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HOUSE OF COMMONS
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GENERAL COMMITTEES

Public Bill Committee

COUNTER-TERRORISM AND BORDER SECURITY BILL

Seventh Sitting

Tuesday 10 July 2018

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Saturday 14 July 2018

The Committee consisted of the following Members:

Chairs: † Mrs Anne Main, Joan Ryan

† Bowie, Andrew *(West Aberdeenshire and Kincardine)* (Con)
Chapman, Douglas *(Dunfermline and West Fife)* (SNP)
† Coyle, Neil *(Bermondsey and Old Southwark)* (Lab)
† Dakin, Nic *(Scunthorpe)* (Lab)
† Doughty, Stephen *(Cardiff South and Penarth)* (Lab/Co-op)
† Foster, Kevin *(Torbay)* (Con)
† Hall, Luke *(Thornbury and Yate)* (Con)
† Hoare, Simon *(North Dorset)* (Con)
† Huq, Dr Rupa *(Ealing Central and Acton)* (Lab)
† Khan, Afzal *(Manchester, Gorton)* (Lab)
† Lopez, Julia *(Hornchurch and Upminster)* (Con)
† Maclean, Rachel *(Redditch)* (Con)
† Maynard, Paul *(Lord Commissioner of Her Majesty's Treasury)*
† Newlands, Gavin *(Paisley and Renfrewshire North)* (SNP)
† Pursglove, Tom *(Corby)* (Con)
† Smith, Eleanor *(Wolverhampton South West)* (Lab)
† Thomas-Symonds, Nick *(Torfaen)* (Lab)
† Wallace, Mr Ben *(Minister for Security and Economic Crime)*
† Warman, Matt *(Boston and Skegness)* (Con)

Nehal Bradley-Depani, David Weir, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 10 July 2018

[Mrs Anne Main *in the Chair*]

Counter-Terrorism and Border Security Bill

9.25 am

The Chair: Good morning. The selection list for today's sitting is available in the Committee Room. Copies of written evidence the Committee has already received are also here. I should just mention that there has been, with the agreement of the Chair, a slight change to the groupings, and amendment 43 to schedule 3 has been included with amendments 24, 25 and 42.

Schedule 3

Border Security

Gavin Newlands (Paisley and Renfrewshire North) (SNP): I beg to move amendment 24, in schedule 3, page 46, line 37, at end insert,

"provided that the person is at all times able to consult with a solicitor in private."

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

Amendment 43, in schedule 3, page 46, line 37, at end insert—

"(7A) The examining officer may require that the detainee consult only a solicitor who has been approved by the Law Society for providing advice to persons detained under the provisions of this schedule."

Amendment 25, in schedule 3, page 47, line 29, leave out paragraph 26.

This amendment would delete provisions in the Bill which restrict access to a lawyer for those detained under Schedule 3 for the purpose of assessing whether they are or have been engaged in hostile activity.

Amendment 42, in schedule 3, page 47, line 31, leave out "and hearing" and insert "but not hearing".

Gavin Newlands: It is a pleasure to see you in the Chair again this morning, Mrs Main.

We have already had a wide-ranging debate on schedule 3, with more to come. Amendments 24 and 25 would delete provisions in the Bill that restrict access to a lawyer for those detained under schedule 3. Specifically, they would retain the right of an individual to be able to consult their legal representative in private, away from a relevant officer.

As I mentioned in my previous contribution, being able to speak with a legal representative in private is a fundamental human right that should not be infringed. In oral evidence, Michael Clancy of the Law Society of Scotland spoke about the fundamental importance of this:

"If we want people to be in a position where they can freely discuss matters with their legal representatives, we have to preserve this value. It is key to the rule of law that people can discuss matters openly with their legal representatives so that the solicitor, advocate or barrister is in a position to advise properly on what avenues are open to the person. Clearly one would want to ensure that that was adequately protected."—[*Official Report, Counter-Terrorism and Border Security Public Bill Committee,* 26 June 2018; c. 49, Q103.]

The Law Society of England and Wales also raised concerns, suggesting that the proposals risk the excellent reputation across the world of the UK justice systems—I add the plural to Richard Atkinson's words. In oral evidence—an aspect of this quote has been raised before—he said:

"The cornerstone is legal professional privilege. That is not access to a lawyer; it is the confidential nature of discussions between a lawyer and their client. That is the cornerstone that has been in existence for hundreds of years and that is held out internationally as a gold standard that we have in this country. That is what is being undermined by this Bill saying that a police officer can stand and listen to the consultation that is going on between the client and the lawyer."—[*Official Report, Counter-Terrorism and Border Security Public Bill Committee,* 26 June 2018; c. 28, Q63.]

For a full house of views on that, Abigail Bright of the Criminal Bar Association said:

"That is deeply concerning and wholly new. 'Radical' is a well-chosen word here; it is a radical departure from anything known to English law. My view, and the view of the specialist Bar associations, is that it is unnecessary and undue, and that it would not in any way be a serious improvement on the powers available to law enforcement agents."—[*Official Report, Counter-Terrorism and Border Security Public Bill Committee,* 26 June 2018; c. 58, Q129.]

In my view, if the schedule is left unamended, it risks infringing a basic, fundamental right that has been in place for hundreds of years, as the legal profession says. It is unnecessary and undue, and it would not be a serious improvement on the powers available to law enforcement. Access to a lawyer—fundamental access to justice—is something we should not compromise on.

Nick Thomas-Symonds (Torfaen) (Lab): It is a pleasure to serve under your chairmanship, Mrs Main.

We had a wide-ranging debate on this issue in Committee last week. I want to raise the specific issues in amendments 42 and 43 and to support what the hon. Member for Paisley and Renfrewshire North said about the importance of legal professional privilege. It is obviously a cornerstone of our criminal justice—indeed, our justice—system and is admired around the world as a gold standard, as the hon. Gentleman pointed out.

However, in the cases we are talking about, it is not as if we must have a trade-off between two purist positions. In my view, there is a simple, practical solution to the problem before us, which should satisfy the Government's concerns about people who are detained passing on messages to others through a lawyer who either acts knowingly or is not in the know. I responded to the Minister on that point last week.

Legal professional privilege is circumscribed by the codes of conduct that govern lawyers in our country. No lawyer can be a party to an illegal act, and they have, of course, to be very mindful of money laundering regulations. The practical solution I suggest in amendment 43 is that the Law Society approve solicitors to provide advice to persons detained. Such solicitors would be subject to the professional code of conduct, which would plug the gap in the legislation as it stands, with people simply not having access to a lawyer at all.

I put that suggestion to Richard Atkinson, the co-chair of the Law Society's criminal law committee, in the 26 June evidence session. I said:

"From what you are saying, there is a practical solution for any legitimate concerns there may be. There is also a situation—in a police station, for example—where you can have a duty solicitor or lawyer made available. That person could be someone of particular standing and reputation in whom we could all have faith and whom we would not have those concerns about."

Richard Atkinson replied, "Absolutely. Again, code H"—he was referring to the Police and Criminal Evidence Act 1984—

"allows exactly for that. If there are specific concerns about a lawyer, the duty lawyer or solicitor can be called to come and advise. That maintains privilege and maintains the defendant's access to advice at that point."—[*Official Report, Counter-Terrorism and Border Security Public Bill Committee,* 26 June 2018; c. 27, Q56.]

This proposal would not involve a large number of cases. The Minister will recall his own questions to Richard Atkinson, when he asked whether a lawyer would be required every single time there was a stop, which clearly is not the point. The provisions apply only when we get to the questioning stage, as set out in the evidence.

The right to private legal advice can be maintained if we adopt the idea that solicitors approved by the Law Society can provide that advice. The arguments that the Minister made against the proposal last week—that those lawyers would somehow inadvertently hand on information—are incredible. These lawyers would be subject to training in this area and would have to act with the highest professional standards. Nor would it be a restriction on the right to confidential legal advice to have a limited number of, say, panel lawyers who are able to provide it.

I urge the Minister to go back and look at this proposal for Report stage. The Government's concerns can be allayed if they put in place a practical scheme that would be limited only in terms of the number of people who would have to deal with it but that would have the crucial effect of maintaining the very important principle of legal professional privilege, upon which our criminal justice system is based.

The Minister for Security and Economic Crime (Mr Ben Wallace): Good morning, Mrs Main. I am delighted to serve under your chairmanship.

