PARLIAMENTARY DEBATES

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OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

SANCTIONS AND ANTI-MONEY LAUNDERING BILL [*LORDS*]

Fifth Sitting

Tuesday 6 March 2018

(Morning)

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Saturday 10 March 2018

The Committee consisted of the following Members:

Chairs: Dame Cheryl Gillan, † Steve McCabe

† Badenoch, Mrs Kemi *(Saffron Walden)* (Con)
Bardell, Hannah *(Livingston)* (SNP)
† Benyon, Richard *(Newbury)* (Con)
† Chalk, Alex *(Cheltenham)* (Con)
† Courts, Robert *(Witney)* (Con)
† Dodds, Anneliese *(Oxford East)* (Lab/Co-op)
† Duffield, Rosie *(Canterbury)* (Lab)
† Duncan, Sir Alan *(Minister for Europe and the Americas)*
† Freer, Mike *(Finchley and Golders Green)* (Con)
† Glen, John *(Economic Secretary to the Treasury)*
† Goodman, Helen *(Bishop Auckland)* (Lab)
† Graham, Luke *(Ochil and South Perthshire)* (Con)
† Maclean, Rachel *(Redditch)* (Con)
† Norris, Alex *(Nottingham North)* (Lab/Co-op)
† Prentis, Victoria *(Banbury)* (Con)
† Rowley, Danielle *(Midlothian)* (Lab)
† Smith, Nick *(Blaenau Gwent)* (Lab)
† Stevens, Jo *(Cardiff Central)* (Lab)
† Thewliss, Alison *(Glasgow Central)* (SNP)

Mike Everett, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 6 March 2018

(Morning)

[Steve McCabe *in the Chair*]

Sanctions and Anti-Money Laundering Bill [*Lords*]

9.25 am

The Chair: Before we resume line-by-line consideration, may I ask everyone to ensure that their electronic devices, including phones, are turned off or silenced? I remind hon. Members that Mr Speaker does not allow tea or coffee to be brought into Committee sittings.

Today's selection list is available in the Committee Room and on the Bill website. It shows how the selected amendments—generally those on the same or a similar issue—have been grouped for debate. I will use my discretion to decide whether to allow a separate stand part debate on individual clauses and schedules after debate on the relevant amendments.

Clause 44

Reports on progress towards register of beneficial owners of overseas entities

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

Helen Goodman (Bishop Auckland) (Lab): It is nice to see you in the Chair again, Mr McCabe, in this much warmer Committee Room 12.

Clause 44 is a concession that the Government made in the other place because there was a lot of concern that they had not cracked on with making progress towards a register of beneficial owners of overseas entities—an extremely important part of the machinery for preventing money laundering. It is rather a pathetic clause, so the Opposition have tabled a new clause that would speed up the timetable, for reasons that I will explain when I move it. I want to register the fact that although we do not intend to vote against clause 44, we think it somewhat weak as a concession.

The Economic Secretary to the Treasury (John Glen): As the hon. Lady says, clause 44 fulfils a Government commitment made at an earlier stage of the Bill in response to a call for clarity on our intentions for the delivery of a separate anti-corruption policy. My noble Friend Lord Ahmad of Wimbledon committed us to reporting on progress made on our policy to create a register of beneficial owners of overseas entities that own or buy property in the UK or that participate in UK Government procurement. We are committed to the register being operational in 2021.

The clause requires the Secretary of State to publish and lay before Parliament three reports on the progress made towards putting the register in place, each of which will be due after the expiry of a 12-month reporting period. The first and second reports must set out

"the steps that are to be taken in the next reporting period towards putting the register in place, and…an assessment of when the register will be put in place."

The third

"must include a statement setting out what further steps, if any, are to be taken towards putting the register in place."

The obligation to report to the House on progress reinforces the commitments on our timetable that the Government have given elsewhere.

Question put and agreed to.

Clause 44 accordingly ordered to stand part of the Bill.

Clause 45

Crown application

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

The Minister for Europe and the Americas (Sir Alan Duncan): Clause 45 allows sanctions regulations under clause 1 and regulations under clause 43 to make provision binding the Crown, but not to make the Crown criminally liable. It also stipulates:

"Nothing in this Act affects Her Majesty in Her private capacity".

Both are common provisions in law. I commend the clause to the Committee.

Question put and agreed to.

Clause 45 accordingly ordered to stand part of the Bill.

Clause 46 ordered to stand part of the Bill.

Clause 47

Regulations: general

Helen Goodman: I beg to move amendment 39, in clause 47, page 34, line 33, leave out paragraph (a).

This amendment would remove paragraph 2(a) from Clause 47, which enables the appropriate Minister to amend, repeal or revoke enactments for regulations under section 1 or 43.

We return to the vexed issue of Henry VIII powers and the Government over-reaching themselves once again. I want to recount for the Committee what happened on this matter in the Lords. Lord Judge moved an amendment to leave out paragraph (a), because he was concerned that it was a Henry VIII provision. Our amendment covers the same issue. Lord Judge said that

"with Clause 44, there is no primary legislation at all...It just says, 'Let's give the Minister regulation-making powers for this, that and the other'...This is all being done on the basis of an unknown law, because the Minister has not yet brought the regulations into existence."

One might say that clauses 47 and 48 are pure Henry VIII powers. They give Ministers the power to change this piece of legislation and other pieces of legislation in perpetuity before the regulations under the clauses have been made. This is perhaps slightly more difficult to understand than the problems with making new criminal offences by regulations, but it is wholly objectionable.

Lord Judge continued:

"In advance of the law being made by regulation, we are giving the Minister power to amend the regulations and to do away with statute. This is in a world where, as we discussed earlier, we already have the Terrorism Act, the Counter-Terrorism and Security Act, the Terrorism Asset-Freezing etc Act and the Proceeds of Crime Act…all of which bear on this Act, and all of which will be susceptible to amendment repeal at the Minister's behest…the secondary will override the primary; and the Minister is in effect going to replace Parliament".—[*Official Report, House of Lords,* 17 January 2018; Vol. 788, c. 718.]

It was not just the Cross-Bench peers who expressed concern about this. Viscount Hailsham, another Lord with a great deal of legal experience, also argued against it. He said:

"It could be used in amending, revoking or repealing existing legislation or to extend classes of offence to which the amended legislation applied. It could be used to increase penalties. It could be used to remove statutory defences. It could be used to amend the definition of criminal intent. Indeed, it could make absolute offences that presently require proof of a specific intent. Because it is an amending power, it could be used to give further powers to the investigating officials or to increase the penalties imposed by the courts."—[*Official Report, House of Lords,* 17 January 2018; Vol. 788, c. 719.]

Lord Pannick, as everybody will recall, was the lawyer who ensured that article 50 was brought to Parliament rather than exercised through the royal prerogative, and he is a person with a strong commitment to this House. He argued that this excess of Henry VIII powers could lead to a point where,

"the courts are not prepared to accept them and are showing every sign that they will give them the narrowest possible interpretation because, as a matter of constitutional principle, they are objectionable".—[*Official Report, House of Lords,* 17 January 2018; Vol. 788, c. 721.]

The Committee has gone over the argument about the problem with Henry VIII powers before, and we have debated it in the Chamber on the European Union (Withdrawal Bill.) People may begin to find it slightly boring, but we are debating it repeatedly because the Government have stuffed it into the Bill so many times. That is the problem, so we really need to persuade Ministers that it is excessive and we need to demonstrate how much they are going down that path.

Of course Ministers think, "When we write these regulations it will all be absolutely fine, because we are nice chaps. It will all be perfectly okay," but they need to remember that they might not always be in power. Other Ministers might write regulations, about which the current Ministers might not be quite so enthusiastic. We need to be a lot more cautious. I do not understand why Minsters have structured the Bill in such a way. They should have put into primary legislation the overall structure for making regulations on both sanctions and anti-money laundering. Ministers are in an even weaker position on anti-money laundering than they are on sanctions.

There is a case for saying that individual sanctions must be made swiftly, and therefore having the negative resolution procedure for statutory instruments is common sense. We all understand that. However, I cannot fathom why Ministers have not said to the lawyers, "Can we please structure this so that we have the overall shape of the way these things work and the penalties in primary legislation?", and Ministers could categorise them. They could say, "We will have a class A, a class B and a class C, and then we will name them quickly," in the way that we do with drugs when people make new chemical formulae and we have to swiftly designate things. That would have got over the problem.

We started with clause 1(1), which states that Ministers may make sanctions regulations. Here we are, right at the end of the Bill, and the pattern is still the same. We still have the same problem.

