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OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

BORDER SECURITY, ASYLUM AND IMMIGRATION BILL

Eighth Sitting

Tuesday 11 March 2025

(Afternoon)

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Saturday 15 March 2025

The Committee consisted of the following Members:

Chairs: Dawn Butler, † Dame Siobhain McDonagh, Dr Andrew Murrison, Graham Stuart

† Bool, Sarah *(South Northamptonshire)* (Con)
† Botterill, Jade *(Ossett and Denby Dale)* (Lab)
† Eagle, Dame Angela *(Minister for Border Security and Asylum)*
† Forster, Mr Will *(Woking)* (LD)
† Gittins, Becky *(Clwyd East)* (Lab)
† Hayes, Tom *(Bournemouth East)* (Lab)
† Lam, Katie *(Weald of Kent)* (Con)
† McCluskey, Martin *(Inverclyde and Renfrewshire West)* (Lab)
Malhotra, Seema *(Parliamentary Under-Secretary of State for the Home Department)*
† Mullane, Margaret *(Dagenham and Rainham)* (Lab)
Murray, Chris *(Edinburgh East and Musselburgh)* (Lab)
Murray, Susan *(Mid Dunbartonshire)* (LD)
† Stevenson, Kenneth *(Airdrie and Shotts)* (Lab)
† Tapp, Mike *(Dover and Deal)* (Lab)
† Vickers, Matt *(Stockton West)* (Con)
† White, Jo *(Bassetlaw)* (Lab)
† Wishart, Pete *(Perth and Kinross-shire)* (SNP)

Robert Cope, Harriet Deane, Claire Cozens, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 11 March 2025

(Afternoon)

[Dame Siobhain McDonagh *in the Chair*]

Border Security, Asylum and Immigration Bill

2 pm

The Chair: I congratulate everyone on their very prompt arrival.

Clause 39

Sections 37 and 38: consequential amendments

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

The Minister for Border Security and Asylum (Dame Angela Eagle): It is a great pleasure to see you, the fourth Chair of our Committee, Dame Siobhain. I welcome you to the Chair. It is a pleasure to serve with you directing us.

The clause is a simple consequential one: it removes references to and amendments made by the Illegal Migration Act 2023 and the Safety of Rwanda (Asylum and Immigration) Act 2024 when they no longer serve a purpose. During the passage of those two pieces of legislation it was necessary to amend existing Acts of Parliament, to cross-reference them and to enable enactment of the provisions within them. Few, if any, of those provisions were ever properly commenced or enacted but, since this Government intend to repeal the Safety of Rwanda Act and large parts of the Illegal Migration Act, which we spent most of this morning discussing, those references no longer serve any practical purpose. They should therefore be removed from the four existing Acts of Parliament.

Katie Lam (Weald of Kent) (Con): It is a pleasure to serve with you in the Chair this afternoon, Dame Siobhain, as it was yesterday afternoon. It is good to see you two days in a row.

The clause, as the Minister said, makes consequential amendments necessary as a result of the two clauses that we discussed this morning: clause 37, which repeals the Safety of Rwanda Act 2024, and clause 38, which repeals provisions of the Illegal Migration Act 2023. As we do not support either of those repeals, we do not support these revisions or agree that the clause should stand part of the Bill.

Dame Angela Eagle: We have had our debates about the contents of those Acts. The clause concerns truly miscellaneous aspects, although I understand the logic of the hon. Lady's argument. I certainly hope that we will press on and agree clause 39.

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

The Committee divided: Ayes 9, Noes 3.

Division No. 10]

AYES

Botterill, Jade	Mullane, Margaret
Eagle, Dame Angela	Stevenson, Kenneth
Forster, Mr Will	Tapp, Mike
Hayes, Tom	White, Jo
McCluskey, Martin	

NOES

Bool, Sarah	Vickers, Matt
Lam, Katie	

Question accordingly agreed to.

Clause 39 ordered to stand part of the Bill.

Clause 40

Immigration advisers and immigration service providers

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

The Chair: With this it will be convenient to consider schedule 1.

Dame Angela Eagle: The clause introduces schedule 1, which will allow the governance arrangements for the Immigration Services Commissioner and deputy commissioner to be made more flexible. That will bring them in line with other public appointments by allowing for interim or shorter appointment lengths.

Schedule 1 sets out that the commissioner and deputy commissioner are to hold office for a term not exceeding five years. That allows the appointments to be for less than five years; currently, there is a fixed five-year term. Schedule 1 will make it discretionary to appoint a deputy commissioner, allowing for the governance arrangements to remain flexible to meet the demands of the organisation. It will enable the Home Secretary to appoint a senior, experienced member of staff to act in the commissioner's place in certain circumstances. It is to be used, for example, to ensure that cover is in place during a public appointment process where there is a vacancy in the commissioner and deputy commissioner posts. It does not replace the provision to appoint a deputy commissioner and will ensure continued regulatory oversight of immigration advisers, which is the point of this organisation.

