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Public Bill Committee

NATIONAL SECURITY BILL

Fifth Sitting

Thursday 14 July 2022

(Morning)

CONTENTS

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Monday 18 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

Thursday 14 July 2022

(Morning)

[Rushanara Ali *in the Chair*]

National Security Bill

Clause 16

Aggravating factor where foreign power condition met: England and Wales

11.30 am

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

The Chair: With this it will be convenient to consider clauses 17 to 19 stand part.

The Minister for Security (Stephen McPartland): Although the Bill provides a range of offences specifically targeted at state threats activity, it will not always be appropriate or possible for harmful activity to be prosecuted under the Bill. Where offences already exist on the statute book that deal effectively with the relevant state threats activity, there is no need to create a similar offence in the Bill. For example, the offence of murder deals effectively with state-sponsored assassinations.

While the Bill provides a suite of offences and accompanying tools and powers, there remain cases in which it will be difficult to secure prosecution due to the covert nature of the activities and the difficulties involved in presenting admissible evidence to a court to illustrate all the components of an offence beyond reasonable doubt. In some cases, however, it might be possible or more appropriate to charge the individual with another offence on the statute book.

The aim of the aggravating factor in clauses 16 to 18 is to ensure that in such scenarios the state threats element is acknowledged in court and offenders are sentenced accordingly. The state threats aggravating factor will apply in cases where the foreign power condition—to which I have referred a number of times in Committee—is satisfied. Currently, if someone is convicted of an offence and it is known that the offence was linked to state threats activity, the judge may take that into account, but there is no formal mechanism to require the judge to factor that in when making a sentencing decision, and there are no clear definitions to enable the court to apply that consistently. This is in contrast to terrorism, where there is already a statutory requirement to acknowledge a terrorist connection when considering the seriousness of certain offences. That has been effective in cases such as those of the murder of Jo Cox MP, and Lee Rigby, where the seriousness of the offences was aggravated by the sentencing judge because of the terrorist connection, so a higher sentence was imposed.

The Government believe that the state threats aggravating factor should be available in relation to any offence. A state threat is a unique national security threat that can take a wide range of forms. We must ensure that our justice system is able to acknowledge all forms that such activity might take, and be able to penalise it accordingly.

Clause 19 ensures that the aggravating factor can apply to those who are convicted of offences in service courts. The service courts system applies to those who are bound by the Armed Forces Act 2006—for example, serving members of the armed forces. The state threats aggravating factor will apply in the same way in service courts as it does in civilian courts, in that if an offender pleads guilty to or is found guilty of an offence—for example, theft—and the foreign power condition is met, the offender's sentence will be aggravated accordingly.

Mr Kevan Jones (North Durham) (Lab): I support the proposals. My concern, which is one I will express throughout the passage of the Bill, is the Bill's relationship with the Official Secrets Act 1989, under which the maximum penalty is two years. The Minister or his officials might not know the answer now, but I am happy for him to write to me. How will the two Acts intersect? Clearly, if someone has committed an offence, they will want to be found guilty under the Official Secrets Act, under which the sentencing powers are limited, as opposed to under the Act that this Bill will become. That will be the problem with the Bill—I still cannot understand why the Government did not do both: what they promised, which was the full reform, and a Bill for a new Official Secrets Act.

Stephen McPartland: As the right hon. Gentleman knows, we are reforming the first three Official Secrets Acts, but not the 1989 Act, with the Bill. We will write to him with the information to explain how that is going to work.

In summary, the aggravating factor provides another tool for prosecutors to deploy, and helps to future-proof the Bill by ensuring that our judicial system can respond to any evolving state threats and activity in the future.

Holly Lynch (Halifax) (Lab): It is a pleasure to see you in the Chair, Ms Ali. I very much welcome your early judgment call on jacket wearing; we are all eternally grateful.

Clause 16, as the Minister outlined, inserts new section 69A into the sentencing code to provide a new aggravating factor for sentencing when the foreign power condition is met in relation to an offence. The court will make its determination on the basis of the usual information before it for the purposes of sentencing, which may include the evidence heard at trial or evidence heard at a Newton hearing following a guilty plea. If the court determines that the foreign power condition is met in relation to conduct that constitutes the offence, it must treat that as an aggravating factor when sentencing the offender and must state in open court that the offence is so aggravated.

We are introducing a measure that will mean that, if an individual is found guilty of an offence that is not outlined in the Bill, but the foreign power condition can be proven, a judge may aggravate their sentence. On Second Reading, the Home Secretary provided a serious

recent example to highlight why she felt the measure was needed, and we very much recognise the merit in that.

However, I note that a sentence would be aggravated only up to the maximum available for the original offence. I have sought a legal opinion about whether there is a precedent for aggravating an offence beyond the maximum sentence where deemed appropriate. Although the judge ultimately has discretion to sentence beyond the sentencing guidelines, it is far from common practice and will be subject to appeal.

I want to work through the application of the measure. For example, if someone acting on behalf of a foreign state were to commit a section 18 assault against someone who was going to speak at an event against that Government as a means of preventing them from honouring that commitment, it might be possible to prosecute them under some of the new offences in the Bill. If that is not the case and they are prosecuted for the section 18 assault, the foreign power condition having been met and the sentence aggravated, it is still subject only to the maximum sentence for a section 18 assault. I feel that the weight of the very serious sentences in this Bill will not be felt by the perpetrator in that instance.

Will the Minister outline why we are not able to push the sentences under clauses 16, 17 and 18 further? Will he comment on whether the usual so-called early plea discount will be ruled out in cases where the foreign power condition is met?

Clause 17 introduces the measure for offences in Northern Ireland, and clause 18 makes a corresponding provision to the one in clause 16 for sentences to be aggravated where the foreign power condition is met for offences in Scotland. Clause 19 amends the Armed Forces Act 2006 to make corresponding provision for service courts considering the seriousness of a serious offence for the purposes of sentencing. The case for tougher sentencing is even stronger in those circumstances, given that people serving in the armed forces and acting on behalf of our nation potentially have a level of access to the UK security apparatus that others do not have. We recognise the seriousness and necessity of these measures, and fully support them, but will the Minister address the points I have raised?

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): It is a pleasure to serve under your chairmanship, Ms Ali. I have one very short point. I am very supportive of these measures. Clause 18, as we have heard, relates to Scotland. As I understand it, it operates and is drafted similarly to other aggravations in Scottish criminal law. I just want to be absolutely sure that the Government are collaborating closely with the Scottish Government to ensure it fits with the schemes in Scottish criminal law. What discussions has he had with compatriots up there?

Stephen McPartland: I am very grateful for hon. Members' responses and support for these clauses, and I will try to provide clarity on the points made by the hon. Member for Halifax.

Serious offences that have a state threat component, such as murder and violent offences, already have significant penalties, as the hon. Lady said, and the aggravating factor will therefore allow for those sentences. However, she is right that for lower-level offences such as harassment, stalking or common assault, this would be a useful example of how these powers can be used if someone is not able to use some of the other clauses, so that they can identify that this person is part of the problem, and the person can at least be prosecuted for something, whereas at the moment it would not really be possible to prosecute them.

Also, the aggravating factor allows for an increase in the sentence, but within the sentencing code. The hon. Lady is correct that if it was a one-year sentence under the guidelines, the aggravating factor would be a maximum sentence of one year.

