

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

## Public Bill Committee

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

*Fourth Sitting*

*Thursday 1 March 2018*

*(Afternoon)*

---

#### CONTENTS

CLAUSES 27 TO 43 agreed to, some with an amendment.

SCHEDULE 2 agreed to, with amendments.

Adjourned till Tuesday 6 March at twenty-five minutes past Nine o'clock.

Written evidence reported to the House.

---

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

**not later than**

**Monday 5 March 2018**

© Parliamentary Copyright House of Commons 2018

*This publication may be reproduced under the terms of the Open Parliament licence, which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

**The Committee consisted of the following Members:***Chairs:* DAME CHERYL GILLAN, † STEVE McCABE

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

## Public Bill Committee

Thursday 1 March 2018

(Afternoon)

[STEVE McCABE *in the Chair*]

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

2 pm

**The Chair:** Welcome to the cold blast. I understand that this morning Dame Cheryl said that hon. Members should wear their coats and hats as they saw fit, and there is no reason for me to dispense with that advice.

#### Clause 27

REVIEW BY APPROPRIATE MINISTER OF REGULATIONS  
UNDER SECTION 1

**Helen Goodman** (Bishop Auckland) (Lab): I beg to move amendment 24, in clause 27, page 20, line 39, leave out

“the purpose stated in them under section 1(3)”

and insert—

- “(a) the purpose stated in them under section 1(3);
- (b) the humanitarian impact;
- (c) any British citizen, a British Overseas Territories citizen or British overseas citizen who is not the intended target of sanctions issued under this Act but who is directly or indirectly impacted by the imposition of such sanctions”.

*This amendment would require the Government to review whether the sanctions regulations are still appropriate for their specified purposes, including their humanitarian impact and impact on British citizens who are indirectly affected by the imposition of sanctions.*

**The Chair:** With this it will be convenient to discuss amendment 25, in clause 27, page 20, line 40, at end insert—

“(2A) The review of the humanitarian impact under subsection (2)(b) must be conducted according to the methodology set out in Chapter 5 of the UN Inter-Agency Standing Committee’s Sanctions Assessment Handbook: Assessing the Humanitarian Implications of Sanctions, published in 2004.”

*This amendment, which is consequential on Amendment 24, would require the Government to carry out a humanitarian impact assessment when reviewing the regulations issued under section 1.*

**Helen Goodman:** Welcome to cold Committee Room 12, Mr McCabe. As we discussed this morning, clause 27 was inserted by those in another place because it was agreed that we need reviews of what is going on. Amendment 24 would extend the coverage of the reviews. At the moment, the clause proposes one question for review: “whether the regulations” relating to the sanctions

“are still appropriate for the purpose stated in them under section 1(3)”, which is whatever purpose the sanctions have. That is absolutely fine; we agree with it and think it completely sensible, but we want to add two other things that we think should be covered by the reviews. One is the

humanitarian impact, and the other is the impact of the sanctions on British citizens who are not their intended target.

Let me tell the Committee about two episodes in which the humanitarian impact of sanctions was very significant and may have made them counterproductive, because they were simply punishing poor people in the countries involved, who were not responsible for the bad behaviour of their leaders. The sanctions had horrendous negative consequences, which led to a lot of anti-western feeling.

The first example is the comprehensive, multilateral, international sanctions imposed on Iraq in August 1990 under UN Security Council resolution 661. As some of us can remember, it was after the first invasion of Kuwait. Before the sanctions, Iraq had imported roughly 70% of its food, medicine and chemicals for agriculture. Obviously, Iraq was a very wealthy country because of its oil reserves, but with trade sanctions imposed, it could not use that wealth to buy food. Some time later, in 1998, Denis Halliday, the United Nations humanitarian co-ordinator in Iraq, said:

“We are in the process of destroying an entire society. It is as simple and terrifying as that.”

UNICEF came to the view that the sanctions caused the deaths of half a million Iraqi children. That is a terrible death toll and not one that any of us can be comfortable with. Although the idea was to have sanctions instead of hot war, the toll of death and suffering for the Iraqi people was probably as bad from the sanctions as it would have been from hot war. We think that should be taken more into account.

Of course, the situation in Iraq was and is highly contested, but that is why we have tabled amendment 25, saying that the assessment must be done in accordance with the UN Inter-Agency Standing Committee’s “Sanctions Assessment Handbook”. We are saying we should have an agreed methodology for making this assessment, because that way we are more likely to reach an agreed assessment of what the impact of sanctions is; then people can stop arguing about the facts and start considering whether sanctions are justifiable or not. We are not saying that this is the only question to be considered. We are saying the questions should be, “Does it achieve the objectives?” and “What is the humanitarian impact?”

There was another serious case a few years later—all of this happened some time ago, but it is significant none the less. In Haiti, following the military coup of 1991 and the fraudulent elections of 2000, the international community reacted by imposing sanctions. Here again the impact on ordinary citizens was devastating. By 1994, the rate of malnutrition among children under five in many health institutions had increased from 27% to more than 50%. The UNICEF view was that thousands of children died as a consequence.

Of course, both those cases involved countries with a history of bad governance, so disentangling the results of bad governance and the results of the humanitarian sanctions is not absolutely straightforward, and I am not saying that it is absolutely straightforward. Nevertheless, these cases reinforce the argument for amendment 25.

We have also proposed adding that the impact on British citizens who are not the targets of the sanctions should be taken into consideration. It is quite easy to stand back in the Chamber and say, “Oh, we think we

should impose sanctions on this person or that person.” The hon. Member for Witney is nodding fiercely; I hope he is nodding at what I am saying.

**Robert Courts** (Witney) (Con): Oh, certainly.

**Helen Goodman:** Of course, sanctions also have an impact on British commercial and economic interests, and on British commercial and economic actors. I will give the Committee a couple of examples of that.

In a more recent example, from 2014, we decided to impose sanctions against Russia after the intervention in Ukraine and the annexation of Crimea. One of the things that the sanctions covered was technology for oil and gas, which is obviously a very big sector in the Russian economy. SMD, a specialist engineering firm in Newcastle, makes sophisticated robots that operate on the seabed, doing the job of deep-sea divers. Those robots were banned and the chief executive of SMD—Andrew Hodgson, who I have met—highlighted the damage to his business. He said:

“Imagine we’re a 500 employee business and 20% of your business doesn’t exist, that’s 100 jobs and obviously we’ve been working hard on the technology”,

which is very modern technology. Normally, the company would have exported £20 million worth of equipment, but that business was lost, straight away. Another reason for considering the impact of sanctions on British citizens and the cost to the British economy is the possibility of counter-sanctions imposed by the person or country we are sanctioning. Russia retaliated by banning imports of agricultural and other produce from both the European Union and the United States, including mackerel from Scotland. That was not great for Scottish fishermen.

Nissan was also extremely badly affected, because the effect of the sanctions on Russia was that the rouble plummeted. Nissan had been paid for its car exports in roubles and was not hedged sufficiently to deal with a big drop in the rouble. It halted all the orders because it could not afford to take the loss, which was significant, although not as bad as if it had sold the cars at a loss.

We are pleased that the Government inserted clause 27 and that they are taking a consensual approach to the Bill—

**The Minister for Europe and the Americas (Sir Alan Duncan):** Yo!

**Helen Goodman:** The Minister is encouraging me to go for it—

**Sir Alan Duncan:** Consensus.

**Helen Goodman:** I will therefore ask for an extension to what is covered in the review. We have given an explanation as to how we think that should be done.

**Sir Alan Duncan:** The Government are well aware of the concerns in the House about the humanitarian impact of sanctions. We are committed to finding constructive solutions through close engagement with non-governmental organisations and other humanitarian actors.

As part of the process of considering when to apply sanctions, the Government already consider the humanitarian impact on the individual or entity being

sanctioned and on the general population, if the sanctions are countrywide. That is kept under close review, and we will continue to ensure that NGOs and other humanitarian actors can access the licences and exemptions needed to carry out their work in countries that are subject to sanctions.

In 2016, the UK secured amendments to the EU’s sanctions regime on Syria to provide a specific exemption for fuel purchases by humanitarian organisations, which assisted them in carrying out their operations in Syria while ensuring that they were still compliant with sanctions. As part of the consultation on the Bill, we hold regular roundtable meetings with NGOs and we take into account their concerns about the humanitarian impact of sanctions. A variety of tools and guidance are available for assessing that humanitarian impact, of which the UN handbook, which the hon. Member for Bishop Auckland referred to, is just one.

We take a case-by-case approach to the assessment of the humanitarian impact of each sanctions regime. We work closely with Department for International Development, as I recall happening when I was a DFID Minister, and with staff from the Foreign and Commonwealth Office, who may be in the relevant country—I am now familiar with what the FCO does on this as well. That ensures that the humanitarian impact is minimised and that licences and exemptions can be made available to NGOs carrying out humanitarian work.

The design and implementation of sanctions has moved on considerably since the handbook was drafted more than 10 years ago. Sanctions are now more targeted and focused directly on people whose behaviour we are trying to change. To restrict the way in which we assess the humanitarian impact to the methodology laid out in the UN handbook would limit our flexibility in making that assessment. In any case, of course, handbooks can change.

The hon. Lady also mentioned Iraq, where sanctions were imposed almost 30 years ago. Those were blanket sanctions. Modern sanctions practice is very different: sanctions are precise and targeted, and the humanitarian implications are much better taken into account. We have learned lessons from historical sanctions regimes. The example of Iraq is useful because it shows exactly the journey that we have been on to make sanctions more precise and effective.

The Government recognise the risks of unintended effects of sanctions on British citizens, as mentioned in the amendment, and on other individuals and entities. A thorough consideration of the possible unintended effects of sanctions is already part of the process of designing and implementing sanctions regimes, and it will continue to be in future. Given that sanctions have an international dimension, it is important that we do not just look at British citizens, but have safeguards for anybody who is unintentionally affected by a sanctions regime. Our concern for justice should not be confined to British citizens.

I assure the Committee that our review, which we will report annually to Parliament under clause 27, will assess the humanitarian impact of each sanctions regime; our approach to mitigating the risks of unintended effects; and our approach to humanitarian licences and exemptions that allow non-governmental organisations to continue their work in countries affected by sanctions.