The schedule will mean that the work of the Immigration Services Commissioner will continue and will operate more flexibly to ensure that good immigration advice is readily available. That is critical to the effective running of a coherent, efficient and fair immigration system.

Katie Lam: As the Minister has outlined, clause 40 inserts schedule 1 into the Bill. That provides that the Immigration Services Commissioner is not to hold office for a term exceeding five years. The current regime is based on there being a commissioner and deputy, so schedule 1 sets out that the commissioner may appoint a deputy. There is also a provision to enable a member of the commissioner's staff to act in the commissioner's place in certain circumstances, such as the roles of

commissioner and deputy both being vacant. That effectively allows for the appointment of an interim commissioner.

As was said in evidence to the Committee, these amendments do not seem to us to have operational consequence. We will not oppose them.

Question put and agreed to.

Clause 40 accordingly ordered to stand part of the Bill.

Schedule 1 agreed to.

Clause 41

Detention and exercise of functions pending deportation

Pete Wishart (Perth and Kinross-shire) (SNP): I beg to move amendment 7, clause 41, page 35, line 32, leave out subsection (17).

This amendment would leave out the subsection of this clause that applies subsections (1) to (13) (relating to detention and exercise of functions pending deportation) retrospectively, i.e. as if they have always had effect.

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

Pete Wishart: It is great to see you in the Chair, Dame Siobhain; it makes a pleasant change from what we have had in the past couple of weeks. I say that in the nicest way to Mr Stuart.

The Chair: I will have to find out more!

Pete Wishart: Clause 41 introduces a significant expansion of detention powers, allowing individuals to be detained from the moment a deportation is considered rather than waiting for a formal order. However, my main concern with the clause is that it is to apply retrospectively, meaning it would legally validate past detentions that were previously unlawful. As would be expected, the provision has sparked serious concerns among legal experts, human rights organisations and advocacy groups, raising critical questions about the rule of law, human rights and judicial oversight.

We had the Immigration Law Practitioners' Association with us as part of an evidence session. They have expressed great concern with this provision, saying:

> "We are concerned with the dangerous precedent which would be set if unlawful deprivation of liberty were to be treated as lawful—such retrospectivity undermines the rule of law and remains wholly unjustified in the materials accompanying the Bill."

I have looked at this issue and there does not seem to be any sufficient justification for this exceptional measure. The ILPA warns us that it could rewrite history, denying justice to individuals who could have sought remedies for unlawful detention.

Amnesty International, which again gave very good evidence to the Committee, has also voiced strong objections. It has highlighted how detention powers have expanded significantly while judicial oversight has weakened, leading to risks of serious injustice.

Bail for Immigration Detainees has stressed that clause 41 risks

> "further criminalising migrants and refugees".

It urges instead for a system that upholds human rights and dignity.

Combined with the Illegal Migration Act, the clause could lead to longer, more expensive and potentially unlawful detentions in breach of article 5 of the European convention on human rights. The Government's own impact assessment acknowledges that clause 41 effectively makes lawful past detentions that were not compliant with due process at the time, yet the European convention on human rights memorandum does not properly address whether that retrospective validation aligns with the fundamental legal safeguards of article 5. I would particularly like the Minister to address those concerns.

Clause 41 therefore undermines accountability, weakens judicial scrutiny and risks setting a dangerous precedent through which the Government can retroactively legitimise actions that would otherwise have been unlawful. Given the weight of these concerns, there is a strong case for leaving out the retrospective provisions from clause 41, and that is what my amendment 7 seeks to do. Upholding the rule of law means ensuring that detention powers are subject to proper legal safeguards and that individuals are not denied their fundamental rights through legislative backtracking.

Dame Angela Eagle: The purpose of clause 41 is to clarify the existing powers of detention pending deportation set out in schedule 3(2) of the Immigration Act 1971. The clause ensures that the Secretary of State can detain individuals once they have been notified that deportation is being considered. It also aligns the power to detain with the power to take biometrics and to search for nationality documents. That is because the taking of biometric information and any other searches will ordinarily take place at the point that somebody is detained. The effect of clause 41 is to make clear that a person subject to deportation may be detained at any stage of the deportation process. It strengthens an existing power; it does not create a new power. It clarifies a power that has always existed and been used for this purpose.

Another effect of the clause is to confirm that the Secretary of State may take biometrics and search for those documents. Since clause 41 clarifies existing powers, the detention provisions it contains are regarded as always having had effect. It is extremely important for Members to understand what the clarification of the powers of detention means. If a person is subject to deportation on the basis that the deportation is conducive to the public good, they may be detained at any stage of the deportation process. It is extremely important that the Home Office should be able to detain those it is seeking to deport on that basis. Some of these foreign national offenders pose a high risk of harm to the public. Therefore, inability to detain them could have a direct impact on public safety.

The clause makes it clear that it is lawful to detain a person once they are notified that the Home Office is considering whether to make a deportation order against them, but that is not a new detention power; it has been misunderstood in some of the commentary from outside of this place. The clause clarifies an existing power to ensure there is no ambiguity about when someone subject to a conducive deportation can be detained. The accurate identification of such people is very important.

