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HOUSE OF COMMONS
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GENERAL COMMITTEES

Public Bill Committee

CRIMINAL FINANCES BILL

Fifth Sitting

Tuesday 22 November 2016

(Morning)

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Saturday 26 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

Tuesday 22 November 2016

(Morning)

[Mrs Anne Main *in the Chair*]

Criminal Finances Bill

Clause 32

Forfeiture of certain personal (or moveable) property

9.25 am

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

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

Government amendments 61 to 72.

That schedule 3 be the Third schedule to the Bill.

Clause 33 stand part.

That schedule 4 be the Fourth schedule to the Bill.

Government new clause 18—*Forfeiture of terrorist cash.*

Government amendments 73 to 75.

The Minister for Security (Mr Ben Wallace): Good morning, Mrs Main. I am delighted to serve under your chairmanship. This group deals with the provisions in the Bill that allow for the seizure and forfeiture of terrorist property. I suggest that we covered some of this ground in our debates last week on clauses 12 and 13, which will do likewise for proceeds of crime, and I will seek to avoid repeating all the same points.

Clause 32 and schedule 3 cover the seizure and forfeiture of moveable personal items such as precious metals and gemstones where they are earmarked for terrorism, are the resources of a proscribed organisation or are intended for use in terrorism. Clause 33 and schedule 4 give law enforcement agencies new powers to freeze funds held in bank or building society accounts that are suspected to be terrorist money, and provide for such funds to be forfeited if law enforcement agencies or the courts are satisfied that that is the case. Hon. Members will know that the threat from terrorism is constantly evolving. In the same way that we should have a mechanism to deal with criminals who launder money to evade disruption, we should have the ability to seize items that represent terrorist property.

Although this is a powerful new measure, several safeguards are built into the Bill to ensure that the interference with individuals' rights to enjoy private property is managed in a way that is proportionate and guards against innocent parties being disadvantaged. Seized property may initially be detained for only 48 hours before an application must be made to a magistrates court in England, Wales or Northern Ireland, or to the sheriff in Scotland, for further detention for up to two years. There is therefore judicial oversight of this provision. Individuals who are joint owners of property will be able to claim back the value of their share.

Denying access to funding is already a key part of our counter-terrorism strategy, but the current powers in the Terrorist Asset-Freezing etc. Act 2010 may not always be the most appropriate operational route for combating the financing of terrorism, as they are designed to freeze the entirety of someone's economic assets, carry a relatively high threshold for use and do not include forfeiture powers. That is why we have tabled several amendments to this part of the Bill.

New clause 18 will ensure that UK law enforcement agencies have the ability to seek forfeiture of terrorist cash without requiring a court order. An administrative forfeiture power is already provided for in the Proceeds of Crime Act 2002, as amended by the Policing and Crime Act 2009. However, the terrorist cash provisions in the Anti-terrorism, Crime and Security Act 2001 were not amended at that time, and we seek to address that anomaly. The new clause will ensure that the best use is made of both the courts' and the police's time and resources by providing that there is no need for law enforcement bodies to involve the courts where forfeiture is uncontested.

However, these provisions are not without oversight. Where terrorist cash is seized, extended detention beyond an initial 48-hour period is already subject to oversight by a magistrates court, or the sheriff in Scotland. There is therefore early judicial involvement in the detention and forfeiture process. In addition, the administrative forfeiture of cash will be exercisable only by a senior officer who is a police officer of at least the rank of superintendent.

The other amendments in this group make several technical and consequential changes to complement those provisions. In particular, they address inconsistencies in the definition of "senior officer" in the Anti-terrorism, Crime and Security Act 2001 and the Terrorism Act 2000 to ensure that such a person is at least the rank of superintendent. The amendments will also ensure that a court can order that property be detained under the powers in ACSA for up to six months per application, with an overall cap of two years, which is consistent with the Proceeds of Crime Act, and that these administrative forfeiture powers can be applied for and implemented in Scotland. Taken together, these measures will strengthen law enforcement agencies' ability to disrupt terrorist financing in a proportionate and effective way.

Dr Rupa Huq (Ealing Central and Acton) (Lab): I apologise for being slightly late, Mrs Main. Her Majesty's Opposition support the amendments.

Question put and agreed to.

Clause 32 accordingly ordered to stand part of the Bill.

Schedule 3

Forfeiture of certain personal (or moveable) property

Amendments made: 61, in schedule 3, page 117, line 36, leave out "3" and insert "6".

This amendment has the effect that an order for the detention of seized property under new Part 4A of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 may be made for a period of up to 6 months, rather than 3 months. This is in line with the provision made by Part 5 of the Proceeds of Crime Act 2002.

Amendment 20, in schedule 3, page 122, line 28, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 62, in schedule 3, page 122, line 38, leave out "inspector" and insert "superintendent".

This amendment has the effect that a police officer must be of at least the rank of superintendent, rather than inspector, in order to be a senior police officer for the purposes of new Part 4A of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001.

Amendment 63, in schedule 3, page 126, line 33, at end insert—

"(5) If sub-paragraph (6) applies, the court or sheriff may order the property to which the application relates to be released to the applicant or to the person from whom it was seized.

(6) This sub-paragraph applies where—

(a) the applicant is not the person from whom the property to which the application relates was seized,

(b) it appears to the court or sheriff that the property belongs to the applicant,

(c) the court or sheriff is satisfied that the release condition is met in relation to the property, and

(d) no objection to the making of an order under sub-paragraph (5) has been made by the person from whom the property was seized.

(7) The release condition is met—

(a) in relation to property detained under paragraph 10C or 10D, if the conditions in paragraph 10C or (as the case may be) 10D for the detention of the property are no longer met, and

(b) in relation to property detained under paragraph 10G, if the court or sheriff decides not to make an order under that paragraph in relation to the property."

This amendment adds to new paragraph 10O of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001, which concerns the release of property seized under new Part 4A of that Schedule, provision which is equivalent to section 301(4) and (5) of the Proceeds of Crime Act 2002.

Amendment 21, in schedule 3, page 127, line 18, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 22, in schedule 3, page 127, line 20, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 23, in schedule 3, page 127, line 28, leave out "designated" and insert "counter-terrorism".—*(Mr Wallace.)*

See the explanatory statement to amendment 16.

Schedule 3, as amended, agreed to.

Clause 33 ordered to stand part of the Bill.

Schedule 4

Forfeiture of money held in bank and building society accounts

Amendments made: 24, in schedule 4, page 129, line 1, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 64, in schedule 4, page 129, line 7, leave out "inspector" and insert "superintendent".

This amendment has the effect that a police officer must be of at least the rank of superintendent, rather than inspector, in order to be a senior officer for the purposes of new Part 4B of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001.

Amendment 65, in schedule 4, page 131, line 37, leave out ": England and Wales and Northern Ireland".

This amendment is consequential on amendment 66.

Amendment 66, in schedule 4, page 131, line 38, leave out "made by a magistrates' court".

This amendment has the effect of extending the application of the provision in new Part 4B of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 about the administrative forfeiture of terrorist money held in bank and building society accounts from England and Wales and Northern Ireland to the whole of the UK.

Amendment 67, in schedule 4, page 134, line 11, leave out "a magistrates'" and insert "the relevant".

This amendment is consequential on amendment 66.

Amendment 68, in schedule 4, page 134, line 16, after "the", insert "relevant".

This amendment is consequential on amendment 66.

Amendment 69, in schedule 4, page 134, line 22, after "the", insert "relevant".

This amendment is consequential on amendment 66.

Amendment 70, in schedule 4, page 134, line 26, after first "the", insert "relevant".

This amendment is consequential on amendment 66.

Amendment 71, in schedule 4, page 134, line 29, after first "the", insert "relevant".

This amendment is consequential on amendment 66.

Amendment 72, in schedule 4, page 134, line 35, leave out ", is to be paid into the Consolidated Fund." and insert—

"—

(a) if, before being forfeited, the money was held in an account in relation to which an account freezing order made by a magistrates' court had effect, is to be paid into the Consolidated Fund;

(b) if, before being forfeited, the money was held in an account in relation to which an account freezing order made by the sheriff had effect, is to be paid into the Scottish Consolidated Fund."

This amendment is consequential on amendment 66.

Amendment 25, in schedule 4, page 138, line 15, leave out "designated" and insert "counter-terrorism".—*(Mr Wallace.)*

See the explanatory statement to amendment 16.

Schedule 4, as amended, agreed to.

Clause 34

Extension of powers to accredited financial investigators

Amendments made: 26, in clause 34, page 90, line 28, leave out from beginning to end of line 17 on page 91 and insert—

"Counter-terrorism financial investigators

63F Counter-terrorism financial investigators

(1) The metropolitan police force must provide a system for the accreditation of financial investigators ("counter-terrorism financial investigators").

(2) The system of accreditation must include provision for—

(a) the monitoring of the performance of counter-terrorism financial investigators,

(b) the withdrawal of accreditation from any person who contravenes or fails to comply with any condition subject to which he or she was accredited, and

(c) securing that decisions under that system which concern—

(i) the grant or withdrawal of accreditations, or

(ii) the monitoring of the performance of counter-terrorism financial investigators,

are taken without regard to their effect on operations by the metropolitan police force or any other person.

(3) A person may be accredited if he or she is—

(a) a member of civilian staff of a police force in England and Wales (including the metropolitan police force), within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2001;

(b) a member of staff of the City of London police force;

(c) a member of staff of the Police Service of Northern Ireland.

(4) A person may be accredited—

(a) in relation to this Act;

(b) in relation to the Anti-terrorism, Crime and Security Act 2001;

(c) in relation to particular provisions of this Act or of the Anti-terrorism, Crime and Security Act 2001.

(5) But the accreditation may be limited to specified purposes.

(6) A reference in this Act or in the Anti-terrorism, Crime and Security Act 2001 to a counter-terrorism financial investigator is to be construed accordingly.

(7) The metropolitan police force must make provision for the training of persons in—

(a) financial investigation,

(b) the operation of this Act, and

(c) the operation of the Anti-terrorism, Crime and Security Act 2001."

This amendment provides for a new system of accreditation and training of financial investigators for the purposes of exercising certain powers under the Terrorism Act 2000 and the Anti-terrorism, Crime and Security Act 2001.

Amendment 27, in clause 34, page 91, line 24, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 28, in clause 34, page 91, line 36, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 29, in clause 34, page 91, line 38, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 30, in clause 34, page 91, line 45, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 31, in clause 34, page 92, line 2, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 32, in clause 34, page 92, line 5, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 33, in clause 34, page 92, line 7, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 34, in clause 34, page 92, line 11, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 35, in clause 34, page 92, line 14, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 36, in clause 34, page 92, line 16, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 37, in clause 34, page 92, line 20, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 38, in clause 34, page 92, line 22, leave out "designated accredited" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 39, in clause 34, page 92, line 26, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 40, in clause 34, page 92, line 28, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 41, in clause 34, page 92, line 36, leave out "designated" substitute "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 42, in clause 34, page 92, line 42, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 43, in clause 34, page 92, line 44, leave out "designated" and insert "counter-terrorism".—*(Mr Wallace.)*

See the explanatory statement to amendment 16.

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

The Chair: With this it will be convenient to discuss clause 35 stand part.

Mr Wallace: Across UK policing, more use is being made of skilled individuals who are not warranted police officers to support the full range of police work, allowing warranted officers to focus on the activities that need their specific training and experience. The financial aspects of terrorism investigations are unlike proceeds of crime investigations—this is not about identifying illicit wealth and taking the profit out of crime. For terrorism, financial investigation allows the police to disrupt terrorist activity by removing access to funds, and to make links in terrorist investigations.

As I set out last week, clause 34 provides for the creation of a new category of civilian financial investigator, to be known as a counter-terrorism financial investigator, which will exercise certain existing investigatory powers, including applying to a court for production orders, financial information orders or account monitoring orders, and to seize terrorist cash or moveable stores of value. The investigator will also be able to use new disclosure order powers being created under the Terrorism Act 2000 and the new bank account seizure and forfeiture powers in the Anti-terrorism, Crime and Security Act 2001.

The new provisions do not confer on counter-terrorism financial investigators any of the search powers available in the legislation for terrorist investigations, and the Government amendments we debated last week will ensure that the investigators will be subject to training and monitoring by the Metropolitan Police Service. The changes are entirely consistent with the changes currently being brought in through the Policing and Crime Bill, which will give chief officers a greater ability to designate civilians with the powers of constables.

Finally, clause 35 introduces offences of obstructing or assaulting the investigators. It is important that a civilian performing the functions of, and exercising the same powers as, a police officer is afforded the same

legal protections from assault or wilful obstruction as their police counterparts. That is consistent with the approach taken in the Proceeds of Crime Act 2002 and elsewhere in the Bill. I hope the clauses stand part of the Bill.

Dr Huq: We support the clauses but we also have tabled a forthcoming new clause that questions a couple of things. If we are looking at increasing workload, we like the idea of the extension of powers of the accredited financial investigators, but we would like to see some commensurate resources. On the other stuff, public servants should never be assaulted in the line of duty, so we wholeheartedly support that provision.