[Sir Alan Duncan]

I hope that that explanation has reassured the Committee sufficiently for the hon. Member for Bishop Auckland to withdraw her amendment.

2.15 pm

**Helen Goodman:** I accept what the Minister says about amendment 25, but I do not understand. Basically, he is saying that he agrees with our proposal but does not want it in the Bill, which I do not find very reassuring, to be honest. I wish to divide the Committee.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 9, Noes 10.

### Division No. 7]

#### 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.*

*Amendment made:* 5, in clause 27, page 21, line 5, leave out “(d)” and insert “(h)”—(Sir Alan Duncan.)

*The provision amended here concerns a Minister’s review of regulations made under Clause 1 which state a purpose within Clause 1(2). The amendment expands the reference to Clause 1(2) so that it covers paragraphs (e) to (h) of Clause 1(2) (as well as paragraphs (a) to (d)).*

**Helen Goodman:** I beg to move amendment 26, in clause 27, page 21, line 8, at end insert—

- “(d) the steps taken to promote the adoption of sanctions on a multilateral basis;
- (e) a summary of any representations made in relation to the exercise or proposed exercise of the powers and the response of the appropriate Minister to the same;
- (f) a review from the Independent Reviewer, appointed pursuant to section 20 of the Terrorism Prevention and Investigation Measures Act 2011 (‘the 2011 Act’), of the operation of this Act in the reports by the Independent Reviewer produced pursuant to the 2011 Act.”

*This amendment would require the review of regulations to include consideration of the steps taken to promote the adoption of sanctions, a summary of the representations made in relation to powers under this Act and an independent review of the operation of this Act.*

I will not press the amendment to a vote, but moving it gives me the opportunity to make a couple of points and perhaps to ask a question. Proposed new paragraph (d) takes us back to whether we accept the Foreign Secretary’s rhetoric about being independent in how we implement sanctions, or whether we know that sanctions are most effective when we do them multilaterally. It is our firm view that we should implement sanctions multilaterally and that Ministers should explain to the House what they have done to secure international consensus on them.

Proposed new paragraph (e) was inspired by representations made to us by the voluntary sector, which wanted to be reassured that Ministers were listening to NGOs in their assessments. The clause says that Ministers have to explain the reasonableness of their “course of action”. That is a sensible thing to do. People will be confident that it is reasonable if they know that the views and information of NGOs have been taken into account. Mr Browder, whom the right hon. Member for Newbury referred to, was keen to have something along those lines, in order to demonstrate that the Government were in listening mode on the sanctions.

Proposed new paragraph (f), with the read-across to the Terrorism Prevention and Investigation Measures Act 2011, was also part of our Magnitsky package of measures. Rather than having a separate amendment with a new clause, I thought it was neater to wrap it in to the review at clause 27, to which Ministers have already agreed. I thought Ministers would find it easier to agree if we made this an amendment to clause 27.

**Richard Benyon (Newbury) (Con):** The hon. Lady is right that this is a key part of the Magnitsky elements of the Bill. There may be a more elegant way of landing this and I am looking forward to hearing what the Minister says about it.

The review aspects are fundamental to achieving what I was talking about earlier: consistency with other jurisdictions. I know the Government are keen to work with us. It may be that that happens in the coming weeks and we find some mechanism by Report stage. Again, the Minister has this in his gift. There are those who say that what we propose would somehow be more than other countries have adopted as part of their Magnitsky legislation, but the US, for example, has a far more onerous oversight provision. It allows certain members of Congress the right to demand that the Government consider sanctioning certain individuals, and the Government have to respond within 120 days to give the reasons why they did or did not. That is called the congressional trigger, and there are other mechanisms in other jurisdictions elsewhere.

What we would like to achieve is that as soon as practicable after six months have elapsed, beginning with the day the Act is passed, and every 12 months thereafter, the Secretary of State prepares a report about the exercise of the powers conferred by the Act and lays that report before Parliament. Subject to issues of clear confidentiality—I absolutely accept that is a requirement—that report should include a summary of any representations made in relation to the exercise or proposed exercise of powers and the response of the appropriate Minister to do the same.

I think there may be some work to be done on the question of who the independent reviewer should be. I note the form of words, which I was initially attracted to by the hon. Member for Bishop Auckland. There may be machinery of Government issues, which mean that that is not the right place for the independent reviewer to reside, but I think there are many ways of skinning this particular cat. The review element is fundamental, because it is important that those organisations that are taking forward evidence are able to have that evidence independently verified and Government held accountable.

On a related issue, which is not specific to this Bill but that makes my point, campaigners—with very good evidence—have brought cases about people connected

to serious organised crime from overseas who operate in this country. They have taken that to agencies such as the Serious Fraud Office, the National Crime Agency and others, but it has not been taken up. When they have done that in other countries, assets have been frozen, people have been subject to visa denials and other measures have been taken. Somehow, people slip between the cracks in our system, and this is an opportunity to close that gap.

On where that independent reviewer resides, I am open to suggestions from my right hon. Friend the Minister or anyone. I am glad that the hon. Member for Bishop Auckland has given us a bit of breathing room to resolve this. By Report, we really need to have a review process that is independent and comprehensive; that addresses the measures that we require to allow people who have access to information to bring it forward; and that holds Government accountable for how they deal with that kind of information.

**Sir Alan Duncan:** The amendment is important because it overlaps with our earlier discussions about the broader Magnitsky issue. It also introduces two other elements, so it has three distinct elements.

The first element is the issue of adopting sanctions on a multilateral basis, which is what sanctions are really for. It is quite rare for sanctions to be adopted by only one country. Their whole effectiveness depends on multilateral co-operation. UN sanctions, which we are obliged to implement, are multilateral by their very nature. All the other sanctions that we have imposed in the past have also been multilateral, because we have imposed them as part of the EU. Although our departure from the EU necessitates our having an autonomous sanctions regime, we envisage that its operation will almost inevitably be multilateral. We agree that sanctions are more effective when they are adopted by a greater number of countries.

The UK plays a leading role as a permanent member of the UN Security Council in negotiating sanctions measures that build on the entire international community. We also work closely with the EU and other international partners in a range of groupings, such as the G7, and we will continue to work hard internationally to gain the widest possible support for sanctions measures.

In the second element of the amendment, the hon. Member for Bishop Auckland asks us to show our hand at all stages and to show the manner in which we piece sanctions together. However, to publicly reveal our discussions and the steps that we take to work with international partners could be damaging to those efforts. We would not wish to embarrass partners who, for their own reasons, decline to align with our sanctions policy or to risk the targets of sanctions understanding too much about which country was in which position on any given sanctions regime.

A related issue is whether an individual can nominate someone to be sanctioned, which they can. Any person can write to the Government and the Government will respond. Individuals may request that the Government apply new or additional sanctions regimes, and we will of course consider that.

**Helen Goodman:** How often does that happen in the real world? Does the Minister get a long letter from Amnesty International every week or every month that says, “We’ve seen this person and this person, and we

think there is a problem”? I give that as an example, because one might imagine that it happened in that kind of way.

2.30 pm

**Sir Alan Duncan:** I cannot quite say that it happens in that way, although there are some issues, and of course countries being discussed in the UN—because, for instance, they may be developing nuclear weapons—obviously does come across a Minister’s desk. That happens less frequently in the case of any individuals, particularly because at the moment we do not have an autonomous sanctions regime that would make all such representations come directly to the desk of a Minister or his close officials, because we are part of the broader EU system. When we have an autonomous regime, I envisage that that type of thing is more likely to happen than it does now, because it tends to happen much more within the EU system at the moment.

The third issue about the amendment is the question of oversight. May I just say to my right hon. Friend the Member for Newbury that I totally understand that the two key words in what he is pressing for are “independent” and “reviewer”? He suggests the need for some kind of independent entity, force or person that perhaps represents the interests of those calling for sanctions, rather than just the interests of the Government in executing sanctions. I understand what he is saying and we will have to consider this matter further.

However, I have to be firm in my view that the counter-terrorism figure suggested in the amendment is not the suitable person to do this work. The amendment is about counter-terrorism, if it is counter-terrorism, but this measure is more broadly about sanctions. So what would happen under the amendment is that someone whose job at the moment is counter-terrorism would have their job widened. It may be too burdensome; the whole job description would have to be changed. They would not necessarily have the required skillset, so they would be the wrong person to try to designate for this purpose. In simple language, they are not the right horse for the course. However, given what my right hon. Friend has said, we will of course need to discuss this matter further, as we approach Report.

**Richard Benyon:** I am grateful for that assurance. I am not qualified to say who this person should be and where they should reside. However, my right hon. Friend is right to say that the words “independent” and “reviewer” are fundamental to those who have been campaigning for this change for some time, and they would put the final icing on the cake of the Magnitsky element to this Bill.

However, will my right hon. Friend allow me, in as mild-mannered a way as I can put it, to convey to him that if other forces in the orbit of the postal district of SW1 were to rain on his parade of the assurances he has given us—I am mixing my metaphors here—there would be a problem for him on Report, and I want to make his life easy? I want this Bill to breeze through the Chamber with universal support and adulation for him, and that we will not find any need to argue the point.

**Sir Alan Duncan:** I both thank and congratulate my right hon. Friend for the elegance with which he has made his point, and I can say in clear and simple language, “Message received.”

[Sir Alan Duncan]

Perhaps I can also take this opportunity to inform the Committee, in a little more detail, our feeling and understanding of what we know are the independent oversight powers in the Bill, because they are a central part of the broader picture of oversight.

We think the Bill finds the right balance of powers and independent oversight of those powers, because—rightly—the powers to impose sanctions are placed in the hands of the Executive. As such, the Government will decide whether or not to impose sanctions and on whom. Likewise, in the first instance the Government will decide when to lift sanctions. That is in line with the standard practice of the Executive deciding foreign policy and is consistent with international practice.

However, the role of the courts—as the independent arbiter and judicial authority overseeing the powers in the Bill—is significant. The courts can look at decisions made by the Government under the Bill and judge whether those decisions were correct. If not, the courts' judgment will of course be binding on the Government. Furthermore, the Bill has significant transparency requirements and the Minister has numerous reporting obligations to Parliament. The reports will all be laid before and scrutinised by Parliament. As is the case now, parliamentary Committees can produce their own independent reports and can take evidence and make recommendations. That will continue. There is far more scope for such independent oversight by Parliament than there is now, where decisions are taken in Brussels and there are limited reporting requirements to the UK Parliament. As such, we believe that the Bill finds the right balance of Executive decision making, independent judicial arbitration by the courts and independent political oversight and scrutiny by Parliament.

