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Public Bill Committee

NUCLEAR SAFEGUARDS BILL

Fifth Sitting

Tuesday 14 November 2017

(Morning)

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Saturday 18 November 2017

The Committee consisted of the following Members:

Chairs: † James Gray, Steve McCabe

† Blomfield, Paul *(Sheffield Central)* (Lab)
† Bradley, Ben *(Mansfield)* (Con)
† Carden, Dan *(Liverpool, Walton)* (Lab)
† Debbonaire, Thangam *(Bristol West)* (Lab)
Gibson, Patricia *(North Ayrshire and Arran)* (SNP)
† Gill, Preet Kaur *(Birmingham, Edgbaston)* (Lab/Co-op)
† Harrington, Richard *(Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy)*
† Harris, Rebecca *(Castle Point)* (Con)
† Harrison, Trudy *(Copeland)* (Con)
† Hendry, Drew *(Inverness, Nairn, Badenoch and Strathspey)* (SNP)
† Lewer, Andrew *(Northampton South)* (Con)
† Maclean, Rachel *(Redditch)* (Con)
† Norris, Alex *(Nottingham North)* (Lab/Co-op)
† Robinson, Mary *(Cheadle)* (Con)
† Smith, Eleanor *(Wolverhampton South West)* (Lab)
† Sunak, Rishi *(Richmond (Yorks))* (Con)
† Syms, Sir Robert *(Poole)* (Con)
† Whitehead, Dr Alan *(Southampton, Test)* (Lab)
† Wragg, Mr William *(Hazel Grove)* (Con)

Kenneth Fox, Rob Cope, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 14 November 2017

(Morning)

[James Gray *in the Chair*]

Nuclear Safeguards Bill

9.25 am

The Chair: Welcome back to the Committee stage of the Nuclear Safeguards Bill. I am a very old-fashioned sort of Chairman, but in the old days we did not bring coats, bags and things into the Room, and if we did we secreted them away in such a manner as not to make it obvious that we did not know where the cloakroom was. That is just for the future. It is a very small matter of no significance.

Schedule

Minor and consequential amendments

Dr Alan Whitehead (Southampton, Test) (Lab): I beg to move amendment 9, in schedule, page 6, line 37, leave out subparagraph (2)(a).

This amendment, together with 10 and 11, would change the Parliamentary procedure for regulations made under Clause 1 to come into force. Currently regulations under this section are only subject to the affirmative procedure on first use. This amendment would ensure this is the case upon every use.

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

Amendment 10, in schedule, page 7, line 3, at beginning insert—

"(zaa) nuclear safeguards regulations under section 76A(1)".

This amendment, together with amendments 9 and 11, would change the Parliamentary procedure for regulations made under Clause 1 to come into force. Currently regulations under this section are only subject to the affirmative procedure on first use. This amendment would ensure this is the case upon every use.

Amendment 11, in schedule, page 7, line 6, leave out subparagraph (3).

This amendment, together with amendments 9 and 10, would change the Parliamentary procedure for regulations made under Clause 1 to come into force. Currently regulations under this section are only subject to the affirmative procedure on first use. This amendment would ensure this is the case upon every use.

Dr Whitehead: If I do have a bag on me this morning, it is very well secreted. You would expect nothing less, Mr Gray.

These amendments are essentially combined amendments, inasmuch as their effect—although it is achieved in slightly different ways—is to ensure that the regulations are made effective by the affirmative procedure on all occasions, so that they can be discussed. At the moment, through various measures in the Bill, regulations will be agreed by the affirmative procedure in the first instance only. Should further regulations be introduced, they will not be agreed by the affirmative procedure.

Hon. Members may think that is not a particularly important distinction. The "Memorandum concerning the Delegated Powers in the Nuclear Safeguards Bill for the Delegated Powers and Regulatory Reform Committee" —the departmental memo—says:

"The first set of regulations made under this power will be subject to the draft affirmative procedure in order to allow both Houses of Parliament to debate the technical details of the new regime in full."

In other words, new regulations will be introduced to bring into being a new regime, as we recall from our previous discussions in this Committee, to replace that which was previously undertaken through Euratom's oversight.

"Subsequent regulations will be subject to the negative resolution procedure unless they create new criminal offences or they include any provision amending or repealing the Nuclear Installations Act 1965 or Nuclear Safeguards Act 2000, in which case the draft affirmative procedure will apply (pursuant to section 113(3) of the 2013 Act)."

That is so. There is an exception to using the negative procedure for subsequent regulations in those instances, but the impression that one gets from the memorandum is that the difference, other than on the matter of repealing the Nuclear Installations Act 1965 or the Nuclear Safeguards Act 2000, is very slight.

I suggest to the Committee that the significance of subsequent regulations can be considerable, inasmuch as they are new regulations that will replace Euratom's regulations, and will not necessarily be fully formed in the first instance. As far as I can see, it is not the case that they are likely to be minor tidy-ups that are of no consequence and therefore can safely be provided for under negative resolution.

9.30 am

Indeed, the memorandum goes on to say that not only is the negative resolution procedure considered appropriate for future amendments as far as the new set of regulations is concerned, but in the case of power to make regulations or authorise the Office for Nuclear Regulation to make the payments towards compliance costs:

"The Department believes that the negative resolution procedure is considered appropriate, as the regulations will only authorise expenditure, but the negative procedure will still ensure Parliament has oversight."

We need to consider two things: first, whether the subsequent amendments that are likely to arise to the new regulations are of such insignificance that it is safe to place into legislation that they will be discussed in the House through the negative procedure. Secondly, we need to consider whether the use of negative procedure for the future regulation ensures that Parliament has oversight of the procedures.

It might be worth considering what one has to do to get oversight of a negative resolution for a piece of secondary legislation in this House. Hon. Members know that the procedure through which a negative resolution is laid is that the Government lay the resolution, and that everyone has 21 days—I believe that is the case—to draw attention or object to that negative resolution, or require that it be debated further. If there is no such objection, the negative resolution is automatically assumed to have been put in place with no oversight at all.

If there is, however, an objection, it remains extremely difficult to get that resolution, further amendment or new secondary legislation in a position where it can be

meaningfully scrutinised. One way of doing that is for those people who want to raise the issue to make a prayer to annul the secondary legislation—the negative resolution. That would be done by laying down that prayer as an early-day motion and by trying to gather a number of signatures on it, as in the case of any other early-day motion; except, of course, it is not an early-day motion but a procedure to try to hoist that negative resolution on to the Floor of the House in some way.

It is remarkable that if a prayer is laid down, there is no guarantee that anything will happen as far as that prayer is concerned. The House needs to review that in the not too distant future. It is down to the Government to decide whether a day should be given to debate that negative resolution, as if it were an affirmative resolution, in Committee. In those circumstances, the most that would happen is that the Government may or may not agree that time should be made available. At that point, a non-amendable motion would be debated for 90 minutes in Committee. However, it is by no means the case that time would be given, and even if time was given that would certainly not make any difference to the laying of the negative resolution. It is quite possible for time to be given for a debate after the negative resolution comes into force. Then, even if that negative resolution is passed, it is effectively only an advisory resolution as far as this particular piece of legislation is concerned; it does not overturn it in its own right and it would require further procedures on the Floor of the House, at the end of a debate, to try to get the negative resolution overturned.