[Dame Angela Eagle]

The clause also makes consequential amendments to existing powers to search detained persons—potential deportees—for documents that prove their identity or nationality, and to take their biometrics upon their being detained. Clause 41 sets out the power to detain pending deportation, as the Home Office has always understood it to operate. It is therefore right that the provision applies retrospectively. That deals with amendment 7, which is in the name of the hon. Member for Perth and Kinross-shire and seeks to remove the retrospective element of the clause.

Clause 41 clarifies the existing statutory powers of detention. There are important public safety reasons why these powers need to be put beyond doubt. Clause 41 clarifies the powers as the Home Office has always understood them to operate. There will be no operational impact that we can assess, or increased use of the power, and no effect on people in relation to whom this power has been exercised. It is entirely right that these provisions should apply retrospectively in these circumstances.

2.15 pm

Pete Wishart: I hear the Minister's justification for the powers and why she feels they are necessary, but I do not hear any compelling reason for why they have to be introduced retrospectively. What on earth is that supposed to help with? She knows the range of concerns raised by a number of legal organisations. I wish she would address their concerns about the consequences of the clause.

Dame Angela Eagle: The clause seeks to put beyond any doubt that the Home Office has the power to detain, in conducive deportation cases, at the earliest point. It has been doing that for many years. The clarification in the clause applies retrospectively to ensure that those who have been detained in the past have not been detained unlawfully. We do not believe they have, but this puts it beyond doubt. To clarify, this is not an extension of deportation powers; it is putting beyond doubt in the Bill the understanding of how and when these powers can be used—at the earliest opportunity, if it is a conducive deportation. The powers, including to detain at the earliest opportunity, have always existed.

If the amendment moved by the hon. Member for Perth and Kinross-shire were agreed to, it would cast doubt on many of the arrests and detentions ahead of deportations that have happened in the past, which I do not think the hon. Gentleman would want to do. To reassure the hon. Gentleman one final time, this is not an extension of deportation powers; it is a clarification of the way that they have always been understood to work. The clause puts beyond legal doubt that if somebody is being detained pending deportation, they can be detained lawfully at the earliest opportunity. That understanding has always been the case, but the clause puts it beyond any legal doubt.

Katie Lam: Clause 41 confirms that the Home Office may detain someone subject to deportation from the point at which the Home Office serves the notification that deportation is being considered, when that deportation is conducive to the public good. We support this provision to allow for detention before a deportation order is signed, but that only applies if the Secretary of State has notified the person in writing. Can I seek reassurance from the Minister that the requirement for a written notice will not build any delay into the process? We also support the provision in clause 42 to allow the Home Office to capture biometrics at the new, earlier point of detention.

Pete Wishart: I will not detain the Committee for long. I do not like clause 41 anyway—I think the extension of deportation powers is overwhelming and I do not believe they are required—but I do not like this retrospection one bit. I have not secured an adequate explanation from the Minister about why that is necessary. I would therefore like to put my amendment to a vote, Dame Siobhain.

The Chair: Thank you for clarifying, as that was going to be my next question. Does anybody else wish to contribute?

Katie Lam: May I ask for a response from the Minister to my question?

Dame Angela Eagle: I am happy to give the hon. Lady the assurance that she sought. If somebody is going to be detained, it will always be done with written notice, and that should not delay anything—it has not in the past.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 11.

Division No. 11]

AYES

Forster, Mr Will	Wishart, Pete

NOES

Bool, Sarah	Mullane, Margaret
Botterill, Jade	Stevenson, Kenneth
Eagle, Dame Angela	Tapp, Mike
Hayes, Tom	Vickers, Matt
Lam, Katie	White, Jo
McCluskey, Martin	

Question accordingly negatived.

Clause 41 ordered to stand part of the Bill.

Clause 42

POWERS TO TAKE BIOMETRIC INFORMATION

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

Dame Angela Eagle: You are getting a lot of practice with locking and unlocking the doors and having Divisions, Dame Siobhain—it is quite exciting this afternoon.

Clause 42 modernises our powers to capture biometric information, so that we have greater flexibility over who can take that information. It will enable a wider range of appropriately trained people to take biometric information, strengthening processing resilience following instances of small boat crossings or unexpected arrivals. In a situation where it is essential to capture biometrics

at the earliest opportunity and through streamlined processes, we will be able to utilise our resources more effectively. For example, the measure will enable contractors working at a short-term holding facility to capture biometrics in the same way as other contractors based in detention centres currently do. The clause also includes a power to make secondary legislation where there is a need for others to be able to capture biometric information. That is a future proofing of the legislation.

These are sensible and necessary measures to ensure that we can identify people quickly and establish whether they pose a threat to public safety if they have arrived in an irregular or illegal way.

Katie Lam: We are essentially supportive of clause 42, which among other things allows a person employed by a contractor in a short-term holding facility to be an authorised person to take fingerprints. The clause also includes a regulation-making power to allow other types of people to be authorised for this purpose.