Sir Alan Duncan: Amendment 39 would remove the power to make certain consequential modifications to existing primary and secondary legislation through regulations made under the Bill. Such power is not unusual. It is worth noting that the Delegated Powers and Regulatory Reform Committee made no comment on the inclusion of the delegated power in its report on the Bill. I recognise that concerns have been expressed—we have just heard them—about the breadth of the regulation-making powers conferred by the Bill. The consequential power is both appropriate and necessary, and I hope I can provide reassurance on that.

The power can be used only to make consequential provisions. It also enables other provisions that are supplemental, incidental or transitional, or that make savings to the sanctions or money-laundering regulations. It is important to note that it does not confer the power to make any changes to legislation that are independent of the sanctions and money-laundering power. For example, the power can be used to repeal frozen EU legislation saved by the European Union (Withdrawal) Bill, so when we use the powers in the Bill to replace a sanctions regime in frozen EU law with one in a statutory instrument, the power will enable the frozen EU law to be repealed even if all that has happened in practice is that the sanctions have been relabelled. Without the power we would be unable to do so without another Act of Parliament. I am sure hon. Members agree that that would not be a good use of parliamentary time and that it would be impractical.

The power simply provides a tool to make changes to ensure that the statute book works as a result of sanctions being imposed or anti-money laundering regulations created. It does not give the Government the ability to change swathes of legislation without regard to the purposes of sanctions and anti-money laundering.

I want to reassure hon. Members that any regulations made that use the power to amend, revoke or repeal any primary legislation would be required to use the draft affirmative procedure. That means both Houses would need to give their consent before the changes would come into effect, and it is fully in line with the standing advice of the Delegated Powers and Regulatory Reform Committee about the appropriate parliamentary procedure for such powers.

In other words, we know what these laws will be. They will be sanctions and anti-money laundering regimes of the types set out in the Bill and for the purposes listed in it. I hope that I have been clear that this power is appropriately limited to what is necessary, and that on that basis the hon. Lady will withdraw the amendment.

Helen Goodman: The Minister said that this power to amend primary legislation through regulations will apply only to sanctions and anti-money laundering; however, he did not and could not say, because it would not be true, that that will mean amendments only to this Bill. That is because sanctions and anti-money laundering offences are already covered by other pieces of legislation on the statute book. This will not be the one Act that says everything anybody ever dared to ask about sanctions and anti-money laundering. This is part of a large carpet, and it has been woven in, I feel, in a most unsatisfactory way. The principle is broken when Ministers take the power to make regulations that may amend primary legislation.

Sir Alan Duncan: May I point out that if there is an amendment to another Bill, it is because those offences would become out of date, and therefore these are consequential?

Helen Goodman: I am grateful to the Minister for that interjection. As I said, and as he has just admitted, this does affect other pieces of legislation. Even if that were not the case, the problem is an issue of principle. We are changing primary legislation with secondary legislation. That is what we find objectionable, and that is why I wish to test the will of the Committee on the amendment.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 11]

AYES

Dodds, Anneliese	Rowley, Danielle
Duffield, Rosie	Smith, Nick
Goodman, Helen	Stevens, Jo
Norris, Alex	Thewliss, Alison

NOES

Badenoch, Mrs Kemi	Freer, Mike
Benyon, rh Richard	Glen, John
Chalk, Alex	Graham, Luke
Courts, Robert	Maclean, Rachel
Duncan, rh Sir Alan	Prentis, Victoria

Question accordingly negatived.

John Glen: I beg to move amendment 8, in clause 47, page 34, line 38, leave out subsection (3) and insert—

"(3) Regulations under section 1 may amend the definition of "terrorist financing" in section 43(4) so as to remove any reference to a provision of regulations that is revoked by regulations under section 1.

(3A) Regulations under section 1 may amend the definition of "terrorist financing" in section 43(4) so as to add a reference to a provision of regulations under section 1 that contains an offence, but only if—

(a) each purpose of the regulations containing the offence, as stated under section1(3), is compliance with a UN obligation or other international obligation, or

(b) paragraph (a) does not apply but the report under section 2 in respect of the regulations containing the offence indicates that, in the opinion of the appropriate Minister making those regulations, the carrying out of a purpose stated in those regulations under section1(3) would further the prevention of terrorism in the United Kingdom or elsewhere."

This amendment provides that regulations under Clause 1 may amend the definition of "terrorist financing" in the Bill to add a reference to an offence only where the purpose of the regulations containing the offence is compliance with a UN or other international obligation or a purpose related to the prevention of terrorism.

There are two purposes behind the amendment. The first is to allow us to update the definition of "terrorist financing" in regulations. The nature of terrorist finance has a tendency to change over time and it is important that we are able to update our counter-terrorism measures to take account of the changes. This will allow us to continue to maintain a robust counter-terrorism regime, while meeting our international UN obligations.

While that is crucial, we also seek to restrict the ability to add to the definition of terrorist financing in the second part of the amendment. The Government listened to the concerns expressed by noble Lords about the aims of the regimes and the need for a proportionate approach. Having engaged with noble Lords, we agreed to restrict the ability to add to the definition of terrorist financing. The definition may be changed only to comply with international obligations or to further the prevention of terrorism, as set out in the clause. If the amendment were not agreed to, we would be unable to update our terrorist finance regime to respond to changing events.

Helen Goodman: Of course, nobody thinks that we should not have effective measures to tackle terrorist financing. That is plain and there is an obvious consensus about that. There are two questions. First, is this the appropriate way to go about it? Secondly—I would like the Minister to elucidate on this a little further—could the Minister give us some examples of the kind of changes to terrorist financing, that are not caught at the moment, but that could be dealt with in regulations as the issues arose?

John Glen: I am grateful for that challenge. As I set out, the Government would only amend the definition when necessary to meet UN obligations to further the prevention of terrorism. The clause is designed just to give the scope to amend the definition of terrorist financing.

Anneliese Dodds (Oxford East) (Lab/Co-op): It is good to be here with you in the Chair, Mr McCabe. My reading of the Government amendment—maybe I have interpreted something wrong—is that it says,

"or a purpose related to the prevention of terrorism."

9.45 am

John Glen: As I was about to say, the Government will be allowed to amend the definition only if it is necessary to continue to meet our new UN obligations or if it would further the prevention of terrorism in the UK or elsewhere.

The hon. Member for Bishop Auckland asked me to speculate on potential uses. That is difficult to do, by the very nature of these things, but, for example, we are seeing the use of cryptocurrencies such as Bitcoin. It may be that there is potential risk associated with that and there may be a need to include that, but I am making a speculative observation. It would depend on the circumstances, and what other jurisdictions and the UN were bringing forward.

Amendment 8 agreed to.

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

Alison Thewliss (Glasgow Central) (SNP): It is a pleasure to see you in the Chair, Mr McCabe.

I would like to reiterate the concerns that I raised on Second Reading about the overruling of any Acts made by the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. I have a solution to this, to some degree, in amendment 37. That is coming up, so I will speak about it more then. However, I am deeply concerned that UK Ministers are being empowered in this Bill to make changes to devolved legislation without the involvement or the permission of the Scottish Government or the Scottish Parliament. That is deeply concerning. If not this Government, it makes future Governments capable of amending Acts of another Parliament and I remain deeply concerned about that.

Sir Alan Duncan: The hon. Lady's fears are utterly unfounded. I do not think there are any such examples. These are reserved matters, so changes are for this Parliament. The question of overriding the devolution settlement simply does not apply to this clause or to the Bill.

Question put and agreed to.

Clause 47, as amended, accordingly ordered to stand part of the Bill.

Clause 48

PARLIAMENTARY PROCEDURE FOR REGULATIONS

Helen Goodman: I beg to move amendment 40, in clause 48, page 36, line 1, leave out paragraph (d).

The Chair: With this it will be convenient to discuss new clause 7—*Parliamentary committee to scrutinise regulations*—

"(1) A Minister may not lay before Parliament a statutory instrument under section 48(5) unless a committee of the House of Commons charged with scrutinising statutory instruments made under this Act has recommended that the instrument be laid.

(2) The committee of the House of Commons so charged under subsection (1) may scrutinise any reviews carried out under section 27 of this Act."

This new clause would require a specialised House of Commons Committee to approve all statutory instruments laid under the affirmative procedure under this Act. The Committee would also scrutinise the Government's reviews of sanctions regulations.

Helen Goodman: The clause relates to parliamentary procedure for regulations. Amendment 40 distinguishes between regulations relating to anti-money laundering and those relating solely to sanctions. As I have said in relation to other amendments and clauses, there is a question of whether it is appropriate, in the case of anti-money laundering measures, to use the swift regulatory approach, which does not give either House the opportunity to make changes to the regulations. Although it is proposed that the affirmative procedure be used at this point in the Bill, that does not give us the opportunity to amend. We feel that the Government have not made their case for going down this path. We think it would be better to use the super-affirmative procedure as a bare minimum. There was cross-party consensus on that in the Lords—it was not complete, obviously, which is why the proposal is still in the Bill.

