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Public Bill Committee

NATIONAL SECURITY BILL

Eleventh Sitting

Thursday 8 September 2022

(Morning)

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Monday 12 September 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)
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)
† Tugendhat, Tom *(Minister for Security)*

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

† attended the Committee

Public Bill Committee

Thursday 8 September 2022

(Morning)

[Rushanara Ali *in the Chair*]

National Security Bill

11.30 am

Mr Kevan Jones (North Durham) (Lab): On a point of order, Ms Ali. I bring good news to the Committee: yesterday, I met the hon. Member for Stevenage (Stephen McPartland), who is alive and well. We asked why he did not attend the Committee, but we have not yet had an explanation from the Government. From what he told me, I understand that the reason why he was told to stay away was that he would not move part 3 of the Bill.

Related to that, however, we also raised the issue of losing a day last Tuesday because the Government insisted on adjourning the Committee. Has any thought been given to an extra day next week—if we need it—to complete the Bill's proper scrutiny?

Maria Eagle (Garston and Halewood) (Lab): Further to that point of order, Ms Ali. On both occasions that the Committee met on Tuesday, although only for a short time and without being able to make any progress on the Bill, I asked the Minister in charge, the Government Whip, for an explanation of why the former Minister had not turned up to the Committee. Had he engaged in dereliction of his duty—he said he would stay in post until the new appointment and then did not turn up—or had he been asked to stay away? My right hon. Friend put forward—we would call this hearsay in the courts—an explanation that he heard from the hon. Gentleman in question, but I had asked the Whip to tell us. I think the Committee deserves to hear why that happened. Will one of the Ministers tell us what the Government's explanation is? It has been requested since Tuesday.

Stewart Hosie (Dundee East) (SNP): Further to that point of order, Ms Ali. The right hon. Member for North Durham made the request for additional time. Given how much is yet to be done, in particular the most contentious new clauses—contentious in the minds of some perhaps—especially relating to the public interest defence, which may take substantial time to deal with fully, will proper consideration be given to replacing at least the day lost earlier this week?

The Chair: May I ask the Minister to respond?

The Minister for Security (Tom Tugendhat): This is the first time that I have spoken on behalf of Her Majesty's Government. It is an enormous privilege to be here. I realise that I enter this process—this lion's den—at a moment when other lions have been through the Bill a few times before—there are an awful lot of Christians in this Committee and only one lion.

Before I say anything further, I pay enormous tribute to the Bill team, who have been phenomenal. The very fact that this has continued at all in such a professional way—

Maria Eagle: It hasn't!

Tom Tugendhat: It has. That is because they have held it together and been a phenomenal asset to the Home Office. I am grateful to them.

On the various points that have been made, the hon. Member—

Mr Jones: Right honourable.

Tom Tugendhat: My apologies: the right hon. Gentleman. He is quite right. He asked some questions, as did the hon. Member for Garston and Halewood, or the right hon. Member for Garston and Halewood—

Maria Eagle: Right first time.

Tom Tugendhat: I will endeavour to find out what the reason is. You will understand, Ms Ali, that I was not appraised of this situation. I have spent rather a long time reading the Bill in the past 36 hours and not so much time asking about the movements of former Ministers.

On the point made by the right hon. Members for North Durham and for Dundee East about time, I will endeavour to do what I can to ensure that we have time available. Let us see how we go today. If time is needed, I will talk to the Whips team about it.

The Chair: The Minister has addressed the key points. I have nothing further to add in response to the point of order, so we will now begin our proceedings.

Clause 41

Variation of measures

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

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

Clauses 42 to 44 stand part.

That schedule 6 be the Sixth schedule to the Bill.

Tom Tugendhat: As the comparable sections in the terrorism prevention and investigation measures legislation make clear, clauses 41 to 44 are technical elements that improve the regime and make it work in practice. Clause 41 mirrors TPIMs by making provision for the measures imposed to be varied while they are in force. That will allow changes to be made to the restrictions where necessary, in response to changes in the individual's personal or family circumstances or to the assessment of the risk they pose. Those provisions will be important in ensuring that the regime is able to respond dynamically and flexibly to changing circumstances, and that the individual is able to live as normal a life as is possible without posing a threat to the British people.

The provisions will also be important to securing the effective operational management of state threats prevention and investigation measures. Critically, the underlying requirement that the measures imposed must always be necessary and proportionate remains, and that is explicitly the case for any variation that has the effect of strengthening the measures imposed.

Holly Lynch (Halifax) (Lab): It is a pleasure to serve under you as Chair once again, Ms Ali. They say a week is a long time in politics: never has that been truer than this week. I am very pleased to see the Minister in his place, but—for the second time over the course of this Committee—not quite as pleased as the hon. Member for North Cornwall that he once again has a Minister in place. I welcome the Minister to his role; as others have said, he is the fourth Minister we have had over the course of this Bill. We welcome the opportunity to continue to work together, now that we can make some vital progress on this really important piece of legislation. I also look forward to working with him on this policy area beyond just the legislation that is in front of us.

Turning to the detail of this group of clauses, clause 41 makes provision for the measures imposed under a part 2 notice to be varied in a number of different circumstances, as the Minister has outlined. Subsection (2) makes it possible for the Secretary of State to vary a relocation measure in a part 2 notice if considered necessary

"for reasons connected with the efficient and effective use of resources in relation to the individual".

We are satisfied with those measures, and recognise the necessity of the remaining provisions in the clause.

Clause 42 provides a power for the Secretary of State to revoke a part 2 notice at any time by serving a revocation notice, whether or not in response to a request by the individual. The Secretary of State may exercise that power where they consider it is no longer necessary for the part 2 notice and the measures imposed under it to remain in force. The explanatory notes say that

"although the measures may no longer be necessary at the time that the Part 2 notice is revoked (for example because the individual has been detained in prison), they may subsequently become necessary again (when the same individual is released from prison, perhaps following an unsuccessful prosecution for a criminal offence)."

As I have said before, the assumed prosecution rate for state threats in the Home Office impact assessment is just 33%, so I am concerned that we might need that level of flexibility, depending on the circumstances.

Subsection (6)(a) of the clause also provides a power for the Secretary of State to revive for a period of a year a notice that has previously expired without being extended, without the need for evidence of new state threat activity. Surely if a person continues to be a threat, the notice should not be allowed to expire; alternatively, if the notice has been allowed to expire because the person is no longer deemed a threat, reviving a notice without any new information surely could not be justified. On that basis, I would be keen to hear any further rationale for the provisions in subsection (6)(a).

When considering the revocation of part 2 notices, it is also worth considering what Jonathan Hall QC described as the "TPIM Catch-22" in his annual report on the terrorism equivalent of these part 2 measures:

"On the one hand, in order to test whether an individual would revert to terrorism-related activity in the absence of TPIM measures, there may be no alternative but to reduce or remove measures; for example, by allowing an individual to associate or move more freely.

"On the other hand, association and movement measures have been imposed precisely to counter the risk of terrorist-related activity. In the absence of evidence of risk reduction, to do so might put members of the public at risk of harm."

It is not easy to step down from STPIMs once they have been imposed and there is a clock ticking on the restrictions imposed on a suspect, so what efforts are we making to establish best practice on this, so that clauses 41 and 42 can be deployed as effectively as possible?

Clauses 43 and 44, also in this group, make provision for circumstances in which a part 2 notice is "quashed" or directed to be revoked as a result of court proceedings, and schedule 6 rightly provides other circumstances in which an individual who is convicted of an offence under clause 50 has a right of appeal against that conviction.

