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Public Bill Committee

CRIMINAL FINANCES BILL

Third Sitting

Thursday 17 November 2016

(Morning)

CONTENTS

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Monday 21 November 2016

The Committee consisted of the following Members:

Chairs: Mrs Anne Main, †Sir Alan Meale

† Arkless, Richard *(Dumfries and Galloway)* (SNP)
† Atkins, Victoria *(Louth and Horncastle)* (Con)
† Dakin, Nic *(Scunthorpe)* (Lab)
Davies, Byron *(Gower)* (Con)
Dowd, Peter *(Bootle)* (Lab)
† Drummond, Mrs Flick *(Portsmouth South)* (Con)
† Elphicke, Charlie *(Dover)* (Con)
† Ghani, Nusrat *(Wealden)* (Con)
† Griffiths, Andrew *(Lord Commissioner of Her Majesty's Treasury)*
† Harris, Carolyn *(Swansea East)* (Lab)
† Hunt, Tristram *(Stoke-on-Trent Central)* (Lab)
† Huq, Dr Rupa *(Ealing Central and Acton)* (Lab)
† Mann, Scott *(North Cornwall)* (Con)
† Mullin, Roger *(Kirkcaldy and Cowdenbeath)* (SNP)
Sandbach, Antoinette *(Eddisbury)* (Con)
Vaz, Keith *(Leicester East)* (Lab)
† Wallace, Mr Ben *(Minister for Security)*
† Wood, Mike *(Dudley South)* (Con)

Colin Lee, Ben Williams, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 17 November 2016

(Morning)

[Sir Alan Meale *in the Chair*]

Criminal Finances Bill

11.30 am

The Chair: We now begin line-by-line consideration of the Bill. Before we begin, would everybody who has a mobile phone switch it off so we can get on with the business of the day? Although it is a bit cold at the moment, hon. Members may remove their jackets if they wish to.

The selection list for today's sitting is available in the room, and shows how selected amendments have been grouped together for debate. Amendments grouped together are generally about the same or similar issues. A Member who has put their name to the lead amendment in a group is called first. Other Members are then free to catch my eye to speak on all or any of the amendments in that group. A Member may speak more than once in a single debate, and I will work on the assumption that the Minister wishes the Committee to reach a decision on all Government amendments. Please note that decisions on amendments do not take place in the order in which they are debated, but in the order in which they appear on the amendment paper. In other words, debate occurs according to the selection and grouping list, and decisions are taken when we come to the clause that that amendment affects. I hope that explanation is helpful.

The Bill contains 51 clauses, which is a substantial number considering that we only have today and two days next week to discuss it. I would appreciate it if Members could be concise and full in their presentation as possible, so the examination can be as full as possible. After all, it is Members' time and the House's time. I will use my discretion on whether to allow separate stand part debates on individual clauses and schedules following the debate on relevant amendments.

Clause 1

Unexplained wealth orders: England and Wales and Northern Ireland

Dr Rupa Huq (Ealing Central and Acton) (Lab): I beg to move amendment 1, in clause 1, page 1, line 17, after "sought" insert—

"(and the property specified may include property located outside the United Kingdom)"

This amendment would ensure that unexplained wealth ordered may be issued for property located outside the UK.

It is a pleasure to serve under your chairmanship, Sir Alan.

In summary, we welcome the Bill. The unexplained wealth orders are a good thing, but amendment 1 is an example of where we think the measures could go a little bit further and be further improved. The amendment would provide that property located outside the UK could be utilised in an unexplained wealth order brought before an individual. It is meant to be a technical rather than political amendment. We are happy to work with the Government, but I think we can all drink to this amendment regardless of political affiliation.

The amendment would facilitate information sharing across different jurisdictions and would provide the United Kingdom with vital information regarding illicit financial activity that has taken place elsewhere across the globe. Reports by both the Select Committee on Home Affairs and the Public Accounts Committee hinted at this, and there is even a line in the Government's action plan for anti-money laundering and counter-terrorism finance from April that says we should increase

"the international reach of law enforcement agencies and international information sharing to tackle money laundering and terrorist financing threats."

Therefore, if an individual provides false and/or misleading information in relation to an unexplained wealth order, they can be prosecuted, but we would widen the scope of the property that comes under such an order so that we can question those who might be resident in the UK regarding their suspected illicit activities regardless of where their wealth is. As we know, people travel and cross borders, so we might not be able to recover wealth from that person. That throws up issues around cross-jurisdictional co-operation, and it is one area where confiscation orders kept hitting a brick wall and coming to grief.

We can glean intelligence on behaviour abroad and share it with other states, which would act as a disincentive to come to the UK to corrupt politically exposed persons who may contaminate our economy with their illicit wealth. If criminals know that on entering the UK, there is a process and our enforcement agencies can compel them to talk about their suspect wealth or property regardless of where they have placed it, they will think twice about coming here. We want to restrict their ability to move. That would send out a powerful message that the UK is not a soft touch when it comes to dodgy financial dealings, which I think we can all agree would be a good thing.

The current threshold at which a UWO can be served under the Bill is £100,000, but what if a criminal or suspected criminal has property of £50,000 here in the UK and has moved £50,000 of property elsewhere? Our enforcement agencies have concluded that, on the balance of probability, both combined are beyond the means of the person in question. I would like to think that the Bill already covers that, but we have tabled this probing amendment to confirm it. We are talking about portable wealth, which extends to jewellery and paintings, which have ultimate portability, because someone could leg it to a foreign country with them. My conclusion is that we would be unable to issue an unexplained wealth order if property is split between two places. I suspect I am right but am happy to be proved wrong.

The scenario I mentioned raises another question. If an individual acquires property of a value that reaches the unexplained wealth order threshold of £100,000 and manages to transfer it out of the UK, it is only after they have done so that our enforcement agencies become aware of it. Does that mean that an unexplained wealth order cannot be issued to that person because the property is now outside the UK? I want some clarification from the Minister on those things. I imagine that the answer is "Yes, we cannot do that", but if the answer is,

"No, we can do it", it would be even better, because Opposition Members want unexplained wealth orders to be a success.

Finally, the amendment would introduce an element of operational efficacy. If all our enforcement agencies were aware that they were able to factor in stuff that is located outside the UK properly from the beginning of their investigations, it could contribute to our agencies being quicker off the mark. They could sound a warning alarm bell. They would be oriented from the get-go to cast their net as widely as they can to hold criminals to account. That is largely what we seek to do through the amendment.

The Minister for Security (Mr Ben Wallace): It is a pleasure to serve under your chairmanship, Sir Alan. As we begin the line-by-line scrutiny, it might be useful if I give the Committee a brief outline of how unexplained wealth orders will work.

In short, an unexplained wealth order is a civil investigatory tool. It is a court order that requires a person to provide information that shows they obtained identified property legitimately. If the person provides information and responds to an unexplained wealth order, the enforcement authority can then decide whether to investigate further, take recovery action under the Proceeds of Crime Act 2002 or take no further action. If the person does not comply with an unexplained wealth order, either by not responding or not responding fully to the terms of the order, the property identified in the order is presumed to be recoverable under any subsequent civil recovery proceedings. It is important to note that the unexplained wealth order does not in itself lead directly to recovery action. It is designed to be an investigatory power and a precursor to civil recovery action.

An unexplained wealth order is an order made against a person, requiring them to provide information to explain how they obtained the property. It is important for all of us to understand this crucial factor: the unexplained wealth order is made against a person, not against property, and does not itself result in the recovery of that property. That is the vital point in relation to amendment 1.