New clause 7 would enable us to create a new Committee of the House. One of the problems with what the Government are doing in the Bill is that they are reducing the amount of scrutiny of regulations on sanctions. We have discussed that issue before. For UN sanctions, the same process—Delegated Legislation Committees and the negative resolution procedure—will be followed, but at the moment EU sanctions go to the European Scrutiny Committee and there is a scrutiny reserve. We will lose that part of the machinery. With this new clause, we seek not simply to replace but to enhance and strengthen that piece of the machinery.

In the European Union (Withdrawal) Bill, we agreed that there should be a sifting Committee of the House, which will decide, for any piece of delegated legislation, whether it is appropriate to use the negative procedure or the affirmative procedure. For sanctions, we all agree that we sometimes have to act quickly and use the negative procedure, so the affirmative procedure clearly would not be appropriate.

I am concerned about the use of Delegated Legislation Committees. I am sure that every member of the Committee will agree that they are the lowest form of parliamentary life; they are the weakest form of parliamentary scrutiny. They are pulled together, people often do not turn up to them, people do not read the papers and the papers are not given to the Opposition Front Bench spokesperson more than two days before. Again, there is no possibility of amending the substance of the measures being considered. Because every single Delegated Legislation Committee is a new Committee, no expertise is built up; there is no institutional memory.

One of the things that we kept being told during the referendum campaign was that we were going to take back control and have parliamentary sovereignty. Accepting the amendment would be a way of strengthening Parliament. It would provide a way for Parliament to structure things, to build up some expertise in this important policy area, to learn from experience and to bring the experience of one situation to the next situation.

It would also be sensible, obviously, for the new Committee to be the Committee that looks at the reviews that the Government have agreed to prepare annually for the House under clause 27. I take the Committee back to clause 27, which sets out that annual reviews will be carried out to consider the effectiveness of sanctions.

At the moment, there is not really a Select Committee that has an overarching view of sanctions policy. There is no Select Committee in this House that examines sanctions policy on a regular basis. That is partly because—

Sir Alan Duncan: There is the European Scrutiny Committee, which looks at every single sanction and every piece of legislation coming from the EU. There is a formalised procedure for that sort of thing.

Helen Goodman: First, we are going to lose that Committee under what Ministers are proposing. Secondly, the European Scrutiny Committee is not a Select Committee. Thirdly, that Committee does not look at the UN-based sanctions, which, as the Minister knows, make up half the sanctions we impose.

Sanctions encompass many things: foreign policy objectives, which is why the Minister for Europe and the Americas is leading for the Government on this Bill; financial measures, which is why we have a Treasury Minister on the Committee; trade measures; and travel bans. Because of that, many Departments are involved with sanctions and therefore many Select Committees have an interest in them, but at the moment we do not have a regular review of sanctions policy by everybody.

It might be possible to set up such a scrutiny Committee on a similar basis to the Committees on Arms Export Controls, which have people from a number of different Select Committees bringing their different expertise to a subject. However, I thought that that would be rather too complex and, in any case, it would not be something that one would legislate for in a Bill; it would be a matter for the Standing Orders of the House.

What we would do is to agree that we wanted to improve scrutiny—that is what the whole Brexit thing is all about—and improve the standing and the role of

[Helen Goodman]

the House. Then, we could consider the detail as to whether we wanted the Committee to be free-standing or a sub-committee of other Committees when we came to amend the Standing Orders of the House.

Both the amendment and the new clause are designed to strengthen Parliament, to strengthen parliamentary sovereignty and to bring back control.

Sir Alan Duncan: Before I speak to the two amendments in this group, perhaps it would be helpful if I restated the Government's case for the approach we are taking—the parliamentary procedures for secondary legislation under this Bill.

The Government recognise that it is important that Parliament scrutinises the use of sanctions and that this Bill allows for such scrutiny. A set of regulations dealing with UN sanctions regimes will be made under the negative procedure. Once sanctions are agreed at the UN Security Council, the UK has an obligation to implement them under the UN Charter. Not doing so would leave the UK in breach of international law.

A set of regulations that do not deal with UN sanctions regimes will be made under the made affirmative procedure. That will allow regimes to come into force immediately, while still allowing Parliament to debate the regulations. That will negate the risk that, before any restrictions take effect, assets are removed, individuals leave or enter the UK, or arms or other prohibited goods are exported to countries that they should not be. It negates that risk.

10 am

Helen Goodman: I do not think the Minister or the officials have understood what the new clause aims to do. It would not change the process or whether the negative, made affirmative or draft affirmative procedure was used for a statutory instrument; it would change the group of people who looked at it, so that we build up some expertise on the matter among parliamentarians across the House.

Sir Alan Duncan: Let me come to the detail of the amendments in a second. I am just outlining the principles behind the Bill and its context.

At present, anti-money laundering regulations are transposed into UK law through the negative procedure in section 2(2) of the European Communities Act 1972. Under the Bill, the vast majority of anti-money laundering regulations will be made using draft affirmative procedures, so parliamentary scrutiny will be increased in that regard. Both the Delegated Powers and Regulatory Reform Committee and the Constitution Committee accepted in their reports on the Bill that the use of delegated powers for sanctions is appropriate. The DPRRC thought that it is

"appropriate for this mechanism to operate through the exercise of delegated powers".

The Constitution Committee confirmed that and thought that,

"In practice, a delegated powers model is inevitable, given the practical difficulties that would arise if Parliament had to legislate to create and amend individual sanctions regimes."

Amendment 40 would delete subsection (5)(d) and so remove the reference to regulations made under clause 43 being made under the draft affirmative procedure, in all but narrowly defined circumstances. The effect of that—which I assume is not hon. Members' intention—would be to reduce parliamentary scrutiny over future money-laundering regulations after the UK ceases to be a member of the EU.

Money-laundering regulations, most recently those that came into force last year, are typically made through the negative procedure. They do not usually require a debate or vote in this House or the other place before coming into force. To enhance scrutiny after the UK ceases to be a member of the EU, subsection (5)(d) provides that substantive changes to money-laundering regulations made under the Bill will be made through the draft affirmative procedure. That will require all such regulations to be debated and voted on by Parliament before coming into force.

The only exception is when the UK is updating the list of high-risk jurisdictions in connection with which enhanced due diligence measures are required. Changes to the list will be made via the made affirmative procedure, as set out in subsections (2) and (3). Again, that will enhance parliamentary scrutiny. Changes to the list are currently made at EU level. If accepted, the amendment would require most regulations under clause 43 instead to be made under the negative procedure, as is provided for clause 48(6). That would weaken parliamentary scrutiny under the Bill as drafted.

New clause 7 would require secondary legislation introduced under subsection (5) to receive the approval of a new House of Commons Committee before being laid before Parliament. I do not think that is necessary, because the new clause would apply to all regulations made using the draft affirmative procedure. Such regulations will be scrutinised directly by Parliament when they are made, as both Houses would need to give consent before they could come into force, thereby negating the need for a scrutiny Committee to look at any of them first.

Were parliamentarians to object, they could reject the regulations. That would force the Government to lay a new instrument, taking into account any concerns that had been expressed. The EU withdrawal Bill is an exception because of the very large volume of statutory instruments that will need to be passed under it in a very short space of time, ahead of the day the UK leaves the EU. That is why a Committee with such a sifting function is appropriate for the powers in that Bill. The same does not apply to the powers mentioned in the new clause. There will not be nearly as much secondary legislation to pass via the draft affirmative procedure. Given that, and together with the points I made on amendment 40, I ask the hon. Lady to withdraw her amendment.

Helen Goodman: I am grateful to the Minister for that explanation. Of course, improvements were made to the Bill in the other place in response to criticisms, and some processes were upgraded from the negative procedure in the original draft to the affirmative procedure in the Bill before the Committee. I do not wish to press amendment 40, but we will wish to press new clause 7 to the vote. I shall explain why, even though we are going to vote on it. First, it is for this House to decide on our processes. We would not dream of telling the other House how to run its affairs. What the Delegated Powers and Regulatory Reform Committee or Constitution Committee in the House of Lords say does not cover

procedures in this House. They are our responsibility. The Minister said there would be far fewer statutory instruments under this Bill, but he has given us no estimate. Does he have any sense of the number of statutory instruments that might come forward? Perhaps he will benefit from inspiration before I sit down, so that he can intervene and tell me what he expects.

Sir Alan Duncan: Our estimate of the regimes that will have to be transferred at the moment is in the region of 33.

