# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# NATIONAL SECURITY BILL

*Fourth Sitting*

*Tuesday 12 July 2022*

*(Afternoon)*

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**not later than**

**Saturday 16 July 2022**

**The Committee consisted of the following Members:**

*Chairs:* Rushanara Ali, † James Gray

† Bell, Aaron *(Newcastle-under-Lyme)* (Con)
† Eagle, Maria *(Garston and Halewood)* (Lab)
† Elmore, Chris *(Ogmore)* (Lab)
† Everitt, Ben *(Milton Keynes North)* (Con)
† Hart, Sally-Ann *(Hastings and Rye)* (Con)
† Higginbotham, Antony *(Burnley)* (Con)
Hosie, Stewart *(Dundee East)* (SNP)
† Jones, Mr Kevan *(North Durham)* (Lab)
† Jupp, Simon *(East Devon)* (Con)
† Lynch, Holly *(Halifax)* (Lab)
† McPartland, Stephen *(Minister for Security)*
† McDonald, Stuart C. *(Cumbernauld, Kilsyth and Kirkintilloch East)* (SNP)
† Mann, Scott *(North Cornwall)* (Con)
† Mohindra, Mr Gagan *(South West Hertfordshire)* (Con)
† Mumby-Croft, Holly *(Scunthorpe)* (Con)
† Phillips, Jess *(Birmingham, Yardley)* (Lab)
Sambrook, Gary *(Birmingham, Northfield)* (Con)

Huw Yardley, Bradley Albrow, Simon Armitage, *Committee Clerks*

**† attended the Committee**

# Public Bill Committee

*Tuesday 12 July 2022*

*(Afternoon)*

[James Gray *in the Chair*]

## National Security Bill

### Clause 7

Meaning of "prohibited place"

2 pm

**The Minister for Security (Stephen McPartland):** I beg to move amendment 5, in clause 7, page 7, line 3, at end insert—

"(ca) any land or building in the United Kingdom or the Sovereign Base Areas of Akrotiri and Dhekelia which is—

(i) owned or controlled by the Security Service, the Secret Intelligence Service or GCHQ, and

(ii) used for the functions of the Security Service, the Secret Intelligence Service or GCHQ;".

*This amendment and Amendments 7 and 8 make provision for sites used by the intelligence services to be prohibited places.*

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

Government amendments 6 to 8.

Clause stand part.

Clause 8 stand part.

**Stephen McPartland:** Amendments 5 to 8 make critical additions to the definition of "prohibited place" in clause 7. The sites used by the UK's intelligence services are some of our most sensitive locations and must be afforded the measures and protections given by the wider prohibited places provisions. These measures will mean that those who commit unlawful conduct can face prosecution under either of the two new prohibited places offences in clauses 4 and 5. Moreover, the police will have powers to stop people engaging in conduct in relation to a prohibited place that may harm the safety or interests of the United Kingdom. While the Government initially intended to add these sites by way of regulations, on reflection we concluded that it would be preferable to give Parliament the opportunity to debate the provisions up front—lucky me!

The amendments make provision for sites used by the intelligence services to be prohibited places under the meaning of "prohibited place" in clause 7. Under amendment 5, any land, building or part of a building used for the functions of the intelligence services will be designated only if it is also owned or controlled by those services. That offers safeguards so that places used temporarily for the functions of the intelligence services would not be designated; that would not be proportionate. I will not dwell on amendments 6 to 8, which are consequential, centralising the definition of a building for the purpose of the clause and providing a definition of GCHQ.

Turning to clause 7 stand part, section 3 of the Official Secrets Act 1911 sets out the places that are, or can be by declaration, a prohibited place under existing legislation. They are mainly defence-related sites or those that are used, or can be used, in times of war. Clause 7, which replaces those provisions, defines what sites will be prohibited places for the purposes of the two offences in clauses 4 and 5 and the police powers in clause 6, and it has been drafted to continue to capture the majority of the sites that are set out as prohibited places in the existing provisions.

The language and drafting has been simplified to ensure that there is clarity about what is or is not a prohibited place under the clause, removing long lists of terms that are less relevant for modern legislation. The definition in the clause includes Crown land or a vehicle in the UK or the sovereign base areas of Akrotiri or Dhekelia used for UK defence purposes or for the defence of another country. That covers the range of defence sites, including military barracks, bases and military headquarters.

Limiting prohibited places to Crown land in the UK or the sovereign base areas ensures that the provisions retain a focus on places important for UK defence, and that the range of sites covered does not become disproportionate or impractical. The definition is extended to sovereign base areas in Cyprus because there are several military bases there that are important for UK defence and should be covered by these provisions, as they are now.

Clause 7 also ensures that we can continue to capture defence vehicles as prohibited places. A vehicle used for defence purposes would include military transportation that is either sensitive in itself—for example, aircraft, vessels, submarines or tanks—or used for the purposes of transporting sensitive defence technology, equipment or weaponry. That may include trains or convoys used for the purposes of transporting weaponry. It is crucial that those vehicles are afforded the protection that the prohibited places regime provides.

Clause 7 also designates Crown land or vehicles in the UK or the sovereign base areas used for the purposes of the defence of a foreign country or territory. It is imperative that these provisions extend to and protect the sites and vehicles that the UK's allies use and operate. For example, there are several military bases in the UK out of which our allies operate; those need to continue to be afforded the protection given by the prohibited places regime. Lastly, clause 7 covers buildings or vehicles designated by regulations made under the clause 8 designation power.

Clause 8 provides for the Secretary of State to declare additional sites as prohibited places by way of secondary legislation. In order to do so, the Secretary of State is required by the clause to reasonably consider the designation necessary to protect the safety or interests of the United Kingdom. The designation can be made either by listing specific sites or vehicles or by introducing a description of sites or vehicles. Any site that met such a description would thereby be designated—for example, the listing of UK defence vehicles would capture military aircrafts, tanks, submarines and vessels. The clause maintains our existing ability to designate sites while ensuring it is appropriately modernised and futureproofed, as recommended by the Law Commission.

When deciding whether a designation to declare an additional prohibited place through the power in clause 8 is necessary to protect the safety or interests of the United Kingdom, the Secretary of State must have regard to certain matters, including the purpose for which the place is used; the nature of the information held, stored or processed on the land or in the building or vehicle; and the nature of any equipment, technology or material that is located on the land or in the building or vehicle. That requirement provides safeguards to ensure that only sites at risk of harmful activity can be designated as prohibited places.

The power to designate additional prohibited places is limited to land or buildings in the United Kingdom or the sovereign base areas in Cyprus, or any vehicle. Although it may seem broad to enable the designating of any vehicle around the world as a prohibited place, in most instances it would be possible to capture harmful activity at such vehicles only within the United Kingdom or in countries with which we have extradition agreements, given the difficulty of enforcing the offence overseas. It is beneficial to be able to designate a vehicle anywhere in the world because, unlike land or buildings, vehicles are clearly capable of being moving targets at different locations.

In the near term, the Government intend to designate as prohibited places certain sites in the nuclear sector, including major licensed nuclear sites. Specific nuclear sites such as Sellafield and Dounreay are currently designated as prohibited places under the existing provisions of the Official Secrets Act 1911. The Government want to ensure that sites in the sector continue to be afforded protection under the reformed prohibited places regime. Consultation is currently ongoing with the nuclear sector to ensure that the range of places that require designation as prohibited places are captured and that the impact of any designation is fully considered before a decision to designate is made.

Given that in rare cases it may be necessary to rapidly designate a site as a prohibited place in response to intelligence about an imminent threat at a certain location, the reformed designation power is subject to the negative parliamentary procedure. The power could be needed to rapidly designate, for example, medical research facilities used during a public health crisis that may be the target of state threat activity. Even in such rapid cases, the Secretary of State must still reasonably consider designation necessary to protect the safety or interest of the United Kingdom and we would expect that, where reasonably practicable, the Secretary of State would consult with the landowner.

A designation power to declare additional prohibited places is a crucial part of the reformed regime. By futureproofing the provisions in such a way, we can continue to capture and deter those who seek to conduct harmful activity at the United Kingdom's most sensitive sites, as the threat landscape will undoubtably evolve over the coming years. I ask the Committee to support the inclusion of clauses 7 and 8 in the Bill and to agree to the amendments.

**Holly Lynch** (Halifax) (Lab): Let me take clauses 7 and 8 and Government amendments 5, 6, 7 and 8 together. As the Minister has outlined, clause 7 defines a prohibited place for the purposes of clauses 4 to 8. The definition includes Crown land and vehicles used for defence purposes; places used for the invention, development, production, operation, storage or disposal of weapons; and land, buildings or vehicles designated by regulations made under clause 8.

Clause 8 provides for the Secretary of State to declare additional sites as prohibited places by way of secondary legislation. This will ensure that additional sites that are vulnerable to state threat activity can be designated when it is considered necessary. The Committee will note that, historically, the list of prohibited places has had a strong, if not total, military focus.

We just need to read the legislation to be struck by how dated it is. The Official Secrets Act 1911 defined a prohibited place as:

"any work of defence, arsenal, naval or air force establishment or station, factory, dockyard, mine, minefield, camp, ship, or aircraft belonging to or occupied by or on behalf of His Majesty, or any telegraph, telephone, wireless or signal station, or office so belonging or occupied, and any place belonging to or occupied by or on behalf of His Majesty"

and so on. While reflective of the contemporary climate and the threats posed to the UK, this list has long been out of date. We therefore welcome this expansive update for defining what a prohibited place is, as well as giving the Government the ability to adapt the list where there is a reasonable case to do so. In the light of that, we recognise that Government amendments 5, 6, 7 and 8 complement the clause in that aim.

That said, I did probe the Law Commission during last Thursday's evidence session on this point. It is important that this legislation is laid in such a way that it is not used by Government or future Governments to infringe on other democratic freedoms. During the consultation period of the Law Commission's report on the Official Secrets Act, a number of stakeholders expressed concern about giving the Home Secretary such powers to designate a new site as a prohibited place.

The *Trinity Mirror* raised concern that an unchecked power to create designated sites based on national security may create a new criminal offence without parliamentary debate and could potentially stifle legitimate investigations in the public interest. WhistleblowersUK stated that the list should not end up being widened to include council officers or schools, for example. It would be incredibly worrying if a Home Secretary interpreted this power to allow himself or herself to mark places that served a purpose in the execution of an unpopular Government policy, for example, as a prohibited place. I outlined these concerns to Dr Nicholas Hoggard of the Law Commission, who provided some reassurance. He said,

"What is good to see about the powers under this Bill is they are quite principled powers. The basis on which the Secretary of State can define something as a protected place is much more transparent. There are just three limbs that are easy to understand. That basis for affording the Secretary of the State the power is much more useful. It is more transparent, but it also enables us to capture within the offence places where

there is actually a real risk of harm arising from hostile state activity. On that front, I would say the power is good in so much as it aligns with the spirit of our recommendation. The fact that there will be parliamentary oversight of this process is important. It was a fundamental feature of our recommendations, and the negative resolution procedure is an important part of that process. The Secretary of State's powers are more effective than is permitted under the current law, but also there is sufficient oversight."—[*Official Report, National Security Public Bill Committee,* 7 July 2022; c. 51, Q96.]