May I ask the Minister how the regulation-making power is intended to be used? Are there currently other categories of people whom the Secretary of State or others in the Department would like to authorise to take fingerprints, or is this essentially a future-proofing measure, as the Minister mentioned?

Dame Angela Eagle: This is essentially future proofing. If another category or range of people became available, we may future proof this power and use the regulation-making power to ensure that they are taking biometrics lawfully.

Question put and agreed to.

Clause 42 accordingly ordered to stand part of the Bill.

Clause 43

ARTICLES FOR USE IN SERIOUS CRIME

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

The Chair: With this it will be convenient to consider clause 44 stand part.

Dame Angela Eagle: Clauses 43 and 44 cover the creation of two new offences concerning articles for use in serious crime. Law enforcement agencies are increasingly encountering individuals in possession of, or supplying, articles suspected to be intended for serious crime. However, proving intent or knowledge for a prosecution is often difficult, as the connection to a specific crime may not be immediately clear and facilitators frequently go undetected.

To address that challenge, clause 43 introduces two new criminal offences. The first criminalises the possession of specified articles; the second targets the importation, manufacture, adaptation, supply or offer to supply of those articles where there is a reasonable suspicion that they will be used in a serious offence. The specified articles include templates for 3D-printed firearms components, pill presses and vehicle concealments. Those concealments are particularly concerning in relation to smuggling operations, as they are often used to hide individuals for irregular immigration purposes.

The accused will need to prove that they did not intend for the article to be used in a serious offence, or that they could not have reasonably suspected it—given the few, if any, legitimate uses for the articles I have just mentioned. Those offences will be triable either way, with a maximum penalty of five years' imprisonment, a fine or both.

Clause 43 defines "serious offences" broadly, to include drug trafficking, firearms offences and assisting unlawful migration, as outlined in schedule 1 to the Serious Crime Act 2007. The clause strengthens the ability of law enforcement agencies to target those facilitating serious crime. It does that by closing legal gaps and addressing emerging criminal tools.

Clause 44 defines the specific articles to be included in the new criminal offences in clause 43. As I said, the articles are templates of 3D-printed firearms or their components, pill presses and encapsulators, and vehicle concealments. Law enforcement agencies have been clear that those articles are being increasingly used by organised crime gangs, and they will continue to be used unless we take action now. 3D-printed firearms templates are increasingly being used by organised criminals, and they are at present not illegal to possess. Pill presses are being used to manufacture illicit drugs, particularly benzodiazepines. Similarly, vehicle concealments have become a significant concern for law enforcement agencies, and they are used as aids in people smuggling and irregular migration.

Clause 44 also provides the Secretary of State with the power to amend the list of specified articles, allowing the law to adapt to emerging threats. Any changes will be subject to the affirmative procedure. The Home Office will continue to work closely with law enforcement agencies and other partners to monitor and update that list, ensuring that it remains relevant as criminal tactics evolve. By capturing those articles, the aim is to disrupt the enablers and facilitators who profit from supplying tools for organised crime.

Katie Lam: The clauses seem broadly reasonable, but we have a few questions on which I would appreciate some clarification from the Minister. Clause 43 creates two new offences: the possession of articles for use in serious immigration crime, and the importation, manufacture, and supply or offer to supply of articles for use in serious immigration crime. Could the Minister explain whether she feels that UK Border Force currently has the right capabilities to identify and intercept the harmful materials captured by the clause?

Clause 43 reverses the evidential burden of proof, in that a person charged with offences under it can successfully prove their defence if they provide enough evidence in court to raise a question about the issue, and the prosecution cannot prove the opposite beyond reasonable doubt. Could the Minister please explain why the decision has been taken to do that? The maximum penalty for the offences created under the clause is imprisonment for five years, a fine or both. Could the Minister please explain how and why those penalties were decided on?

Clause 44 defines "relevant article" for the purposes of the offences created in clause 43. Could the Minister please explain whether clauses 43 and 44 provide any operational benefit in terms of tackling smugglers operating abroad, and if so, how?

Tom Hayes (Bournemouth East) (Lab): It is a pleasure to serve under your chairpersonship, Dame Siobhain. I want to dwell briefly on clause 43 because it embodies a significant theme in the Bill: preparing our country for the challenges we face today and those we will face to a greater extent in the future. In that context, it is so important to talk about the risk posed to our country's security by 3D-printed firearms.

I commend the campaigning of my hon. Friend the Member for Birmingham Edgbaston (Preet Kaur Gill), who has done an enormous amount of work on this issue. 3D-printed firearms are a serious threat to our security, and present a new challenge to law enforcement because they can easily be made at home and are untraceable and undetectable. Indeed, files containing IKEA-like step-by-step guides to 3D print firearms at home can be downloaded from the web in as little as three clicks. That is terrifying. If we can tackle that through the Bill, that feels like a significant contribution.