The challenge is that we are losing sight of what a schedule 7 or a schedule 3 stop is: it is to establish the purpose and intent of an individual travelling at our borders. The vast majority of the current stops under counter-terrorism measures are for people leaving the country and not returning. We do them in an environment in which the new challenge is the digital data that people are carrying with them.

If we were standing here in 1992, the limit of the examination would be what people had on them—what they had in their bag and pockets. Those things can currently be examined; the power to stop someone to do that, in public or in private, has been in existence for many years, whether it is a customs and border stop or simply an immigration stop. Some of that is purely screening and may take minutes, which was part of my questioning to the Law Society of England and Wales when it gave evidence.

The core of these schedules is to establish that purpose and intent. Because of the challenge of digital media, it is obviously harder to establish that in the shorter periods you might have been able to do it in in the past. That is why the last Labour Government introduced the power in 2000. If we magnify these things, 18 years on, when everyone has a smartphone—not just a mobile phone—which can carry gigabytes of data, we can understand the potential challenge our law enforcement agencies face at the border.

That, at its heart, is what this stop is about. It is not about an interview under caution at a police station, which can usually be an integral part of the investigation and evidence. The verbal evidence given in these stops is not admissible in court, so if I give up information in my interview, that cannot be used in itself as the basis of a prosecution. That is why that is there.

Nick Thomas-Symonds: I am grateful to the Minister for giving way. All that he has said so far is perfectly fine. It is just that there is a specific provision in the Bill that allows for an examining officer to overhear what is said between lawyer and client. The Government's justification for that is the concern that the lawyer would, somehow, inadvertently pass on information. I have suggested a practical solution—I put it to Richard Atkinson of the Law Society in the evidence panel—that would deal with all the concerns the Minister has put forward so far, but also maintain legal professional privilege. What is wrong with that suggestion?

Mr Wallace: I will come to that. I am setting the scene of why we need this power.

Then we come to the two amendments and the ancient right to access a lawyer and legal advice. First, on the right to a lawyer, if you are detained beyond an hour at these stops, you then have a right to a lawyer. I suspect that, in 2000, when this law was introduced by the last Labour Government, it was decided that an hour was a reasonable time for that type of screening examination, which is similar to the question, "Could I search your bag?" from a customs officer and so on. That was a reasonable time. When you go beyond that hour, you have the right to a lawyer.

Another part of that very old and dear right within the UK legal system is the right to have a lawyer of your choice. It is not just, "And here is a selection of vetted lawyers decided by the state." There are two rights here. The hon. Member for Paisley and Renfrewshire North talks about the right to access a lawyer.

Nick Thomas-Symonds: The last characterisation is simply so open to challenge: the idea that there are panels of lawyers for so many different things. My suggestion simply brings the law in line with what already exists in the Police and Criminal Evidence Act 1984, and that was why the Law Society agreed with it. This idea of the state choosing the lawyer simply does not hold water, given the reality of the legal profession. In addition, in terms of what we are talking about—legal professional privilege—confidentiality is the key. It is not about the right of access, but the right of confidential discussion, and it is justification for taking that away that is the big concern.

Mr Wallace: I will get to that. Whether it is the Law Society or the state that defines the duty roster, the point is made that a detained individual should have a right to choose their own lawyer. The Law Society can produce a panel or a duty solicitors' roster, but that does not impinge on someone detained in a police station tonight saying, "Thank you for that. I am going to pick my own lawyer."

Nick Thomas-Symonds: I am grateful for that. Could the Minister indicate, then, whether it is the Government's intention to repeal the Police and Criminal Evidence Act 1984, which already includes a provision like this one?

Mr Wallace: Let me get to the next bit, which is also about the right not to be overheard—for legal privilege to be protected—and the idea that that is somehow absolute. It has never been absolute. The justification for that not being absolute was that the last Labour Government introduced paragraph 9 of schedule 8 to the Terrorism Act 2000, which says:

"A direction under this paragraph may provide that a detained person who wishes to exercise the right…may consult a solicitor only in the sight and hearing of a qualified officer."

The principle of, effectively, allowing the law enforcement agencies to do that, subject to chief officer authorisation, is not a new precedent that we are setting, as the hon. Member for Paisley and Renfrewshire North seems to suggest. It has existed for 18 years. The last Labour Government viewed that as important enough for it to happen when it applies to TACT offenders in a police station setting, never mind in a schedule setting. That is where that policy idea came from. It has not been rustled up in the last year. It has been around for 18 years.

If I was arrested tomorrow morning and taken to a police station, rather than the border, and I wanted to consult a solicitor, I would find that, if there were reasonable grounds—or stronger than that—and the chief officer gave permission, that discussion could, on a very few occasions, be listened to. It is not at all about "inadvertently"; it is about the few individuals, who, as I witnessed in the early '90s, exploit that relationship for the simple purpose of tipping off or undermining or disposing of evidence. Under those circumstances, the power has already existed.

I bring the hon. Member for Torfaen back to the point of this schedule stop. What is this stop really about? The verbal evidence given is not admissible in court, and this is not the same as sitting in a police station. This is about effectively establishing the intent, the identity and the basic details at the time of a border stop.

Given that we are a free and open society, it is at our border that we are most vulnerable. Once someone is within our community, because of the way we live our lives, quite rightly, they have free movement and free everything. I am delighted that those are our values, but if we are to keep that special, and maintain that freedom within the United Kingdom, we have to be able to give that power for the simple purpose of establishing the intent—the who and the what—at our border.

The new schedule applies to hostile state activities and to people who come here to attack and undermine the very state that allows us to enjoy those freedoms. That does not put in peril the strength of our justice system and the right to a lawyer and to a fair trial—I am a Scot, and we take a slightly different philosophical view on the right to a jury, which is a very Norman thing in England and Wales. That is why I believe that these measures are proportionate and necessary to keep us safe, and I do not believe that going back on the principle established 18 years ago would keep us safe; in fact, we would be unpicking well-established law.

Funnily enough, in my two years as Security Minister, I have had lots of representations on the use of schedule 7 and whether people have a right to compensation, whether the schedule is abused, and whether we should be cleverer and faster in using it, so it does not impinge on people's journeys. I have not yet had a representation in those two years to ask for paragraph 9 of schedule 8 to the Terrorism Act 2000 to be undone. Therefore, the Government will not accept these amendments and will leave the schedule to stand, for the purpose of screening the who, what, where and when at our border and of taking into account the large amounts of data some of these individuals carry on their way into this country.

Gavin Newlands: In the debate on the previous group of amendments, I indicated that I would keep my powder dry until this group. I have listened carefully to the Minister, but in making the point that each suspect should be able to consult a lawyer of their choosing, he seems to be arguing against some of the provisions in his own Bill. For that reason, I wish to press my amendment.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 3]

AYES

Coyle, Neil	Newlands, Gavin
Dakin, Nic	Smith, Eleanor
Huq, Dr Rupa	
Khan, Afzal	Thomas-Symonds, Nick

NOES

Bowie, Andrew	Maclean, Rachel
Foster, Kevin	Maynard, Paul
Hall, Luke	Pursglove, Tom
Hoare, Simon	Wallace, rh Mr Ben
Lopez, Julia	Warman, Matt

Question accordingly negatived.

The Chair: We would now have come to amendment 47 to schedule 3, but the hon. Member for Cardiff South and Penarth is not present to move it, so it will not be called.

Schedule 3 agreed to.

Clause 21 ordered to stand part of the Bill.

Schedule 4

MINOR AND CONSEQUENTIAL AMENDMENTS

Mr Wallace: I beg to move amendment 48, in schedule 4, page 78, line 30, at end insert—

"Civil Legal Services (Financial) Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 196)

28A (1) In regulation 4(2) of the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015 (exceptions from requirement to make a determination in respect of an individual's financial resources), after sub-paragraph (a) insert—

'(aa) is detained under Schedule 7 to the Terrorism Act 2000 or under Part 1 of Schedule 3 to the Counter-Terrorism and Border Security Act 2018;'.

(2) Nothing in sub-paragraph (1) affects any power under the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)) to revoke or amend any provision of the regulations amended by that sub-paragraph.