What I think is clear from that little exposition of how negative resolutions can be addressed by this House is that the idea that a negative procedure will ensure that Parliament still has oversight is rather wide of the mark, regarding the reality of what one would be faced with if a negative resolution was to be laid.

As for the content of a negative resolution, as I have said, it is by no means clear that, in this instance and as far as this Bill is concerned, after the first set of regulations has been made, for which an affirmative resolution must be laid, any subsequent secondary legislation will only make small technical amendments to the regulations. Indeed, it is not possible to guarantee, in order to sustain the case that the negative procedure should be applicable after the first time, that there will only be small technical amendments to those regulations.

The reason is that, as I have said and as has been mentioned both in this Committee and in evidence given to this Committee, the Bill is not only a contingent Bill but is a Bill, when it becomes operational, whose safeguarding regime would not be everything that we want it to be. It might be fit for purpose basically, but as both the Minister and witnesses have indicated, the regulations and their operation on day one after exit day would be by no means the finished article.

Although it would be possible to accord to, for example, the voluntary agreement arrangements with the International Atomic Energy Agency—one would hope that is possible—one could reasonably envisage further significant regulations being introduced to bolster the regime that had been passed for duty, as it were, on day one after exit day.

Therefore, in this particular instance it is really not possible to state with certainty that, after the first regulations have been laid, nothing significant will come down the road under the general heading of "regulations". It appears to me that on both those grounds it is difficult to make a case saying, "Don't worry. Everything's okay. Nothing to look at. Move along," which appears to be what is happening.

First, I would particularly like to hear from the Minister whether he thinks, and can really say, that the secondary regime after regulations have been made will be one of a merely technical nature in perpetuity. Secondly, does he think that the negative procedure will give the House a sufficient level of scrutiny and leverage about the nature of subsequent regulations, as the memorandum appears to suggest? I will be interested to hear how that argument proceeds, but at the moment I am not convinced that it has great substance. I therefore hope that the Committee will consider these amendments to put that right, so that the affirmative procedure is not just required for the initial regulations but is guaranteed for future regulations that are introduced under the heading of the general subject matter of the first regulations.

Dan Carden (Liverpool, Walton) (Lab): With the affirmative procedure, it is not as if we have any great scrutiny power, but it at least allows us to have a debate in a Committee Room such as this. Has my hon. Friend had any indication that the Minister is opposed to debates about future regulations relating to nuclear safeguards?

Dr Whitehead: My hon. Friend makes an important point: the affirmative procedure is actually fairly limited. What we discuss in Committee is unamendable and our scrutiny is often pretty perfunctory. Nevertheless, it at least guarantees that something will be brought to somewhere in Parliament, and the opportunity to discuss it is not dependent on the Government's largesse. It is at least a minimal protection, as far as Parliament is concerned, and it guarantees that something will be brought to the Floor of the House. Importantly, the negative procedure does not do that.

I hope the Minister will reflect on the fact that, because we are introducing such a wide-ranging enabling Bill, it is important that the regulations have proper scrutiny subsequently. We must not simply sign a blank cheque for the future and allow anyone making the regulations to do what they want. It is an important principle in this House that we do not do that under anything but the most minimal circumstances, and in this instance I suggest that those minimal circumstances do not exist.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Richard Harrington): Good morning, everybody. I thank the hon. Member for Southampton, Test for his contribution relating to amendments 9, 10 and 11. I have spent quite a lot of time thinking about them and about how practical his suggestion is.

I apologise to the hon. Gentleman and the Committee as I do not have the draft regulations for the Committee. We discussed them the week before last, but I was eager to secure this slot so that the Bill could progress. Discussions with the Office for Nuclear Regulation are well advanced, and I hope that, before we discuss the Bill further—definitely by January—they will be published for all hon. Members and a wider audience to see. They are not secret regulations

[Richard Harrington]

or anything particularly devious. It is simply because of the logistics of organising them along with the Bill that we have not published them in time.

I should set out this provision in the same way as the hon. Gentleman did. Clause 1(2) creates new powers to enable the Secretary of State to make regulations for the purpose of ensuring that qualifying nuclear material, facilities or equipment are available only for the use for civil activities. 7. To do that, clause 1(2) inserts new section 76A into the Energy Act 2013. Section 76A provides the Secretary of State with new regulation-making powers relating to nuclear safeguards. The regulations will set out the detail of the domestic regime for civil nuclear safeguards.

It is appropriate to make provision for a nuclear safeguards regime in delegated legislation, simply because the subject matter is highly technical and the substantive provisions necessary to give effect to the regime will be very detailed. That is why we believe that it has to be in secondary legislation.

9.45 am

New section 76A(2) sets out examples of the safeguards obligations that can be imposed through the nuclear safeguards regulations. These could be in relation to record keeping, accounting, the provisional publication of information, imports and exports, the design of qualifying nuclear facilities or equipment, and the production, processing, use, handling, storage or disposal of qualifying nuclear material or equipment.

The regulations will cover the detailed aspects of the safeguards regime. At the heart of that are the technical provisions governing how nuclear materials are accounted for and how they are reported. For example, the existing nuclear safeguards regime defines "material balance areas", which is a core concept in international safeguards methodology for accounting for nuclear materials. Another example is safeguards equipment that can be installed on licensed sites such as surveillance cameras, seals and remote monitoring equipment, used to support safeguards activities by detecting declared and undeclared nuclear material and activities. That is fairly non-controversial stuff, but the regulations need to go into detail and those are just two examples.

The proposed use of delegated powers goes with the grain of the rest of the Energy Act 2013 and how it deals with highly technical, complex and detailed areas such as nuclear security, which is also regulated by the ONR. That fits with the rest of the Bill and the rest of the supervision of powers within ONR regulations.

We all accept that the consequences of failing to put in place such a safeguards regime would be profound. We have all repeated that quite a few times, so I will just say that there is consensus. I have to make sure that the powers in the Bill allow the UK to comply with any international safeguards commitments or undertakings that we make with the International Atomic Energy Agency or with other states. Empowering the Government and the Office for Nuclear Regulation quickly and effectively to adapt to the changing nuclear regulatory landscape is essential as nuclear technologies and proliferation techniques develop; if we are to continue to be able to support the international community; and as believers in non-proliferation and safeguards activities.

I will briefly, but importantly I hope, come on to the point on parliamentary scrutiny procedure. The amendments proposed by the hon. Gentleman would change parliamentary procedure for regulations made under clause 1. As the Bill is drafted, the first set of regulations made under this power will be subject to the affirmative procedure, as he said, to allow both Houses of Parliament to debate in full the technical details of the new regime. I politely disagree with the hon. Gentleman, because I feel that that means full debate in the affirmative procedure.

We think, for very good reason, that subsequent regulations will be subject to a negative resolution procedure. He eloquently went through the system for praying, which I did not understand in my first few years in this House, although I am sure that you, Mr Gray, and other colleagues did. I now understand it fully, but at first when people told me that they were praying on a particular subject I thought that may have been to do with hunting or indeed some form of religious observance. I now understand that it is one of the great traditions of this House. For us, the important thing is the initial affirmative procedure.