Helen Goodman: Thirty-three whole regimes is quite a chunky number, is it not? That is not 33 individuals; it is 33 regimes. Of course, I was extremely concerned about the way that the EU withdrawal Bill looked, as were many Members. However, in one respect the problem is greater in this Bill. This is a Bill with permanent powers; the EU withdrawal Bill is one with temporary powers. Therefore, when we come to the right moment, we will wish to put new clause 7 to a vote. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Alison Thewliss: I beg to move amendment 37, in clause 48, page 36, line 5,

'(5A) A statutory instrument containing regulations under section 1 that repeals, revokes or amends—

(a) an Act of the Scottish Parliament,

(b) a Measure or Act of the National Assembly for Wales, or

(c) Northern Ireland legislation,

must receive the consent of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly, respectively."

This amendment would require the UK Government to obtain the consent of the devolved administrations before repealing, revoking or amending devolved legislation using a statutory instrument containing regulations under section 1.

As I mentioned before, in this Bill the Government have given themselves the capability—although it is not necessarily their intention—to amend devolved Acts. It is not necessarily that the Government will do that, but we need to be mindful that future Governments may choose to. We cannot foretell exactly what the future will hold. In its response to the consultation on this issue, the Law Society posed the question about whether the Government have consulted the devolved Administrations and for what purpose the measure is in the Bill. Although the Government have given themselves this power, they have not explained the circumstances in which they might need to use it. If they say that nothing in the legislation has to do with the devolved Assemblies, why are they giving themselves the power to revoke devolved Assemblies' legislation, when they would not have any competence to do so? It does make any sense that they would put something in the Bill if they have no intention or need to use it.

I would also like to know—given that the Government have not explained this either—the circumstances in which they would want to override devolved legislation and why they feel a consent provision such as the one I am suggesting is not appropriate. If the Government believe that devolved legislations have no power in this area anyway and would therefore not be legislating in it, why have they put the capability of amending devolved Acts within the scope of this Bill? Would the Minister also explain why our consent provision would be considered inappropriate? That has not been explained up to this point, or during deliberations in the Lords. I have read some of the background, and Baroness Northover and Baroness Sheehan did not quite understand the need for what the Government propose either, so I would be grateful if they made more information available. It is not clear to me, and, as I mentioned previously, this provision strikes me as a power grab, and an unnecessary one at that.

Sir Alan Duncan: If I can set this out again to the hon. Lady's satisfaction I hope she will draw a conclusion. Under the UK's constitutional settlement, matters of foreign policy are reserved to Westminster. This Bill will provide the UK Government with powers to be used in pursuit of the UK's foreign policy as well as to ensure that our national security is intact and to deal with money laundering. The Bill therefore relates to matters that are accordingly reserved. The devolved Administrations were consulted during the Bill's preparation, and they have not disagreed with our assessment that the Bill deals with a reserved matter. Amendment 37 would mean that the consent of the relevant devolved Administration was required for any sanctions or anti-money laundering regulations that made a consequential repeal, revocation or amendment to any law created by the devolved Administrations. This would effectively give devolved Administrations veto rights over legislation relating to UK foreign and security policy, or to anti-money laundering policy. That is contrary to the established devolution settlement between Westminster and the devolved legislatures.

With regard to regulations under the Bill, any amendment to laws created by devolved Administrations would only arise as the consequence of the sanctions or money laundering measures under the Bill. Regulations cannot make free-standing changes to devolved legislation. Their primary purposes will always be a reserved matter. Such consequential amendments are entirely consistent with the constitutional settlement, and it would not be consistent with our devolution settlement to give the right of veto to devolved Administrations. Given that the effect of this amendment would be to rewrite the devolution settlement without consulting other devolved Administrations or seeking their consent, I do not agree with it and I urge the hon. Lady to withdraw the amendment.

Anneliese Dodds: We have had an interesting exchange of views. The Minister, however, did not explain a couple of things that would be helpful for the Committee to understand. He indicated that there was consultation with the devolved Governments, but did not spell out what kind of arrangements he anticipates in future that might fall short of the requested veto but that could constitute consultation. This is important, because we have just been talking about the fact that money-laundering regulations in particular span a range of Government issues, not all of which are reserved. They cut across a number of different powers and it would be helpful to know whether, for example, he anticipates that these matters would be part of the ongoing dialogue between the Westminster Government and the devolved Governments, and whether there is regular exchange of information.

The Committee has discussed SLPs, and there is huge concern about whether there is sufficient action in Westminster on that. Devolved Administrations have

[Anneliese Dodds]

raised the issue, and it would be interesting to know whether that was part of a structured dialogue or whether it was something that occurs in an ad hoc way, and how the Minister anticipates that developing in the future.

Sir Alan Duncan: We have continuous discussions with the devolved Assemblies and, of course, with Scottish Members of this House. Once again, I must make it clear that clause 48 is focused entirely on reserved matters, so it does not affect our devolution settlement in any way, whereas the amendment moved by the hon. Member for Glasgow Central most certainly does.

10.15 am

Alison Thewliss: I am not certain that the Government have answered my points. I can buy what the Minister of State says about sanctions and foreign policy, but Scotland and the Scottish Parliament may have something to say about the money-laundering part. I am concerned that the case has not yet been made for the power grabs in the Bill. Why include powers to overrule Scotland on something that it cannot do in the first place? That is just not logical.

I do not intend to press amendment 37 to a vote at this stage, but I would like the Government to consider the matter further; we might raise it again on Report.

Luke Graham (Ochil and South Perthshire) (Con) *rose—*

The Chair: You have obviously provoked some interest, Ms Thewliss.

Luke Graham: Opposition Members have spoken about power grabs, and hon. Members who are not Scottish have raised issues relating to devolved Administrations, but we need to be really clear that this is a reserved area, that there is ongoing dialogue and that Scotland has a voice here in Scottish MPs. That is why we are part of Westminster, which is our Parliament as much as Holyrood is. We need to make it very clear that we are having a discussion, but these powers are reserved.

Anneliese Dodds: Will the hon. Gentleman give way?

Luke Graham: I will not. These powers are reserved. This is not a power grab; it is a reserved matter. Devolution does not mean "separate". We are in conversations, and Scotland has a strong voice here in its Members of Parliament.

Alison Thewliss: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 48 ordered to stand part of the Bill.

Clauses 49 and 50 ordered to stand part of the Bill.

Schedule 3 agreed to.

Clauses 51 to 53 ordered to stand part of the Bill.

Clause 54

EXTENT

Helen Goodman: I beg to move amendment 41, in clause 54, page 41, line 6, leave out "may" and insert "must".

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

Amendment 42, in clause 54, page 41, line 16, leave out "may" and insert "must".

Amendment 43, in clause 54, page 41, line 22, leave out "may" and insert "must".

Amendment 44, in clause 54, page 41, line 25, leave out "may" and insert "must".

Helen Goodman: Clause 54 defines the territorial extent of the Bill. I did not include an explanatory statement for amendments 41 to 44 because I thought their effect so obvious that it did not need further explanation.

In the sanctions part of the Bill, at the moment, Ministers may, by Order in Council, provide for any of the provisions to the Channel Islands, the Isle of Man and the British overseas territories, whereas the amendment would require an Order in Council to extend the provisions to the Channel Islands, the Isle of Man and any of the British overseas territories. We are obviously making the distinction that the Minister made earlier between Her Majesty in her personal role and Her Majesty as the Crown, which is the representative of the Executive. We think that it is appropriate to extend the sanctions part of the legislation in this way.

I am sure that Ministers have looked at the draft EU withdrawal document produced by the EU Commission last week, but in case not every member of the Committee has done so, I would like to draw their attention to article 3 on territorial scope:

"1. Unless otherwise provided in this Agreement or in Union law made applicable by this Agreement, any reference in this Agreement to the United Kingdom or its territory, shall be understood as referring to:

(a) the United Kingdom;

(b) the Channel Islands, the Isle of Man, Gibraltar and the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus to the extent that Union law was applicable to them before the date of entry into force of this Agreement;

(c) the overseas countries and territories listed in Annex II to the TFEU having special relations with the United Kingdom, where the provisions of this Agreement relate to the special arrangements for the association of the overseas countries and territories with the Union.

2. Unless otherwise provided in this Agreement or in Union law made applicable by this Agreement, any reference in this Agreement to Member States, or their territory, shall be understood as covering the territories of the Member States to which the Treaties apply as provided in Article 355 TFEU."

Then there is a footnote to list the overseas countries and territories that have that special relation with the United Kingdom:

"Anguilla, Cayman Islands, Falkland Islands, South Georgia and the South Sandwich Islands, Montserrat, Pitcairn, Saint Helena and Dependencies, British Antarctic Territory, British Indian Ocean Territory, Turks and Caicos Islands, British Virgin Islands and Bermuda."