In the Proceeds of Crime Act, it is clear that, if an order is to be made against a person or a property overseas, it must be explicitly stated on the face of the legislation. For example, section 282A of POCA provides that a civil recovery order can be made against property overseas if there is a connection with the UK. Section 375A of POCA also provides that an evidential request can be made overseas in constructing a case for civil recovery.

The same is already the case with unexplained wealth orders. New section 262A(2)(b) in clause 1 of the Bill provides that the person on whom the order will be served must be named, and it expressly provides that

"the person specified may include a person outside the United Kingdom".

The unexplained wealth order therefore has global effect. The definition of "property" in the POCA already encompasses all property, whether it is situated at home or abroad. An unexplained wealth order can therefore list any property, wherever it is in the world. The court has an associated power to make an interim freezing order in respect of that property.

Clause 3 inserts a provision into POCA that an enforcement authority can request assistance from an overseas state concerning the freezing of property overseas that is subject to an unexplained wealth order. I therefore assure the hon. Lady that unexplained wealth orders will be effective against property anywhere in the world. Accordingly, I invite her to withdraw her amendment.

Dr Huq: I thank the Minister for his reassurance. It was a probing technical amendment to clear up that point, and he has sufficiently clarified it, to my mind. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Dr Huq: I beg to move amendment 2, in clause 1, page 2, line 31, at end insert—

"(8) Persons who are members of an enforcement authority must co-operate with other persons who are members of other enforcement authorities for the purposes of making application to the High Court for an unexplained wealth order.

(9) In particular, the duty imposed on a person by subsection (8) requires a person—

(a) to engage constructively, actively and on an ongoing basis in any process leading to an application being made for an unexplained wealth order, and

(b) to have regard to activities of a person within subsection (8) so far as they are relevant to the making of an application for an unexplained wealth order."

This amendment would require enforcement authorities to co-operate when making applications for unexplained wealth orders.

The Chair: With this it will be convenient to discuss new clause 12—*Unexplained wealth orders: duty to prevent corruption*—

"In Chapter 1 of Part 8 of the Proceeds of Crime Act 2002 (investigations: introduction), after section 342, insert the following—

'342A Unexplained wealth orders: duty to prevent corruption

(1) A relevant authority must exercise its functions in relation to unexplained wealth orders in the way which it considers is best calculated to contribute to the prevention of corruption.

(2) For the purposes of this section it is immaterial whether corruption is being prevented in the United Kingdom or elsewhere.

(3) In considering under subsection (1) the way which is best calculated to contribute to the prevention of corruption a relevant authority must have regard to any guidance given to it by—

(a) in the case of the National Crime Agency, the Secretary of State,

(b) in the case of the Director of Public Prosecutions or the Director of the Serious Fraud Office, the Attorney General,

(c) in the case of Her Majesty's Revenue and Customs or the Financial Conduct Authority, the Chancellor of the Exchequer, and

(d) in the case of the Director of Public Prosecutions for Northern Ireland, the Advocate General for Northern Ireland.'"

Dr Huq: We heard in the evidence session on Tuesday from many different bodies, including Her Majesty's Revenue and Customs, the Serious Fraud Office, and the National Crime Agency. One problem with the existing confiscation orders is that the buck seems to be

[Dr Huq]

passed between many of them, and there is confusion about who the lead investigator is. The amendment would introduce a duty on all those agencies to co-operate, even before it got as far as the Crown Prosecution Service and Her Majesty's Courts and Tribunals Service. Those people feel stymied, and they cannot investigate—it does not get that far because of squabbling over where the buck stops. The amendment seeks to address the lack of co-operation among UK law enforcement agencies that devolve responsibility for investigating cases.

There is an example that people may know about. It is the quite famous case of Sergei Magnitsky, the Russian who was murdered, and who uncovered what had been going on at Hermitage Capital Management. Bill Browder, an American, has spoken to an all-party parliamentary group here and is quite vocal on these issues. The murdered chap blew the whistle on $230 million in Russian Government frauds. Hermitage Capital Management discovered that, and there is a timeline on which it sought every possible avenue to open a money laundering investigation in the UK. Every single UK enforcement agency refused to open an investigation, stating that it was not its responsibility to investigate.

In 2010, Hermitage filed a complaint with the Metropolitan Police Service, highlighting the UK nexus of criminal activity. The MPS replied that the responsibility for investigating the fraud did not lie with the MPS. Hermitage then attempted to take legal action through the Serious Organised Crime Agency, requesting that an investigation begin in connection with the $230 million in fraud. SOCA replied that it was not the appropriate body for the job. In 2012, Hermitage filed another complaint with the Serious Fraud Office, which gave evidence to us on Tuesday, to highlight those financial crimes, which occurred in a UK jurisdiction. The SFO refused to do anything. In its words,

"matters do not fall within the offences that the SFO is permitted to investigate."

In 2013, Hermitage filed a complaint with HMRC seeking a review of the company formation agent that facilitated the money laundering in the UK. HMRC answered that confidentiality precluded an investigation. In 2015, Hermitage filed a complaint with the NCA, which also gave evidence to us on Tuesday, outlining the flow of money—the fraudulent $230 million—to the UK. The NCA replied that it was a domestic criminal investigation relating to money laundering in the UK and therefore that the NCA was not the most effective way forward.

The amendment would create a duty for UK authorities to co-operate and take constructive action. We used to talk about joined-up thinking. That is essentially what the amendment is with regard to unexplained wealth orders. It would strengthen the Bill and ensure that provisions are not rendered ineffective because everyone says, "It is not my responsibility."

11.45 am

Tristram Hunt (Stoke-on-Trent Central) (Lab): New clause 12 seeks to add to amendment 2 and put a duty to prevent corruption in the Bill, to strengthen the hand of the Minister and the agencies involved. As we have heard, the UK is still considered a global haven for money laundering.

According to a Home Affairs Committee report on the proceeds of crime, it is estimated that more than £100 billion is laundered through London's financial systems every year. Despite more than 380,000 suspicious activity reports being filed each year, the National Crime Agency currently has only 27 investigations open, with approximately £170 million frozen. By contrast, in Switzerland, some £5 billion-worth of Swiss francs are currently frozen.

The new clause seeks to ramp up the responsibilities on the National Crime Agency, public prosecutions and HMRC to make it a duty to prevent corruption, to ensure that we protect London's reputation and that our financial, legal and accountancy services remain among the best in the world.

Mr Wallace: We are all in agreement that law enforcement agencies should do more to co-operate and talk to each other before embarking on action against a person or property, and that they should ensure that they are acting to combat corruption in all its forms. In that sense, the implication of the amendments is entirely sensible.

As the hon. Lady set out, amendment 2 would impose a duty on operational agencies to co-operate prior to applying an unexplained wealth order. Such co-operation would have several benefits. Most obviously, it would avoid duplication of the same effort against an individual and their property. It would avoid one agency trampling over another that had embarked on a similar line of inquiry. Indeed, another agency may well have an explanation of the wealth. An obvious example is that HMRC can be aware of complex legal tax arrangements that an individual may have.

I am entirely supportive of the spirit of the hon. Lady's amendment. I would go further and say that liaison should not be limited to those bodies that can apply for unexplained wealth orders and take civil recovery action; it should happen between all law enforcement agencies and prosecution authorities. I am pleased to reassure her that that already happens. Law enforcement agencies, as a matter of course, check various law enforcement databases to see whether there is a flag against a particular person or property that is of interest to them. They can then liaise accordingly. In addition, unexplained wealth orders will be subject to the Proceeds of Crime Act investigation code of practice, which will be amended and subject to debate in both Houses before coming into force. I can assure the Committee that this issue will be addressed in that code.

The Proceeds of Crime Act is not the only legislation where a conflict between law enforcement agencies could occur relating to the same person or property. Several police forces may have an interest in the same criminal. Those conflicts can be resolved without the need for primary legislation. This is a matter for internal discussion on tasking and co-ordinating, which the code of practice will achieve.