Civil Legal Services (Remuneration) Order (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 201)

28B (1) In Schedule 2 to the Civil Legal Services (Remuneration) Order (Northern Ireland) 2015 (advice and assistance)—

(a) for the title to Part 2 substitute 'Matters other than those relating to PACE, Schedule 7 to the Terrorism Act 2000 or Schedule 3 to the Counter-Terrorism and Border Security Act 2018';

(b) in the title to Part 3 after 'matters' insert ', Schedule 7 to the Terrorism Act 2000 matters or Schedule 3 to the Counter-Terrorism and Border Security Act 2018 matters';

(c) in note (1) to Table 1 in Part 3 (which refers to work relating to interviews conducted under the Police and Criminal Evidence (Northern Ireland) Order 1989), at the end insert ', Schedule 7 to the Terrorism Act 2000 or Schedule 3 to the Counter-Terrorism and Border Security Act 2018'.

(2) Nothing in sub-paragraph (1) affects any power under the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)) to revoke or amend any provision of the Order amended by that sub-paragraph."

This amendment would ensure that provision of legal advice and assistance, and the remuneration payable for such advice and assistance, to persons detained in Northern Ireland under Schedule 7 to the Terrorism Act 2000, or under Schedule 3 to the Bill, is available in the same way as applies in relation to persons arrested and detained under the Police and Criminal Evidence (Northern Ireland) Order 1989.

The Chair: With this it will be convenient to discuss Government amendment 49.

Mr Wallace: Amendment 48 relates to the new hostile state activities ports power in schedule 3. Paragraph 27 of schedule 4 already makes provision for persons detained under schedule 3 in England and Wales to be eligible for legal aid in order to pay for legal advice and assistance they obtain concerning their detention.

Amendment 48 makes analogous provision for Northern Ireland. It brings the provision of legal aid and assistance for individuals detained in Northern Ireland under schedule 7 to the Terrorism Act 2000 or schedule 3 to this Bill, in line with what is currently provided for when an individual is arrested and held under the Police and Criminal Evidence Act 1984.

Before the hon. Member for Paisley and Renfrewshire North asks, "What about Scotland?" I can advise the Committee that the Scottish Government will bring forward any necessary secondary legislation to make equivalent provision in Scotland.

Amendment 49 is consequential on the changes we are making to the notification regime for terrorist offenders. Paragraph 40 of schedule 4 amends the notification requirements in respect of foreign travel so that a terrorist offender must inform the police of any intended foreign travel and not just, as now, any foreign travel lasting three days or more. Amendment 49 ensures that this change flows through to the requirement on a terrorist offender to notify the police of their return to the UK.

Nick Thomas-Symonds: I rise simply to support the Minister's position. They both seem sensible amendments in that context.

Amendment 48 agreed to.

Amendment made: 49, page 80, line 27, in Schedule 4, at end insert—

'( ) in regulation 5 (notification of return), in paragraph (1), omit "for a period of three days or more".' *—(Mr Wallace.)*

Regulation 5 of the Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009 requires a person to whom the notification requirements apply who leaves the United Kingdom for a period of three days or more to notify the police of the date of their return and the point of their arrival in the United Kingdom within three days of their return (if they did not notify this information before leaving the United Kingdom). This amendment would ensure that regulation 5 applies to a person who leaves the United Kingdom for any period of time instead of only for periods of three days or more.

Schedule 4, as amended, agreed to.

Clause 22

NOTIFICATION REQUIREMENTS: TRANSITIONAL PROVISIONS

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

Mr Wallace: Clause 22 is a very exciting clause. It makes transitional provisions in respect of the changes to the notification scheme for terrorist offenders made by clauses 11 and 12. The changes will apply to terrorist offenders who are made subject to the notification requirements after clauses 11 and 12 come into force, as well as those who are subject to such requirements when the changes take place. Generally, that means that a terrorist offender who is already subject to the existing notification requirements must provide the police with the additional information within three months of the provision coming into force—in effect, within five months of Royal Assent. The police will ensure that existing registered terrorist offenders are informed of the new requirements being placed upon them.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

Clause 23 ordered to stand part of the Bill.

Clause 24

EXTENT

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

Mr Wallace: This is a standard clause that sets out the territorial extent of the provisions in the Bill. As counter-terrorism is a reserved matter, the majority of the provisions apply to England and Wales, Scotland and Northern Ireland. Although the Bill relates to reserved matters, it clearly affects criminal justice agencies across the United Kingdom and local authorities in Great Britain and, accordingly, we extensively consulted the devolved Administrations on its drafting.

A number of the provisions have a more limited extent, in particular clause 8, "Extended sentences etc for terrorism offences: England and Wales". There is a

[Mr Wallace]

separate sentencing framework in Scotland and Northern Ireland, and clauses 9 and 10 respectively make similar changes to extended sentences there. In addition, clause 14, "Traffic regulation", clause 18, "Persons vulnerable to being drawn into terrorism" and clause 19, "Terrorism reinsurance" pertain to England and Wales and Scotland only in line with the existing legislation amended by the clauses. Clause 24 also contains provision to apply certain provisions of the Bill to the Crown dependencies by Order in Council. In the normal way, that would be done only with their agreement and, indeed, at their request. The working assumption is that if any of the Channel Islands or the Isle of Man wish to make provision similar to that contained in the Bill they will bring forward legislation in their own Parliaments.

Question put and agreed to.

Clause 24 accordingly ordered to stand part of the Bill.

Clause 25 ordered to stand part of the Bill.

Clause 26

SHORT TITLE

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

Mr Wallace: So that we do not suffer the criticism that we have galloped through a Bill that both sides of the House think is incredibly important—I have consulted hon. Members throughout the process—it is important that on this final clause, before we get to the new clauses, I simply speak to the title. The clause provides for the short title of the Bill.

Question put and agreed to.

Clause 26 accordingly ordered to stand part of the Bill.

The Chair: We should now come to new clause 1, tabled by Mr Doughty, but he is not here so we will skip over it and go straight to new clause 5.

New Clause 5

FUNDRAISING FOR VICTIMS OF TERRORISM: RESTRICTIONS ON PROFITS

"(1) Organisations that provide services for the purposes of raising donations shall not be entitled to profit from those services where the conditions in subsection (2) are met.

(2) The conditions referred to in subsection (1) are that—

(a) the purpose of raising funds is wholly or substantially to support persons who have sustained a loss due to acts of terrorism; and

(b) the persons donating the funds are doing so without any expectation of personal benefit.

(3) In this section "profits" means any income derived from providing services for the purposes of raising donation in excess of the cost of providing those services."

This new clause would mean that organisations such as online donation platforms would not be able to make a profit from supporting charitable fundraising for those affected by acts of terrorism.—(Neil Coyle.)

Brought up, and read the First time.

Neil Coyle (Bermondsey and Old Southwark) (Lab): I beg to move, That the clause be read a Second time.

It is a pleasure to serve under your chairmanship, Mrs Main. We got here slightly quicker than I expected.

The new clause would mean that organisations, including online donation platforms, would not be able to make a profit from helping to collect funds donated for the people affected after terror attacks. It is in effect a no-profiteering from terrorism clause. As Members might know, some online platforms are designed to help raise funds for good causes. The most famous of all is JustGiving. The Institute of Fundraising praises JustGiving and makes it clear that that site alone raises vital funds for a whole host of charitable causes. Millions of pounds are being generated that simply were not there before or were not as easily raised previously, and JustGiving deserves credit for its innovative approach and engaging systems. Its site is used by many individuals for single and small causes and collections.

My wife used JustGiving recently to raise money for St Christopher's Hospice, who so carefully looked after her father when he passed away in 2016. I use JustGiving every year when I do a sponsored sleep-out for the Robes Project. We sleep outside Southwark cathedral on the last Friday in November. Members are welcome to sponsor or join me there. It is not every night that you get to sleep with the bishop. The project raises vital funds for homelessness and for shelter and accommodation across churches in Southwark and Lambeth, so please sponsor. If Members do not wish to sponsor me personally, in my constituency Sophie Willis is using JustGiving to raise funds for a range of rare conditions, including mast cell activation disorder and Ehlers-Danlos syndrome. They recently had an event that many Members might have attended here at Westminster.

I am not saying that people should not use JustGiving. Single issues and small fundraising schemes help to boost charity coffers considerably and that is to be welcomed. JustGiving describes itself as a "tech-for-good" company aimed at growing the giving community and it has a demonstrable experience of raising additional funding. As well as the ordinary campaigns that JustGiving helps to raise funds for, it also covers the extraordinary. It helps to collect donations after major events. Specifically, it is the huge campaigns born out of public generosity after catastrophic incidents, such as terrorism, that raise significant and legitimate concerns.

