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Public Bill Committee

NATIONAL SECURITY BILL

Twelfth Sitting

Thursday 8 September 2022

(Afternoon)

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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

(Afternoon)

[Rushanara Ali *in the Chair*]

National Security Bill

2 pm

Clause 53

Notices

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

The Minister for Security (Tom Tugendhat): Let me briefly say that we all pray for Her Majesty; it is an extraordinary moment. God save the Queen.

Clause 53 sets out how certain part 2 notices are to be served. A part 2 notice, an extension notice, a revival notice or a notice of a variation of the measures without consent must be served in person to the individual in order to have effect, whereas other notices may be served through the individual's solicitor.

Schedule 5 contains a supporting power for the police to enter and search premises to find an individual for the purpose of serving a notice on them. This is so that the individual is informed in person and the implications of the notice can be explained to them.

Clause 53 also provides that when a subject is served the relevant notice they must be provided with a confirmation notice that sets out the period for which that notice will remain in force. This will give the individual certainty regarding the period of time for which the measures apply to them.

Holly Lynch (Halifax) (Lab): Clause 53 states that a confirmation notice must be served on an individual who is served with a state threats prevention and investigation measure, or a revival notice or extension notice, setting out the period, including dates, for which the individual will be subject to the STPIM, unless it is quashed or revoked before its expiry.

We recognise the need for the clause, and it is right that there is a great deal of emphasis on serving the notice to an individual personally. There is, however, a distinct lack of detail in the Bill about who can serve a notice. Counter-terrorism police have again been very helpful in taking me through how such work might be undertaken operationally, but I put it to the Minister that it is not clear in the legislation that it would need to be a constable of a certain rank, or that it would need to be a constable. Other areas of the Bill do specify that.

It is not just a case of serving the notice: it is also the point at which a person is informed of the terms of the part 2 notice notice and presumably relocated and monitored to ensure their compliance with it. I wish to probe whether the provisions in clause 53 would benefit from being ever so slightly tightened up in that specific regard.

Stewart Hosie (Dundee East) (SNP): The Minister has laid out clearly what clause 53 does. It sets out the requirements for notices to be served and for how long they are in force, and it makes it clear that the individual is not bound unless they have been personally served the notice. I have one question: although the list of different sorts of notices is very clear in the legislation, are individuals to be told in the documents with which they are served of their rights to challenge, seek a revocation or seek a variation of the notice served upon them?

Tom Tugendhat: I hope the right hon. Gentleman will forgive me, but I will have to write to him on that question. As for the question about the rank of the officer, a constable or any warranted officer is the answer.

Question put and agreed to.

Clause 53 accordingly ordered to stand part of the Bill.

Clause 54

Contracts

Holly Lynch: I beg to move amendment 67, in clause 54, page 38, line 29, at end insert—

> "(2) Within three months of the passing of this Act, the Secretary of State must publish a statement setting out how the Secretary of State intends to exercise the power under this section. The statement must include an list of illustrative examples of the kinds of contracts or other arrangements this power relates to."

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

Holly Lynch: Clause 54 makes me uncomfortable and requires some thorough consideration. Amendment 67 seeks to flesh out some of the detail as to what the clause means in reality.

The explanatory notes say:

> "This clause grants the Secretary of State authority to purchase services in relation to any form of monitoring in connection with measures specified in Part 2 notices. This would include, for example, electronic monitoring of compliance with the residence requirement provided for in Schedule 4."

Frankly, the Government have a somewhat chequered history in awarding contracts, and while I will not go through the back catalogue, it is against that backdrop that we ask for more detail before we sign off on this clause. Section 29 of the Terrorism Prevention and Investigation Measures Act 2011 includes the same provision, so I hope that the Minister is in a position to share with us how private companies have been involved in the monitoring of those subject to TPIMs, so that we can gain a clearer understanding of how that would be replicated with STPIMs.