Question put and agreed to.

Clause 34, as amended, accordingly ordered to stand part of the Bill.

Clause 35

OFFENCES IN RELATION TO ACCREDITED FINANCIAL INVESTIGATORS

Amendments made: 44, in clause 35, page 93, line 3, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 45, in clause 35, page 93, line 4, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 46, in clause 35, page 93, line 7, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 47, in clause 35, page 93, line 36, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 48, in clause 35, page 93, line 37, leave out "designated" and insert "counter-terrorism".

See the explanatory statement to amendment 16.

Amendment 49, in clause 35, page 93, line 41, leave out "designated" and insert "counter-terrorism".—*(Mr Wallace.)*

See the explanatory statement to amendment 16.

Clause 35, as amended, ordered to stand part of the Bill.

Clause 36

MEANING OF RELEVANT BODY AND ACTING IN THE CAPACITY OF AN ASSOCIATED PERSON

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

Mr Wallace: Mrs Main, this is like an auction—the speed at which you are dealing with matters. The only person who can understand these things is the auctioneer.

Clause 36 defines essential terms that establish the scope of the new corporate offences of domestic and foreign failure to prevent tax evasion. It defines those entities that can be liable under the new offences, and those persons for whom a corporation can be liable if it fails to prevent them from facilitating tax evasion. The relevant bodies that can be liable under the new offences are defined as bodies incorporated and partnerships, not individual men or women, reflecting the responses to HMRC's consultation on the provisions. The new offences can therefore be committed by companies, whether established to make a profit or for charitable purposes; partnerships; and similar entities established under foreign law. Indeed, the not-for-profit sector publically welcomed the offence applying to its sector, recognising that charities can be misused to facilitate tax evasion. Individuals involved in facilitating tax evasion will of course continue to face prosecution under existing tax evasion offences.

We will go on to debate the provisions in greater depth, but for now it is important to stress that part 3 of the Bill creates offences of corporate failure to prevent the criminal facilitation of tax evasion. They are not offences of corporate failure to prevent tax evasion itself and do not create a legal obligation for corporations to prevent their client's tax evasion.

The clause also defines broadly the persons who could attract liability for a relevant body. Those include an employee, an agent and any other person who provides services for, or on behalf of, the relevant body. That mirrors the similar offence of corporate failure to prevent bribery in the Bribery Act 2010. That is important because we have seen in the past that corporations structure their affairs to try to insulate themselves from liability by deliberately contracting out the most risky services, typically to persons based in the most secretive jurisdictions. The definition of associated persons in the clause addresses that and closes that potential loophole.

However, it is important to appreciate that not every act of, say, an employee will give rise to criminal liability for the relevant body. For example, where an employee who has gone home from work and is acting in their private capacity criminally facilitates a tax evasion offence by their partner, that will not give rise to any liability for the employing relevant body because the criminal facilitating act was not done in the capacity of employee. I hope that that explanation provides a useful introduction to how the subsequent clauses will function.

Dr Huq: We support the clause. The Minister mentioned the Bribery Act 2010, from which there has been an unusually small number of successful convictions. Does he have any thoughts as to whether there will be a beefed-up number from this legislation? That is largely what I wanted to ask about it. Many big companies have been blogging that it is a bad idea, which makes me think that it must be a good one.

Mr Wallace: In response to what has been said by the Opposition spokeswoman, it is important to note that the Bribery Act has two effects: prosecution, but also change of behaviour. If one goes out to many parts of the world where British companies are engaged in export or trying to win orders, it is clear that the message has gone out loud and clear not to bribe them and not to be involved in bribery. I was in Kenya a couple of weeks ago, and it is clear that British businesses there—people wishing to do business—do not even ask. That is a cultural change so, as I said, the effect is twofold. One thing that can be said about the Bribery Act is that it certainly went to the heart of things. There were no favours drawn: the first person convicted under the Bribery Act was an employee of the Ministry of Justice,

[Mr Wallace]

and was convicted quite soon after the introduction of the legislation, so we all work under it, whether we are a civil servant or a business.

Question put and agreed to.

Clause 36 accordingly ordered to stand part of the Bill.

Clause 37

FAILURE TO PREVENT FACILITATION OF UK TAX EVASION OFFENCES

Amendment made: 50, in clause 37, page 95, line 40, after "England" insert "and Wales".—*(Mr Wallace.)*

This amendment corrects an omission in clause 37(8)(b).

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

Mr Wallace: Clause 37 creates a new offence that will apply to relevant bodies who fail to prevent persons acting in the capacity of persons associated with it from criminally facilitating a UK tax evasion offence. It also provides a defence for the relevant body of proving that it had in place reasonable procedures designed to prevent persons associated with it from criminally facilitating tax evasion, or that it was not reasonable in the circumstances to expect them to have such procedures.

The offence will apply to any legal person, based anywhere in the world. It does not matter where in the world a relevant body is based. If people are criminally facilitating UK tax fraud, that body can commit the offence and be tried by the UK courts. The offence was first announced in March 2015 and has been subject to two public consultations, including one on draft clauses and guidance. A succession of high-profile data leaks has shown the lengths to which some people will go to hide their taxable income and gains from HMRC, and that there are professionals willing to help them to perpetrate that fraud. There has been unprecedented international action to increase tax transparency around the globe, but that must be coupled with action to tackle those professionals and corporations who are complicit in tax crime.

The existing criminal law already makes it an offence to evade tax. When an individual taxpayer evades their tax, they can be prosecuted. When a professional such as a banker or an accountant is complicit in the fraud, that individual can also be prosecuted. However, for the relevant criminal acts to be attributed to the corporation itself, the existing law on corporate criminal liability requires the most senior members of a corporation to be involved in and aware of those acts. At present, they can simply say, "I did not commit the crime" and blame the individual employee for the offence. That current approach to corporate criminal liability simply does not reflect the decentralised way in which decisions are made in large multinational organisations, and it can leave them beyond the reach of the criminal law.

The new offence will change that. By moving beyond seeking to attribute specific criminal acts to the relevant body, and by focusing instead on its failure to prevent those who act in its name from breaking the criminal law, we can better ensure that relevant bodies take reasonable steps to ensure that crimes are not committed when services are being provided on their behalf. The improved approach to criminal corporate liability has already been adopted with success in relation to the Bribery Act 2010. Businesses are already accustomed to the offence of corporate failure to prevent bribery and much of the new offence will be familiar. I know that hon. Members would like the approach that we are taking to go further still, to cover fraud more generally, money laundering and false accounting. That is an issue to which we will come later, in the debate on new clause 6, which has been tabled by the hon. Member for Ealing Central and Acton.

It is important to note that the offence we are considering is one of tax fraud—tax crime. It is not about tax non-compliance that falls short of being criminal, such as accidental non-payment of taxes. There has been much discussion about how the offence will operate in relation to tax avoidance. Tax avoidance, and even aggressive avoidance, is not a crime and falls outside the scope of this measure. The Bill is, after all, about criminal finances. However, it is right that we distinguish between actions that are within the letter if not the spirit of the law, and fraudulent acts dressed up and marketed as tax planning. We must robustly challenge those who mislabel their criminal behaviour as avoidance or planning; and the Act will address such behaviour.

The clause is not intended to criminalise conduct that is not currently against the criminal law. It is not primarily about what is a crime, but rather about who is held to account before the criminal courts. It seeks to ensure that when crimes are committed in the name of a relevant body, that relevant body can be placed in the dock, alongside the taxpayer evading their tax and the professional enabler criminally facilitating that offence.

I stress that reasonable prevention procedures are needed for the defence to be available. "Reasonable" does not mean excessively burdensome, unduly expensive, disproportionate or foolproof; nor does it demand the impossible. It means taking a risk-based and proportionate approach. Under clause 39, the Government will issue guidance to help business to assess its risks and put prevention procedures in place.

As is the case for the individual accountant, it will not matter where the relevant body is based. British businesses have welcomed the global reach of the new offence as it requires businesses providing services to UK taxpayers, regardless of where in the world those businesses are based, to operate to the same high standards as British businesses. I welcome the cross-party support, and support from the NGOs that I have met, that has been expressed for the measure.

9.45 am

Dr Huq: We support the clause, its global reach and the idea of weeding out corporate bad apples, if that is not mixing too many metaphors—weeds and apples at the same time. The Minister is correct; we think the clause could go further. We have tabled amendments to the next clause.

Richard Arkless (Dumfries and Galloway) (SNP): We support the clause and, like the Opposition spokesperson, we commend its international reach. We look forward

to discussions, perhaps this afternoon, on new clause 6, but instinctively, like Opposition Members, we are minded to take the clause further.

As time goes on, we ought to monitor the issue of designing processes that demonstrate that reasonable measures have been taken not to facilitate tax evasion. As a consumer finance lawyer, I have seen large multinational organisations roll out various folders of processes, procedures and protocols, but we were not always convinced that those had been followed to the letter. Some sort of monitoring mechanism would be most helpful.

We ask the Government to take note of the evidence we heard last week that these measures could disproportionately impact smaller organisations; larger organisations may be more suited to gathering this information in order to set out processes and procedures. We should keep an eye on those two things. We look forward to discussions on new clause 6 and support the clause.

Mr Wallace: To clarify, I think that statutory guidance is first published in draft. Given the hon. Gentleman's experience, I would welcome his input on whether that guidance is appropriate. We did that with the Bribery Act; I remember when that came out. Statutory guidance is an important tool for small businesses, because big businesses have big compliance departments and can do all the work even without the statutory guidance, but for small or medium-sized businesses, the statutory guidance is a good starting point. It is really important both that we get it right, and that we get it written in plain English.

I reiterate the offence created by the clause: if someone in a Crown dependency or overseas territory—I know that hon. Members are interested in those—is advising UK citizens to evade UK tax, it does not matter that they have no nexus here; they are criminally at risk. As regards trying to change the behaviour of overseas territories or tax havens, this offence will allow us to prosecute people anywhere in the world who are encouraging people to evade UK tax. That is a major and significant step. If someone on a Caribbean island calls themselves a tax consultant and encourages British people to evade tax, we will come after them. That is a major change that goes beyond the shores of the United Kingdom. I hope that the action that we have taken to stop that will go some way to alleviating colleagues' concerns about the behaviour of some tax havens around the world.

Question put and agreed to.

Clause 37, as amended, accordingly ordered to stand part of the Bill.

Clause 38

Failure to prevent facilitation of foreign tax evasion offences

Dr Huq: I beg to move amendment 5, in clause 38, page 96, line 6, after "United Kingdom" insert—

"Crown dependency or British overseas territory".

This amendment would extend the offence of failure to prevent facilitation of foreign tax evasion offences to companies incorporated in a British Overseas Territory or Crown Dependency.

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

Amendment 6, in clause 38, page 96, line 7, after "United Kingdom" insert—

"Crown dependency or British overseas territory".

This amendment would extend the offence of failure to prevent facilitation of foreign tax evasion offences to companies doing business in a British Overseas Territory or Crown Dependency.

Amendment 7, in clause 38, page 96, line 9, after "United Kingdom" insert—

"Crown dependency or British overseas territory".

This amendment would extend the offence of failure to prevent facilitation of foreign tax evasion offences to conduct conducted in a British Overseas Territory or Crown Dependency.

Dr Huq: These amendments in my name and those of my hon. Friends the Members for Swansea East, and for Bootle, seek to extend the offences of failure to prevent facilitation of foreign tax evasion, and all the other good work described in clause 37, for which the Scottish National party and ourselves praised the Minister, to companies incorporated in a UK overseas territory or Crown dependency. I stress how much we welcome the new offences on failing to prevent tax evasion, and the fact that they can apply anywhere in the world, as the Minister pointed out. However, we wish that they related to all economic crime, rather than just tax evasion, and that they covered companies doing business in overseas territories and Crown dependencies, and offences committed there.

This is quite a chunky Bill that is broad in scope, but this seems to be the gaping hole—the elephant in the room. Almost all those who gave evidence, and all the speeches on Second Reading, including those from respected Members on both sides of the House, such as the right hon. and learned Member for Harborough (Sir Edward Garnier), mentioned that this was a bit of an oversight. There is no mention of the issue at all in the Bill, and that is why we tabled these probing amendments to help the Committee better understand exactly how the new offences relate to the UK's tax havens, as the Minister termed them; that is how they are perceived all around the world.

I raise the issue because we all know that the UK may well be facilitating tax evasion through its overseas territories. It is worth pointing out that the Foreign and Commonwealth Office appoints a Governor in each of these jurisdictions. The opaqueness and lack of transparency in these places makes it difficult to know the scale of the problem, but we know that developing countries are losing out massively. This legislation rightly seeks to hold directors of companies in the UK accountable for their business's actions, but why does it not also apply to the UK's overseas territories? The lack of accountability of directors there is dangerous.