Many of those who use JustGiving do not know that it has a blanket policy of taking 5% of all funds raised. That is on top of administration fees and over and above the charges levied to charities to use its site, which can be as much as £39 per month. I understand from JustGiving that it has about 25,000 charities signed up. I simply do not believe that everyone using the site realises that their donations do not wholly go to good causes, nor do they know the margins involved. I think many would be disturbed to find out the truth that not all their contributions reach the target that they wish, and the sums provided by members of the public can be significant. The British public is a generous beast who donated millions after Grenfell and the Manchester Arena attack, for example. Members might have seen Matt Dathan's coverage on this issue in *The Sun*, and I thank him and the paper for covering the topic.

The Sun revealed in June that JustGiving took more than £200,000 in what it calls "revenue" from Grenfell donations. Many people would find that distasteful, to

say the least. My right hon. Friend the Member for Warley (John Spellar) raised that specific example and stated that JustGiving,

"should see sense and cough up",

because of public concern. However, JustGiving has not listened and nor has it adapted its policy. Worse still, it applies the same 5% blanket take even after terror attacks. I find that unpalatable.

After the Manchester Arena bomb in May last year, JustGiving pages raised more than £5.5 million in donations from people wishing to help the families of the children killed and injured. That meant a profit of more than £277,000. Imagine the difference that that quarter of a million could have made to the lives of those affected. It was intended to help those traumatised, devastated and in shock. Instead it was taken from the pockets of the intended beneficiaries and trousered by JustGiving.

It is also estimated that, from public donations intended to help the people and firms affected by the terror attack at London Bridge and Borough market last June in my constituency, JustGiving took a profit of almost £70,000. Not all the public donations intended to help have gone on to reach the people affected, not because of the lack of will or interest of those making the donations, but because of JustGiving's insensitive policy. Such a shocking system simply must be changed. When JustGiving transferred the public donations raised after the terror attack in my constituency last June, the amount provided to the Borough Market Trust was £95,000. JustGiving apparently then made a donation of its own. It gave £900 out of its £17,000 profits from public donations. Some have suggested that that was guilt money.

10 am

JustGiving should waive its 5% fee, as the new clause proposes. It should simply not take a profit from the donations made. Donating from the revenue creamed off genuine donations is disingenuous at best and undermines the trust JustGiving relies on to operate, full stop. To reiterate, we are talking about clear profits that are beyond the admin fees for handling donations that we all expect—for example, when we are donating by card—beyond the charges that charities pay, and beyond the requirements of running a safe and secure site under financial regulations.

To restate the point, no one is questioning an admin fee in and of itself. That is fine. Covering the costs of running the collection services and ensuring they are there to help raise money for more good causes in future is welcome, but profiteering from terror or tragedy is simply unacceptable. In 2017, we witnessed five terror attacks. In security terms and for the families affected, it will be remembered very badly. In the areas and communities that suffered, people are glad they got through. Borough market and London Bridge still have a slightly lower footfall and continue to lack the support needed from Government and the full amount of donations the public provided. Those businesses are still feeling the impact of terror attacks, but for JustGiving it was a bumper year. Its revenue rose by more than £500,000 due to terrorism in this country and the Grenfell disaster, directly through the 5% policy.

JustGiving has claimed it uses all the revenue raised to help generate more donations for other good causes. I asked directly, "Who have you helped raise extra funds? How much extra had been raised on the back of this bumper year?" Not a single cause nor a single penny extra in charitable donations has been identified. JustGiving has stated that its staff numbers have risen by 70. When thousands of members of the public donated what they could afford to help people blown up, stabbed or run over by terrorists last year, I do not think they really thought they would help JustGiving grow its corporate structure. JustGiving and others have had ample time to provide and implement new policies, and they have failed. They have refused to date to even consider a cap on the total amount the 5% profit raises. It could stop, for example, at a total limit of £10,000. They have not even considered that, and they appear unwilling to do so.

JustGiving has ignored public outrage and disgust about taking from the coffers of Grenfell and Manchester, and that must be tackled head on. The new clause would do that. In advance of any future attack, it would prevent any platform from taking further profit before any future donations are made from people's pockets and given to those who need them most. The Bill is an opportunity to ensure no platform makes money on the back of terrorism or from donations from UK taxpayers.

Gift aid changes were designed to ensure even greater generosity from taxpayers with Treasury help, but it seems that JustGiving and other platforms also take their 5% revenue fees from the gift aid element of those donations, which was never the intent of the policy. I am aware that Her Majesty's Treasury are reviewing how the policy has operated, but the new clause would not interfere with that wider developing approach from Government; it would simply prevent a profit being taken from the full donation following a terror attack. I hope the Government will signal their intent to act, and I hope to receive a concrete assurance that this obscene approach will be ended. I welcome the Minister's response.

Nick Thomas-Symonds: Let me briefly add my support to what has been said by my hon. Friend the Member for Bermondsey and Old Southwark. I pay tribute to him for the work he has done on this issue and a number of others in light of the terrible events at London Bridge and Borough market in his constituency last year. I think he highlights an important issue that is of great concern to a number of people, and I am pleased to support the new clause he has put forward.

There is great concern about the issue. My hon. Friend was right to draw a distinction between the costs of administration and clear and excessive profits. I do not think anyone is suggesting that there is a problem with having an administration cost or that those organisations involved in raising money in what are often emotionally charged and difficult circumstances need to be able to cover the costs of administration. The concern is about excessive profits being made by those particular organisations, and that concern has been expressed by my constituents. People have no objection to giving money, and they want to give money. There is great charitable intent among the British public, particularly when coming together after terrible events, but there is great concern about giving money some of which is siphoned off for clear profit for another organisation in the most awful circumstances. I support what my hon. Friend said, and I hope that the Minister will give some reassurance on this matter.

Mr Wallace: The hon. Member for Bermondsey and Old Southwark made, as with his other points, a passionate appeal to do something about this issue, as a direct result of working with his constituents in Borough market. Charities in this country do an incredible amount of work. I think the public gave more than £10.3 billion to charity in 2017. As a British citizen, I am incredibly proud that it is still in our nature to contribute to a range of charities. The establishment of the Charity Commission has played a hugely important role in supporting and helping to co-ordinate the work of fundraisers and charities in responding to such major incidents.

We should also reflect that it is not the incidents that define people's hurt, need and suffering. The pain and goodwill of the husband, wife, brother or sister of someone desperately trying to raise money for an operation abroad, someone trying to raise money for the hospice where their father died, someone raising money to deal with someone injured in a car accident, or someone trying to campaign for change or for the NHS, for example, to produce some new treatment, are the same as those trying to support victims of terrorism. Someone who has lost their children at the hands of knife crime, not terrorism, will feel no different to, and no less a victim than, any other victims. I am not saying that the hon. Member for Bermondsey and Old Southwark suggested that.

There are emergencies all the time that result in a significant loss of life. Thankfully, they are not all caused by terrorism; in fact, they are very rarely caused by terrorism, and I would not seek to put a line on one versus another. I would not seek to say that one incident deserves a cap or a lesser fee than the other. We have to get to grips with the core of what needs to be put right.

Neil Coyle: It is different when there is an accidental need to raise, such as in the Minister's example of a car accident, although I would hope that the NHS would cover that. Cancer was another example. Again, I would hope that NHS treatment and research would be done to try to prevent that from happening. In the context of the Bill, we are talking solely about terror attacks and those who deliberately sought to attack us, this country and our way of life. In response to that, I think a unique and different position should be adopted by the Government. Also, when we make donations we do not expect anyone to take a profit from those donations.

Mr Wallace: I hear what the hon. Gentleman says and I understand his dividing line of accidental or unavoidable, but many more people are killed in this country as a result of domestic abuse than terrorism. Many more people are killed because of knife crime or violent crime every year than terrorism. It is the same; no one went out to look for that. That is the position. We could probably debate all day where we would draw the line. That is one of the challenges we face.

The Government are committed to ensuring that victims of terrorism receive effective support that is comprehensive and co-ordinated. That is why last year we set up the cross-Government victims of terrorism unit to co-ordinate support to UK citizens directly affected by terrorist events at home and overseas. We continue to work across Government, including with the third sector and private sector organisations, to improve and strengthen the support available so that victims receive the best possible support now and in the future.