This Bill is a Brexit Bill. We are trying to have new provisions that apply to the United Kingdom post-Brexit. It is absolutely clear that when we leave, the Channel Islands, the Isle of Man, Gibraltar and all the overseas territories will also be affected as set out in that draft agreement. Many things in the Commission's draft were controversial and were challenged and questioned, but the territorial extent was not one of them. It seems reasonable to enable us to move from a situation where Union law applies in the existing way to the

Crown dependencies and the overseas territories, and not to set up a situation where we have great big loopholes.

This raises a question for Ministers. At the moment, European law applies to the United Kingdom, the Channel Islands, the Isle of Man and Gibraltar. There is still a question mark over Ministers' intentions with respect to the fifth anti-money laundering directive. Although my amendment applies to the sanctions part of the Bill, it raises the question of whether Ministers plan to accept the contents of the fifth anti-money laundering directive. The UK is ahead in some respects, but not in all, and clearly the Crown dependencies and the overseas territories are not ahead. I wish to tease that matter out with this series of amendments.

Sir Alan Duncan: I suppose the overarching point is that Brexit will change the UK's relationship with the EU; it is not designed to change the UK's relationship with its overseas territories and Crown dependencies. The starting point is that EU law applies to a certain extent to Crown dependencies and overseas territories, but not entirely. Currently, overseas territories are not bound to apply EU sanctions, but choose to do so to ensure alignment with the UK's foreign policy.

Let me explain that in more detail. As I said last Tuesday, the UK is responsible for the foreign affairs and security of the Crown dependencies and overseas territories. That is the constitutional position. However, another important constitutional point is that our long-standing practice is that we do not generally legislate for these jurisdictions without their consent, except in exceptional circumstances. Sanctions are tools of foreign policy, or are used to protect our national security. We have been clear that the overseas territories and Crown dependencies must follow the UK Government's foreign policy, including the sanctions that we apply.

Currently, there are two ways in which sanctions are implemented by the overseas territories and Crown dependencies. The UK legislates directly for the majority of these jurisdictions, with their consent, through Orders in Council. Other jurisdictions choose to legislate for themselves, but they follow precisely the sanctions implemented in the UK. That model is well established, and respects the rights of the jurisdictions. The Bill is drafted in a way that reflects that reality. It is consistent with the current implementation model for UN and EU sanctions, as well as measures under the Terrorist Asset-Freezing (Temporary Provisions) Act 2010. It allows those jurisdictions that choose to follow UK sanctions through their own legislation to continue to do so. It also allows the UK to legislate directly for certain overseas territories, where they choose.

I do not see the Bill as the right place to change those long-standing constitutional arrangements, nor do I see a compelling case for doing so at all. I am sure that hon. Members would not wish to jeopardise the achievements that friendly co-operation with these jurisdictions has already made, nor would they seek to disenfranchise those territories that have chosen to legislate for themselves. On that basis, I urge the hon. Member for Bishop Auckland to withdraw her amendment.

Helen Goodman: The Minister has set out the position in principle; he has not given any examples. Let me put it like this: if they always do what we want them to, why do we not just have an automatic system? What is the value of the divergence? That is the obvious rejoinder, but I feel that perhaps this is not the right way, and the right place, to deal with this matter, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 54 ordered to stand part of the Bill.

Clause 55

COMMENCEMENT

10.30 am

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

Helen Goodman: I asked the Minister about commencement last week and he did not have a clear answer. I hope he has had time over the weekend to think about the issue and can now explain the Government's plan to us. While it is perfectly acceptable, normal and understandable, when dealing with some real technicality, to rely on officials, commencement is something for which Ministers themselves are responsible—how the Bill's commencement provisions will interrelate with our withdrawal from the European Union, and whether the intention is to implement the sanctions on 1 April 2019, to wait until 1 January 2020—the projected end of the transition period—or to implement them at some other time.

I am concerned that, in looking at the Bill, thinking about what they wanted to do, and considering how this interrelates with everything else in EU withdrawal, Ministers did not seem to have a clear plan—last week, at any rate. They do not appear to have thought through what they are trying to achieve with these negotiations. It is all very well to say, "It'll all come out in the wash and we'll find out in the end," but that puts us very much in the position of being recipients of whatever the European Union, from on high, prefers to give. I would have thought that Ministers would have an objective, and how they wanted it to happen. We need more clarity from the Minister, not on subsection (1) which covers sections 44 to 56, but on the earlier parts of the Bill. What is his plan?

Sir Alan Duncan: This clause sets out when the Act will commence. It is not part of the negotiations we are currently having with the EU, which are, of course, still a matter of negotiation. I urge the hon. Member for Bishop Auckland to appreciate that what we debating here is the detail of this particular Bill.

Clauses 45 to 49 and 51 to 56 will come into force on the day on which the Bill becomes an Act of Parliament. Those clauses make up part 3 of the Bill, dealing with supplementary provisions, definitions and final provisions, with the exception of clause 50 which deals with consequential amendments and repeals. The remaining clauses will come into force on a day appointed by the Secretary of State, who may allow for clauses to commence on different days. That will enable the Secretary of State to commence the other clauses when required. With that flexibility—which I hope the hon. Lady appreciates—I urge that clause 55 stand part of the Bill.

Helen Goodman: The Minister has not given us a plan; he has not said how he sees this panning out, and he has not even made it clear whether the Secretary of

[Helen Goodman]

State will implement chapters 1 to 5 on the same day, or on multiple days. I think we need to test the view of the Committee.

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

The Committee divided: Ayes 10, Noes 8.

Division No. 12]

AYES

Badenoch, Mrs Kemi	Freer, Mike
Benyon, rh Richard	Glen, John
Chalk, Alex	Graham, Luke
Courts, Robert	Maclean, Rachel
Duncan, rh Sir Alan	Prentis, Victoria

NOES

Dodds, Anneliese	Rowley, Danielle
Duffield, Rosie	Smith, Nick
Goodman, Helen	Stevens, Jo
Norris, Alex	Thewliss, Alison

Question accordingly agreed to.

Clause 55 ordered to stand part of the Bill.

Clause 56

SHORT TITLE

Amendment made: 9, in clause 56, page 42, line 3, leave out subsection (2).—*(Sir Alan Duncan.)*

This amendment removes the privilege amendment inserted by the Lords.

Clause 56, as amended, ordered to stand part of the Bill.

New Clause 3

REPORT IN RESPECT OF OFFENCES IN REGULATIONS

'(1) In this section "relevant regulations" means regulations under section 1 which create any offence for the purposes of—

(a) the enforcement of any prohibitions or requirements imposed by or under regulations under section 1, or

(b) preventing any such prohibitions or requirements from being circumvented.

(2) The appropriate Minister making any relevant regulations ("the Minister") must at the required time lay before Parliament a report which—

(a) specifies the offences created by the regulations, indicating the prohibitions or requirements to which those offences relate,

(b) states that the Minister considers that there are good reasons for those prohibitions or requirements to be enforceable by criminal proceedings and explains why the Minister is of that opinion, and

(c) in the case of any of those offences which are punishable with imprisonment—

(i) states the maximum terms of imprisonment that apply to those offences,

(ii) states that the Minister considers that there are good reasons for those maximum terms, and

(iii) explains why the Minister is of that opinion.

(3) Subsection (4) applies where an offence created by the regulations relates to a particular prohibition or requirement and the Minister considers that a good reason—

(a) for that prohibition or requirement to be enforceable by criminal proceedings, or

(b) for a particular maximum term of imprisonment to apply to that offence,

is consistency with another enactment relating to the enforcement of a similar prohibition or requirement.

(4) The report must identify that other enactment.

(5) In subsection (3) "another enactment" means any provision of or made under an Act, other than a provision of the regulations to which the report relates.

(6) In subsection (2) "the required time" means—

(a) in the case of regulations contained in a statutory instrument which is laid before Parliament after being made, the same time as the instrument is laid before Parliament;

(b) in the case of regulations contained in a statutory instrument a draft of which is laid before Parliament, the same time as the draft is laid.

(7) This section applies to regulations which amend other regulations under section 1 so as to create an offence as it applies to regulations which otherwise create an offence.'—*(Sir Alan Duncan.)*

This new clause requires that where regulations under Clause 1 are made which include offences, a report specifying the offences and giving reasons for any terms of imprisonment that apply to them must be laid before Parliament.

Brought up, and read the First time.

Sir Alan Duncan: I beg to move, That the clause be read a Second time.

In view of the debate in the other place I will discuss the new clause in some depth, which I hope will satisfy the Committee. I apologise in advance for speaking at length, but this matter exercised the other place in considerable detail and I feel duty bound to give a proper in-depth explanation.