New clause 12 would impose a duty on agencies to prevent corruption when considering the use of unexplained wealth orders. It is my hope that the mere existence of these orders in UK law will in itself create a deterrent to those who seek to place their corrupt wealth in the UK.

We continue our efforts to tackle corruption in all its forms. This year, we hosted the London anti-corruption summit, bringing together world leaders, business and

civil society to agree a historic package of actions to expose, punish and drive out corruption in all walks of life. We will continue to implement UK commitments from the summit and encourage others to do likewise.

Indeed, the limb of unexplained wealth orders that allows their application to non-EEA foreign officials and politicians reflects the real concerns about those involved in corruption overseas who then launder the proceeds of their criminality in the UK. I hope the hon. Member for Stoke-on-Trent Central can see that the power will be used to tackle corruption, but unexplained wealth orders go further: they will also apply to cases in which there is a suspicion of involvement in serious crime, not necessarily corruption. The proposed duty could risk the deprioritisation of other crime types, which we agree that the NCA, the Crown Prosecution Service, HMRC and the Financial Conduct Authority could be tackling. They will of course pursue those guilty of corruption, but I hope we agree that our law enforcement agencies are best placed to prioritise their resources to pursue a whole range of criminals.

The Secretary of State and Attorney General already issue statutory guidance on the use of powers under POCA, including the use of civil recovery powers. That guidance will be extended to the new bodies granted civil recovery powers in the Bill. HMRC and the FCA intend to reissue the guidance next year, when we will be able to address both issues. I hope that the hon. Members for Ealing Central and Acton and for Stoke-on-Trent Central are reassured that the issues are already accounted for. I invite her to withdraw the amendment.

Tristram Hunt: I am happy for the amendment to be withdrawn, but it would be nice to hear something more on Report. I take the point about the precision of focusing on corruption when other serious criminal activities are involved, but some language on a duty to prevent corruption would be good. The important element is the duty; I hope that the wording on corruption and other serious criminal activity might be added to that.

Dr Huq: If I understood correctly, the Minister said that no primary legislation is required to do what the amendment would do, and that there are already flags and a joined-up process. Are we confident that something like the Magnitsky case, with all the stuff that happened—everyone closing the door to Bill Browder, year upon year—would not happen again with unexplained wealth orders?

Mr Wallace: On the Magnitsky case, it would be inappropriate to comment on a case that could be under continuing investigation. The main point is that our law enforcement agencies have operational independence. It is for them to decide the priorities for how they spend their resource and work together. We do an awful lot, without primary legislation, to ensure that they work together. They liaise through regional bodies such as the regional organised crime units, and through the national co-ordinators and everything else.

Our view is that primary legislation is unnecessary because, whether it is through the code of practice, which will be published alongside the Bill, or in the operational day-to-day running of the organisations, joint working is part of their remit and, effectively, their duty. We do not think it is necessary to put anything in the Bill because we fear that that could pervert their priorities and interfere with their operational independence.

Dr Huq: I thank the Minister for that explanation. We will leave it where it is. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Tristram Hunt: I beg to move amendment 59, in clause 1, page 3, leave out line 28.

This amendment would allow unexplained wealth orders to be issued to politically exposed persons in the United Kingdom and EEA States.

The Chair: With this it will be convenient to discuss amendment 60, in clause 4, page 15, leave out line 25.

This amendment has the same effect as amendment 59 but applies to unexplained wealth orders issued in Scotland.

Tristram Hunt: The amendment is explained by the explanatory statement. You will know, Sir Alan, that in 2014 Slovenia's former Prime Minister, Janez Janša, was found guilty of taking bribes during the course of a €278 million arms deal with a Finnish state-owned contractor. Politically exposed persons were also among the 12 people referred to a criminal court in Cyprus earlier this year to stand trial for corruption and bribery charges in connection with a waste overcharging scam that is thought to have involved more than €30 million.

Although it may be reasonable to expect that European economic area countries would be able to undertake criminal investigations against politically exposed persons in their countries if there were sufficient evidence to suggest that they had been involved in corruption, that might not necessarily be the case. For example, there is still blanket immunity from criminal prosecution for parliamentarians in Hungary, despite it being an EEA country. The amendment would extend the Government's welcome reform of unexplained wealth orders for those outside EEA states to include those within EEA states. We know that what we are dealing with does not simply stop at the continent of Europe or the EEA states. The amendment seeks to apply some degree of equality of this legislation to the EEA states.

Amendment 60 would have the same effect as amendment 59, but would apply to unexplained wealth orders issued in Scotland as well.

Mr Wallace: I thank the hon. Gentleman for his comments. We had a useful meeting yesterday about some of these issues. He will know that we welcome these amendments as they give us the opportunity to discuss why we have effectively a different regime between politically exposed persons outside the EEA and ourselves. The amendment would cover us sitting in this room—all PEPs in the EEA. That is important because, if any of us were to face an unexplained wealth order, we would want to know that it had been issued on the basis of evidence linking us to serious crime; we would not want to give our authorities the ability just to slap one on without any evidential threshold.

We have confidence that, within the EEA—the hon. Gentleman used the example of a country prosecuting its own former Prime Minister—there are the tools to find the evidence and the ability to work with fellow law

[Mr Wallace]

enforcement agencies around Europe to meet the evidential threshold. We cannot discriminate within the EEA; we cannot say, "This applies to Slovenia but it doesn't apply to France". Once we go into that area, we cannot discriminate between the different states. He picked out Hungary, where there is immunity for parliamentarians. I think there are other countries—even Italy; I do not know. If I remember my Berlusconi history, I think there were lots of issues about immunity in that country. That is the real issue. We have confidence in our neighbours and friends in Europe that they have the capacity to build the evidence and therefore to build a case for an unexplained wealth order.

Charlie Elphicke (Dover) (Con): My hon. Friend is making a powerful argument. Is he aware how many Members of Parliament have problems just opening a bank account because of over-eager regulators using the PEPs regulations? With this amendment, would there not be a risk that over-eager agencies would be interested in issuing these things to MPs, which is not an ideal situation? We ought to have the evidential threshold set out in clause 1(4)(b).

Mr Wallace: I am grateful to my hon. Friend for his intervention. He makes the clear point that we want to be confident that, when we are held to account, it is based on evidence gathered by our resourced law enforcement agencies. The decision on PEPs outside the EEA reflects real operational challenges that we and organisations such as the National Crime Agency have had in gathering evidence against people in some countries where there may be no properly functioning Government or, indeed, where the Government are entirely corrupt and it is very difficult to gather that evidence.

That is the reason we have had to plug that gap in that way. I hope that the hon. Member for Stoke-on-Trent Central understands that that is why we have a different approach. I urge him not to push his amendment to a vote.

Tristram Hunt: I thank the Minister for his comprehensive response, including on the evidential threshold, and the hon. Member for Dover for his point concerning the energy with which some financial institutions in the UK have approached PEPs, even—dare I say it?—on car insurance.

On the basis of the Minister's argument, I am willing to withdraw the amendment, but I fear that this may be returned to in the aftermath of our exiting the European Union.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

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

New Clause 11—*Unexplained wealth orders: reporting requirements*—

"In Chapter 2 of Part 8 of the Proceeds of Crime Act 2002, after section 362H insert—

'362HA Unexplained wealth orders: reporting requirements

(1) The Secretary of State must make an annual report to Parliament setting out the number of unexplained wealth orders applied for by enforcement agencies under section 362A of this Act (and by Scottish Ministers under section 396A of this Act) during the previous 12 month period.