Question put and agreed to.

Clause 16 accordingly ordered to stand part of the Bill.

Clauses 17 to 19 ordered to stand part of the Bill.

Clause 20

Powers of search etc

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

The Chair: With this, it will be convenient to consider the following: Government amendment 12.

That schedule 2 be the Second schedule to the Bill.

Stephen McPartland: Robust investigative tools are crucial to enable the police effectively to counter threats by state actors, which operate using highly sophisticated means and often have access to significant resources and are skilled in tradecraft.

Clause 20 introduces schedule 2, which provides the police with powers of search and seizure when investigating threats posed by state actors to the UK and its interests. These powers replace the power of search in section 9 of the Official Secrets Act 1911.

Under the existing powers and those provided in schedule 2, the police can act on a reasonable suspicion that a relevant act has been, or is about to be, committed. This threshold is a crucial element within the provisions to enable the police to act with the necessary speed to counter state threats activity.

Mr Jones: Can the Minister clarify what he means by "reasonable"? I know what it means in law, but I also know that there is a reasonableness test in the existing section 7 of the Act, which the security services say is not enough? So why is it okay here and it is not okay when it comes to clause 23?

Stephen McPartland: The difference is that under the Police and Criminal Evidence Act 1984, or PACE, the police need to be able to identify in this situation that a crime has been committed, whereas for this measure the police are trying to intervene earlier, so that they can stop a crime from being committed. Effectively, that is what the difference is.

We will debate clause 23 when we get to it—

Mr Jones *rose*—

Stephen McPartland: No, no—we will debate clause 23 when we get to it. I will be very happy to talk about clause 23 then.

The Chair: The Minister is not taking interventions.

Mr Jones: Will the Minister give way?

Stephen McPartland: No. *[Laughter.]*

As I was saying, clause 20 introduces schedule 2 to the Bill. Under the existing powers and those provided by schedule 2, the police can act on a reasonable suspicion that a relevant act has been, or is about to be, committed.

The threshold is a crucial element within the provisions to enable the police to act with the necessary speed to counter state threats activity. General search and seizure powers, such as those provided under PACE, are comparatively restrictive because they do not allow the police to act pre-emptively when there is intelligence to indicate that an offence is about to be committed. So, both the Ministry of Justice in 2014 and the Law Commission in 2020 reviewed the existing power, concluding that it was necessary and that reliance on PACE powers alone would limit the ability of the police to disrupt and investigate state threats.

These powers may only be used to deal with the most serious offences covered by this Bill, as well as where state threats activity involves violence or constitutes a serious threat to life or public safety.

Turning to the powers themselves, part 1 of schedule 2 legislates for powers of search and seizure as they apply in England, Wales and Northern Ireland. They provide for the police to gain access to material likely to be evidence of a relevant act, which covers specific offences or certain acts or threats under the Bill.

Where the relevant act has been, or is about to be, committed the powers in part 1 of this schedule are different, depending on the nature of the material sought to reflect the enhanced safeguards that are required to protect confidential material.

Under paragraph 2, for non-confidential material, the police can obtain a warrant to enter and search premises and to seize and retain material. There are two key conditions that a court must be satisfied are met for such a warrant to be granted: first, that a relevant act has been, or is about to be, committed and, secondly, that the material sought on a premises is likely to be evidence of that act and is not confidential material. Should the police apply for an all-premises warrant, an additional condition applies: it must not be reasonably practicable to set out all the premises that the person of interest occupies or controls, but that may need to be searched. To access confidential material, a production order must be obtained, should this course fail or be unavailable through a warrant.

11.45 am

For a production order to be granted, there are four tests or conditions, all of which must be satisfied for a judge to grant a production order. First, there must be reasonable grounds to suspect that a relevant act has been, or is about to be, committed. Secondly, it must be confidential material that will likely evidence a relevant act and not be legally privileged. Thirdly, the material must be likely to be of substantial value to the investigation. Finally, it must be in the public interest considering the benefit it would provide to the investigation in question and the circumstances in which it is held.

Given the nature of the material, it is right that more robust tests must be met before access to this material is granted. If granted, a production order requires a person to produce or give the police access to material. There are also circumstances in which a judge may grant a production order where the police suspect that evidence will come into a person's possession within 28 days. That mirrors the power available in counter-terrorism legislation—that is an important point. In certain circumstances, a constable can apply to a judge to grant a warrant to enter premises, and search for and seize confidential material. This type of warrant cannot be granted unless it satisfies all four of the same tests that are required for a production order.

In addition, the warrant must be required for one of several reasons, including, first, that it is not practicable to communicate with the person who may grant access to the premises or material. Secondly, that it would be seriously prejudicial to the investigation to do so or, thirdly, that a production order has not been complied with. Under paragraph 8, a constable can obtain an order from a judge for a person to provide an explanation as to why they had in their possession certain material recovered during the execution of the above powers. That enables police to build a greater picture of how material came to be in an individual's possession and for what purposes they held it.

Investigators have a responsibility to pursue all legitimate lines of inquiry, regardless of where they may lead, and this power provides a vital tool to support the investigative inquiries of the police. Part 1 of schedule 2 provides specific powers for search and seizure in urgent cases whereby a superintendent may authorise the police to enter premises, search for and seize material if it appears to them that the case is one of great emergency in which immediate action is necessary. Similarly, there is an emergency power to require an explanation. Again, these powers are likely subject to safeguards, which I will come on to shortly.

Part 2 of schedule 2 provides a similar set of powers for police in Scotland, but with minor differences to reflect their devolved powers. In addition to the conditions I have already covered, there are additional safeguards within these provisions, including, first, that orders and warrants must be made by an independent judicial authority in all cases, expect in cases of great emergency. Secondly, in the rare instance that the urgent powers are exercised by a senior police officer, the Secretary of State must be notified of their use, and if certain confidential material is recovered during the search that the police want to retain as evidence, its retention must be authorised by a judge. I will come to that in more detail shortly. Finally, nothing in the schedule provides for access to legally privileged information.

Recognising the importance that we place on press freedoms, there are specific safeguards that govern the handling of confidential journalistic material. In an exceptional case where such material is seized during a search that has been authorised under the urgent procedure, a warrant must be sought from a judge for its continued retention. In instances where a warrant is refused, a judge may direct that the confidential journalistic material

be returned or destroyed. That reflects recent case law and ensures that the provisions provide appropriate protection for journalists.

Government amendment 12 is to schedule 2. As I am sure hon. Members would agree, it is important that court rules are able to be amended to cover the powers of search and seizure provided for in schedule 2, if required. This technical amendment achieves that. Under part 1, paragraph 2 of schedule 2, a constable can apply for a warrant to enter a premises and search for and seize material classed as non-confidential where they suspect a relevant act in the Bill has been, or is about to be, committed. As provided for in paragraph 2(1)(b), a constable in Northern Ireland must apply for that type of warrant from a lay magistrate. Government amendment 12 will ensure that, should it be necessary to do so, the court rules can be amended to reflect any specific requirements that apply to the application and issuing of such warrants.

In summary, the Government have reformed an existing tool, the utility of which has been independently recognised and provided for in its use in state threats investigations, while ensuring that it is subject to a range of modern and vital safeguards. I ask the Committee to support the inclusion of clause 20 and schedule 2 in the Bill, along with Government amendment 12.