I would like to state clearly that the draft affirmative procedure will continue to apply where subsequent regulations create new criminal offences or, very importantly, where they include any provision amending or repealing the Nuclear Installations Act 1965 or the Nuclear Safeguards Act 2000. We believe that it is appropriate to have an initial draft affirmative procedure for the first set of regulations because of the breadth of the measures initially needed to establish the regime and the potential significance of the regulations that will set out in detail the key elements of the regime. That is our point of difference, because I would argue that once the nuclear safeguard regime has been established by the first regulations, the subsequent changes are likely to be technical and smaller, reflecting developments in safeguards technologies and processes. There are many precedents for this approach in relation to nuclear regulations, and precedents that permit subordinate legislation to be made subject to the negative resolution procedure. In particular, the proposed approach to scrutiny is consistent with the scrutiny of nuclear regulations under section 74 of the Energy Act 2013, as set out in section 113(2)(a) and (3). That power can be used to make provision on four important areas of nuclear regulation: nuclear safety; nuclear security; the transport of nuclear materials; and, until replaced by the power in the Bill under discussion today, nuclear safeguards. After my explanation, I hope that the hon. Members feel able to withdraw their amendments.

Dr Whitehead: I am not sure that we are able to withdraw them. The Minister has helpfully set out the line of thinking behind putting in place affirmative procedure the first time round, and negative procedure subsequently, but he has not departed in any way from the memorandum that was set out in the first instance, from which I quoted this morning. Therefore, no reassurance has been given that the Opposition have wrongly interpreted particular procedures, or that the regulations that the Minister has talked about really will be of the very minor nature that he suggested. He has not addressed that point at all.

Alex Norris (Nottingham North) (Lab/Co-op): Having listened to the discussion on affirmative procedure, does my hon. Friend agree that it is not inevitable—indeed, given the complications, it is quite unlikely—that every subsequent decision would be merely technical, and could be safely dealt with under negative procedure?

Dr Whitehead: My hon. Friend is absolutely right. That is underlined by the fact that, as has been alluded to on several occasions, we are not talking about a common or garden piece of legislation that simply places something on top of something else and thereby moves us forward. We are talking about a complete replacement for something that existed previously and will no longer exist. It will have no back-up or reference if we have not got everything in new regulations, replacing the previous regulations that no longer exist or have any currency as far as the UK is concerned.

With this legislation, we would be placing it on trust that everyone had got everything right first time as far as the new regulations were concerned, yet it has been stated in Committee that it is quite possible that there will be further amendments to those regulations, because we will need to be ready on exit day for the basic provision—

Drew Hendry (Inverness, Nairn, Badenoch and Strathspey) (SNP): Is it not true that the aspects of the Bill that the Minister described as "non-controversial" would be so were we staying in Euratom? However, because we will have to move to a new system and there can be no guarantee, as the Minister himself said, of having the professionals in place to deliver the regulations, there are likely to be new regulations. We must therefore have these protections in order to scrutinise them.

Dr Whitehead: The hon. Gentleman is quite right. The procedure that we are looking at is very likely, in my view, to lead to far more than technical changes. Because there is a body of existing legislation, technical changes can be made, and to some extent I agree with that, because that is how the House works on occasion. If the Government are considering minor or technical changes, simply updating legislation to make it compatible with other pieces of legislation, or proposing to make the regulations in one Bill compatible with new regulations in another, that goes through under the negative procedure, and everyone accepts in the House that that is how we do it.

Lots of things go through in that non-controversial nature. I accept that, but it is not the case here. That is not what we are doing. As the hon. Member for Inverness, Nairn, Badenoch and Strathspey said, we are not tweaking or amending something, but providing something absolutely new. We hope it will be okay, but I think we freely agree that there will be a number of occasions when quite important subsequent regulations will need to be made to beef up the procedure, because even though it is on the road on day one, it is not necessarily as good as it might be. Indeed, the Committee heard that in evidence. We have not had any assurances this morning that we have misunderstood how the new regulations will work or that guarantees can be given that they will be of the technical nature we are more used to in ordinary dealings.

Dan Carden: Will people outside not be slightly surprised that we are leaving Euratom because of a Brexit decision? The leading lights of that campaign told us it was all about parliamentary sovereignty—

The Chair: Order. That is a little beyond the scope of the Bill.

Richard Harrington: Will the hon. Gentleman give way?

Dr Whitehead: Perhaps I could deal with my hon. Friend's intervention, and then I am happy to give way again.

The Chair: Within the context of the Bill.

Dr Whitehead: Of course, Mr Gray. Within the context of the Bill, an associated issue is the extent to which Parliament has a hand in ensuring that the regulations are as good as they should be. In taking this grave step by reinventing a complete set of regulations, a complete regime and a complete landscape, parliamentary sovereignty has to be respected. It is important that we get that right in the legislation, and it is important that we get the regulations right subsequently.

Richard Harrington: The hon. Gentleman is perfectly at liberty, as he knows, to press this to a vote. I have tried, as he has, to try to find common ground, but obviously he feels that I have not done so in this case. It is true that our positions are much the same as they were before we stood up to speak today. Although he has the ability to press this to a vote, I wonder if he would be interested instead in talking about this in other discussions before Report to see if there is common ground. I feel that the majority of the regulations are technical, and the affirmative procedure is perfectly acceptable, but if there were a way of separating the two issues so that he and I could discuss it with colleagues, I would be very happy to.

Dr Whitehead: I thank the Minister for that intervention and for what I think—I am reading the tea leaves a little bit here—is a slight softening of the position that it is all okay and there is nothing to worry about.

Richard Harrington: This is not a softening of the position. I am genuinely trying to explore whether there is a way of separating the vast majority of technical regulations, for which it would be very impractical to do what the hon. Gentleman wants, from things he has mentioned that may be of a different nature. My position remains the same. As I say, he is perfectly at liberty to press this to a vote, but I am happy to talk with him at one of the meetings we are having on other matters so that he can explain further his position and we can see if we can reach an agreement.

10 am

Dr Whitehead: Well, let us see whether we can talk about a mellowing of the position rather than a softening of the position.

[Dr Whitehead]

What the Minister has importantly alluded to is the fact that if subsequent amendments to the regulations that we have highlighted are really just issues of a wholly technical nature and are, as I have described them, part of the bread and butter machinery of this House in terms of undertaking things by negative resolution, Members can simply say, "Yes, that is fine. Provided they are published and one sees them, one has the opportunity, perhaps informally, to say, 'Well, actually, maybe these are not drafted as well as they should be, but in general there is no controversy attached to those technical changes.'"

However, if subsequent changes to these regulations are clearly not of a wholly technical nature, perhaps they could be flagged in the Bill as being an exception to those arrangements of a purely technical nature, as indeed there already are in the Bill two instances where negative resolution procedure does not apply. So, it is not the case that there is no precedent for this change, because it has already been envisaged that there are circumstances under which the negative resolution procedure will not apply.

If, let us say, on Report it might be possible to add a line to those particular exceptions, then we might have the basis for something we could discuss further. If that is the sort of thing that is possibly in the Minister's mind, I would be happy to discuss it further with him, to see whether something could be drafted in the Bill that is able to make the distinction that he quite rightly and properly made between what is technical and what is not technical, subsequent to the first regulations being laid.

Richard Harrington: I would like to confirm to the hon. Gentleman that I do not want to make him an undertaking that I cannot carry through, because I would like to discuss this matter further with him, but in good faith I am perfectly prepared to—I would not really use the word "mellowing". I cannot think of another word at this time of the morning. However, in the spirit that he knows, I am happy to fully explore the matter. Perhaps lawyers might say, "without prejudice" or "subject to contract", but it just seems to me that there might be a way in which we could be in agreement.