2.30 pm

We know that law enforcement is calling out for these powers. In oral testimony, we heard comprehensively from operationally and frontline-focused senior leaders that they want to be able to do more to get ahead of these threats. One of the great things about the Bill is that it has been drafted by people who have listened to the experts, and it will give them the resources they need. As a consequence, we will be able to secure our border and make sure that people are safe on our streets.

Dame Angela Eagle: The hon. Member for Weald of Kent may be familiar with the provisions in clauses 43 and 44, because they were in a Bill introduced by her predecessor, the right hon. Member for Croydon South (Chris Philp), who is now the shadow Home Secretary. That Bill was interrupted by the general election. Oddly, I chaired that Bill Committee in the last Parliament and listened to him make a speech about this issue. I therefore hope that there will be no real objection to the powers we need to take in clauses 43 and 44 to make it easier to disrupt and prevent harm from serious organised crime, some of the tools used in it and the facilitators who enable it. Such people might not have been at the scene of the crime, but they have enabled a lot of harm by supplying or importing the goods that I mentioned.

There are two sets of offences, which are designed to target different types of activity. The hon. Member for Weald of Kent asked about the evidential burden. These articles do not have ordinary, normal uses that I would consider legitimate. Printing 3D guns, or having pill presses in order to produce drugs for street sale, does not seem to be as legitimate as, say, purchasing a boat engine or indeed a boat. Given that there are no real, legitimate uses for such items, we think that placing the evidential burden on the defence to explain why on earth the person charged with possessing them has them is wholly reasonable.

Clauses 43 and 44 are intended to disrupt serious organised crime efforts to penetrate our border with paraphernalia for producing drugs or guns, or any of the things that go along with serious organised crime activity in this country, and thereby to keep people safe. I hope that the Committee will support them.

Question put and agreed to.

Clause 43 accordingly ordered to stand part of the Bill.

Clause 44 ordered to stand part of the Bill.

Clause 45

Confiscation of assets

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

Dame Angela Eagle: Clause 45 amends the Proceeds of Crime Act 2002 to include offences related to the possession and supply of articles intended for serious crime, as outlined in clause 43. It will enable law enforcement agencies to seize the assets of individuals convicted under clause 43.

Specifically, the clause adds:

"Offences relating to things for use in serious crime"

to the criminal lifestyle schedules for England and Wales, Scotland and Northern Ireland. A defendant convicted of an offence listed in those schedules will automatically be deemed to have led a criminal lifestyle and to have benefited from criminal conduct over a period of time. That means that assets obtained or spent in the six years prior to conviction are presumed to be derived from criminal conduct and are subject to confiscation unless the defendant can prove otherwise. However, the court is not required to make that assumption if it would result in injustice or is shown to be incorrect.

Confiscation orders are calculated based on the defendant's monetary gains from crime—known as the benefit—and the assets they have available to them when the order is made. Orders are made to reflect the amount gained from crime and can be increased if the defendant's finances improve. Non-payment of orders can lead to the defendant returning to prison.

By including these offences in the Proceeds of Crime Act, we can target financially criminals who profit from facilitating crime, disrupting both the crime and the financial gains that support it.

Katie Lam: Clause 45 allows the relevant articles listed under clause 44 to be confiscated under the Proceeds of Crime Act. We support this measure.

Question put and agreed to.

Clause 45 accordingly ordered to stand part of the Bill.

Clause 46

Electronic monitoring requirements

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

Dame Angela Eagle: The purpose of clause 46 is to remove any ambiguity about the court's power to impose electronic monitoring as a condition of a serious crime prevention order or interim serious crime prevention order.

As currently drafted, the clause applies in England and Wales for any serious crime prevention order or interim serious crime prevention order, and in Scotland and Northern Ireland in terrorism-related cases only. However, since the Bill's introduction, further legal

complexities have come to light regarding the devolved Governments' powers to impose an electronic monitoring condition. Pending agreement from the Scottish Cabinet Secretary, an amendment will be tabled to remove that express provision for Scotland. Northern Ireland's position is still to be determined. I point that devolution complication out to Committee members and will keep them informed as those discussions develop.

Electronic monitoring serves as a deterrent, but it also improves the detection of any breaches. If the subject violates the conditions, it enables quicker intervention by law enforcement agencies. The clause outlines specific requirements for both the courts and the individual, including the obligation for the subject to consent to the installation and maintenance of monitoring equipment and to avoid tampering with it.

Additional safeguards are included. For instance, electronic monitoring can be imposed only for up to 12 months at a time, with the possibility of extension. A further safeguard requires the Secretary of State to issue a code of practice on handling monitoring data, ensuring consistency and clarity for law enforcement.

This clause on electronic monitoring for those subject to serious crime prevention orders will enhance the effectiveness of such orders and interim SCPOs, supporting efforts to disrupt serious and organised crime, reduce harm and protect the public. I commend the clause to the Committee.

Katie Lam: Clause 46 allows the courts to impose an electronic monitoring requirement as part of a serious crime prevention order. The clause is helpful for investigating suspects who are already in the UK, and we broadly support it. Will the Minister confirm that the requirement for electronic monitoring will apply to those who are on immigration bail? What value does the Minister feel serious crime prevention orders might have as a deterrent for those operating abroad?