**Helen Goodman:** We have had another interesting exchange. We are extremely grateful to the right hon. Member for Newbury, who knows about the issues in great detail. When it was first suggested to me that we involve the independent reviewer for terrorism, I was a bit taken aback as well. At first blush, one thinks that sanctions and terrorism are not quite the same thing. However, that person is looking at assets frozen under terrorism legislation as well, so it is appropriate, and I do not think that the job description-type points that the Minister made quite hit the nail on the head.

Had the Minister said to us, “No, we have thought about this, but the independent reviewer for terrorism is not the right person—we would propose that it would be X, Y or Z,” that would have been a good response. Then, we would have had more confidence in the Minister's willingness to engage in the consensus-building process that we are all, across the House, looking for on the Bill. It seems to me that the Minister is being extremely cautious, to the point of not acknowledging that some changes will have to be made if the Government are to get the Bill on to the statute book. The Minister would have done well to have thought about that between 20 February and today, and he would do well to be more flexible now than he has been.

The suggestion that we rely on the courts is not very practical. That means, in effect, that people have to take the Government to court using the judicial review processes. It is incredibly ad hoc and unsystematic. It will mean that

somebody with a lot of money who is critical of the Government's actions can go to court and get their justice. This is not a place where we are about to have legal aid, is it?

**Sir Alan Duncan:** There are many stages to be gone through before it ever needs to go to court. One of the provisions that I really pressed hard for in the preparation of the Bill was that there could be swift and direct redress for someone caught up in sanctions unfairly—as they might see it—who needs to defend themselves but does not have money. That is why there is a process for being able to submit arguments that say they have been wrongly caught up. If they are justified, those issues can hopefully be resolved before there is any need to go to court. The hon. Lady is making a very valid point, and, if it were the case, that is addressed in the Bill.

**Helen Goodman:** I am sorry, but I think we are now conflating two things. The Minister is conflating the arguments that were had in the other place on designated persons, and the arguments here. The changes that were made with respect to designated persons were completely reasonable. I would go further than that: I would say that the Minister in the other place, Lord Ahmad, was right to resist the blandishments of Lord Pannick, who wanted to provide a court process for UN sanctions as well as non-UN sanctions, but that is not what we are talking about here. I am disappointed that the Minister has not shown a more flexible posture, and indicated more clearly that he is prepared to think again. His intervention was really a defence of the Bill. He did not indicate that he was prepared to go some way, but not to have this precise wording. That being the case, I think we do want to test the will of the Committee.

**Richard Benyon:** Perhaps there is an opportunity, in the relatively short period of time between now and Report, for us to work collectively with the Government to try to identify a structure that would read better in the Bill, and that would give the kind of assurances that the hon. Lady is after. Without having gone into the weeds of the issue, I am quite attracted by what Congress has—the congressional trigger is a relatively powerful means of holding the Executive to account. The Joint Committee on Human Rights may be a vehicle in Parliament to give it an added degree of independent oversight. I have not consulted to any great degree with those who have been working on this matter for longer than I have, or with those who understand more about drafting a Bill, but I would be very keen to work with the hon. Lady on trying to achieve that.

**Helen Goodman:** I am grateful to the right hon. Gentleman. I do not know whether the Minister would like to intervene again in the light of that, or whether he is content with what he has said.

**Sir Alan Duncan:** Content.

**Helen Goodman:** Okay. In the light of the intervention from the right hon. Member for Newbury, I will stick with what I had first thought to do, and will not press the amendment. However, the Minister needs to understand that we will have to come back to this matter on Report. From his point of view, it would be best if he took the initiative. He has not taken any initiative so far. If he does not, we will. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Helen Goodman:** I beg to move amendment 36, in clause 27, page 21, line 17, at end insert—

“(5A) The Appropriate Minister who made the regulations must in each quarterly period lay before Parliament a report for each sanctions regime and regulation containing—

- (a) the aggregate value of funds and other assets frozen;
- (b) the number of suspected breaches and the aggregate value of such breaches; and
- (c) actions taken on suspected breaches.”

*This amendment would require the Government to report to Parliament on a quarterly basis about the impact of sanctions regimes, including the number and value of suspected breaches of those sanctions.*

We discussed this matter a bit the other day. The amendment is a request for information from the Government on breaches to sanctions. I will not embarrass the Treasury Minister again by going into the full detail of how, on 8 February, he told me that the sanctions busting in 2017 was £117 million, but by 22 February it had shot up to £1.4 billion, and how concerned I was by that. Our interest in transparency did not begin with that episode. We think that it is important to have more information about this subject.

The amendment would require Ministers to report regularly on the value of funds and assets frozen, the number of breaches, and the actions taken on those breaches. We discussed this issue when we were looking at the Crown Prosecution Service guidelines on breaches. We need to understand this matter better, and we think that without shining the light of transparency on it, breaches can very easily be swept under the carpet and not acted on. We are not happy about that, particularly given how the Government have acted in the past when challenged.

I will share an episode with the Committee—it will take a couple of minutes, but I think that it is relevant. In July 2011, information was sought from the Treasury on its reasons for approving and licensing the CAMEC platinum deal—the CAMEC being the Central African Mining and Exploration Company. It bought a platinum mine in Zimbabwe from the sanctioned regime of Robert Mugabe. It transferred \$100 million to the Mugabe regime as part of the purchase, and that injection of hard currency funded a campaign of violence against opposition supporters. The funds appear to have paid for weapons, trucks and the dispatch of youth militias and war veterans to crush the opposition.

2.45 pm

The Treasury was asked to give some information about what had happened, including the amounts and the sale of the shares. When it responded, it relied on an exemption under the Freedom of Information Act, which prohibits disclosing information that is incompatible with any EU obligation. The UK had signed up to EU sanctions, and in the Government’s view article 8 of Council regulation No. 314/2004 of 19 February 2004, which implemented sanctions on Zimbabwe, prevented the disclosure of any information gathered. That article is repeated under most EU sanction regimes. Of course, Brexit means that we will be free of those European constraints. We will be an independent nation, as the Foreign Secretary put it, so it seems to me that that excuse for not providing the information no longer holds, and that we ought to be able to keep track in public of what is going on.

**Richard Benyon:** I will not detain the Committee long. The Government have an opportunity to show off their virtue here. Yesterday, we saw the first application

of the criminal finance powers to go after the people we are talking about. I gather that yesterday the courts granted us the first unexplained wealth order on a foreign person to freeze £22 million-worth of property assets in London. Within the constraints of what is wise in terms of disclosure, I think that some element of this proposal might be acceptable to the Government, although I feel that it could all be drawn together in a much simpler amendment. I refer to my earlier comments about how I think we should take that forward.

**The Economic Secretary to the Treasury (John Glen):** I am grateful to the hon. Member for Bishop Auckland for not seeking to embarrass me again.

Amendment 36 requires the Government to provide quarterly reports on the impact of all sanction regimes, including the number and value of suspected breaches of sanctions. In considering the sorts of scenario that are in play here, hon. Members will remember that sanctions breaches are highly complex and involve multiple parties across various time periods. Sometimes they take place across borders and in different jurisdictions. The complexity of most sanctions breaches means that the investigation process from initial report to action often takes significant time and resources. There is also often a time lag between the breach taking place and being reported. The Government therefore continually adjust their figures as new information comes to light. Hence, it is very challenging to make the process fully accurate. It would be extremely difficult for the Government to report accurately on the number of breaches suspected or found at any one time. That would render the information published in the quarterly reports of little practical value.

The amendment would also place a significant burden on businesses. Currently, the Office of Financial Sanctions Implementation collects information on the value of funds frozen annually, which is onerous on businesses but important for compliance purposes.

**Anneliese Dodds (Oxford East) (Lab/Co-op):** I understand that the US Office of Foreign Assets Control routinely releases details of licences and other information. It believes it has achieved an appropriate balance between commercial confidentiality and public accountability, and it does not appear to be overly onerous in the US context. I wonder why we view it as being overly onerous in the UK context.

**John Glen:** It is not about the reporting, but the frequency of the reporting. The point I am making is that to increase it to quarterly would add unnecessary compliance cost to industry, when that cost is already considerable if necessary. It would also result in an administrative burden for Government to produce figures that may not be of much practical use. We do not think that is the best way to spend the limited resource of public money.

Providing quarterly reporting regime by regime may also risk breaking other laws. At the moment we only provide regime figures for the largest regimes. For the small regimes there may only be a small number of designated persons with frozen funds in the UK so providing that specific information, which can easily be traced back to them, may risk breaching data protection laws.

[John Glen]

The Government have already committed to being transparent where appropriate. As part of the monetary penalty guidance published last year by the Office of Financial Sanctions Implementation, the Government committed to publishing details of breaches and criminal prosecutions. That is a matter of public record.

For those reasons, I urge the hon. Member for Bishop Auckland to withdraw the amendment.

**Helen Goodman:** I am sorry, but notwithstanding the blandishments of the right hon. Member for Newbury, I do not think that the Minister has made the case for keeping that information secret. The fact that the numbers can jump around in the way that they did last month suggests that the Government have not got a grip. One way to incentivise Ministers is through the OFSI, which after all is the body that the Treasury set up to run sanctions policy. We have a whole group of people there devoting their lives to that—perhaps they are even in room, supporting the Minister today—and to supporting Ministers to do that. It is a perfectly reasonable piece of information for us to be requesting. It would help Ministers to manage things better and help to give the public confidence that breaches of sanctions are being dealt with properly. I am afraid that I therefore wish to press the amendment to a vote.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 9, Noes 10.*

#### Division No. 8]

#### 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 negated.*

*Clause 27, as amended, ordered to stand part of the Bill.*

*Clause 28 ordered to stand part of the Bill.*

#### Clause 29

TEMPORARY POWERS IN RELATION TO EU SANCTIONS  
LISTS

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

**Helen Goodman:** I have some questions about chapter 3. It would not be appropriate to table amendments, but I want to ask the Minister for some explanation of what is going on with clauses 29 to 32, because I could not really follow them. It looks to me as if Ministers are taking the powers in chapter 3 for a transition period—we will leave the European Union at the end of March 2019,

we will use the powers under chapter 3 during the transitional period, and then, when we move into our new deep and special relationship with the European Union thereafter, as the Prime Minister would describe it, we will use the other powers in the Bill. Will the Minister tell me whether I have understood that properly?