The Government's approach to digital fundraising platforms is to promote self-regulation, with the aim of ensuring that transparency and the public interest are protected. The Fundraising Regulator, working with a number of digital fundraising platforms, has developed new transparency requirements, which it consulted on and announced just last month on 7 June. These changes were incorporated into the "Code of Fundraising Practice", the rulebook for fundraising in the UK, and the platforms have until the end of August to make any necessary changes to their systems and processes. Most digital fundraising platforms have already registered with the Fundraising Regulator. Several platforms chose to waive or cap their fees in relation to some of the incidents last year, including the Manchester terror attack.

Alongside the updates to the "Code of Fundraising Practice", the Fundraising Regulator has developed guidance for online fundraising platforms, to help them meet the expected standards of transparency. Guidance has also been produced to help members of the general public who want to use these platforms to ensure that they do not inadvertently breach the code and that they consider how funds will reach the intended beneficiaries.

We expect non-statutory regulation under the Fundraising Regulator to work, but as a backstop the Government have reserve powers to regulate fundraising under the Charities (Protection and Social Investment) Act 2016, should that prove necessary. We will not hesitate to do so, if that is the case.

These changes are already having an impact. One prominent for-profit funding platform has changed its practices; as well as being more transparent about its fees, it now offers donors the ability to make an additional payment to cover the fees, ensuring that the entire donation goes to the beneficiaries.

I have greater sympathy for a more directive approach when it comes to gift aid. Some digital fundraising providers include the gift aid amount when they calculate their charge. I think that is outrageous. Gift aid is taxpayers' money that is given to charities; it is not meant for businesses that operate fundraising platforms. That is why my hon. Friend the Exchequer Secretary to the Treasury has asked Her Majesty's Revenue and Customs to explore options to ensure that gift aid is passed on in full to the charities to which it is due.

Separate to the work of the Fundraising Regulator in improving transparency and the regulation of digital fundraising platforms, work is underway with the charity sector to better co-ordinate charities' response to major emergencies. This programme is being supported by the Charity Commission, working closely with a range of charities, fundraisers and regulators, including the Fundraising Regulator.

In January this year the Charity Commission organised a roundtable event involving 25 charities, regulators, fundraising platforms and others, to start to develop a framework for a more co-ordinated charity sector response to national critical incidents. Attendees agreed to the principle of creating a collective framework for co-ordinating such responses. They formed a working group to develop the framework and operating principles behind any future disaster response. That work is

progressing well and focuses on the themes of first response, fundraising, distribution of funds, and recovery.

I am sure that this is not the intention of the hon. Member for Bermondsey and Old Southwark in new clause 5, but we believe that, at the moment, there might be unintended consequences for reducing the charitable funds raised to help victims of terrorism. Were the new clause to become law, some of the digital fundraising platforms might stop people setting up fundraising pages for the victims of terrorism, resulting in less charitable funds being raised. There is also a risk that funds already raised by established charities, using professional fundraisers, which could have been used to support victims, could not be used for the proper purpose. There does not appear to be a clear rationale, as I said earlier, about where we draw the line. I hope that he understands why I cannot support the new clause.

I assure the Committee that work is underway to improve the transparency of digital fundraising platforms and the co-ordination of charities' responses to major incidents, including supporting victims of terrorism. I am happy to facilitate a meeting with the hon. Gentleman and the Minister with responsibility for charities to talk that through directly. As a Security Minister, my locus is over terrorism, but the wider regulation of charities across the whole sector—all types of charities—is the responsibility of another Minister. I am happy to present the hon. Gentleman's intentions in this new clause to that Minister and then arrange a meeting between them.

I hope that I have reassured the hon. Gentleman that we are working through the Fundraising Regulator and the Treasury to ensure that his concerns are met. At the same time, we are trying to balance the modern technology of the world, which a lot of people use to fundraise and collect donations.

Afzal Khan (Manchester, Gorton) (Lab): I support the new clause tabled by my hon. Friend the Member for Bermondsey and Old Southwark. I am from Manchester—I am a former Lord Mayor—so I saw what happened there and I know how people feel. Millions of pounds have been raised in Manchester, because people there are generous. I think that they would find it offensive if someone was profiteering from the money they had donated in response to such a terrible attack. Is that acceptable?

10.15 am

Mr Wallace: I do not disagree with the hon. Gentleman. The first thing to do in a big event is get out loudly and publicly the alternative charitable telephone numbers. Telephone lines for donations are always set up, often directly to charities and sometimes through the Department for International Development—for foreign emergencies—or other Departments. That is the first path.

I am constantly disappointed by this. As an ex-soldier, I was approached by a forces charity and asked to be one of its many patrons, only to discover that a massive wedge was for the fee. The charity does not advertise that on its stall when it is raising money. The problem has gone on for too long, which is why the Government, with cross-party support, introduced the 2016 Act. That was also on the back of elderly people being ruthlessly pursued by some fundraisers. The charity sector, in many different areas, has to clean up its act. Recently we have seen sexual harassment cases in some major charities.

My worry is that those who sometimes oppose charities might seek to exploit all that. We have to get this fine balance right, because we want people to keep giving. We should be much more prescriptive about fees, we should publicise how much they are and what the alternatives are, and we must recognise that people give in many different ways. That giving costs money.

An amazing thing, which no one ever really publicises, is that during Ramadan mosques in this country raise £100 million for charitable causes. That is a huge collective effort over a short period. One of the pillars of Islam is charitable giving, but people do it differently. We have to ensure that the platforms that people use, whether verbally in the mosque or online, are supported and enabled without grotesque profits being made out of suffering.

We have therefore taken the power under the 2016 Act. The first process is to get the industry, through the regulator, to self-regulate, with us keeping a close eye on it. Where the system has been abused, we have to go to the heart of things and question motives. Abuse of gift aid, for example, makes me incredibly worried. What type of organisation does that? I hope that my hon. Friend the Exchequer Secretary takes strong and swift action—I shall reinforce his efforts—to ensure that is dealt with at once.

I hope that I have reassured the hon. Member for Bermondsey and Old Southwark. I agree with his motives but not his methods, so I ask him to withdraw the motion.

Neil Coyle: I have listened carefully to the Minister, but I am afraid that I am not reassured, for a number of reasons.

I have spoken to the Treasury about its plans and I am interested in having a discussion with the Minister with responsibility for charities, but I remain aware that JustGiving meets with charities in this country about the more immediate Disasters Emergency Committee-type approach to an international incident. It goes to the table with the charities, which are working out how best to support people through the immediate aftermath of a terror attack and the urgent need of communities affected. The fundraising platforms, however, are sitting at that table and they know that they can make a profit out of the incident and future events. Their involvement will guarantee them additional income and revenue on the back of a terror attack.

Precisely because the Bill covers terrorism, the charities issue deserves to be treated separately and can be drawn out uniquely. Terrorism, being so uniquely horrific, is clearly the reason why the public are so generous in their response. That is why the figures are so much higher after a terror attack, because people respond. The British public respond when they see children attacked in Manchester, because they want to be able to help. When they see innocent civilians enjoying a night out around Borough market, they want to donate. The large sums arising from those donations are the reason why there is more significant concern.

I had hoped that the platforms involved—JustGiving is the prime player, but there are others—would have done more to cap their own policies, but they have not

[Neil Coyle]

done so. I do not accept the idea that they would no longer be there or that this would limit future donations, because others would always step in to fill that gap.

There is a unique opportunity with the Bill not to undermine the collective will of the British public who seek to help innocent civilians and their families. The ministerial mantra of terrorists not beating us or changing our way of life can be reflected in this new clause. It would mean that donations from the public that are designed to support the continuation of our way of life are not watered down through the profit margins of others. The Government are trying to take some action. The Minister suggests that we wait and see if that works, but we have a clause here that would do the job much quicker and better.

Dr Rupa Huq (Ealing Central and Acton) (Lab): I wholeheartedly agree with my hon. Friend. Platforms such as JustGiving are behaving in a very uncharitable way. The Minister has an "It'll be all right on the night" policy, but I am reminded of when in 2017—my hon. Friend the Member for Scunthorpe was with us then—the same argument was made about the public register of beneficial interests. The Minister on that occasion said, "Let them do it on their own," but public opinion forced the Government to climb down. I urge Government Members to join my hon. Friend the Member for Bermondsey and Old Southwark. Even *The Sun* has backed this campaign—

Mr Wallace: Even *The Sun*!