*[Holly Lynch]*

I look to the Minister for the same political assurances: that such powers would not be used should the Government find that to declare somewhere a prohibited site would serve a purpose in the execution of an unpopular Government policy, for example. Having gone through the prohibited places National Security Bill factsheet on the Government website, I have already asked the Minister what information should be in the public domain to confirm that somewhere is a prohibited site.

I completely accept that somewhere might be so secure that extensive signage and its inclusion on any such list might not be appropriate. However, in the event of our Pokémon GO example, it is about being able to check without needing to travel to a prohibited place to observe the signage to find out, which might itself bring someone in scope of earlier offences. I want to ensure that the status of such a site, the restrictions and the consequences of not adhering to those restrictions are appropriately and clearly communicated to the public.

Before closing, I want to bring the Minister's attention to clause 7, where we have sovereign based areas overseas for UK defence purposes. He has made the undertaking to consider military powers within the earlier clauses on police powers. It is my understanding that the Ministry of Defence police would not provide that service to these sites deemed to be prohibited places within clause 7. Once again, he might need to write to us to work through some of that detail further.

**Mr Kevan Jones** (North Durham) (Lab): Mr Gray, we know that it is officially summer when you remove your jacket.

**The Chair:** Order. In 25 years in this place, I have never once removed my jacket until now. I am embarrassed!

2.15 pm

**Mr Jones:** Possibly this historic day shows the effects of global warming.

I was a little surprised at some of these amendments, to say the least. I want some clarification first of all, and then I will come to some other issues. Clause 7 says that a "prohibited place" relates to Crown land used for the extraction of

"metals, oil or minerals for use for UK defence purposes".

I would like to define why it has been outlined in that way in the Bill.

I found Government amendment 5 quite surprising. There are quite a lot of assets that our defence and intelligence use around the world that are not known about, and it is important that they are not in the public domain. Government amendment 5 identifies a military area or base, but the Minister will know—or he might not yet have been briefed on this—that many sites around the world are used for defence and intelligence purposes; those are not in the public domain for very good reasons. How do they come into the scope of the Bill? I would not suggest for one minute that we should list them all—if we knew where they all were, that would be wrong. But I want to know how the legislation intersects with the protections that those sites clearly need.

The Bill talks of the Crown estates that we actually hold or control, but there are a number of occasions where we are collocated with other forces. We do not control those areas, although our defence and intelligence services will be using them. I am trying to think of a couple of examples. A few weeks ago I was in Lithuania with the rapid reaction force, a coalition of different nations under NATO, and the UK contingent was located in a wood outside Tallinn. That deployment was a temporary arrangement. How would that be defined under the Bill? Technically, that area is under the control of the Lithuanian defence force. Would that operation be classified in the Bill?

Likewise, I look back to deployments in Afghanistan and Iraq and the green zone, for example. We clearly had defence and intelligence assets there, but we did not control a lot of those areas in terms of force protection or even areas shared with other nations. How does the Bill cater for the jointness of those operations, some of which will be temporary and some permanent?

I accept that it would be completely wrong to put all these sites into the Bill but it is important that we understand how those sites—temporary or permanent—interact with the Bill. This morning, my hon. Friend the Member for Halifax mentioned the Pokémon question and I raised the flying eagle. How will the Bill be effective when it comes to such a person being seen to penetrate a prohibited area? Will it catch people who end up there by accident?

I support the amendments, but think they need a bit more clarification. If the Minister does not know the answer to my questions, I will be happy for him to write to me.

**Stuart C. McDonald** (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): Clause 7 and the Government amendments to it seem to make sense; my concern is about clause 8. I read the exchange that the shadow Minister referred to, when she asked the Law Commission about the broad powers in clause 8; it was one of the very rare occasions when I was not absolutely convinced by the answer that came back. At the end of the day, clause 7's definition of "prohibited place" is very defence oriented, and it will now be defence and security oriented. But clause 8 opens the definition up to any sort of land at all and the nebulous concept of the safety or interests of the United Kingdom: if the Secretary of State considers it reasonably necessary for the safety of UK interests, a place can be added to the list.

I worry about immigration detention facilities or a fracking site being added to the list. Regardless of the rights or wrongs of the policy, that is a fairly significant extension to how the whole policy area operates. That is where our concern lies. Has it been opened up too broadly? I appreciate that the Minister says we need flexibility and to be nimble, but I worry that we have left it too open to potential—abuse is probably too strong a word—overgenerous interpretation.

**Stephen McPartland:** I commit to write to the hon. Member for Halifax—and the whole Committee—to answer her point about the police. I totally accept the genuine concern I am hearing from across party lines about what safeguards are in place to ensure that a place is designated for reasons of defence as opposed to

Government embarrassment. The safeguard is that the power to designate only be exercised may if the Secretary of State reasonably considers it necessary to do so in order to protect the safety or interest of the United Kingdom.

**Holly Lynch:** There is that difference between safety and interest; it would be quite easy for a Home Secretary, if she has an unpopular deportation policy—to give a topical example—to argue that that it in the UK's interest rather than its safety. That gives us cause for concern.

**Stephen McPartland:** I appreciate that. We have heard this morning and in previous sittings about that tension in respect of the Government interest and defence. There is case law that defines it. The purpose of the Bill is to provide the intelligence services with the tools they need to keep the country safe. They feel that they need these tools to do that. There are safeguards. The idea behind the number of factors is that there are a variety of checks on the Secretary of State, so they would have to demonstrate all the way through that they have considered that multitude of factors and that it was necessary for the defence of the country.

On the point made by the right hon. Member for North Durham, I cannot believe I am going to say this but I cannot tell him what I have been briefed, for national security reasons. The reality is that in these clauses we have moved away from designating places to categories. One of the categories is unavowed sites. That means that some of the sites that he suggested would be covered by the category.

**Mr Jones:** As long as they are covered, that is fine. I do not want the Minister to start referring to any of them.

**Stephen McPartland:** Another query raised was about oil and metal, which I understand are already in the existing provision for use in defence. That is why we refer to those areas. Finally, we are not designating military bases abroad, other than sovereign bordered areas, purely because of difficulties with jurisdiction and making that work.

*Amendment 5 agreed to.*

*Amendments made:* 6, in clause 7, page 7, line 4, leave out

"(including a part of a building)".

*This amendment is consequential on Amendment 7.*

Amendment 7, in clause 7, page 7, line 24, at end insert—

"'building' includes any part of a building;".

*See Amendment 5.*

Amendment 8, in clause 7, page 7, line 37, at end insert—

"'GCHQ' has the meaning given by section 3(3) of the Intelligence Services Act 1994;"—*(Stephen McPartland.)*

*See Amendment 5.*

*Clause 7, as amended, ordered to stand part of the Bill.*

*Clause 12 ordered to stand part of the Bill.*

**Clause 9**

POWER TO DESIGNATE A CORDONED AREA TO SECURE DEFENCE AIRCRAFT

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

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

Clauses 10 and 11 stand part.

**Stephen McPartland:** The power set out in clause 9 allows a constable to designate a cordoned area around a military aircraft, part of an aircraft or related equipment. Regrettably, there have been several aircraft crashes over the past several years, including an F-15 aircraft crash in Lincolnshire in 2014. In such cases it is common for sensitive technology or material to be dispersed, and a specific power to cordon an area will ensure that such material is sufficiently protected until it can be removed.

Under the clause, a constable may designate an area under the cordon power only if they consider it expedient for the purposes of securing an aircraft, parts of an aircraft or equipment relating to such an aircraft, used for military purposes. The clause goes on to describe the process for designating a cordoned area this power, including ensuring that the boundary is appropriately marked and that a written record is made of the relevant decisions.

Members will appreciate the interest that hostile actors would have in accessing military technology. A cordon power that allows us to protect sensitive military aircraft technology beyond prohibited places—for example, in the event of a crash—is a tool that our armed forces and police can use to prevent harmful activity from taking place if sensitive technology is exposed and becomes vulnerable to access or inspection.

Clause 10 sets out the duration for which a designation of a cordoned area made under the clause 9 power may have effect. The end of the cordon must be specified in the designation, and initially an area can be cordoned only for a maximum period of 14 days. The initial period of the cordon specified in the designation may, in many cases, be adequate for the secured military aircraft, parts or related equipment to be safely removed. Should the process take longer—for example, if more time than originally anticipated is required in the event of a criminal investigation or an investigation by the Defence Accident Investigation Branch—the duration can be extended up to a maximum of 28 days from the point of the initial designation. Setting out the duration for which a designation of a cordoned area may have effect is an essential provision as part of the wider military aircraft cordon power. It prevents the provisions from being implemented for longer than is justified or proportionate.

Clause 11 provides the police with the powers to enforce a cordoned area that has been designated under the clause 9 power. The powers are similar to those that the police are able to use to protect prohibited places under clause 6. They include requiring a person not to carry out specified conduct, such as entering or inspecting a cordoned area; requiring a person or persons in charge of a vehicle or device to leave a cordoned area or

*[Stephen McPartland]*

an adjacent area immediately; and arranging for the movement or removal of a vehicle from a cordoned area.

It is especially important to have powers in relation to an area adjacent, given that people are able to take photographs, videos or other recordings of a crashed aircraft that is within a cordoned area from outside the cordon perimeter. The powers to prohibit such activity allow for enhanced protection against the threat that may be posed when sensitive technology or information is exposed—for example, hostile actors may still be able to gather potentially damaging information from outside a cordon through the use of long-range cameras, or may use photos and videos obtained by others and posted on social media.

Alongside the powers I have outlined, clause 11 will make it an offence to fail to comply with an order given by a constable under the powers. There may well be instances in which a person has a reasonable excuse for failing to comply with such an order, so the clause includes a defence to protect those who have a legitimate reason to be within a cordoned area.

The police powers in relation to a cordoned area in clause 11 are crucial, as they give our law enforcement agencies the tools needed to deter hostile actors from accessing the sensitive defence technology or material that may potentially be exposed—for example, following the unfortunate event of a military aircraft crash.

**Holly Lynch:** Clause 9 provides a power for the police to create a cordoned area around a defence aircraft, presumably, as the Minister outlined, if it has crashed or had to make an emergency landing outside a prohibited place. We agree that the powers in clause 9 are entirely appropriate and that the ability to cordon off scenes of that kind is necessary to ensure that the aircraft and any equipment or material relating to it can be sufficiently protected until removal has been completed. Under subsection (2) a constable may designate an area under the cordon power in subsection (1) only if they consider it expedient for the purposes of securing an aircraft used for military purposes, or part thereof, or equipment relating to that aircraft.