That being the case, we flip back to the end of the Bill. This is where I am slightly puzzled by what Ministers intend. Clause 55 on commencement says:

“The Secretary of State may by regulations make transitional or saving provision in connection”

with the provisions of the Bill coming into force. It is all about Ministers making regulations when they want to. I do not understand why Ministers have not tied up the commencement provisions, the transitional provisions and the enforcement of the regulations with the definitions that we have used in the European Union (Withdrawal) Bill, and why we are not using the words “exit day” here, which we defined in that other Bill.

Let me remind the Minister what it says in the European Union (Withdrawal) Bill:

“ ‘exit day’ means 29 March 2019 at 11.00 p.m.”

and

“A Minister of the Crown may by regulations...amend the definition of ‘exit day’ in subsection (1) to ensure that the day and time specified in the definition are the day and time that the Treaties are to cease to apply to the United Kingdom, and...amend subsection (2) in consequence of any such amendment.”

The Minister will remember that we had a long debate, with the right hon. and learned Member for Beaconsfield (Mr Grieve) putting forward a new way of deciding on exit day, and the right hon. Member for West Dorset (Sir Oliver Letwin) tabling an amendment that was eventually accepted. I do not understand why a different approach is being used here.

The point matters not just for neat-and-tidiness, but because it will need to tie up with the rest of the negotiations and the deal that Ministers are negotiating on Brexit. For sanctions to work, it will be necessary to have an agreed approach to information sharing, on criminal justice and on border control. None of that is covered in the Bill and it is therefore very unclear what will happen in practice.

I did not know how to table amendments to raise the point, which is why I am asking a simple question to the Minister on how he is handling it. I am not the only person who has noticed the problems. UK Finance, the coalition of the banks, has said that

“the ‘jurisdictional’ description is left rather open ended.”

They are saying, “We know when EU law applies and when it does not apply, but will European Court of Justice judgments apply?” I would like the Minister to explain in concrete terms how he thinks that will work in the period before we leave, in the transitional period and in the post-transitional world of the new deep and special relationship.

3 pm

**Sir Alan Duncan:** I will explain the clause, and I hope answer the hon. Lady’s questions. As part of our membership of the UN and the European Union, we currently impose sanctions on more than 2,000 people and organisations. Upon our departure from the EU, it may be that there has been insufficient parliamentary time or civil service capacity to comprehensively review

all EU sanctions listings, and to prepare and pass appropriate statutory instruments to incorporate them under the regular powers conveyed by the Bill.

In those circumstances, to ensure that we meet our international obligations and do not become a route through which sanctioned individuals can move their assets, it may be necessary to retain some lists of persons sanctioned by the EU, as frozen EU laws under the European Union (Withdrawal) Bill. The freezing of existing EU sanctions via the withdrawal agreement is a safeguard measure to make completely sure that there are no gaps in our sanctions regimes as a result of leaving the EU. If that proves necessary, Ministers will need powers to amend those lists by adding or removing individuals from them, and the clause provides that power. It is a backstop measure, operable only for a maximum period of two years after the date of departure. All it does is allow Ministers to amend the list of designated persons. It does not allow new regimes to be set up, or substantive changes to be made to retained regimes, such as setting up a new arms embargo. That would require action under clause 1.

**Helen Goodman:** We can debate the matter when we come to clause 55, if the Minister has been better briefed by then, but when does he picture Ministers starting to use the powers? Is it on 1 April 2019 or 1 January 2021? If it is not until 1 January 2021, what will happen during the intervening period? Is he satisfied that simply using the lists will work if we are in a period when we do not have integration on borders, criminal justice and so on?

**Sir Alan Duncan:** The clause enables us to exercise those powers, but we cannot at this stage provide the date specificity that the hon. Lady is seeking, because that is a matter of negotiation.

*Question put and agreed to.*

*Clause 29 accordingly ordered to stand part of the Bill.*

*Clauses 30 to 33 ordered to stand part of the Bill.*

### Clause 34

#### COURT REVIEWS: FURTHER PROVISION

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

**Alison Thewliss** (Glasgow Central) (SNP): I have a quick query about the clause raised in a briefing by the Law Society of Scotland about the extension of the measure to Scotland. Will the Minister tell us a wee bit more about that? Will he also tell us what consultation was done with Law Officers in Scotland?

**Sir Alan Duncan:** The purpose of the clause is to ensure that those acting in good faith and in compliance with this legislation are properly protected from damages being awarded against them. The clause will not protect individuals if they are found to have been negligent or to have acted in bad faith. The measure is aligned with existing EU law and is necessary to ensure, for example, that enforcement officers acting under the law may perform their duties without fear of destitution.

The clause also restricts the circumstances in which the court may award damages against the state. Sanctions are imposed to counter unacceptable behaviour. They may need to be applied quickly and in situations in which there is incomplete information. However, the clause will still allow damages awards where there is evidence of negligence or of acts in bad faith. In practice, therefore, the clause restricts damages awards only in cases where the Government act in accordance with the information available to them and lawfully apply a sanction on the basis of sufficient evidence.

If damages awards were allowed in those circumstances, applying sanctions would carry a very significant risk to the public purse. Indeed, it is likely that the larger and more important the sanction target, the higher the financial risk to the taxpayer. It is therefore important to allow the Government to respond swiftly to developing situations and to protect the taxpayer to restrict the availability of damages as a remedy in the specific circumstances of negligence or acts of bad faith.

There was consultation before the Bill. As a piece of legislation that covers the whole of the UK, we believe that the powers should be as consistent as possible.

*Question put and agreed to.*

*Clause 34 accordingly ordered to stand part of the Bill.*

*Clauses 35 and 36 ordered to stand part of the Bill.*

### Clause 37

#### GUIDANCE ABOUT REGULATIONS UNDER SECTION 1

**Helen Goodman:** I beg to move amendment 28, in clause 37, page 29, line 39, at end insert—

‘(d) reporting obligations;

(e) licensing requirement provisions.

(3) Where civilian payments and humanitarian activity are exempt from any prohibitions and requirements imposed by the regulations, the appropriate Minister must issue guidance.

(4) The guidance under subsection (3) must include—

(a) best practice for complying with the processing of civilian and humanitarian activities to reduce the risk of funds benefiting designated individuals, entities or organisations;

(b) mechanisms to limit the impact of prohibitions and requirements on a permissible civilian and humanitarian activity;

(c) circumstances where the prohibitions and requirements may be relevant in the context of the otherwise permissible delivery of a humanitarian activity; and

(d) options setting out effective banking and payment corridors for the processing of payments in support of a civilian and humanitarian activity which is not subject to any prohibitions or requirements.’

*This amendment would require that the guidance issued about regulations under section 1 includes guidance on reporting obligations and licensing requirements. It would also require the Government to issue guidance on civilian payments and humanitarian activity exempt from prohibitions and requirements imposed by regulations.*

**The Chair:** With this it will be convenient to discuss amendment 27, in clause 37, page 29, line 39, at end insert—

‘(3) Where regulations under section 1 make provision as to the meaning of any reference in the regulations to a person “owned” or “controlled” by another person pursuant to section 50(3), the appropriate Minister must issue guidance.’

*This amendment would require the Government to issue guidance setting out the meaning of a person “owned” or “controlled” by another person when regulations are issued to make provision for this purpose under section 50(3).*

**Helen Goodman:** The amendments relate to the importance of having guidance. There is considerable concern in the voluntary and financial sectors that the regulations as provided for under clause 36—  
“an appropriate Minister may make regulations”—  
are a piece of volunteerism and not an obligation on the Minister. That is causing some anxiety and confusion among those actors who have to implement the sanctions, whether NGOs or the financial sector. I will give a slightly more detailed description of this, because it is a bit complicated.

Last year Chatham House looked at the issue in some detail. It concluded that a number of UN Security Council sanctions regimes authorise the imposition of targeted sanctions against non-state armed group parties to armed conflicts. Of particular relevance to humanitarian action are financial sanctions such as asset freezes, which, among other things, require member states to ensure that funds, financial assets or economic resources are not made available to or for the benefit of designated entities. Asset freezes can be problematic for humanitarian action. There is a risk that the obligation not to make assets available to designated groups will be interpreted as covering incidental payments that must be made to such groups—for road tolls or locally purchased fuel, for example—so that humanitarian relief reaches civilians in need. It may also be interpreted as covering humanitarian goods or equipment that are diverted to such groups or otherwise benefit them, directly or indirectly. The scope of potential liability for violating asset freezes is very broad, and no intent or knowledge is required for that to be an offence, which is harsher than the bar for other kinds of breaches.

Although asset freezes are most likely to have an adverse impact on humanitarian action and, consequently, they have received the greatest attention, other forms of sanction may have a similar impact. In Syria, the problem was oil and petrol. Broader financial crimes risks arising from the Financial Action Task Force have also complicated humanitarian work.

The role of the UK financial sector in implementing sanctions is also relevant. It is not clear whether, when assessing the impact of sanctions, the UK intends to borrow the EU’s 50% rule for ownership and control. UK Finance states that

“the clarity of the ownership and control structures becomes of paramount importance and can be one of the most complex elements of ensuring sanctions compliance. If ownership or control is established in accordance with set criteria, the making available of funds or economic resources to non-listed legal persons or entities which are owned or controlled by a listed person or entity will in principle be considered a sanctions breach. The EU, and indeed many other jurisdictions, tend to apply a 50 percent rule and criterion to establish the ownership and control of an entity...if a listed individual has 50 percent or more ownership of a non-listed entity, EU persons/entities are prohibited from making available funds”.

There is no reference in the Bill to existing EU standards. The purpose of amendment 27 is to clarify that.

**Alison Thewliss:** I am concerned about the use of the word “may” in the clause, which states that the guidance “may include guidance” about certain things. I am

concerned that that is not sufficiently well developed. I very much support the hon. Member for Bishop Auckland’s amendments, which would add a wee bit more clarity, detail and guidance. The clause is worth while, but the Government would do well to listen to the detail that she laid out.