(2) The report must also provide information in respect of each unexplained wealth order about—

(a) the value of property subject to the order,

(b) whether the respondent was—

(i) a politically exposed person,

(ii) a person involved in serious crime (whether in a part of the United Kingdom or elsewhere)

(c) whether the order was granted,

(d) the value of the property reclaimed as a result of the order.

(3) For the purposes of this section "enforcement agencies" has the same meaning as in subsection 362A(7).'"

This new clause would require the Secretary of State to make an annual report to Parliament about the number of unexplained wealth orders made each year.

New Clause 13—*Unexplained wealth orders: award of costs*—

"In Chapter 2 of Part 8 of the Proceeds of Crime Act 2002, after section 362H insert—

'362HB Unexplained wealth orders: award of cost

(1) Part 44 of the Civil Procedure Rules (General Rules about Costs) shall not apply to applications made by enforcement authorities for—

(a) unexplained wealth orders under section 362A of this Act,

(b) interim freezing orders under section 262I of this Act.

(2) The High Court shall not have power to make awards for costs against enforcement authorities who bring an unsuccessful application for—

(a) unexplained wealth orders under section 362A of this Act,

(b) interim freezing orders under section 262I of this Act.

(3) For the purposes of this section 'enforcement agencies' has the same meaning as in subsection 362A(7).'"

This new clause would prevent the courts from awarding costs against enforcement agencies where they have brought unsuccessful applications for unexplained wealth orders or interim freezing orders.

12 noon

Mr Wallace: The previous debates have given us the opportunity to begin considering clause 1, which provides for the creation of unexplained wealth orders. Those are powerful new tools, and I welcome the cross-party support for them as well as the strong endorsement of those in civil society from whom we heard earlier this week.

The London anti-corruption summit in May galvanised the international response to corruption. Domestically, we must tackle grand corruption and protect the integrity of the UK's financial sector. Unexplained wealth orders will help us to do that. As we have discussed, unexplained wealth orders are essentially an investigatory tool that will help to enable civil recovery of the proceeds of crime under existing powers in the Proceeds of Crime Act 2002. Civil recovery is a powerful tool, because it can be used where criminal prosecution followed by a confiscation order is impossible, perhaps because a person is abroad and cannot be extradited or there is not specific evidence linking an individual to a crime, but there is enough evidence to show that property is linked to the wealth generated from a crime.

Between April 2015 and March 2016, £6.5 million was recovered under those powers, but there is still a gap where law enforcement agencies cannot satisfy the necessary evidential burden. Unexplained wealth orders will flush out evidence to enable enforcement agencies to take forward recovery action under POCA. Such an order will require a person to provide information that shows that they obtained identified property legitimately. If they do so, agencies can then decide whether to investigate further, take civil recovery action or take no further action. If the person does not comply with the order, the property identified in the order is presumed to be recoverable under any subsequent civil recovery proceedings.

I stress that the unexplained wealth order is designed to be an investigative power and a precursor to civil action, not an end in itself. I accept that there is significant interest in the way that such orders will operate, because they involve the reversal of the burden of proof. That is why they are subject to stringent safeguards. The value of the property subject to an unexplained wealth order must be greater than £100,000, a much higher threshold than for normal civil recovery, where action cannot be taken against property worth less than £10,000.

Nic Dakin (Scunthorpe) (Lab): I thank the Minister for being so complete in his arguments. Can he explain why £100,000 was chosen? I note from the evidence that we have received that no one had any objection to that figure, but I am interested in why it was chosen.

Mr Wallace: The hon. Gentleman poses an interesting question. Unexplained wealth orders are linked to serious and organised crime. Although, inevitably, some serious criminals make below £100,000, that was thought to be a useful threshold, and that is where we should look as a starting point. There will be concerns among Members that Aunt Bessie's £25,000 appearing in someone's bank account may trigger something like an unexplained wealth order, and we wanted the wealth threshold to be significant enough to ensure that there was a link between serious crime and the recovery of assets being triggered. I know that some people wanted that threshold to be higher than £100,000 and some people wanted it to be lower. As the Minister, my job is to try to get it in the right place, but I would welcome his suggestions on whether it should be, say, £59,000 or £105,000. It could be like "Bullseye".

Carolyn Harris (Swansea East) (Lab): It is a pleasure to serve under your chairmanship, Sir Alan. Is there a mechanism for recognising regular, ongoing transactions that are close to but always under £100,000? Will that trigger any red flashing warning lights that there may be illegal activity?

Mr Wallace: The cumulative wealth would of course build up. I am happy to be persuaded by the Committee about the threshold. The reality is that, given the vast number of people involved with organised crime groups across the threat picture and the staggering wealth of some of them, we will be lucky to get to £100,000. We will be going for people worth £20 million, £30 million or £40 million and all the way down. It would chill people's bones to realise how some of the people who live among us make their money out of crime and launder that money. The bottom line is the number of those individuals. That is why we chose £100,000, but hon. Members may want to make a persuasive argument otherwise. Cumulative wealth is certainly an issue. I was in the north-east of England the other day and met an individual who is unemployed but has well over £400,000 in their bank account. I am looking forward to knocking on that person's door.

Tristram Hunt: I had a terrible fear about the rule of law for a minute there.

We tabled new clause 11 to help the Minister. It would require the Secretary of State to make an annual report to Parliament about the number of unexplained wealth orders made each year. It is really about helping to drive culture change through the Government, the Departments and the agencies involved in this excellent set of reforms, and ensuring that Parliament is kept up to date with how the agencies and Ministers are approaching it. There is nothing quite like a presentation to Parliament —a ministerial statement, written or oral—to concentrate attention in Departments on the importance and significance of a particular piece of legislation. The new clause would ensure that the Bill had the bureaucracy and political support behind it.

Similarly, new clause 13 would help to get the wheels in motion for unexplained wealth orders and investigatory powers under the Proceeds of Crime Act 2002. It seeks to prevent the courts from awarding costs against enforcement agencies if their applications for unexplained wealth orders or interim freezing orders are unsuccessful. It is about ensuring that a culture of risk-aversion does not develop in our agencies. They are often fearful, in these straitened budgetary circumstances and under the full glare of the press, about pursuing the kind of individuals the Minister spoke about, for fear of the financial implications if they are unsuccessful and taken to court. Colleagues will remember that the Serious Fraud Office's botched case against the entrepreneur Vincent Tchenguiz will settle for £3 million plus costs, which is a fraction of what his lawyer originally demanded, so these can be quite costly enterprises.

We would not want to hand down these new powers in statute to those who direct our investigatory agencies, only for a culture of not pursuing those individuals to develop in those organisations. New clause 11 would ensure that Parliament had a voice and oversight over the process, and new clause 13 would ensure that a culture of risk-aversion does not develop in the agencies that are to be granted these new powers.

Mr Wallace: I will start with the good news: I support the spirit of new clause 11, which I discussed with the hon. Gentleman yesterday. It is important that we have a measure to ensure the transparency of the operation of unexplained wealth orders. In my recent responses to the reports of the Public Accounts Committee and the Home Affairs Committee on asset recovery—both reports were excellent, I have to say—I committed to publishing annual statistics on annual recovery performance. After our meeting, I instructed my officials to ensure that those statistics include unexplained wealth orders. I therefore hope there is no need for the hon. Gentleman's new clause—which would create a statutory duty in primary legislation to report—as those figures will be contained in an annual bulletin.