Other than the points we have raised, we are satisfied that these measures strike an appropriate balance.

Stewart Hosie: I welcome the Minister to his place.

In this group, clause 41 allows for the variation of STPIMs, either on application by the individual on whom it has been served or by the Secretary of State, when certain circumstances apply. Most of the clauses in this group seem to make sense, but there is some slightly odd wording. I know the Minister described these measures as "technical" and said that they would improve provision, but will he give some clarity?

Clause 41(1)(c) provides the power to vary, which is available if necessary

"for purposes connected with preventing or restricting the individual's involvement in foreign power threat activity."

Why is that? The words "purposes connected with" appear to be a slightly odd formulation. Why is the requirement not simply to prevent or restrict involvement in "threat activity"?

That same question arises in relation to clause 41(2)(a), but in that paragraph what is meant by allowing a new relocation measure to be invoked when

"necessary for reasons connected with the efficient and effective use of resources in relation to the individual"?

What does that actually mean? The Minister described these provisions as "dynamic" and "efficient". Are we saying that people may be moved for a second time simply to save money? The explanatory notes suggest that is the case, so I seek reassurance that such a provision will not be used unless genuinely necessary.

Clause 42 allows for the revocation of notices, including on application, but it does not appear to restrict the number or frequency of revocation applications. It also allows the Secretary of State to make a "revival notice" in regard to a part 2 notice that has expired or been revoked. It protects against expired notices already extended to the maximum limit, but it seems to leave open the possibility of revoking a four times extended part 2 notice and then reviving it, despite the time limit. That seems to be expressly permitted in clause 42(7)(b), although clause 42(9) appears to stop that. Will the Minister confirm that revival notices cannot be used to try to circumvent the absolute maximum of five years and that clause 42(9) will prevent that happening?

[Stewart Hosie]

Turning briefly to schedule 6, which covers circumstances in which a person has been convicted of breaching a part 2 notice but the notice or extension is "quashed" so that the offence would not have been committed had it been quashed earlier. There are some very tight timescales in this schedule. For example:

"An appeal under this Schedule to the Court of Appeal against a conviction on indictment in England and Wales or Northern Ireland…may not be brought after the end of the period of 28 days beginning with the day on which the right of appeal arises".

The same 28 days is used in relation to

"an appeal under this Schedule to the High Court of Justiciary"—

the Scottish High Court of Appeal—

"against a conviction on indictment in Scotland".

There is a 21-day deadline on

"an appeal under this Schedule to the Crown Court against a summary conviction in England and Wales".

There is a 14-day time limit on

"an appeal under this Schedule to the Sheriff Appeal Court against a summary conviction in Scotland".

Some of these timescales, particularly the 14 day one, are very tight and it may be very tricky to know precisely when the clock starts ticking, as that depends on when a different clock has run out.

We may be slightly over-cautious. However, it appears ridiculous if people are left with convictions for breaching what would have been illegal orders. Would it not be more sensible in those circumstances, to avoid people having to go to appeal courts of one sort or another in short timescale, simply to automatically quash them? Why is there a time limit on the ability to appeal in any circumstance?

11.45 am

Tom Tugendhat: Let me answer some of the questions that have just come up. The hon. Member for Halifax and the right hon. Member for East Dunbartonshire, if I am correct—

Stewart Hosie: Dundee East.

Tom Tugendhat: Forgive me; the right hon. Member for Dundee East. They have raised some interesting points. The first is on the notice to be revived without new evidence of a lapse. The reason for that variation is to allow for prison sentencing. Should an individual find themselves being sentenced for a crime in the middle of an STPIM, that allows the STPIM to be paused for the purpose of imprisonment and revived afterwards, without having to go through the whole process again. The purpose is practical, rather than that of having a massive legal effect. Therefore, I believe it is entirely proportionate with the requirements of security.

Stewart Hosie: That seems a slightly illogical formulation. If the prison sentence is substantially longer than the maximum the STPIM could provide for, it seems preposterous that the remainder of the STPIM's time would be added to the end of a sentence once it was fully discharged. That does not appear to be fully thought through.

Tom Tugendhat: Perhaps the hon. Member will appreciate that not everybody who spends time in prison will do so for the offence for which the STPIM might have been applied. It is perfectly possible that somebody might spend six months in prison for something completely unconnected—a driving offence, a minor theft, or whatever—and therefore a pause would be entirely in keeping with that. The STPIM is about controlling different people's ability to move and communicate, in which circumstances prison would simply not be a relevant application because the prison sentence effectively supersedes the controls that would have been put in place. In that sense, it is merely a way of recognising that, in certain circumstances, different applications would apply.

Clause 39 requires police to keep under review criminal investigations. STPIMs are a civil measure to protect against national security threats when a criminal prosecution is not possible. They are not overlapping; they are compatible and, indeed, complementary.

Question put and agreed to.

Clause 41 accordingly ordered to stand part of the Bill.

Clauses 42 to 44 ordered to stand part of the Bill.

Schedule 6 agreed to.

Clause 45

APPEALS

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

Tom Tugendhat: The clause set out the rights of appeal of a person subject to an STPIM notice and the function of the court on considering such an appeal. Those rights of appeal are in addition to the automatic review of each case and ensure that the individual subject to a notice is able to appeal against all relevant decisions taken by the Secretary of State using the powers contained in the Bill—for example, to extend or revive a notice, to vary the measures or to refuse an application for measures to be varied.

In determining an appeal brought under the clause, the court must apply judicial review principles. That is a particularly intense level of scrutiny and will ensure that the Secretary of State's decisions are subject to independent consideration. Clause 45 makes clear the powers of the court on considering an appeal, which include to quash the extension or revival of the notice or the measures within, or to give directions to the Secretary of State for the revocation of the notice or in relation to the variation of the measures specified in the notice. As I have said already, a key feature of the Bill is the extensive and multi-layered approach to judicial oversight, which will ensure that the courts can be involved at every stage of the process, and that every decision of the Secretary of State can be reviewed by the judiciary and can be overturned if the court so decides.

To recap, there is an initial permission stage before measures are imposed. There is then the automatic full review of the decision to impose measures, and there are the extensive rights of appeal contained in the clause. Taken together, those provide important safeguards.

Holly Lynch: I am grateful to the Minister for that explanation. It is absolutely right that clause 45 sets out those rights to appeal. I have nothing further to add at this stage, but we will come back to oversight when we discuss later amendments and new clauses.

Stewart Hosie: Clause 45 includes the important power to appeal to the court against the decision to review or revive a part 2 notice; against variations, or the refusal of them; against unlimited revocation applications; and in relation to permission applications. As the Minister said, the function is to review the decision, and the court must apply the principles applicable on an application for judicial review.

That sounds fine—so far, so good—but why is there no right to appeal against a clause 35 permission to impose STPIM decisions, as made clear in clause 47? Is it because it is expected that other procedures will have the same effect, for example an application to revoke, or is this an attempt to limit in statute the ability of those subject to STPIMs having access to court to appeal in those circumstances?

Mr Jones: I warmly welcome the Minister to his position. He and I go back a long way: when I was a Minister in the Ministry of Defence, he was a bright, fresh young officer, and I think we both have fond memories of our time working together. One of the dangers he faces is being appointed to a position that he knows a lot about. That is always a downer for any Minister and strikes fear into the civil service. I wish him well, and he will do a good job.