**John Glen:** I am grateful for those questions. I am a little confused, because both hon. Members referred to clause 36, which states, “An appropriate Minister may,” but I thought these amendments were pursuant to clause 37, which states in subsection (1) that

“the appropriate Minister who made the regulations must issue guidance”.

I acknowledge that these amendments are about guidance. We have just agreed clause 36, which states, in subsection (1),

“An appropriate Minister may make regulations”.

The two amendments as tabled by the hon. Member for Bishop Auckland are on clause 37, subsection (1) of which states

“the regulations must issue guidance”.

3.15 pm

**Alison Thewliss:** We seem to be at cross purposes. The amendment is about the line further to that; subsection (2) states, further to “regulations must issue guidance”, that

“guidance may include guidance about”.

It is about the expansion of what that guidance may be.

**John Glen:** I am very grateful for that clarification. I hope that I will be able to address that in my remarks and give sufficient reassurance about the Government’s plan.

I should make clear from the outset that the Government are in favour of good guidance and we intend to produce it. It is in the Government’s interest to produce thorough guidance, to improve sanctions implementation and to ensure that sanctions can be enforced robustly. It was clearly set out that amendment 27 would require Government to provide guidance on the definition of ownership and control on the face of the Bill.

**Hannah Bardell (Livingston) (SNP):** Further to the points made by my hon. Friend the Member for Glasgow Central about the efficacy of these amendments, Governments come and go, and I fully appreciate that the Minister is committed to giving proper guidance, but with the greatest respect, his party may not always be in power. Is it not important that if they have the intention, they should put these things on a statutory footing?

**John Glen:** I will address those points in my remarks, and I will be happy for the hon. Lady to come back if she is not content at the end.

Amendment 28 would broaden the scope of guidance to areas such as providing best practice on compliance with financial sanctions and establishing effective banking and payment corridors. As I said at the start, the Government are committed to producing clear and accessible guidance on sanctions implementation and enforcement. Clause 37 requires Ministers to issue guidance about any prohibitions and requirements imposed by

sanctions regulations. There is already a mandatory requirement to provide comprehensive guidance for all those affected by sanctions and implementation.

The Government have been consulting extensively; across Whitehall, they have been meeting with NGOs and financial institutions that have asked for this guidance. I can reassure the Committee that we will give them what they have asked for. The Government do not believe that further amendments to clause 37 are needed to provide the type of guidance sought on “owned” and “controlled” in amendment 27. Where sanctions regulations contain prohibitions or requirements about entities that are owned and controlled by a designated person, we are already under a duty to issue guidance. I can reassure hon. Members that the Government already provide guidance on ownership and control and will continue doing so.

The additional guidance sought in amendment 28 would greatly extend the scope of the guidance to specific areas such as mechanisms to limit the impact of prohibitions and requirements on civilian and humanitarian activity, and establishing effective banking and payment corridors. Although I can understand the concerns of NGOs that lie behind this amendment, some of them clearly are beyond the remit of the Government to provide. For example, the Government do not have the powers to require banks to make payments on behalf of particular customer or to open new payment channels. Although I appreciate the spirit of the amendments, the Bill already caters for them in so far as it addresses matters within the Government’s control. Adding extra text to the Bill will only create confusion.

**Alison Thewliss:** Does the Minister not agree that it is in the public interest for the Government to support payment channels being created? If, for example, there is a Disasters Emergency Committee emergency appeal and the NGOs gather lots of funds, but those funds cannot reach the beneficiaries because there is no appropriate payment channel that gives everybody reassurance, surely it is in the Government’s interest to make that happen.

**John Glen:** I acknowledge what the hon. Lady says, but this is a non-exhaustive list. We intend to issue guidance on those issues listed in the Bill and more, as new issues evolve. We may also not need guidance in some areas that the sanctions do not cover. Where we are at cross purposes here is that people think the list is exhaustive when it is enabling and allows the Government to give the necessary guidance as required and as circumstances evolve.

We understand the concerns behind the amendments and have worked closely with NGOs to understand their needs, and we will continue to do so.

**Hannah Bardell:** I appreciate the Minister’s response to my hon. Friend the Member for Glasgow Central, but if he does not think it is the Government’s role to create those channels, whose role is it?

**John Glen:** I am not necessarily denying the role of Government in issuing guidance in a whole range of areas. What I am dealing with here is the necessity of adding the provision into the Bill when the need to give guidance is sufficiently catered for in the text of the Bill.

The Bill will put the requirements in a better place because of the new flexibility on exemptions, licensing grounds and the ability to provide general licences. We are therefore unable to agree to the level of guidance sought, and I ask the hon. Member for Bishop Auckland to withdraw her amendment.

**Helen Goodman:** I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 37 ordered to stand part of the Bill.*

*Clause 38 ordered to stand part of the Bill.*

### Clause 39

#### REVOCATION AND AMENDMENT OF REGULATIONS UNDER SECTION 1

*Amendment made:* 6, in clause 39, page 30, line 24, leave out “(d)” and insert “(h)” — (*Sir Alan Duncan.*)

*The provision amended here is a condition which applies to the power to amend regulations made under Clause 1 which state a purpose within Clause 1(2). The amendment expands the reference to Clause 1(2) so that it covers paragraphs (e) to (h) of Clause 1(2) (as well as paragraphs (a) to (d)).*

*Clause 39, as amended, ordered to stand part of the Bill.*

*Clause 40 ordered to stand part of the Bill.*

### Clause 41

#### POWER TO AMEND PART 1 SO AS TO AUTHORISE ADDITIONAL SANCTIONS

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

**Alison Thewliss:** I want to express some concerns that I mentioned on Second Reading. The clause grants a lot of powers to Ministers. It allows them to amend the definition of sanctions. What I and the House of Lords Constitution Committee are concerned about is how that is then scrutinised by Parliament. I do not know whether the Minister has had any time to think about how it might work since Second Reading, but I am concerned that the legislation does not include a mechanism to look at sanctions that is similar to the one that exists in the European Scrutiny Committee. I would like a wee bit further clarity on whether the Government have plans to do that. If not, why not? What might the mechanism look like?

**Sir Alan Duncan:** The hon. Lady makes a perfectly fair request, and I think I can give her the reassurance she is seeking. Clause 41 enables an appropriate Minister to alter the legislation to introduce new types of sanctions measures where the UK has been subject to a UN or other international obligation to do so. That, I think, is the basis of her concern, but the power is for types of sanctions measures that have not previously been predicted and therefore cannot be and are not included in the Bill.

Common types of sanctions include asset freezes, travel bans, arms embargoes and prohibitions on aviation and maritime transport. These types of sanction are included in the Bill. A recent example of where the international community developed a new type of sanction

[Sir Alan Duncan]

was in the UN sanctions imposed in respect of North Korea. A recent UN resolution, which we are obliged to follow, requires that UN member states do not grant work permits to North Koreans, save where the UN agrees in advance on a case-by-case basis. That type of restriction did not exist prior to the resolution, and in the future there may be other unforeseen types of sanction that we would be under an obligation to introduce.

Under the powers in the clause, new types of sanction can be introduced only if the UK is, or has been, under a UN or other international obligation to impose them. The clause does not enable any modification to be made to the purposes for which sanctions can be made, as set out in clause 1(1) and (2). Changes will be made through regulations via the draft affirmative procedure, to ensure that Parliament is given a full role in scrutinising such changes.

The clause will ensure that we remain in close co-ordination with our international partners and can respond to changes in how sanctions are used as a foreign policy tool. That will help to maintain the UK's leading role in this field and to address global challenges in collaboration with our partners.

*Question put and agreed to.*

*Clause 41 accordingly ordered to stand part of the Bill.*

*Clause 42 ordered to stand part of the Bill.*

### Clause 43

#### MONEY LAUNDERING AND TERRORIST FINANCING ETC

**Anneliese Dodds:** I beg to move amendment 38, in clause 43, page 33, line 12, at end insert—

“(1A) Provision made under subsection (1)(a) may in particular include provision for enabling or facilitating the detection or investigation of money laundering, or preventing money laundering, through limited partnerships registered in Scotland.”

*This amendment would ensure that regulations under this section made in relation to money laundering particularly applied to money laundering through limited partnerships in Scotland.*

It is a pleasure to serve under your chairmanship, Mr McCabe. I will probably try to move around a little bit while I am speaking to warm myself up. It is wonderful to be able to speak to amendment 38. As colleagues will have seen, it is designed to ensure that regulations made under clause 34 in relation to money laundering also apply to money laundering through Scottish limited partnerships—SLPs, as they are commonly known and as I will call them for the purpose of this speech.

SLPs are a unique form of company. We tabled the amendment because we are concerned that, in addition to their use for modern business purposes—particularly by private equity firms and property investment funds—there appears to be considerable evidence that the huge surge in their use may be linked to money laundering. That concern has certainly been raised extensively in Scotland. It needs to be heard in the House, and action surely needs to be taken.

The key difference between SLPs and other forms of limited partnership is that they have a distinct legal personality; an SLP is able to sue and be sued, but the liability of the directors is still limited. In many respects,

principally on tax, the partners within an SLP behave as they would elsewhere in the UK as part of a normal partnership, but the structure enables the company to maintain secrecy. They can also carry out other activities that other partnerships cannot—it can open bank accounts on its own account, for example. SLPs also have limited management participation requirements; the limited partners do not have to be involved directly in management, so there is less of a necessity for accountability there.

There has been some suggestion that SLPs initially proliferated partly for tax reasons. They reduce the liability of partners to UK or foreign tax on income and chargeable gains, as well as to stamp duty land tax. However, the recent increase in their number has been quite astonishing. The number of limited partnerships in Scotland has more than doubled, from just over 6,000 to nearly 15,000, since 2009. Now Scotland has more of those partnerships than England and Wales put together have ordinary limited partnerships.