I am looking for reassurance on two fronts. The first is that we are not using contractors who are vulnerable to hacking or other forms of cyber-attack. There will be marked differences between the cohort of people currently subject to a form of monitoring—and even those subject to TPIMs—compared with STPIMs, which stand to present different challenges, so what tech will be used for monitoring someone subject to a part 2 notice, and how do we ensure that we, but no one else, knows where that individual is? I am assuming, based on what little

we are asked to go on in the clause and explanatory notes, that we could be talking about wearable technology or monitoring hardware and software. I suspect that at least some component parts will be made overseas, if not all of them.

We sought to establish where the ankle monitors that are currently used come from. With some help from the House of Commons Library, we found that in November 2017 the Ministry of Justice awarded a contract for the supply of electronic monitoring services, which includes software and hardware, to G4S, and it appears to have been extended, but we could not establish where they were purchased from or just how robust they are. How do the Government plan to address that concern operationally and ensure that there are no holes to be exploited in the technology itself? How do we write those protections and technical specifications into contracts under clause 54?

Secondly, we are dealing with particularly capable people, potentially with the support of entire nation states. I want to know that our security services and trained police officers are undertaking this monitoring work, rather than private contractors who stand to be overwhelmed if not equipped and trained adequately. I had a look at what happens currently. The National Audit Office's recent report published in June 2022, called "Electronic monitoring: a progress update", states on page 22 that G4S supplies tags and home monitoring equipment as part of HM Prison and Probation Service's tower delivery model for its tagging transformation programme.

HMPPS is an agency of the Ministry of Justice and is responsible for tagging. The report explains that the tower contracting approach has four different suppliers, each responsible for a different element of the national programme: supplying and fitting tags to offenders; running a monitoring centre; providing underlying mapping data; and providing the communications network. HMPPS acts as an integrator to co-ordinate work across the four suppliers. Can the Minister confirm that that is the same model, which has a number of private contracts and moving parts, presumably with the exchange of a lot of information between those moving parts, that we use for monitoring those subject to TPIMs, and that it is therefore the same way in which we will monitor people subject to STPIMs?

I would greatly appreciate some clarification from the Minister on that, to ensure that our national security cannot be outsourced and that we have specialist and trained people from our dedicated services undertaking this really important monitoring, using technology that can withstand the threat of outside interference. Given the situation in which we find ourselves, I urge the Minister to consider the merits of amendment 67.

Tom Tugendhat: Clause 54 grants the Secretary of State authority to use third parties to assist in relation to any form of monitoring in connection with the measures specified in part 2 notices. As the hon. Member for Halifax rightly identified, the electronic monitoring of compliance with the residence measure, such as by entering into a contract with a third party to provide tagging services, is exactly the form of contract that is envisioned. In practice, the Government will ensure efficiency by aligning, where possible, with existing contracts, and therefore may use ones that are already set up for comparable provisions in law, such as TPIMs.

The intention of the amendment is to seek clarity about what types of contracts the Home Secretary might enter into in relation to STPIMs and how she intends to exercise the power. Though the Government do not feel that publishing further detail on any such contract is necessary, I absolutely assure the Committee that the clause is not designed to do anything to outsource intelligence services. Instead, it is a standard approach that we have with TPIMs, where in some instances it is necessary for the Government to outsource some services. An example of such is the contract for ankle monitoring services to which the hon. Lady referred. She will be aware of my own views on outsourcing technology to various states; she can be absolutely assured of my own interest in making sure I prosecute this.

Stewart Hosie: I understand perfectly well what the Minister is saying about the occasional need to outsource. I also understand why he would say that much of the contractual information should not be released. However, there are valid questions about the clause. What information would a third-party contracting company have about the subject? For example, would that company be told that the subject may not even have been convicted of committing a crime, but was the recipient of a state threats prevention and investigation measures order?

Tom Tugendhat: As the right hon. Member will be aware, in all such circumstances there will be a great variety, because what might be shared with somebody providing one service may not be the same as what is shared with another. It is also evident that the normal regulation on protecting privacy would apply where appropriate, and the Government would therefore abide with all due legal requirements. I cannot give a further commitment than that, for the obvious reason that the variety in which such contracting would apply is enormous. I can therefore only assure him that the existing previsions would endure.