Throughout the entire Bill, there should be an ability for the individual to have recourse to appeal. That is not because I am somehow soft on terrorism or on the individuals we are dealing with. It is because we must have a system whereby, when the state takes hard measures to limit someone's freedom, they need the counterbalance of the ability to appeal. That is why I welcome the measures. My problem with the Bill is that, although this measure is present in this part of the Bill, there are no safeguards in other parts of the Bill. Those types of appeal mechanisms balance state power and the individual.

I have two specific points on the process, which I support. How will the appeals be done in the court? Some of the information that the Secretary of State will rely on will be highly classified, so how will the process work? It will mean the disclosure of some information that we would not want disclosed in open court. I shall not rehearse the arguments on part 3, but it is clear that, if part 3 is retained, the individual will not have recourse to legal aid for an appeal. I am opposed to that. That is not because I am on the side of individuals who wish us harm, but we must ensure that we have a system that is robust in ensuring that justice is done, and people must not be arbitrarily detained or subject to those restrictions if they clearly have legitimate arguments against what the state is trying to apply.

Tom Tugendhat: Before I come to the right hon. Member for Dundee East's words, I will just address the very generous tribute from the right hon. Member for North Durham. I remember that I used to call him sir; he never called me sir, and he still will not. I do not feel special in that; I do not think he has ever called anyone sir in his life. It was very kind of him.

On the question raised by the right hon. Member for Dundee East, clause 38 means that there has to be a review wherever a STPIM notice is imposed, which is in clause 35. The individual can attend the automatic review. I will come on to that element, because as the right hon. Member for North Durham rightly says, there is likely to be material that is extremely sensitive. That is why the procedure relates to what is already established with special advocates. The right hon. Member knows much more about Special Immigration Appeals Commission hearings, and the various ways in which advocates can have access to information that is relevant to a court but is not then shared with somebody for whom that would not be conducive. That is the way that the proceedings will work, and I think that provides the right balance between disclosure, justice and protection.

Question put and agreed to.

Clause 45 accordingly ordered to stand part of the Bill.

Clause 46

JURISDICTION IN RELATION TO DECISIONS UNDER THIS PART

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

Tom Tugendhat: Members will be pleased that this is very brief. Clause 46 makes an important but largely technical provision. The purpose is to provide absolute clarity that the High Court is the appropriate forum for judicial proceedings arising from decisions relation to STPIMs, or in Scotland, the Outer House of the Court of Session. That is important given that such proceedings may rely on closed material, which we will come on to next.

Question put and agreed to.

Clause 46 accordingly ordered to stand part of the Bill.

Clause 47

PROCEEDINGS RELATING TO MEASURES

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

The Chair: With this it will be convenient to consider that schedule 7 be the Seventh schedule to the Bill.

Tom Tugendhat: Clause 47, and schedule 7, to which the clause gives effect, make further provision for court proceedings in relation to decisions taken under the Bill. I will spend slightly longer on those measures, given the important issue raised by some of the key aspects of those provisions.

Subsection (1) makes clear that an appeal against a court decision in STPIM proceedings may only be brought on a point of law. That limitation is appropriate. The court of first instance has the expertise in fact finding for national security determinations. It has developed expertise and a body of knowledge in an experienced judiciary who hear national security cases. That means it is right that the court of first instance, which has significant expertise, has the final determination on points of fact.

[Tom Tugendhat]

In such cases, it is therefore right to limit the right of appeal to a point of law, as higher courts will not have available the national security information or expertise to make a fair determination on the facts. The approach is reflected from the provisions in the Terrorism Prevention and Investigation Measures Act 2011, and the Special Immigration Appeals Commission.

Schedule 7 makes further provision relating to court proceedings under the Bill, including, in particular, powers to make rules of court about various matters. Critically for the operation of the scheme, the rules will make provision that court proceedings in relation to STPIMs will operate with both open and closed elements given the sensitivity of the evidence that will be a key component of why an individual cannot be prosecuted and why the use of a STPIM is necessary. It would fundamentally undermine the scheme if closed proceedings, where sensitive intelligence and national security arguments can be made, were not available. The individual, and his or her chosen legal representatives, can be present at the open hearings, and see all the material used in those hearings, but they cannot be present at the closed part of the proceedings or see the closed material.

12 noon

Schedule 7 provides for the appointment of a special advocate in relation to any closed proceedings, who will attend all parts of the proceedings—both open and closed—and, like the judge, they will see all the material, including the material that is not disclosed to the individual.

The role of the special advocate is to act in the individual's interests in relation to the closed material and closed hearings. Each individual who is subject to a TPIM must be given the gist of the key allegations against them and it is the judge reviewing the case, rather than the Government, who will decide on the level of disclosure required to allow a fair trial.

The proposed level of disclosure is submitted by the security service. Special advocates, who are barristers, representing the defendant in closed material proceedings may then make the case for further disclosure, with the final decision on the level of disclosure being made by a judge.

It is true that this process does not necessarily involve the individual knowing the detail or the sources of the evidence forming the basis of the allegations against them. There are clear reasons why it would not be in the public interest to disclose all that information, for example where the information comes from an informant who may be put at risk, or if the information was obtained using an investigative capability that might be compromised. However, it is equally clear that the requirements of a fair trial would not be satisfied where a case is based purely or mostly on closed material and the open material consists purely of general assertions.

Paragraph 5 of schedule 7 expressly provides that nothing in this rule-making provision or in the rules of court made under it is to be interpreted as requiring the court to act in any way that is inconsistent with article 6 of the European convention on human rights. In other words, the proceedings and any rules of court must be applied in accordance with the right to a fair hearing, which would be concerned in particular with provisions about withholding information from the individual.

Schedule 7 makes further provision relating to the rules that may be made. This includes a power for the court to make an anonymity order preventing the disclosure of information that could identify, or that could tend to identify, the individuals subject to the measures.

Currently, the courts tend to make such an order in respect of most TPIM cases and there are several benefits. The anonymity order limits the impact, including from media intrusion, on the individual's private and family life. It also limits the impact on the community in which the individual lives, both in terms of community cohesion and ensuring the ability to monitor and enforce the measures effectively without drawing attention or causing concern within the community.

Holly Lynch: I am grateful to the Minister for that introduction to clause 47 and schedule 7. I am particularly interested in what he had to say on special advocates and I will perhaps come on to that.

Schedule 7 introduces provisions relating to prevention and investigation measures and proceedings, as we have already heard. As outlined in the explanatory memorandum, paragraph 2 will take into account closed elements of proceedings where sensitive material is not disclosed as it would be contrary to the interests of the UK's national security to do so, with paragraph 3 setting out the rules for the court on disclosure. In previous exchanges, we have examined the balance that needs to be struck on both these issues, so we expect the commitments to both transparency and national security to be weighed delicately in each instance.

We certainly welcome the guarantee around article 6 of the European convention on human rights, which is set out in paragraph 5. Paragraph 10 provides for the appointment of a special advocate in relation to any closed proceedings. A special advocate attends all parts of the proceedings—both open and closed—and plays a key role in scrutinising material while acting on behalf of the individual subject to the proceedings. The explanatory notes say that part of the function of the special advocate is to ensure that the closed material is subject to independent scrutiny and adversarial challenge, including making submissions in closed session on whether the closed material should be disclosed to the individual.

I think that the Minister confirmed that the special advocate would be a barrister, but I could not find any detail within the Bill or the explanatory notes about how a special advocate would be appointed and what their experience and background would be expected to be in such circumstances, when they would be providing such a specialist function. I would be grateful if there was a commitment to ensuring that those things are clear in the Bill and the explanatory notes that accompany it.

Stewart Hosie: Schedule 7 empowers the court to make rules in relation to reviewing proceedings and onward appearance, and the rules of court must secure not only a proper review of decisions, but

"that disclosures of information are not made where they would be contrary to the public interest."