I have explored this clause with a recently retired senior police officer, and I will relay his query. Why is this provision needed, given that the police already have the ability to cordon off such areas through common law powers? Where is the gap that needed to be closed by the clause? What does it do that was not there previously? The Minister may outline the differences we have missed; further to that point, the explanatory notes make it clear that the power will not be applicable to aircraft other than those used for military purposes. Say, for example, a civilian fixed-wing light aircraft has raised espionage concerns, having flown over a prohibited place without clearance before making an emergency landing: although it would not be a military aircraft, I would be quite comfortable with clause 9 powers being used in such circumstances. Will the Minister consider that in his response?

2.30 pm

The clause and the explanatory notes are not explicit about whether the clause applies only to British military aircraft and equipment, or whether it applies also to foreign military aircraft, should we find ourselves in that worrying position. Will the Minister confirm that for the Committee?

Clause 11 outlines the powers that the police will have in relation to a cordoned area. They include the powers to require a person not to carry out specified conduct, such as entering the cordoned area; to require a person to leave a cordoned area immediately; and to arrange for the movement or removal of a vehicle from a cordoned area. Subsection (2) clarifies that inspection of a cordoned area can be undertaken by way of taking or procuring photos, videos and other recordings. Subsections (4) and (5) provide that it is an offence to fail to comply with an order under subsection (1).

Again, nothing in clause 11 explicitly allows a constable to seize a device that has been used to photograph, film or record details of the cordoned-off area. That, too, would require scrutiny and consideration, and a proportionate balance would need to be found, but that seems to be an omission that I cannot see addressed elsewhere in the Bill. Could a person be instructed to leave an area, but potentially take footage or photos away with them? Will the Minister confirm whether that is the case? We are minded to consider the matter further. For the avoidance of any doubt, we are comfortable with clause 10 and the designation of a cordon.

**Antony Higginbotham** (Burnley) (Con): I wish to speak briefly to the clauses. In Lancashire, we are home to BAE Systems Air, in Samlesbury and Warton. That is a significant manufacturing and assembly location for the fourth generation Typhoon aircraft, the fifth generation F-35 and, looking ahead, potentially the sixth generation of the future combat air system. Manufacturing and assembling those aircraft brings a requirement to test them and put them in the air. With any new aircraft, we run the risk of some kind of emergency landing, so the clause is entirely necessary and proportionate to allow the police to put a cordon in place, should that be required. We have to remember the highly sensitive nature of some of the aircraft, recognising in particular that many contain not just UK technology but technology from our friends and allies around the world.

Not that long ago, as we may all remember, one of the F-35s fell off the deck of the Queen Elizabeth carrier as it was meant to be taking off. On the news, we all saw that other allied warships had to go towards the area to ensure that unfriendly or hostile states could not go to find that aircraft on the seabed and try to take some of its technology. The clause seems to do something similar: it will ensure that in the event of an emergency, we have the ability to protect a site so that we can clean it up and investigate it in a controlled way. That control is important, because hostile states are always looking at ways to take advantage of unforeseen circumstances.

Will the Minister confirm that the area where the cordon is put in place will be as tightly defined as possible? We must recognise that in Lancashire, for example, where such events might happen, there is a significant amount of farmland and land used for other things, so we must try to find a balance. It is about proportionality and recognising that although a site is controlled—not just in terms of where it is but recognising that parts might be spread over a significant area—the land might have another use. Will the Minister confirm

that the Government expect there to be a balance and that an area will not be so widely defined that it becomes unusable for a significant number of people?

I was pleased to see that there is a 14-day limit for the cordon zone in clause 10, with the potential to expand it to 28 days if needed. That properly tries to balance the different access requirements that the police will have during the clean-up. We all recognise that these will sometimes be complex sites to try to clean up. I very much welcome the clause. For an area such as Lancashire, which has aircraft test flights all the time because of BAE, it will put lots of residents' minds at ease that if the worst happens, there is a controlled, legislative way to make sure that the site is managed.

**Stephen McPartland:** I am grateful to my hon. Friend for his helpful contribution. The maximum time period is 14 days because we are trying to put in place a limit. The idea is to restrict the areas as tightly as possible to protect the sensitive material without having an impact on other issues. A cordon around the military area will cover a much tighter area. There are already other cordoning factors, which is why the provision is not wider in scope.

The clauses have been drafted because of the experiences in Lincolnshire with the crashed F-15 aircraft in 2015, and the gaps during that period. My understanding is that the pilot lost control of the aircraft, successfully ejected and crashed into farmland adjacent to a village. Once the fire was extinguished, because there were no fatalities Lincolnshire police left it to the relevant military teams to run the area. As result, potentially sensitive debris was left vulnerable to harmful hostile actors over quite a wide range of areas. The purpose of the clauses is to address the direct experience of what happened during that unfortunate aircraft accident.

The hon. Member for Halifax asked a range of questions, including one on civilian light fixed-wing aircraft. The answer is that the provision currently applies only to military aircraft and does apply to foreign aircraft. The powers in the Bill enhance the powers in common law to try to compensate for what happened with that F-15 aircraft. Although the hon. Lady made an incredibly good point about search and seizure powers, as it stands they are not included in the clauses. I will go away and think about that point and ask my officials to look into it in more detail.

*Question put and agreed to.*

*Clause 9 accordingly ordered to stand part of the Bill.*

*Clauses 10 and 11 ordered to stand part of the Bill.*

## Clause 12

### Sabotage

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

**Holly Lynch:** Clause 12 is a substantial addition to the Bill so warrants further consideration. It introduces a new bespoke offence of state-sponsored sabotage, capturing activity conducted for, on behalf of or for the benefit of a foreign power, resulting in damage to property, sites and data affecting the UK's interests and national security, which we are happy to support. What has taken the Government so long? It is an extremely welcome provision.

The need for a specific criminal offence of sabotage on the UK's statute books is long overdue. The necessity for it has increased over time. Over recent years, the nature of sabotage—most notably, the nature of cyber-attacks and sabotage—has changed rapidly. Subsection (3) outlines all the ways in which the act of sabotage can manifest. Subsection (1)(b) is explicit, covering a person's intent and whether they are

"reckless as to whether their conduct will result in damage".

As MI5 director general Ken McCallum highlighted,

"cyber is no longer some abstract contest between hackers in it for the thrill or between states jockeying for position in some specialised domain...cyber consistently bites on our everyday lives."

I was struck by the evidence provided by Paddy McGuinness, the former deputy national security adviser, when I asked him about clause 12 last week. He said:

"one of the difficulties with this grey space activity…is that if you have a presence for an intelligence purpose, you can flick it over and turn it into a disruptive or destructive attack. That is where that preparatory bit is quite important, too: understanding that the simple fact of engaging and being present quickly takes you towards sabotage. I think these are absolutely vital powers."—[*Official Report, National Security Public Bill Committee,* 7 July 2022; c. 24, Q47.]

The sense that someone engaged in espionage on behalf of a hostile state could just as easily be instructed to engage in sabotage reminds us why the new offences are necessary as a package of measures. A report published by Lloyd's of London only last month crystalises the threat posed by cyber-attacks and sabotage. The report, entitled "Shifting powers: Physical cyber risk in a changing geopolitical landscape" and written in partnership with the Centre for Risk Studies at the University of Cambridge, warned that:

"Whilst most cyber-attacks are digital, physical cyber-attacks–defined as virtual attacks which trigger physical disruption–are becoming increasingly commonplace. The rise of state-sponsored cyber-attacks is a significant focus for businesses and governments, driven by an evolving geopolitical landscape in the wake of Russia's invasion of Ukraine."

The UK's national cyber strategy, published in February this year, also demonstrates the potential threat posed by cyber-sabotage. It states:

"The threats we face in and through cyberspace have grown in intensity, complexity and severity in recent years. Cyber attacks against the UK are conducted by an expanding range of state actors, criminal groups (sometimes acting at the direction of states or with their implicit approval) and activists for the purpose of espionage, commercial gain, sabotage and disinformation."

From this, we can see that cyber-activity could be prosecutable under a number of the new offences, but I know that the ability to robustly take on sabotage with clause 12 is welcome to those on the frontline of mounting the UK's defences.

Although outside of scope of the Bill, I will briefly make the point that the Computer Misuse Act 1990, which was the first major legislative attempt to tackle cyber-crime and criminalise hacking, is now also long overdue an update. May I suggest that we have another look at that legislation alongside the Bill and the provisions in this clause, to ensure that we are meeting the cyber-challenges we face as a nation as robustly as is required?

*[Holly Lynch]*

Existing legislation largely fails to accommodate for state-sponsored acts of sabotage. The Criminal Damage Act 1971 defines sabotage as:

"A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence."

We therefore welcome the foreign power condition in subsection (1)(d), which will allow police to bring to justice those who work for or conspire with hostile Governments to prejudice the safety or interests of the UK.

We welcome that the offence will link to the preparatory conduct offence to give law enforcement and the intelligence agencies the powers to intervene at an early stage. Despite the changing nature of sabotage, we also welcome that the clause contains provisions to tackle acts of physical damage on sensitive sites, such as critical national infrastructure, property belonging to Her Majesty's Government, military buildings and sites, other defence assets, or acts that impact goods, systems or services supplying the UK, such as data centres or undersea cable infrastructure. If I have not been clear enough, we very much welcome the addition of clause 12 to the Bill.

**Stuart C. McDonald:** I echo much of what the shadow Minister, the hon. Member for Halifax, said. As ever, I have slight concerns about the breadth of the foreign power condition and how that might interact with sabotage—for example, if a protest on behalf of one of the aforementioned non-governmental organisations causes some damage to a site. Of course, such protestors should face criminal law, but I would hope it would be general criminal law rather than the sabotage offence set out in clause 12 and the heavy sentence that comes with that.

For all the reasons set out by the shadow Minister, we support the inclusion of clause 12. The Minister moved the clause formally, but it would be useful for us to talk it through because this is a new departure for us, and it would be interesting to hear the Government's thoughts on the nature of the offence.

**Stephen McPartland:** I will go through clause 12 in a bit more detail. As hon. Members have outlined, the clause makes provision for an offence of sabotage. It is designed to capture intentional reckless activity resulting in damage to assets including property, sites and electronic systems where the person is acting in a way that they know or should know is prejudicial to the UK's safety and interests.

A state-linked saboteur poses as much of a potential risk to the UK's national security as someone undertaking terrorist activities. Working to further the interests of a foreign state by damaging something of importance to the UK is sabotage and therefore should be reflected as such.