Holly Lynch: I have listened carefully to what the Minister has said. He talked about the convenience of extending existing contracts; however, given the cohort of those who will be subject to STPIMs, that is the exact point that concerns me. We are talking about a volume of those who have committed more typical types of crime, but we need to think much more carefully about the types of technology, the software and the individuals involved in monitoring those subject to STPIMs.

Given the Minister's reputation and understanding of the detail, and as he has already given me those assurances, I am willing to give him the benefit of the doubt that he will go back to officials and interrogate clause 54, so that he and I are satisfied that there are no vulnerabilities in that approach. I hope we can continue that conversation with the Minister. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 54 ordered to stand part of the Bill.

Clause 55

LEGAL AID IN RELATION TO PART 2 NOTICES

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

Tom Tugendhat: I thank the hon. Member for Halifax; she can be assured that my commitment to protecting our security through electronic means, as through every other means, will endure.

Clause 55 will extend the scope of legal aid so that it will be available for state threats prevention and investigation measures. It will allow individuals to access legally aided advice and representation in relation to a part 2 notice, subject to means and merits tests. That replicates the position in the Terrorism Prevention and Investigation Measures Act 2011.

The measures are a civil order designed to protect and mitigate the risk to the public from individuals who pose a threat but cannot be prosecuted or, in the case of foreign nationals, deported. Legal aid will be made available in those cases due to the restrictive nature of the measures that an individual may be subject to. It is right that we balance robust investigation and prevention measures with the access to justice and judicial oversight that this House would demand.

Holly Lynch: As we have already heard, clause 55 inserts a new paragraph in schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2021, to enable individuals subject to part 2 notices to receive civil legal services in relation to those notices.

The Chair: Order. Will the shadow Minister speak up, for the benefit of colleagues at the back?

Holly Lynch: Thank you for that helpful observation, Chair; I will certainly will.

My hon. Friend the Member for Birmingham, Yardley will discuss part 3 of the Bill shortly. However, clause 55, which is in part 2, and clauses 62, 63 and 64, which are in part 3, pull in completely opposite directions in principle. Dare I say that it is almost as if they were produced by two different Government Departments that have not been speaking to each other?

2.15 pm

Maria Eagle (Garston and Halewood) (Lab): My hon. Friend is making an important point. Does she agree that the reasoning appears to be that this is such an intrusive and important provision, affecting people's rights in such a potentially serious manner, that legal aid, subject to merit and means, ought to be available? Would that not also be an argument for getting rid of the whole of part 3 of the Bill?

Holly Lynch: My hon. Friend makes a really powerful point: there are very different principles evident in this element of part 2 compared to those in part 3. We will get into the details of part 3 shortly, but my hon. Friend is exactly right. Part 3 prevents civil legal aid from being available even to British children with any spent terror convictions, yet we are providing legal aid to those who we suspect of engaging in espionage on behalf of hostile foreign states. There is absolutely a powerful case for that, but my hon. Friend is right that that powerful case extends beyond the provisions in part 2 and should also be considered in relation to part 3.

There is a distinct lack of rationale and consistency in the proposals. When we continue into the debate on part 3, I would be grateful if the Minister could provide us with a greater understanding of why those differences occur in the Bill.

Tom Tugendhat: I will restrict myself to discussing clause 55 now rather than considering part 3, because clause 55 covers a particular use of legal aid, which is the use of legal aid in relation to the subject who may be under an STPIM notice. It is therefore a very particular application of legal aid. The question to which the hon. Lady refers, which I understand, is one that, as she knows, we have already discussed, and I look forward to having further discussions with her on it because it does raise questions.

Question put and agreed to.

Clause 55 accordingly ordered to stand part of the Bill.

Clause 56

INTERPRETATION ETC

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

Tom Tugendhat: Clause 56 gives the meaning of numerous terms used throughout this part of the Bill. Subsection (2) sets out that the Secretary of State can consider evidence that was relied upon for the original part 2 notice when assessing whether to continue with measures or to impose new measures on a subject. This will be alongside evidence of engagement in

"new foreign power threat activity",

where relevant for a new notice. This ensures that the Secretary of State is able to consider all the relevant information that may imply a pattern of behaviour. It does not weaken what we discussed when we considered clause 33: evidence of

"new foreign power threat activity"

is required if a further part 2 notice is to be applied after five years.