We can have determinations without a hearing, without full reasons being given for a decision—the Minister described that—and, when sensitive information is to be laid, hearings without the accused. There is a duty of

disclosure on the Secretary of State, but he or she can apply not to disclose certain information on the grounds that disclosure would be

"contrary to the public interest."

That rule means that the Secretary of State might be able to ignore other requirements to disclose information. That is Kafkaesque.

The Minister, rightly, prayed in aid national security; he was absolutely right to do that. We can all understand that there could be circumstances where such rules would be necessary, but does the legislation describe those circumstances appropriately? The watchwords appear to be "public interest", but is that not far too wide or far too vague? Given he prayed in aid national security, why do we not only allow the avoidance of disclosure on genuine national security crimes?

Mr Jones: I think the Minister has explained that. I take the point made by the right hon. Member for Dundee East, but as I said earlier on, I think the rules are a sensible safeguard in terms of what we need. Frankly, with no access to legal aid they are for the birds, because no one will be able to use them. We will come on to that debate later.

I want to ask the Minister about the issue of juveniles, which is an increasing problem for our security services. For example, the "Extreme Right-Wing Terrorism" report that we just produced in the Intelligence and Security Committee found that, increasingly, those individuals are young people—some as young as 15. If we are going to apply the rules in some possible circumstances to those individuals, what are the protections for them? If the Minister does not know the answer, I am quite happy for him to write to explain the situation. We are perhaps fixated on thinking that this is about Islamic terrorists and grown-ups, but certainly according to the ISC report, very sadly, in many cases those who are now coming before the courts are minors.

Tom Tugendhat: Let me quickly answer the question on who is the appropriate advocate. That is somebody appointed by the Attorney General under schedule 7(10)(1). The person has to be an appropriate law officer, so a barrister or a solicitor. That is how it is determined.

On the question of genuine national security, I understand the point made by the right hon. Member for Dundee East. He will understand that this is a matter of concern for many of us who are devoted, as he knows I am, to the application of the rule of law and the access to justice that this country and many countries in Europe have secured over the past century. That is vital to the provision and protection of liberty in our country. I appreciate his point and the right to a fair trial is essential.

However, it is simply the reality of life in our world that sometimes we need to frame that justice within certain provisions to allow it to be real, and not to be silenced by the inability to bring together evidence that would otherwise protect British people. That means that we have to find ways of balancing it. That is why these court proceedings, which are less than ideal and not the ones that we would like to see, are sadly necessary because of the security restrictions that apply.

On the point made by the right hon. Member for North Durham, he knows that I spent some time in the past few decades hunting people who sought to do our country harm, and he is absolutely right. Sadly, it was not always the people who we see on the various TV shows. Very often, it was people who came at it from a very different angle. I therefore appreciate his point; I will look into it and come back to him.

Question put and agreed to.

Clause 47 accordingly ordered to stand part of the Bill.

Schedule 7 agreed to.

Clause 48

REPORTS ON EXERCISE OF POWERS UNDER THIS PART

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

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

Clause 49 stand part.

New clause 2—*Reviews of Parts 1, 3 and 4*

"(1) The operation of Parts 1, 3 and 4 of this Act must be reviewed by a person, or people, appointed by the Secretary of State.

(2) The operation of Part 3 must be reviewed by the person appointed by the Secretary of State under section 36(1) of the Terrorism Act 2006.

(3) The operation of Parts 1 and 4 must be reviewed by either—

(a) the person appointed by the Secretary of State under section 36(1) of the Terrorism Act 2006, or

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

(4) Reviews under this section must be carried out in respect of—

(a) the 12-month period beginning with the day on which any section in this Part comes into force, and

(b) each subsequent 12-month period.

(5) Each review under subsection (1) must be completed as soon as reasonably practicable after the period to which it relates.

(6) The person or people mentioned in subsections (2) and (3) must send to the Secretary of State a report on the outcome of each review carried out under subsection (1) as soon as reasonably practicable after completion of the review.

(7) On receiving a report under subsection (6), the Secretary of State must lay a copy of it before Parliament.

(8) Section 36(6) of the Terrorism Act 2006 shall be read such that the 'expenses' and 'allowances' mentioned therein may include the discharge by the person or people of their functions under this section."

Tom Tugendhat: Clause 48 requires the Secretary of State to report to Parliament every quarter on the exercise of her powers under this part of the Bill. The Committee will recognise the parallel to similar measures in the TPIM Act 2011. Although details of the operation of the system and of particular cases will necessarily be sensitive and cannot be disclosed publicly, the clause acts as an additional safeguard by welcoming public scrutiny of the use of the regime and powers, and offers reassurance that crucial information about the operation of the regime will be public and kept up to date. Crucially, that information will include the extent of the Secretary of State's use of her powers and the number of cases in which measures are imposed. It will also include details of court judgments handed down in the relevant period that relate to the use of those powers.

[Tom Tugendhat]

Clause 49 requires the Secretary of State to appoint an independent reviewer to review the operation of part 2 annually. First, the reviewer is required to undertake a review of the operation of the STPIM regime as soon as is reasonably practical at the end of each year, and a report on the outcome of the review must be sent to the Secretary of State as soon as is reasonably practical after the review has been completed. Then, the Secretary of State is obliged to lay the report before Parliament. That replicates the approach in TPIMs, for which the annual reports have been an effective way of examining the Government's use of their powers.

The independence of the Independent Reviewer of Terrorism Legislation, combined with their unrestricted access to Government papers and intelligence, has led to real insight and informed reports that have aided the functioning and development of the TPIM regime. Using the same approach for STPIMs will ensure similarly robust scrutiny. Omitting the clause would undermine the level of oversight and transparency of the regime. I hope the Committee agrees that the provision is important for the effective operation of STPIMs.

New clause 2, tabled by the hon. Member for Halifax, proposes commitments to review annually the operations of parts 1, 3 and 4 of the Bill. I thank the hon. Lady for tabling the new clause and I understand the intention behind it. Appropriate oversight of national security functions—particularly the use of intrusive powers—is important. A range of oversight mechanisms are in operation and govern both the UK's intelligence agencies and the police, which are the primary bodies that will utilise the new powers in the Bill.

As I have just mentioned in addressing clause 49, the Government have made a commitment to an independent reviewer of part 2 of the Bill. Although there may well be merit in extending oversight of the legislation beyond part 2, careful consideration must be given to how that is done. In some cases, it could create an undesired overlap of duplication of responsibility. The Committee discussed that earlier—a little bit before my time—in the context of the hon. Lady's proposal for an independent body to monitor disinformation. There are further examples of potential duplication, such as the powers in clause 22, which are already the responsibility of the Investigatory Powers Commissioner.

The new clause also proposes that part 3 of the Bill be reviewed by the Independent Reviewer of Terrorism Legislation. As the Committee knows, part 3 contains measures to freeze civil damages awarded to claimants who are seen as representing a real risk of using their award to fund acts of terror, and measures to restrict access to civil legal aid for convicted terrorists. As a result, it is already in the remit of the Independent Reviewer of Terrorism Legislation to review those measures. An explicit commitment to oversight of part 3 of the Bill is therefore unnecessary and would duplicate the existing discretion of the Independent Reviewer of Terrorism Legislation to review and report on terrorism-related legislation.

With those points in mind, the Government cannot accept new clause 2 at this stage. Although I fully appreciate the purpose behind the new clause, I ask the hon. Lady to withdraw it for now. The Government take oversight of the Bill seriously, and we will consider the best way to approach it. I will be in touch with her about that.

