PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

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

Second Sitting

Tuesday 27 February 2018

(Afternoon)

CONTENTS

CLAUSE 17 agreed to, with an amendment.
CLAUSE 18 agreed to.
Adjourned till Thursday 1 March at half-past Eleven o'clock.

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not later than

Saturday 3 March 2018

The Committee consisted of the following Members:

Chairs: † Dame Cheryl Gillan, Steve McCabe

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

Mike Everett, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 27 February 2018

(Afternoon)

[Dame Cheryl Gillan *in the Chair*]

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

2 pm

The Chair: I call the Committee to order.

Richard Benyon (Newbury) (Con): On a point of order, Dame Cheryl—

The Chair: May I just make some announcements first?

First of all, normally, the announcement from the Chair is that gentlemen may remove their jackets if they wish. The announcement today is that anybody can wear their coats if they wish. It may be unparliamentary but I have just done two and a half hours in another Committee room and it was freezing, so I am comfortable if people want to cover themselves in layers of clothing. Indeed, I have got my coat here in case I get cold.

We are about to resume the line-by-line consideration of the Bill. Unfortunately, we are all blessed with mobile phones. I remind everyone they need to be turned off and that, sadly, we are not allowed tea or coffee or hot drinks in here, although on such a day I almost feel I should be able to make an exception.

The selection list is available in the room and on the webpage, and it shows how the amendments are grouped together. I remind you that the Chair always has discretion to decide whether to allow a separate stand part debate on the individual clauses. I hope everybody understands that that is the usual practice.

Richard Benyon: On a point of order, Dame Cheryl. You anticipated my remarks. I was just going to ask if the House authorities could put 50p in the meter and turn the heating on. I do not want that to be my only contribution to this Committee.

The Chair: I am sure it will not be your only contribution. We do have a small heater over here in the corner, but unfortunately we cannot share it around the room. I am sure the debate will be lively and will keep us all hot. Without further ado, we will begin with amendment 21 to clause 17 on enforcement.

Clause 17

Enforcement

Helen Goodman (Bishop Auckland) (Lab): I beg to move amendment 21, in clause 17, page 16, line 36, at end insert—

"(8) An appropriate Minister must publish guidance from the Crown Prosecution Service on when it is in the public interest for a breach of a sanctions regulations to be prosecuted."

This amendment would require the Government to publish guidance on when it is in the public interest for a breach of sanctions regulations to be prosecuted.

It is a great pleasure to see you in the Chair this afternoon, Dame Cheryl. It is not quite as sunny as it was this morning, but it is still very cold.

The clause is about enforcement of sanctions regulations. Breaching sanctions is a criminal offence, and this morning we discussed whether the legislation on those criminal offences is appropriate. It is fair and reasonable that people have a clear view of what the penalties will be for any breach of sanctions. Our amendment would require the Crown Prosecution Service to say when it is in the public interest that a breach of sanctions regulations be prosecuted.

The Treasury published some guidance a few months ago entitled "Monetary Penalties for Breaches of Financial Sanctions". I am sorry to say that it does not include the sort of detail that we would expect. The stark reality was brought to our attention last week, when the Economic Secretary to the Treasury had to correct an answer to a written parliamentary question. I had asked him what the total level of breaches was in 2017 and on 8 February, he told me it was £117 million. On 22 February, he told me that the estimate had shot up to £1.4 billion—a tenfold increase, which suggests that the Treasury is not keeping the beady eye that it ought to be keeping on this matter.

Many years ago, I was a Treasury civil servant. One year, I was responsible for the Budget arithmetic and I had to go and tell Chancellor Nigel Lawson that I had lost £50 million from the Budget arithmetic and it was very embarrassing. I never lost £1.2 billion, which is what current Treasury Ministers seem to have managed to do. The fact that the figures are so large tells us that the level of breaches is significant. It is hard for us to believe that, in a great wodge of £1.2 billion, there are not some breaches that should be prosecuted. From the information Ministers have given us, we have no idea whether this figure involves many small breaches or three or four really big breaches.

A report published in December in a magazine called *Nikkei Asian Review* says that 49 nations have breached North Korean sanctions. The sanctions against North Korea have been agreed at the UN Security Council—they could not be more important. We have a situation where North Korea is trying to develop nuclear weapons. Everybody in this House and this country knows that that would be disastrous—completely destabilising to the region and potentially the whole world. If North Korea acquires nuclear weapons, the risk of proliferation is immense. I know Foreign Office Ministers understand this. The report suggests that 13 of the countries that have breached North Korean sanctions have engaged in arms trading; they are primarily countries with a history of political turmoil such as Syria, Angola, Iran, Myanmar and Sir Lanka, but even Germany and France were deemed culpable in certain respects.