Subsection (3) provides that

"if a Part 2 notice is revived under section 42(6)"

when considering whether there is

"new foreign power threat activity",

which could allow for a new STPIM after five years, that new activity must take place at some point after the original imposition of the measures and not necessarily after the revival.

Stewart Hosie: I want to raise one issue in relation to clause 56(5), which relates to a provision in cases in which the Secretary of State does not bother to respond to an application to vary or revoke a part 2 notice. That is treated as a decision not to vary, but from when? Given the importance of the tight timescales within which to lodge appeals, in respect of a decision not to vary when the Secretary of State chooses not to respond, does the clock start ticking when the application is sent to the Secretary of State, when it is received at the ministerial office or when the Secretary of State takes a decision not to respond? When does the clock start ticking to allow subsequent action in the courts to be taken if the Secretary of State simply chooses not to respond and that is taken to mean a thing?

Tom Tugendhat: The clock does not start ticking until the notice is enforced. At that point, the timing begins.

Question put and agreed to.

Clause 56 accordingly ordered to stand part of the Bill.

Clause 57

NATIONAL SECURITY PROCEEDINGS

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

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

Amendment 59, in clause 58, page 42, line 2, at end insert—

"(2A) If the court concludes following its consideration under subsection (2) that the claimant has not committed wrongdoing involving—

(a) the commission of a terrorism offence, or

(b) other involvement in terrorism-related activity,

subsection (3) does not apply."

Clauses 58 to 60 stand part.

Tom Tugendhat: Under the Bill, courts can formally be required to consider whether to reduce or withhold damages awarded when they find for the claimant in a national security claim where the claimant's own wrongdoing of a terrorist nature should be taken into account. I will set out the detail of the reforms when I speak to clauses 58 and 59.

On clause 57, it is important to set out the types of cases in which the powers that would be exercised in clauses 58 and 59 would apply, and those in which they would be excluded from applying. The clause establishes that the reforms to reduce damages would apply only in cases that relate to national security proceedings. Those are cases in which one of the parties in the proceedings has presented evidence or made submissions to the court on a matter of national security. That particularly applies to specified types of claims—for example, those involving the use of investigative powers or surveillance, or the activities of the UK's intelligence services, and cases relating to terrorism-related activity in the UK or overseas. However, the legislation excludes claims brought under the Human Rights Act 1998. The clause specifies that the reforms apply only to claims that are brought against the Crown, which reflects the fact that this cohort of cases is aimed at actions brought against our national security services.

Clause 58 details the measures under which courts can be formally required to consider whether to reduce or withhold damages awarded when the court finds for the claimant in a national security claim, but the claimant's wrongdoing of a terrorist nature should be taken into account. This measure is aimed at those cases where a claimant, often based overseas, makes a claim against UK security services that is based on, or related to, the claimant's own involvement in terrorist activity. Although courts already have discretion over the amount of damages to award, they can in theory make a declaration on a finding of fact outcome with no award. In civil tort cases, however, this approach is very rarely taken. In such cases, the courts follow a regular pattern by seeking to establish liability, calculate compensation and award damages. The Bill would go further by requiring courts to consider reducing or removing damages in exceptional cases. These are cases involving matters of national security in which the claimant's case relates to their involvement in terrorism—for example, to personal injury sustained in the course of such activities—where a claim is then made against UK security services.

It is important to note that the Bill does not fetter the court's discretion; judges will still be able to determine cases fairly, independently and objectively. However, we think it is appropriate in these cases that they consider the claimant's conduct as well as the state's. Here, as in the companion measures on damages freezing and forfeiture, the Government have an overriding duty of public protection and the safety of society. The measures will reduce the prospect of large sums in damages being paid to people associated with terrorism, who may use those resources to fund acts of terror.