Holly Lynch: I thank the Minister for his explanation. Clause 20 and schedule 2 deal with the power of entry, search and seizure in relation to the new offences created by part 1 of the Bill. There are a number of powers here that seem largely appropriate and proportionate for the reasons outlined by the Minister.

However, I will press the Minister on paragraphs 3 and 4 of part 1 in schedule 2, on the production orders relating to confidential material. These provisions set out the conditions that must be met in order for a constable to apply to a judge for a confidential material production order. I was listening carefully to what the Minister said on that. The person specified in that order then has to produce, within a specified period, any material that they have in their possession, custody or control.

The specified period is seven days. The clause says that it is seven days unless it appears to the judge that a different period would be appropriate in the particular circumstances of the application. Why is it seven days? Given the seriousness of some of the offences and the consequences of confidential material being in the hands of someone who should not have it—potentially to the benefit of a hostile state—that feels like quite a long period for such material to be able to be used against us. I would be grateful if the Minister explained the rationale for specifying the period as seven days.

My second point is that there is a lot going on in schedule 2, much as there is in schedule 3. While there are provisions for an ongoing review of the powers created by part 2 of the Bill, at clause 49, I think that part 1 should be reviewed by an independent reviewer to safeguard against any unintended consequences once the legislation is enacted. That is why the Opposition have tabled new clause 2; we will make the case for that provision when we reach the appropriate point.

Stuart C. McDonald: I broadly welcome the provisions. As the hon. Member for Halifax said, they are extensive powers, so I am very sympathetic to her suggestion that they should be subject to review in the same way that other parts of the Bill are. I appreciate that those extensive powers are modelled on the equivalent provisions in terrorism legislation. I have no problem with those provisions being borrowed from such legislation, but they need to be justified in their own context. The Minister has usefully set out why exactly they are needed here. The SNP is broadly supportive of that.

I have a couple of questions. I am not familiar with the idea of allowing police officers or sheriffs to order a person to explain material that is seized. I see that is borrowed from terrorism legislation. However, I wonder how that works alongside the right not to require someone to self-incriminate, particularly when there is an emergency power for police officers to require an explanation—if that is not complied with, it can be a criminal offence. I am interested in how that works; I assume it works in the context of the terrorism legislation, but it would be interesting to hear a bit more about that. I am also interested in the idea of what a "great emergency" amounts to. That is not a concept that I have seen before. Are we talking about threat to life and limb, essentially? I am not sure about that.

My only other point is that how the provisions on search and seizure apply depends largely on how the foreign power condition operates. I said at the outset of our debates on clause 1 that I have some difficulties with how broadly some aspects of the term were drawn. For example, the non-governmental organisations I referred to during that debate and journalists working for a foreign state broadcaster can be brought within the foreign power condition, meaning that they are subject to the search-and-seizure powers. We can probably come back to that in the context of clause 1, but it is relevant to our discussion. It could be those people who are searched or who have documents seized under the schedule, including confidential journalistic material.

Those are a couple of points to emphasise, but we broadly support what is in the clause and the schedule.

Stephen McPartland: I am grateful for Members' support. To sum up, the important thing is to recognise that between 2017 and 2022, the powers relating to great emergency have been used seven times in England and Wales and once in Scotland, and they have never once been used by a senior police officer during that five-year period. This will not happen weekly or monthly; it will be a very rare event. We are trying to mirror the legislation that has proven to be successful in the Terrorism Act 2000. The seven days figure also mirrors the legislation in that Act. I totally accept the point made by the hon. Member for Halifax: if the judge has the evidence in front of him and wants to make it a different time period, that is then a judicial decision as opposed to any other kind of decision.

Question put and agreed to.

Clause 20 accordingly ordered to stand part of the Bill.

Schedule 2

POWERS OF ENTRY, SEARCH AND SEIZURE

Amendment made: 12, in schedule 2, page 62, line 9, after "rules" insert "and magistrates' courts rules".—*(Stephen McPartland.)*

This amendment enables Northern Ireland magistrates' courts rules to make provision about proceedings under Schedule 2.

Schedule 2, as amended, agreed to.

Clause 21

ARREST WITHOUT WARRANT

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

Stephen McPartland: Currently, the police must rely on the powers of arrest and detention available under the Police and Criminal Evidence Act 1984, as we discussed earlier, when tackling state threats activity. In contrast, under the Terrorism Act 2000 the police have enhanced powers to facilitate early disruption and the investigation of acts of terrorism and terrorism-related activity.

The enhanced police powers are available for terrorism investigations and have proven very effective at tackling the threat. We consider the risks posed by state threats to be similar and to require enhanced powers and tools. Clause 21 creates a new arrest power whereby a constable can arrest without a warrant anyone who they reasonably suspect is or has been involved in foreign power threat activity. If an individual is arrested under clause 21, the further provisions in the clause and in schedule 3 will apply. We will debate the latter powers shortly.

The police must currently arrest an individual for a state threats offence under the arrest power in PACE. On arrest under PACE, the constable must specify the offence that the person is suspected of committing or being about to commit. For example, that could be foreign interference under clause 13 or obtaining or disclosing protected information under clause 1. As we all know, state threats actors are highly trained operatives, with police often needing to rely on sensitive intelligence to build their case and understand the threat that the suspect might pose to UK national security.

In some circumstances, police might have evidence to suspect an individual's involvement in state threats activity but might not yet have the full picture to determine the intended offence. In such circumstances, where police have the intelligence to indicate that state threats activity is imminent, police can deploy the arrest power in order to prevent that person from committing the activity. That early disruption by the police is critical in saving time and ensuring that the activity is not allowed to occur. That prevents harm to UK national security and potentially prevents harm to people's lives.

The clause is modelled on the similar arrest power that operates under the 2000 Act, which has been shown to be effective in providing the police with an early disruption tool. I ask the Committee to support the clause.

12 noon

Holly Lynch: The clause provides a power of arrest without warrant and includes provisions about subsequent detention. The explanatory note explains that the provisions are modelled on those in section 41 of and schedule 7 to the Terrorism Act 2000, as the Minister said, which give police officers the power to arrest persons suspected of terrorism-related offences without a warrant.

We recognise the importance of granting law enforcement officers this power. The sense within policing is that it will provide the police a window in which to work, in order to undertake the necessary analysis and investigative work needed to confirm if an act of espionage or sabotage has been committed. Once a more substantive offence is established, the person in question must then be arrested for that offence, which would trigger the further relevant detention powers.

I have a query from within law enforcement, which relates to subsection (9). If the warrant for further detention is refused, a person can still be detained in hospital or if they are removed to hospital because they needed medical treatment. I am not aware that any such provision to continue to detain someone on the basis they need medical treatment when the application has been refused exists within any other detention powers. I would be grateful if the Minister could clarify that point.

Stuart C. McDonald: The provisions are for very significant powers of arrest and people can remain under arrest for a quite striking period of time, so we should be cautious. The key issue for me is subsection (1), because arrest without a warrant is justified not by the suspicion of a specific event set out in the Bill, but by involvement in foreign power threat activity. Will the Minister say a little more about why that decision has been made?