Obviously, breaching weapons of mass destruction sanctions against North Korea is something that nobody would take lightly. One would think that this would be a case where it would be appropriate to prosecute, but because of the lack of transparency, we have no idea whether we in this country have made mistakes in the same way as the Germans and French have. Obviously there would be nothing intentional about it, but accidents too can be dangerous. That is why we think the Government should be stronger and clearer on enforcement. The Government could make matters clearer by publishing

CPS guidelines explaining how and when they believe prosecutions are in the public interest. If the Economic Secretary could tell us a little more about what happened with this mistake—how the figure came to be £1.2 billion out—and whether the Treasury has looked back over previous years to see the pattern of breaches, I am sure that would be of great interest to the Committee.

The Economic Secretary to the Treasury (John Glen): It is a pleasure to serve under your chairmanship for the first time, Dame Cheryl.

First, I would like to address the serious matter that the hon. Member for Bishop Auckland raised with respect to Office of Financial Sanctions Implementation data. She is quite correct to assert that there was an error; this was caused by technical and data problems. Officials have now manually checked each case by reference to the original information and have confirmed that the revised figures for suspected breaches reported in 2017 accurately answer the question. I wrote to the hon. Lady at the earliest opportunity and apologised to her.

The Government take financial sanctions evasion extremely seriously and have made an unprecedented commitment to tackling it, increasing the dedicated resources and providing new enforcement powers to deal with breaches, including new penalty powers and an increase in the criminal offence's maximum sentence from two to seven years. We cannot go into specifics on the size of the breaches but I can assure the hon. Lady and the whole Committee that I do not anticipate difficulties in future.

Amendment 21 would require the Government to provide specific guidance, produced by the Crown Prosecution Service, on the prosecution of sanctions breaches. Hon. Members will be interested to know that the CPS already publishes guidance on how the public interest is taken into account in any decision to prosecute in "The Code for Crown Prosecutors". This public interest test is the same one that we applied in decisions to prosecute sanctions offences. The Government's view is that no additional public interest guidance is necessary for a sanctions prosecution decision. The public interest is a fundamental assessment in any decision to prosecute, and "The Code for Crown Prosecutors" includes factors relevant to public interest tests such as the seriousness of the offence and the level of culpability of the suspect. These and other factors included in the code are relevant to the decision to prosecute in sanctions cases. There is therefore no need for separate guidance on this amendment.

We will be discussing clause 37 and the Government's duty to issue guidance later in Committee. Clause 37 sets out a comprehensive duty to provide guidance where it is required, but the Government believe that in this instance separate guidance is not required.

Helen Goodman: That is rather unsatisfactory, because the general guidance is intended for the practitioners. As we were discussing this morning, it is for the NGOs and for the banks. I am sure that the Minister understands that the CPS guidance is for the lawyers, and although the banks and NGOs may be advised by lawyers it does take a different form. The Treasury guidance addresses processes; it does not look at the public interest in this context. I am not satisfied with what the Minister says and I do wish to test the view of the Committee on this amendment.

Question put, That the amendment be made

The Committee divided: Ayes 9, Noes 10.

Division No. 3]

AYES

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

NOES

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

Question accordingly negatived.

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

John Glen: Sanctions are one of our most important foreign policy and national security tools. To ensure the effective implementation and enforcement of sanctions, it is important that we have the greatest possible range of enforcement measures at our disposal to deal with breaches of sanctions. Following the vote in the other place to remove key offences and penalties creation provisions from the Bill, I regret to say that we currently have no meaningful enforcement measures in the sanctions Bill.

It is important to remember that when these clauses were debated in the other place, those peers who objected to them did so not on the grounds that sanctions should not be enforced with a criminal offence, but out of concern about the division of powers between the Government and Parliament. The Government have been working with interested Peers and parliamentary counsel as a matter of urgency to consider the procedural safeguards that could be added to clause 17 to address those concerns and enable the key provisions on offences and penalties to be reinstated.

2.15 pm

I will not repeat my previous comments about the Government amendments, but it is plain that the Government want sanctions that can be vigorously and robustly enforced. In our view, effective enforcement will require powers that allow the Government to create offences and penalties alongside the individual sanction measures introduced in secondary legislation. That will provide certainty in the law, because the statutory instruments will show clearly what is and what is not a criminal offence. We do not intend to create offences with maximum penalties higher than those that currently exist in relevant UK financial sanctions and export control legislation. I commend the clause to the Committee.

Question put and agreed to.