In addressing amendment 59, I have spoken about the duty imposed on the court to consider, in the circumstances of the case and on the evidence presented, whether it would be appropriate for the claimant's damages award to be reduced, including to nil. The key word there is "consider". The legislation is not fettering the court's discretion. Judges will assess whether, on the balance of probabilities, the factors set out in subsection (2) are made out, and if they are, whether a reduction in damages is appropriate. If the court is satisfied, it will assess what an appropriate reduction in damages should be. In making that assessment, the court will receive submissions from both the security services and claimant, and there will be a right of appeal. The proceedings will be able to rely on the closed material procedures where necessary, to ensure that there is a fair trial and that the evidence is tested. It is also important to note that the claimant will have a right of appeal against the decision of the court.

Amendment 59, tabled by the hon. Member for Birmingham, Yardley, seeks to make it explicit in the Bill that the court will not be required to consider reducing damages when the claimant has not been involved in the commission of terrorist offences or other terrorist-related activity. The Government's intention is not for this reform to apply in national security cases where a claimant had no involvement in wrongdoing of a terrorist nature; nor is it contemplated that the security services would make an application for this duty to be exercised by the court in such cases. The Government will seek to introduce an amendment to clarify this point in the Bill once consultations with parliamentary counsel have concluded. In such case, I ask the hon. Member to withdraw her amendment, and I will be happy to discuss the issue with her in advance of the Government tabling its proposed amendment.

Clause 59 provides some supplemental procedural requirements, including safeguards, for the Crown's application for the court to exercise its duty under clause 58. As I have outlined, the measure is aimed at those cases where a claimant, often based overseas, makes a claim against the UK security services that is related to that claimant's involvement in terrorist activity. Clause 59 supports and supplements clause 58 by setting out the essential requirements of an application made under that clause. The procedural and evidential requirements are set out, as well as the grounds on which the court may refuse an application. We are confident that our measures provide a reasonable, proper and proportionate balance between the right to access justice, and the need to protect national security and to properly deploy the resources devoted to it. The reforms will have a deterrent effect on litigation, so that the UK is no longer seen as such a soft touch for litigation of this nature.

Finally, clause 60 is designed to ensure that interpretation of the legislation by the courts and others will be consistent with terms defined and understood in existing

[Tom Tugendhat]

statutes that concern national security, and in measures to combat terrorism. As such, the clause defines relevant terms used in the Bill, such as "terrorism offence" and "intelligence service". That ensures that there is no inconsistency or ambiguity in the wider legal framework, and that the Bill complements existing legislation. The clause clarifies the relatively narrow cohort of cases at which these reforms are aimed, which are those brought against the Crown on matters of national security, in which a claimant has had some involvement with terrorist activities or offences.

Jess Phillips (Birmingham, Yardley) (Lab): I have heard what the Minister said. The Committee is finding common cause on these matters, as we do on much of the Bill. This is in no way a criticism of him, his speech or what he is offering, but it is a shame that there has been no Justice Ministers on this Bill. Frankly, part 3 of the Bill is far more concerned with justice measures than it is with home affairs in the classic sense. I have felt for some of the many Home Office Ministers who have been in front of us during this Committee in the role of Security Minister; they have had to justify things that did not relate to their Department.

My problem with part 3 more generally—then I will come on to my amendment—and this was clear from the evidence sessions, some four Ministers ago, concerns the nature of deterrents. As we go through the Bill and look over each acronym—we have all learned them like a second language by now—we are seeking to protect and secure our nation. Nobody in this room has any greater claim to do that than anybody else. That is all we seek to do. The trouble with much of part 3—evidence on this has been presented to us—is that it potentially reverses that. Parts of it are of concern for the prevention of terrorism. That is a fundamental line that needs to be drawn. Labour certainly wishes the Government, with their new slew of Ministers, to go back and investigate whether prevention is at the very heart of what is being suggested in part 3 more generally.