Clause 46 specifies that there will be a code of practice to outline the expectations, safeguards and broad responsibilities for the data gathered, retention and sharing of information on these orders. When will that code of practice be issued, and can the Minister please outline what the Government expect to be included?

Mr Will Forster (Woking) (LD): It is a pleasure to serve under your chairmanship, Dame Siobhain. I would like the Minister to define electronic monitoring for us, if she can. I do not believe that there is such a definition in the Bill or in other Acts of Parliament. As a result, I worry that there is confusion, so I would welcome her thoughts.

Dame Angela Eagle: We are talking about electronic monitoring in the context of serious crime prevention orders; we are not talking about monitoring simply in connection to being an asylum seeker or migrant. I would not want Opposition Members to worry or mix up those two things.

This part of the Bill is about dealing with serious and organised criminality, some of which will involve people smuggling, and some of which will involve drugs, firearms or other serious organised crime. This is electronic tagging in the context of the granting of serious and organised crime orders, or interim serious and organised crime orders, which are designed to disrupt and prevent the activities of serious organised crime groups, not just general asylum seekers or migrants. Obviously, there may be some connection between the two, but it is not direct in this area.

Those orders and their conditions, such as electronic monitoring, therefore will not apply to migrants generally. Law enforcement agencies use serious crime prevention orders to manage individuals who have been convicted of, or are suspected of, serious criminality, where the order will protect the public by preventing, restricting or disrupting the person's involvement in serious crime.

Serious crime prevention orders can be imposed on offenders for a range of offences relating to people smuggling. The specific conditions of the order will be a matter for the judge in the High Court who makes it, and for the law enforcement body that makes the application. This is very focused, and it is all about the context of the individual who has been served with such an order. For that to happen, there has to be evidence of their involvement in serious and organised crime.

Clearly, tagging is about being able to check where people are, while electronic monitoring can also apply to other activity. It will apply in a particular context to a particular person for disruption reasons, so there is not one definition of electronic tagging. I hope that helps the hon. Member for Woking to understand the monitoring that we are talking about. On that basis, I hope members of the Committee will agree to clause 46.

Question put and agreed to.

Clause 46 accordingly ordered to stand part of the Bill.

Clause 47

INTERIM SERIOUS CRIME PREVENTION ORDERS

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

The Chair: With this it will be convenient to discuss schedule 2.

Dame Angela Eagle: Clause 47 introduces interim serious crime prevention orders as part of the wider regime of serious crime prevention orders established under the Serious Crime Act 2007. Interim serious crime prevention orders are designed to protect the public while a full serious crime prevention order application is considered. The Court can impose an interim serious crime prevention order within hours, imposing a range of conditions and restrictions to disrupt further criminal behaviour. For example, anyone suspected of being involved in people trafficking or other serious crime could face bans on travel, using the internet and mobile phone use.

2.45 pm

Interim serious crime prevention orders will allow enforcement agencies to act swiftly to prevent, disrupt or restrict serious offences before they occur. These are the counter terrorism-style powers that attach to the Bill, and they are about disruption and prevention. It is not about waiting until the harm has happened and then arresting people for causing it; it is about trying to prevent the harm from happening in the first place.

Interim crime prevention orders will allow enforcement agencies to act swiftly to prevent, disrupt or restrict serious offences before they occur, stopping offenders from reorganising or destroying evidence. This clause allows without notice applications, enabling interim orders to be made without the individual present, if notice could undermine the order's effectiveness.

Additionally, given that this is a powerful tool, clause 47 provides key safeguards, including the requirement to serve notice of an interim serious crime prevention order within seven days, and to allow individuals to challenge the order in court via the appeal process, or on application to vary its terms or discharge. This is not without precedent; interim orders are successfully used in areas such as sexual risk and modern slavery, where the urgency to protect the public justifies temporary restrictions or requirements on individuals. Clause 47 will enable the National Crime Agency, the police and other law enforcement agencies to act more quickly than current powers allow to protect the public from serious criminals, including those who are engaged in organised immigration crime.

Schedule 2 introduces a series of consequential amendments to the Serious Crime Act 2007 to extend existing provisions to interim serious crime prevention orders. These amendments ensure that interim serious crime prevention orders are governed by the same legal safeguards and processes as full orders. Key provisions include extending protection for individuals under the age of 18, granting the right to make representations in court, and aligning rules for the duration, variation and discharge of orders. The amendments also apply to bodies corporate, partnerships and unincorporated associations, ensuring accountability if they breach an interim serious crime prevention order. Schedule 2 ensures that interim serious crime prevention orders have the same effective safeguards as serious crime prevention orders, while strengthening the legal framework for preventing serious crime.

Katie Lam: Clause 47 introduces a new provision for interim serious crime prevention orders. These allow the High Court to impose immediate restrictions, pending the determination of a full serious crime prevention order application. The Court can do that if it considers that it is just to do so. Can the Minister explain a little more by what process the Court will decide whether it is just? Is the criterion that it is necessary for public protection?