We debated the offences provisions in the Bill in an earlier sitting, and I recognise the concerns raised by hon. Members about returning control to Parliament. We have listened to the concerns raised here and in the other place by Lord Judge and others, and the new clause is intended to address them directly. As I mentioned in a previous sitting of this Committee, we have had meetings with Lord Judge and others, and my officials and I continue to make this offer. We are happy to meet hon. Members to answer their questions about the new clause and previous discussions.

It might be helpful if I remind hon. Members that the new clause proposes nothing new. Offences are regularly provided for in secondary legislation made under the European Communities Act 1972 by the negative procedure. Every current sanctions regime involves offences that are set out in the secondary legislation relating to that regime. None of the maximum penalties that we are providing for in the Bill are new. They reflect maximums provided for in existing secondary legislation relating to sanctions. However, the new clause recognises that concerns were raised in the other place and ensures that Ministers do not use the powers without good reasons, and that Ministers inform Parliament about the use of the powers so that they can be properly held to account.

The new clause will require the appropriate Minister to lay a report in Parliament whenever a sanctions regime includes criminal offences. The report will confirm that Ministers consider there are good reasons to do so and will set out what those reasons are. The clause specifies what elements should be included in the report, and I will address those in more detail in a minute.

I am sure that we all agree, as was the consensus in the other place, that sanctions are crucial to fulfilling our UN obligations and are a useful foreign policy and national security tool. To be effective, they must be enforced robustly, and those who breach sanctions must face the consequences—for example, it seems appropriate that those contributing to North Korean weapons proliferation should face financial penalties and criminal prosecution for their actions. In April 2017, the UK used the Policing and Crime Act 2017 to increase, using secondary legislation, the maximum sentences available for those who breach sanctions. We drafted this Bill with a view to continuing that practice, but were met with resistance in the other place on constitutional grounds. On Report, Lord Judge tabled an amendment that removed criminal offences provisions from the Bill, asking the Government to think again about the appropriate level of parliamentary oversight on criminal offences.

We accept that the powers of the Executive to create criminal offences and regulations should be subject to appropriate parliamentary scrutiny and we have carefully considered what we can do here. One option we considered was putting all criminal offences in the Bill, but that is both difficult and impractical, as was recognised by the House of Lords Delegated Powers and Regulatory Reform Committee. Setting out the detail of the criminal offences in the Bill solely by reference to the powers under which sanctions regulations will be made would risk producing the wrong results. We would be creating criminal offences about prohibitions and requirements that have not yet been set.

Trying to set out the offences in primary legislation would risk producing offences and penalties that are defective or disproportionate, or both. That would also run counter to the general principle that provisions creating criminal offences should be precisely drafted and clear in their effect, and would not provide the necessary flexibility to respond to fast-moving international events and changing sanctions regimes. For example, we may need a new criminal offence if the UN adopts a new type of sanction to curtail the North Korean regime, which is entirely plausible as the North Korean sanctions regime has gone significantly further than any regime has gone previously, and it is entirely possible that it will continue on that trajectory. It is important that we can implement the sanctions without gaps in our ability to enforce them.

We also considered whether criminal offences relating to breaches of sanctions could be dealt with in their own separate regulations, which could be considered by Parliament in slower time than regulations that contain the sanctions themselves. However, I am sure that Members will appreciate that that is also unworkable because it would mean that, for a period of time, there would be no criminal penalties for breaches of sanctions and people could breach them with impunity.

After much consideration, including meetings with Lord Judge, we proposed that the Government should have to consider whether there were good reasons for creating offences and setting penalties and explain their rationale to Parliament in relation to every offence and penalty in every individual sanctions regime. The new clause and the resultant reports will ensure that the Government must properly consider that there are good reasons for any offences and penalties and justify those decisions in detail to Parliament.

As I said, the new clause indicates what should be included in the report to Parliament: first, the offences and the prohibitions or requirements to which they refer; secondly, the good reasons that the Minister has considered that justify why breaches of those prohibitions or requirements need to be criminal offences; thirdly, the maximum prison terms for any offences created that are punishable by imprisonment; and finally, the good reasons that the Minister considers justify setting the maximum sentences of imprisonment at the level they have been set. That will largely involve replicating the offences and penalties that currently exist in relation to existing sanctions. Where the Minister is using offences and penalties that already exist in law as a precedent, the report must identify the existing offences to Parliament.

Putting offences in secondary legislation is nothing new. The report would give Parliament the opportunity to scrutinise offences and regulations to a greater extent than currently. Importantly, it would give Parliament greater opportunity to scrutinise sanctions regimes than it has while we are in the EU. The new clause would hold the Government accountable to Parliament, ensuring that new criminal offences for sanctions can be questioned following the report.

To clarify, and in response to comments from the hon. Member for Bishop Auckland on the first day in Committee, the enforcement provisions in the Bill do not create Henry VIII powers. Henry VIII powers would allow the Government to alter primary legislation by statutory instrument. The enforcement provisions in the Bill just enable the Government to provide appropriate criminal penalties in secondary legislation. For example, the North Korea regime statutory instrument may say something to the effect that a person who contravenes any of the prohibitions or requirements and regulations commits an offence.

10.45 am

The new clause will ensure that Ministers do not use the power lightly. They must consider what the good reasons for using the power are, and justify themselves in an open report to Parliament. The new clause has to be considered alongside the additional parliamentary scrutiny provided for in the Bill, including the additional parliamentary scrutiny provisions that were added in the other place. Under clause 2, as inserted in the other place, the Government must justify themselves to Parliament regarding the reasons for pursuing the purpose underlying the sanctions regime, and why sanctions are an appropriate means of achieving that purpose. Under clause 39, the Government must continue to justify themselves when they amend regulations, and in clause 27, an amendment inserted in the other place requires the Government to report annually to Parliament on each of the sanctions regimes in place.

We hope that the additional scrutiny provided for in relation to offences satisfies the concerns raised in the other place, to which we have listened very carefully. I hope that it will also satisfy the Committee.

Helen Goodman: That was an extremely useful explanation. We feel that the new clause is a significant step forward, and deals well with some of the issues raised in the other place. We are happy for it to be added to the Bill.

Question put and agreed to.

New clause 3 accordingly read a Second time, and added to the Bill.

New Clause 4

DUTIES TO LAY CERTAIN REPORTS BEFORE PARLIAMENT: FURTHER PROVISION

(1) In this section "a reporting provision" means section 2(4), (Report in respect of offences in regulations)(2) or 40(2) or paragraph 20A(2) of Schedule 2 (duties to lay before Parliament certain reports relating to regulations).

(2) Where more than one reporting provision applies in relation to particular regulations under section 1, the reports to which those provisions relate may be contained in a single document.

(3) If a reporting provision is not complied with, the appropriate Minister who should have complied with that provision must publish a written statement explaining why that Minister failed to comply with it.

(4) Subsection (5) applies where a reporting provision applies and—

(a) a statutory instrument containing the regulations concerned, or

(b) a draft of such an instrument,

is laid before the House of Commons and House of Lords on different days.

(5) Where this subsection applies, the reporting provision in question is to be read as requiring the laying of a copy of the report to which that provision relates—

(a) before the House of Commons at the time the instrument or draft mentioned in subsection (4) is laid before the House of Commons, and

(b) before the House of Lords at the time that instrument or draft is laid before the House of Lords.—*(Sir Alan Duncan.)*

This new clause enables certain reports relating to regulations to be combined in one document, requires a written statement to be made by the Minister if certain reporting requirements are not complied with, and clarifies how those requirements apply.

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

New Clause 1

PUBLIC REGISTERS OF BENEFICIAL OWNERSHIP OF COMPANIES IN THE BRITISH OVERSEAS TERRITORIES

(1) For the purpose of preventing money laundering, the Secretary of State must provide all reasonable assistance to the governments of—

(a) Anguilla;

(b) Bermuda;

(c) the British Virgin Islands;

(d) the Cayman Islands;

(e) Montserrat; and

(f) the Turks and Caicos Islands,

to enable each of those governments to establish a publicly accessible register of the beneficial ownership of companies registered in that government's jurisdiction.

(2) No later than 1 January 2019 the Secretary of State must prepare an Order in Council in respect of any British overseas territories listed in subsection (1) that have not by that date introduced a publicly accessible register of the beneficial ownership of companies within their jurisdiction, requiring them to adopt such a register by 1 January 2020.

(3) In this section a "publicly accessible register of beneficial ownership of companies" means a register which, in the opinion of the Secretary of State, provides information broadly equivalent to that available in accordance with the provisions of Part 21A of the Companies Act 2006 (information about people with significant control).—*(Helen Goodman.)*

This new clause would require the Secretary of State to take steps to ensure the governments of specified British overseas territories introduce public registers of beneficial ownership of companies.

Brought up, and read the First time.