[Mr Wallace]

New clause 13 relates to the risk that potential financial liability may make law enforcement agencies reluctant to apply for unexplained wealth orders. It seeks to ensure that the authorities are not liable following an unsuccessful unexplained wealth order application. I was pleased to be able to discuss that issue with the hon. Gentleman yesterday, and I am advised that the existing civil procedure rules, which would extend to cover unexplained wealth orders, mean that by default an application for such an order would take place in private. I am happy to share those civil procedure rules with the hon. Gentleman to see whether he thinks that is enough. That is also the case for any subsequent legal stages. On that basis, if an application is unsuccessful, or if the individual was latterly able to provide the court with an acceptable explanation of their wealth, it would not generally be public knowledge. There would therefore be no undue reputational damage to the individual concerned.

More generally, whatever the peculiarities relating to unexplained wealth orders, it remains our view that any awards of costs should follow the same rules that apply in other, similar matters. The general principle that the loser pays is a well established position. Changing it could lead to unfortunate unintended consequences in relation to other powers and procedures. In any case, the judge has a general discretion to award costs that are proportionate. It is not a matter of one side producing a figure and the judge awarding that without any consideration of the case; we should maintain a consistent approach.

On that basis, although I share the concern about impinging on our agencies' ability to pursue crimes, it is not appropriate to indemnify them in this context. If they have made a mistake and applied for an unexplained wealth order against the wrong person, risking someone's reputation, it is in my view appropriate for them to take responsibility. If we indemnify them, a mistake will be confused with normal investigative procedure. I do not think it is the best thing to indemnify them, given that hearings can be held in private, in court procedure. I hope that hon. Members will be satisfied with that.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

Interim freezing orders

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

Mr Wallace: Clause 2 acts in tandem with clause 1 in appropriate cases. It provides that the court can also issue an interim freezing order in relation to property that is subject to an unexplained wealth order. The interim freezing order provides that the property cannot be dealt with in any way while subject to that order. There is no point in putting an unexplained wealth order on something if it can immediately be sold, as we might lose the asset. The freezing order can be used to keep it in place.

It is important to split the obtaining of an unexplained wealth order and the freezing of property into two different matters. Although they will be done at the same hearing, they are different decisions with separate considerations. Some colleagues have asked why we are not providing that property must be frozen in every case. Freezing someone's property is a very invasive measure and may not be necessary in every case. For example, there may be no suspicion that the property will be dissipated—perhaps it is a house that has been owned and occupied by the same person for many years—or that a civil recovery order will be frustrated in some other way.

We would not want unexplained wealth order applications to be rejected solely on the grounds of a technicality related to the freezing decision. It is also important to note that if property is frozen, the court may quite reasonably expect the case to progress at a far quicker pace than if no freezing order was in place. On that last point, I should flag up the fact that, under clause 1, if property is subject to an interim freezing order, the enforcement authority is given a deadline of 60 days to decide the next steps. The freezing order would then be discharged after a further 48 hours.

The expectation is that if an enforcement authority is to go forward with civil recovery action, it will obtain a property freezing order, with many of same provisions and safeguards, to apply immediately to the same property once the interim freezing order is lifted. The property would remain frozen.

An application can be made for the variation or discharge of the freezing order. The court can also provide that property can be released to meet affected persons' reasonable living expenses, their need to carry on their business and their legal expenses. I hope that what I have said reassures hon. Members that the freezing order provisions are properly circumscribed.

Dr Huq: The Minister has given a full and cogent account of why interim freezing orders are being introduced. As a London MP, I know how dirty money in the property market has skewed the entire London property market, meaning that genuine people cannot get a foot on the ladder. It sounds as if sufficient safeguards are being put in place, so we will not stand in the way of the clause.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

External assistance

12.15 pm

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

Mr Wallace: Clause 3 supplements clause 1, on unexplained wealth orders, and clause 2. It provides for a request to be sent to another country to freeze property there that is subject to an unexplained wealth order, which addresses the point that the hon. Member for Ealing Central and Acton made in the debate on her amendment 1 about going after property abroad.

I will make two points for the benefit of the Committee. First, an unexplained wealth order can apply to property outside of the UK. That reflects the operation of existing

civil recovery powers, which can include property overseas if a sufficient connection can be shown with the United Kingdom—for example, where the suspected criminal is British, the criminality is thought to have taken place in this country or there are victims in the UK.

Secondly, there is no international law that expressly provides for the freezing of property in relation to unexplained wealth order-type powers. We will need to liaise closely with other countries in relation what existing international law may underpin such a request, as well as working on obtaining wider recognition of unexplained wealth orders. The clause primarily creates legal certainty that such a request can be made. We also encourage recognition of such requests as part of the wider fight against international crime and corruption.

Dr Huq: Once again, we have no problems with any of that, particularly as it allays some of those concerns about overseas property that were anticipated by amendment 1.

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Clause 4

UNEXPLAINED WEALTH ORDERS: SCOTLAND

Richard Arkless (Dumfries and Galloway) (SNP): I beg to move amendment 57, in clause 4, page 14, line 35, leave out "£100,000" and insert "£50,000".

This amendment reduces the threshold for the value of property that UWO may be issued for in Scotland to £50,000.

It is a pleasure to serve under your chairmanship again, Sir Alan. Essentially, we are asking for the threshold or limit for which an unexplained wealth order can be granted to be reduced, in Scotland only, from £100,000 to £50,000. I cite three main arguments for making that suggestion. We state in the explanatory notes that that would bring the threshold in line with international standards. The level in Ireland is €5,000, while the level in Australia is 100,000 Australian dollars, which equates to around £60,000.

I also refer the Minister to the drastic difference in asset valuations north and south of the border, particularly in property prices. Property prices in London average at £487,000. The unexplained wealth order threshold in England and Wales is set at £100,000, which is just less than a quarter of the average property price. Property prices in Scotland are significantly lower. In my constituency the average is £120,000, while in North Ayrshire they are less than £100,000. Applying the same rationale of a percentage of the overall property price, our threshold should be substantially lower. We suggest that a reasonable level would be £50,000.

I also draw the Minister's attention to the point that reducing the threshold in Scotland, where there are lower asset valuations, is a no-lose situation for the Government. The threshold in itself is not the main benchmark to trigger these unexplained wealth orders; it is the test. The test for Scotland, which we agree with, is set out in proposed new subsection 396B(3) of the Proceeds of Crime Act 2002. That test must be met in every single circumstance, whether the threshold is £5, £10 or £100,000. Even if the limit was set at £500,000, that test must be met. Given the lower asset valuations in Scotland, it is a no-lose situation to bring the threshold down.

I envisage criminals perhaps acquiring properties in a lower-asset valuation jurisdiction and creeping below the £100,000 threshold. We do not want to end up with some criminals getting off the hook and us having to come back to Parliament to try to lower the threshold. We are not suggesting that the threshold is lowered in England and Wales—that is a matter for the Minister and Members for England and Wales. Clearly there are arguments, given the higher property prices, but I suggest, for the reasons I have set out, that it would be sensible to lower the threshold for Scotland. It would be a no-lose situation for the Government to agree to the amendment.

Mr Wallace: I thank the hon. Gentleman for his point. The point to note is that an unexplained wealth order is made against the person and therefore their collective assets, rather than an individual asset. Therefore, whether a successful gangster with a huge amount of money chooses to buy 10 houses where property prices are low—in any part of the United Kingdom—or one house, the order is against that person and catches all their wealth however it is stored.

I want to put the hon. Gentleman at his ease on his view that there is such a difference between Scotland and England. The threat of organised crime is exactly the same. Unfortunately for all of us, there are successful gangsters on both sides of the border who make considerable amounts of money. Therefore, the argument about the £100,000 threshold is that it will catch serious criminals on both sides of the border. We are going to go after their wealth. We must also remember that it is about the person rather than the property. I therefore urge him to withdraw his amendment. If he does so, I am happy to meet him to discuss this issue further—there are other opportunities for that, should he like to do so—and to explore the different options at the threshold.