Let us take the example of the British Virgin Islands, the jurisdiction that received the most mentions in the Panama papers, I believe, which is nothing to be proud of. Given its role in the Panama papers, is it not reasonable to talk about having more oversight of this UK-governed territory? It has more than 450,000 companies; nobody quite knows the exact number. That is at least 15 companies for every person—an unusually large number of companies. Every person would need to have 13 board meetings every day to get through all of them in a year.

[Dr Huq]

It sounds like a bold suggestion, but we think that more action is needed. I have five questions for the Minister. When the UK receives information on the beneficial owners of companies registered in the British Virgin Islands, will it use it and look for potential tax evasion? Is there an active duty on the part of the Government? What action will they take if they find any tax evasion? How will owners of British Virgin Islands companies be held to account for their actions? What discussions has the Minister had with leaders of overseas territories and Crown dependencies about these excellent new offences? Are any of them minded to consider introducing something similar on a voluntary basis? We do not want to look like neo-imperialists, going into countries and making them do stuff, so what are they doing of their own volition? If offences are committed in UK-governed overseas territories, under what circumstances would prosecutions be possible under this new legislation?

The last question is the most important one, and the one that would help me to understand this: does the Minister concede that, as clause 40(1) refers to clause 38(2), his Bill effectively allows places such as the British Virgin Islands and the Cayman Islands to facilitate tax evasion on an industrial scale, provided that the companies have no business dealings in the UK? There has to be that link first; they have to have an office, or be somehow incorporated, in the UK. Sham businesses go to those territories only because they are implicitly backed by UK law. Historically, overseas territories and Crown dependencies have been able to market the attractiveness of their financial services by highlighting the fact that the UK rule of law underpins their systems; thus the situation is perpetuated. The fact that people can stash their dirty cash there is part of the unique selling point of these places. I am curious about how the provisions would apply to overseas territories and Crown dependencies if that UK link was not there.

Richard Arkless: We are interested in hearing what the Minister has to say on the clause before we make any submissions. We take the point about the link to a UK company, but we are also concerned about this House's authority to legislate—or be seen to be legislating—over Crown dependencies.

Mr Wallace: I understand the importance that Members attach to the amendments, and what they are trying to do. They allow us to begin the debate on the response of the British overseas territories and Crown dependencies to tax evasion, and fraud and corruption more broadly. I am sure that that debate will continue as we consider other amendments later today.

The Opposition's amendments 5, 6 and 7 are designed to give the foreign tax evasion offence a broad scope, and to ensure that corporate complicity in tax evasion is tackled effectively. On that objective, I share the intentions of the hon. Member for Ealing Central and Acton. Before addressing the amendments specifically, I want to clarify that the foreign tax evasion offence in clause 38 would, as drafted, apply to a relevant body that is incorporated under the law of the UK, or carrying out part of a business activity from the UK, and where a person acting in the capacity of an associated person of the relevant body criminally facilitates tax evasion from within the UK, regardless of where the relevant body is based. The offence would, therefore, require there to be some nexus with the UK for our authorities to exercise jurisdiction; that would include a bank that is based or doing business in the overseas territories and Crown dependencies also doing business in the UK.

However, the hon. Lady's amendments would criminalise, under the UK law, a situation where there is no link to the UK. For example, if a Norwegian were to set up a business in a tax haven, and that business were to advise an American citizen on how to evade tax, and it had nothing to do with the UK at all—we had no loss of revenue and no business with either the Norwegian or the American—the hon. Lady would be asking us to criminalise that person, and effectively to become the world's policeman on that issue. We would have no nexus whatsoever to go after that individual; neither they nor the company helping them to evade tax would be British. We would perhaps have some ability, in some instances, to help our neighbour's tax authorities, as we share data under agreements reached over the last year or so. For example, if we find out that someone is helping the French to evade tax, our law enforcement agencies do share information.

The amendment seeks to force Crown dependencies and overseas territories to change their law. It seeks to use neo-imperialism, to use the hon. Lady's term, to force our will on territories with those statuses. That is a major step to take. As I said earlier, we have come a long way—90% of the way—with the establishment next year of automatic sharing of data via beneficial registers of ownership. Yes, that is not public, and I know that we will come on to that later in the Bill, but we have come a considerable way, and we should remember that.

We should also remember that because of the City of London, there will not be many financial organisations that do not have a nexus in this country. I am not going to finger a particular country, but the bank of a fictitious country with tax haven status would not be much of a bank if it did not have an operation in the UK. If that bank was encouraging people to evade tax, even if they were not British citizens or were not evading UK tax, we could deal with it, because it would have a branch here. If those concerned were convicted, they would most likely lose their banking licence. A bank that cannot trade in one of the major financial institutions of the United Kingdom is effectively a dud. In a sense, we could take quite considerable action. The fundamental difference is that we think there has to be a link. The alternative is to impose our will directly on these Crown dependencies and overseas territories.

I would like to correct the hon. Lady on two things. They are not "our" territories; we do not own them. The Crown dependencies have never been ours. They have never been part of the British Empire—well, they have never been part of our colonies. We do not even own the overseas territories. We have a governing oversight, but they have Parliaments and elections of their own, and they make their own decisions.

I think the direction of travel—my officials have been directly in touch with the Crown dependencies and the overseas territories—has been right. We are going some

considerable way from where we were three or four years ago. Those places have smelt the coffee, and the world is moving forward.

10 am

At the end of next year, our law enforcement agencies will have automatic access to many of the records we need. The register is not public, though I know that some Members would like it to be. It is, however, a considerable step that I can sit in my office and read about the behaviour of significant organised crime groups, major drugs smugglers or financiers of terrorism. People at Her Majesty's Revenue and Customs will now be able to get those records automatically from those countries, and we can set about taking these people down and making sure that they are prosecuted. We have moved in the right direction with that.

While I understand the motives behind the amendments and agree that we want to go further and make things more transparent, what the hon. Lady proposes in these amendments is going one step too far, too fast. On the calls on the United Kingdom to be a world policeman in this area, we are already in the lead; we are the only G20 country—never mind some of these other countries—with a public register of beneficial ownership. Let us do some work on our friends across the channel.

I therefore urge the hon. Lady to withdraw her amendment and, no doubt, she can scrutinise the progress. I would also be the first to ask her to come and see, when this Bill becomes an Act, the first case—if we do get a case sooner rather than later—of a prosecution of individuals engaged in that. Without a nexus, we are going one step too far.

Richard Arkless: We agree with that summary from the Government. The Minister describing the amendment as "neo-imperialism" put the seal on my view of it. The Scottish National party is reluctant to legislate on areas where there is no locus and no nexus and we fully accept that that is the position of the Crown dependencies. We accept the Minister is keen to see that direction of travel continue. In that vein, we have held meetings with representatives of the Crown dependencies over the last few weeks and have been assured that their co-operation in providing information for the register of beneficial ownership is groundbreaking. It will be co-operative and give the authorities in the UK the armoury they need to tackle financial criminality.

I agree it is very likely, if not probable, that organisations facilitating tax evasion, whether in the Crown dependencies or overseas territories, will have a link to the UK and are more likely, more often than not, to have their head office in the UK. We may need to address that again once we leave the European Union, but we can discuss it.

Dr Huq: I listened carefully to what the Minister said and was slightly disappointed. I said precisely that I do not want to be neo-imperialist. I do not want to rush into these countries, which is why I asked what was happening already and whether there is any way those people can do things on their own. I did not say that we own those places; I simply said that the UK rule of law underpins their systems.

The Prime Minister said on the steps of Downing Street that she wants an economy that works for everyone. This looks like an anomaly from all the evidence we have had from all those groups, and from all the speeches on the Floor of the House on Second Reading. However, we are not going to push the measure to a vote. It was a probing amendment. I wanted to hear more about the anomaly where there is a direct UK connection. I do not think it is sufficient to turn a blind eye while this goes on.

The Minister mentioned what has happened in some of these places and I have information that will be more relevant when we consider new clause 21. Therefore, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment made: 51, in clause 38, page 96, line 37, after "England" insert "and Wales".—*(Mr Wallace.)*

This amendment corrects an omission in clause 38(7)(b).

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

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

New clause 7— *Corporate probation order*—

'(1) A court before which a relevant body (B) is convicted of an offence under section 37 or 38 of this Bill may make a corporate probation order in relation to B.

(2) A corporate probation order—

(a) shall require B to implement a compliance procedure or make changes to an existing compliance procedure to prevent persons acting in the capacity of a person associated with B for committing UK tax evasion facilitation offences or foreign tax evasion facilitation offences;

(b) may require B to appoint an external body to verify that compliance programme, costs of which shall be met by B.

(3) A corporate probation order may be made only on an application by the prosecution specifying the terms of the proposed order. Any such order must be on such terms (whether those proposed or others) as the court considers appropriate having regard to any representations made, and any evidence adduced, in relation to that matter by the prosecution and on behalf of B.

(4) Before making an application for a probation order the prosecution must consult such enforcement authority or authorities as it considers appropriate having regard to the nature of the relevant offending.

(5) An organisation that fails to comply with a corporate probation order is guilty of an offence, and is liable—

(a) on conviction on indictment, to a fine,

(b) on summary conviction in England and Wales, to a fine,

(c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

(6) For the purposes of this clause "relevant body" has the same meaning as in section 36.'

This new clause would allow courts to require bodies found guilty of a UK or foreign tax evasion facilitation offence to make steps to improve their internal procedures to minimize the chance of persons working for that company committing the same offence in the future.

New clause 8—*Facilitation of tax evasion offences: disqualification of directors*—

'(1) Where a body (B) has been convicted of an offence under sections 37 and 38 of this Act the Secretary of State must arrange for the relevant enforcement authorities to investigate the conduct of the directors of B.

[The Chair]

(2) The purpose of the investigation under this subsection is to determine whether the directors of B were grossly negligent by failing to ensure that B had in place reasonable prevention procedures.

(3) In section 8 of the Company Directors Disqualification Act 1986, after sub-paragraph (ii) insert—

(iii) an investigation under section [Facilitation of tax evasion offences: disqualification of directors] of the Criminal Finance Act"

(4) For the purposes of this section—

"enforcement authorities" means one or more the bodies listed in subsection 362A(7) of the Proceeds of Crime Act 2002.

"prevention procedures" has the same meaning as in subsection 37(3) where B was convicted of an offence under section 37, or as in subsection 38(4) where B was convicted of an offence under section 38.'

This new clause would require the Secretary of State to investigate the directors of a company found guilty of a UK or foreign tax evasion offence to see whether the directors should be subject to a disqualification order for the failure to have proper procedures in place to prevent agents of that company facilitating tax evasion.

Mr Wallace: Perhaps I may clarify for the hon. Member for Ealing Central and Acton that I said she used the word "neo-imperialism"—I never implied that she wanted to be neo-imperialist, but some people could describe it as that if we were to impose our will on Parliaments in some of our overseas territories.

Clause 38 creates a new offence that will be committed by relevant bodies that fail to prevent persons associated with them from criminally facilitating evasion of taxes owed to a country other than the United Kingdom. We have seen that criminals seeking to provide services to further their clients' tax evasion will try to operate between the gaps between the legal systems of different countries. The measure will ensure that the UK is not a safe harbour for professional facilitators or the businesses for which they work. The new overseas tax evasion offence can be committed by relevant bodies that are formed or incorporated in the UK, or which are carrying out a business activity in the UK, or where the criminal act of facilitation occurs within the UK.

There is a necessarily broad scope for the new offence. It holds corporations that carry out a business in the UK, or the representatives of which are acting in the UK, to operate to the same high standards as UK businesses. The message is clear. Tax evasion is a crime. It is wrong. It is no less wrong where the revenue loss is suffered by another country. If a body is part of UK plc, or sends people to the UK, it is not okay to allow people to criminally facilitate the evasion of taxes, wherever they are owed.

The offence requires a dual criminality. Essentially, that means that, for a relevant body to be liable, the criminal law of the country suffering the tax loss must recognise tax evasion and the facilitating of tax evasion as criminal offences in their jurisdiction, and the laws must be broadly equivalent to those in the UK.

The offence does not require relevant bodies to have a thorough understanding of the tax laws in each jurisdiction, but rather to ask itself the question, "If we were providing these services to a UK taxpayer client, would this be legal?" If the answer is yes, there is no question of criminal liability under the new overseas fraud offence.

The offence is not about the UK policing the world's tax affairs. We envisage that a prosecution for the overseas tax evasion offence will take place only where there would otherwise be a failure of justice—for example, where the country suffering the tax loss was unwilling or unable to take action because of an inability to handle a complex international fraud trial, or was unable to investigate and prosecute because of corruption concerns. I will leave my explanation of the clause there and allow the hon. Member for Ealing Central and Acton to speak to her new clauses before I respond.