Proposed new section 5F of the Serious Crime Act makes provision for without notice applications. That is where the application for an interim serious crime prevention order, or the variation of an interim serious crime prevention order, is made without notice being given to the person against whom the order is made, in circumstances where notice of that application is likely to prejudice the outcome. Subsection (2) of proposed new section 5F makes provision for the Court to allow the relevant person to make representations about the order as soon as is reasonably practicable. Can the Minister explain whether that will always happen after the order is granted?

Dame Angela Eagle: The High Court will be empowered to impose an interim serious crime prevention order if it considers it just to do so. In other words, it is not an evidential test, because the Court does not apply a standard of proof. Rather, it invites the Court to impose an order before it has heard and tested all the evidence in instances that require fast-paced action to prevent and disrupt serious and organised crime. It is therefore an exercise of judgment or evaluation. There is a precedent for this approach in interim sexual risk orders and interim slavery and trafficking risk orders, which are currently a feature of the system and work reasonably well.

Question put and agreed to.

Clause 47 accordingly ordered to stand part of the Bill.

Schedule 2 agreed to.

Clause 48

Applicants for making of orders and interim orders

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

Dame Angela Eagle: Currently, the High Court can make a serious crime prevention order only upon application from the Crown Prosecution Service, the Serious Fraud Office and the police in terrorism-related cases. However, High Court serious crime prevention orders have not been fully utilised; between 2011 and 2021, only two applications were made, and only one resulted in a successful order. Clause 48 extends the list of agencies that can apply directly to the High Court for a serious crime prevention order, or an interim serious crime order, to the National Crime Agency, His Majesty's Revenue and Customs and the police in all cases, including the British Transport Police and the Ministry of Defence Police. The clause also specifies who within each agency is authorised to apply for these orders.

This extension will simplify and expedite the application processes for serious crime prevention orders, making it easier for agencies that are directly involved in tackling serious crime to make an application where appropriate. It gets rid of a gateway process that has proven to be so tight that it has not allowed very many of these orders to go forward at all. Those agencies are often best placed to apply for a serious crime prevention order as they already have an in-depth knowledge of the case.

The clause also requires the CPS to be consulted by the applicant authority, as it will continue to have responsibility for ensuring that the order is not used as a substitute for prosecution. That is a very important part of ensuring that these orders work appropriately. In practice, this clause will make serious crime prevention orders more readily available to the agencies that are most likely to use them, to ensure that this powerful tool is used to best effect to protect the public by preventing and disrupting serious and organised crime.

Katie Lam: Clause 48 details who can apply to make orders and interim orders, and it replaces and extends the previous list in section 8 of the Serious Crime Act 2007. Can the Minister please explain how long an application for an interim serious crime prevention order might take when made to either the High Court or the Crown court?

Tom Hayes: I want to reflect on where we have got up to. We have moved through the clauses at quite a pace, and that is very pleasing to see. The Bill responds to the requests of operationally and frontline-focused people in law enforcement and border security, and it is an

attempt to give them the tools and powers that they need. I particularly wanted to mention that in the context of interim serious crime prevention orders, which we have spoken about in clauses 47 and 48.

That cuts such a sharp contrast with what has happened over recent years. In 2022, one Home Secretary introduced the Nationality and Borders Act 2022. At the time, the Government said that that would deter people from crossing in small boats, but it did not. In 2023, another Home Secretary brought in the Illegal Migration Act 2023. At the time, the Government said that that would turn people away from crossing the channel in small boats, but it did not. In 2024, another Home Secretary brought in the Safety of Rwanda Act, which happily we have just repealed today. At the time, the Government talked about the prospect of sending people to Rwanda, and they said that alone would be sufficient to deter people from crossing the channel in small boats. It is no wonder that that failed, too.

I wanted to set out how in 2022, 2023 and 2024 we had three separate Acts, which all aimed to do something and failed to do so. They have not delivered what operationally focused people have requested. We really need to look at how, just eight months into this new Government, we are turning the page on our asylum system and giving enforcement powers to the people who need them. We are also tidying up the statute book and ensuring greater co-ordination across the key agencies that can secure our border. I commend clause 48 to the Committee, as I do the series of clauses before it and the Bill overall.

Dame Angela Eagle: The idea behind the creation of interim serious crime prevention orders is to ensure that they can be brought into use ahead of a longer lasting serious crime prevention order. The widening of the range of organisations that can apply for them is designed to empower organisations such as the National Crime Agency, HMRC and the MOD police to apply, because they are much closer to the evidence that could enable the disruption of a particular serious organised crime group.

The hon. Member for Weald of Kent asked how long it would take to get such an order, and that would vary from case to case. It depends on the evidence. As I pointed out in relation to the previous clause, this is about the High Court reviewing the papers. It is not about a trial or a pre-trial; it is just about issuing an order that will prevent something that might cause damage from happening. We think that the changes made by the clauses that we have just debated, up to and including clause 48, make it more likely that serious and organised crime orders will be used and will be effective.