3.30 pm

One worrying matter is the new regime in which companies are required to name a person with significant control. There seems to be varied evidence in this regard: Global Witness suggested that only 20% of SLPs had named a person with significant control, but other commentators have said that 30% are now complying, although that is still an incredibly low compliance rate with an important requirement. It is also interesting to note the very high number of beneficial owners named as PSCs who are either nationals or former nationals of former Soviet countries, or companies incorporated there. That compares with only about 0.01% of all limited companies across the UK. Of course, in and of itself that might just indicate that there is more awareness of this type of partnership in different areas, but the concern that many campaigning groups, lawyers and others have raised is that these SLPs can be used for the purposes of money laundering and corruption.

Transparency International, which as colleagues will know has done a lot of research on the issue, suggests that 71% of all SLPs registered in 2016 were controlled by anonymous companies based in secrecy jurisdictions such as Belize, Seychelles and Dominica. Furthermore, 113 SLPs were used to launder \$20 billion to \$80 billion between 2010 and 2014 as part of what has been called the “global laundromat”. I will go into some of the different examples in a minute.

**Hannah Bardell:** I congratulate the hon. Lady on making an excellent speech. Will she join me in paying tribute to the former Member for Kirkcaldy and Cowdenbeath, our colleague Roger Mullin, who did a huge amount of work on this? Will she acknowledge as well that despite their name—Scottish limited partnerships—these companies have little to do with Scotland? They were introduced by the UK Government under Liberal Chancellor Herbert Asquith in 1907. The operation, regulation and dissolution of SLPs remain exclusively the preserve of Westminster, so it is vital that this legislation goes through and the changes happen.

**Anneliese Dodds:** I am very grateful to the hon. Lady for bringing those matters to light; I will return to the point about this being a UK Government responsibility later, because it is enormously important. It is important

to raise our recognition of those who have done so much to uncover what has been occurring with SLPs. I also pay tribute to *The Herald* newspaper, which has done a good investigative job in this regard, and I know that Labour's Jackie Baillie has expressed her concern about Scotland's name being used potentially to enable offshore tax arrangements and worse. It is important that we look at these arrangements.

Also related to the hon. Lady's comment, there is huge concern that the unfortunate link between the name SLP and Scotland itself is potentially darkening Scotland's name. I understand that there is an advertisement that is run on a Belarus TV station, Varyag, saying,

"A company operating in the UK does not need to register with the tax authorities and is therefore automatically freed from any tax payments on an absolutely legal basis. Having registered a company in Scotland, by using offshore rules, you do not need to carry out any audits and, furthermore, there is no requirement to provide financial reports."

The TV station stressed the kudos of Scotland and the fact that it is part of Britain:

"As a result of Scotland being part of the United Kingdom it does not fall in to the black list of offshore zones",

presumably meaning either the OECD blacklist or the EU blacklist.

I will briefly mention a couple of specific cases where SLPs have been shown to be problematic, before looking at the current legal context, why this is a UK Government responsibility, and why we require Government to act and hopefully to accept our amendment. The first, which is very worrying, is the Moldovan case. According to the Organised Crime and Corruption Reporting Project, in November 2014 \$1 billion was reported to have gone missing from three Moldovan banks. Hon. Members will know that Moldova is not a well-off country—quite the opposite: although it is one of the most beautiful countries in Europe, it is one of the poorest. The corruption that was revealed in that case was enormously damaging for that nation, which has many governance challenges. The World Bank and the International Monetary Fund suspended financial aid to it after revelations about what had occurred in that siphoning off. Two companies registered on Brunswick Street in Edinburgh—a street I know well, as I am sure others do, too—kept coming up in the records for the case, which has had such a significant impact on that nation.

Another example that is commonly adduced in this regard is the Ukrainian one. A Lancashire-based firm called Fuerteventura Inter, which sounds rather like a football team, appears to have been used as an SLP. It was created in February 2015, and was used to siphon off funds from the sale of cannon shells to the United Arab Emirates. The SLP was an intermediary in that deal. The prosecutors allege that it enabled officials to take a large slice of the value of that contract.

Then there is the Azerbaijani laundromat, which I will come back to later. I am sure colleagues have heard of it, and I am sure we will hear a lot more about it in our discussions next Tuesday. "The Global Laundromat" was a piece of investigative journalism that looked into Russian money being laundered through different shell companies. That was going on until 2014. More recently, an investigation of Azerbaijani companies that came out in 2017 showed how companies including SLPs appear to have been used to hide the real ownership of payments.

This is not just about stealing from very poor people; it is about political influence. Some of the payments from the Azerbaijani laundromat were going to individuals who sit on Council of Europe working groups, including those involved in producing reports about human rights in Azerbaijan. Of course, many of the individuals involved have rejected any accusation that those funds had any influence on them. We will draw our own conclusions from looking at the paperwork and what has been said legally about that matter.

**Hannah Bardell:** I declare an interest: I represent my party in the Council of Europe. I spoke to some activists from Belarus, who raised that issue with me and talked about the damage and devastation it is causing in their country. That again highlights why this is so very important.

**Anneliese Dodds:** I am grateful to the hon. Lady for raising that issue. It is particularly important that highly respected international bodies are above any insinuation or reproach. It may be that there has been confusion and a lack of knowledge about the provenance of some of those funds, but we need to remove from the system any opacity that could give that impression.

Operation Car Wash, which came up only last month—it is funny that all of these cases use the washing metaphor, but it is clearly because they are about washing out the provenance of money—covered Brazil and Peru. A giant construction firm in those countries paid £1 billion in bribes for, it appears, political purposes, and it appears that some of the payments went through SLPs. When we look at the evidence, we see we need to have a far stronger grip on this problem.

In early summer last year, legislation was introduced by the Department for Business, Energy and Industrial Strategy to try to regulate SLPs, under which they were to be forced to disclose their beneficial owners within the next 28 days or face daily fines. I am concerned that we still do not know how many such firms have genuinely indicated their beneficial owners—I hope we will hear from the Minister on that now. I am not privy to information on how many fines have been levied, and most commentators suggest that not a single business has been prosecuted. Perhaps some have been fined but not prosecuted. Perhaps we can find out more about that.

The Opposition are concerned that more action needs to be taken. To return to our earlier exchange, it is important that the UK Government take responsibility, because they have reserved powers over Scots corporate law. The Scottish Government have asked the UK Government to act, and it appears that previous actions to require more ownership information may not have gone far enough. I hope the Minister will enlighten us on that and support our amendment.

**Alison Thewliss:** The hon. Lady has already said much of what I was going to say, so I am sure that, if that I am a bit briefer, that will be okay with everyone. We have serious concern about SLPs, and the Bill provides an opportunity to do something about it. When we know there is a problem and an opportunity to put it right, it would be negligent of us as parliamentarians to look the other way.

I understand that, even in the new regime where people with significant control should be registered, up to December 127 or so SLPs had registered via law

[Alison Thewliss]

firms, but 489 had registered via anonymous mailbox addresses, which means that the people with significant control are not there, are barely identifiable and are very hard to trace. We know from recurring stories in *The Herald* worked on hard by David Leask and the researcher and expert in this field, Richard Smith, that such companies keep the issues, scandals and money laundering behind the scenes, and that it keeps going on. We therefore need to do everything we can in every area to tackle these problems.

There is the broader issue of SLP non-compliance and the inadequacies of Companies House, which we may speak about later in our proceedings. Not having a postcode when registering a company should be a pretty simple compliance issue—the process could be stopped at that point, never mind going into the more technical detail. We therefore need to look at this issue carefully. Never mind all the overseas territories; we are allowing it to happen here, in this country, behind mailboxes in Scotland. Frankly, that is unacceptable. We need to do something about it. If we continue to let it go, the problem will not go away.

We can talk about how we might go ahead with this issue in terms of enforcement, because other countries have tackled it. My colleague Roger Mullin and others have worked on it for many years, and we should take the opportunity to look at it here and now. If the Government are not willing to accept any of the amendments, I urge them to table their own and not to let the opportunity pass.

**John Glen:** I am grateful to both Front-Bench spokespeople for their speeches, and I will try to address the detail of the points they raised. The essence of the case made by the hon. Member for Oxford East was about whether the Bill covers SLPs. First, I draw attention to clause 9(5), which confirms that “person” includes individuals, corporate bodies, unincorporated bodies, organisations and

“any association or combination of persons.”

The Bill therefore does include SLPs, and we can make anti-money laundering provisions for them.

3.45 pm

Amendment 38, as the hon. Lady set out, makes it explicit that future regulations made under clause 43 have the power to include provisions that enable or facilitate the detection, investigation or prevention of money laundering through limited partnerships registered in Scotland. However, the amendment would have no effect on the powers contained in clause 43. The power to make provision that relates to Scottish limited partnerships for the purposes of the detection, investigation or prevention of money laundering is already contained in clause 43(1)(a).

I recognise that hon. Members have legitimate concerns, as I do, about the transparency of certain Scottish limited partnerships. The hon. Member for Glasgow Central set out on Second Reading that

“SLPs have become a cover for all manner of murky and dubious behaviour.”—[*Official Report*, 20 February 2018; Vol. 636, c. 93.]

I assure her and other hon. Members that the Government have an active and ongoing reform agenda in this area.

**Hannah Bardell:** Does the Minister recognise the reputational damage to Scotland? We have a Liberal Chancellor to thank for that, but it is very important that we make these changes, because Scotland’s reputation is being damaged through no fault of its own and by legislation over which we have no power.

**John Glen:** Absolutely, and that is why it is important that the UK Government act. In June last year, Scottish limited partnerships were brought into the scope of the public register of corporate beneficial ownership maintained by Companies House. That was welcomed by the former Member for Kirkcaldy and Cowdenbeath, who is a leading campaigner on the issue, as was mentioned earlier. He said it was

“the first practical recognition SLPs have been a significant problem”.

That reform further required SLPs to submit an annual confirmation statement that information held on the register is accurate, and to keep the information updated on an ongoing basis. In cases of non-compliance with the duties to deliver information about people with significant control—PSC information—to Companies House and to keep it up to date, officers of Scottish limited partnerships convicted on indictment can face a sentence of up to two years’ imprisonment, a fine, or both.

Additionally, the Department for Business, Energy and Industrial Strategy sought views last year on whether changes need to be made to limited partnership law to further address the concerns that have been raised about misuse of structures, including Scottish limited partnerships. Responses to that call for views are being analysed and options for reform actively considered. BEIS will announce its next steps shortly, and after a response to the call for evidence is published, identified options for reform will be subject to public consultation in the usual way. That process will be used to inform any necessary further reforms to the UK’s treatment of limited partnerships, including Scottish limited partnerships.