We will obviously get to clause 26 and the definition of "foreign power threat activity" soon, but it is a much broader concept than being under suspicion of one of the particular offences in the Bill. It could be somebody providing assistance or support to individuals, or known to be involved in certain types of conduct. Why have these powers of arrest without warrant been drafted differently compared with the powers on search and seizure? The search-and-seizure powers relate to specific offences under the Bill. The power of arrest without warrant applies to a much broader category of people. Given the significance of the powers, and how long people can be detained for, it is important that we push the Minister a little bit further on why the Bill has been drafted in this way.

Stephen McPartland: I am grateful for the contributions and the general support. On safeguards, the powers mirror the powers in the Terrorism Act 2000, which are very important and have proven to be very disruptive, as well as useful and effective in keeping the country safe. It is critical that the police have strong powers of arrest and I outlined the reasons for that. Currently, a person can be detained for 24 hours. These provisions allow a detention for 48 hours, which would have to be reviewed periodically after 12 hours, so there are safeguards. The provisions mirror the 2000 Act, which has proven very effective and very disruptive.

On the question asked by the hon. Member for Halifax, the detention clock stops if the individual goes to hospital. If a warrant is refused, they can only be detained for 48 hours. These may appear to be very significant powers, but a person is not going to be held for a huge number of days.

Question put and agreed to.

Clause 21 accordingly ordered to stand part of the Bill.

Schedule 3

DETENTION UNDER SECTION 21

Holly Lynch: I beg to move amendment 45, in schedule 3, page 70, line 27, at end insert—

"(1A) A place designated by the Secretary of State under sub-paragraph (1) must be subject to an independent inspection by—

(a) Her Majesty's Inspectorate of Constabulary, or

(b) a different person or body appointed by the Secretary of State."

I will speak to amendment 45, tabled in my name and those of my hon. Friend the Member for Birmingham, Yardley and the shadow Home Secretary, my right hon. Friend the Member for Normanton, Pontefract and Castleford (Yvette Cooper). I will also address the wider schedule 3 powers.

The amendment reflects the place of detention powers at the start of schedule 3, which gives the Secretary of State the power to designate places at which persons may be detained under section 21. The Minister's predecessor was asked repeatedly whether he could clarify what types of buildings could be designated places of detention beyond police stations on Second Reading. In response, he said:

"I do not think that this is an appropriate forum in which to discuss the detail of such measures, but I hope I can reassure my hon. Friend on that particular point. As I have said, this is to allow for cases in which such capacity is required owing to operational need, and it cannot be outside the United Kingdom."—[*Official Report*, 6 June 2022; Vol. 715, c. 636.]

I am still not convinced about the provisions based on that response.

Maria Eagle (Garston and Halewood) (Lab): The provisions in paragraph 1(1) of schedule 3 give the Secretary of State the power to designate places at which persons may be detained under section 21. However, sub-paragraph (2) states that in the entire schedule a reference to a police station includes a reference to any place that the Secretary of State has designated. That means that as long as the Secretary of State says, "I designate this place", any building in the UK—it does not even say "building"—or any place can be a police station. Can that possibly be adequate and correct?

Holly Lynch: My hon. Friend makes an incredibly important point. I was just about to say that operational need provided a reason for the appalling asylum accommodation provided by the Home Office during the pandemic, and we now know that the official guidance was ignored. That leads to a great deal of concern about the ability to designate any type of building as a place suitable to detain somebody.

To introduce some safeguards, we propose an amendment whereby any such place designated as a place of detention must be subject to an inspection regime. We have given the Government some discretion to determine who the most appropriate body to do that would be, given the absence of any steer at all, as my hon. Friend has just said, about what type of buildings might be used. Her Majesty's inspectorate of constabulary and fire and rescue might be the most obvious choice. I hope the Minister will reflect on that and adopt our sensible and measured proposal.

Schedule 3 is massive—32 pages of powers. To consider the implications of it all once enacted is an enormous undertaking. That is why I come back to this principle when making the case for new clause 2.

The Chair: Order. We will come on to schedule 3.

Holly Lynch: Of course, Ms Ali—I will wait until I am invited to do that.

Mr Jones: It is a pleasure to serve under your chairship, Ms Ali. I have some sympathy with the amendment as I am always against things that give Ministers or the Executive broad powers. As my hon. Friend the Member for Halifax has already said, the powers seem to be unlimited. We are talking about national security and the confidence that we should have in our agencies to act in our interests, with the best of intentions and proper oversight, so the amendment is important. What does "any site in the UK" mean? My hon. Friend said that that was quite a broad power, and I want to ask about sites in the UK that are not under the control of the UK Government, such as US sites. Could Mildenhall airbase, a US airbase in the UK, be designated as one of these sites? I raise that because it limits UK authorities' oversight and jurisdiction.

People may ask why that is important, but I am very conscious that we should always ensure that civil servants, Ministers and others have historical knowledge and take into account what happened in the past. I served on the Intelligence and Security Committee when we did our inquiry into detainee mistreatment and rendition in 2018. I have to say, it did not make for pretty reading. We did not shy away from the facts, and the actions of our agencies and certain Ministers—including some Ministers in the Government I served in—did not come out of that report very well. Guidance and regulations were put in place to ensure that did not happen again. I would like some clarity about whether such bases could be designated under this measure? Some of those sites could potentially have been used for what the ISC report on rendition highlights. They certainly were abroad, but this is about sites that are actually in the UK.

Stephen McPartland: I looked at the amendment in a lot of detail, and I discussed it with my officials and challenged them. I think the hon. Member for Halifax makes a very, very important point and has a strong case, and she will be delighted to know that, although I will resist the amendment today, I will commit to consider it and whether the Bill should clarify that only sites located in the UK can be designated as places of detention. I share her concerns about the possibility of rendition and stuff outside the UK. I will go into a bit more detail for her, and hopefully that will help the right hon. Member for North West Durham—

Mr Jones: North Durham.

Jess Phillips (Birmingham, Yardley) (Lab): He hates west Durham.

Stephen McPartland: Sorry—North Durham.

I am grateful for the way the hon. Member for Halifax has tried to help us improve the Bill. She has been constructive throughout.

Paragraph 1 provides a delegated power for the Secretary of State to designate places where someone may be detained after arrest for foreign power threat activity under clause 21. If arrested under PACE, suspects are taken to a designated police station and held in a custody cell, unless they are being questioned, when

[Stephen McPartland]

they will be in an interview room. When arrested under the Terrorism Act 2000, suspects are taken to a TACT custody suite. If a TACT suite is not available—for example, because the nearest one is located too far away—as an alternative a police station can be used.

There are five TACT suites in England and Wales, one in Scotland and one in Northern Ireland. Currently, they are all located inside police stations. Police use TACT suites in the first instance because they are designed to hold suspects for longer periods and address their specific personal needs. They are also designed to take into account the operational requirements for handling those suspects. For example, they are bigger and they ensure that, when multiple arrests have been made, suspects cannot communicate with other. The staff are also specially trained to deal with those types of suspects.

Under the designation power in paragraph 1, the Secretary of State will issue a certificate to the chief officer in charge of a facility to affirm its accreditation. The designation will be published through the routine Home Office circular update, so it will be publicly available to view. In order for a facility to be designated, it must meet the technical standards of custody suites set by the Home Office and Ministry of Justice. The power means that a bespoke custody suite or other suitable facilities built or identified in the future outside a police station, where they meet the standards above, can be designated as a place of detention by the Secretary of State. That is just future-proofing.