Holly Lynch: I am grateful for the way the Minister has approached the new clause. I accept entirely the volume of work he has had to do in the past 24 to 36 hours.

We feel quite strongly about some of the proposals we are advocating for in new clause 2. There is an acceptance of the real value of the work undertaken by the independent reviewers right across the agencies that work with this type of legislation. We think we are largely doing the Government a favour in putting these proposals forward.

12.15 pm

Let me work through the other elements of this group. As the Minister outlined, clause 48 creates a duty for the Secretary of State to report to Parliament on a quarterly basis on the exercise of certain powers under part 2 of the Bill. Given the seriousness of the measures, we very much welcome this accountability and transparency as to the use of part 2 notices, providing an evidence base that will help both parliamentarians and the independent reviewer undertake their roles in assessing the effectiveness and proportionality of STPIMs.

Subsection (1)(b) states that the Secretary of State will

"lay a copy of each such report before Parliament",

mirroring section 19 of the Terrorism Prevention and Investigation Measures Act 2011, which states that the Secretary of State must update the House on active TPIMs every three months. However, the clause does not state explicitly whether a written statement will be laid before both Houses, rather than just, for example, the Intelligence and Security Committee or another subsection. I had the opportunity to clarify that with Home Office officials earlier this week, who confirmed that the intention was to lay the report before both Houses, and I am grateful to them for that; none the less, we would welcome the Minister's commitment to ensuring that that happens.

I also take this opportunity to make the point that the TPIMs statements have taken longer to publish in recent months. In 2021, and prior to that, they were being presented to the House within two months. The latest report, which covers December 2021 to February 2022, was presented in June, taking four months to prepare. The report covering March 2022 to May 2022 has not yet been published. We would like to make a request to return to the timely publication of those statements and a plea that the STIPM equivalent starts as it means to go on.

I will turn to clause 49 and our new clause 2, tabled in the name of my hon. Friend the Member for Birmingham, Yardley, the shadow Home Secretary, my right hon. Friend the Member for Normanton, Pontefract and Castleford (Yvette Cooper), and myself. Clause 49 states that the Secretary of State

"must appoint a person to review the operation"

of part 2 of the Bill and that the independent reviewer must carry out a review every 12 months. We have probed previously as to who will perform that function, as we believe the oversight is integral to finding the

appropriate balance of powers and freedoms. I hope the Minister will be able to clarify who the independent reviewer will be. Will those responsibilities be added to those of an existing independent reviewer, or will a new post be created for this legislation?

As my right hon. Friend the shadow Home Secretary outlined on Second Reading, the scrutiny provided by David Anderson QC and Jonathan Hall QC of terrorism legislation has been invaluable. Members across the Committee will know that their scrutiny has identified weaknesses in terrorism legislation and highlighted areas where stronger safeguards are needed, and provided crucial checks and balances on those powers.

Giving evidence to the Committee, Jonathan Hall outlined the value of the independent function of his office in reviewing TPIMs, stating:

"When I review TPIMs, I have a completely free hand. I am able to interrogate officials and able to see whatever I want. That is really important. I am not just looking at judgments in courts, or just reading documents; I am actually there able to interrogate, test and challenge. That is what I do. Also, I think it is important that Parliament and the public have a sense of what is going on. Regrettably, because legal aid has not been made available in all cases for TPIMs, there are now fewer court cases, so general information about how this important but serious power is being exercised is relatively cut off. The independent reviewer can provide a lot of transparency about how it is operating."

I asked him whether there is a logic to his office taking on the additional responsibilities and if he had the capacity to do it. He said:

"My answer is that I think it actually is quite a good fit for the reviewer's job, and I think it probably is right that the person who does the independent review of terrorism legislation should also do the state threats legislation. The reason is that this new legislation is really modelled on terrorism legislation. In crude terms, the concept of the foreign power condition sits in place of the purposes or acts of terrorism, and then there is the same framework in terms of very strong arrest power, detention up to 14 days, strong powers of cordons and search and investigations, and, of course, the PIMs. There are so many learning points between the two regimes that it does make sense."—[*Official Report, National Security Public Bill Committee,* 7 July 2022; c. 5-6, Q4-5.]

We have the highest regard for Jonathan Hall; we recognise the merits in adding the responsibilities created by clause 49 to his remit and we can see the benefit of a coherent, joined-up approach in assessing both counter-terrorism and state threat legislation. That said, if the Minister were to make a case for the creation of a brand new position exclusively for the independent review of these laws, we would certainly be open to that. Sir Brian Leveson, in his capacity as the Investigatory Powers Commissioner, also has some responsibilities as an independent reviewer, so there are options.

At this stage in proceedings, clarity on who will undertake that work is necessary, as is agreement that their role will begin immediately once this legislation is enacted. The Minister might be aware that the position of the Independent Anti-Slavery Commissioner has, unbelievably, remained vacant since Dame Sara Thornton left the post. There have also been a series of gaps and delays in the appointment of other posts providing crucial oversight. We refuse to allow the Government to let that happen in this instance.

As I have said several times before in our discussions, it is odd that clause 49 deems just part 2 provisions eligible for ongoing independent review. We feel that the new provisions created by the rest of the Bill should be similarly subject to the same ongoing consideration. This legislation is required in a space that is dynamic and can shift quickly. We are often dealing with highly capable state-sponsored individuals with potentially unlimited resources. They will adapt to the barriers that we put in place, so it would seem logical that we continue to keep the legislation under review.

With new clause 2, we have replicated the framework of clause 49 and extended it to the remaining parts of the Bill. We anticipate that the Independent Reviewer Of Terrorism Legislation would automatically take in part 3, as I think the Minister has confirmed. He has already issued a five-page assessment of the terrorism clauses in this Bill which was not entirely complimentary to the Government's approach. My hon. Friend the Member for Birmingham, Yardley will come to that. However, there is precedent for having further oversight of the measures, rather than exclusively of those in part 2 of the Bill. Jonathan Hall has assumed that he already has responsibility for part 3, so I hope the Minister can as a minimum confirm that that is the case.

In his final contribution, before the recess, the Minister's predecessor, the hon. Member for Stevenage (Stephen McPartland) said:

"Here is the bit that the hon. Lady and our friends in the SNP will be most keen to hear about: as with TPIMs, there will be an independent reviewer to ensure that clause 40 and the whole of the STPIMs regime will be implemented correctly."—[*Official Report, National Security Public Bill Committee,* 19 July 2022; c. 240.]

While I very much welcome that, I am certainly not overly excited by it. That is on clause 49, and we have consistently argued that clause 49 must be extended. This is one of the areas that we feel most strongly about, so, with that in mind, I urge the Minister to reconsider whether he will support new clause 2.

Stewart Hosie: Clause 48 requires quarterly reports by the Secretary of State on the exercise of powers to impose, extend, vary, revoke or revive part 2 notices. Clause 49 requires an independent reviewer of this part—that is, the STPIMs. Annual reports are to be prepared and laid, and that is all good and well. The only issue we have is the scope of the clause 48 report, in that its requirement is

"the exercise of the powers",

while the scope of the clause 49 review is about

"the operation of this Part".

It is important that the review includes information about the workings of what I described as potentially Kafkaesque rules for reviews and appeals in schedule 7. I will be very brief, but new clause 2, in the name of the hon. Member for Halifax, which calls for a broader review requirement to cover parts 1, 3 and 4 of the Bill, does seem rather sensible.