I hope that I have addressed in detail the range of concerns about Scottish limited partnerships.

**Alex Norris** (Nottingham North) (Lab/Co-op): Does the Minister feel that it is possible for just 20 Companies House staff to have oversight of perhaps 400,000 entities under these arrangements?

**John Glen:** I would hope that BEIS will address the issue of what resourcing is necessary to do that sort of work. That will be something that the Department will seek to respond to in the consultation.

**Jo Stevens** (Cardiff Central) (Lab): Is the Minister aware that Companies House has been making large-scale redundancies for the past few years?

**John Glen:** The issue is really about the effectiveness of the regime. As I said, it is matter of what BEIS determines it needs to do to address the problem. Clearly, questions can be asked about the plans that will be put in place when they are forthcoming.

As clause 43 already gives the Government the power to make provision for the purposes of combating money laundering by Scottish limited partnerships, I ask the hon. Member for Oxford East to withdraw the amendment.

**Anneliese Dodds:** I am grateful to the Minister for his comments. I know that he is a very sincere and engaged Minister, but I am concerned that the direct questions that we levelled have not been answered. We asked for an indication of exactly how many of these SLPs had provided that beneficial ownership information. We asked for an update on that, but we have not had it. I also asked for an indication of how many of these SLPs have been prosecuted; I did not receive that, either. I did not receive an indication of how many have been fined under this new regime, which was set up last June. Surely we have had a number of months of operation of that new regime in order to adjudge whether it is truly effective.

I appreciate what the Minister said about BEIS conducting a review, but if the existing system is not working correctly, or if we have doubts about its operation, given the huge damage that these structures already seem to have inflicted, surely we need to have a reference to them in the Bill? We need to show that we are taking this matter seriously, and particularly that the Westminster Government are taking it seriously, in the light of comments from Government figures in other nations and their concerns about the use of SLPs.

I give the Minister one last chance to answer those questions and give that information: the number of prosecutions, the number of fines, and the number of SLPs indicating beneficial ownership information. If we do not get that information, we will have no choice but to press our amendment to a vote.

**John Glen:** I am very sorry but I cannot give those precise details at this point. I undertake to write to the hon. Lady, as soon as I can with that information, but I can do nothing from this place at this moment to provide it.

**Anneliese Dodds:** I wish to press the amendment to a vote.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 9, Noes 10.*

#### Division No. 9]

#### 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	Macleay, Rachel
Duncan, rh Sir Alan	Prentis, Victoria

*Question accordingly negatived.*

**John Glen:** I beg to move Government amendment 7, in clause 43, page 33, line 13, leave out subsection (2).

*This amendment removes the provision that prevents contraventions of regulations under Clause 43 (money laundering and terrorist financing etc) from being enforceable by criminal proceedings.*

In moving this amendment, I acknowledge the recognition that this House has given to the importance of a rigorous anti-money laundering regime. To ensure the robustness of future anti-money laundering regulations, corresponding powers to create criminal offences are necessary. At the same time, I recognise that Lord Judge and others in the other place expressed significant concerns about the scope of criminal offence powers in the Bill upon its introduction. It is important to note that those concerns were not about the existence of offences for breaching anti-money laundering regimes; instead, they were concerns about the unchecked ability of Ministers to create offences.

The amendment reinstates the power to create criminal offences, while the package of amendments as a whole directly addresses those concerns through additional safeguards, which narrow the scope of and the ability to use these powers. I shall elaborate upon these safeguards, which the Government have discussed with Lord Judge since the passage of this Bill through the other place, and then I will turn to amendments 10, 11 and 12. Before I do so, however, it would be useful to consider how anti-money laundering regulations have operated with criminal offence powers in the past.

In accordance with standard practice, when implementing EU directives on money laundering, criminal offences in this area have been created by Ministers in secondary legislation made under the powers in the European Communities Act 1972. That was done under the negative procedure, with no prior consultation with Parliament and no need to seek Parliament's consent. That position will be improved for future money laundering regulations made under the Bill. They will now be made under the draft affirmative procedure, so Parliament will consider and vote on them before they come into force. Using the affirmative procedure is a direct response to the concerns raised, to ensure that where changes need to be made, they will be properly scrutinised.

Criminal offences were created by both the Money Laundering Regulations 2017 and their predecessors, the Money Laundering Regulations 2007, which were brought into force by the then Labour Government. As hon. Members can see, the approach has been supported on a cross-party basis in the past. The detailed provisions in such regulations set standards and procedures for regulated businesses. They are designed to prevent money laundering and terrorist financing and to help law enforcement authorities to investigate those crimes, and should also be seen in the context of a separate penalty regime for the key substantive money laundering offences. Such offences are established under part 7 of the Proceeds of Crime Act 2002, which provides for more punitive prison sentences of up to 14 years, for example for those guilty of directly laundering the proceeds of crime. Money launderers are typically prosecuted through those offences as they allow for longer sentences.

Without the power to create new criminal offences in secondary legislation, the enforceability of new regulations would be seriously weakened. That would dramatically lower the effectiveness of the UK's anti-money laundering regime. More generally, it is not unusual for requirements to be set in delegated legislation that can be enforced using criminal penalties. In the area of financial services, for example, the regulated activities order, made under the Financial Services and Markets Act 2000, specifies which activities are or are not regulated. Carrying on such activities without permission from the regulator is

[John Glen]

a criminal offence. It remains the position of the Government that it is neither unusual nor improper for Parliament to confer powers of that type to Ministers.

**Helen Goodman:** I just want to clarify with the Minister the status of his conversations with Lord Judge. I do not know if he was trying to give us the impression that Lord Judge had agreed the amendments. I felt on Tuesday that he was trying to give that impression, so I spoke to Lord Judge, who told me that he had indeed had conversations with Ministers, but he did not say to me that he had approved the amendments. Is the Minister now trying to tell us that Lord Judge has agreed Government amendment 7?

**John Glen:** What I can tell the Committee is that officials have had sensitive conversations with Lord Judge. It is not for us to presume the outcome of his deliberations at this point. I am setting out what we have discussed and the consequence of those discussions. Clearly, Lord Judge will make his position known in his own way in due course.

I would like to set out why the ability to create criminal offences for the UK's anti-money laundering regimes is necessary. The issue has been considered previously, when the Government consulted specifically on whether to remove the criminal offence provisions in the Money Laundering Regulations 2007. The British Bankers Association stated that removing such provisions would be at odds with the objective of driving an effective anti-money laundering regime.

Further, the Crown Prosecution Service argued that provisions for creating criminal offences in the Money Laundering Regulations that are different from those of the Proceeds of Crime Act 2002 serve a separate and useful function in tackling money laundering. In some instances, prosecuting according to the Proceeds of Crime Act could jeopardise ongoing investigations. It said that in such cases, the ability to prosecute for a regulatory offence relating to defective anti-money laundering counter-terrorist financing systems can be an important tool. Finally, HMRC noted in response to the same consultation that abolishing criminal sanctions for breaches of regulations carries significant risk to its ability to tackle money laundering.

4 pm

Those organisations, representing industry, law enforcement and AML supervisors, were all clearly of the view that the criminal offences contained within money laundering regulations are a valuable tool in the UK's wider work to combat illicit finance. Removing the power to create further, appropriately targeted criminal offences through secondary legislation would simply restrict future Governments' abilities to continue the UK's existing approach to criminalising breaches of anti-money laundering requirements. The effect would be to preserve the existing criminal offences contained in our current regulations but to weaken our anti-money laundering regime as future regulations are brought into force, whether to address emerging risks or to comply with new international standards.

Hon. Members should also be aware that the amendment is part of a wider package. Government amendment 11, to which I hope to speak very shortly, provides appropriate

safeguards around the use of the power. When it is to be used, the appropriate Minister must report to Parliament that, on consideration, there are good reasons for creating an offence and for setting penalties at the given levels; and the Minister must inform Parliament what those good reasons are. Parliament may then consider those reasons before voting to bring the regulations into force. The safeguards were created specifically to address concerns expressed by Lord Judge in the other place. We listened carefully and Government amendment 11 is our response.

**Anneliese Dodds:** I am grateful to the Minister for his clarification. I do not want to go around the houses again, as we did at some length on Tuesday. I am grateful to my hon. Friend the Member for Bishop Auckland for explaining why we are concerned about the lack of accountability in general for measures imposing criminal sanctions throughout the Bill. I recognise what the Minister said about this being a separate regime; it is obviously not the same one as is applied in the case of sanctions. The offences that can be applied are lesser in their extent—for example, we are talking about shorter prison sentences in the Bill—but we still have many of the same concerns that we expressed previously.

There has been some shift on the part of the Government, but I suppose it is difficult for any of us to judge whether the spirit of Lord Judge has been complied with, or whether there has merely been some kind of interpretation of a clutch of some of his words. Certainly we will look at what is written on the tin, but to us it does not appear to constitute recognition of the concerns expressed or the kind of meaningful engagement that we need. We are doing something very significant in the Bill, which in effect creates de novo a sanctions and anti-money laundering regime. Much stronger accountability is needed than is in the Bill, even as amended by the Government. We have the same concerns as we expressed previously, so we will resist the amendment.

**John Glen:** I acknowledge the outstanding concerns. I think I have set out clearly the rationale, why we need the provisions and how they respond suitably to Lord Judge's concerns. I acknowledge the genuine difference of opinion, but I have set out the Government's position and it is now for the Opposition to do as they wish.

*Question put.* That the amendment be made.

*The Committee divided:* Ayes 10, Noes 9.

#### Division No. 10]

#### 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.*

*Amendment 7 agreed to.*

*Clause 43 ordered to stand part of the Bill.*

## Schedule 2

## MONEY LAUNDERING AND TERRORIST FINANCING ETC

**John Glen:** I beg to move Government amendment 10, in schedule 2, page 53, line 32, leave out paragraph 15 and insert—

“15 Make provision—

- (a) creating criminal offences for the purposes of the enforcement of requirements imposed by or under regulations under section 43, and
- (b) dealing with matters relating to any offences created for such purposes by regulations under section 43,

but see paragraphs 18 and 19.”