Although there are offences in legislation that cover similar activities, sabotage as a crime is not an offence under domestic legislation, which was a surprise to me. The existing related offences were not developed to address the specific threat of state-linked sabotage, and the new offence more appropriately addresses the threat that this type of state threat poses. For example, none of the existing offences has a link to a foreign power. Clause 12 resolves those issues by giving law enforcement and the intelligence agencies the tools to tackle sabotage that is carried out for a purpose that the saboteur knows, or should know, prejudices the UK's safety or interests.

2.45 pm

Subsection (1) provides that an offence is committed where a person engages in conduct that results in damage to any asset and the person intends their conduct to, or is reckless as to whether it will, result in damage to an asset. In addition, the person's conduct must be for a purpose that they know, or ought reasonably to know, is prejudicial to the safety or interests of the United Kingdom, and the foreign power condition must be met in relation to the person's conduct. The clause is structured so that each of the four limbs must be met for the offence to apply.

Sabotage may be conducted directly by members of a foreign intelligence service, but it could also be conducted by agents, co-optees, or other individuals or organisations working for, on behalf of, or with the intention to benefit, a foreign state. Sabotage could be caused by cyber-means, such as by overriding critical systems, but would also include the deletion or corruption of data, the installation of malware or the introduction of vulnerabilities into systems or ransomware. As those can also be put in place without being implemented, the offence will link to the preparatory conduct offence, to give law enforcement and the intelligence agencies the powers to intervene at an early stage.

Sabotage is often conducted through the use of cyber-actions and physical damage. Sabotage can be conducted from anywhere in the world but still prejudice the UK's safety or interests. Subsection (2) addresses this issue, which is why the offence applies whether the person's conduct takes place in the UK or elsewhere, or whether the asset is located in the UK or elsewhere. The sabotage offence aims to tackle damage that might take place in sensitive locations, such as critical national infrastructure, or that impacts goods, systems or services supplying the UK, such as data centres or undersea cable infrastructure.

Subsection (3) provides non-exhaustive definitions of "asset" and "damage". An asset can be tangible or intangible, and that includes real and personal property, electronic systems, and information. We considered listing assets such as water systems, nuclear, and transportation, but considered that to be too restrictive. Damage is not defined exhaustively, but includes destruction, alteration, contamination, interference, loss of or reduction in access or availability, and or loss of or reduction in function, utility or reliability. This applies whether the damage is temporary or permanent, which allows us to tackle cyber-activity that results in, for example, the temporary loss of access to data.

Clause 12 does not specify a level of damage. Defining the asset and damage in this way provides flexibility for investigating saboteurs and adds a degree of future-proofing. Well-resourced states will find ways around our legislation if we define things too narrowly, such as the types of assets that they may target by conducting sabotage. The assets targeted by foreign powers for sabotage could change, and the way in which they are damaged could also evolve beyond a narrow definition.

We need a bespoke, modern offence to tackle a modern and evolving threat. A person's conduct must meet the "prejudicial to the safety or interests of the United Kingdom" test in subsection (1), which is designed to capture harmful activity such as a cyber-attack on Her Majesty's Government data, or a physical attack on data servers resulting in widespread disruption and damage to national security, not legitimate protesting. Clause 12 makes provision for a maximum penalty of life imprisonment or a fine, or both. A fine is included to allow the prosecution of a company if it engages in conduct amounting to an offence. We expect the maximum penalties to apply only in the most serious cases, such as where an act of sabotage has resulted in a threat to or loss of life, or damage to UK critical infrastructure that compromises our national security. This is in line with existing maximum penalties in comparative legislation and the proposed penalty in clause 1.

Clause 12 will provide law enforcement and the intelligence agencies with a vital tool against harmful state-linked sabotage. It makes provision for an offence that reflects the global threat posed by saboteurs through cyber-means, as well calling out physical damage for what it is.

*Question put and agreed to.*

*Clause 12 accordingly ordered to stand part of the Bill.*

## Clause 13

### Foreign interference: general

**Stuart C. McDonald:** I beg to move amendment 51, in clause 13, page 11, line 26, leave out "England and Wales" and

"any part of the United Kingdom".

*This amendment would mean that "condition A" for the offence of foreign interference would be met by conduct outside the UK that would be an offence in any part of the UK.*

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

Government amendment 9.

Clause stand part.

**Stuart C. McDonald:** I will be brief. Clause 13 introduces a general offence of foreign interference that is punishable by up to 14 years in prison. As with clause 12, we support the broad idea—indeed, the structure of the offence appears to make sense—but it is a fairly novel departure for this country. I look forward to hearing the Minister talk us through precisely how the provision will work given that it is so novel and fairly complicated. I have said my piece on my concerns about the foreign power condition and the rather nebulous concept of the interests of the United Kingdom, so I will not repeat it.

The amendment asks a short, sharp question. Condition A applies if the foreign offence takes place outside the UK, and it is met only if the conduct is an offence under the law of England and Wales. The simple question is: why does that apply to England and Wales only? It does not apply to Scotland or to offences under the law of Northern Ireland. I genuinely do not know what the thinking behind that is. There may be a perfectly reasonable answer, and the amendment is designed to tease it out. I look forward to hearing much more from the Minister about how the offence will work. On the whole, the clause provides a justified and welcome new offence that we would support.

**Holly Lynch:** Clause 13 is quite substantial, and creates a new and general offence of foreign interference. Under the clause, someone who behaves recklessly but for whom an intention to aid a foreign intelligence service cannot be proven would not be committing an offence, unlike under clause 12.

The hon. Member for Hastings and Rye has a particular interest in that element of the offences. She will remember that in last Thursday's evidence session, she asked Professor Sir David Omand, the former director of GCHQ, about the question of recklessness in clause 13. He said that he

"looked to clause 24, 'The foreign power condition', and there is quite a lot of scope in it for a successful prosecution to demonstrate that the individual who has, as you say, acted recklessly, could reasonably have been expected to know that their act would benefit a foreign power, for example, so I was not so concerned about that particular question."—[*Official Report, National Security Public Bill Committee,* 7 July 2022; c. 17, Q34.]

However, in response to a very similar question, Carl Miller, the research director of the Centre for the Analysis of Social Media at Demos, made the interesting point that introducing recklessness in such a way may make businesses or service providers take their responsibilities on those types of risks more seriously when agreeing to take on commissioned work. I put that example to the Minister in our discussions on clause 3.

We will propose later in proceedings, through new clause 2, an independent reviewer to look annually at all the powers in the Bill—not just part 2—and not only check that we have the right balance when using the powers, and consider any unintended consequences, but make recommendations. I think clause 13 is viewed as fair by both sides of the Committee, but I hope that our debate about recklessness has shown that new clause 2 would make a great deal of sense.

Government amendment 9 is a welcome step—if somewhat presumptuous—that would make foreign interference a priority offence in the "Online Safety Act", as on the amendment paper. It is slightly odd to amend the Online Safety Bill through this Bill, given that that Online Safety Bill is only just out of Committee—it is on Report in the Chamber as we speak—but the change is a very welcome development none the less. Reset.Tech's Poppy Wood spoke in evidence of her hopes for that provision, and was pleased to see its addition.

Later in proceedings, we will come back to what more could be done in the disinformation space when we discuss new clause 3, which addresses the reporting of disinformation originating from foreign powers. Alongside clauses 13 and 14, we have discussed separately with the Minister that we are still awaiting further news about the planned foreign influence registration scheme, which has been called for since the aforementioned 2020 Russia report. It was a big focus on Second Reading, when the Minister's predecessor was under a great deal of pressure from the Chair of the Intelligence and Security Committee and others for not having produced the detail in time for the whole House to be able to discuss and debate it. The practical outcome of the implications of clause 13 is that we would like to see the detail as soon as possible, and the Minister knows our views on that.

*[Holly Lynch]*

Before closing, I want to touch on the issue of foreign interference. On Second Reading, my right hon. Friend the Member for Normanton, Pontefract and Castleford (Yvette Cooper) spoke extensively about the need to tackle shell companies. The new offences outlined in these clauses will mean little if they cannot be detected or if measures are rarely enforced. Again, we urge the Government to remove the loophole that allows shell companies to be used to make donations to political parties, and to hide foreign donations and donations linked to hostile states. I expect the Minister will say that further work on interference of that type is under consideration as part of a second economic crime Bill, but I am looking to him for further assurances on that type of foreign interference.

**Maria Eagle** (Garston and Halewood) (Lab): I rise to support some of the points made by my hon. Friend the Member for Halifax. Given the Minister's recent arrival, I am sure that this is not his responsibility and would not have happened had he been in charge, but it is particularly bad for a Government amendment to seek to amend a Bill that is still going through its Commons stages and has not reached the other place. In fact, it is still on the Floor of the House. It is a particularly poor practice that I hope the Minister, in his new role, will deprecate among his officials and seek to prevent from happening in the future.

It is really bad for the Committee to seek to amend a Bill that is still on the Floor of the House and has not been passed yet, when it is quite clear—unless the Minister has a good reason why it is being done this way, which I would be interested to hear—that it is not sensible for us to amend a Bill that has not yet even passed its Commons stages. It seems to be a recipe for incoherence and confusion. I hope that the Minister will agree and seek to prevent us from seeing such amendments in the future, because it is just rank poor practice.

The clause introduces an important defence for the country and fills a gap that has needed to be filled for many years, so I very much support it. However, it is noticeable that, unlike clause 12, which we have just discussed and approved, the offence set out in clause 13 does not include recklessness in the same way as some of the other offences set out in the Bill. There must be a reason for that, but it is not immediately apparent what that is, and it would help the Committee a great deal if we could hear the rationale for recklessness being left out.

Obviously, the offence also does not include where an individual is unwittingly used to conduct the activity that the person who is engaging in the interference is seeking to conduct. I can understand that a bit more, because if someone is a dupe—perhaps without any intention or recklessness at all—one can understand why the offence might not extend to that person. However, given that some of the offences being introduced by the Bill do include recklessness, it would still constitute an offence if there was recklessness rather than intent. Why has recklessness not been made a part of the offence? I am sure there is an explanation, and I think it would help the Committee a lot to hear what it is. If there is no good explanation, perhaps the Minister might go back and produce an amendment that includes "recklessness" in clause 13.

3 pm

**Stephen McPartland:** Clause 13 provides for a criminal offence of foreign interference. It is and always will be an absolute priority to protect the UK against such interference. The principal aim of the clause is to create a more challenging operating environment for, and to deter and disrupt the activities of, foreign states who seek to undermine UK interests, our institutions, political system and our rights, and ultimately prejudice our national security.

Clause 13 will act as a tool for disruption and deterrence, raising the cost to foreign states of carrying out interference activity by holding those responsible to account for their actions. I noted the concerns expressed by the hon. Member for Garston and Halewood very clearly. I have raised that issue myself, and it is something that we will talk about in the Home Department, because I understand those concerns. I will address the issue of recklessness later in my remarks. Reference was also made to the foreign power condition, which we will debate in much more detail later in our proceedings.