Richard Arkless: Given that we are almost wholly persuaded by my arguments to reduce the threshold, I am tempted to press the amendment to a vote. However, taking the Minister at his word—I have no reason to disbelieve him—we will be happy to withdraw the amendment if we are assured that those further conversations could happen. We do not see any harm in that, and perhaps we can develop those conversations as we go through the stages of the Bill. Given his gracious assurance, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Mr Wallace: The clause brings us for the first time to devolution and separate court systems in the United Kingdom. Clauses 4 to 6 provide for unexplained wealth orders in Scotland on effectively the same terms as clauses 1 to 3 do for England, Wales and Northern Ireland. As such, much of what we have discussed relating to the substance of unexplained wealth orders applies equally here.

[Mr Wallace]

The reason for separate provisions for Scotland is the different court structure and the separate existing practice and procedure that relates to civil recovery. I assure the Committee that there will be a consistent approach to unexplained wealth orders across the United Kingdom. All the safeguards and other measures will apply in Scotland as they do elsewhere in the United Kingdom.

As we are adding to the criminal law, I will specifically mention the creation of a parallel offence of knowingly or recklessly making a statement that is false or misleading, but I do not think there is anything more to concern the Committee relating to unexplained wealth orders that we have not already discussed.

Dr Huq: We entirely support the Government on the clause.

Richard Arkless: I rise to reiterate our support that the clause stands part of the Bill.

Question put and agreed to.

Clause 4 accordingly ordered to stand part of the Bill.

Clause 5

INTERIM FREEZING ORDERS

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

Mr Wallace: The clause supplements clause 4 in appropriate cases. It provides that the court can also issue an interim freezing order in relation to property subject to an unexplained wealth order in Scotland. It is important to note that it provides in Scotland what clause 2 provides in England, Wales and Northern Ireland. The safeguards and processes are similar. It is also closely modelled on freezing powers that already exist in civil recovery.

Richard Arkless: Although we accept the principal contents of the clause, I reiterate the concerns I made on the Floor of the House on Second Reading. The test to implement a freezing order in proposed new section 396I(2) is that the court

"considers it necessary…for the purposes of avoiding the risk of any recovery order that might subsequently be obtained being frustrated."

Therefore, essentially the judge will have to decide whether there is reasonable suspicion that the alleged criminal will abscond with that property. We are clearly keen to avoid that situation.

How does the Minister see that paragraph being interpreted by the judiciary? Is there a danger that it is over-prohibitive or too onerous? How will it be evidenced? How on earth can a judge determine whether that person is likely to abscond with the property? The fact that they have been subject to an unexplained wealth order might reasonably suggest in itself that that would be enough to compel the profit to be frozen? We are trying to avoid an unexplained wealth order being granted, but then some pest from another jurisdiction wriggles with the freezing order and gets the property out of the country, and the unexplained wealth order will have no effect. We are keen to make sure that does not happen in Scotland or, indeed, in the rest of the UK.

Mr Wallace: The hon. Gentleman makes an interesting point and my response is "judicial discretion." It is up to the sheriff or the judge to weigh up the evidence, and the individual or party, before him. The likelihood and ability that they may flee and so on may well come into that.

Richard Arkless: I completely understand and respect those points. The point of an unexplained wealth order is that the wealth is unexplained. We do not know the nature of the criminal. We know nothing about them. We have no idea whether they are likely to abscond. I suggest that it would be difficult for the judge to make that determination, and if he cannot do so under the Act, he will probably, as the judiciary is entitled to do, err on the side of caution and not implement the freezing order, but implement the unexplained wealth order.

Mr Wallace: The provision reflects the existing civil recovery arrangements in both Scotland and England. In other civil recovery procedures, that is how it is dealt with at the moment. That is why it is framed that way in the Bill.

I take the hon. Gentleman's point concerning the worry about flight and so on, but if criminals are obviously residents of the UK or European economic area and there is a link to serious organised crime, those making the application cannot just turn up, but will have to present evidence, so there will be scrutiny and the judge or sheriff will be able to weigh up whether there should be a freezing order.

Richard Arkless: I accept that and am happy to support the clause. The Minister's constructive response provides an opportunity to discuss this and to examine the legal points to ensure that criminals do not to fly with the cash before we can get our hands on it. No one wants that.

Mr Wallace: We can discuss that at length when we discuss the £50,000 threshold, which I am happy to do. As the hon. Gentleman knows, we are grateful to the Scottish Government with whom we have worked hand in hand on much of the Bill. Because we have accepted recommendations, advice and help from the Justice Minister in Scotland on some of the framing of the Bill, it is one we can agree on. We have accepted some of the guidance from the hon. Gentleman's Government north of the border.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

Clause 6

EXTERNAL ASSISTANCE DISCLOSURE ORDERS

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

Mr Wallace: The clause supplements clauses 4 and 5 and provides that a request can be sent to another country to freeze property there that is subject to an unexplained wealth order. It is a Scotland-specific provision but closely mirrors what clause 3 provides in England, Wales and Northern Ireland.

Dr Huq: Clause 6 makes Labour's Proceeds of Crime Act 2002 even better so we will not obstruct it.

Richard Arkless: I reiterate that we will not stand in the way of clause 6 standing part of the Bill.

Question put and agreed to.

Clause 6 accordingly ordered to stand part of the Bill.

Clause 7

DISCLOSURE ORDERS: ENGLAND AND WALES AND NORTHERN IRELAND

12.30 pm

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

The Chair: With this it will be convenient to discuss clause 8 stand part.

Mr Wallace: The Proceeds of Crime Act 2002, which was introduced by the last Labour Government, provides a suite of powers to be used in connection with a range of investigations, including confiscation and civil recovery. A disclosure order is one of those powerful tools and requires any person having relevant information to answer questions, provide information or produce any document that is relevant to the investigation. Disclosure orders are flexible, practical and efficient. Their use avoids the need to seek multiple orders over the course of an investigation. The changes we are making extend the power to seek disclosure orders in money laundering investigations that were previously explicitly excluded. This exclusion was primarily because of concerns over self-incrimination. However, that protection is maintained in the new provisions, ensuring that individuals who are subject to a money laundering investigation cannot be compelled to provide information that might incriminate them.

Clause 7 also changes the definition of who can apply for a disclosure order, removing the need for a prosecuting body to be responsible for its application. Significantly, this change does not lead to a reduction in the level of seniority of the person who can apply. An appropriate officer can apply for a disclosure order only on the approval of the senior appropriate officer, ensuring that the application process is safeguarded. These changes will be reflected in the statutory code of practice on the investigation tools in the Proceeds of Crime Act 2002.

Clause 8 replicates in Scotland the provisions contained in clause 7 for England and Wales that enable an application for disclosure orders in money laundering investigations, providing an essential UK-wide response.

Dr Huq: I am convinced by the Minister's persuasive words that red tape will be removed. We can apply for disclosure orders and yet maintain vital safeguards, so we will support clause 7 and clause 8, which extends the power to Scotland.

Question put and agreed to.

Clause 7 accordingly ordered to stand part of the Bill.

Clause 8 ordered to stand part of the Bill.

Clause 9

POWER TO EXTEND MORATORIUM PERIOD

Mr Wallace: I beg to move amendment 8, in clause 9, page 28, line 34, at end insert "(subject to the restriction mentioned in section 336A(6))"

This amendment clarifies that the 186 day maximum period for extending the moratorium period also applies to a decision of the appeal court in Scotland.

The Chair: With this it will be convenient to discuss Government amendments 15, 50, 51, 55, 56, 52, and 53.