Dr Whitehead: On that basis, and clearly we need a lexicographer here this morning as we discuss these circumstances, I am happy not to press the amendment to a vote and I hope that we can discuss these issues during the passage of the Bill, to see whether we can make any progress.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Dr Whitehead: I beg to move amendment 14, page 7, line 13, leave out from "provisions" to end of line 16

Paragraph 3(5) of Schedule 8 to the Energy Act 2013 exempts inspectors' powers from provisions related to nuclear safeguards. This amendment includes nuclear safeguards in inspectors' powers.

This amendment looks like a tiny amendment, but I will suggest that in practice it is a substantial amendment, and I will spend a little time explaining why.

The amendment is about the paragraph in the schedule where amendments are made to schedule 8 to the Energy Act 2013 concerning the powers and duties of inspectors. We will all recall that we have already talked about inspectors at some length in this Committee, but what we have talked about is their existence, their skills, their training and their appropriateness for undertaking inspection on nuclear safeguards in replacement of the inspections by inspectors under the auspices of Euratom.

At the moment, the vast majority of inspectors involved in nuclear safeguarding in this country are not under the auspices of the ONR. A small number of people are involved in that process, but the majority work under Euratom and Commission Regulation (Euratom) 302/2005, which, among many other things, sets out the terms under which inspectors work as far as Euratom is concerned. Inspectors go into establishments for the purposes of safeguarding, and they have a number of powers regarding what they can do, look at, and require to be provided, and what changes they can make. All that is done under the auspices of Euratom. The Bill effectively proposes that all those powers, and the authority of inspectors to undertake those inspections, is transferred bodily from Euratom to the oversight of the ONR, and that the ONR will subsequently be responsible for the exercise of those powers and the supervisions of the inspectors as they go about their business.

In every area other than nuclear safeguarding, the powers, duties and responsibilities of inspectors are laid out as far as the ONR is concerned in schedule 8 of the Energy Act 2013. Paragraph 2(1) of schedule 8 contains a brief description of how those powers are organised and invested in the inspectors, and how they are carried out. It states:

"An inspector's instrument of appointment may authorise the inspector to exercise any relevant power.

Authority to exercise a relevant power may be given—

(a) without restriction, or

(b) only to a limited extent or for limited purposes."

It then states:

"For the purposes of this Schedule, an inspector is 'authorised', in relation to a power, if and so far as the inspector is authorised by the instrument of appointment to exercise the power."

An instrument of appointment must be provided by, in this instance, the ONR, and as far as I can see—*[Interruption.]* I am so sorry, Mr Gray. That was a phone-a-friend moment—I was short of inspiration. The instrument of appointment is, in the provisions for inspectors in the Energy Act, more like a passport held by the inspector. The Act states:

"When exercising or seeking to exercise any relevant power, an inspector must, if asked, produce the instrument of appointment (including any instrument varying it) or a duly authenticated copy."

An inspector has an instrument of appointment that is proof that they have all the powers, duties and responsibilities set out in the legislation. Those duties, powers and responsibilities are also set out in subsequent legislation. An inspector can authorise the issuing of improvement notices or issue prohibition notices. An inspector in pursuit of those notices has a power of entry. They have a power to take persons and equipment into premises. They have powers to cause articles or substances to be dismantled or tested and they have powers to take possession of any article or substance. They have powers to require information and to receive accounts and various other things.

Inspectors therefore have fairly extensive powers authorised under the legislation, except that all those powers, as currently set out, do not apply to nuclear safeguarding. They do not apply to nuclear safeguarding because they were specifically excluded, certainly as far as issuing prohibition notices and having the power to issue improvement notices are concerned, in paragraph 3(5) of schedule 8 to the 2013 legislation.

Paragraph (5)(a) states:

"In this paragraph "applicable provision" means—

(a) any of the relevant statutory provisions other than—

(i) a provision of the Nuclear Safeguards Act 2000, or

(ii) any provision of nuclear regulations identified in accordance with section 74(9) (requirement for provisions made for nuclear security purposes or nuclear safeguards purposes, or both, to be identified as such),".

So it is quite clear that, as far as a substantial part of the work of nuclear inspectors is concerned, the intention of the 2013 Act was specifically to exclude any concerns about nuclear safeguarding from those inspectors' powers and responsibilities. That is quite reasonable, because those powers and responsibilities were carried out by Euratom inspectors. A clear distinction was therefore made that ONR-based inspectors would not have any jurisdiction over nuclear safeguarding.

Now all that is going to change and there are two big questions in front of us. First, is it reasonably possible to translate those powers and responsibilities of inspectors which at present do not refer to nuclear safeguarding into a position where they do refer to nuclear safeguarding? Secondly, is it the case that if we simply hand over en bloc to nuclear inspectors who are undertaking nuclear safeguarding activities, the powers and responsibilities that are set out for purposes other than nuclear safeguarding in the 2013 legislation—which set up the ONR in the first place—those provisions will be wholly adequate for that purpose? Those are the two big questions about nuclear inspectors that we need to ask ourselves.

Would it be desirable, as was the case with the 2013 legislation, that the powers of the inspectors were laid out fully in the Bill? They were not set out in subsequent regulations, because they are such important powers and limitations of powers that it was clearly felt in the 2013 legislation that they should be set out in a separate schedule. It was not something that would be looked at in a Committee Room, subsequent to legislation being passed.

The first question that might arise after addressing how we translate the powers of inspectors into UK legislation is whether we should be conducting an exercise similar to that carried out in the 2013 Bill—that is, whether the legislation should include a schedule that contains the powers of the new inspectors who are carrying out their duties in respect of nuclear safeguarding.

10.15 am

The Government have chosen not to do that in this legislation, as we can see, because otherwise this document would be about three times as thick as it is. There is no translation of powers in the Bill, except for what appears in paragraph 11(1), (2) and (3) of the schedule. The paragraph in the 2013 Act that I mentioned, which removes concern for nuclear safeguards from inspectors' activities, is replaced by another paragraph. Instead of that prohibition, it says:

"(a) any of the relevant statutory provisions other than any provision of nuclear regulations which is identified in accordance with section 74((9) (provisions made for nuclear security purposes),".

The Government are not in this legislation simply switching off paragraph (3)(5) in the 2013 Act; they are deflecting it to another clause in the 2013 legislation. If we turn to that clause—

The Chair: Order. While the hon. Gentleman is finding that page, I will interrupt for a second. I think it is the will and flavour of the Committee that we are seeking to make good progress on consideration of the Bill today and, if necessary, Thursday. I hope hon. Members will take note of the fact that we are seeking to do so. Maybe that has given the shadow Minister a moment to find his reference.

Dr Whitehead: It has not, actually, Mr Gray. Because I was listening so carefully to you, I did not entirely get my reference sorted out. I have now found it, so I am grateful for your admonition. I am hopeful that we will make speedy progress in Committee today.

However, I am sure we need to pay attention to this section because it is important in getting the regime right for the wholesale change that we are making to how the provisions for nuclear inspection will be carried out.

The deflection that the Government make in their amending of the 2013 Act relates to section 74(9). I would be pleased if anyone could clarify this for me.