Peter Dowd (Bootle) (Lab): It is a pleasure to serve under your stewardship, Mrs Main. The Minister referred to this as the Criminal Finances Bill and the clue is in the name. People who commit an offence and go to prison come out and go on probation. New clause 7 would create a similar thing—a sort of corporate probation order that would allow courts to require bodies found guilty of a UK or foreign tax evasion facilitation offence to take steps to improve their internal procedures and minimize the chance of a person working for that company committing the same offence in future. That would be an important step in encouraging large organisations to take responsibility for those they hire and the actions they undertake, and more importantly in ensuring that financial crime and misconduct is not repeated by others in the organisation.

Before making an application for a probation order, the prosecution would have to consult enforcement agencies. Once a corporate probation order had been issued, any organisation that failed to comply with it would be subject to a fine. Currently, the only remedies a court may impose upon a company convicted of an offence is a fine, disgorgement of profit and compensation. Corporate probation orders would be an additional tool that prosecutors could seek. Courts could impose conditions requiring companies to undertake remedial action to their management and compliance procedures to ensure that the offending is not repeated.

Under the Corporate Manslaughter and Corporate Homicide Act 2007, courts can impose remedial orders on companies to require them to remedy any management failure that led to an offence occurring. This provides a workable pre-existing model for such orders. Under the Crime and Courts Act 2013, if a company is offered a deferred prosecution agreement, or DPA, a prosecutor can require a company to implement a compliance programme or make changes to an existing compliance programme. There is no equivalent power in relation to convictions. DPAs are reserved for companies that self-report their misdemeanours and co-operate with enforcement authorities.

Although prosecutors could, theoretically at least, use financial reporting orders to require a company to provide financial information, under the Serious Organised Crime and Police Act 2005, it is not clear that that would include information on compliance procedures. Additionally, such orders are heavy-handed, require separate court proceedings and require a prosecutor to prove that the risk of reoffending is sufficiently high.

The effect of that discrepancy is a ridiculous imbalance: companies that self-report and co-operate may be subject to greater monitoring of their compliance programme than companies that do not and are convicted. The result is that the companies that most need monitoring

of their compliance procedures—those whose procedures did not pick up the wrongdoing in the first place—get none, which is a huge deterrent to self-reporting, and puts a greater burden on enforcement agencies.

The Opposition believe that corporate probation orders are required to remedy that clear anachronism. Companies and defence lawyers have noted the more stringent compliance programme monitoring requirements under DPAs as one factor, among others, that puts companies off self-reporting wrongdoing to the Serious Fraud Office. The discrepancy between what happens under DPAs and what happens on conviction is creating a disincentive for companies to self-report.

At the end of the day, we need to encourage self-reporting in a framework in which companies feel that they are able to work with enforcement agencies to deal with rogue elements or individuals. The alternative would see the continuation of a culture of secrecy in which those at the top deliberately turn a blind eye to what those at the bottom do, and in which financial misconduct is not limited to an individual, but instilled and passed on to others in an organisation.

Richard Arkless: The Scottish National party is broadly in support of the new clauses. In particular, a corporate probation order would give an opportunity for an offending company to have its processes meticulously examined to ensure that they are fit for purpose going forward. We support new clause 8 on the potential disqualification of directors, which goes beyond the relevant body offences in the Bill. As a matter of principle, we think it will concentrate minds and ensure the protocols are fit for purpose if the directors at the top of the organisation feel the liability could be at their heels, as it were. I am interested to hear what the Minister has to say.

Several hon. Members *rose—*

The Chair: Order. I gather that Mr Dowd wants a second bite at the cherry on new clause 8.

Peter Dowd: I apologise, Mrs Main. I was going to deal with new clause 8 and was pre-empted, I am afraid. New clause 8 relates to the facilitation of tax evasion offences and the disqualification of directors.

It will be pretty apparent to hon. Members that a central theme to proceedings so far, as promulgated by virtually everybody, is the notion of transparency in the actions of those in positions of stewardship, such as directors of companies. Opaqueness has its advantages, I have no doubt, but when it leads to illegality there must be action to deal with it. Given that, the new clause would require the Secretary of State

"to investigate the directors of a company found guilty of a UK or foreign tax evasion offence to establish whether the directors should be subject to a disqualification order for the failure to have proper procedures in place to prevent agents of that company facilitating tax evasion."

Under the new offences covering the facilitation of tax evasion, a company could be criminally held to account if an employee commits such an offence. That is a huge step forward. However, there is a danger that senior executives, who are ultimately responsible for ensuring the company has in place the procedures to prevent its involvement in the facilitation of tax evasion, will escape any individual accountability under such an offence. The purpose of new clause 8 is to ensure that, where a company is convicted, the director of that company should be investigated with a view to disqualification, as happens currently when a company is held to have breached competition law, for example.

A perfectly legitimate question is whether new clause 8 is taking a hammer to crack a nut. That has been alluded to in past debates. I contend that it is not, because tax evasion has huge implications for the public purse, not just in lost revenue but in relation to public confidence in the tax system.

10.15 am

The day before the autumn statement, with warnings from the Chancellor that the economy must be watertight to manage the sharp challenges ahead of Brexit, surely any largesse—toleration of industrial-scale tax evasion—must stop. Ensuring that there is senior-level accountability when companies are convicted of tax evasion offences will instil confidence in the public that those in companies who are responsible for allowing tax evasion to happen there will face penalties. It will create greater incentives for senior-level executives to ensure that the companies operate on the right side of the law and drive out bad actors in the sector.

The Opposition acknowledge and recognise that it is unfair to tar all directors with the same brush when it comes to the perception of financial misconduct and criminality, and we would not want to do that. Since the financial crisis, those who run financial organisations have had huge reputational damage—some warranted, some not. The new clause would create a clear distinction between directors who do the right thing, complying with pre-existing regulation and working with enforcement agencies to tackle misconduct, and those who wilfully break the law or look the other way when it happens.

A disqualification order for those guilty of tax evasion offences is only right, so that they cannot continue to sit on the board of the company in question, or the board of any other company for that matter, to encourage further financial misconduct and send out the wrong message. The new clause is not about pointing the finger at those who commit themselves day in, day out, to their companies' and the country's health and wealth; it is about isolating and identifying individuals in those companies and ensuring that they are held accountable for their actions, thus preventing them from working in the financial industry again, and encouraging an environment of openness and transparency rather than a milieu that turns a blind eye.

Mr Wallace: I am grateful to the hon. Member for Bootle and pleased to say that the Government are supportive of what he is trying to achieve—that the new offences should be as effective as possible at changing corporate behaviour, and that law enforcement should have the tools it needs to police the new laws effectively. However, I hope to reassure him and his hon. Friends that those matters are already provided for.

As the hon. Gentleman said, new clause 7 would introduce a system of corporate probation orders, which would allow a court to require relevant bodies found guilty of the new corporate offences to make changes to their prevention procedures. Hon. Members should be

[Mr Wallace]

aware that clause 43(2) adds those offences to the list of offences for which a serious crime prevention order can be imposed under the Serious Crime Act 2007. Serious crime prevention orders allow for a court passing sentence on a person or corporate body to impose prohibitions, restrictions or requirements to prevent, restrict or disrupt involvement in serious crime. Those orders are already available and can successfully disrupt tax fraud. Where such an order is made against a relevant body, its terms may require the body to allow a law enforcement agency to monitor how it provides services in the future.

Additionally, where the corporation in question is in the regulated sector, the regulator may, quite independently of a serious crime prevention order, undertake monitoring of the relevant body, relevant to failings in its systems and controls. For example, the Financial Conduct Authority could take steps to disqualify directors or put extra conditions on to the companies. It is the Government's view that the hon. Gentleman's objective can be achieved by applying the existing power to impose serious crime prevention orders on conviction of the new offences, or within the terms of the deferred prosecution agreement. Those orders can do anything that corporation probation would do.

New clause 8 would create a duty on the Secretary of State to investigate the directors of a company found guilty of a UK or foreign tax evasion offence, to see whether they should be disqualified. The existing law already allows the Secretary of State to apply to a court to have a director disqualified where he or she believes that that is in the public interest. A court can grant such an order when it is satisfied that the director's conduct makes him unfit to be concerned in the management of the company. There is no evidence of which we are aware that the power is not being used in the appropriate cases. When not used, it is not used for appropriate reasons. When company directors are charged with offences, the sentencing court can consider disqualification.

Where the new offence is charged and the relevant body is not tried alongside a director, prosecutors will still be able to refer cases to the Secretary of State so that an application for disqualification can be considered. Indeed, there may be cases when sentencing judges recommend that this is done in their sentencing remarks. In short, rather than creating new law, we again consider it proper for the new offences to sit alongside, and work within, the existing legislative framework for disqualifying directors. If regulators have evidence that a director is unfit to be concerned in the management of the company, they can refer the case to the Secretary of State to make an application to have that director disqualified.

I hope that the hon. Members for Ealing Central and for Bootle, and others, agree that these points are therefore already accounted for, that they do not feel the need to move their new clauses, and that clause 38 can stand part of the Bill.

Question put and agreed to.

Clause 38, as amended, accordingly ordered to stand part of the Bill.

Clause 39

GUIDANCE ABOUT PREVENTING FACILITATION OF TAX EVASION OFFENCES

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

Clause 39 requires the Government to produce guidance on reasonable prevention procedures, and empowers the Government to agree supplementary guidance produced by others, such as industry and trade bodies. The aim of the guidance is to help organisations to understand and avoid committing the new offences by undertaking a risk assessment and establishing reasonable prevention procedures to address their risks. The guidance is vital to the success of the offences and will mean higher levels of compliance with the new legislation, creating the desired culture change, and ultimately leading to a reduction in the criminal facilitation of tax evasion. In parallel, it will help to avoid an unnecessarily defensive approach to compliance, whereby excessive prevention procedures are adopted that constitute an undue regulatory burden.

Whether any relevant body can avail itself of the reasonable procedures defence will always be a matter for the criminal courts. The guidance will be only an illustrative set of principles, not a list of absolute requirements. Departure from the guidance will not mean that the defence is unavailable and that the relevant body is guilty. There may well be many different approaches—all equally reasonable—to preventing tax evasion facilitation offences by those who act in the relevant body's name. Equally, following the guidance does not lead the relevant body to safe harbour rendering it immune from prosecution. Even full compliance with the guidance might not amount to having reasonable prevention procedures if the prevention procedures ignore a particular risk that the relevant body's particular business carries.

Her Majesty's Revenue and Customs consulted with industry extensively on what support was needed to ensure compliance with the new offences. The overwhelming feedback revealed a desire for guidance akin to that already produced for the similar offence of corporate failure to prevent bribery in the Bribery Act 2010. The last draft guidance was published at the same time as the introduction of the Bill and has received positive feedback. HMRC continues to work with a number of leading financial service trade bodies on developing detailed supplementary guidance for the sector. I hope the clause stands part of the Bill.

Dr Huq: We all need guidance in life. The measures sound eminently sensible and the Minister described them cogently. We support the clause.

Question put and agree to.

Clause 39 accordingly ordered to stand part of the Bill.

Clause 40

OFFENCES: EXTRA-TERRITORIAL APPLICATION AND JURISDICTION

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

The Chair: With this it will be convenient to discuss clause 41 stand part.

Mr Wallace: Clause 40 provides for the extraterritorial application of the corporate failure to prevent offences. The UK's criminal courts will have jurisdiction to try the domestic tax offence in clause 37, regardless of where the conduct took place. The UK courts claim jurisdiction as a result of the UK suffering the tax loss. With respect to the foreign tax offence, our courts again claim jurisdiction on the basis that the relevant body has a nexus with the UK, such that it can be regarded as part of UK plc and thus is required to abide by the criminal law of this country. We have seen, and our partners in other jurisdictions have confirmed that they have also seen, that those deliberately facilitating tax evasion will typically offshore illicit services to try to avoid detection and to hide in the gaps between domestic legal systems.

Those facilitating offshore tax evasion often do not provide those services from within the geographic borders of the country whose tax loss they are facilitating. It is therefore vital that both the domestic and the overseas tax evasion facilitation offences capture activity that takes place outside the United Kingdom. Failure to apply the laws in such a way would lead to loopholes that could be easily exploited. By its very nature, the foreign tax evasion offence is likely to raise a complicated range of competing interests and issues, including those relating to international relations and diplomatic affairs.

Clause 41 puts appropriate safeguards in place by requiring that a decision to prosecute the offence is taken only by, or with the authority of, the director of these prosecuting bodies: the Director of Public Prosecutions, the director of the Serious Fraud Office or the Director of Public Prosecutions for Northern Ireland. A similar protection is in place for prosecutions for the corporate failure to prevent bribery under section 7 of the Bribery Act. I hope the clauses stand part of the Bill.

Dr Huq: Her Majesty's loyal Opposition support clause 40.

Question put and agreed to.

Clause 40 accordingly ordered to stand part of the Bill.

Clause 41 ordered to stand part of the Bill.

Clause 42

OFFENCES BY PARTNERSHIPS: SUPPLEMENTARY

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

The Chair: With this it will be convenient to consider clauses 43 and 44.