Clause 17, as amended, accordingly ordered to stand part of the Bill.

Clause 18

EXTRA-TERRITORIAL APPLICATION

Helen Goodman: I beg to move amendment 22, in clause 18, page 17, line 7, leave out subsection (4) and insert—

"(4) For the purposes of subsection (2)(b), a body incorporated or constituted under the law of any part of the United Kingdom includes a body incorporated or constituted under the law of the following—

(a) any of the Channel Islands;

(b) the Isle of Man;

(c) any of the British Overseas Territories."

This amendment would require the Government to include any of the Channel Islands, the Isle of Man and any of the British Overseas Territories in the definition of "United Kingdom person" under subsection(2).

Clause 18 was not much discussed in the other place, but the Opposition tabled amendment 22 because we think it important that part 1, which relates to sanctions, be extended automatically to the Channel Islands, the Isle of Man and the British overseas territories. We will be able to revisit the subject at the very end of our deliberations when we consider clauses 54 and 55, but I thought we should take the opportunity to consider it now.

As a matter of constitutional law, the UK Parliament has unlimited power to legislate for the overseas territories. Some overseas territories and Crown dependencies have their own legislatures, but they legislate on domestic matters, whereas sanctions are a lever in foreign policy—a Foreign Minister is leading the Bill, and the Foreign and Commonwealth Office is very much in the lead when it comes to driving sanctions policy. It cannot be argued that legislation on sanctions policy is domestic or in the normal purview of Crown dependencies and overseas territories, so the amendment seems logical.

There is a further reason for extending the definition automatically. There is a lot of controversy about the secrecy in how some Crown dependencies and overseas territories run their financial services, which gives them scope to be part of sanctions busting, whether deliberately—which I doubt—or inadvertently. That brings us back to the question of North Korea. The US Department of Justice alleges that companies based in the British Virgin Islands and Anguilla are linked to a North Korean bank. *The Guardian* reported on 20 February:

"The China-based Dandong Hongxiang Industrial Development Company was placed under US sanctions in 2016."

I am sure the Minister is familiar with the Dandong Hongxiang Industrial Development Company. It was sanctioned after it was

"accused of operating on behalf of the Korean Kwangson Banking Corporation, which was itself sanctioned in 2009 over alleged links to North Korean weapons development. The shell companies, some of which appear in the Panama Papers, were part of a network of offshore entities used to obscure the acquisition of millions of dollars of fertiliser, coal and other commodities, according to the complaint."

The report continued:

"US sanctions prevent North Korean financial institutions from dealing in US dollars. However, because some commodities vendors require sales to be conducted in dollars, North Korea needs to be able to access the currency in order to obtain goods and services that are unavailable domestically.

The criminal complaint, filed in 2016, alleges that KKBC used DHID to obtain access to US dollars, in part by establishing a network of 22 different shell companies in various jurisdictions that would obscure its role in the commodity transactions."

I think I have made it clear that there is a case for applying sanctions in a straightforward and automatic way to the Crown dependencies and the overseas territories. It is clear, as the Government stated in 2012:

"As a matter of constitutional law, the UK Parliament has unlimited power to legislate."

Given that is the case, I am sure Ministers will be keen to accept amendment 22.

The Minister for Europe and the Americas (Sir Alan Duncan): The UK is responsible for the foreign affairs and security of the Crown dependencies and overseas territories. That is the constitutional position. However, there is another important constitutional point, which is that our long-standing practice is not generally to legislate for those jurisdictions without their consent.

Sanctions are a tool of foreign policy or are used to protect our national security. We have been clear that the overseas territories and Crown dependencies must follow the UK Government's foreign policy, including the sanctions we apply. The Foreign Office has discussed that with the overseas territories and Crown dependencies, and they also accept that point of principle.

The hon. Lady referred to the current distinction. There are two ways in which sanctions are implemented by the overseas territories and Crown dependencies. The UK legislates directly for the majority of the jurisdictions with their consent through Orders in Council. Other jurisdictions choose to legislate for themselves but follow precisely the sanctions implemented in the UK. That model is well established and respects the rights of those different jurisdictions.

The Bill is drafted to reflect that reality. It is consistent with the current implementation model for UN and EU sanctions, as well as measures under the Terrorist Asset-Freezing etc. Act 2010. It allows those jurisdictions that choose to follow UK sanctions through their own legislation to continue to do so. It also allows the UK to legislate directly for certain overseas territories.