"Nuclear regulations which include any provisions to which any paragraph of subsection (10) applies must identify those provisions as such."

As in the honoured Marx Brothers "tootsie-frootsie ice cream" sketch, with different form guides and various other things, one must now look at subsection (10).

"This subsection applies to any provisions of nuclear regulations which are made for—

(a) the nuclear security purposes,

(b) the nuclear safeguards purposes, or

(c) both of those purposes,

and for no other purpose."

They appear to half switch off the prohibition of inspectors from undertaking activities for nuclear safeguarding as well as for non-nuclear safeguarding. They apparently refer not to regulations but to provisions of nuclear regulations. I am not sure whether, by deflecting to that paragraph, the responsibilities of nuclear inspectors are wholly translated into what is in the Energy Act 2013. I would appreciate clarification about whether, in the Minister's opinion, the Government's proposed amendment to the 2013 Act actually does that. Is there a clear line that shows that everything that is there is what a nuclear safeguards inspector has the power to do as a result of the deflection to that clause? It is by no means clear that that is the case.

With our amendment, we are trying to do that by means of a much simpler procedure. Instead of deflecting it to another clause, the amendment simply states that the inspectors' powers relate to any of the relevant statutory provisions, and excises the rest of the paragraph. The relevant statutory provisions include nuclear safeguards, and therefore what was there previously would be fully translated into what a nuclear inspector pursuing nuclear safeguards can do. My view is that that is a simpler, more straightforward and clearer way of ensuring that the powers are fully translated.

[Dr Whitehead]

The second point I alluded to is the question whether, even if one did that, there would be a complete transfer of powers and authorities from what was previously done under Euratom to what is done under ONR. The current Euratom treaty—the 2005 regulations—which I am sorry to admit I have actually looked at, appears to talk about more extensive powers and responsibilities than those in the 2013 Act. Although they are not set out in the same way, there appear to be various things in the Commission regulation that are not mentioned in the powers of inspectors in the 2013 Act, such as the requirement for inspectors to install and maintain equipment, an offence of interfering with equipment, special reports on unusual circumstances and special reports on inventory change.

I am very keen to hear from the Minister—I am sure he has had a good look at the Euratom regulations, too—whether he thinks that, even if he were minded to accept our amendment, the process of translating what is in the 2013 Act to ONR-supervised inspection really does the job, in respect of giving inspectors the safeguarding powers and responsibilities they had under Euratom and those that they need under ONR supervision. I am sure that the Department has looked at that closely. Is he completely satisfied that that is the case, or might he look at that again to see whether the moment of transmission set out in the Bill really does the business in respect of both making the nuclear safeguarding regime secure and the powers of inspectors for the future?

Richard Harrington: I shall do my best to implement the wise advice you gave us, Mr Gray.

In summary, I believe that the intentions behind amendment 14 are entirely good, but I would argue that it is defective because it would turn on the improvement notice power for nuclear security. That does not need to be turned on because there are existing, stronger direction-making powers. I shall briefly try to make that argument—hopefully with some success—to the Committee. Of course, I share the hon. Gentleman's concern to ensure that the ONR inspectors have the right powers to fulfil their responsibilities. That is the whole purpose of the Bill.

This issue was raised by the Prospect union. As a result of its evidence, I asked it for a meeting, which I have arranged for the next couple of weeks, to discuss all the issues it raised, together with the other union that gave evidence at the same time.

Paragraph 11(2) of the schedule to the Bill amends paragraph 3(5) of schedule 8 to the Energy Act 2013, extending the power to inspectors who are appointed. That is important so that inspectors can issue improvement notices for non-compliance in relation to nuclear safeguards. Therefore, I would argue that the Bill already achieves the purpose of the amendment.

Paragraph 4 of the schedule amends section 82 of the 2013 Act such that relevant statutory provisions will include nuclear safeguards. That is the key to switching on the ONR power. I hope that that reassures the hon. Gentleman, and colleagues on both sides of the Committee, that the Bill achieves the purpose of the amendment.

I shall leave at that, Mr Gray, in keeping with the advice you gave. I would like to discuss this matter in greater detail, but that was the sentiment of your instructions to us.

Paul Blomfield (Sheffield Central) (Lab) *rose—*

The Chair: Before the hon. Gentleman speaks, I should perhaps remind him that he may not withdraw the amendment, even if he wishes to. That must be done by the Member who proposed the amendment. He may, by all means, speak to it.

Paul Blomfield: Thank you for that clarity. Do not worry, Mr Gray, I was intending not to usurp my colleague's role, but simply to underline the point that the Minister made.

An important part of our proceedings are the public evidence sessions that precede consideration of the Bill. Speaking on behalf of inspectors, Sue Ferns gave powerful evidence on a range of issues, but she was very clear on this one, as the Minister mentioned. She stated:

"As warranted inspectors, they feel that it is important to have those powers in the Bill. It is important for purposes of parity, to ensure continuity"—

and this is a crucial point in relation to safeguarding—

"also, as we have discussed, for external confidence in the way the job will be done."

She went on to say that she had heard no argument to say

"why, if it is good enough for the 1974 Act"—

the Health and Safety at Work etc. Act—

"and the 2013 Act, we should contemplate a change in practice for this piece of legislation."—[*Official Report, Nuclear Safeguards Public Bill Committee,* 31 October 2017; c. 35, Q71.]

That was powerful evidence on behalf of warranted inspectors that should lead the Government to think again. The Minister has been very accommodating and positive in trying to achieve consensus and agreement on issues where we share common concerns. I wonder whether he is able to reach out in the way that he did on earlier amendments to see whether an accommodation can be reached.

10.30 am

Dr Whitehead: I appreciate the Minister's wish for brevity on these occasions, but I do not think that this is an issue on which we can be completely brief. By the way, there is plenty of time for the Committee to get the rest of its business through, so I am not concerned that by having a proper debate on this clause we will run out of time—I am certain about that.

I have not heard anything about the second point that I made in my contribution. My hon. Friend the Member for Sheffield Central emphasised that point. Indeed, the evidence from Sue Ferns and Prospect emphasised the question of whether the inspectors will have the powers, through straight translation into oversight by the ONR of what is presently oversight by Euratom, that they actually need.

I mentioned comparing and contrasting what was in Euratom and what is in the Energy Act 2013. The Minister may well be right that although the translation of the requirements in the Energy Act 2013 into nuclear

safeguarding may not be as elegant, it does the job. However, that does not at all address the point of what is going to be translated and whether that is fully fit for purpose as far as the new inspection regime is concerned. Will the Minister give an assurance that he has looked at this matter carefully and is completely assured that that is the case? Has he considered, or might he consider, whether combing through the material that was there previously might lead to anything further being added to inspectors' powers and responsibilities, either by regulation or by further legislation, perhaps on Report? *[Interruption.]*

The Chair: Is the hon. Gentleman giving way?

Dr Whitehead: I was seeking to tempt the Minister into standing up and saying a few more things.

Richard Harrington: I was not quite sure whether the hon. Gentleman had finished his comments. I stick to my point that this is obviously a complex area and I think that the Bill does exactly what he wants. I will consider his points carefully and, if further drafting is necessary, will bring forward proposals on that subject.

Dr Whitehead: This is going quite well. I thank the Minister for that consideration and it meets our concerns that, although I have not yet been able to spell them out, additional powers may be needed. If the Minister looked at that I would be very grateful. I therefore beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Schedule agreed to.