Mr Wallace: Clause 42 makes provision for rules of criminal procedure in relation to the prosecution of companies to apply to prosecutions of partnerships for the new offences in part 3. It mirrors section 15 of the Bribery Act 2010 and provides that proceedings for an offence under clauses 37 or 38 are to be brought in the name of the partnership and not that of an individual partner; and that any resulting fine is paid out of the assets of the partnership. The clause also applies existing rules of criminal procedure applicable where bodies corporate are prosecuted. They cover various matters including the transfer of cases from the magistrates court to the Crown court, the representation of the relevant body in court, the entering of pleas and the taking of action in the relevant body's absence.

As I mentioned in debating an earlier group, clause 43 amends a number of pieces of existing legislation, adding the new offences created by part 3 to the lists of offences for which various powers are available, which will assist the effective investigation and prosecution of the offences. That includes allowing the CPS to require suspected persons to answer questions or provide information in relation to those offences; allowing for serious crime prevention orders to be imposed on relevant bodies; and providing for deferred prosecution agreements.

Clause 44 is simply an interpretation clause, defining terms within part 3. I hope the clauses stand part of the Bill.

Dr Huq: We support the clauses.

Question put and agreed to.

Clause 42 accordingly ordered to stand part of the Bill.

Clauses 43 and 44 ordered to stand part of the Bill.

New Clause 9

IMMIGRATION OFFICERS

'(1) Section 24 of the UK Borders Act 2007 (seizure of cash) is amended as follows.

(2) For the heading substitute "Exercise of civil recovery powers by immigration officers".

(3) For subsection (1) substitute—

(1) Chapters 3 to 3B of Part 5 of the Proceeds of Crime Act 2002 (civil recovery) apply in relation to an immigration officer as they apply in relation to a constable."

(4) In subsection (2)(a), for "section 289" substitute "sections 289 and 303C and Chapter 3B".

(5) In subsection (2)(c), for "and 297A" substitute ", 297A and 303E and in Chapter 3B (see section 303Z2(7))".

(6) In subsection (2)(d), for "section 292" substitute "sections 292 and 303G".

(7) In subsection (2)(e), for "and 293A" substitute ", 293A, 303H and 303I".

(8) In subsection (2)(f), in the words before sub-paragraph (i), after "295(2)" insert "or 303L(1)".

(9) In subsection (2)(f)(ii), after "298" insert "or (as the case may be) 303O".

(10) In subsection (2)(g), after "298" insert ", 303O or 303Z14".

(11) In subsection (2)(h), after "302" insert ", 303W or 303Z18"." .—*(Mr Wallace.)*

Immigration officers exercise the civil recovery powers conferred by Chapter 3 of Part 5 of the Proceeds of Crime Act 2002 by virtue of section 24 of the UK Borders Act 2007. These amendments of section 24 provide for immigration officers to be able to exercise the civil recovery powers conferred by new Chapters 3A and 3B of Part 5 of the Proceeds of Crime Act 2002 (see clauses 12 and 13 of the Bill) in the same way.

Brought up, read the First and Second time, and added to the Bill.

New Clause 10

FORFEITURE OF CASH

'(1) In section 289(6) of the Proceeds of Crime Act 2002 (meaning of cash for purposes of Chapter 3 of Part 5 of that Act), after paragraph (e) insert—

"(f) gaming vouchers,

(g) fixed-value casino tokens,".

(2) After section 289(7) of that Act insert—

"(7A) For the purposes of subsection (6)—

(a) "gaming voucher" means a voucher in physical form issued by a gaming machine within the meaning of the Gambling Act 2005 (see section 235 of that Act) that represents a right to be paid the amount stated on it;

(b) "fixed-value casino token" means a casino token that represents a right to be paid the amount stated on it."

(3) In Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 (forfeiture of terrorist cash), in paragraph 1 (meaning of terrorist cash)—

(a) after sub-paragraph (2)(e) insert—

(f) gaming vouchers,

(b) fixed-value casino tokens,";

(b) after sub-paragraph (4) insert—

"(5) For the purposes of sub-paragraph (2)—

(a) "gaming voucher" means a voucher in physical form issued by a gaming machine within the meaning of the Gambling Act 2005 (see section 235 of that Act) that represents a right to be paid the amount stated on it;

(b) "fixed-value casino token" means a casino token that represents a right to be paid the amount stated on it.""—*(Mr Wallace.)*

This new clause provides for casino tokens and what are commonly referred to as "ticket in ticket out vouchers" to be treated as cash for the purposes of the civil recovery powers conferred by Chapter 3 of Part 5 of the Proceeds of Crime Act 2002 and by Schedule 1 to the Anti-terrorism, Crime and Security Act 2001.

Brought up, read the First and Second time, and added to the Bill.

New Clause 18

FORFEITURE OF TERRORIST CASH

'(1) Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 (forfeiture of terrorist cash) is amended as follows.

(2) In paragraph 3 (detention of seized cash)—

(a) in sub-paragraph (2)(a), for "three" substitute "6";

(b) after sub-paragraph (8) insert—

"(9) Where an application for an order under sub-paragraph (2) relates to cash seized under paragraph 2(2), the court, sheriff or justice may make the order if satisfied that—

(a) the condition in sub-paragraph (6), (7) or (8) is met in respect of part of the cash, and

(b) it is not reasonably practicable to detain only that part."

(3) After paragraph 5 insert—

PART 2A

FORFEITURE OF TERRORIST CASH WITHOUT COURT ORDER

Cash forfeiture notice

5A (1) This paragraph applies while any cash is detained in pursuance of an order under paragraph 3(2).

(2) A senior officer may give a notice for the purpose of forfeiting the cash or any part of it if satisfied that the cash or part is terrorist cash.

(3) A notice given under sub-paragraph (2) is referred to in this Schedule as a cash forfeiture notice.

(4) A cash forfeiture notice must—

(a) state the amount of cash in respect of which it is given,

(b) state when and where the cash was seized,

(c) confirm that the senior officer is satisfied as mentioned in sub-paragraph (2),

(d) specify a period for objecting to the proposed forfeiture and an address to which any objections must be sent, and

(e) explain that the cash will be forfeited unless an objection is received at that address within the period for objecting.

(5) The period for objecting must be at least 30 days starting with the day after the notice is given.

(6) The Secretary of State must by regulations made by statutory instrument make provision about how a cash forfeiture notice is to be given.

(7) The regulations may (amongst other things) provide—

(a) for a cash forfeiture notice to be given to such person or persons, and in such manner, as may be prescribed;

(b) for a cash forfeiture notice to be given by publication in such manner as may be prescribed;

(c) for circumstances in which, and the time at which, a cash forfeiture notice is to be treated as having been given.

(8) The regulations must ensure that where a cash forfeiture notice is given it is, if possible, given to every person to whom notice of an order under paragraph 3(2) in respect of the cash has been given.

(9) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.

(10) In this Part of this Schedule—

"senior officer" means—

(a) a senior police officer;

(b) an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer;

(c) an immigration officer of a rank designated by the Secretary of State as equivalent to that of a senior police officer;

"senior police officer" means a police officer of at least the rank of superintendent.

Effect of cash forfeiture notice

5B (1) This paragraph applies if a cash forfeiture notice is given in respect of any cash.

(2) The cash is to be detained until—

(a) the cash is forfeited under this paragraph,

(b) the notice lapses under this paragraph, or

(c) the cash is released under a power conferred by this Schedule.

(3) If no objection is made within the period for objecting specified in the notice under paragraph 5A(4)(d), and the notice has not lapsed, the cash is forfeited (subject to paragraph 5D).

(4) If an objection is made within the period for objecting, the notice lapses.

(5) If an application is made for the forfeiture of the whole or any part of the cash under paragraph 6, the notice lapses.

(6) If the cash or any part of it is released under a power conferred by this Schedule, the notice lapses or (as the case may be) lapses in relation to that part.

(7) An objection may be made by anyone (whether a recipient of the notice or not).

(8) An objection means a written objection sent to the address specified in the notice; and an objection is made when it is received at the address.

(9) An objection does not prevent forfeiture of the cash under paragraph 6.

(10) Nothing in this paragraph affects the validity of an order under paragraph 3(2).

Detention following lapse of cash forfeiture notice

5C (1) This paragraph applies if—

(a) a cash forfeiture notice is given in respect of any cash,

(b) the notice lapses under paragraph 5B(4), and

(c) the period for which detention of the cash was authorised under paragraph 3(2) has expired.

(2) The cash may be detained for a further period of up to 48 hours (calculated in accordance with paragraph 3(1A)).

(3) But if within that period it is decided that neither of the applications mentioned in sub-paragraph (4) is to be made, the cash must be released.

(4) The applications are—

(a) an application for a further order under paragraph 3(2);

(b) an application for forfeiture of the cash under paragraph 6.

(5) If within that period an application is made for a further order under paragraph 3(2), the cash may be detained until the application is determined or otherwise disposed of.

Application to set aside forfeiture

5D (1) A person aggrieved by the forfeiture of cash in pursuance of paragraph 5B(3) may apply to a magistrates' court or (in Scotland) the sheriff for an order setting aside the forfeiture of the cash or any part of it.

(2) The application must be made before the end of the period of 30 days starting with the day on which the period for objecting ended ("the 30-day period").

(3) But the court or sheriff may give permission for an application to be made after the 30-day period has ended if the court or sheriff thinks that there are exceptional circumstances to explain why the applicant—

(a) failed to object to the forfeiture within the period for objecting, and

(b) failed to make an application within the 30-day period.

(4) On an application under this paragraph the court or sheriff must consider whether the cash to which the application relates could be forfeited under paragraph 6 (ignoring the forfeiture mentioned in sub-paragraph (1)).

(5) If the court or sheriff is satisfied that the cash to which the application relates or any part of it could not be forfeited under that paragraph the court or sheriff must set aside the forfeiture of that cash or part.

(6) Where the court or sheriff sets aside the forfeiture of any cash—

(a) the court or sheriff must order the release of that cash, and

(b) the cash is to be treated as never having been forfeited.

Release of cash subject to cash forfeiture notice

5E (1) This paragraph applies while any cash is detained under paragraph 5B or 5C.

(2) The person from whom the cash was seized may apply to a magistrates' court or (in Scotland) the sheriff for the cash to be released.

(3) On an application under sub-paragraph (2), the court or sheriff may direct the release of the cash or any part of it if not satisfied that the cash to be released is terrorist cash.

(4) An authorised officer may release the cash or any part of it if satisfied that the detention of the cash to be released is no longer justified.

Application of cash forfeited under cash forfeiture notice

5F (1) Cash forfeited in pursuance of paragraph 5B(3), and any accrued interest on it—

(a) if first detained in pursuance of an order under paragraph 3(2) made by a magistrates' court or a justice of the peace, is to be paid into the Consolidated Fund;

(b) if first detained in pursuance of an order under paragraph 3(2) made by the sheriff, is to be paid into the Scottish Consolidated Fund.

(2) But it is not to be paid in—

(a) before the end of the period within which an application under paragraph 5D may be made (ignoring the possibility of an application by virtue of paragraph 5D(3)), or

(b) if an application is made within that period, before the application is determined or otherwise disposed of."

(4) In paragraph 7(4) (release of cash on appeal against decision in forfeiture proceedings), after "of" insert "the whole or any part of".

(5) In paragraph 9 (victims), after sub-paragraph (3) insert—

"(4) If sub-paragraph (5) applies, the court or sheriff may order the cash to be released to the applicant or to the person from whom it was seized.

(5) This sub-paragraph applies where—

(a) the applicant is not the person from whom the cash claimed was seized,

(b) it appears to the court or sheriff that the cash belongs to the applicant,

(c) the court or sheriff is satisfied that the release condition is met in relation to the cash, and

(d) no objection to the making of an order under sub-paragraph (4) has been made by the person from whom the cash was seized.

(6) The release condition is met—

(a) in relation to cash detained under paragraph 3, if the conditions in that paragraph for the detention of the cash are no longer met,

(b) in relation to cash detained under paragraph 5B or 5C, if the cash is not terrorist cash, and

(c) in relation to cash detained pending the conclusion of proceedings in pursuance of an application under paragraph 6, if the court or sheriff decides not to make an order under that paragraph in relation to the cash."

(6) In paragraph 19 (general interpretation), in sub-paragraph (1), at the appropriate places insert—

""cash forfeiture notice" has the meaning given by paragraph 5A(3),";

""senior officer" (in Part 2A) has the meaning given by paragraph 5A(10),"."—*(Mr Wallace.)*

This new clause makes various amendments of Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 to bring it into line with the provision made by Chapter 3 of Part 5 of the Proceeds of Crime Act 2002, including amendments to provide for the forfeiture of "terrorist cash" by the giving of a forfeiture notice. This administrative forfeiture regime will apply throughout the UK; the equivalent regime under the 2002 Act is limited in its application to England and Wales and Northern Ireland.

Brought up, read the First and Second time, and added to the Bill.

New Clause 1

Review of Scottish Limited Partnership

"(1) The Secretary of State must undertake a review into the extent of financial criminal activity associated with Scottish Limited Partnerships, and lay a copy of the review before the House of Commons within six months of this Act receiving Royal Assent.