Mr Jones: The amendment from my hon. Friend the Member for Halifax is, as I said earlier, part of a broader piece about ensuring that we get the balance right between giving our security services, agencies and people the powers that I personally support, and providing proper scrutiny for the individual and for the operation of the Bill. That is the thing that has been missing from the Bill. Knowing Sir Brian Leveson, the Investigatory

[Mr Kevan Jones]

Powers Commissioner, I know that system works well in terms of warrantry and so on. If we are going to give powers to our agencies to do their job rightly, we have to ensure that they are robust and reviewed as things change.

I know the Minister is only a day or a bit into his job, so he might not be able to accept an amendment today, but I think this aspect needs to be looked at throughout the Bill. It was certainly raised with his predecessor, though I cannot remember if it was his immediate predecessor or the one before that.

My other point is to do with this issue of laying before Parliament. I support that, but the report will be very anodyne in terms of what it can provide in public, so I might look to the Intelligence and Security Committee. I am not looking for work for that Committee, but it has the ability to access material that cannot, for obvious reasons, be put in the public domain. The Minister will soon learn about the battles going on at the moment with parts of the Cabinet Office, Home Office and various other agencies about our role and access to material. We already get, for example, the independent commissioner's report, but we have an ongoing row about our access to the annex, which we had in the past but for some reason are now not allowed to have. Given the role of Parliament and for its reassurance, will the Minister consider the ISC having access to the information that cannot be put in the public domain? That would be helpful. I accept that some people think the ISC just agrees with everything the agencies do, but it is another review body that can give assurance to the public and Parliament that the powers are proportionate.

We know that once we implement the Bill, we will learn and powers will change. I am not against Brian Leveson, the independent tribunals and the Investigatory Powers Commissioner—they do a fantastic job. They have helpfully pointed to some of the lessons that need to be learned, for example, from the terrorist attacks in London and Manchester. The ability of parliamentarians at least to ask the questions and have access to the information that cannot be put in the public domain would be an added layer of scrutiny, allowing the public to know at least that we have a full spectrum to ensure that such things are done proportionately and are working effectively.

Tom Tugendhat: I thank hon. Members for the tone of this discussion. I appreciate that scrutiny is important. This is about protecting not just the rights of individuals, but the agencies that are carrying out such important work on our behalf. Their heroism and courage on operations need to be protected, so that the agencies are not later found in legal difficulty in areas where they have acted not only with integrity but with enormous courage. I therefore appreciate the tone.

Briefly, I will touch on the question of scrutiny and laying before the House. I will make an absolute commitment to bring forward reports as soon as possible. I appreciate that there have been a few issues of late, which may have delayed things. I assure the hon. Member for Halifax that I will do my best to ensure that those timelines are reduced and are as sharp as possible. I absolutely appreciate her point. The issue of being laid before both Houses is made absolutely clear in the publication.

To touch on the question of who the commissioner might be, that has not been resolved as yet. I appreciate the hon. Lady's point and there is merit on both sides of the argument, but either way, there is huge merit in ensuring that whoever is doing TPIMs has a very close connection with whomever is doing STPIMs. Whether that is a newly appointed individual or the extension of a role, I am happy to ensure that they work closely together.

Holly Lynch: We have been probing that during the passage of the Bill. Because that role is so crucial to the oversight that needs to follow the rest of the provisions in the legislation, can the Minister, as an absolute minimum, confirm that that person will be in post and that that issue will have been resolved by the time the Bill is enacted, so that that is not an ongoing question that starts to run into the legislation being enacted?

12.30 pm

Tom Tugendhat: The hon. Member will be aware that I have been in post for only a few hours, so I will be cautious about making commitments that I cannot keep, but I can assure her that I will do my absolute damnedest to make sure that they are in post, because I can see exactly the point that she makes and I appreciate it. As I say, this is about protecting the rights not just of those who are subject to the provisions but of those carrying out the protection of our state and our nation.

Question put and agreed to.

Clause 48 accordingly ordered to stand part of the Bill.

Clause 49 ordered to stand part of the Bill.

Clause 50

OFFENCE

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

Tom Tugendhat: The clause provides for a criminal offence of breaching a measure specified in a part 2 notice without reasonable excuse. This echoes, as do many of the provisions, a similar provision in the TPIM regime, and includes cases in which a person has permission from the Secretary of State to contravene a measure and does not adhere to the terms or conditions of that permission. For the sake of enforceability, it is vital that a part 2 notice is reinforced with effective penalties if the subject does not comply. Hence the maximum penalty on conviction is a custodial sentence not exceeding five years, unless the travel measure is breached, in which case the maximum sentence is 10 years.

Holly Lynch: The clause provides for an offence of contravening without reasonable excuse any measure specified in a part 2 notice. That, again, mirrors section 23 of the Terrorism Prevention and Investigation Measures Act 2011. According to the Government's most recent transparency report, in December 2020 the total number of individuals who had been served a notice since TPIMs were introduced in 2011 was 24, so compliance is relatively high. But so are the stakes when someone breaches the terms of such measures.

According to the "Statistics on the operation of police powers under the Terrorism Act 2000 and subsequent legislation" quarterly report from the Home Office, the number of people who have been prosecuted and convicted under section 23 of the TPIM Act, meaning that they contravened an order, is 10. Like TPIMs, the primary function of STPIMs is to be able to control and monitor those who represent a serious threat to our national security but cannot yet be prosecuted. We have been assured that the primary function of an STPIM is to be able to manage a person while an investigation into a part 1 offence is established, rather than simply creating a situation where a prosecutable breach is highly likely.

We note the particular focus on travel in clause 50, and that under subsection (2) an individual who travels without permission loses any reasonable excuse defence. Given that we anticipate that there might be a higher number of foreign nationals and dual nationals in this cohort due to the state threat nature of the offences, it is possible that we might have higher numbers of requests to attend overseas births and deaths of family members and loved ones among the cohort. However, the risk of permitting that travel, which might mean a return to a very hostile state that we fear is sponsoring the individual's activity, presents a massive challenge. To ensure there are robust decision-making processes around those considerations and to have good reporting and a review of those elements of the clause would be welcome additions.

Stewart Hosie: As the Minister said, the clause creates a criminal offence of contravening without a reasonable excuse a measure in a part 2 notice, but there is no defence of reasonable excuse if the subject leaves the UK when they are restricted from doing so. In normal circumstances, a breach of a part 2 notice would leave the individual subject to five years' imprisonment on indictment, or 12 months' imprisonment on a summary conviction in Scotland, but that becomes nine years' imprisonment on indictment for a breach of a travel measure.

I wish simply to get to the bottom of why some of the breaches of a part 2 notice appear to be disproportionately harsh. The Minister said that much of this provision mirrors the provisions of TPIMs; does this bit—the doubling of the tariff for a breach of a travel measure—mirror the TPIMs provisions? If it does, how often was such a penalty imposed for such a breach under the existing provisions?

Tom Tugendhat: It is quite clear that any order given must have consequences if it is disobeyed—I do not think anyone in this room would disagree with that—and it is important that the penalties for disobedience against a lawfully given order must be proportionate. The penalties are proportionate, and it is normal to have an increased penalty for an aggravated offence, whatever that may be. In the circumstances, travelling abroad would be considered an aggravation and therefore have a greater penalty attached. That is entirely appropriate, so it is entirely reasonable to have that increased sentence.

Question put and agreed to.

Clause 50 accordingly ordered to stand part of the Bill.

Clause 51

POWERS OF ENTRY ETC

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

The Chair: With this it will be convenient to consider that schedule 8 be the Eighth schedule to the Bill.