Her Majesty's inspectorate of constabulary and fire and rescue services already independently assesses the effectiveness and efficiency of police forces. It already regularly inspects police custody conditions and, in 2019, published a joint inspection with Her Majesty's inspectorate of prisons of TACT custody suites in England and Wales.

12.15 pm

Maria Eagle: The Minister has just given a great deal more information than is written in the Bill. Paragraph 1(1) states:

"The Secretary of State may designate places",

and, at sub-paragraph (2), that

"a reference to a police station includes a reference to any place"

so designated. That could be a square in the middle of a field. Will the Minister consider inserting into the legislation some of the detail that he has just put on the record to make it clear that a specific power is being taken to designate more custody suites?

Stephen McPartland: As I have said, I am very interested in the amendment and am looking at possibly doing something along similar lines. I am trying to get the facts out. I heard what was said about the response on Second Reading so I am trying to be open and transparent and to put stuff on the record, in the official record of the sitting. I am doing the best that I can to be open, so that people are not concerned about rendition or people being taken overseas.

Maria Eagle: I am grateful to the Minister for giving way again. I am glad to hear about the amendment, but that is of course about inspecting such places. As he is doing more work, does he mind also taking away the suggestion that I have just made? He might like to make it clearer in the legislation that we are talking about custody suites and not about squares of ground in the middle of a field or any other such place.

Stephen McPartland: I am always happy to take away the hon. Lady's suggestions.

My initial concern with the amendment is that, as drafted, it adds little value, just a statutory requirement for Her Majesty's inspectorate to fulfil a role it is doing already. I note all the concerns of hon. Members, however—

Mr Jones *rose—*

Stephen McPartland: I have given the right hon. Gentleman the blink and he still wants to intervene.

Mr Jones: I welcome what the Minister says—

Stephen McPartland: Say thank you!

Mr Jones: It takes a lot to get that in a Bill Committee. My hon. Friend the Member for Garston and Halewood is right—this needs clarifying in the Bill. When the Minister goes away to think about it, will he look at and ask officials about the issue of those sites that are in the UK, but outside the control of Her Majesty's Government? I will not say too much, but we occasionally work with organisations and countries in certain places in the UK, but do not control what goes on there. Will he reflect that when doing his work?

Stephen McPartland: I will come back to the right hon. Gentleman on that. As I have said, we will be designating sites and that information will be publicly available. I am not sure that he would want to make the information about the sites he mentions publicly available.

Mr Jones: But that is not what the Bill says at the moment, as my hon. Friend the Member for Garston and Halewood said. It gives sweeping powers to designate things, and I am always against giving such sweeping powers to the Executive—whether it is the present Government or the Government I was a member of—or to anyone. When the Minister comes back, clarification would be welcome, even if that is for the Bill to require publication.

Stephen McPartland: I hear what the right hon. Gentleman says. If the hon. Member for Halifax is kind enough to withdraw the amendment, I commit to considering it further. I will look to provide further clarity in the legislation.

Holly Lynch: I am very grateful to the Minister for the spirit in which he has responded, taking our concerns about this element of the Bill seriously. I am reassured by his commitment, that he understands what we are trying to achieve with the amendment and that he will seek the best way to deliver that in the Bill.

Slightly separately, the clarity and detail that he has been able to provide about the minimum standards for the places of detention were welcome. In addition to

putting that on the record today, however, I think that he has understood the point made by my hon. Friend the Member for Garston and Halewood on the need for it to be put on the face of the Bill and that he will continue to have a positive personal impact on some of the detail of the provisions. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stephen McPartland: I beg to move amendment 13, in schedule 3, page 81, line 26, leave out sub-paragraph (3) and insert—

"(3) In any other case, paragraph 19 material must be destroyed unless it is retained under any power conferred by paragraphs 20 or 21."

This amendment and Amendments 15, 18 and 22 make provision for the indefinite retention of fingerprints, data and other samples taken from a person who is or previously has been convicted of a specified offence.

The Chair: With this it will be convenient to discuss Government amendments 14 to 38.

Stephen McPartland: As we have discussed, clause 21 provides for a state threats power of arrest. If an individual is arrested under that power, the further provisions in schedule 3 will apply. As part of that, schedule 3 provides for a new regime whereby biometric data, such as fingerprints and DNA profiles, that are collected on arrest for foreign power threat activity may be retained for an initial period of three years, with the option to extend the retention period for a further two years where considered necessary. A similar provision is made in schedule 9 for those subject to state threats prevention and investigation measures, or STPIMS. These are the same timeframes and procedures that operate for arrest under the Terrorism Act 2000—once again, we are trying to mirror the terrorism legislation.

The group covers a number of technical Government amendments to the biometric regimes in schedules 3 and 9. I turn first to amendments 13, 15, 18, 22, 28, 29, 30, 31 and 36, which relate to the indefinite retention of biometric data in certain circumstances. Again, the amendments put the new retention regime in line with what already operates for arrests made under PACE and the Terrorism Act. The law rightly sets strict limits on how long biometric data, such as fingerprints and DNA, can be retained where a person is investigated but ultimately not convicted of an offence. In certain circumstances, including under the Bill, biometric data taken in the course of an investigation can be retained for longer periods, and further retention of that data can be authorised, but the principle is that the data will be deleted unless further retention is specifically provided for. Where a person has been previously convicted of an offence, their biometric data can be retained indefinitely, subject to the requirement for ongoing review that is set out in the Data Protection Act 2018.

Both the Police and Criminal Evidence Act 1984 and the Terrorism Act 2000 allow for the indefinite retention of biometric data taken during an investigation, if it is found that an individual has previously been convicted of a recordable offence. This means that if an individual has previously been convicted of any offence that could carry a term of imprisonment, their biometric data taken during any new investigation can be held on the police national database indefinitely, irrespective of the outcome of that new investigation.

Maria Eagle: Generally, these are very sensible measures. There has obviously been some major redrafting of the schedule for the Government amendments to be necessary, and it would be interesting to hear why that is. I am looking at Government amendment 18, which says:

"For the purposes of paragraph 20, a person is to be treated as having been convicted of an offence if…the person has been found not guilty of the offence by reason of insanity".

Why is that instance included here? The person has been found not guilty by reason of insanity. They have not admitted the offence, unlike in the situation described in proposed new paragraph 20A(1)(a)(i), whereby a person has received a caution and admitted the offence. By contrast, this person has been found not guilty.

Stephen McPartland: I am going to write to the hon. Lady.

Maria Eagle: It is a small but important point.

Stephen McPartland: I know, and I will write to the hon. Lady, because I do not know the answer.

As we have already discussed in Committee, state threats activity poses a serious and enduring risk to UK security, and the Bill must provide law enforcement agencies with the tools they need to combat hostile activity. Indefinite retention of biometric data enables the police and the security services to use the data to support investigations into state threats offences and other criminal activity. That mirrors the approach taken in PACE and the Terrorism Acts.

Given that threat, it is right that where an individual with a previous conviction for a recordable offence is arrested under the state threats arrest power in clause 21, or is subject to a STPIMs notice, biometric data taken under those regimes should be retained indefinitely. Accordingly, the amendments provide for indefinite retention of biometric data in these circumstances in schedules 3 and 9 respectively.