Question put and agreed to.

Clause 48 accordingly ordered to stand part of the Bill.

Clause 49

Notification requirements

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

Dame Angela Eagle: Clause 49 amends the Serious Crime Act 2007 to introduce a standardised list of notification requirements for individuals and bodies corporate that are subject to serious crime prevention orders. This is a process of standardisation. Currently, notification requirements are added at the court's discretion on a case-by-case basis. The clause will standardise those requirements for all serious crime prevention orders, improving the consistency and monitoring of the orders across police forces.

We have worked closely with law enforcement partners to identify appropriate requirements. The standard list will include monitoring legitimate income, checking addresses or communication methods for signs that criminal activities are being re-established, and monitoring foreign travel to assess potential indications of a return to crime. The courts can then impose additional requirements and conditions as part of the serious crime prevention order.

For bodies corporate, a designated individual must be named to liaise with the police and provide the notifiable information—including personal details, employment, financial data and contact information—which is essential for law enforcement to ensure compliance and assess risk to public safety.

The clause includes a delegated power to add to the list of notification requirements, ensuring flexibility to meet operational needs as technology evolves. The statutory instrument will be subject to the draft affirmative procedure. Individuals who are subject to a serious crime prevention order must provide the notifiable information within three days of the order coming into force. Failure to provide information, or providing false information, will be a criminal offence punishable by a fine or up to five years' imprisonment. The standardisation of notifications will improve consistency in managing serious criminals and improve law enforcement agencies' ability to assess risk and therefore more effectively protect the public.

Katie Lam: Clause 49 sets out a prescribed set of notification requirements, so that a person who is subject to a serious crime prevention order is required to provide the police or the applicant authorities with certain information. We support the clause, although can the Minister explain why three days has been given as the deadline to respond with the notifiable information requested?

Dame Angela Eagle: Three days seems a reasonable amount of time to allow the individual or body corporate concerned to gather the information, but also to ensure that the authorities get it in a timely way, so as to prevent any potential harm that might come from delay.

Question put and agreed to.

Clause 49 accordingly ordered to stand part of the Bill.

Clause 50

Orders by Crown Court on acquittal or when allowing an appeal

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

Dame Angela Eagle: Currently, the High Court has the authority to impose a serious crime prevention order without a conviction, provided that the Court is satisfied that the person has been involved in serious

[Dame Angela Eagle]

crime and that there are reasonable grounds to believe that the order will protect the public by preventing, restricting or disrupting their involvement in serious crime.

Clause 50 amends the Serious Crime Act 2007 to grant the Crown court the power to impose a serious crime prevention order on individuals who have been acquitted of an offence, or in circumstances where the appeal has been allowed, if the same two-limb test is met. There may be cases where a person is acquitted but a serious crime prevention order is still needed. This can happen if the threshold for a criminal conviction is not met but there is still enough evidence to show that the person is involved in serious crime, and that the order would protect the public.

The Crown court would have just heard the evidence of the case and would be in the best position to assess whether an order is necessary to protect the public. Again, this approach is not new; similar provisions are found in other laws, such as domestic abuse protection orders under the Domestic Abuse Act 2021, and restraining orders under the Protection from Harassment Act 1997, where orders can still be issued even after an individual has been acquitted. The effect of this clause is to streamline the process, enabling serious crime prevention orders to be applied more regularly and effectively in appropriate cases.

Katie Lam: Clause 50 allows the Crown court the power to impose a serious crime prevention order on acquittal or when allowing an appeal. Subsection (2) provides that in order to impose a serious crime prevention order in these circumstances, the court has to be satisfied both that the person has been involved in serious crime and that the court has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by that person in serious crime in England or Wales. Why do both tests need to be satisfied for a serious crime prevention order to be imposed? Where these cases involve acquittal, as the Minister outlined, it might be hard to satisfy the first test. It seems to us that the second test of protecting the public is sufficient grounds to impose a serious crime prevention order.

Dame Angela Eagle: It is a two-limb test. Obviously, the evidential test for criminal proceedings is beyond reasonable doubt. There is a lower evidential test in other court instances, and it may very well be that someone who did not pass the "beyond reasonable doubt" test in a criminal trial would still be considered by the court to be involved in criminal activity, and therefore they would pass the first limb of the test. They would pass the second limb as they would still be likely to be involved in criminal activity in the future. We think that the two-limb test is an appropriate response to protect civil liberties, while protecting the public from the behaviour of those who are involved in serious and organised crime. We think that that balance is about right.

Question put and agreed to.

Clause 50 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Martin McCluskey.)*

3.4 pm

Adjourned till Thursday 13 March at half-past Eleven o'clock.

Written evidence reported to the House

BSAIB27 The Bar Council

BSAIB28 Detention Action, Medical Justice and Bail for Immigration Detainees

BSAIB29 Liberty

BSAIB30 Safe Passage International

BSAIB31 Scottish Refugee Council (supplementary submission)

BSAIB32 Young Roots

BSAIB33 Public Law Project and Freedom from Torture (joint submission)