Mr Wallace: Clause 9 inserts in part 7 of POCA a scheme for the extension of the suspicious activity report moratorium period beyond 31 days. As the action plan for anti-money laundering and counter-terrorist finance sets out, the Government see a more robust law enforcement response as central to tackling money laundering. It might help if I briefly explain how the suspicious activity report regime works.

Where a company in the regulated sector—a bank, an accountancy firm or a legal firm—suspects that they may commit a money laundering offence, they are obliged to submit a suspicious activity report to the National Crime Agency seeking consent to proceed. The National Crime Agency then has a seven-day period to determine whether it is necessary to refuse consent to the company to proceed with the transaction. If consent is refused, the 31-day moratorium period begins. During the moratorium period, law enforcement agencies need to gather the necessary evidence to instigate civil recovery proceedings or a criminal investigation in relation to the money laundering activity. However, money laundering investigations can be multi-layered and complex. Money launderers obfuscate the financial trail to distance proceeds from their criminal source; funds are often moved overseas.

New section 336A of the Proceeds of Crime Act 2002 states that the court may not grant a further extension of the moratorium period if the effect would be to extend the period of more than 186 days in total, beginning with the day after the end of the initial 31-day moratorium period. The amendment makes that clear. Amendment 15 replicates in Scotland what clause 28(2) already does for England and Wales. Amendments 52, 53, and 56 are consequential to that.

The criminal's property, referred to in POCA as "free property", which may be in the form of cash, is available for consideration in confiscation unless it is already subject to a forfeiture or deprivation order. When a court considers making a confiscation order under POCA, it must not take into account certain types of property when calculating the amount of the order. This is to ensure fairness to the defendant and prevent the double counting of assets.

Clause 28 amends POCA to clarify the situation in relation to cash that has been seized and is being detained pending the decision of a forfeiture application. Cash that is detained in anticipation of the forfeiture application being made is already excluded, so this is an extension of the existing principle in section 82 of POCA. The amendment extends that to Scotland. We hope to be making an equivalent amendment in respect of Northern Ireland in due course—we are awaiting their formal agreement.

[Mr Wallace]

Amendments 50 and 51 will correct an error in clauses 37 and 38, which incorrectly refer to England when they should refer to England and Wales. That is merely to ensure that the text of the Bill reflects the intent of the policy, which is for the measure to extend to England and Wales. Amendment 55 will correct another typographical error.

Dr Huq: It sounds as if the amendments are tidying up some sloppy mistakes. On the whole, however, I know that the SARs extension to the moratorium period was very much welcomed by the witnesses we heard from. I have seen that some law firms do not like the policy, but I think it is a good idea. The previous period of 31 days was not long enough. Does the Minister have an inkling of how many times the maximum would be used—I think it is 200 days?

Mr Wallace: It is 186 days.

Dr Huq: It is something like 186 days plus the 30 days, so if we add it all together it is more than 210. It gets stretched out a lot. Is that likely to be used very sparingly? There are people on the other side who think it is too long.

Mr Wallace: The timescale is really just a reflection of what the investigatory agencies have said to us: that some of these cases are very complex. Some of the ways in which people hide their wealth—they sometimes freeze it themselves—and who they are mean that the process will take time. We want to ensure that our agencies have time to investigate, rather than being under the sort of pressure where effectively they run out of time. Those people exploit that. That is the reason for the longer period. Hopefully it will not be used, but the very fact that it is there will give power to the elbow of the agencies trying to do the job.

Dr Huq: I thank the Minister for his response. We support the proposal, but we have a concern, which will come up in a new clause at the end, about the architecture of crime fighting. There could be better resource for all the different agencies that will be looking at these issues and particularly for the ELMER IT system. It was envisaged that that system would deal with 20,000 SARs a year, but the figure is 380,000 at the moment and will probably rise even higher after the Bill is passed. That does not relate to the clause, but I wanted to sound a word of caution.

The Chair: Order. I am sure the Minister will visit that when we get to it.

Richard Arkless: I have a very quick point to make on amendment 9. I apologise if I missed it—I had my head buried in some papers—but could the Minister clarify why Scottish Ministers are being removed from the list of people who can apply to the sheriff?

The Chair: Order. Amendment 9 is in the next group, which we have not quite moved on to yet.

Richard Arkless: My apologies, Sir Alan. I got ahead of myself.

Amendment 8 agreed to.

Mr Wallace: I beg to move amendment 9, in clause 9, page 29, leave out line 47.

This amendment removes a reference to the Scottish Ministers from the list of persons who may make an application to the sheriff for extending the moratorium period under new section 336A of the Proceeds of Crime Act 2002.

The Chair: With this it will be convenient to discuss Government amendments 10 and 19.

Mr Wallace: The amendments will remove references to Scottish Ministers from the list of persons who may make applications to the sheriff for extending the moratorium period and for making a further information order under the Proceeds of Crime Act 2002 or the Terrorism Act 2000. In our ongoing dialogue with the Scottish Government and with law enforcement partners, we have clarified that Scottish Ministers do not require those powers. In Scotland, they would be used by the Crown Office and Procurator Fiscal Service, the National Crime Agency, the police and HMRC in respect of the moratorium period and by the procurator fiscal, the police and the NCA in respect of further information orders. We are acting on the advice of the Scottish Government, with whom we have consulted extensively in the development of the Bill and will continue to do so. We are making these amendments to ensure that the new measure will work effectively in Scotland.

Richard Arkless: The Minister's explanation was comprehensive and persuasive and accords with my understanding of the Government's position. We will not stand in the way of the clause.

Dr Huq: Ditto. We agree and will not stand in the way of the clause.

Amendment 9 agreed to.

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

Mr Wallace: Clause 9 inserts in part 7 of POCA a scheme for extending the suspicious activity report moratorium period beyond 31 days. As the action plan for anti-money laundering set out, the Government see a more robust law enforcement response as central to tackling money laundering. I have already explained the SARs regime, so we do not need to hear about that again.

As the national risk assessment set out, the UK is vulnerable to abuse by professional enablers from the legal, accountancy and finance sectors. The level of expertise involved can make it difficult to progress a money laundering investigation substantially in only 31 days. That is particularly the case when the law enforcement agency needs to obtain evidence from overseas authorities, which is another reason for an extension for a further length of time—the hon. Member for Ealing Central and Acton asked why it needed to be so long—or to undertake complex asset-tracing inquiries. Accordingly, the moratorium period may be lifted and funds dissipated before the investigation has progressed sufficiently to determine whether civil or criminal proceedings should be undertaken.

We need to provide law enforcement agencies with an appropriate amount of time to undertake investigations. This clause provides for the extension of the moratorium period by a court for periods of up to 31 days. That can

be repeated up to a total of 186 days from the end of the initial 31-day moratorium period. The hon. Lady is better at adding up than me, so she produced the right figure. Providing an extension of the moratorium period enables law enforcement officers to continue investigating particularly complex transactions, such as those involving overseas grand corruption or other serious crime. The clause ensures that proceeds of crime are not dissipated when there is a suspicion that money laundering activity has taken place and when the law enforcement agency has not had the opportunity to complete its inquiries.

The Government recognise that there may be concerns about the length of time for which an individual's property could be withheld from them. The clause does not allow unlimited extension of the moratorium period. The court must approve the application to extend the moratorium period each time an extension is sought. Law enforcement agencies must demonstrate to the court that it is reasonable in all circumstances for the moratorium period to be extended. They must satisfy the court that the investigation is being carried out diligently and expeditiously and that further time is required to progress the investigation.

An application to extend the moratorium period will be made to the Crown court, which provides a senior level of judicial authorisation. The owner of the property will be able to make representations in person before the court and is provided with the opportunity to appeal the decision to extend the moratorium period. An application may be made only by a senior officer who has a remit to undertake financial investigation. A senior officer is at the police rank of inspector or equivalent.