On the foreign influence registration scheme, I have spoken to hon. Members about that. The Home Secretary has committed to its formal introduction during Committee proceedings, and I put on record that I would like it to introduced during Committee proceedings in the Commons, so that it can be debated properly and dealt with here before being considered in the House of Lords. Donations from shell companies will be dealt with in the economic crime Bill.

We know that states around the world, including the UK, conduct open and transparent influence activities, such as using diplomacy to shape and align policy to benefit shared interests. That is a welcome part of transparent international engagement and is vital to the UK in achieving its interests. However, some states seek to further their strategic interests by going further than overt political influence, such as through cultivating and manipulating relationships with individuals and entities in the UK where power and influence lies and undertaking deceptive lobbying operations to shape public policy making. Although not necessarily hostile, those "interference" activities are typically non-transparent and outside the norms of diplomacy.

In our approach to legislating against foreign interference, we have chosen to target the intended effect of the foreign interference rather than the specific method used to achieve that result. We considered whether it would be more appropriate and effective to create specific offences, such as a bespoke "hack and leak" and disinformation offences, but that approach risked leaving gaps in our ability to prosecute foreign interference. Disinformation campaigns seek to sow discord and undermine public confidence in our institutions and values. Often, the damage caused by disinformation cannot be measured until long after the information is in the public domain. Our approach to foreign interference is intended to enable harmful behaviour to be disrupted at an early stage, before significant damage occurs. That is yet another reason to focus on the intended effect of foreign interference, as opposed to focusing on specific actions and methods of a state actor.

Clause 13 has been constructed with three conditions that must all be met in order for a person to have committed an offence. As is the case throughout the Bill, there must be a link to a foreign power, that is to say where conduct is undertaken for, or on behalf of, or with the intention to benefit, a foreign power. A person must intend that their conduct, or that a course of conduct of which their conduct forms a part, will have a specific effect. I will now turn to those effects to more detail.

The first stipulated effect is interfering with the exercise of a convention right as it has effect under the law of the United Kingdom. The aim of encompassing such intended effect is to catch activities that interfere with a right that is already protected from unjustifiable domestic interference under UK law such as freedom of speech. It has been evidenced that foreign states have engaged in activity that seeks to intimidate or threaten diaspora communities to stop engaging in lawful protest activities, or to embrace their home country or face punishment. It is our aim that such hostile activity can be stopped through this targeted approach.

The second and third effects look at affecting the exercise by any person of their public functions and manipulating whether or how someone uses services provided in the exercise of those public functions. The first of these two effects could relate to the functions of a person who holds public office, such as a Member of Parliament. The type of activity this effect could capture, subject to the other legal conditions being met, is conduct that seeks to affect a political decision. The second of the two effects could be manipulating whether or how any person makes use of vaccination services. In isolation, this is of course not a crime, but sophisticated and well-resourced state actors will choose topics that divide public opinion and pit us against one another. As I have already touched on, this clause focuses on the person's intention, as opposed to the vector or means they use to achieve it. That is at the very core of what foreign interference is.

The fourth and fifth effects capture conduct that manipulates whether, or how, any person participates in a political or legal process under the law of the United Kingdom respectively. Examples of the type of activity that we consider those effects capturing, subject to the other legal conditions being met, would be threatening a member of a jury in order to prejudice a trial, stealing evidence of a crime in order to disrupt an investigation, or intending to secure the election of candidates with views favourable to, or favoured by, the foreign power.

The sixth effect is consistent with other offences in the Bill and could cover foreign interference in UK defence and security interests or trade deals being negotiated with countries around the world.

In addition to the foreign power condition needing to be met and an intention to cause one of the effects in subsection (2), the person's conduct must meet at least one of three specific conditions: A, B or C. Condition A is that the person's conduct constitutes an offence or, if it takes place in a country or territory outside the United Kingdom, would constitute an offence if it took place in England and Wales. That reflects the potential for foreign interference to be conducted through a range of methods, all with different outcomes. In seeking to bring about one of the effects in subsection (2), a foreign state actor could, in theory, commit an offence such as fraud or bribery in the course of their conduct.

Condition B is met when a person's conduct involves coercion of any kind. The term coercion captures aggressive and violent forms of conduct such as damaging or destroying, or threatening to damage or destroy, a person's property, or damaging or threatening to damage a person's reputation. In addition, the term "coercion" also encompasses activity that causes spiritual injury to, or place undue spiritual pressure on, a person. This term follows existing precedents, as debated during the passage of the Elections Act 2022.

Condition C is met when a person's conduct involves making a misrepresentation. A misrepresentation may include making either a statement or by any other kind of conduct and may be either expressed or implied. This covers a misrepresentation as to the person's identity or purpose, as well as presenting information in a way that amounts to a misrepresentation, even if some or all of the information is true. As the recent Russian invasion of Ukraine has demonstrated, information can be weaponised. The new offence of foreign interference is a significant step forward in the UK's response to tackling state-sponsored disinformation. We believe that the vast majority of state-sponsored disinformation captured by this clause will be done so by meeting condition C.

It is right that the framework we have devised consists of three high legal tests, which must all be met for an offence to apply. That is an effective and appropriate way to safeguard against capturing legitimate forms of influence or undermining and eroding the freedoms and values we are actively seeking to safeguard.

Additionally, this clause provides that the offence applies regardless of whether a person's conduct takes place in the United Kingdom or elsewhere. This important component reflects the threat landscape of the 21st century and enables activity conducted overseas to be captured. I must reiterate that if this component did not apply to the clause as drafted, vast swathes of hostile activity could go unpunished, which could ultimately undermine the UK's safety and interests. The provision in clause 13(10) is consistent with other offences in the Bill.

As I have said, clause 13 is not about restricting the rights and liberties of the British people. It reinforces such protections and privileges we care so deeply about. As I have noted, the offence consists of a framework with three explicit legal conditions that must all be met in order for a person's conduct to be caught. Furthermore, the measures underpinning this clause also include the requirement of Attorney General consent in England and Wales, and Advocate General in Northern Ireland, in order to bring forward a prosecution.

Turning to the penalty, we propose a maximum of 14 years' imprisonment on conviction, or a fine, or both. That reflects the seriousness of the harm that state threats can have on the UK and its interests. This is about activity that intends to interfere in our democracy, and we must not be complacent in ensuring that sentencing judges have available to them penalties that can reflect the potential harm caused by this type of conduct.

Therefore, the best way of tackling the significant threat we face from hostile activity by states is to ensure that we have appropriate and proportionate measure that do not overshadow our freedoms. As previously stated, I am committed to ensuring that we have a full

*[Stephen McPartland]*

suite of provisions in our arsenal to protect our national security. I hope the Committee will agree on the clear requirement for clause 13.

Government amendment 9 creates a bridge from the offence in clause 13 to the priority offences in the Online Safety Bill, which will strengthen the Government's response to the state-sponsored disinformation that seeks to undermine the UK's interests. The new offence of foreign interference will criminalise state-sponsored disinformation affecting the UK, allowing us to disrupt and deter foreign actors engaging in disinformation campaigns against the UK. As well as prosecuting perpetrators where possible, we need online platforms to take action against the content. Designating the offence as a priority offence in schedule 7 to the Online Safety Bill will require online platforms to guard against and act swiftly to remove content that amounts to an offence.

The risk assessment and safety duties provided for in the Online Safety Bill include the use of proportionate measures to reduce and manage the risk of harm to individuals and prevent users from coming across priority illegal content on the service. Where priority illegal content is present on the service, providers must minimise the length of time for which it is present and also swiftly remove the content on being alerted to it.

Officials in the Home Office and the Department for Digital, Culture, Media and Sport continue to work closely with Ofcom and platforms to ensure that guidance is produced to allow platforms to take proportionate steps towards removing state-sponsored disinformation. To comply with these duties, platforms will have to consider the design and features of their service and the operation of their algorithms. In the context of the foreign interference offence, that could include measures to ensure that platform manipulation, such as engaging in artificially co-ordinated messaging campaigns, is more difficult, thus mitigating the risk of co-ordinated inauthentic behaviour and disinformation more broadly.

While amendment 9 ensures robust action on state-sponsored disinformation, it must be set in the context of a regime that will also defend freedom of expression and the invaluable role of a free press. Platforms and Ofcom will have duties relating to freedom of expression for which they can be held to account. Platforms will not be able to arbitrarily remove harmful content. They will need to be clear what content is acceptable on their services and enforce the rules consistently. Users will have access to effective mechanisms to appeal the removal of content without good reason.

It is right for the Government to go further in addressing disinformation and wider information operations undertaken and amplified by foreign states. Amendment 9 will address the most concerning information campaigns being amplified by foreign powers who are seeking to advance their interests and harm the UK.

On the point about recklessness, my understanding is that we are trying to get the balance right between legitimate and illegitimate restrictions. The concern was that including recklessness would possibly widen the scope and would then move into the political and diplomatic arenas. There is a reason—it may not be the best one, but there is a reason.

Amendment 51 seeks to modify condition A subsection (4), so that conduct outside the UK is within the scope of condition A where such conduct would amount to an offence in any part of the UK, not just England and Wales. Condition A

"is that the person's conduct constitutes an offence or, if it takes place…outside the United Kingdom, would constitute an offence if it took place in England and Wales."

Conduct taking place in Scotland or Northern Ireland that constitutes an offence in Scotland or Northern Ireland would be covered here. It is only where the conduct takes place outside the UK that the criminal law of England and Wales is currently used as the benchmark. The clause has been drafted this way for operational effectiveness and to ensure no unintended or complex consequences where, for example, a prosecution is brought in one part of the UK but relies on a charge from another part of the UK. We expect the amendment would have little practical impact on prosecutions.

However, that said, I accept the spirit of the amendment and I personally believe that we should be seeking to legislate for all parts of the UK. If the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East will withdraw the amendment, I propose to take the point away to consider further. In particular, I want to ensure that there are no unintended practical difficulties for investigators and prosecutors that may make bringing charges for foreign interference, which can often emanate from overseas, harder than necessary. Another consideration is ensuring that any amendment does not affect the utility of our Government amendment to add the offence of foreign interference to the Online Safety Bill, where platform operators will be under a duty to guard against and swiftly remove content that amounts to an offence of foreign interference.

I will consider those points and hope to be able to come back favourably at a later stage. I ask that the hon. Gentleman withdraw the amendment.