Dr Huq: Even *The Sun* newspaper, which normally is not really friendly to the Labour party. I pay tribute to my hon. Friend's work and I hope that the Minister will think again.

Neil Coyle: As the Member with *The Sun* in his constituency—News UK's head office is at London Bridge—I am definitely proud of part of the contribution it makes on this issue. Let us leave it there. In response to what the Minister said, there is no need to wait. The new clause would do part of the job by ending the profit from some of these platforms. It does not prevent admin or running costs being collected or those platforms from existing in future, but it sustains the trust that they rely on to continue to be the go-to point for people seeking to raise money after terror attacks or other incidents. Very simply, I urge the Committee to support new clause 5.

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

The Committee divided: Ayes 8, Noes 10.

Division No. 4]

AYES

Coyle, Neil	Khan, Afzal
Dakin, Nic	Newlands, Gavin
Doughty, Stephen	Smith, Eleanor
Huq, Dr Rupa	Thomas-Symonds, Nick

NOES

Bowie, Andrew	Hoare, Simon
Foster, Kevin	Lopez, Julia
Hall, Luke	Maclean, Rachel
Maynard, Paul	Wallace, rh Mr Ben
Pursglove, Tom	Warman, Matt

Question accordingly negatived.

New Clause 6

CONTINUED PARTICIPATION IN THE EUROPEAN ARREST WARRANT

"(1) It is an objective of the Government, in negotiating the withdrawal of the United Kingdom from the European Union, to seek continued United Kingdom participation in the European Arrest Warrant in relation to persons suspected of specified terrorism offences.

(2) In this section, 'specified terrorism offences' has the same meaning as Schedule 15 of the Criminal Justice Act 2003."—*(Nick Thomas-Symonds.)*

This new clause would require the Government to adopt the continued participation of the UK in the European Arrest Warrant in relation to people suspected of terrorist offences as a negotiating objective in the withdrawal negotiations with the European Union.

Brought up, and read the First time.

Nick Thomas-Symonds: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss new clause 7—*Continued participation in Eurojust and Europol*—

"It is an objective of the Government, in negotiating the withdrawal of the United Kingdom from the European Union, to seek continued United Kingdom participation in Eurojust and Europol's activities relating to preventing acts of terrorism."

Nick Thomas-Symonds: These new clauses make it an objective in the Brexit negotiations to continue participation in the European arrest warrant, which new clause 6 refers to, and in Europol and Eurojust, which new clause 7 refers to. They are not restrictively drafted; they simply ask for that continued participation as an objective.

It is worth reminding ourselves of the great advantages the European arrest warrant gives us with regard to law enforcement and protecting our security. European arrest warrants are of course valid in all member states of the EU. They can be used to ask a state to arrest and transfer a criminal suspect to be put on trial, or to ask for someone who is sentenced to custody to be transferred to the UK to complete that sentence.

I have visited the National Crime Agency on a number of occasions over the past year—I am grateful to the Minister for facilitating those visits—and I have looked carefully at the extent to which the UK uses the European arrest warrant. In the calendar years from 2010 to 2016, the UK issued 1,773 requests. It is not the case that the European arrest warrant is not relevant to how we enforce our anti-terror laws, because 11 of those requests related purely to terrorism and a significant number related to organised crime—55 requests related to human trafficking, 206 to child sex offences and 255 to drugs trafficking. The European arrest warrant is an important tool for keeping the public safe.

Extradition outside the European arrest warrant

"can cost four times as much and take three times as long. It would mean an end to the significant exchange of data and engagement through Europol. And it would mean the UK would

no longer be able to secure evidence from European partners quickly through the European Investigation Order".

Those are not my words but the words of the Prime Minister about the importance of the European arrest warrant. It is vital that we seek continued participation.

There is a concern about Europol, and the Minister would do well to provide reassurance by backing new clause 7. Denmark is a recent example of a country leaving membership of Europol but maintaining access. Its experience should give the Minister pause for thought. In a referendum in 2015, Danes rejected a proposal to end the country's full opt-out on home and justice matters and convert it to a version that would have allowed opt-outs on a case-by-case basis. That meant Denmark's full membership of Europol was brought to an end and it was left having to negotiate a more restrictive access agreement, which stated:

"Irrespective of any access restrictions, Europol shall notify Denmark of any information concerning it if this is absolutely necessary in the interest of preventing imminent threat to life."

Denmark continues to pay an annual sum, accepts the jurisdiction of the European Court of Justice and has observer status at Europol board meetings. However, the UK will not be in the same position as Denmark, which remains an EU member. As a third country, the UK will be negotiating from a different position—a point the EU's chief negotiator, Michel Barnier, has made more than once. Europol co-operates with third countries, but the Minister would do well to consider why that will not work in the UK's case. It is crucial that the UK maintains access to Europol's data.

New clause 7 also deals with Eurojust and the general tools that are available. It is vital that we have judicial co-operation on criminal matters. That was created to improve the handling of serious cross-border and organised crime by stimulating investigation and prosecutorial co-operation.

Whether people voted remain or leave, and whatever shades of opinion there are about our future relationship with the European Union, organised crime knows no borders. To keep our country safe, we have to co-operate with the EU27 and other countries around the world. The Prime Minister herself has highlighted that. I suspect that people's attention may have been elsewhere, but she spoke clearly in her statement yesterday about the idea of a security treaty.

New clauses 6 and 7 would simply make continued participation a negotiating objective; they would not tie anybody's hands in negotiations. They are just a common-sense statement of the need for continued co-operation in order to keep our country safe. Keeping our country safe is far more important than any political divisions or any different shades of opinion about our future economic relationship. The Government should commit clearly to these two new clauses. After all, they are only in line with what the Prime Minister has said. I therefore hope that the Minister will be able to support them.

10.30 am

Stephen Doughty (Cardiff South and Penarth) (Lab/Co-op): I want to support my hon. Friend's arguments for these new clauses. We discussed this issue at great length in the Home Affairs Committee, because continuing that security co-operation in so many areas is crucial to the functioning of our police forces and law enforcement agencies. In that regard, I was greatly concerned when reviewing the voting record of the new Brexit Secretary. I hope that the Minister will be able to address this. In 2014 the new Brexit Secretary voted twice against close working with the EU on criminal justice and associated data protection measures. He also voted against the UK re-joining a series of measures—

The Chair: Order. I think that this is somewhat off the subject.

Stephen Doughty: I have a question for the Minister: what is his position on these matters?

The Chair: Order. We will not stray on to the voting record of another Member who is not even in this room.

Stephen Doughty: It relates to the voting of the Minister. I am glad to see that the Minister actually supported these sensible measures. They were important measures on security co-operation that relate to the two new clauses, on the functioning of the European arrest warrant, and the sharing of data in order to enforce such warrants, and on the nature of our relationship with Eurojust and Europol—crucial mechanisms that the Minister saw right to support at the time. I assume that he continues to regard co-operation with those agencies as very important. Can he be clear on where the Government's policies are in this area? As my hon. Friend the Member for Torfaen asked, does he support us retaining that close co-operation to keep all our citizens safe?

Mr Wallace: I had hoped that the Brexit word was never going to pass anyone's lips in this Committee. On the penultimate new clause, I had hoped we would have had the chance of a long and healthy life. Unfortunately, the word has ventured into the Committee.

The aims of the new clause tabled by the hon. Member for Torfaen are exactly the aims of the Government's negotiating position. We want access to the European arrest warrant. We want to play a full part in Eurojust in that way. We have made an unconditional offer to the European Commission on security. However, the difference between our position and the proposed primary legislation is that we want that to be the outcome. The drafting of the new clause is flawed, as it would have a limited practical impact on the new clause. It does not oblige the Government to secure an outcome or prescribe how negotiations are conducted but merely affirms that it is a negotiating objective of the Government to do so.

It is conceivable that the Commission is already well aware of our negotiating aims—in fact, I can tell you that it is. The inclusion of the new clauses could provide the Commission with more weight to leverage those tools in the negotiations.

Nick Thomas-Symonds: I am relieved to hear that the Commission is clear about our negotiating aims, but I would not be over-confident about that. On this crucial point, I am sure if I had been too prescriptive, the Minister would be jumping to his feet saying that I had not left enough flexibility for negotiation. Given that, so far, he has hardly disagreed with anything in the new clauses, I presume it is clear.

