Schedule makes a number of amendments in consequence of the existing Commissioners being replaced by the Investigatory Powers Commissioner and the Judicial Commissioners. This is in addition to the amendments made by clause 209 and provides that the Judicial Commissioners will have the same powers and functions as the Commissioners that they are replacing and requires direct amendment to be made to RIP(S)A and the Police Act 1997.

Clause 243 Commencement, extent and short title

126. Clause 243 sets out the extent provisions and in doing so provides that the Bill extends to Scotland.

This Legislative Consent Memorandum relates to the Investigatory Powers Bill (UK legislation) and was lodged with the Scottish Parliament on 23 June 2016

INVESTIGATORY POWERS BILL – LEGISLATIVE CONSENT MEMORANDUM

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