Clause 2

Power to amend legislation relating to nuclear safeguards

Dr Whitehead: I beg to move amendment 5, in clause 2, page 4, line 8, leave out

"may by regulations amend any of"

and insert

"must by regulations amend relevant provisions of".

This amendment would require, rather than enable, the Secretary of State to make regulations in consequence of a relevant safeguards agreement.

The Chair: With this it will be convenient to discuss amendment 6, in clause 2, page 4, line 13, at end insert—

"(1A) The Secretary of State may only exercise powers under this section at the point at which amendment of any of the legislation in subsection (1) becomes necessary in order to complete the process of transposition of responsibility for nuclear safeguarding from EURATOM to the Office for Nuclear Regulation, and for no other purpose.

(1B) Upon exercising the power set out in subsection (1) the Secretary of State shall report its operation by means of a report laid before both Houses of Parliament."

This amendment limits circumstances under which the Secretary of State may exercise certain powers in this section and requires a report to be laid before Parliament.

Dr Whitehead: This proposal is serious and requires substantial discussion in Committee. Amendments 5 and 6 address a particularly egregious part of the Bill: clause 2, which provides the power to amend legislation relating to nuclear safeguards.

As I am sure hon. Members are aware, the clause suggests that we amend not only secondary legislation relating to nuclear safeguards but a series of other pieces of legislation: the Nuclear Safeguards and Electricity (Finance) Act 1978, the Nuclear Safeguards Act 2000 and the Nuclear Safeguards (Notification) Regulations 2004. Two of those are pieces of primary legislation that have gone through the whole parliamentary procedure on the Floor of the House, received Royal Assent and become legislation. The clause suggests that those pieces of legislation should not only be amended by regulation but be amended on the basis of discussions about an agreement with the IAEA that we know nothing about at the moment and have not agreed.

One might think that these are not Henry VIII clauses but Henry IX clauses. I think there was a Henry IX in France, so it is possible to make that point without too much interruption in history. These powers are very substantial and exceptional and, to my mind, run wholly counter to what we should be doing in the House as far as legislation is concerned.

I will come to what the Government have to say about the particular circumstances in a moment. Henry VIII powers were obviously used substantially during the reign of Henry VIII, but subsequently have not been used quite so frequently. Although they have been used a little more frequently in recent years, the idea that the Executive—by Executive action, effectively—can overturn, amend or take in a different direction what Parliament has decided through legislation is something the House has fought against for many years. When such powers have been sought in the past, they have been in some instances successfully challenged, and on many occasions strongly challenged on both sides of the House.

We want to make an initial statement of principle that the Opposition do not like Henry VIII clauses. We think they are an overturning of the sovereignty of Parliament in dealing with these issues and that they give powers to the Executive that are unwarranted on virtually all occasions. A piece of legislation should be written in this form only in a dire emergency, where a calamity will befall the nation if that action is not taken. In all other circumstances, the idea is that legislation should properly appear before Parliament to be debated. If it is legislation replacing or substantially amending primary legislation, that process should be one of primary legislation as well.

In this instance, what might be envisaged as far as primary legislation is concerned would not detain the House forever or be particularly complex or difficult to achieve. Yesterday in the Chamber, we saw how it is possible to take a Bill through in an afternoon. Where changes are made with a consensus in the House, the procedure is pretty rapid, straightforward and achievable. Why can that procedure not be adopted for these pieces of legislation? Is it because there is a national emergency or the sky will fall in if we do not make the amendments? Is it because it has not been possible to find parliamentary time to undertake what would be neat and precise Bills to make the amendments? Indeed, on the basis of what has previously been achieved, would not a brief piece of

[Dr Whitehead]

primary legislation on the Floor of the House have agreement from all parts of the House?

I am not persuaded, nor do I think I will be persuaded easily, that that is not possible in these circumstances. The clause as drafted is therefore not something that has to be done, but something the Government have chosen to do in support of their legislation. It may well be that the Minister will say, "Yes, we have chosen to do this because, as far as we are concerned, these things have to be done." As far as previous legislation is concerned—let me find a copy of the document that I just gave to the Clerks.

The Department's delegated powers document on legislation, to which I have referred, states at paragraph 78:

"It is essential that the specified safeguards legislation is amended to make correct reference to the new agreements that the UK envisages concluding with the IAEA".

Furthermore, paragraph 79 states:

"Without amendment, the existing provisions will become ineffective".

The Henry VIII clause emergency is simply that any legislation that has not been amended after an IAEA agreement has been decided—we would enter a different arrangement from the one we had with Euratom—would render the new procedure ineffective. The relevant Acts therefore need to be changed. However, that is not the case with secondary legislation; it is only the case with those Acts, which I think we can all agree need to be amended. Of course, when all those proceedings have concluded, legislation will need to be in line with new procedures elsewhere on the statute book. That is not an issue at all. The issue is whether, in order to bring those bits of legislation in line with whatever we have agreed, we effectively declare a national emergency and say that we have to adopt Henry VIII clauses to do it. That is quite wrong, both for this piece of legislation and indeed most other pieces of legislation that try to include those Henry VIII clauses.

10.45 am

It is the case not only that those amendments need to be made in order to make the new regime effective, as the Government set out in that document, but, as the document says, the amendments are necessary for the whole thing to become operational. We would like to simply strike it out and to say, "You should not do it in this way at all," but that might be seen as wrecking the Bill, because a lot of other material would have to be written in in order to fully strike it out. For the moment—although it may not be the case as the Bill progresses—in the absence of what we think should be the proper procedure with this piece of legislation, we will content ourselves with doing two things to the clause that do not strike it out but amend it very substantially, so that it comes back at least to some extent for Parliamentary consideration.

We are suggesting those two things in the amendments. First, the Minister is empowered by the clause to change those Acts by regulations. It states that he

"may by regulations amend any of the following".

As we have previously alluded to, the emphasis is on the fact that the Secretary of State "may" amend by regulations. For the transposition of agreements to ONR and the signing of the new agreement with IAEA, it is clear from the Government's own documentation that it is not the case that the Secretary of State may amend, but that he must do so. If he does not amend by regulation, the whole thing does not work. Although I accept the parliamentary convention that a power given to a Secretary of State saying that they "may" do things by regulation means, under most circumstances, that they should do something, that is not what the Bill says.

I suggest that we are in new times. The convention that the Secretary of State may do something by regulation is normally related to something that they may do to change something, and they would have power in a piece of legislation to make those changes by regulation. If the Secretary of State did not make those changes, the previous regulations would apply and the status quo ante would continue. As I have previously mentioned, under no circumstances does the sky fall down; the world carries on and previous regulations continue to exist, although perhaps they are not as great as they might be. Regulations may have not been introduced to change things, but there are lots of instances in Acts where regulations that could be introduced have not been, but business proceeds. In this instance, business would not proceed. The departmental memorandum makes it clear not only that business would not proceed but that it could not proceed unless the Secretary of State did something to change those pieces of legislation under the terms of this Bill, to make them compatible with the new set of circumstances.

The amendment changes the word "may" to "must", and it makes clear that the Secretary of State must make those changes. That seems to be entirely logical and consistent with what the Department has said about the necessity of making those changes and it submitted that necessity to the regulations committee.