Out of an abundance of caution, the provisions were not included when the Bill was introduced while we considered the questions raised by the Gaughran judgment. Based on the UK response to that judgment, I am pleased to confirm to the Committee that these provisions are indeed compatible with the European convention on human rights and, therefore, should be included in the Bill.

As highlighted, state threats investigations can be complex and resource-intensive. By bringing forward the amendments, we are strengthening the ability of the police to use biometric data to support criminal investigations. Not agreeing to the amendments would create a position where the police's ability to retain biometric data of a person with a previous recordable conviction would be more restricted than in other cases.

Aligning our approach with that of TACT and PACE ensures consistency in respect of biometric regimes. The requirement for ongoing review of retention, in accordance with the Data Protection Act 2018, ensures that interference with the right to respect the private and family life

[Stephen McPartland]

of persons to whom the data belongs is necessary, proportionate and in accordance with the law. I will now speak briefly to the remaining amendments in the group, which are comparatively minor and technical.

Stuart C. McDonald: Before the Minister moves on, I get the general thrust of why those amendments have been tabled but my concern is the inclusion of people who have accepted a caution or even a youth caution. It seems quite extreme to make them subject to lifelong retention of significant information on them. They have not been tried and the fact that they have had a caution means that, presumably, the circumstances were not the most serious. Does he have anything to say about those circumstances?

Stephen McPartland: I am grateful for the intervention. What we are trying to do is to mirror what is in TACT and PACE to keep the regimes identical so there are not different ones for different areas. Obviously, if someone has accepted a caution, they have in essence accepted that they were guilty of an offence—they have just not proceeded to court.

Maria Eagle: Would not an additional safeguard in those circumstances be to ensure that before a youth caution is offered and accepted in any given case, it is made clear to the individual concerned that if they were to accept it, it would mean the retention of their data for their entire life? In those circumstances, the individual concerned could consider whether they really wanted to accept the caution or go for a trial.

Stephen McPartland: The hon. Lady makes an important point. I would add that it is "may" be held indefinitely not "will". There is still an element of choice and discretion.

Maria Eagle: The Minister is correct about that, but perhaps the individual who may be considering accepting a youth caution and their adviser ought to be advised, before they do so, that there "may" be a consequence of biometric data and so on being kept for that person's entire life, so they can make a proper decision about whether they want to accept the caution in full knowledge of the potential consequences.

Stephen McPartland: My understanding is that that what happens under TACT and PACE, and that would be the intention for what would happen under this legislation, so the regimes mirror each other.

Amendments 16 and 17 to schedule 3 separate the reference to the Chief Constable of the Police Service of Northern Ireland from those in England and Wales in the list of chief officers who can extend the period of biometric retention. They make no practical change to the provisions.

Amendments 14, 25 and 27 address some unnecessary duplication in the list of databases against which biometric data obtained under the powers in schedules 3 and 9 can be searched. Amendment 26 provides that data obtained under the powers in schedule 9 can be searched against data taken under the provisions of the Terrorism Prevention and Investigation Measures Act 2011.

12.30 pm

Amendments 19 and 32 add the British Transport police and the Ministry of Defence police to the list of forces that can make a national security determination under schedules 3 and 9 respectively, to make it clear that the powers are available to those forces. A national security determination allows for the extended retention and use of biometric material for national security purposes. It must be made in writing by a chief officer of police for a maximum of five years, with the option of renewing. Amendment 32 adds the National Crime Agency to the list of forces that can make such a determination in schedule 9, bringing it into line with schedule 3.

Amendments 23, 24, 37 and 38 make provision to clearly identify the responsible chief officer of police in relation to fingerprints or samples taken by a constable of the Ministry of Defence police or the British Transport police.

Finally, amendments 20, 21, 34 and 35 amend the definition of police force for the biometric provisions to remove reference to the various armed forces police forces. Members will be glad to know that I have come to the end of one of the more technical groupings of amendments to the Bill. I ask the Committee to support the amendments.

Holly Lynch: Having heard the Minister's detailed explanation for this group of Government amendments, I will come back to the issues in the slightly wider discussion on schedule 3, which is the next proceeding.

Stuart C. McDonald: I do not need to say much more. The Minister understands from my intervention that I have some reservations about the lifelong retention of the materials. I shall give that further thought. Other parts of the relevant amendment are perfectly sensible, so I will not oppose the amendment at this stage. Further thought should be given to it, though. The Government have explained a number of times how they are copying what is in the counter-terrorism legislation, which is fine and understandable but does not in of it itself justify the measures in this sphere of behaviour. I will look at the matter again. I want to put on the record that I am slightly uneasy about that type of provision.

Stephen McPartland: I am grateful for the support for the amendments.

Amendment 13 agreed to.

Amendments made: 14, in schedule 3, page 82, line 22, leave out "or 42".

This amendment removes reference to paragraph 42 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019 from a list of provisions under which fingerprints, data and other samples may be taken. Reference to paragraph 42 is not needed because its contents are already covered by paragraph (e).

Amendment 15, in schedule 3, page 82, line 26, leave out sub-paragraph (2) and insert—

"(2) Paragraph 19 material may be retained indefinitely if—

(a) the person has previously been convicted—

(i) of a recordable offence (other than a single exempt conviction), or

(ii) in Scotland, of an offence which is punishable by imprisonment, or

(b) the person is so convicted before the end of the period within which the material may be retained by virtue of this paragraph.

(2A) In sub-paragraph (2)—

(a) the reference to a recordable offence includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute—

(i) a recordable offence under the law of England and Wales if done there, or

(ii) a recordable offence under the law of Northern Ireland if done there,

(and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted);

(b) the reference to an offence in Scotland which is punishable by imprisonment includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute an offence under the law of Scotland which is punishable by imprisonment if done there (and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted).

(2B) Paragraph 19 material may be retained until the end of the retention period specified in sub-paragraph (3) if—

(a) the person has no previous convictions, or

(b) the person has only one exempt conviction."

See Amendment 13.

Amendment 16, in schedule 3, page 83, line 37, leave out "and Northern Ireland".

This amendment and Amendment 17 clarify the identity of the specified chief officer of police in Northern Ireland.

Amendment 17, in schedule 3, page 84, line 5, at end insert ", and

(c) the Chief Constable of the Police Service of Northern Ireland, where—

(i) the person from whom the material was taken resides in Northern Ireland, or

(ii) the chief constable believes that the person is in, or is intending to come to, Northern Ireland."

See Amendment 16.

Amendment 18 in schedule 3, page 84, line 5, at end insert—

"20A (1) For the purposes of paragraph 20, a person is to be treated as having been convicted of an offence if—

(a) in relation to a recordable offence in England and Wales or Northern Ireland—

(i) the person has been given a caution or youth caution in respect of the offence which, at the time of the caution, the person has admitted,

(ii) the person has been found not guilty of the offence by reason of insanity, or

(iii) the person has been found to be under a disability and to have done the act charged in respect of the offence,

(b) the person, in relation to an offence in Scotland punishable by imprisonment, has accepted or has been deemed to accept—

(i) a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995,

(ii) a compensation offer under section 302A of that Act,

(iii) a combined offer under section 302B of that Act, or

(iv) a work offer under section 303ZA of that Act,

(c) the person, in relation to an offence in Scotland punishable by imprisonment, has been acquitted on account of the person's insanity at the time of the offence or (as the case may be) by virtue of section 51A of the Criminal Procedure (Scotland) Act 1995,

(d) a finding in respect of the person has been made under section 55(2) of the Criminal Procedure (Scotland) Act 1995 in relation to an offence in Scotland punishable by imprisonment,

(e) the person, having been given a fixed penalty notice under section 129(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 in connection with an offence in Scotland punishable by imprisonment, has paid—

(i) the fixed penalty, or

(ii) (as the case may be) the sum which the person is liable to pay by virtue of section 131(5) of that Act, or

(f) the person, in relation to an offence in Scotland punishable by imprisonment, has been discharged absolutely by order under section 246(3) of the Criminal Procedure (Scotland) Act 1995.