(2) In conducting the review the Secretary of State must consult—

(a) the Scottish Government;

(b) the National Crime Agency;

(c) the Serious Fraud Office;

(d) the Financial Conduct Authority;

(e) HMRC;

(f) interested third sector organisations; and

(g) any other persons he deems relevant.

(3) The review must set out what steps the Government intends to take to prevent Scottish Limited Partnerships being used for criminal purposes."—*(Roger Mullin.)*

This new clause would require the Secretary of State to conduct a review of financial criminality associated with Scottish Limited Partnerships and set out what steps the Government intends to take to prevent Scottish Limited Partnerships being used for criminal purposes.

Brought up, and read the First time.

10.30 am

Roger Mullin (Kirkcaldy and Cowdenbeath) (SNP): I beg to move, That the clause be read a Second time.

It is a great pleasure to serve under your chairmanship, Mrs Main. Before I go into the substance of the new clause, I place on the record our thanks to the Minister for his willingness to discuss the issue with us both before and after Second Reading. Although I am a relatively new Member of Parliament, this is the fifth Bill Committee on which I have served in just over a year, and this is the most listening Minister I have come across. I would like to acknowledge that.

Mr Wallace: That's my career over.

Roger Mullin: Yes, this is the gentle dagger.

I rehearsed on Second Reading many of the specific instances of abuse using Scottish limited partnerships. I do not intend at this moment to repeat all that, but for the Minister's benefit, I would like to add to what has already been said.

First, we have had further discussions with the Law Society of Scotland and others. They indicate a willingness to assist us in moving forward to address what the solutions may be to Scottish limited partnerships. I have also had discussions with an individual who was named in evidence to us, Mr Richard Smith, who has undertaken a lot of research into this matter. He, too, has indicated a willingness to assist.

Why do we consider that a review is needed? A lot of research has been undertaken, including by Mr David Leask, who gave evidence to the Committee just last week. However, in our view, before the Government move towards precisely how they will take action to secure SLPs from abuse in the future, it would do us a lot of good if we conducted a detailed review, sponsored by the Government, to ensure that all forms of abuse are properly understood. It would be good to do that before we move towards saying what the precise solutions will be. Therefore, it would be valuable if the Minister, when he comments on the new clause, indicates whether he thinks there is still scope for the Government to consider a detailed review such as that which we have discussed.

I shall conclude now and allow the Minister to respond. Our hope is that the response will be such that there will be no need for us to push the new clause to a vote.

Mr Wallace: I thank the hon. Gentleman for his kind words. As the son of a Fifer, I know that one always does well to listen to a Fifer—or one faces the consequences.

I am also grateful to the Scottish National party and *The Herald* newspaper for raising this issue. It is a genuine issue of abuse, as they have rightly pointed out. We have taken important steps to prevent the misuse of corporations for money laundering, corruption and tax evasion. The UK's public register of company beneficial ownership went live this year—we were the first G20 country to put such a register in place. At the London anti-corruption summit, we committed to going further and creating a register of the beneficial ownership of foreign companies that own real property or wish to be involved in public sector procurement contracts in the UK.

However, we must not be complacent. Hon. Members have rightly raised the issue of Scottish limited partnerships a number of times. I hope they are assured that I take it very seriously. The stories in *The Herald* and the intelligence assessments that I have received from our law enforcement agencies are very concerning.

As I committed to do on Second Reading, I have spoken on this subject to the Under-Secretary of State for Business, Energy and Industrial Strategy, my hon. Friend the Member for Stourbridge (Margot James), who is responsible for small business, consumers and corporate responsibility, and she shares my concerns about the abuse of SLPs. We agreed that we need to get the balance right between ensuring that the UK remains a good place to do business for the law abiding and cracking down on abuse. Her Department recently published a discussion paper that invites views on a number of questions about transposing corporate transparency requirements under the fourth anti-money laundering directive. The catchy name is "Implementation of the Fourth Money Laundering Directive—Discussion paper on the transposition of Article 30: beneficial ownership of corporate and other legal entities".

Peter Dowd: Too pithy.

Mr Wallace: I can repeat it for those who want to write it down. That was launched on 3 November. I think that it is a six-week consultation. As a starting point, I strongly urge the Scottish National party to make a submission.

Roger Mullin: We are aware of that consultation with a snappy title, and it is our understanding that, appropriately, submissions have to be in by St Andrew's day—30 November. We intend to make a submission.

Mr Wallace: One issue raised in the paper is whether SLPs should be brought within the scope of the directive by including them on the UK's public company beneficial ownership register, which would go some way to revealing the people behind some of those arrangements. The Government propose that SLPs should be on the register, although we must wait to see the responses to the consultation before we make a final decision. Hopefully

my office will be in touch with hon. Members to arrange a meeting to discuss both that and some of the other issues they have raised.

New clause 1 proposes a statutory review of SLPs. The existing discussion paper already provides for interested parties to submit their views on identifying the beneficial owners of SLPs, which is a good first step. I reassure hon. Members that officials and Ministers in multiple Departments are looking closely at the wider issues related to SLPs, and I hope we will have more to say about that on Report. For now, I hope the hon. Gentleman feels suitably encouraged to withdraw his new clause.

Roger Mullin: I thank the Minister for his encouraging response. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 2

NATIONAL CRIME AGENCY: REPORT ON STAFF TRAINING

"Section 3 of the Proceeds of Crime Act 2002 is amended as follows, after subsection (7) insert—

'(8) The National Crime Agency must make an annual report to Parliament on the provision of training to persons under this section.'".—*(Dr Huq.)*

This new clause would require the National Crime Agency to make a report to Parliament about the training it provides to its staff in financial investigation and the operation of the Proceeds of Crime Act.

Brought up, and read the First time.

Dr Huq: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss

New clause 5—*Accredited financial investigators: Recovery of training costs*—

"(1) The Secretary of State shall have a duty to work with enforcement authorities to ensure that enforcement authorities have in place training cost agreements with staff who are trained by the enforcement authority to be accredited financial investigators.

(2) For the purposes of this section

"Enforcement authority" has the same meaning as in section 362A(7) of the Proceeds of Crime Act 2002

"training costs agreement" means an agreement requiring an employee who has been trained as an accredited financial investigator to repay the cost of their training if they voluntarily leave the employment of the enforcement authority within 3 years of their training being completed.

"accredited financial investigators" has the same meaning as in section 47A(2) of the Proceeds of Crime Act 2002.".

This new clause would place a duty on the Secretary of State to work with enforcement agencies to ensure that the agencies have appropriate HR arrangements in place to recover the costs of training accredited financial investigators where the AFI leaves the employment of the agency within 3 years of completing their training.

Dr Huq: New clause 2 would ensure that the National Crime Agency makes an annual report to Parliament on the training it provides to enforcement agency staff who are defined under both this Bill and the Proceeds of Crime Act 2002 as having the power to exercise civil recovery proceedings. We selected the National Crime Agency to be subject to the proposed duty because it is the sole body responsible for the training of other enforcement agencies with such powers under POCA.

Our main reason for wanting to introduce a duty on the National Crime Agency to make an annual report is that new clause 2 is nothing new. All this stuff was in the two influential Select Committee reports—the report by the Select Committee on Home Affairs on the proceeds of crime, and the report by the Public Accounts Committee. The report by the Home Affairs Committee showed that there is a lack of understanding at enforcement level regarding confiscation orders. There is sometimes confusion about where the buck stops.

The Home Affairs Committee report makes it clear that that misunderstanding is manifested in a number of ways, and I will give two quick examples. Some enforcement staff are not aware of their power to exercise civil recovery procedures and/or actions to that end, and confiscation orders are regularly not factored in at the beginning of criminal investigations—that is on page 13 of the report. The Home Affairs Committee alleges that, as a result, criminals regularly have time to hide their assets and that that has contributed to the poor recovery rate of confiscation orders. We know there is a lot wrong with those orders and that a lot of money falls through the cracks. According to the Committee report, as of last year there was a total of £1.6 billion in outstanding debt from confiscation orders.

The Public Accounts Committee also recently reported that administering the orders costs £100 million, yet £175 million was recovered through the orders last year. I am not arguing that that is solely down to staff training or a lack of knowledge among the staff, but the Home Affairs Committee report makes it clear that a number of causal factors contribute to the poor rate of recovery. Those factors include, but are not limited to, the overworked ELMER IT system for suspicious activity reports. My right hon. Friend the Member for Leicester East eloquently mentioned that several times in the debate on the Floor of the House. The creaking IT system is overloaded and overworked as it is. I cannot account for where he is now, but I am sure that he will be there when needed. That is one factor. There is also a reluctance among barristers and judges to specialise in asset recovery law, as the Home Affairs Committee report also mentioned. Arguably, there is a lack of specialist confiscation courts.

Obviously, we are not arguing that the amendment would suddenly wave a magic wand to remedy those problems, but building in the audit mechanism through an annual report would allow us to identify weaknesses in the context of training provided by the National Crime Agency. One problem contributing to the poor recovery rate for confiscation orders, as I mentioned earlier, is that they are not factored into the very beginning of criminal procedures. The Minister talked about behaviours. If there were a regular report, we could identify similar behaviours and remedy the problem. In theory, we would increase the rate of recovery. To that end, Labour see the duty to report as being a cost-effective performance enhancer. There is nothing quite like the fear of having to make a statement that must be relayed on the Floor of the House orally or in writing or both, and it would focus the mind on the tasks at hand.

[Dr Huq]

Regular reporting would allow Parliament to assess in real time the necessity of adjusting NCA training—that form of crime and the techniques underpinning it change in real time. Since the Proceeds of Crime Act 2000, 16 years ago, we have seen technology change how such evil crimes are effected—hopefully, they are ineffective. To that end, I draw Members' attention to the debate on whether NCA training should be mainstreamed or extended to new enforcement agencies. Detective Superintendent Clark, head of the economic crime directorate at the City of London Police, has been positive about the idea of mainstreaming National Crime Agency training, so that some of it can be taken over. That is on page 9 of the Home Affairs Committee report.

That level of detail may be for another day, but the point I am trying to make is that regular reports to Government would allow the House to keep a closer eye on the quality and quantity of training provided. The reports could then be factored into more well-informed discussions at a later date about things such as mainstreaming training. Whether or not we are now living in an age of austerity, everyone in this House wants best value for money from our public services, particularly when budgets are tight. When it comes to underperforming services, we can all agree that making institutional or procedural change, rather than just throwing money around in an unfocused way, can help to drive up standards. I believe that regular, up-to-date, detailed reports would provide this and future Governments with the ability to make such changes.

The amendment is not intended to be political; it is technical. I know that the Minister is a reasonable man, and I think that he will agree that it is fair and reasoned. Everyone in the House appreciates the great work done by the NCA on our behalf, but it is only fair that we monitor and have an up-to-date understanding of the training that it provides.

The Chair: Dr Huq, would you like to speak to new clause 5 at the same time?

Dr Huq: Yes. New clause 5 is simple and does what it says on the tin. We want the Secretary of State to work with the enforcement agencies, using accredited financial investigators, to hammer out some form of agreement whereby if an accredited financial investigator chooses to leave his post within the first three years of qualifying as an AFI, they must repay the cost of training before doing so. There are some figures.

10.45 am

In evidence to the Home Affairs Committee, the Serious Fraud Office noted:

> "Experienced accredited financial investigators with the skills to deal with complex financial crime are scarce within the public sector, and their skills are increasingly attractive to financial institutions in the private sector."

Since its establishment in 2009, the SFO has employed 15 senior financial investigators. Of those, six have left the SFO and the resulting recruitment campaigns, according to that Home Affairs Committee report, had very "limited success".

This could be done through, for example, the illicit wealth that they have confiscated or that they have been instrumental in confiscating. The Home Affairs Committee report had some quite startling statistics showing that AFIs are routinely subject to what it described as private-sector poaching. Another alarming feature of the Committee's report was that AFIs are working for organisations where one could reasonable suspect that their skills may not be put to the most ethical use. I mentioned the other day that some of them have gone over to, for example, the gambling industry—something we do not want to encourage. It is wholly unfair for the state effectively to subsidise their training costs when they then scurry off to the private sector. It is a time of budgetary restraint and belt-tightening: we need to be getting value for money. It is only fair that those who benefit from the state's generosity should repay it in kind.

Secondly, the Government are wholly aware of this issue. In fact, I believe there was meant to be a working party on recruitment and retention of key financial staff. Whatever happened to that? Sometimes these things get swept under the carpet or become a talking shop, so I would be curious to know what happened to that. It was a Whitehall working paper—we have not heard any concrete suggestions come out of the other end of that about how this problem is to be remedied. The Government's plan on this is as mysterious and as tightly under wraps as the PM's plan for Brexit, but let us not be political. I would like to ask the Minister whether he is opposed to this new clause—I would have thought he was a sensible man; it is quite sensible stuff. If he is opposed to it, can he please explain what he will do to stem the poaching of accredited financial investigators?