**Stuart C. McDonald:** On that basis, I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Amendment made:* 9, in clause 13, page 12, line 13, at end insert—

"(12A) In the Online Safety Act 2022, in Schedule 7 (priority offences), before the italic heading "Inchoate offences" insert—

"Foreign interference

32A An offence under section 13 of the National Security Act 2022 (foreign interference)."—*(Stephen McPartland.)*

*This amendment amends the Online Safety Act expected to result from the Online Safety Bill currently before Parliament to make foreign interference a priority offence for the purposes of that Act.*

*Clause 13, as amended, ordered to stand part of the Bill.*

**Clause 14**

FOREIGN INTERFERENCE IN ELECTIONS

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

3.15 pm

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

Government amendments 10 and 11

That schedule 1 be the First schedule to the Bill

New clause 3—*Reporting on disinformation originating from foreign powers*—

(1) The Secretary of State must appoint a person or body to review the extent of disinformation originating from foreign powers which presents a threat, or potential threat, to national security.

(2) A review under subsection (1) must include an assessment of the extent of foreign interference in elections.

(3) A review under subsection (1) may include—

(a) examining the number and scale of offences committed, and estimating the number and scale of instances where an offence is suspected to have been committed, under—

(i) section 13, where Condition C is met, and

(ii) section 14,

and,

(b) any other matters the person or body considers relevant to the matters mentioned in subsections (1) and (2).

(4) The person or body appointed under subsection (1) may be the Intelligence and Security Committee of Parliament, or another person or body the Secretary of State considers appropriate.

(5) A review must be carried out under this section in respect of—

(a) the 12-month period beginning with the day on which section 13 comes into force, and

(b) each subsequent 12-month period.

(6) Each review under this section must be completed as soon as reasonably practicable after the period to which it relates.

(7) The person or body must send to the Secretary of State a report on the outcome of each review carried out under this section as soon as reasonably practicable after completion of the review.

(8) On receiving a report under subsection (7), the Secretary of State must lay a copy of it before Parliament.

(9) The Secretary of State may pay to the person or body—

(a) expenses incurred in carrying out the functions of the reviewer under this section, and

(b) such allowances as the Secretary of State determines,

except where financial provision is already made to the person or body for the discharge of the person or body's functions, of which this section may form part"

**Stephen McPartland:** The clause provides for substantially increased maximum penalties where a person commits any of the existing electoral offences set out in schedule 1 and the person's conduct meets the foreign power condition found in clause 24. I will also deal with amendments 10 and 11 and new clause 3 in the course of my speech.

As I touched on in highlighting the necessity of clause 13, activity that interferes in our elections, political processes and democratic events reflects the most egregious form of state threats activity. It is therefore absolutely right that we have the tools and powers at our disposal to be able to deter, disrupt and withstand the actions of foreign states who seek to harm the UK and its interests. The clause's primary aim is to provide for substantially increased maximum penalties where a person commits any of the existing electoral offences set out in the related schedule and the person's conduct meets the requisite foreign power condition. That will help to create a more challenging operating environment for those who seek to do the UK harm, raising the cost to foreign states of carrying out interference activity by holding those responsible to account for their actions.

We have constructed a provision that applies to a range of existing electoral offences under the Representation of the People Act 1983 and the Political Parties, Elections and Referendums Act 2000. The offences remain unaffected, but, where the foreign power condition is met, a substantially increased maximum sentence will be available. For example, existing offences under the Representation of the People Act criminalise interfering with elections—for example, undue influence in section 114A, bribery in section 113, and tampering with ballot or nomination papers in section 65—but the maximum penalties available do not reflect the significance of malign political foreign interference at the hands of a foreign power. Where a person commits any of the existing electoral offences set out in schedule 1 and their conduct meets the requisite foreign power condition, the maximum sentence available to the court will be substantially increased.

As I mentioned, part 1 of schedule 1 sets out a table that lists the relevant electoral offences in column 1 and the specified maximum term for each relevant offence in column 2. Part 2 of the schedule provides for necessary amendments to the Acts from which the offences are taken, where the clause applies. Let me turn briefly to the table in part 1 of schedule 1. In respect of the relevant electoral offences from the Representation of the People Act 1983, there will be a seven-year maximum sentence for offences relating to personation, postal and proxy voting, tampering with nomination papers, and handling of postal voting documents by political campaigners. There will be a four-year maximum sentence for offences relating to providing false statements in nomination papers, bribery, treating, and undue influence.

In respect of the relevant electoral offences from the Political Parties, Elections and Referendums Act, there will a four-year maximum sentence for offences relating to information about donors, providing a false declaration about source of donation or a false declaration as to residence condition, failing to return donations, evading restrictions on donations, failing to comply with requirements about recording donations, providing a false declaration in a donation report, donating to individuals and members associations, loaning to individuals and members, donations to recognised third parties, and donations to permitted participants. There is also a two-year maximum sentence for an offence relating to incurring controlled expenditure in contravention of restriction.

These offences and associated penalties have been determined following robust engagements between the Home Office, other Departments and law enforcement agencies, highlighting that the provisions under the Representation of the People Act 1983 and the Political Parties, Elections and Referendums Act 2000 signify the most egregious conduct associated with political and electoral interference. Therefore, if such conduct has been carried out for, on behalf of, or with the intention to benefit, a foreign power, it fundamentally changes the seriousness of the conduct already criminalised, and therefore requires a greater and more severe sentence. Obtaining the strongest possible deterrence is essential

*[Stephen McPartland]*

to deliver our broader objectives of pushing back on state threats and making the UK a hard operating environment in which to conduct hostile activity.

The offences in clause 14 are excluded from clause 16 —dealing with the aggravating factor where the foreign power condition is met—to aid investigations and create clarity for prosecutions. Many of the offences in the Bill have the foreign power condition built in, such as clause 13, and we have replicated that approach for the offences in part 1 of schedule 1. Many of the offences under part 1 of schedule 1 have a time limit for investigations. We have removed that to reflect the complexity of state threat investigations, but that also means that we must exclude the offences contained in that schedule from clause 16.

I now turn to Government amendment 10, which is concerned with the relevant electoral offences referenced in clause 14 and contained in part 1 of schedule 1 to this Bill. For context, clause 14 provides for substantially increased maximum penalties where a person commits any of the existing electoral offences set out in the related schedule and the person's conduct meets the foreign power condition in clause 24. These offences are currently found solely in the Representation of the People Act 1983 and the Political Parties, Elections and Referendums Act 2000. The relevant electoral offences in part 1 of schedule 1 in the RPA are applied in several pieces of secondary legislation. Where that is the case, the Interpretation Act 1978 effectively cascades the effect of clause 14 so that it will apply to the applied versions of the offences without the need to include an express provision in clause 14.

Government amendment 10 proposes to include certain offences contained in the Electoral Law Act (Northern Ireland) 1962 as relevant electoral offences. Those are offences that are akin to the offences from the RPA that are already set out in the schedule. Given the complexity of electoral law, it was right for us to ensure that we have fully considered what else we ought to include in relation to foreign interference in elections, given the threats that we face in this space. That is why the amendment includes the Electoral Law Act (Northern Ireland) 1962. That piece of legislation is specific to Northern Ireland and contains its own stand-alone offences. Many of them are akin to those in the RPA—for example, personation, bribery and treating. Because they are stand-alone offences and not applied versions of the RPA offences, it is necessary to include them expressly in the schedule of offences to which clause 14 relates.

Although the current list of relevant electoral offences under part 1 of schedule 1 has been determined following extensive engagements with wider Government, law enforcement and the devolved Administrations, it is evident that these additions need to be made to clause 14 to respond fully to the threat posed by foreign interference in elections. These changes will ensure a complete and coherent footprint across the whole United Kingdom in responding to foreign interference in elections. It is right that the Government have considered our approach for dealing with foreign political interference and are seeking to expand the list of relevant electoral offences in order to provide greater protections against foreign interference in elections. The amendment does just that and I hope the Committee will support it.

Separately from the amendment, the topic of shell companies being used to make donations to political parties and to hide foreign donations was raised extensively on Second Reading, so it is right that I address what the Government are doing in that area. First, there are strict rules that ensure that foreign money is prohibited from entering through proxy donors, providing a safeguard against impermissible donations by the back door. It is also an offence to attempt to evade the rules on donations by concealing information, giving false information or facilitating the making of an impermissible donation. Under this clause, substantially increased maximum sentences will apply to those offences where the foreign power condition is met.

Secondly, UK electoral law sets out a stringent regime of donations and spending controls to safeguard the integrity of our democratic processes, and only those with a genuine interest in UK electoral events can make political donations. This includes registered UK electors—including registered overseas electors—UK-registered companies, trade unions and other UK-based entities or otherwise eligible donors, such as Irish citizens meeting prescribed conditions who can donate to parties in Northern Ireland. The recently passed Elections Act 2022 introduced a restriction on ineligible foreign third-party campaigning above a £700 de minimis threshold.

Transparency is the best form of disinfectant with regards to who is donating or contributing to political parties, and that is why all political parties, recognised third-party campaigners and candidates must record their election spending and report this to the Electoral Commission or local returning officer. This information is publicly available. In addition, political parties, third-party campaigners and candidates are required to record all contributions over £500. It is also right that the Electoral Commission publishes information about larger donations online for transparency.

New clause 3 would require the Home Secretary to create an independent body for monitoring disinformation originating from foreign states, producing a report to be laid before the House on an annual basis. The new clause would duplicate existing work being carried forward by Government to ensure that the threat posed by disinformation spread by foreign states is monitored effectively. It is, and always will be, an absolute priority to protect our democratic and electoral processes from foreign interference. That is why the Government have robust systems in place to protect UK democracy, bringing together Government, civil society and private sector organisations to monitor and respond to attempted interference, in whatever form, to ensure our democracy stays open, vibrant and transparent.

The intelligence agencies produce and contribute to regular assessments of state threats, including potential interference in UK democratic processes. We keep such assessments under review and, where necessary, update them in response to new intelligence. Where new information emerges, the Government will always consider the most appropriate use of any intelligence they develop or receive, including whether it is appropriate to make it public.

Ahead of major democratic events, the Government stand up the election cell, which brings together capabilities and expertise from across Government to address complex risks that threaten our democratic processes. The cell works closely with the Electoral Commission, police,

and devolved Administrations to ensure rapid information sharing and a response that covers key risks, including electoral logistics, policing, counter-terrorism, cyber-security, disinformation and electoral interference.

During major democratic events the DCMS-led counter-disinformation unit works with the election cell and plays a pivotal role in the protection of elections by working with a range of partners to understand the extent and reach of disinformation across a number of risks, including foreign interference. The Government are keen to do more to tackle state-sponsored disinformation. That is why we have now also put forward an amendment to make the foreign interference offence a priority offence in the Online Safety Bill. That will require companies in scope of the regime to conduct regular risk assessments for the presence of content that constitutes an offence and to put in place proportionate systems and processes to mitigate the possibility of users encountering this content. That will include disinformation spread by foreign states that is intended to undermine our democratic, political and legal processes.

Furthermore, the Online Safety Bill's advisory committee on disinformation and misinformation will provide cross-sector expertise on disinformation and misinformation and advice to Ofcom about how providers of regulated services should deal with disinformation and misinformation. It will advise Ofcom on how it should exercise its transparency powers and its duty to promote media literacy in relation to disinformation and misinformation. This could include recommendations relating to disinformation originating from a foreign power, for which this amendment seeks to establish an independent review.