Mr Wallace: I do not believe the place for Government negotiation is in primary legislation. The ball is firmly in the court of the European Commission. Our position is an unconditional offer on security. The only time I ventured from the shelter of security to engage publicly on a European issue was when Michel Barnier said recently, in a rather dismissive and offhand manner, that we would not have access to any of these issues as a third country. That does not reflect the examples of special relationships with Europol, of which there are at least two—probably more.

The hon. Gentleman mentioned Denmark, which is unique as a member of the European Union that has pulled out of Europol. Switzerland and Norway, which are not EU members, have good access to Europol for the sharing of data. The point is, when the European Commission has wanted to, it has extended a bespoke or special unique relationship. I venture that the United Kingdom has contributed, shaped, funded and supported many of these European organisations. Europol was created predominantly by the United Kingdom, and it shares huge amounts of our data—our citizens' data and our intelligence—with other European countries.

It is important that our unconditionality is taken on board and embraced by the Commission. My public venture to Mr Barnier, apart from a quip about gambling with safety, was that security was not a competition. We are not talking about trade. It is about working together, where the sum of the parts is greater than the individual contributions.

Afzal Khan: As I have said, I served as a vice-chair of the security and defence committee of the European Parliament, so I am aware of how important co-operation is. Does the Minister agree that if we want to be successful against terrorism we need to improve co-operation? We have benefited from co-operation.

Mr Wallace: We absolutely have. It is not just about scale or who is better at one thing over the other; it is genuinely that in such activity the sum of the parts is greater. The United Kingdom has developed a clear lead on counter-terrorism policy through our intelligence services and police services learning to work together on domestic issues quicker than our European allies. That needs to be scaled up to working internationally. At the same time, we need to navigate the real obligation of the state to protect its citizens' data. It is not a free-for-all.

The hon. Member for Torfaen is right, and we are totally determined to get there through negotiation. It is not that we disagree; I simply take the view that primary legislation is not the place for individual parts of a negotiation. The new clauses would not make any difference, because the Government would not be bound to the outcome but just be saying, "This is what we intend." The Prime Minister has said what our position is and what we want. I have said it to the Committee, and we have said it to the European Commission. It has been said on a number of occasions and no piece of primary legislation will change that. We agree with the intention, and I understand the symbolism of putting an objective into the Bill, but it is not necessary. As long as I am the Security Minister and the Government are negotiating, we wish that to be the case, and that is what we are asking for.

The hon. Member for Cardiff South and Penarth worries about the new Brexit Secretary, but we are all in a team with collective responsibility and he was probably not aware in 2014 of the clear importance of intelligence and security sharing and how it makes a difference to saving lives every single day. Most recently—two weeks ago—the United Kingdom contributed a significant part towards foiling a plot in Cologne involving a terrorist who had managed to make ricin and was making a bomb to devastate that city and its people.

As long as I have breath in my body, I shall do everything I can, but I do not believe that primary legislation is the place for our negotiating objectives. I will happily arrange it for anyone who is in any doubt to visit our police officers to see how important that is.

Neil Coyle: When she was Home Secretary, the Prime Minister warned that Brexit had risks for our national economy and national security. Does this new clause not go some way towards reassuring the Prime Minister about her concerns about Brexit?

Mr Wallace: I refer the hon. Gentleman to the Prime Minister's Munich speech in February, in which she continued to make this point about security—it is not a competition and our offer is open. The only danger to our security would be a dismissal by the European Commission out of hand and refusal to give us any intelligence or data. That would be a danger to us and to it; it would cut off its nose to spite its face.

All the Commission's professionals, and member states' intelligence services and police forces, are telling them that. In all my meetings with member states' Interior and Security Ministers, they agree and concur. It is time that the Commission reflects that, because it is in the interests of European citizens to continue this relationship. It is not purely in our interest; it is in their interests, too.

The Prime Minister is absolutely determined on this point: a safer Europe is a safer Britain; and a safer Britain is a safer Europe. I do not think that will change. My simple dispute with the Opposition Front-Bench spokesperson is that I do not believe that this duty needs to sit in primary legislation.

Nick Thomas-Symonds: I am confused as to why the Minister is indicating that he will vote against the new clause, because he seems to agree with it wholeheartedly.

First, it would make a difference to put it in primary legislation. It would send a clear message to the European Commission, about which the Minister is worried; it would reassure the public; and it would also give Government Members the chance really to put country above party, by supporting the new clause. I will therefore press it to a vote.

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

The Committee divided: Ayes 8, Noes 10.

Division No. 5]

AYES

Coyle, Neil	Khan, Afzal
Dakin, Nic	Newlands, Gavin
Doughty, Stephen	Smith, Eleanor
Huq, Dr Rupa	Thomas-Symonds, Nick

NOES

Bowie, Andrew	Maclean, Rachel
Foster, Kevin	Maynard, Paul
Hall, Luke	Pursglove, Tom
Hoare, Simon	Wallace, rh Mr Ben
Lopez, Julia	Warman, Matt

Question accordingly negatived.

New Clause 8

PASSENGER DATA SHARING BY TRAVEL PROVIDERS

"(1) Providers of travel services by air, sea or land for persons who embark or arrive in the United Kingdom, must transfer passenger name record data to relevant agencies within the United Kingdom, in advance of travel, provided that such data are collected by providers in the normal course of their business.

(2) For the purposes of subsection (1) relevant agencies include, but are not limited to, United Kingdom—

(a) police forces,

(b) intelligence agencies, and

(c) border security and immigration control agencies.

(3) The Secretary of State may by regulations made by statutory instrument set out—

(a) the specific types of minimum data required, which shall include names, dates of birth and passport or travel document information, required under subsection (1),

(b) arrangements and safeguards for handling of the data required, and the process for transferring of such data, required under subsection (1), and

(c) a restitution scheme to allow individuals to provide relevant information to protect against wrongful denial of travel.

(4) The agencies listed in subsection (2) may compare the data obtained under subsection (1) against relevant law enforcement databases in order to identify persons that may have been convicted of terrorist offences, serious crime or hostile state activity."—*(Stephen Doughty.)*

This new clause would require the sharing of a minimum amount of passenger data by travel operators, for international transport beginning or ending in the UK, with relevant law enforcement agencies – in order to check this against relevant UK terrorism, hostile state activity, and criminal databases, to allow decisions to be made on whether to grant entry / exit. It also provides for restitution provisions to prevent wrongful denial of travel.

Brought up, and read the First time.

Stephen Doughty: I beg to move, That the clause be read a Second time.

I shall begin, Mrs Main, by apologising profusely to you and to the Committee for not being here earlier for another new clause, which I did not move. I can only say that I completely misjudged the impact of a very important event that is taking place today on the Mall on the traffic, which unfortunately was in gridlock. However, you and the Committee will be pleased to know that it was only a probing measure. Because of some external feedback I have received I shall consider amending it and introducing it for discussion on Report. It was very useful feedback on the provisions on the amendment paper in any case, and I hope that that will ensure that I can supply more carefully crafted words on Report.

New clause 8 is largely a probing measure, to try to persuade the Minister to explain what is happening in this important area. It would require the sharing with relevant law enforcement agencies of a minimum amount of passenger data by travel operators for international transport beginning or ending in the UK, to check that data against relevant UK terrorism, hostile state activity and criminal databases, to allow good decisions to be made about whether to grant entry or exit. However, it also provides for restitution provisions, such as we see in the Electronic System for Travel Authorisation, or ESTA, arrangements with the United States, to prevent wrongful denial of travel, recognising that mistakes have often been made. Perhaps names have been mixed up, or there have been wrongful listings of people who have had convictions or other impacts against their names.

10.45 am

Essentially the new clauses relate to concerns that have been raised with me regarding a number of cases, some of which I have discussed with the Minister where, unfortunately, individuals have been able to travel abroad to engage in terrorist activity or indeed return to the UK. We are well aware of some of the high-profile cases in the news in recent weeks. Regrettably, in my own constituency, certain individuals, despite having been subjects of interest, were able to travel abroad and undertake acts of terrorism in Syria. That should be of concern to all of us. We need the fullest co-operation with travel operators, including airlines, Eurostar and ferry port operators. The sharing of information in a timely manner is often crucial both to intercepting individuals who may be willing to travel or indeed to enter the UK to commit these acts, and to ensuring that there is a sensible, pragmatic approach to the issues so that individuals who may be of interest and may come up in these checks can be detained at the earliest possible opportunity, not when they are in the process of boarding a flight or are already on a flight or a Eurostar train or something else. We would all agree that it is important that we deal with these issues as soon as we have the information.