The amendment would drive a coach and horses through that well established model by deeming legal entities formed or incorporated in the overseas territories or Crown dependencies to be UK persons. At a stroke, it would bring those legal entities within the ambit of UK sanctions confined to the territory of the UK and subject to UK courts. It would disenfranchise those overseas territories or Crown dependencies by legislating for their legal entities without their consent. It would also give rise to the unusual situation in which a legal entity incorporated in an overseas territory is bound by UK sanctions, but those UK sanctions do not extend to the overseas territory in question and so do not bite on the entity's activities in that territory. The amendment in such a case would not seem, therefore, to have any practical purpose.

I do not see the Bill as the right place to change these long-standing constitutional arrangements, nor do I see a compelling case for needing to do so. I am sure Members would not wish to jeopardise the achievements that friendly co-operation with these jurisdictions has already made. Nor would they seek to disenfranchise

those territories that have chosen to legislate for themselves. For those reasons, I ask the hon. Lady to withdraw the amendment.

Helen Goodman: I accept that the Government are right to proceed through mutual agreement with the Crown dependencies and the overseas territories. I can also see, from what the Minister said, that there is a more elegant way of achieving what I wish to achieve with the amendment later in our proceedings. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 18 ordered to stand part of the Bill.

Motion made, and Question proposed, That further consideration be now adjourned.—*(Mike Freer.)*

Helen Goodman: I think this motion is an extraordinary development on the part of the Government Whip. I have been a Member of this House for 13 years, and I have never been in a Bill Committee where it has been suggested that we adjourn after three hours of sitting and half an hour of the second session. We have another 40 clauses, two schedules, 11 Government amendments and 36 Opposition amendments to consider. They all concern extremely important matters. I am frankly astonished that the Government think it acceptable to behave in this way on these issues.

We agreed yesterday to the Government reshuffling the order of the consideration of the clauses. We agreed to their request that we consider clause 1 after clause 18. We did not demur from that; we asked them why. I do not know whether they are trying to avoid that consideration, whether they are uncomfortable about the many speeches they heard on Second Reading on the Magnitsky amendments that we have tabled, or whether they want to avoid fully debating their record on anti-money laundering. Do they not want us to discuss the secret regimes of the overseas territories? Are they uncomfortable about what they have overseen with foreign corrupt oligarchs buying property in London? Do they wish to supress exposure of those matters? There is certainly not a consensus in this Committee for adjourning now.

Alison Thewliss (Glasgow Central) (SNP): I agree that this motion is quite disrespectful to the Committee. We have only been here for half an hour, and we all want to press on. We have got only two more days to look at this huge number of amendments to a very important Bill. It smacks to me of game playing on the part of the Government to move the motion and to be so disrespectful. We are all here in this House, and if the Minister turns around, he will see that the weather outside indicates that we are not going anywhere soon. We are pretty much getting snowed into the building as we speak. We may as well sit here, huddled together, and finish the work that we have begun here this afternoon.

Sir Alan Duncan: I fully respect the fact that the hon. Member for Bishop Auckland has served in the House for 13 years; in the same spirit, I am sure she will respect my 26 years of service. The motion does nothing more than to reflect the understanding that we reached last night, namely that we would debate a very significant amendment in a full session on Thursday. There is no attempt not to discuss anything, because the whole point of Committee is that everything is discussed. There is nothing that will not be discussed as a result of our adjournment this afternoon.

This matter is important, and we are genuinely trying to work out if there is some accommodation that we can make to deal with the issues raised by the hon. Lady and the wider House. There is no game playing and this is not obstruction; it is in the spirit of what was agreed last night. I say that with a smile, looking especially at her. Come Thursday, we will be able to spend a good amount of time getting into the matter in great detail. On that basis, I support the wish to adjourn.

Anneliese Dodds (Oxford East) (Lab/Co-op): I appreciated our discussions last night. As a new Member, I found them very helpful. I took a great deal of notice of what was said during the meeting by both Ministers and by everybody else who was there. I am sorry; we have spent so much time together that I am imagining that the Economic Secretary was there. I remember it being suggested at the meeting that we needed to get into a rhythm of working and establish how the Committee would operate, and that that was the reason for taking clause 1 after clause 18. Having served on two Finance Bill Committees, I absolutely understand the need to get into a rhythm and work out how we will operate as a Committee. I do not, however, recall anybody saying that that meant that we could not consider clause 1 on the first day of Committee. Perhaps other Members can contradict my recollection, but that is certainly what I took from the meeting.

Question put, That further consideration be now adjourned.

The Committee divided: Ayes 10, Noes 9.

Division No. 4]

AYES

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

NOES

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

Question accordingly agreed to.

2.33 pm

Adjourned accordingly till Thursday 1 March at half-past Eleven o'clock.