Changing the word "may" to "must" does not automatically bring something fully into the purview of Parliament, so we have tabled amendment 6, which requires the Secretary of State, when he has done his duty when amending regulations, to place a report before Parliament that will be debatable under a motion. Parliament can see what the Secretary of State has done when amending those pieces of legislation, and can give its opinion on whether they are good enough to do the job that they are supposed to do. Parliament would then have oversight, to see whether the changes work once the Secretary of State has done what he should with those regulations.

My view is that that is probably not good enough. There are still Henry VIII clauses in the first instance, but at least the amendment goes some way towards ameliorating the unacceptable way in which those clauses work at present. To my mind, that is the very minimum that the Minister ought to accept as a change in the arrangements. If he cannot accept those changes, we will want to pursue the matter quite a long way further.

Drew Hendry: I will make a few short comments to indicate Scottish National party support for the amendment. The shadow Minister referred to our being in new times; indeed, we are in uncharted territory. The SNP has great concerns about the possible use of Executive powers, particularly the prospect of a lack of scrutiny. Let us consider how the decision to leave Euratom came about: representatives found out about the decisions via

a bit of small print in the Bill. That does not give the Government a good track record in how transparent they are willing to be. No warning was provided and no indication was given of the impact. Frankly, there was a blatant lack of transparency.

We call on the UK Government to ensure that future decisions are taken in a transparent and consultative way and in an inclusive manner. At the moment, the set-up does not give anyone reassurance that that will happen, so we support the amendment.

Richard Harrington: I have been very interested in our tour around Henry VIII and the French royal family and its possible member, Henry IX, which you did not rule outside the scope of discussions, Mr Gray, but you are entitled to use your judgment. However, neither Henry VIII nor Henry IX had to come up with a nuclear safeguards regime; I wonder what would have happened if they had.

In all seriousness—*[Interruption.]* The hon. Member for Southampton, Test is on great, humorous form, as well as making serious points, which I will try to answer, I hope, in a suitably serious manner. The fundamental difference between us, forgetting the "may" and "must" difference for the moment—we will come on to that—is about the actual powers and why we need them. I find the Henry VIII expression a bit misleading—not that the hon. Member for Southampton, Test is trying to mislead the House—given the way it is always referred to in the press and so on. We are talking about very limited non-primary legislation here.

Changing minor references, whether saying that that calls for Henry VIII powers or not, would not be a good use of parliamentary time, given that Governments have to govern and Parliament must in some way ration its time so that it can deal with the fundamental matters that it has to deal with. I know the Opposition's view generally on Henry VIII powers, but I think there should be some leeway within that for what genuinely needs to be delegated, and which is comparatively minor in nature, so that we can act quickly. I am sure the hon. Gentleman and the Opposition Front Bench recognise that in practice. Sometimes principle is a great thing in life, but it has to be adapted pragmatically to deal with circumstances. I will park that for the moment.

As it stands, clause 2 will create a limited power, enabling regulations to amend the Nuclear Safeguards and Electricity (Finance) Act 1978, the Nuclear Safeguards Act 2000 and the Nuclear Safeguards (Notification) Regulations 2004. It will be a narrow power to amend references in those laws to provisions of the existing agreements with the IAEA. Those references enable the IAEA to carry out its activities in the UK, including, importantly, by providing legal cover for the UK activities of its inspectors. The references and the legal cover they have will need to be updated after the new agreements have been concluded with the IAEA; it cannot be done before.

At present, our nuclear safeguards regime complies with international safeguards and non-proliferation standards agreed between the three parties—ourselves, Euratom and the IAEA. The UK applies those standards primarily through its membership of Euratom. They are set out in two tripartite safeguards agreements between the UK, the IAEA and Euratom: the voluntary offer agreement and the additional protocol. At the moment, they rely on the UK's membership of Euratom. Following our withdrawal from the European Union and Euratom, these agreements will become ineffective. That is why the Bill has to ensure that a domestic civil nuclear safeguards regime is put in place. The UK will need to conclude new agreements with the IAEA to detail the international safeguards and nuclear non-proliferation standards with which the UK agrees to comply. Without those, no regime we could have will be recognised by the international community.

Amendment 5, as tabled and eloquently articulated by the hon. Member for Southampton, Test, intends to require—rather than enable—the Secretary of State to make regulations under clause 2. I welcome the Opposition's change of position on clause 2 since Second Reading. Amendment 5 clearly recognises the need to have the power in clause 2 to ensure the necessary legislative amendments are made in time to give effect to the new IAEA agreements, and to therefore ensure that the UK has a civil nuclear safeguards regime that gives effect to international standards on the UK's withdrawal from the Euratom treaty.

However, making the Secretary of State's power in clause 2 mandatory does not provide any additional value. Following the negotiation of the new agreements, the references to the old agreements in the legislation mentioned in this power automatically become ineffective—they will not work. The inspection of UK facilities by IAEA inspectors is a vital part of our agreement with the IAEA. It is not in anyone's interest to fail to make the necessary consequential amendments to existing safeguards once new agreements with the IAEA are agreed. Requiring the exercise of the power in the Bill is therefore unnecessary.

I want to assure hon. Members that we are currently negotiating new agreements with the IAEA on the same principles as the existing agreements and that the consequential changes are expected to be minor. That will ensure that the IAEA retains its right to inspect all civil nuclear facilities and continues to receive all current safeguards reporting, ensuring that international verification of our safeguards activity continues to be robust.

11 am

The Government have emphasised their continued commitment to the IAEA and to international standards for safeguards and nuclear non-proliferation. It is our aim to maintain our reputation as a responsible nuclear state. That is why we have begun formal discussions to conclude the new bilateral safeguards agreements. The discussions, which have been under way since September, are constructive. I hope that that reassures hon. Members that the Secretary of State will exercise the power in clause 2 as soon as it becomes necessary.

Amendment 6 is intended to limit the circumstances under which the Secretary of State may exercise the powers in clause 2, and requires a report to be laid before both Houses of Parliament on the exercise of the power. I welcome the sentiment of proposed new subsection (1A), because it acknowledges that a power of this nature is necessary and appropriate in the circumstances. However, the exercise of the power in clause 2 is already very narrowly cast to allow changes to be made in consequence of the new bilateral agreements with the IAEA which, as I have explained, will be

negotiated to replace the existing trilateral agreements. It is not necessary to make the change set out in proposed new subsection (1A).

Similarly, although we understand the intent of the proposed new subsection (1B) to allow both Houses of Parliament to scrutinise the use of the powers through a report laid before Parliament, it is unnecessary since the draft regulations under clause 2 must already be laid before both Houses for scrutiny.

I welcome the constructive interventions from the hon. Members for Southampton, Test and for Inverness, Nairn, Badenoch and Strathspey in acknowledging that a power of this nature is necessary and appropriate in the circumstances. However, I hope that the hon. Member for Southampton, Test will not press the amendments to a vote.

Dr Whitehead: I am disappointed by the Minister's response to the amendments this morning. He is right to point out that they in some ways represent what might be construed as a little bit of a change, perhaps a mellowing, from our position on Second Reading on the Floor of the House. It is not that we have changed our positions on Henry VIII clauses, but that addressing what is in the Bill is the important thing to do in Committee. We need to decide whether to amend it rather than try to chuck the whole thing out. That is the difference in our discussion this morning. I thought the amendments were constructive.