I understand—perhaps the Minister would clarify this—that there is a degree of support from certain major airlines for sharing this information. We are now required to enter advance passenger information when travelling on Eurostar. When travelling to the United States, it is important to provide advance passenger information before secondary checks that take place before people board US airlines, and that has been the case for the last few years. There is also the whole ESTA—Electronic System for Travel Authorisation—process which provides, crucially, for a restitution number to be inserted so that somebody is not wrongfully denied travel just because of a past mistake or confusion over a name.

I would like to see a clearer and more consistent approach, particularly from airlines and other forms of travel. When the Minister responds to the new clause will he say something about the measures that have been put into place to ensure that information is shared in a comprehensive and timely manner to ensure that we can prevent those wishing to do harm to our country or other countries overseas from doing so?

Mr Wallace: I am grateful to the hon. Member for Cardiff South and Penarth for setting out the proposals in the new clause, and I hear what he said about his other proposals. It would have been interesting to debate those.

[Mr Wallace]

As the hon. Gentleman explained, the new clause would require travel operators to share passenger data with relevant law enforcement agencies and provide for restitution provisions to prevent wrongful denial of travel. I fully share his objective of ensuring that police and others have access to passenger data, but there are already provisions for the transfer of passenger name records for immigration and policing purposes in two different immigration Acts and in the passenger name record data regulations. All of those provisions are subject to safeguards provided for in the Data Protection Act 2018. Given the extensive legislation already in place governing the provision and processing of passenger data supply, it is unnecessary at this time to provide any new powers in this regard.

Turning to the provision of restitution to prevent wrongful denial of travel, I appreciate the hon. Gentleman's concerns, but the new clause would have unintended consequences that would fundamentally undermine vital tools that protect this country from terrorism and hostile state activity. Although new clause 8 is intended to help passengers by enabling them to provide information to police that would protect against wrongful denial of travel, it would risk undermining the current no-suspicion element of the power. The effect of the new clause would be to allow some individuals to establish the fact that information exists on them on police databases—information that had been used to inform an examination under schedule 3.

We have already debated the necessity to conduct schedule 3 and schedule 7 stops on a non-suspicion basis, so I will not take up more time by going over the same arguments again. Decisions to examine a passenger under schedules 3 or 7 will be informed by a number of considerations, not just passenger data. Other considerations may include the current threat from terrorism and hostile state activity to the UK; available intelligence; trends or patterns of travel; and observations of passengers and their behaviour while they are in a port or border area.

We know that terrorists and hostile state actors are aware of the UK's security measures to counter their activities, and intelligence shows that they flex and adapt accordingly. If we implement the process proposed in the new clause for confirming or amending any of the data that may be used in consideration for making a stop, terrorists and hostile actors will adapt their methods of travel to minimise the chances of alerting, and being interdicted by, the police, or will recruit individuals who are unknown to law enforcement to bypass data checks.

New clause 8 would undermine the utility of the powers, and compromise police and operational partner efforts to keep the public safe. However, the hon. Gentleman makes a valid point about when the powers are used and the financial consequences that they can lay on individuals stopped, and I met him recently to discuss that; indeed, I have constituency cases on the issue.

We are doing work in response to the hon. Gentleman's points, to see what we can do to ensure that the data we have is used at the earliest opportunity for individuals transiting through ports, and to ask stronger questions of police officers about whether measures are necessary. For example, most of the loss occurs when people are exiting the UK—while they are on the outbound leg of a holiday, rather than the return. We are asking basic questions about whether measures could wait until they return. Obviously, if the intelligence or threat is high enough that they cannot, those measures will be taken. Also, we are looking at what we can do to speed up the data at check-in at the gate.

Stephen Doughty: I thank the Minister for giving way, and I have listened carefully to the arguments he has made on the other parts of the new clause. On the issue of speed, is he satisfied at the moment that all airlines, in particular, are sharing information quickly enough, and that their systems allow that to be done, so that we can detain people who might be going to commit acts and ensure that we do things at the earliest possible stage?

Mr Wallace: I believe the airlines are, but of course some of the data is held by airports. If someone checks in at security, that may, at the moment, be airport data, not airline data. How can we get that data to our police in a timely manner so that the most appropriate time is when I emerge from check-in or my baggage search, rather than when I am on an aeroplane, or just about to get on an aeroplane, and the clock is ticking down after I have been shopping in the terminal and so on?

I am absolutely determined—I picked up on the hon. Gentleman's points from our meeting—to see what we can do to improve that. It slightly depends on the age of the airport and how its systems work. For now, I am content to see how that work goes, to see which airports can do that and which cannot, and to feed into the data other information that the police might have to better inform them.

I am not sure we will get many challenges from the Russian, or the hostile, state, but, in the terrorism space, if the powers are to continue to have predominant public support for their necessity, we have to ensure that they are targeted and sympathetically used—I do not want the powers to end up in the same debate as stop-and-search, which made that a toxic power for so long. I will be pressing to ensure that that happens, and I will happily update the hon. Gentleman.

Stephen Doughty: I thank the Minister for his comments. On the basis of what he said, I am happy not to press the new clause at this stage. I ask that he keeps this matter under review and looks at it closely, because we need to ensure that information is shared as quickly as possible, both from the point of view of keeping the public safe and ensuring that the powers are used effectively. We need the co-operation of all travel operators, airports and ports of entry and exit as much as possible. However, given what the Minister has said, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

Mr Wallace: On a point of order, Mrs Main. Before we draw to a close, I would like, to conclude these proceedings in an orderly manner, to put on the record my thanks for your chairmanship and Ms Ryan's chairmanship. I do not think that those on either the Government or the Opposition Benches disappointed the Chair—I hope not.

I also thank those on the Opposition Front Benches. I am always amiable to the hon. Members for Torfaen and for Paisley and Renfrewshire North, and try to

accommodate them. As I set out at the very beginning, I have sought, where possible, to concede. I have conceded on the suggested improvements to clause 3—the three clicks—and to the Scottish National party about clarifying that there will be no charging for public order and the right to protest.

I do not know about you, Mrs Main, but I sat for years on the Opposition and Government Back Benches listening to the valiant efforts of Opposition MPs, who get no recognition whatever. I always promised myself that I would never allow that to happen as a Minister.

I thank my officials, who have been very patient when I have said, "That makes sense. Why can't we do it?" to which the whole Government says, "The Minister might actually change something!" The Bill manager, in particular, has been incredibly patient. I am still determined to improve the Bill before it gets on to the statute book.

I thank the Clerks, the *Hansard* writers and the Doorkeepers for keeping us on the record and safe. I thank the lawyers from the Home Office, the Ministry of Justice and the Treasury, and our witnesses, who set out their clear positions at the beginning.

Nick Thomas-Symonds: Further to that point of order, Mrs Main. I echo what the Minister said, and I thank him for taking a constructive approach to the Bill—he said on Second Reading that he would do that. I add my thanks to the Doorkeepers and the *Hansard* writers. I am very grateful to the Clerks, in particular, for dealing with the numerous amendments I emailed in.

I thank you, Mrs Main, and Ms Ryan for your excellent chairing of the Committee. I am very grateful to all the officials for their contribution to the Bill. I thank the hon. Member for Paisley and Renfrewshire North for working so constructively, and the witnesses for giving us very helpful evidence and cause for debate throughout the Committee.

Gavin Newlands: Further to that point of order, Mrs Main. This is for the hat-trick. Thank you for allowing us to sit without ties. I thank you and Ms Ryan for chairing the Committee and for being so patient with us at certain times. I thank the Clerks, the Doorkeepers and the various officials. I add my thanks to the witnesses who came to the oral evidence session and those who submitted written evidence and briefing papers, which helped Members to draw up amendments.

I thank the Minister for being open—not quite as open as I would have liked, but open none the less, compared with other Ministers I have sat opposite in previous Bill Committees. I also thank the other Front Benchers for their assistance and co-operation.

Bill, as amended, to be reported.

10.58 am

Committee rose.

Written evidence reported to the House

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