2.30 pm

I totally see where the desire for part 3 comes from. As the hon. Member for Birmingham, Northfield, will know only too well, I have for many years helped to represent the families of the Birmingham pub bombings victims, who suffered gravely from terrorism. One of the major parts of the battle—this is certainly public opinion about these sorts of cases; as the Minister pointed out, the Government are considered to be a soft touch on some of these cases—is the idea that terrorists get funding for legal aid while victims do not. In the case of the Birmingham pub bombings families, the issue was that they, rather than the terrorists, did not get legal aid in a case that they were bringing against the state. There is a real questioning of why we are paying for baddies to take the Government to court, when the people who have to go through inquest after inquest do not get legal aid. I totally understand that underpinning feeling.

However, none of what has been suggested in part 3 would have given the families of the Birmingham pub bombings victims access to legal aid. I suggest that if there is real concern about that problem at the Ministry of Justice, the Government should look at their policies on legal aid more broadly.

Mr Kevan Jones (North Durham) (Lab): My hon. Friend makes a good point. Sadly, over the past 12 years, legal aid has been cut back in this country. It is now a tax on the innocent, in my view. Would she agree that, while people find legal aid for potential terrorists abhorrent, there is a long list of other people that the public might want to withdraw legal aid from? That could include rapists, paedophiles, murderers—you name it. The core point is that those individuals need to go before a court. That is not just for those individuals, but for the potential victims, so that we can ensure that the truth comes out and justice is served.

Jess Phillips: I agree 100%. For much of my career, I have been painted as being very one-sided on such matters, but I know that justice has been properly served to the victims I have worked with in my life by a justice system that is properly resourced.

I have seen the degradation of legal aid harm victims' processes in court. It holds things up and, in lots of cases—certainly in the civil courts, which is what part 3 is largely about—it has caused a perverse situation whereby perpetrators are able to cross-examine victims, as neither has access to any advocacy because neither qualified for legal aid. There is therefore the perverse situation that victims of domestic abuse or rape can, in family court, be cross-examined by their rapist. There is potential for that same unintended consequence as a result of what is being proposed in the Bill. I say that it is an unintended consequence; I think that the will to do what has been put in the Bill comes from a decent, if somewhat misguided, place.

Mr Jones: I am not sure that I agree with my hon. Friend. The problem with the Bill, as she suggests, is that we have a Home Office Minister, and an MOJ shadow operation in the back. The lifting of that shadow, via the dismissal of the right hon. Member for Esher and Walton (Dominic Raab), might help the process and ensure that we get a Bill that is at least functional and does everything we want it to do.

Jess Phillips: Throughout this Committee, a lot of people have been called on to comment on what is going on internally on the Government Benches. I may be less qualified than others, but I suspect that what my right hon. Friend says about the right hon. Member for Esher and Walton may well be true. I wish him the best of luck on the Back Benches.

I will move on to the amendment. I have heard what the Minister has graciously said about the Bill not intending to come in the way of people who are caught up in acts of terrorism. However, its drafting leaves that open. I also hear what he says about proposing further amendments in this space.

Amendment 59 seeks to protect innocent bystanders, or even victims of crime, from being excluded from seeking damages for harm caused by the state. The Bill provides for a duty on the court, in cases where evidence is related to the intelligence services, to consider reducing damages that could be paid in a claim against the state. Potentially, the whole amount can be denied. While we of course support the concept that public money via damages should not be used to fund terrorism, the drafting of the clause is incredibly broad. The potential consequences of such loose and opaque language are

disturbing and must be taken seriously if we are not to undermine the values we seek to uphold with this legislation.

I will demonstrate the issues—as I am sure nobody here will be surprised to hear this—through a gendered lens. In the discourse on security and terrorism, we commonly forget about women. In the assessment, analysis and debate, the impact and experiences of women do not often play a central role. I will use the platform I have to unpack the issues through consideration of how they will affect a victim of gendered violence.