However, the Government can see merit in considering whether additional oversight is required for state threats legislation, including the offence of foreign interference, and we will come to a broader amendment in this regard later in Committee. In view of the significant cross-Government work in this area and the need to consider the most effective way of ensuring transparency and oversight of state threats legislation more broadly, I ask the hon. Member for Halifax to withdraw her amendment when the time comes.

In closing, the construction and inclusion of a provision for foreign interference in elections reflects how seriously the Government take the threat posed by hostile activity by foreign states. I am sure the Committee is committed to ensuring that we have a holistic and effective suite of measures to tackle such corrosive activity and to counter its malign impact. I hope the Committee will agree that there is a clear requirement for clause 14.

3.30 pm

**Holly Lynch:** I listened carefully to the Minister. The Opposition welcome those measures in clause 14 that will bolster the UK against acts of foreign interference in our elections that are committed on our soil and abroad. For too long the Government have been complacent about the threat of foreign interference, and we seek to complement the measures in the Bill through new clause 3. I will continue to make the case for the new clause, but I have heard what the Minister had to say.

According to a report from the Centre for Strategic and International Studies, Russian hackers launched a cyber-attack in 2014 against the Polish electoral commission's website, which damaged faith in the election. In 2015, the German Parliament was the victim of a cyber-attack linked to Russia that was aimed at collecting documents ahead of the federal elections. During the Scottish independence referendum, pro-Russia accounts on social media spread stories claiming voter fraud.

Ahead of the Finnish parliamentary elections, Russian entities created fake social media accounts posting as official parliamentary accounts. At first, those accounts posted mainstream political content and amassed thousands of followers, but as the election neared, the accounts turned to posting misinformation and vitriol aimed at sowing confusion among the electorate. Russian-sponsored disinformation through state media and fake social media accounts was also rampant in general elections in Italy and the Netherlands throughout 2017 and 2018, and in Spain at the time of the Catalonian independence referendum.

The evidence base is massive, and those are examples of just some of the most aggressive and obvious attempts to interfere in elections, which, until now, legislation has largely failed to address. We can only assume that, as Russia's belligerence increases, so will its attempts to undermine our democracy and society. The measures proposed are long overdue.

On being asked his thoughts on the matter in last week's evidence session, Paddy McGuinness made the interesting point that

"because there are not strong controls and real clarity about what is happening around our electoral processes, people mess about in that space."

He wanted to make a distinction between "messing about" in that space—as he put it—and delegitimising an election. He went on to explain that

"Vladimir Putin's intent, which is to have us off balance—is that if the Russians do hack into a political party's servers and mess about within them, and maybe mess with the data or interfere, or if they play games with a technology platform that people rely on for information and put out information, and we decide as a result that we cannot trust a referendum or an election, they succeed. That is success for them, so I think what really matters in this space is the ability to measure the impact that state activity has on the democratic process we are looking at, and…that there is bright transparency so we know who is doing what."—[*Official Report, National Security Public Bill Committee*, 7 July 2022; c. 24, Q48.]

Turning to the relevant electoral offences in part 1 of schedule 1, I wonder whether the list of offences is grounded in a dated understanding of how someone might seek to interfere in an election when acting on behalf of a state. Although they are all very serious in themselves, my concern is that they might need a fresh look to consider whether they would capture state actors interfering in elections.

It is worth noting that in its 2020 Russia report the Intelligence and Security Committee recommended that MI5 should be operationally responsible for upholding the safety of our democratic process, stating:

"In our opinion, the operational role must sit primarily with MI5, in line with its statutory responsibility for 'the protection of national security and, in particular, its protection against threats from espionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy'."

Last week, we heard from Louise Edwards, director of regulation at the Electoral Commission. Despite the fact that almost all the other witnesses confirmed that state interference in elections was a significant cause for

*[Holly Lynch]*

concern, we heard that the Electoral Commission is not currently undertaking any investigations on the issue. That suggests that, as things stand, it is not the right organisation to lead on this work.

With all of that in mind, we very much support the provisions in clause 14 and are content with schedule 1 —despite the points I have made—and with Government amendments 10 and 11. However, I would also make the case for new clause 3, and I am seeking to persuade the Committee and the Minister that an annual review on disinformation, with particular consideration of interference in elections, would help with the transparency and awareness piece that needs to sit alongside these offences. I think the Minister said that some of that would replicate the work already happening in Government, but he largely talked about the enforcement agencies being stepped up to try to protect those processes in real time from interference. All of that is actually quite clandestine; it does not seek to enhance the public's understanding of some of that interference, which might assist them in making informed decisions when digesting information and allowing that to inform their voting decisions. The new clause would grant the Government the discretion to determine who would be best placed to carry out that annual but independent review, with the Intelligence and Security Committee being one of the bodies that could undertake it.

We have discussed the matter with the UK intelligence community, and it was clear from the evidence we heard on Thursday that raising awareness within the general public is a slightly separate piece of work from criminalising and disrupting hostile activity online. We heard that, while disinformation and misinformation are a problem—Government amendment 9 is very much welcome in tackling that—there is the issue of the amplification of often uncomfortable truths or single viewpoints, which is much harder to address. None the less, efforts should be made to identify the origins of such content and ensure that the public can see how narratives and public discourse can be manipulated to suit the agendas of foreign states, empowering the public to make more informed judgments about how they use social media. When I put these proposals to Poppy Wood of Reset.tech on Thursday and asked for her judgment about the measures and about who would be best suited to undertake such a review, she said:

"That is a brilliant idea…It should probably be a body like the Intelligence and Security Committee—some kind of cross-party body, quasi-independent of Government".—[*Official Report, National Security Public Bill Committee,* 7 July 2022; c. 60, Q113.]

I have heard what the Minister has said, and I very much hope that he will take seriously his commitment to have a further look at this issue—not just at the law enforcement of it, but at a report that would be published in the public domain that would reveal some of the origins of this content, alongside criminalising it where it meets certain thresholds. I will give the Minister the benefit of the doubt, and I am persuaded to withdraw new clause 3 on the basis that he does commit to further consider this matter very seriously.

**The Chair:** Of course, we will deal with new clause 3 when we get to the new clauses at the end.

*Question put and agreed to.*

*Clause 14 accordingly ordered to stand part of the Bill.*

**Schedule 1**

FOREIGN INTERFERENCE IN ELECTIONS

*Amendments made:* 10, in schedule 1, page 51, line 5, at end insert—

*"Offences under the Electoral Law Act (Northern Ireland) 1962 (c.14 (N.I.))*

| An offence under any of these provisions of Schedule 9 to the Electoral Law Act (Northern Ireland) 1962 (c.14 (N.I.)) | Maximum term of imprisonment |
|---|---|
| Paragraph 1 (bribery) | 4 years |
| Paragraph 2 (treating) | 4 years |
| Paragraph 3 (undue influence) | 4 years |
| Paragraph 4 (personation) | 7 years |
| Paragraph 4A (postal and proxy votes) | 7 years |
| Paragraph 5A (false statements in nomination papers etc) | 4 years |
| Paragraph 26(2) (tampering with nomination papers etc) | 7 years" |

*This amendment adds offences under the Electoral Law Act (Northern Ireland) 1962 to the list of offences to which clause 14 applies.*

Amendment 11, in schedule 1, page 52, line 27, at end insert—

*"Electoral Law Act (Northern Ireland) 1962 (c.14 (N.I.))*

1 (1) The Electoral Law Act (Northern Ireland) 1962 (c.14 (N.I.)) is amended as follows.

(2) In section 105 (restrictions on summary prosecution) after subsection (8) insert—

'(9) A corrupt practice or electoral offence in relation to which section 14 of the National Security Act 2022 (which provides for higher sentences in cases of foreign interference) applies is triable only on indictment.'

(3) In section 106 (prosecution of offences disclosed on election petition) after subsection (1) insert—

'(1A) The duty in subsection (1) to obey a direction given by an election court does not apply to a direction with respect to the prosecution of a corrupt practice or electoral offence in relation to which the Director has reasonable grounds to believe section 14 of the National Security Act 2022 (which provides for higher sentences in cases of foreign interference) applies.'

(4) In section 108 (penalties for corrupt practices) after subsection (4) insert—

'(5) This section does not apply where section 14 of the National Security Act 2022 (which provides for higher sentences in cases of foreign interference) applies in relation to the corrupt practice.'

(5) In section 111 (penalties for electoral offences) after subsection (2A) insert—

'(2B) Subsections (1) to (2A) do not apply where section 14 of the National Security Act 2022 (which provides for higher sentences in cases of foreign interference) applies in relation to the electoral offence.'

(6) In section 112(1H) (incapacities resulting from convictions) after '109' insert 'or under section 14 of the National Security Act 2022 (which provides for higher sentences in cases of foreign interference)'.

(7) In section 118 (time limit for prosecutions) after subsection (3) insert—

'(4) This section does not apply where section 14 of the National Security Act 2022 (which provides for higher sentences in cases of foreign interference) applies in relation to the electoral misdemeanour.'"

*—(Stephen McPartland.)*

*This amendment amends the Electoral Law Act (Northern Ireland) 1962 in relation to offences under that Act to which clause 14 applies, e.g. to prevent such offences being tried summarily and to remove time limits for prosecuting such offences.*

*Schedule 1, as amended, agreed to.*

## Clause 15

PREPARATORY CONDUCT

**Stuart C. McDonald:** I beg to move amendment 52, in clause 15, page 13, line 6, leave out "in preparation for" and insert "which materially assists".

*This amendment ensures that only actions materially contributing towards to acts prohibited by this section will be criminalised.*

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

**Stuart C. McDonald:** Clause 15 criminalises conduct that is preparatory to some of the offences we have debated. It is fair to say that this is another amendment that I might have approached slightly differently had I been able to draft it in the light of the evidence session on Thursday, rather than in advance of it. Obviously, this clause was widely welcomed at that evidence session, and I accept that evidence.

I thought Sir Alex Younger made an interesting observation when he said:

"The bottom line is that we have to get in front of this stuff…We need to solve it before it has happened, and that raises a set of ethical and legal dilemmas where it is important to be striking the right balance".—[*Official Report, National Security Public Bill Committee,* 7 July 2022; c. 19, Q38.]

While he welcomed how the issue was treated in the Bill, he recognised that there are ethical and legal dilemmas.

I am another one of those lawyers who seem to overrun this place. *[Laughter.]* Thanks very much. Punishing preparatory conduct is not something I can recall from my dim and distant past as a law student, although that is probably as much to do with my memory as anything else. However, the serious point is that various crimes are set out and designed to punish certain acts; after that, other inchoate crimes such as attempts or conspiracy attach themselves to those basic criminal laws.