Helen Goodman: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss new clause 8—*Public registers of beneficial ownership of companies in the British Crown Dependencies—*

(1) For the purpose of preventing money laundering, the Secretary of State must consult with the authorities of governments in each Crown Dependency on establishing a publicly accessible register of the beneficial ownership of companies registered in their jurisdictions.

(2) Within 6 months of this Act being passed, and every 12 months thereafter, the Secretary of State must report to Parliament on progress within the Crown Dependencies on establishing registers as referred to in subsection (1).

(3) In this section a "publicly accessible register of beneficial ownership of companies" means a register which, in the opinion of the Secretary of State, provides information broadly equivalent to that available in accordance with the provisions of Part 21A of the Companies Act 2006 (information about people with significant control)."

This new clause would require the Secretary of State to consult with the governments in each Crown Dependency about introducing public registers of beneficial ownership of companies in the Crown Dependencies, and to report to Parliament on the progress of establishing such registers.

Helen Goodman: The issue of the secret jurisdictions of the Crown dependencies and the overseas territories is extremely vexed. The Opposition are disappointed by what has happened, because we felt that considerable progress was made under David Cameron's Administration on this matter. There are no Liberal Democrats on the Committee—they normally take credit for anything positive that happened when David Cameron was Prime Minister—but my impression from talking to Conservative Members is that many of them were strongly supportive of what the then Prime Minister promised.

I will remind hon. Members what was promised, go through what has happened and the current state of play, say something about why it matters, and then say something about both the counter-arguments and what we are proposing. The Government of the day committed to implementing a central registry of company beneficial ownership information at the G8 conference in Lough Erne in June 2013. It was truly a British initiative; I was criticised on Second Reading for not giving David Cameron credit, but I am not going to fall into that trap today.

The Companies House register contains information on people with significant control, meaning individuals who hold more than 25% of a company's shares or voting rights. The Department for Business, Innovation and Skills published details of its intention to create such a register in a discussion paper called "Transparency and Trust" and then made a call for evidence. The Government passed the relevant primary legislation—the Small Business, Enterprise and Employment Act 2015—at the end of March 2015 and the new register went live in 2016.

The new register is very interesting. Searching for information at Companies House used to involve trolling through lots of papers without finding anything of interest, but now that we can see who is controlling companies, we can spend a very interesting hour finding out who owns what—we are all interested in companies in our constituencies. The register is not perfect, as will become evident when we debate other Opposition new clauses—there is no process for checking information,

and 10% of the 4 million companies have not submitted the information—but it is a big, helpful step forward none the less.

In parallel with the new register, the then Prime Minister wrote to the overseas territories to encourage them to consult on a public registry and look closely at what we were doing in this country. Whereas progress in this country has been good, albeit not perfect, progress in Crown dependencies and overseas territories has been extremely limited. Let me explain the very different situations in each place.

In the British Virgin Islands, legislation is in place and a registry exists, but it is not public—a big weakness. There is information sharing with five or six regulatory or prosecuting authorities in this country, including the National Crime Agency, the Serious Fraud Office and Her Majesty's Revenue and Customs. Those organisations can phone up and say, "We are suspicious about Bloggs, the Member for Salisbury South."

John Glen: There is plenty going on in Salisbury at the moment.

Helen Goodman: Yes, indeed. Our authorities can ask the BVI registry to check what is going on, which I understand has been quite helpful. However, unlike our register, the BVI registry is not public, which means that our authorities are not allowed to go on fishing expeditions; they need a reason to ask for information. The problem is that they cannot see the full pattern of ownership. That can make it very difficult to work out what is going on, because people involved in money laundering set up extremely complex structures and relationships. In other areas of organised crime, the NCA maps nodal interconnections, which helps it to find criminals, but a secret register makes that impossible.

Another relevant point is which EU list people are on—whether they are on the greylist, or whether they are not on the list, for lacking transparency. The BVI were given more time in order not to be on the greylist.

The situation in the Cayman Islands is similar. We have an exchange of beneficial ownership information—a central register—but it is done in secret. They are on the European Union's greylist. The Turks and Caicos have a private register. Like the British Virgin Islands, they were given more time by the European Union because they were affected by the hurricanes. Bermuda has a private register and is on the European Union greylist. The legislation is in place for Montserrat, but no register has been set up. Mind you, Montserrat does not have any particular financial expertise, so it does not matter very much.

Sir Alan Duncan: The hon. Lady is trying to paint a picture of the OTs and we all understand what she is trying to do. She said a moment ago that progress in the Crown dependencies and Overseas Territories was "extremely limited". However, I think it is undeniable—and I would ask her to confirm that she admits this—that progress in these areas is steps ahead of all the other G20 countries, except the UK. Can she put it on the record that she admits that that is the case?

Helen Goodman: I was going to come to that point at the end, because I anticipated that that was an argument. If the Minister will be a little patient, I will stick to the structure of my speech. In the case of Gibraltar, we have exchange of beneficial ownership information. Gibraltar is in a different situation because it is subject to European legislation. In Anguilla, we have exchange of beneficial ownership information. Like the BVI, it was given more time due to the hurricanes.

In the case of Jersey, Guernsey and the Isle of Man, there is exchange of beneficial ownership information legislation in place, but all three are, unfortunately, on the greylist. This is obviously a matter of regret and it is also extremely damaging to our reputation.

Sir Alan Duncan: It is very important that some of the basic facts are established as either true or false, and I hope the hon. Lady will not object to my pointing out another thing that she has got wrong. She spoke about the greylist. There is no greylist. The EU Council conclusions, which I could explain at length, set out the jurisdictions that have been cleared. She is wrong on the greylist in the way she explained it earlier.

Helen Goodman: I am interested that that is the Minister's perception, but I think there might be a competing perception.

Anneliese Dodds: I regret to contradict the Minister, but perhaps there is a slight information gap around the procedure operated by the EU in regard to these matters. There is a blacklist of jurisdictions that have definitely been viewed as beyond the pale by the EU. That has followed a very intensive process of consultation through ECOFIN, which is obviously an intergovernmental mechanism. Countries that are not yet on the blacklist, but about which there are concerns, are on the greylist. I suggest that it would be helpful to look at that list.

I am grateful to my hon. Friend for enabling me to intervene. I made a freedom of information request to the UK Government to find out what they had done to try to remove jurisdictions from the blacklist, and the lobbying they had done in that case, which appeared to reveal that our Government had been active on this matter. So I hope Ministers will update us on what the Government have been doing in relation to this issue.

11 am

Helen Goodman: Now I turn to why this issue matters. I am extremely grateful to Christian Aid for its very thorough briefing. The problems fall into three categories: tax losses, corruption and crime, and the impact on the least developed countries.

On tax losses, the problem is that people are basically using secret jurisdictions to hide both capital and income, and, in doing so, avoiding tax. A particularly powerful example is the case of Bywater Investments. In November 2016, an Australian federal court found that two anonymous Cayman Islands companies controlled by an Australian accountant had facilitated multimillion-dollar tax evasion schemes, leading to 300 million Australian dollars of repayments and fines. The scam relied on the accountant being able to pretend that the companies were owned and controlled by someone else, thanks to beneficial ownership secrecy in the Cayman Islands. Despite the existence of a legally binding tax information sharing agreement between Australia and the Cayman Islands, Cayman courts and laws had blocked both Australian and UK tax authorities from access to information about the real owner of the companies—and these laws still exist. In that particular case, the tax

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losses were to the Australian Revenue, but I think that everybody is conscious that we, too, are losing tax in this country.

On corruption, crime and money laundering, I will talk about the problem of the Azeri Government. The first time that I came across Azeri money laundering was about seven years ago, when the hon. Members for Bridgwater and West Somerset (Mr Liddell-Grainger) and for Na h-Eileanan an Iar (Angus Brendan MacNeil) and I all became very concerned that some students had been locked up for putting a video on the internet about some donkeys. Those donkeys had been bought from the Germans and each donkey was worth $250,000. The students made a video and they found that the reason the donkeys were so valuable was that they could play the violin like Menuhin, and there were photographs of them doing so. That kind of creative sarcasm would get somebody a television award in this country, but in Azerbaijan those students were locked up. The hon. Members for Bridgwater and West Somerset and for Na h-Eileanan an Iar and I tabled an early-day motion and we got the students released.

That is not the sort of money laundering that usually goes on in Azerbaijan. My hon. Friend the Member for Oxford East spoke about the laundromat case. When discussing money laundering cases, we may use one example to illustrate a multitude of problems, because there is not just one problem. My hon. Friend, for example, has mentioned Scottish limited partnerships. Secret jurisdictions were also part of the problem, because the beneficial ownership secrecy gave the Azeri politicians the opportunity to circumvent money laundering laws. Two of the four UK-registered partnerships whose control and ownership was concealed were registered in the BVI.