*This amendment, read with Amendment 12, makes clear that any offences included in regulations under Clause 43 must be for the purposes of enforcing requirements imposed by or under regulations under Clause 43 or (while they remain in force) the Money Laundering Regulations 2017.*

**The Chair:** With this it will be convenient to discuss Government amendment 12.

**John Glen:** Amendment 10 is a consequence of the proposed new paragraph 20A, which will be inserted by amendment 11. Paragraph 20A(1) refers to offences created for the purposes of the enforcement of requirements imposed by or under regulations under clause 43.

The amendment further narrows the powers for future regulations to make provision for new criminal offences, as I referred to in the discussion on the previous amendment, as compared with the Bill when it was first introduced in the other place. It would make the powers subject to the requirement for a report to Parliament, along the same lines as amendments to part 1 of the Bill. That report would identify the offences created and their respective penalties, and would confirm that the Minister has considered that there are good reasons for creating those offences and setting the penalties at the levels at which they have been set. It would ensure that the Minister does not use the power lightly and is fully accountable to Parliament for doing so.

I take the opportunity to remind hon. Members that these safeguards are contained in Government amendment 11, to which I will turn shortly. These amendments are part of the wider package that inserts safeguards on the use of this power, and have been designed to directly address the concerns raised by Lord Judge and others in the other place.

The amendment restricts the scope of the power to create future offences to offences created for the purposes of enforcing future anti-money laundering regulations. Amendment 12 ensures that references made to regulations made under clause 43, with respect to paragraph 15 of schedule 2, and requirements imposed by regulations made under clause 43, with respect to paragraph 20A of schedule 2, also include reference to, or requirements imposed by, the Money Laundering Regulations 2017. That ensures that the safeguards proposed by Government amendment 11 will also apply to possible future changes made to the 2017 regulations.

The amendment ensures that it is possible for new money laundering offences to be created by amending the 2017 regulations. It will therefore enable the Government to create new offences in order to respond to, for

example, emerging risks identified by the national risk assessment of money laundering and terrorist financing, which was published in October 2017, or in response to the ongoing review of the financial action taskforce of the UK’s anti-money laundering and counter-terrorist finance regime. When the Government do so, using the powers contained in clause 43, the enhanced procedural protections set out in the amendment will apply.

**Anneliese Dodds:** I am grateful to the Minister for that explanation. First, in relation to Government amendments 10 and 11, the Opposition would like the accountability provisions to be much more extensive than they are. However, given that the Government just won the last vote on an amendment, it would be rather self-defeating for us to oppose these amendments at this stage.

I have a question on Government amendment 12; perhaps the Minister can enlighten us a little bit. I understood that the whole Bill, when it comes to its money laundering provisions, amends the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. I am therefore slightly confused about the timing and scheduling. Why are the Government bringing those regulations into the Bill when they were not there in the first place? I wonder whether the Minister can enlighten us.

**John Glen:** This is an enabling measure that allows us to take the action necessary. I am not sure I quite grasped the hon. Lady’s point. I think I will need to write to her to clarify that so that I do not say anything that misrepresents the Government’s position.

*Amendment 10 agreed to.*

**John Glen:** I beg to move amendment 11, in schedule 2, page 54, line 11 at end insert—

“20A (1) In this paragraph ‘relevant regulations’ means regulations under section 43 which create any offence for the purposes of the enforcement of any requirements imposed by or under regulations under section 43.

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

- (a) specifies the offences created by the regulations, indicating the requirements to which those offences relate,
- (b) states that the Minister considers that there are good reasons for those requirements to be enforceable by criminal proceedings and explains why the Minister is of that opinion, and
- (c) in the case of any of those offences which are punishable with imprisonment—
  - (i) states the maximum terms of imprisonment that apply to those offences,
  - (ii) states that the Minister considers that there are good reasons for those maximum terms, and
  - (iii) explains why the Minister is of that opinion.

(3) Sub-paragraph (4) applies where an offence created by the regulations relates to particular requirements and the Minister considers that a good reason—

- (a) for those requirements to be enforceable by criminal proceedings, or
- (b) for a particular maximum term of imprisonment to apply to that offence,

is consistency with another enactment relating to the enforcement of similar requirements.

(4) The report must identify that other enactment.

(5) In sub-paragraph (3) ‘another enactment’ means any provision of or made under an Act, other than a provision of the regulations to which the report relates.

(6) In sub-paragraph (2) ‘the required time’ means the same time as the draft of the statutory instrument containing the regulations is laid before Parliament.

(7) This paragraph applies to regulations which amend other regulations under section 43 so as to create an offence as it applies to regulations which otherwise create an offence.”

*This amendment requires that where regulations under Clause 43 are made which include offences, a report specifying the offences and giving reasons for any terms of imprisonment that apply to them must be laid before Parliament.*

As I said earlier, amendment 11 provides for an important safeguard that will apply when powers are used to create criminal offences. It will require the Government to lay a report before Parliament explaining the Minister’s reasons for using the powers—amendments 10, 11 and 12 are really a package—whenever a criminal offence is created in new or amended anti-money laundering regulations under clause 43.

The amendment requires such a report to be laid at the same time as the draft statutory instrument containing the relevant regulations. Regulations under clause 43 will of course be made using the draft affirmative procedure, unless they update the UK’s list of high-risk jurisdictions in connection with which enhanced due diligence measures are required. The report will therefore facilitate effective parliamentary scrutiny of changes to the UK’s AML regime and will go further than the status quo in enabling Parliament to scrutinise the creation of criminal offences through money laundering regulations.

The amendment specifies that the following elements should be included in the report: the offences that have been created and the requirements to which they refer; the good reasons why those requirements need criminal offences; the maximum prison terms for any offences created that are punishable by imprisonment; the good reasons for setting the maximum prison terms at the levels at which they have been set; and, where the creation of an offence is justified by reference to an existing offence in another enactment, reference to that other enactment.

The requirement for the Minister to demonstrate that they have good reasons for using the power ensures that it cannot be used lightly. I hope hon. Members agree that such reports will provide increased transparency about the reasons for creating criminal offences and give Members a solid basis for holding the Government to account when debating anti-money laundering regulations made under the Bill.

Nevertheless, the Government remain very aware that creating criminal offences and setting penalties in regulations is a serious matter that is not to be undertaken lightly. I am therefore happy to repeat reassurances and existing safeguards that the Government introduced in the other place. As it stands, a criminal offence can be established under clause 43 only if regulations provide either a mental element necessary for the commission of the offence or a defence to it, or both. That will maintain the existing policy position under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and preserve the deterrent effect established by criminalising breaches of anti-money laundering and terrorist financing regulations.

The amendment is an additional safeguard to the changes the Government have already introduced in response to concerns raised in the other place by Lord Judge and others. We listened to those concerns, and the amendment addresses them. It will ensure that Ministers cannot create criminal offences or set penalties—up to a maximum of two years’ imprisonment—without good reasons, and that Parliament has all the information it needs to hold Ministers to account.

That contrasts starkly with current practice, in which new criminal offences are created through statutory instruments made under section 2(2) of the European Communities Act 1972 under the negative procedure, without any need to state reasons, with no information about such reasons being provided to Parliament, and with no requirement for a vote in Parliament to approve them. The measure is, therefore, a better way of ensuring that proper safeguards are placed in the Bill with respect to offences, rather than removing the ability to create them, and so weakening the UK’s anti-money laundering regime.

**Anneliese Dodds:** I am grateful to the Minister for his comments. I shall not dwell on the matter, because we have already talked about the amendment to an extent in a previous debate. I repeat our concern that the regime is not sufficiently accountable. Reference to the previous regime may be inappropriate, because the framework in that case was set at EU level, and it was a question of implementing it in the UK. Surely with the brave new dawn that some see coming as we leave the EU, we should be aiming at a system that is as accountable as possible.

In our previous discussions about offences in relation to sanctions, Ministers suggested that there could be a need for speed in the creation of new regimes or new types of criminal offence, because, for example, a human rights challenge could arise suddenly, or there could be gross violations of human rights in a particular country, and we might need to respond quickly. Surely such a situation does not apply to money laundering. It is peculiar that the same almost fast-track, post hoc style of system should be applied to criminal offences to do with money laundering. It would be helpful to have more information about why the Government believe that in the relevant category of criminal offence, there cannot be the same—or at least movement towards the same—degree of scrutiny as there would be in other contexts, when the question of speed surely does not apply. In fact, the Minister did not mention speed.

**John Glen:** I take the hon. Lady’s concerns seriously. As my right hon. Friend the Minister said earlier, when we were discussing similar matters on Tuesday, we should be happy for hon. Members to meet officials to discuss outstanding concerns. I have set out in the amendments a clear affirmative process for laying a statutory instrument before the House, in a situation where Parliament will be able to discuss the requirement and its extent, the underlying rationale, and a mechanism for reporting to Parliament. If there are particular issues and specific cases that the hon. Lady wants to raise, I suggest that we convene a conversation with officials to deal with them. As we move forward, I am keen to secure the widest possible support and consensus about the Bill.

*Amendment 11 agreed to.*

*Amendment made:* 12, in schedule 2, page 54, line 39, at end insert—

“( ) In paragraph 15 (offences), any reference to regulations under section 43 includes the Money Laundering Regulations 2017.

( ) In paragraph 20A (report in respect of offences)—

- (a) the reference in sub-paragraph (1) to requirements imposed by or under regulations under section 43 includes requirements imposed by or under the Money Laundering Regulations 2017, and
- (b) the reference in sub-paragraph (7) to other regulations under section 43 includes the Money Laundering Regulations 2017.”—(*John Glen.*)

*This amendment has the effect that, while the Money Laundering Regulations 2017 remain in force, offences may be created by regulations under Clause 43 for the purposes of enforcing requirements in the 2017 regulations.*

*Schedule 2, as amended, agreed to.*

*Ordered, That further consideration be now adjourned.*  
—(*Mike Freer.*)

4.20 pm

*Adjourned till Tuesday 6 March at twenty-five minutes past Nine o'clock.*

**Written evidence reported to the House**

SAMLB 01 Richard Osborne, founder of eFiling

SAMLB 02 Amnesty International

SAMLB 03 Transparency International UK

SAMLB 04 Global Witness