Money laundering is an enabler of serious and organised crime. The clause will help to stop criminals profiting from their criminal behaviour. It gives our law enforcement agencies the time to progress critical investigations into money laundering where they have genuine reasons for being unable to progress their investigation substantially in 31 days.

Dr Huq: The Minister has put it very well. All the witnesses stated that 31 days was not enough. Here we have appropriate checks and balances. A legal procedure is gone through to extend the period; it cannot be open-ended; and appeals procedures are built in. The Minister also praised my maths, which never happens normally—I am a qualitative person usually—so for that reason as well as all the other reasons, we will not stand in the way of the clause.

Question put and agreed to.

Clause 9, as amended, accordingly ordered to stand part of the Bill.

Clause 10

Sharing of information within the regulated sector

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

Mr Wallace: The clause introduces a new provision into the Proceeds of Crime Act 2002. As the action plan for anti-money laundering also set out—it seems to make a regular appearance—the Government see public-private partnership as central to tackling money laundering and terrorist financing. A major part of that approach is to provide support for the effective exchange of information, both within the private sector and between the public and the private sectors, to increase our collective knowledge of threats and vulnerabilities, to help the regulated sector to protect itself and to improve the quality of the UK's financial intelligence.

Both the private sector and law enforcement agencies hold significant amounts of information that can be of great use to each other. The private sector holds data on financial transactions and related personal data; law enforcement agencies hold intelligence on money laundering and terrorist financing. When those data have been shared, there have been benefits to both sectors.

12.45 pm

This model has been piloted through the joint money laundering intelligence taskforce—a unique partnership between a number of major banks and the National Crime Agency. The pilot has demonstrated that information sharing supports effective action against money launderers, and we want to build on the success of that work and encourage information sharing, particularly to tackle serious and organised crime. The nature of money laundering is that illicit funds move across the regulated sector and through business structures, and sometimes only the regulated sector entities can see how those flows, or the interactions between money launderers, occur. By providing better information drawn from across the sector, the NCA will have a better picture of how money launderers abuse the regulated sector.

The clause will allow members of the regulated sector to share information between themselves, on a voluntary basis, where they have a suspicion of money laundering. It will allow the regulated sector to submit joint suspicious activity reports, providing the whole picture of complex money laundering schemes to the NCA in one comprehensive suspicious activity report. It will also allow the NCA to seek information about money laundering on a voluntary basis from across the regulated sector.

We believe that a number of significant benefits will flow from the new proposal. It will allow better information flows within the regulated sector, and between the regulated sector and law enforcement agencies, generating better intelligence. It will also support the development of a common understanding of the highest priority risks, and will provide the basis for the focused and efficient use of public and private resources on money laundering and terrorist financing threats.

The clause provides immunity from civil and criminal liability for those in the regulated sector who share information in good faith and for that purpose only. That is a significant level of immunity, and we recognise that there will be concerns in relation to the sharing of personal data between private sector institutions. To allay those concerns, and to ensure that any interference in citizens' rights is necessary and proportionate, we have proposed that such sharing should be done only where there is a suspicion that money laundering is taking place.

Suspicion is a test that is understood by the courts, and it forms the basis on which much of the anti-money laundering activity set out in the Proceeds of Crime Act 2002 is undertaken. While we recognise that that does not allow as much information sharing to take place as

some would like, we believe that it strikes the right balance between the benefit to be derived from the sharing of information, and the protection of individuals' data. There is a balance to strike and we will continue to consult with the banks and others.

Any organisation sharing or receiving data will also be required to handle the data in accordance with their existing data protection requirements. I stress that the sharing of data is entirely voluntary. That in itself provides an additional level of protection, as a regulated sector company will not be required to provide information to another company if it does not know or trust it.

Dr Huq: I described joined-up thinking in my remarks on amendment 2. The Minister has reassured us. I have seen that some people have civil liberties concerns, but he has told us that the sharing of information will be a last resort in extreme cases, and that it will happen largely on a voluntary basis anyway.

The Government action plan on money laundering said that what is needed is a

"collaborative approach to preventing individuals becoming involved in money laundering."

It discussed different agencies, supervisors and the public and private sectors working together. The clause does all those things, and we support it.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Clause 11

FURTHER INFORMATION NOTICES AND ORDERS

Amendment made: 10, in clause 11, page 38, leave out line 2.—*(Mr Wallace.)*

This amendment removes a reference to the Scottish Ministers from the list of persons who may make an application to the sheriff for a further information order under new section 339ZJ of the Proceeds of Crime Act 2002.

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

Mr Wallace: Clause 11 creates a new power to issue further information orders. In the anti-money laundering action plan the Government set out our commitment to improving the financial intelligence that would be available to both the law enforcement agencies and the private sector. Improving our financial intelligence is essential to allow the identification of the major risks from money laundering, and to identify where resources from both the public and private sectors should be focused.

The action plan also contained a commitment to do more to tackle money laundering internationally, through sharing information and intelligence, and working through international bodies such as the Financial Action Task Force. The suspicious activity reports regime, run by the UK Financial Intelligence Unit at the National Crime Agency, is central to the UK anti-money laundering regime, and to the development of financial intelligence. The regime took more than 380,000 reports in 2014-15 from the regulated sector, including banks, lawyers and accountants.

Clause 11 will allow the UK Financial Intelligence Unit, following the receipt of a suspicious activity report, to request further information from any member of the regulated sector, irrespective of whether that entity raised the SAR.

There are a number of reasons why the UKFIU needs such a power. First, there are occasions where the SAR does not contain all the information necessary to allow the UKFIU to determine whether action, including an investigation, should be undertaken. That is particularly important when determining how scarce resources should be allocated. The intention is to drive up the quality of SARs and to enable improved intelligence analysis for the better identification of risk and threat.

Secondly, the UKFIU can use the power when it needs information in order to develop effective intelligence to identify the major threats from money launderers. That intelligence will be used to inform the work of law enforcement agencies and can be shared with the private sector to help them put in place effective counter-measures to the threats they face from money laundering.

Thirdly, it will allow the UKFIU to seek further information on behalf of a foreign financial intelligence unit to support investigations or intelligence development in that country. That will be subject to the appropriate safeguards, and the UK will benefit from the ability to request equivalent information from foreign financial intelligence units. The provision will also ensure that the UK is compliant with the relevant Financial Action Task Force recommendations ahead of the its evaluation of the UK anti-money laundering regime in 2018.

The clause will allow the National Crime Agency to direct that further information is provided and, if it is not provided, to apply to a court for a further information order to require the person to provide the information requested. We are keen to support appropriate information sharing between financial intelligence units, and we know that FATF and its members want to do more in that area. Incidents such as the attacks in Paris, where financial intelligence was needed to support the investigation, illustrate the need to be able to share such information. However, I would like to be clear that there should be safeguards in place for international information sharing. As with a request driven by the NCA itself, a court order will be required where a regulated entity does not provide information if requested to do so by the NCA. That in itself is an important safeguard. I am, as ever, open to discussing this issue with hon. Members if it is felt that additional safeguards may be appropriate.

On a separate point, I know that the issue of privileged information is of concern to Members, and I want to be clear that the UK Financial Intelligence Unit will not be able to request the provision of privileged information as part of this measure. This is an important safeguard for those who hold such information, and we do not believe that it should be requested under this power.

Dr Huq: It appears that the clause enacts some of the recommendations of the action plan for anti-money laundering and counter-terrorist finance that the Government issued in April 2016. We will support the clause.

Question put and agreed to.

Clause 11, as amended, accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —*(Andrew Griffiths.)*

12.53 pm

Adjourned till this day at Two o'clock.