Crime and corruption cases often involve a great deal of violence in the initial corruption and the initial crime. It is easy to take the view that these are white-collar crimes and that nobody really gets hurt, and that it is just about moving money from one bank account to another and clicking on a computer. What is really going on, however, is that people are stealing from weak and fragile states and running big organised crime gangs. For example—this relates to an earlier point made by the Economic Secretary—kidnappers in Mexico requested that the ransom be paid in bitcoin. The Mexican authorities said that they had never come across that before, although they had certainly come across kidnappings before: 70 people a day are kidnapped in Mexico, which is linked to drug running.

Large international organised crime syndicates are involved in extremes of violence and the destruction of societies. Stealing taxpayers' money from former Soviet Union states or getting involved in big drug deals in Latin America is worth their while only if they can one day get that money and spend it; otherwise, why would they bother? Although these crimes might not seem very serious, they have horrendous consequences for other people. I am not saying that everybody who puts their money in a secret jurisdiction in the British overseas territories is doing so for criminal purposes—that is obviously not the case—but some people are doing that and we need to end the secrecy in order to identify them and track them down.

Last week we discussed sanctions busting and the selling of weapons of mass destruction and their components and materials to North Korea, which also involves shell companies. United Nations investigators and the American courts showed that the North Koreans had used networks of shell companies to evade UN sanctions and to help conceal the origins and destinations of the money that they needed to do so. A significant proportion of those shell company networks have been registered in the BVI and Anguilla. It is unfortunate that the BVI is mentioned a lot, but that is because their specialism lies in this type of registration. It does happen in the other places, but it happens a lot there because it is a world leader in the provision of offshore companies, whereas the Caymans specialise in hedge funds, and Bermuda in captive insurance.

Christian Aid is concerned about the issue because of its impact on developing countries. The former president of Zambia stole $25 million, which he put through an anonymous BVI company and bought property in Brussels. Zambia's per capita income is $4,000 a year. The Nigerian dictator, Sani Abacha, used a BVI company to hold at least $450 million of the $2 billion he is believed to have stolen from the Government during his time in power. Nigeria has a per capita income of below $6,000 a year. The case of Equatorial Guinea is tragic. It has a much higher average income because of its oil reserves, but those reserves have not been used for the benefit of the people, because the President's son, Teodorin Obiang, and others have stolen $38 million of their country's money and spent it on private jets and other luxuries.

The United Nations Conference on Trade and Development estimates that the overall loss to developing countries is some £100 billion a year, which is more than the aid flows going into those countries. If we could sort this out, we would be doing something as useful as all of DFID's efforts. *[Interruption.]* I can hear the Minister saying from a sedentary position, "Yeah, but the real fundamental problem is corruption." He has a point, but we facilitate it. We make it easy, but why? It makes no sense.

We want the Government to set up public registers of beneficial ownership of companies in the British overseas territories. For the purposes of preventing money laundering, the Secretary of State should provide all reasonable assistance to the Governments of the countries we have listed, to enable them to establish a publicly accessible register. The Minister is concerned about the constitutional niceties of making a distinction between the constitutional arrangements in the overseas territories and those in the Crown dependencies. To respect that distinction, we tabled new clause 8, which requires the Secretary of State to consult the authorities of Governments in the Crown dependencies.

The Minister said again this morning that we do not intervene directly. I have two points to make about that: first, we run the foreign policy bit, and secondly, we also run domestic legislation from time to time. We have intervened on gay rights and capital punishment. There was a suspicion that Royal Assent was given to the change to gay marriage laws in Bermuda because it was felt that that was a price worth paying for not having the counter-example of us debating, within a month, these tax privileges—

Sir Alan Duncan: No, no, the hon. Lady cannot allow that to lie on the record. The decision on Bermuda was taken—

The Chair: Order. Lie?

Sir Alan Duncan: I meant lie in the sense of nestling into its duvet on the record.

The Chair: Thank you, Sir Alan. You have woken me from my slumbers!

Sir Alan Duncan: Bermuda introduced a gay marriage Act that gave no particular rights. When it introduced civil partnerships for everybody, it gave proper pension and equality rights, which was in itself a good step, even though it is not called gay marriage.

11.15 am

Helen Goodman: I am grateful to the Minister for that interpretation. I will come now to the counter-arguments. The first is the one the Minister put to me a few minutes ago, that the overseas territories are ahead of others and we should not focus on them.

The problem with that argument is twofold. First, everybody else will catch up soon: there is the EU anti-money-laundering directive, and other countries across the world are introducing public registers. Secondly, we are responsible for what happens, to some extent, and we can influence it. We can make a change if we want to. I will end by asking why Ministers are not making a change. Furthermore, these secret jurisdictions are the most used: the BVI was by far the most popular tax haven in the Panama papers and Bermuda ranked as number one on Oxfam's list of worst corporate tax havens. So we are talking not about obscure little operations, but about the centre of this financial secrecy problem.

The next counter-argument is that we should wait until public registers of beneficial ownership become a global standard, and then expect swift change. I will not be able to speak as eloquently as the right hon. Member for Arundel and South Downs (Nick Herbert) did on Second Reading, but he put the kibosh on that argument very effectively. We do not say about other crime or problems that we are not going to deal with that thief over there until we have caught this one somewhere else. That is not a sensible way to run policy. The fact is that the UK is at the centre of this problem. Post-Brexit we could do so much to regain leadership on anti-corruption.

The third counter-argument is that the overseas territories' economies are heavily reliant on financial services. There are a number of things to say about that, but first being that, were we to have more tax revenues, we would be able to support the overseas territories better in trying to shift their economies from where they are now to where we would like them to be. Examples of alternatives include tourism and the geothermal resources in Montserrat. There are a number of ways in which we could support a better and more balanced development of their economies.

Another reason is that, in the long run, people want to use financial services in jurisdictions that are trustworthy, have a high reputation and where the rule of law is enforced. The rule of law is one reason why London is such a successful financial services centre. Some of the overseas territories' activities—for example, the insurance market—are perfectly legitimate and reasonable, and they can get an income from that. Leaders of large businesses are now calling for that, including at HSBC—notorious for its involvement in the Mexico problem.

We then have the argument that trying to intervene in the overseas territories is neo-colonialist. I think that is a problem of missing the wood for the trees, given that it cannot be neo-colonialist to want to ensure that African countries are not ripped off and lose their tax revenues and the value of their assets. That is not neo-colonialist; it is supportive of their development. That is why, for examples, the South Africans were very pleased with the information they got from the Panama papers, and they used it.

The next argument is that public beneficial ownership registers degrade the quality of information available to law enforcement. I am puzzled by that argument, as that does not seem to be the case, given that the more people are scrutinising something, the more likely it is that the quality of information will be improved.

Another argument is that such a policy threatens the privacy and security of people using the secrecy jurisdictions. There are two things to say about that: first, we seem to be extremely worried about the privacy and security of a very small number of rich people, but not at all worried about the massive and violent crimes inflicted on people who are suffering from human trafficking, drugs gangs or other kinds of violence. Even if we say that we need to address that, though, it is adequately addressed in the British regime; and we are suggesting that they run a similar publication regime. An analysis commissioned by the Government found that the UK register would actually save our law enforcement authorities £30 million a year; so I think that that argument is also extremely weak.

When David Cameron was in power we were making progress on this. I do not know what has changed or why this Government seem to be in a different place. Perhaps it is because there are too many people influencing the Government who keep their money in these offshore havens. For example, the hon. Member for North East Somerset (Mr Rees-Mogg) was referred to in the Paradise papers because of a $680,000 payment he received when the BVI-based investment firm he worked for was bought by a Canadian bank. Everybody knows that the hon. Gentleman is extremely rich and his finances are complex, but his stake in Somerset Capital is managed by subsidiaries in the tax havens of the Cayman Islands and Singapore. Or are we seeking to protect the interests of Philip May, who works for an investment management firm—

Sir Alan Duncan: On a point of order, Mr McCabe, I think these ad hominem attacks are highly inappropriate for this stage of the Committee, or indeed any stage in our Parliamentary proceedings.

The Chair: That is not strictly speaking a point of order. Perhaps we can stick with the detail of the new clause, though.

Helen Goodman: I know what the rules of the House are and I wrote to the hon. Member for North East Somerset yesterday, telling him I would be mentioning him in the Committee today. However, the rules and courtesies of the House do not apply to people who are

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not Members of the House. It is perfectly reasonable to tell the Committee that Philip May works for an investment management firm, Capital Group, which reportedly used offshore-registered funds to make investments in a Bermuda registered company.

Sir Alan Duncan: So what?

Helen Goodman: The Minister asks, "So what?" but—

The Chair: Order.

11.25 am

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

Adjourned till this day at Two o'clock.