(2) Paragraph 20 and this paragraph, so far as they relate to persons convicted of an offence, have effect despite anything in the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27)).

(3) But a person is not to be treated as having been convicted of an offence if that conviction is a disregarded conviction or caution by virtue of section 92 or 101A of the Protection of Freedoms Act 2012.

(4) For the purposes of paragraph 20—

(a) a person has no previous convictions if the person has not previously been convicted—

(i) in England and Wales or Northern Ireland of a recordable offence, or

(ii) in Scotland of an offence which is punishable by imprisonment, and

(b) if the person has previously been convicted of a recordable offence in England and Wales or Northern Ireland, the conviction is exempt if it is in respect of a recordable offence, other than a qualifying offence, committed when the person was under 18 years of age.

(5) In sub-paragraph (4) 'qualifying offence'—

(a) in relation to a conviction in respect of a recordable offence committed in England and Wales, has the meaning given by section 65A of the Police and Criminal Evidence Act 1984, and

(b) in relation to a conviction in respect of a recordable offence committed in Northern Ireland, has the meaning given by Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

(6) For the purposes of sub-paragraph (4)—

(a) a person is to be treated as having previously been convicted in England and Wales of a recordable offence if—

(i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and

(ii) the act constituting the offence would constitute a recordable offence under the law of England and Wales if done there (whether or not it constituted such an offence when the person was convicted);

(b) a person is to be treated as having previously been convicted in Northern Ireland of a recordable offence if—

(i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and

(ii) the act constituting the offence would constitute a recordable offence under the law of Northern Ireland if done there (whether or not it constituted such an offence when the person was convicted);

(c) a person is to be treated as having previously been convicted in Scotland of an offence which is punishable by imprisonment if—

(i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and

(ii) the act constituting the offence would constitute an offence punishable by imprisonment under the law of Scotland if done there (whether or not it constituted such an offence when the person was convicted);

(d) the reference in sub-paragraph (4)(b) to a qualifying offence includes a reference to an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute a qualifying offence under the law of England and Wales if done there or (as the case may be) under the law of Northern Ireland if done there (whether or not it constituted such an offence when the person was convicted).

(7) For the purposes of paragraph 20 and this paragraph—

(a) 'offence', in relation to any country or territory outside the United Kingdom, includes an act punishable under the law of that country or territory, however it is described;

(b) a person has in particular been convicted of an offence under the law of a country or territory outside the United Kingdom if—

(i) a court exercising jurisdiction under the law of that country or territory has made in respect of such an offence a finding equivalent to a finding that the person is not guilty by reason of insanity, or

(ii) such a court has made in respect of such an offence a finding equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence.

(8) If a person is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction for the purposes of calculating under paragraph 20 whether the person has been convicted of only one offence."

See Amendment 13.

Amendment 19, in schedule 3, page 84, line 21, at end insert—

"(ca) the Chief Constable of the Ministry of Defence Police,

(cb) the Chief Constable of the British Transport Police Force, or".

This amendment enables the Chief Constables of the Ministry of Defence Police and the British Transport Police Force to make a national security determination in relation to fingerprints, data and other samples.

Amendment 20, in schedule 3, page 89, line 36, leave out paragraphs (j) to (l).

This amendment removes reference to the Royal Navy Police, the Royal Military Police and the Royal Air Force Police from the definition of "police force". Those forces should not be included in that definition because members of those forces do not have the power to obtain fingerprints, data or other samples under Schedule 3.

Amendment 21, in schedule 3, page 90, leave out lines 1 to 3.

This amendment removes reference to the tri-service serious crime unit from the definition of "police force". Members of that unit should not be included in that definition because they do not have the power to obtain fingerprints, data or other samples under Schedule 3.

Amendment 22, in schedule 3, page 90, line 3, at end insert—

"'recordable offence' —

(a) in relation to a conviction in England and Wales, has the meaning given by section 118(1) of the Police and Criminal Evidence Act 1984, and

(b) in relation to a conviction in Northern Ireland, has the meaning given by Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12));"

See Amendment 13.

Amendment 23, in schedule 3, page 90, leave out lines 6 to 24 and insert—

"'responsible chief officer of police' means—

(a) in relation to fingerprints or samples taken by a constable of the Ministry of Defence Police, or a DNA profile derived from a sample so taken, the Chief Constable of the Ministry of Defence Police;

(b) in relation to fingerprints or samples taken by a constable of the British Transport Police Force, or a DNA profile derived from a sample so taken, the Chief Constable of the British Transport Police Force;

(c) otherwise—

(i) in relation to fingerprints or samples taken in England or Wales, or a DNA profile derived from a sample so taken, the chief officer of police for the relevant police area;

(ii) in relation to relevant physical data or samples taken or provided in Scotland, or a DNA profile derived from a sample so taken, the chief constable of the Police Service of Scotland;

(iii) in relation to fingerprints or samples taken in Northern Ireland, or a DNA profile derived from a sample so taken, the Chief Constable of the Police Service of Northern Ireland."

This amendment and Amendment 24 make provision identifying the responsible chief officer of police in relation to fingerprints or samples taken by a constable of the Ministry of Defence Police or the British Transport Police Force.

Amendment 24, in schedule 3, page 90, line 24, at end insert—

"(2) In the definition of 'responsible chief officer of police' in sub-paragraph (1), in paragraph (c)(i), 'relevant police area' means the police area—

(a) in which the material concerned was taken, or

(b) in the case of a DNA profile, in which the sample from which the DNA profile was derived was taken."—*(Stephen McPartland.)*

See Amendment 23.

Question proposed, That schedule 3, as amended, be the Third schedule to the Bill.

Holly Lynch: I want to conclude some earlier remarks that I made as part of the discussion on amendment 45 and the discussion on some of the Government amendments. There is an awful lot going on in schedule 3. I repeat the point: it is massive—it is 32 pages of powers. An ongoing consideration of the implications of all those powers is quite a significant undertaking. That is why I come back to making the case for new

clause 2, which would ensure that part 1 of the Bill is subject to the same ongoing scrutiny as part 2, under clause 49, and as counter-terrorism legislation, which a great deal of this Bill is already based on.

We have talked about part 1 of the schedule; the delay in the exercise of rights under part 2 should also be kept under review, alongside the points about the retention of biometrics that were made by right hon. and hon. Members. Even if the Minister cannot share with the Committee some justification for all the measures today, I very much hope he will discuss that further with the Intelligence and Security Committee in the deliberations on the Bill that he has promised to have with the ISC.