Tom Tugendhat: The clause gives effect to schedule 8, which provides the police with powers of search, entry, seizure and retention in a number of scenarios relating to STPIMs. For the sake of ease, I will cover the clause and the schedule together.

Before I go into the detail of the clause, I remind the Committee that STPIMs will be a tool of last resort. The Government will use every other tool at our disposal before resorting to such significant measures. Again, I remind the Committee that these measures mirror those in the TPIMs regime.

In order to effectively enforce the regime and check an individual is complying with the measures under their STPIM, the police will have the powers they need to enter premises, conduct necessary searches and seize and retain items as necessary. They will also be able to arrest the individual for a "breach of" offence if they fail to grant police access.

Schedule 8 provides powers to the police to enter and search premises without a warrant to locate an individual for the purpose of serving an STPIM notice or another specified notice on them; to search an individual or premises when serving an STPIM notice for the purpose of discovering anything that might breach any measures specified in the STPIM notice; to search premises on suspicion that an individual subject to an STPIM notice has absconded; and to search an individual subject to an STPIM notice for public safety purposes. It provides a power to police with a warrant to search an individual or premises to determine whether an individual is complying with the measures specified in the STPIM notice. There are also powers for a constable to seize and retain items found in the course of such searches.

I remind the Committee that the STPIM itself is kept under review and requires a court's permission to impose the measure. That means that a court will have already agreed with the assessment of the Secretary of State that the individual meets the meet five conditions in clause 33, which the Committee has already agreed to. That means it is proportionate in terms of a national security determination for the police to be able to undertake the aforementioned activities without a warrant. The powers will be essential to managing and enforcing the measures imposed under STPIMs and, importantly, they provide the right balance between effective powers and safeguards for the rights of the individual.

Holly Lynch: I have a couple of queries on schedule 8, which provides powers of entry, search, seizure and retention in a number of scenarios relating to part 2 notices.

I have queried the use of the word "constable" in legislation before, but it seems to be standard. Paragraph 9(9) states:

"The warrant may be executed by any constable."

[Holly Lynch]

Previous schedules specify certain ranks and specialisms, such as counter-terrorism officers, to undertake such duties. Are we satisfied that further stipulations on who may execute a warrant are not required?

Sub-paragraph (10) states that a warrant issued by a court to search the individual, the individual's place of residence, or other premises specified by the warrant, expires after 28 days. That period feels a bit odd to me. We want officers to have the flexibility they need, but I cannot imagine a scenario in which they have grounds to apply for a warrant but then take more than 20 days after it is issued to execute it. I am grateful to counter-terrorism police for sharing a bit more about their operations and how these warrants are used, which has provided some reassurance on this front, but will the Minister confirm that a warrant cannot be executed more than once in the 28-day period?

Stewart Hosie: Clause 51 applies schedule 8, which makes provision about various powers of entry, search, seizure and retention—to enter and search premises for the purpose of personally serving, to search for items that breach the notice, and to search when there is a suspicion of absconding. A warrant is required to search people or premises for the purposes of determining whether an individual is complying with the measures specified in the notice, and the warrant is to be granted only if necessary.

However, some of the powers in paragraph 10 appear to be rather broad, allowing a person to be searched without a warrant to see whether they might be

"in possession of anything that could be used to threaten or harm any person".

I am not quite sure what that means. Unlike in the case of other warrantless powers, there is no requirement even for suspicion that someone is likely to threaten or cause harm. What is the justification or the reason for that?

Paragraphs 11 and 12 contain very strong powers to retain certain items which are seized, with no time limit other than

"as long as is necessary in all the circumstances."

There follows a non-exhaustive example of what could represent necessity, but necessary for what? Is there provision for a person to challenge the ongoing retention of property seized by police under these powers? Is there a model for this drafting that has been used elsewhere? If there is, and if a piece warrantless search and retention legislation exists, how frequently is such a measure used?

Tom Tugendhat: The hon. Member for Halifax asked about the use of the term "constable". It is standard, and she will realise that mostly it will be counter-terrorist police who lead on STPIMs, and who the most appropriate person is will be reviewed by the operational commander. The use of the term "constable" and the equivalent ranks in other forces and relevant services is standard for these purposes.

The provision on when a warrant may be executed is operationally beneficial to those who may have reason to delay or have to wait for a window to open when action can be taken. I will not go into the potential operational requirements on any element, but clearly they will vary: in some circumstances, it will be appropriate to act immediately; in others, it may be necessary to wait.

The provision on retention for

"as long as is necessary"

is also standard, including in the Police and Criminal Evidence Act 1984. The Bill also contains provisions allowing people to apply to have property returned.

Question put and agreed to.

Clause 51 accordingly ordered to stand part of the Bill.

Schedule 8 agreed to.

Clause 52

FINGERPRINTS AND SAMPLES

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

The Chair: With this it will be convenient to discuss that schedule 9 be the Ninth schedule to the Bill.

12.45 pm

Tom Tugendhat: The clause will give effect to schedule 9, which makes provision for the taking and retention of biometric material from individuals subject to a part 2 notice. I will cover the clause with the schedule.

The biometric data retention provisions relating to state threats prevention and investigation measures are in line with those existing elsewhere in the statute book, including in TPIMs, which have been well established for more than 10 years. The schedule makes separate provisions for taking the fingerprints and samples of an individual subject to a specified prevention and investigation measure in England, Wales and Northern Ireland to that of Scotland. That ensures that provisions are in line with different police procedures and legislation.

constable may take biometric data, which could include physical data, from an individual subject to a part 2 notice. The individual will be informed of the reason for the fingerprints or sample being taken. Police can require an individual to attend a police station for the purpose of providing biometric data, and that material may be checked against other such material held under a variety of other powers. The schedule requires the destruction of relevant material, including fingerprints, DNA profiles or relevant physical data, unless there is a power to retain, which I shall come to.

The purpose of the provisions is to ensure the right balance between the protection of the public and individual civil liberties. Under paragraph (11), any samples taken from the individual must be destroyed as soon as a DNA profile has been derived from that sample or, if sooner, within six months of taking the sample. Paragraphs (8) and (9) contain powers to retain biometric data. Where there is no relevant previous conviction, fingerprints, DNA profiles and physical data may be retained for six months after the end of the relevant part 2 notice being in force.

Under paragraph (9), a national security determination can be made by a chief officer of police, enabling the police to retain for up to five years data relating to an individual who may pose an enduring national security

threat. All national security determinations that can be reviewed must be reviewed by the biometrics commissioner, who has continued oversight of the retention and use of such data.

We recognise the importance of safeguarding individuals' right to privacy, so paragraph (12) sets out the limitation of uses for any retained material taken from a person subject to a part 2 notice, which are in the interests of national security, for the purposes of investigation foreign power threat activity, for the purposes of a terrorism investigation, for the detection and prevention of crime, or in the interests of identification only.

Holly Lynch: I listened intently to the Minister. Schedule 9 makes provision for the taking and retention of fingerprints and non-intimate samples from individuals subject to a part 2 notice. Schedule 9, like schedule 3, is subject to several Government amendments. As the explanatory notes explain, fingerprints and non-intimate samples have the same meaning as that given in section 65 of PACE 1984. I would be grateful to the Minister for some clarity on that, which he may need to provide in writing. There is a lot going on in relation to biometrics in different parts of the Bill.