I absolutely appreciate that criminalising preparation allows enforcement and prosecution at an even earlier stage than an attempt, but the sort of legal and ethical questions raised by it come sharply into focus when we realise that the maximum sentence for such preparatory conduct is life imprisonment. What is particularly striking is that some of the completed offences do not attract that sentence. That seems pretty odd. If somebody guilty of completing the actual offence faces a maximum sentence that is lighter than the maximum sentence for somebody who is simply convicted of preparing for that offence, that seems a bit of an inconsistency.

Preparatory conduct offences also attach themselves, of course, to offences that I have already argued might be worded quite broadly. When we debated clauses 1 and 4, I made various points about the foreign power condition, national interest and so forth. For example, on clause 4, I expressed concerns about protesters operating in the vicinity of a naval base. The idea of life imprisonment for preparing for a blockade at Faslane naval base seems quite extreme. I appreciate that, for various reasons that we discussed, clause 4 does not attach in that way, but that is why we should take adding a preparatory offence to arguably already wide offences very seriously and be very cautious about it.

Indeed, in the clause the notion of preparatory conduct is pretty vaguely defined, I would say. It refers to

"any conduct in preparation for".

Not to be flippant—particularly in relation to jackets, which everyone has taken off—but if someone puts their jacket on before heading along to a peaceful protest, is that preparatory conduct? I accept that that will not lead to life imprisonment—we hope—but what exactly do we mean by preparatory conduct? The amendment suggests that it must materially contribute to the offence.

The ethical point is that we need to leave people able to change their mind and not end up incentivising them just to carry on and complete the act. If they will already get life imprisonment for preparing, they might arguably say, "Well, I've gone this far. I might as well just carry on and complete the act." Where is the incentive of saying, "Well, okay, you're going to get punished for your preparatory conduct, but the consequences will be much less severe if you stop now rather than carry on and complete the act"?

If someone sits for three days with a confidential document on their desk in an envelope addressed to a Russian agent, does not the threat of life imprisonment for having stuck the document in an addressed envelope and put a stamp on it effectively encourage them to go through with that act?

**Sally-Ann Hart** (Hastings and Rye) (Con): The hon. Gentleman is talking about acts in preparation for an offence. A person engaged in preparing for an act of this type, even if they fail, could still be prosecuted, because they have been preparing for something. Who assesses material assistance? It could be a very small thing, but small things can be very incremental and lead to something bigger. Perhaps he could highlight that a little.

**Stuart C. McDonald:** That is a perfectly legitimate question and I suppose that ultimately it would be down to the judge to decide what is meant by a material contribution. As I say, putting a jacket on—again, I do not want to be flippant—could be about anything. Does it bring whatever is planned closer to fruition? I do not know. It could be more readily argued that purchasing equipment materially takes forward what was in contemplation, for example. However, as I say, that is a perfectly legitimate question.

The point that I was coming to was that the amendment seeks to put us in a place where we encourage people to change their mind, essentially, and not to put people away for life even if they are on the verge of engaging in conduct that would thoroughly merit that sentence. It would give them an out that will still attract punishment—possibly—but will give them that choice, basically.

We have not have very much in the way of written evidence, but we did receive some interesting written evidence from Dr Kendall at the University of Queensland. She makes the argument, as I have tried to, that the

*[Stuart C. McDonald]*

sentence is too harsh. She also argues that the Bill could be better worded. Furthermore, she makes the point that we should probably put in the Bill that someone cannot be convicted of an inchoate preparatory conduct offence. Basically, she is worried that someone might be found guilty of attempting to prepare, which takes us a step further back and complicates the picture even further. In her written evidence, she suggests that it should be made clear that someone cannot be charged with an attempt to prepare, which will take us too far through the looking glass.

3.45 pm

**Maria Eagle:** I have a couple of points to ask the Minister about. The clause is a generally necessary and helpful provision. It provides for the offence of preparatory conduct, and makes it an offence to do things that are not an offence at the moment. The point, however, is that it helps law enforcement to intervene at an earlier stage, before the preparatory conduct has turned into the capacity to commit whatever it is that is being prepared for. It must be difficult for those seeking to disrupt such activities to have to sit around and wait for an offence to be committed before putting a stop to the preparatory conduct.

The purpose of the clause is clear, and it will be a useful addition. However, will the Minister explain why the clause covers preparatory conduct for various offences, but not all the offences in the Bill? Why does it not cover preparatory conduct with the intention of committing a new foreign interference offence, for example, because it does not? What is the reasoning behind that offence being left out of the clause?

It would be helpful for us to hear from the Minister what the thinking is in that regard. If it is good to have an offence of preparatory conduct to prevent at an early stage offences that might otherwise be committed that would be quite serious, why not for the foreign interference offence?

**Stephen McPartland:** The clause provides a disruptive tool to tackle preparatory activities carried out by those who seek to cause us harm. Malign actions by states have the potential to cause significant damage to the UK and its interests, and it is therefore vital that the law can intervene at an early stage when preparatory activities are under way. That is already provided for under the Official Secrets Act 1920, and the Law Commission has recognised the importance of maintaining the provision.

The offence covers preparatory conduct in two scenarios. The first is preparation to commit acts that would constitute one of the following offences: obtaining or disclosing protected information, obtaining or disclosing trade secrets, entering a prohibited place for a purpose prejudicial to the UK, and sabotage. The second is preparation to commit state threats activity that involves serious violence, that endangers life or that creates a serious risk to the health and safety of the public. The offence of preparatory conduct covers those who are preparing to carry out harmful acts themselves, and those who make preparations for another person to commit the acts.

Importantly, the preparatory conduct offence is committed only where there is an intention to commit a relevant act and that can be proved beyond a reasonable doubt—I hope that provides some reassurance. The element of intention provides an important safeguard that will prevent the offence from capturing legitimate acts, or acts undertaken by individuals who did not engage intentionally in state threats activity. In addition, consent will be required by the Attorney General, or the Advocate General in Northern Ireland, before a prosecution can be brought under the offence.

When preparatory acts are caught at an early stage, it may be unclear exactly what the perpetrator intended as the ultimate outcome—for example, an act of sabotage or obtaining trade secrets. The offence may therefore be committed if there is a general intention that the preparatory conduct will result in harmful state threats activity of a general nature. That is in line with the approach taken by Parliament when it provided the offence of the preparation of terrorist acts under section 5 of the Terrorism Act 2006. A requirement to demonstrate that the preparatory act was undertaken with the intention that specific harmful state threats activity result would, in many cases, constrain the offence in a way that would be wholly undesirable and potentially allow state actors to evade the law.

Those caught preparing to harm us could face a maximum sentence of up to life imprisonment. The Committee will be aware that the ultimate decision on the length of the penalty faced will be decided by the courts, taking into account the severity of the preparatory activity and the harms that were intended to result from it, which could include long-lasting damage to the UK or the loss of life. I totally understand what the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East said about life imprisonment being a heavy penalty, and the courts would not give such a sentence for some of the examples that he described. But the courts could impose life imprisonment if someone was preparing to commit murder and the courts would want to treat some activities in the same manner, because if someone had another person assassinated, the court would want the full ability to impose a life sentence in those circumstances.

We know all too well that state actors operate using sophisticated methods, and that they can cause unimaginable harm. I therefore stress the importance of clause 15 as a key tool in our fight against states who seek to harm us. Where we can disrupt state actors at a preparatory stage, we must do so, before they have the opportunity to manifest their intentions to cause harm to our nation. As we discussed earlier, the ability to deal with the offence already exists in the Official Secrets Act 1920, and the proposed offence in the Bill modernises its terms. With regard to why the offence is to be expanded to apply to some rather than others, we believe that we have carefully assessed the link between the two, and we do not think it is necessary or appropriate to extend the offences to apply to foreign interference or assisting a foreign intelligence service at present. That is something that we will continue to look at.

Effectively, we need to continue to get the powers on the statute book to help the intelligence services and provide them with the toolkit that they need to help keep us safe.

On amendment 52, which seeks to raise the threshold—

**Maria Eagle:** I was trying to work out the Minister's answer to me. The foreign interference offence in clause 13, which we have debated, covers a wide range of harmful activity, including manipulating legal or political processes, interfering with fundamental rights. Why is the offence of preparatory conduct not applying to those activities? What is the reasoning, because it would be an important disruption tool for authorities to try to prevent foreign interference, would it not?

**Stephen McPartland:** I understand what the hon. Lady is saying—

**Sally-Ann Hart:** Clause 13 on foreign interference refers to a person committing an offence

"if…the person engages in conduct intending that the conduct, or a course of conduct of which it forms part"

so that would include preparatory conduct, because it is a course, so the conduct goes from beginning to end. There will be preparatory conduct. Does my hon. Friend agree that that might scoop up the relevant particular point?

**Stephen McPartland:** My hon. Friend makes a very good point. At the end of the day, my understanding is that the offences are designed differently, which is why we were unable to capture the relevant preparatory activity as part of the offences themselves. I am not a lawyer, but effectively those offences are designed differently, and that is where we are.

Amendment 52 seeks to raise the threshold of that which be proven to show the preparatory nature of the clause. Those who intentionally engage in preparatory conduct, as specified under clause 15, pose a significant risk to national security, and that will be true regardless of whether or not their actions materially assist the ultimate outcome. For example, if a security guard in the employment of a foreign power leaves a door open to facilitate access into a prohibited place by a hostile actor, that would constitute a preparatory act. If the hostile actor then used an alternative route to access the site, for example, cutting through a fence, the guard's act would not have materially assisted them and his acts would go unpunished. I am sure that the Committee would agree that that would be an unacceptable outcome.

Furthermore, the offence enables disruptive action to be commenced at an early stage, to provide the greatest chance of avoiding the harmful activity occurring. It will not always be possible to determine the end goal of a person's conduct, and thus whether their preparations are of material assistance. Indeed, in some cases, an individual may not even have decided the precise harmful acts that will result from their conduct, but rather will have the intent that their preparatory conduct will bring out harmful activity in general. However, in order to be caught by this offence the individual must have the intent that their conduct will bring about one of the relevant harmful outcomes. I hope that reassures the Committee that the offence cannot be used to prosecute those who undertake actions without any awareness or intent that it could support the commission of a relevant act.

The amendment would undermine the utility of what is otherwise a key preventive tool. Therefore, I do not support it, and I ask the hon. Gentleman to withdraw it.

**Stuart C. McDonald:** I am grateful to the Minister for his explanation. I particularly take his point about the door being left open, and that ultimately ending up not making a material contribution to what happened thereafter. I will go away and think again about the issue, but I think the Minister's explanation was very helpful. In the meantime, I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 15 ordered to stand part of the Bill.*

*Ordered,* That further consideration be now adjourned. —*(Scott Mann.)*

3.55 pm

*Adjourned till Thursday 14 July at half-past Eleven o'clock.*