Stephen McPartland: I am grateful to the hon. Lady for her support. I know that we will debate things later on. As I have said, we are currently in discussions about how we can securely provide further information to help to provide further clarity. I cannot say more than that.

Question put and agreed to.

Schedule 3, as amended, accordingly agreed to.

Clause 22

Border security

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

Stephen McPartland: Under schedule 3 to the Counter-Terrorism and Border Security Act 2019, counter-terrorism police have the power to stop, question and, if necessary, detain and search individuals travelling through the UK border. As part of a schedule 3 examination, counter-terrorism police are able to retain protected materials by following a lengthy authorisation process. Protected materials include confidential business and journalistic material, as well as legally privileged material. The powers are a vital tool for counter-terrorism police and form part of a range of national security checks that enable the determination of whether a person at a UK port or border area has current or previous involvement in hostile state activity.

The use of protected materials in investigations, particularly confidential business material, can be a helpful insight into a person's involvement in hostile state activity, whether it be espionage or a disinformation campaign. To use protected materials seized during a schedule 3 examination, an examining officer must currently seek authorisation from the Investigatory Powers Commissioner, who is a serving or retired High Court judge. In most cases, the material must not be examined or used for investigations until authorisation has been granted. Currently, that can take up to six weeks.

Clause 22 will remove the definition of confidential business material—material defined as acquired in the course of trade—from the definition of protected material under schedule 3. This will remove the requirement for the Investigatory Powers Commissioner to authorise the retention of copies of confidential business material. The Bill will replace that authorisation process with a new safeguard: the requirement for a counter-terrorism police officer of at least the rank of superintendent to authorise access to such material.

The clause will bring the schedule 3 safeguards for confidential material into line with those that apply to schedule 7 to the Terrorism Act 2000. It will mean that police do not face lengthy and unnecessary delays to examining material in a schedule 3 stop.

Mr Jones: I have some sympathy with this clause; the Investigatory Powers Commissioner has a big job on their hands anyway. I wonder whether the Minister could say whether he has given any thought to the Investigatory Powers Commissioner not just looking at the material and giving it authorisation but having retrospective powers to dip in and see whether things have been done correctly.

Stephen McPartland: I will take that idea away and consider it. We do not want to enable somebody at the border to say that something is confidential material so that the police cannot look at it for up to six weeks. That would just be the easiest defence. We are dealing with incredibly sophisticated experts and they will know what to say to ensure that the material will be held in abeyance.

The Government are only amending the safeguards for confidential business material and will not change the authorisation safeguard for other material within the definition of protected material or confidential journalistic material, for which judicial authorisation is a proportionate safeguard. I am sure Members agree that it is only right that the security services should be able to use critical information in real time during a schedule 3 examination to address live national security risks posed to the UK. I assure Members that this essential amendment to schedule 3 to the 2019 Act will strengthen and streamline state threats investigations to disrupt and deter hostile state activity.

Holly Lynch: The drafting of clause 22 is complicated and I have had to speak to a number of experts to try to unravel it. It amends schedule 3 to the Counter-Terrorism and Border Security Act 2019, as the Minister outlined. In essence, it allows examining officers a right to confidential material that would currently require the authorisation of the Investigatory Powers Commissioner. I am grateful to the commissioner, Sir Brian Leveson, in his capacity as the independent reviewer of schedule 3, and his office for their insight on the clause.

If I have understood it correctly—I am sure the Minister will correct me if I have not—the clause amends schedule 3 to the 2019 Act to reflect the position of schedule 7 to the Terrorism Act 2000. Schedule 3 subjects are far more likely to possess confidential business records than those stopped under schedule 7. That means the requirement for judicial approval is engaged in the majority of schedule 3 stops. It is therefore important to assess whether the requirement for a judicial authorisation in such cases is necessary and proportionate, taking into account both the sensitivity of the category of protected material and the purpose of the statute specifically to counter hostile state activity.

The Investigatory Powers Commissioner's Office said

"We are not aware of any other statute that requires judicial authorisation for the retention of confidential business records acquired direct from a person in a public setting such as a port".

[Holly Lynch]

The closest is perhaps schedule 1 to the Police and Criminal Evidence Act 1984, commonly known as PACE, although this is restricted to material on private premises. There is no requirement in PACE to seek judicial authorisation to seize or retain confidential business material found during the search of a person in a public place, or if such material is unexpectedly encountered on private premises.

Confidential business records are protected in PACE as "special procedure material" because they have a degree of special sensitivity that Parliament has decided merits certain access requirements in the context of criminal investigations. The Investigatory Powers Act 2016 does not include any similar requirement for judicial authorisation to acquire confidential business records using covert investigatory powers. The sensitivity of this category of material is not the same as that of legally privileged or journalistic material, the safeguards for which will not be affected by the proposed amendment to schedule 3—I hope the Minister can confirm that that is the case.

The statutory purposes in schedule 3 go well beyond criminal investigations and include national security or protecting life and limb. On that basis, it seems unlikely that the interests of the business, trade or profession would outweigh the interests of national security in any circumstances, or that judicial authorisation should be necessary for the retention and use of confidential business records in circumstances that might prevent death or serious injury.

Having considered those points in the round, the Investigatory Powers Commissioner has concluded that the Home Office's proposals to replace judicial authorisation for confidential business records with one of internal authorisation from a senior officer strike the right balance and align the definition of confidential material with that of the 2016 Act. Inevitably, that view has very much shaped our judgement on clause 22, but I suggest that it is another area where keeping the provisions under review to mitigate any unintended consequences is the responsible thing to do.

Let me turn to who has the powers to make and retain copies of confidential material. Page 35 of the explanatory notes outline that "examining officers" have that power. However, schedule 7 to the 2000 Act defines an examining officer as a constable, immigration officer or a customs officer. In paragraph (j) of the policy background section of the explanatory notes, it states that part 1 amends schedule 3 to the Counter-Terrorism and Border Security Act 2019

> "to allow counter-terrorism police officers to retain copies of confidential business material…without the authorisation of the Investigatory Powers Commissioner. This will allow counter-terrorism police to progress operations and investigations into state threats…at the required pace and reflects the position in schedule 7 to the Terrorism Act 2000".

Paragraph 17 of schedule 3 to the 2019 Act, on the power to make and retain copies, confirms that the examining officer, only when they are "a constable", can retain copies when necessary and potentially needed as evidence in criminal proceedings. The references to various different roles in the different supporting documents to the Bill make it a bit of a mess. I was listening carefully to the Minister, but I would like further clarity about who has the powers. Given that we have references to examining officers—who can have different roles—to counter-terrorism police specifically and to an examining officer who can be a constable, I wonder whether the Minister can tidy it up for us on the record and be explicit about who has the powers at the border.

Stephen McPartland: My understanding is that the amendment of the authorisation safeguards to access confidential business material in schedule 3 brings it completely into line with other policing powers. It is not likely that access to confidential business material would be subject to a higher level of safeguarding where there is already consistent precedent set by PACE 1984, the IPA 2016 and schedule 7 to the 2000 Act. As we have said, it does not affect legal, profession or journalistic material, and the provisions are reviewed by the Investigatory Powers Commissioner as part of their statutory function. Only trained counter-terrorism officers will be able to use the powers. I hope that provides the clarity that the hon. Lady requires.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

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

12.47 pm

Adjourned till this day at Two o'clock.