Mr Wallace: The Government recognise the importance of ensuring that investigation and prosecution agencies have sufficient expertise and resources to carry out their functions under the Proceeds of Crime Act 2002. Section 3 of the Act places a statutory duty on the National Crime Agency to provide a system for the accreditation of financial investigators who use the powers under POCA. This is done through the National Crime Agency's Proceeds of Crime Centre. The accreditation system includes provision for monitoring performance and, importantly, accreditation can be removed from an investigator who fails to meet the accreditation standards.

The training can be lengthy and expensive. The Home Affairs Committee, during its recent inquiry into asset recovery, identified the risk of the private sector poaching trained resources with the promise of better pay and benefits. It was a good report. I read it in full as well as the Public Accounts Committee report.

The NCA already publishes statistics on the training activities undertaken by the Proceeds of Crime Centre in its annual report. Their last report showed the delivery of 95 training courses, support for 760 delegates through that training, and the completion of 1,400 registrations and re-accreditations. Those statistics are already published annually.

New clause 5 provides for the use of agreements to tie accredited financial investigators to their agencies, so that they would pay the cost of their training if they voluntarily left the employment of the agency that has funded their training. However, these agencies have tried such agreements and found them difficult and costly to enforce. In most cases, the benefits of such agreements are minimal.

Even if an effective and enforceable form of cost training agreement could be found—I do not want to dismiss the idea out of hand today—making it a requirement in primary legislation would not be appropriate. The operational agencies who use financial investigators should be given the freedom to manage their workforce according to their needs.

In line with the hon. Lady's concerns, the criminal finance board, which I chair with my hon. Friend the Economic Secretary to the Treasury, commissioned a working group to examine the retention and training of financial investigators. It has not gone away or been swept under the carpet; I assure hon. Members that nothing is swept under the carpet in my Department. There is no conspiracy either—we do not do conspiracies in my Department; we are the conspiracy, according to some. That group is also considering what actions can be taken to incentivise investigators to stay and develop their career within the public sector.

The hon. Lady also referred to ELMER—the database of the suspicious activity reports IT regime. We have committed to replacing the SARs IT regime by October '18, but in the meantime we have taken steps to upgrade and maintain it as part of the SARs reform package. We have not finished reforming the SARs programme, and before we roll out a new system we need to know what the new suspicious activity reports will look like, because if we are going to have a software database in order to cope with that effectively, we need to know what we are planning to cope with.

I am therefore alive to the issues and will be following the issues raised by the right hon. Member for Leicester East. I will visit to look at the system directly; I will have to bring my 1980s computer knowledge up to date to see whether I can remotely understand what I am looking at. I will certainly make sure that it is on because, like the hon. Member for Ealing Central and Acton, it is not my or the Government's intention for the system to grind to a halt. It is very important.

It is also important that we register that we are keen to make sure that all those people who benefit from that system—not just the Government but the banks and the other people who use it—perhaps make a contribution towards the new system. That is important. It is for their benefit as well for the system to work successfully and efficiently.

I hope that demonstrates to the hon. Lady that I take both matters seriously. I think the training has already been dealt with, because it is published in the National Crime Agency's annual report. I hope she is inclined to withdraw her motion on that basis.

Dr Huq: I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 3

ANNUAL REPORTING: ADEQUACY OF RESOURCES

"(1) In Part 12 of the Proceeds of Crime Act 2002 (miscellaneous and general), after section 455, insert—

"455A Annual reports on resources

(1) A relevant authority must, no later than 1 June in each calendar year, prepare an annual report on the adequacy of the resources available from money voted by Parliament for the exercise of any functions of that authority—

(a) under this Act;

(b) in connection with investigations into terrorist financing offences under the Terrorism Act 2000;

(c) under Part 3 of the Criminal Finances Act 2017.

(2) In this section, "a relevant authority" means—

(a) the National Crime Agency;

(b) the Director of Public Prosecutions;

(c) the Director of the Serious Fraud Office, and

(d) Her Majesty's Revenue and Customs.

(3) The reports prepared in accordance with subsection (1) shall be sent—

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

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

(c) in the case of Her Majesty's Revenue and Customs, to the Chancellor of the Exchequer.

(4) The person receiving annual reports in accordance with subsection (3) must lay those reports before each House of Parliament in the form in which they were received no later than 30 June in the same calendar year, together with a statement on plans for future resources to be provided from money voted by Parliament."."—*(Peter Dowd.)*

This new clause would require the National Crime Agency and other agencies to report annually to Parliament on the adequacy of its resource to fulfil its functions relating to combating financial crime.

Brought up, and read the First time.

Peter Dowd: I beg to move, That the clause be read a Second time.

This is not a technical clause. It goes to the heart of transparency of resources for the enforcement agencies concerned. It is crucial that they are adequately funded, given the nature of the task that they are dealing with. They are chasing billions of pounds of evaded tax in relation to crime, with a particular emphasis on concerns around terrorism, and it is therefore perfectly legitimate for Parliament to be directly reported to on the adequacy of resources. That is the starting pitch.

In the evidence session, I, along with other Members, in particular the hon. Member for Portsmouth South, as I recall, asked many questions of witnesses about the resources available to law enforcement agencies. To Detective Superintendent Harman, who heads the national terrorist financial investigation unit at the Met, the hon. Lady asked:

"Are you confident that the enforcement agencies will have sufficient resources to make full use of the new powers in the Bill?"—[*Official Report, Criminal Finances Public Bill Committee,* 15 November 2016; c. 9, Q8.]

"Yes" was the response from the police officer and the witness accompanying him. I have to say, it is a pleasure to have the police helping us with our inquiries, rather than the other way around.

Clearly, the adequacy of resources goes to the heart of the ability of enforcement agencies to stamp out and tackle abuse within the financial sectors, particularly that which is linked to crime and terrorism. It is self-evident that, if the resources are not there, or if they are not used forensically and wisely, the agencies concerned will certainly not fulfil the intention of the Bill. It is worth reminding hon. Members of the intention of the Bill, as set out in the explanatory notes—I alluded to this in the evidence sessions last week—namely,

"to give law enforcement agencies, and partners, the capabilities and powers to recover the proceeds of crime, tackle money laundering and corruption, and counter terrorist financing."

[Peter Dowd]

It is fair to say the Government could not be any more plain on this matter. The measure is, after all, the Criminal Finances Bill, so the clue is in the title. Given that we all agree with the Government's intention as set out in the overview of the Bill—in the section relating to its mission—it is incumbent upon us to establish whether the resources are available to effect that good and laudable intention, notwithstanding the view expressed by the superintendent and his colleagues that they felt that they had enough money.

One way of holding the Government to account is to ensure that those intentions are backed up with the wherewithal to carry them out through a parliamentary annual review, given the crucial nature of these issues. All those who were asked about the adequacy of the resources to do the job agreed that the intention of the Bill was sound, and I do not dispute that. However, aside from the enforcement agencies themselves, which felt that they had enough to do the job—I am not sure whether that was in hope rather than in expectation—it is fair to say that most of the other witnesses' enthusiasm for that element of the equation was not quite as clear-cut, although I would stand corrected and am challengeable on that.

For illustration purposes, Members may recall that when I asked the witnesses representing the Centre for Financial Crime and Security Studies at the Royal United Services Institute, Corruption Watch, Global Witness and Transparency International a question about whether they felt that—in their experience—the resources were available to do the job, there was a bit of a tumbleweed moment, with sideways looks at one another. I read the clear body language—and you do not have to be an experienced psychologist to have spotted it—that in their experience they felt that there clearly were not enough resources, and that they felt that that would hinder the enforcement agencies in doing their job. In response to the question from my hon. Friend for Ealing Central and Acton about the adequacy of resources, the director of the Centre for Financial Crime and Security Studies Mr Keatinge said:

> "Resourcing is clearly a major issue. Cynically, one of the reasons for involving the private sector is to harness it to do some of the work…I do not believe we have the resources that we need."—[*Official Report, Criminal Finances Public Bill Committee,* 15 November 2016; c. 69-70, Q150.]

I accept that that is a view, but it is a view that has been reached after asking expert witnesses. We at least have to listen to them and take on board some of the concerns that they had. Moreover, when I followed up with the representative from the Metropolitan Police Authority, the National Crime Agency and the National Police Chiefs Council earlier the response to the hon. Member for Portsmouth South, I felt that they had begun to row back a little on their unequivocal answer to the hon. Lady.

That is why it is paramount that the professionals, and those whose day to day job is to tackle financial crime adequately, are adequately equipped with the resources to do the job. That is why we have to challenge them, and it is our responsibility to challenge them. In a sense, it is Parliament's responsibility to challenge the Government and the Executive, and one of the best ways of doing that is for the information to be reported directly, rather than articulated through some sort of pontifical process to Parliament. I can inform Members now—I do not think I have to, but I will—that the people the law enforcement agencies are trying to catch are ahead of the game in relation to the crimes that they are committing, and we need to ensure that the enforcement agencies have the resources to do the job.

A clear example of where annual reporting would be effective is in the oversight of the IT system for SARs, which I know the Minister has referred to as being revamped or changed. As far as I am aware, ELMER is designed to process up to 20,000 suspicious activity reports; it is currently processing up to 381,000 of them. Of those, only 15,000 are looked at in detail, as was noted in the Home Affairs Committee's fifth report of the 2016-17 Session, "Proceeds of crime". That raises the question of whether reporting that many SARs is simply over the top, and borne out of caution on the part of banks. If so, then that approach wastes a good deal of time for those doing the reporting, and for the receiving agencies, who have to search through the haystack. Alternatively, if the reporting numbers are, to all intents and purposes, a reasonable reflection of concern that has reached a mutually agreed threshold, that raises another question: why are so many reports being ignored, brushed aside or not acted on? The Minister has reassured us that they are not under his office carpet.

11 am

The next question, unsurprisingly, is whether there is a resource deficit that dare not speak its name, especially for witnesses from one of the enforcement agencies that kindly gave evidence to us last week. It is not unreasonable to suggest that, as a result of the Government's funding levels, SARs are now seen by many private regulators and bodies as a box-ticking exercise that underperforms, at the very least. I recall some witnesses alluding to that. Although the Government have committed to replacing the system, annual reporting to Parliament would ensure that its replacement is effective. If that had been instituted earlier, no doubt it would have shown up the inadequacies of the system, but we are where we are.

It is up to the Minister to take us where we would all like to be. We need well resourced agencies that are able to deliver the tasks set out for them in the Bill. Ultimately, the new clause would allow Parliament to hold the Government to account, through annual reports from professionals and experts on the ground, on their funding of enforcement agencies, and on the impact of that funding on the ability to prevent and disrupt attempts to hide the proceeds of crime. Given the seriousness of the issue we face—the loss of billions of pounds to the Exchequer—that is not too big an ask of the Government.

Mr Wallace: In my response to the hon. Member for Ealing Central and Acton on new clauses 2 and 5, I explained what we are doing to assess the capacity and capability of investigator resource. The new tools in the Bill are a key part of strengthening our response to economic crime. The Government continue to invest in law enforcement agencies through the asset recovery incentivisation scheme, which returns recovered assets back to the frontline. A top-slice of £5 million has been set aside every year until the end of this Parliament to fund key national asset recovery capabilities, and I can

announce today that we are going further. We made a manifesto commitment to return a greater percentage of recovered assets to policing, and we are implementing that commitment by investing in policing the whole Home Office share of amounts above a certain baseline collected by the multi-agency regional asset recovery teams. That will give the agencies greater financial resources, if performance continues to increase—100% of the Home Office share, rather than the 50% that they currently get. There we are: an announcement in a Bill Committee—a new way of venturing forward.

Let us be honest: I say to the hon. Member for Bootle that in Government, we never have enough resources across all our priorities, because different priorities are preyed on by events such as flooding in the west of England, or issues for the Home Office such as a surge in terrorism. I therefore question the use of the word "adequacy" in the new clause. We can scrutinise accounts or budgets, but asking a police officer whether he feels he has enough is like asking, "How long is a piece of string?" Of course we never have enough for crime fighting across the country. If I had millions of pounds, I could find things to spend that money on immediately, and so could every Member in this Committee Room.

I am concerned about whether it would be right and fair to publish a report to Parliament, as the new clause demands. The agencies that use their powers under the Proceeds of Crime Act already report on their resources and results through the departmental annual accounts, which are subject to scrutiny from the National Audit Office and the Public Accounts Committee. The use of criminal justice tools and powers is also subject to scrutiny by Her Majesty's inspectorate of constabulary and, in the case of terrorism legislation, by the independent reviewer of terrorism legislation. The criminal finances board also closely monitors performance and resourcing issues. I hope that the hon. Members for Ealing Central and Acton, and for Bootle, can see that there is already significant scrutiny of resourcing. I invite the hon. Member for Ealing Central and Acton to withdraw the motion.