Although the Minister has mentioned that Government changes to these pieces of legislation would have to be reported to Parliament, that is a very different procedure from the procedure being suggested this morning.

Drew Hendry: The Minister himself has said that principles sometimes have to be adjusted pragmatically. The problem is that the Minister cannot tell us at the moment which principles and for whom they would have to be pragmatically adjusted.

Dr Whitehead: The hon. Gentleman is absolutely right because we are in the dark as far as what is going to come out and the IAEA are concerned. We think that an agreement will be reached and that there will be a new voluntary treaty arrangement. We think that when that new arrangement has been reached, it will be suitable for the purposes for which we have made all these legislative changes. Indeed, the legislative changes will be scrutinised effectively by the IAEA before that treaty can come about. The IAEA wants to be sure that we have put a regime in place that does the job in changing the relationship of this country as far as nuclear safeguarding is concerned from Euratom to ONR.

Richard Harrington: Does the hon. Gentleman agree—and I am also trying to answer the Scottish National party's spokesman about the principle and the way it might be changed—in practical terms, forgetting principle for the moment, that we cannot be sure exactly when the agreements with the IAEA will be finalised? Certainly, it is in our gift but it is also with the IAEA. We may well be under great time pressure to make sure that the new inspectors—who might even be the same inspectors—have the legal cover to maintain the safeguards we all want. There are times when some things have to be delegated and moved very quickly to deal with an expediency. I felt that was an example.

Dr Whitehead: I appreciate what the Minister says, but that does not knock away the fundamental principle that, except under very exceptional circumstances of national emergency, things that amend primary legislation by secondary legislation should not be before this House. Essentially, the Minister has summed up the case from his point of view that he thinks this is essential. It is just that there could be some time constraints.

Drew Hendry: On time constraints, as the Minister has just said, is it not the fact that when Governments have to act in haste, it is even more important to have the scrutiny of the decision they are taking?

Dr Whitehead: The hon. Gentleman is absolutely right. I accept that in cases of dire emergency, where the enemy is about to invade or some such, action needs to be taken that may not necessarily carry out the full intent of the parliamentary procedure. We are not in that position. As the Minister has said—he put it very well—there could be time constraints, that's all. The limited time available for us to get this done could be problematic.

Richard Harrington: I do not want to be dramatic, but not having a nuclear safeguards regime because of the lack of an inspector's legal power to inspect, as far as we are concerned, would be pretty much a national emergency.

Dr Whitehead: Indeed, the Minister is right, in principle. That may be something we might address with one of the amendments we may discuss this afternoon.

The fact of the matter is that putting something in this legislation simply because it might be a little inconvenient to have it any other way, given time constraints, is not a justification for using Henry VIII clauses. As I have mentioned, it is not beyond the wit of Government under those circumstances to introduce primary legislation that can be carried through this House very quickly indeed. If the Minister is so concerned about time constraints, he should also understand that other people will be concerned about time constraints as well and would be willing to make sure that that kind of legislation went through in a speedily.

This morning, he is giving assurances that this will all be done in the proper way and that it will be okay. We can give assurances on the other side that yes, if he did it in a proper way, we would make sure that this was done properly. Those assurances are of about equal weight. He simply has not made the case that the arrangements are necessary for the purpose of translating all the stuff in question into UK law. I remind the Committee that the Department, setting out the context and purpose of the clauses, has emphasised that it is necessary to take the action in question, but there is no mention in the document of the necessity to do it in time that is not otherwise available to Parliament. The document does not make that argument.

Because we have tried to be so reasonable and careful in our approach, but have not received anything coming the other way—

Richard Harrington: I remind the Committee that the changes under the Henry VIII power are about changing references to specific articles in the existing legislation. They are not changes to substance or principle.

Dr Whitehead: Indeed, which is why it would be easy to take a new Bill through the House, to make that evident with respect to the relevant provisions. Everyone would agree that that Bill should move through the House quickly. I think I could get an absolute assurance of that from the Opposition. For that reason, it is not necessary to cast the measure in its present form.

Richard Harrington: Is the hon. Gentleman saying that he would rather there was a brief period with no safeguards regime because there were no inspectors with the legal cover to inspect, so that the Bill could be brought through the House under an emergency procedure?

Dr Whitehead: No. I should rather that the Government organised their business so that it could be done properly in the time available, and that we could then carry out proper parliamentary procedure, to make sure that the power of Parliament was behind whatever was agreed.

Richard Harrington: But the hon. Gentleman would accept that, as it takes two to tango, a lot depends on timing with the IAEA, which is another organisation.

Dr Whitehead: Yes, indeed. The Minister is straying slightly, I think, into concerns that we may well address this afternoon: it is true that there are time constraints, and there are ways to sort that out.

Paul Blomfield: My hon. Friend is right to underline the importance of the point. I am sure that he, like me, would accept the Minister's point about urgency in good faith, but is not there a problem in that the provision could apply to a range of issues? It is central to the Government's argument about Henry VIII powers in general—

The Chair: Order. That is going well beyond the scope of the Bill. Mr Whitehead is, I think, about to wind up.

Dr Whitehead: My hon. Friend makes a—

The Chair: No, he does not; he makes an entirely out-of-order point.

Dr Whitehead: I could have said, Mr Gray, that he makes an entirely out-of-order but nevertheless strong point.

The bottom line is that we have not received this morning the assurances that we hoped we might, about the circumstances in which we could move ahead with the amendments, rather than simply sitting on our hands and demanding that the Henry VIII clauses be struck out. Therefore I think we are going to have to divide the Committee on both amendments this morning. I hope that we can proceed to do that.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 1]

AYES

Blomfield, Paul	Hendry, Drew
Carden, Dan	Norris, Alex
Debbonaire, Thangam	Smith, Eleanor
Gill, Preet Kaur	Whitehead, Dr Alan

NOES

Bradley, Ben	Maclean, Rachel
Harrington, Richard	Robinson, Mary
Harris, Rebecca	Sunak, Rishi
Harrison, Trudy	Syms, Sir Robert
Lewer, Andrew	Wragg, Mr William

Question accordingly negatived.

Amendment proposed: 6, in clause 2, page 4, line 13, at end insert—

"(1A) The Secretary of State may only exercise powers under this section at the point at which amendment of any of the legislation in subsection (1) becomes necessary in order to complete the process of transposition of responsibility for nuclear safeguarding from EURATOM to the Office for Nuclear Regulation, and for no other purpose.

(1B) Upon exercising the power set out in subsection (1) the Secretary of State shall report its operation by means of a report laid before both Houses of Parliament."—*(Dr Whitehead.)*

This amendment limits circumstances under which the Secretary of State may exercise certain powers in this section and requires a report to be laid before Parliament.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 2]

AYES

Blomfield, Paul	Hendry, Drew
Carden, Dan	Norris, Alex
Debbonaire, Thangam	Smith, Eleanor
Gill, Preet Kaur	Whitehead, Dr Alan

NOES

Bradley, Ben	Maclean, Rachel
Harrington, Richard	Robinson, Mary
Harris, Rebecca	Sunak, Rishi
Harrison, Trudy	Syms, Sir Robert
Lewer, Andrew	Wragg, Mr William

Question accordingly negatived.

Clause 2 ordered to stand part of the Bill.

Clause 3 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —*(Rebecca Harris.)*

11.18 am

Adjourned till this day at Two o'clock.