Paragraphs (6) to (11) make provision relating to the destruction and retention of material taken from individuals subject to a part 2 notice. The explanatory notes say that where an individual has no relevant previous convictions, fingerprints and DNA profiles may be kept for only six months after the part 2 notice ceases to be in force. Paragraph (11) goes on to state that, as provided in the Protection of Freedoms Act 2012, material taken under PACE, for example, or that is subject to the Terrorism Act 2000 or the Counter-Terrorism Act 2008, need not be destroyed if a chief office of police determines that it is necessary to retain that material for purposes of national security. Given that we are dealing almost exclusively with matters of national security in schedule 9, can we assume that the majority of biometric evidence taken from individuals subject to part 2 notices may be held indefinitely under this provision?

I am reliably informed that the biometric retention provisions in the Bill are designed to bring the powers into line with similar provisions in terrorism legislation. Schedule 9(8) deals with the retention of biometrics collected in the course of the service of a part 2 notice under the STPIM provisions. That provides us with a retention of six months prior to a national security determination being made, and is therefore in line with the provision under schedule 6 of the Terrorism Prevention and Investigation Measures Act 2011.

A separate provision for the retention of biometrics can be found in paragraph 22 of schedule 3. It provides for a retention period of three years for those detained under schedule 4 provisions, in line with biometrics collected under section 41 of the Terrorism Act 2000 and section 41 of the Counter-Terrorism Act 2008, which qualify terrorism offences.

Beyond the initial retention period, both provisions are capable of retention by way of a national security determination process. I have lost track—I do not know whether other Members have—of whether we are keeping biometrics for an initial six months, as schedule 9 seems to outline, or for three years, which is the case elsewhere in the Bill. I suspect the Minister is unable offer absolute clarity right now—although I have no doubt that the civil servants think it is absolutely crystal clear—but I would be grateful if he could outline, perhaps in writing, the rationale for the different provisions.

Government amendment 32 specifies that the chief constables of the Ministry of Defence police and the British Transport police, and the director general of the National Crime Agency, are added to paragraph 9(4) of schedule 9. The responsibilities of the Civil Nuclear Constabulary are different from those of other forces, but is the Minister certain that it does not need to be added to the list?

Stewart Hosie: I am aware that similar provisions were debated in relation to schedule 3, and concerns were raised then that the provisions may end up allowing the indefinite retention of the material of people who have accepted cautions—indeed, even youth cautions—meaning that they were never charged, never mind convicted. The Minister has not provided much of a justification for that, other than that he wants the legislation to mirror the provision in other Acts. He used the same argument in his introductory remarks.

That is not enough. Provisions on the ability to retain material indefinitely on whatever grounds must be justified in their own terms in this legislation. I know that the Minister is new to the job, so if he cannot do that now, he can write with that explanation, as the hon. Member for Halifax said. Notwithstanding the fact that we all want the maximum powers necessary to tackle the state threat and the terrorist threat, if his explanation is not compelling or convincing, the provisions will need to be revisited at a later stage.

Tom Tugendhat: I do appreciate that elements are being raised about which I will write to various Committee members, and I will follow up on areas that I have not covered in detail.

Although the operational use of biometrics remains the same across provisions, we are taking a different approach to the powers provided under STPIMs and the powers in schedule 3. That ensures the right balance and proportionality in tackling foreign state threat activity while protecting individuals' right to privacy. Although there is the option to make a national security determination under both regimes, under our police powers the initial retention period is longer than for STPIMs to reflect the seriousness of an arrest made for suspected involvement in foreign power threat activity.

Following arrest for involvement in foreign power threat activity, an individual's biometric data may be retained for three years, with the option of extending that, irrespective of whether there is no further action, or whether they are charged or acquitted. Certain national security offences under this Bill will be added to the list of qualifying offences in PACE to reflect the seriousness of the offence that justifies longer retention periods.

Question put and agreed to.

Clause 52 accordingly ordered to stand part of the Bill.

Schedule 9

FINGERPRINTS AND SAMPLES

Amendments made: 25, in schedule 9, page 133, line 1, leave out paragraph (f).

This amendment removes paragraph (f) from a list of provisions under which fingerprints, data and other samples may be taken. Paragraph (f) is not needed because its contents are already covered by paragraph (g).

Amendment 26, in schedule 9, page 133, line 9, at end insert—

"(ia) any of the fingerprints, data or samples obtained under paragraph 1 or 4 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011, or information derived from such a sample;".

This amendment inserts a reference to the provisions of the Terrorism Prevention and Investigation Measures Act 2011 under which fingerprints, data or samples may be taken, so that fingerprints, data or samples obtained under paragraph 1 or 4 of Schedule 9 may be checked against fingerprints, data or samples taken under that Act.

Amendment 27, in schedule 9, page 133, line 13, leave out paragraph (k).

This amendment removes paragraph (k) from a list of provisions under which fingerprints, data and other samples may be taken. Paragraph (k) is not needed because its contents are already covered by paragraph (g).

Amendment 28, in schedule 9, page 133, line 30, after "paragraph 8" insert ", 8A".

This amendment is consequential on Amendment 31.

Amendment 29, in schedule 9, page 134, line 4, at beginning insert—

"(Z1) This paragraph applies to paragraph 6 material taken from, or provided by, an individual who has no previous convictions or (in the case of England and Wales or Northern Ireland) only one exempt conviction."

This amendment is consequential on Amendment 31.

Amendment 30, in schedule 9, page 134, line 4, leave out "Paragraph 6" and insert "The".

This amendment is consequential on Amendment 29.

Amendment 31, in schedule 9, page 134, line 26, at end insert—

"8A (1) This paragraph applies to paragraph 6 material taken from, or provided by, an individual—

(a) who has been convicted of a recordable offence (other than a single exempt conviction) or of an offence in Scotland which is punishable by imprisonment, or

(b) who is so convicted before the end of the period within which the material may be retained by virtue of paragraph 8.

(2) The material may be retained indefinitely.

8B (1) For the purposes of paragraphs 8 and 8A an individual 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 individual has been given a caution or youth caution in respect of the offence which, at the time of the caution, the individual has admitted,

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

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

(b) the individual, 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 individual, in relation to an offence in Scotland punishable by imprisonment, has been acquitted on account of the individual'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 individual 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 individual, 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 individual is liable to pay by virtue of section 131(5) of that Act, or

(f) the individual, 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) Paragraphs 8, 8A and this paragraph, so far as they relate to individuals 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 paragraphs 8 and 8A—

(a) an individual has no previous convictions if the individual 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 individual 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 individual was aged under 18.

(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 8, 8A or 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 an individual 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 8 or 8A whether the individual has been convicted of one offence."

This amendment and Amendment 36 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.

Amendment 32, in schedule 9, page 134, line 40, at end insert—

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

(e) the Chief Constable of the British Transport Police Force, or

(f) the Director General of the National Crime Agency."

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

Amendment 33, in schedule 9, page 135, line 32, after "8" insert ", 8A".

This amendment is consequential on Amendment 31.

Amendment 34, in schedule 9, page 137, line 34, leave out paragraphs (h) to (j).

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 9.

Amendment 35, in schedule 9, page 137, leave out lines 38 to 40.

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 9.

Amendment 36, in schedule 9, page 137, line 40, at end insert—

"'recordable offence' has—

(a) in relation to a conviction in England and Wales, 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, 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 31.

Amendment 37, in schedule 9, page 138, leave out lines 5 to 19 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 38 make provision identifying the responsible chief officer or police in relation to fingerprints or samples taken by a constable of the Ministry of Defence Police or the British Transport Police Force.

Amendment 38, in schedule 9, page 138, line 22, 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."—*(Tom Tugendhat.)*

See Amendment 37.

Schedule 9, as amended, agreed to.

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

12.55 pm

Adjourned till this day at Two o'clock.