Dr Huq: I was interested to hear a groundbreaking announcement in this Committee. I completely get the Minister's point that we will never feel satiated, and that there will always be inadequacy, but my hon. Friend the Member for Bootle made a really powerful case. He mentioned SARs and the ELMER IT regime. Originally, 20,000 SARs were anticipated, but there are now 381,882—my hon. Friend said there were "up to" 381,000 of them, but there are even more, and the figure is rising.

I want to mention the NCA's ability to cope with the greater workload. It takes an increasing length of time to get investigations into the courts. We have heard that it could take more than 200 days, with the new SARs regime. The NCA was created as a successor to several different organisations. The budget of those it replaced was £812 million, but the NCA's new annual budget was £474 million. Those figures put the situation into context. The Government have cut that budget even further since the NCA's creation; it received £411 million in 2015-16. I accept that there was a one-off £200 million cash injection last year, but the agency needs steady long-term funding to carry out its functions effectively. It is no good just sprinkling blockbuster sums now and then; it needs a consistent funding model.

My hon. Friend the Member for Bootle made some powerful points. For effective crime fighting, we should not have agencies that are overworked and under-resourced. The announcement that 100% of assets will go to the Home Office conflicts with an amendment that we have tabled.

Mr Wallace: Not the Home Office; it is going to the law-enforcement agencies.

Dr Huq: Okay, so it is within the system. We have tabled new clause 20, which is about repatriating assets to the jurisdictions they came from. Some charities—Christian Aid and all those people—are saying that third-world health budgets get robbed when someone buys a house in Hampstead with such proceeds. Are we going to—

The Chair: Would the hon. Lady please face the Chair?

Dr Huq: I think we will press the new clause to a vote.

Richard Arkless: I would like to make a very small point about the Minister's comments on new clause 3. He rightly suggests that if we were to ask any police officer or public servant whether they had enough resources, the answer would clearly always be no, but the new clause does not seem like a generic question about whether there is enough generally. The hon. Member for Bootle is asking whether adequate resources are available for specific functions to be exercised under the Proceeds of Crime Act 2002. That is a marked departure from asking any Department the generic question, "Have you got enough, guv?", to which we would almost certainly know the answer. The new clause is about activities undertaken under the Act, and I do not think it is fair to categorise the suggestion as the Minister did.

Mr Wallace: Perhaps I can clarify some of the issues. Obviously the word "adequate" is subjective. We heard evidence in Committee from members of the law enforcement agencies, and they did use the word "enough". My point is that we scrutinise the accounts in this place, and then compare that with agencies' performance and outcomes. That is how we come to a decision—subjective, often—on whether there are adequate resources. It is not necessary to put that in primary legislation.

Perhaps I could clarify for the hon. Member for Ealing Central and Acton the issues around asset recovery and where those funds go. At the moment, if we recover assets from drug dealers, for example, the money is split, with 50% going to the Home Office, and 50% to the Crown Prosecution Service and all the other agencies—the National Crime Agency or the police—involved in that operation, so that they can invest it in their capabilities, and use it to increase their ability to fight crime. I can say today that further to our manifesto commitment, in future, instead of having that 50% of the cake, they will be able to keep 100% of the amount coming in above the baseline, which was set in 2015, if I am not mistaken. They have a very strong incentive to ensure that they are rewarded for their good work, and to make sure that we go after big sums as well as small. That is important.

[Mr Wallace]

On the point the hon. Lady raised about returning money that is stolen—we will come back to this—we sent back £27 million to Macau recently. Where we identify the ownership of stolen assets that we can return to a foreign country or wherever, we will, and we have already done that. My colleague the Minister for Immigration signed a memorandum of understanding with the Nigerian Government in August to make it even easier for us to return stolen property or assets to a country's people. It is absolutely our intention to do that.

Across the money laundering piece, we can identify the owners of certain assets and take steps to return them. Other assets that accrue because of the high margins in the illicit trade of, say, drugs may be harder to return. In fact, the people who contributed to those sums may have committed a crime themselves, so there is a difference there. I recently saw in Mombasa some confiscated stuff that we will be returning, as soon as we can get through the paperwork. It is not our intention to divvy up the proceeds from the house in Knightsbridge and hand them all over to the National Crime Agency, and rob the third country from which the money was stolen.

Dr Huq: I wanted clarification on just one other thing. The Home Affairs Committee report wanted ELMER replaced by the end of December. Am I right in thinking that the Minister referred to October 2018?

Mr Wallace: 2018.

Dr Huq: So it will not be December?

Mr Wallace: No. As I said earlier, we have spent money updating and making sure that ELMER is maintained, but we are also in the process of drawing up a SAR reform policy. There are a number of reasons why there are so many referrals—380,000-odd—but the Bill will hopefully cut that number. We want quality, not quantity. At the moment, we are getting quantity, partly because in the suspicious activity regime, if a body makes the report, its defence is halfway there—that is the tick-box bit that is highlighted in the report. Also, many institutions currently report a fragment of the transactions, because they say that they are unable to report the complete transaction due to data-sharing barriers. That is why this Bill removes those barriers. Hopefully, instead of 15 pieces of a transaction being reported as 15 separate SARs, we will get one, because one institution will be able to report the transaction from beginning to end.

We are already taking steps to reduce demand on the system. The system is working; people should not think it has stopped working. The challenge is the analysis, and making sure that we act on the suspicious reports and are quick enough to discard the ones that are not, because we want quality, not quantity.

This time last year, we agreed a £200 million capital improvement budget for the National Crime Agency between 2016 and 2020. That is a huge sum of money for it to spend on a whole range of capital projects to bring them up-to-date. We all have lessons to learn—Labour Governments and Conservative Governments—from rushing into IT replacement projects that cost much more than anyone envisaged. It is therefore important we get the new SARs regime right before we replace the system. I assure hon. Members that that is at the forefront of my mind. We are not going to fall over—that is the main thing—and we will make sure that when we replace it, we do so with the right system, so that we are not all back in this Committee Room in a few years' time saying, "The SARs regime is not working." I hope that clarifies the point for the hon. Member for Ealing Central and Acton.

11.15 am

Peter Dowd: I started by talking about Parliament being able to have reports from the agencies concerned, given the seriousness of the issue facing us. The Minister, reasonably, told us that 100% of the proceeds will go to the appropriate agencies and be divvied up as appropriate. I completely accept that, in good faith, and repeat the point made earlier: that he is a reasonable man. I do not challenge the Minister's reasonableness; my challenge is based on the fact that Parliament, given the nature of this issue, is perfectly entitled to receive reports from agencies—no doubt articulated through the Departments in some fashion—on their resources. A definition of "adequacy" is that something is proportionate, or sufficient for its purpose. That is a matter for Parliament to discuss. It will not necessarily be able to do anything other than discuss it, but the discussion may produce views and experiences for the Minister to consider.

As to the Minister's point that this is not something to go into primary legislation, about this time last year I was on the Committee that for 17 sittings considered the Housing and Planning Bill. There were all sorts of things in that Bill far less important to the health and integrity of the nation. Indeed, in the past, local government Acts—primary legislation—have even included provisions on how many hours off a person in one local authority can have, compared with a person in another. Primary legislation can be used in a range of ways. It is for the Government of the day to say, "We have nothing to fear from the reports coming before Parliament, from openness and transparency, or from challenge."

Mr Wallace: Anyone who is a victim of financial crime takes that crime incredibly seriously; the same goes for victims of violent crime. The National Crime Agency has a number of threats to deal with, including drugs, firearms, child sexual exploitation, financial crime and foreign national offenders. Our police forces deal with a range of threats. Are we to say, on the principle that the hon. Gentleman has set out, that primary legislation should require our law enforcement agencies to produce a report every year, under each heading across the whole range of crime, on whether they believe they have adequate funding to do their job? If so, I envisage that our law enforcement agencies will be full of people doing reports all year, arguing about whether resourcing is "adequate", and submitting them to Parliament, rather than getting on and prosecuting the people we need prosecuted.

Peter Dowd: That is a fair point, but we know that, every day, Parliament debates issues that are far less important for the body politic, security and the safety

of the country. The point that I am trying to make is that the issue is of great importance and significance. It is so different in degree as to be different in kind. My hon. Friends and I therefore say that Parliament should have this opportunity. This is not a technical proposal. I repeat that, given the nature of the threat to the country, and the importance that people place on the safety of the country, we would like the report to be made to Parliament.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 8.

Division No. 1]

AYES

Arkless, Richard	Huq, Dr Rupa
Dowd, Peter	
Harris, Carolyn	Mullin, Roger

NOES

Atkins, Victoria	Griffiths, Andrew
Drummond, Mrs Flick	Sandbach, Antoinette
Elphicke, Charlie	Wallace, Mr Ben
Ghani, Nusrat	Wood, Mike

Question accordingly negatived.

New Clause 6

FAILURE TO PREVENT FINANCIAL CRIME

'(1) A relevant body (B) is guilty of an offence if a person commits a criminal financial offence when acting in the capacity of a person associated with (B).

(2) It is a defence for B to prove that, when the criminal financial offence was committed—

(a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or

(b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.

(3) In subsection (2) "prevention procedures" means procedures designed to prevent persons acting in the capacity of a person associated with B from committing criminal financial offences.

(4) For the purposes of this clause—

"criminal financial offence" means one of the following offences—

(a) an offence under section 1, 6 or 7 of the Fraud Act 2006;

(b) an offence under section 17 of the Theft Act 1968;

(c) an offence under section 327, 328 and 329 of the Proceeds of Crime Act 2002;

(d) a common law offence of conspiracy to defraud;

"relevant body" has the same meaning as in section 36.

(5) A relevant body guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine,

(b) on summary conviction in England and Wales, to a fine,

(c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

(6) It is immaterial for the purposes of this section whether—

(a) any relevant conduct of a relevant body, or

(b) any conduct which constitutes part of a relevant criminal financial offence

takes place in the United Kingdom or elsewhere."—*(Peter Dowd.)*

This new clause would create a corporate offence of failing to prevent financial crime.

Brought up, and read the First time.

Peter Dowd: I beg to move, That the clause be read a Second time.

The new clause would create a corporate offence of failing to prevent financial crime. It would compel the financial services industry to take greater steps to stamp out financial crime, and to tackle tax evasion and other economic crimes. At the heart of the new clause is the need for a level playing field, and to end the impunity that many large global organisations have enjoyed, whereby directors have plausible deniability if they are not involved in decisions taken at a lower level by employees.

The 2015 Conservative party manifesto stated:

"We are...making it a crime if companies fail to put in place measures to stop economic crime, such as tax evasion, in their organisations and making sure that the penalties are large enough to punish and deter."

At the UK anti-corruption summit on 12 May this year, the Government announced that the Ministry of Justice would consult on an extension of

"the criminal offence of a corporate 'failing to prevent' beyond bribery and tax evasion to other economic crimes."

They acknowledged that law enforcement struggles

"to prosecute corporations for money laundering, false accounting, and fraud under existing common laws."

As far as I am aware, no consultation has been announced; it appears that the consultation is likely to have been downgraded to a call for evidence, bringing further delay and sending the wrong message.

The Opposition are always willing to assist the Government where it is sensible and in the interests of the country to do so. The new clause would enable the Government to fulfil their manifesto promise, which I know is dear to the hearts of every Government Member; I know that they recite the manifesto with catechistic fervour before, during and after meetings of the 1922 committee. The Minister will sleep easier knowing that he has delivered his part of the schedule ahead of time. I expect Government Members will want to fulfil the UK summit's commitment before the parliamentary calendar becomes clogged up with Brexit-related measures. The Prime Minister has promised to deliver an economy in which everybody plays by the same rules.

UK corporate liability laws rely on a "directing mind" test, which requires prosecutors to prove that senior board level executives intended misconduct to occur. This moves the focus of attention away from the bigger fishes, and on to small and medium-sized enterprises, where directors are more involved and can therefore be more easily prosecuted—quite rightly, if appropriate. This was a concern of some of the witnesses. The system undermines corporate governance by creating perverse incentives to keep boards in the dark about decisions that may lead to misconduct. Several recent major scandals, including LIBOR and Euribor, have resulted in no prosecutions against companies owing to the current corporate liability regime.

[Peter Dowd]

Where individuals have been prosecuted under conspiracy to defraud, they have argued that their actions were condoned and encouraged by their employers. However, the Serious Fraud Office has not charged any of the employers concerned, which include Barclays, UBS and Deutsche Bank, and not a single UK financial institution faced criminal charges as a result of the 2008 financial crisis. A "failure to prevent" offence for fraud and conspiracy to defraud would have enabled such prosecutions. Similarly, in 2015 the SFO was forced to drop its case against Olympus after the Court of Appeal found that it was not illegal under current corporate liability laws for companies to mislead their auditors. This was also the case in 2015, when the CPS stated that because of corporate liability laws, it could not mount a successful prosecution against the companies in the phone hacking scandal, which included some of the largest tabloid newspapers in the UK. Although the new clause would not specifically address the phone hacking case, it highlights the urgent need for broader corporate liability reform.

The Government also need to tackle the facilitators of corruption.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.