Earlier this year, a case hit the headlines. The BBC claimed that an MI5 informant—I shall call him X—used his status to abuse his partner. I will share just a few of the details from the investigation. Beth—not her real name—a British national, met the MI5 informant online. As time passed, she became aware that he collected weapons, and he made her watch terrorist videos of violence. She realised he was a misogynist and extremist. Beth claimed he sexually assaulted her, was abusive and coercive, and used his position in the British security forces to terrorise her. She said:

"He had complete control. I was a shadow of who I am now,"

and:

"There was so much psychological terror from him to me, that ultimately culminated in me having a breakdown, because I was so afraid of everything—because of how he'd made me think, the people that he was involved with, and the people who he worked for."

Beth says X told her he worked as a covert human intelligence source, infiltrating extremist networks. Beth claimed he told her that his status meant she could not report his behaviour:

"It meant that I couldn't speak out about any of his behaviour towards me, any of the violence I went through, sexual or physical, because he had men in high places who always had his back, who would intervene and who would actively kill me, if I spoke out".

In a video filmed on Beth's phone, X threatens to kill her, and attacks her with a machete. She is screaming as the video cuts out. A few hours later, Beth says he tried to cut her throat. X was arrested and charged, but the case was dropped, and the BBC claims its investigation uncovered serious issues with the police response to this incident. That is an entirely different speech for an entirely different day. Heartbreakingly, Beth had a mental breakdown and was hospitalised.

Another previous partner—we will call her Ruth—says that X also abused and terrorised her. He threatened her life and that of her child:

"He said he would be able to kill me and my daughter, too, and then put our bodies somewhere and no one would ever know who I am."

Ruth was unable to speak due to trauma and was also admitted to hospital. She said:

"I was psychologically broken, really broken".

There are many issues to discuss around this case, regarding how the state and intelligence services should balance the need to safeguard individuals and the need for informants who infiltrate the darkest circles of society. What I want to outline, however, is the horrendous, hellish experience of those two women at the hands of this man X: the trauma, the violence, the abuse, the isolation, and how the man exploited his position to terrorise those women, who had done nothing wrong. Under the clause, if those women had sought damages for harm caused by the state, those damages could have been limited, or reduced to zero.

Sally-Ann Hart (Hastings and Rye) (Con): Does the hon. Lady agree that it is not the state doing harm, but the individual?

Jess Phillips: There is almost certainly always going to be an ideological difference between the hon. Lady and me on personal responsibility and the responsibility of the state. It is of course the individual doing harm, but it is the state that intervenes to protect the parties, or the state that allows cases to be closed. The idea that the state does not have a responsibility for the human rights of a victim of crime such as this when it comes to how they are treated when they try to interact with the state is, I am afraid, for the birds. Almost every single rape victim I have ever met—I have met thousands—tells me that the initial trauma they were put through is almost nothing compared with the trauma of going through any particular state system.

The provisions of the clause, as it stands, mean that if the women had sought damages for harm, those damages would be limited, potentially, to zero. These are completely innocent bystanders, victims of crimes in which the intelligence services and their power were weaponised to abuse and control them. These women could be denied redress even if wrongdoing by the state was proven. This case, where a man was videoed attacking a woman with a machete, was then closed. Even if it were found and proven that the state was responsible, the woman would still not have a claim. The current drafting does not require that the matter over which damages are sought is directly related to terrorist activity.

I have used this case—a covert human intelligence source case—as an example, but the concerns apply to many other situations and many people whose actions will have had nothing to do with criminal activity. That cannot be right. The provisions are simply too broadly drawn.

The amendment would mean that the limitations to seeking damages apply only to those who have committed wrongdoing involving terrorism. I have made my feelings clear about part 3 of the Bill, but this is simply an amendment to make sure that innocent people definitely do not fall within the scope of the provisions when they are caught up in a terrible situation, which I am very glad the Minister has recognised. The Bill must include this constraint.

There are other broad, loose elements in the Bill that are concerning. I raise them now and urge clarification from the Minister. Seeking damages is a tool to hold the state accountable. The clauses apply only when courts have already found the UK Government liable for wrongdoing. How are the Government going to ensure the provisions in these clauses are not used to allow the Government to evade being held accountable for their actions?

The current drafting seems to suggest that, if there is any evidence related to national security or the intelligence services, the damages for harm could be reduced or erased. The Law Commission has highlighted that that could create a perverse situation where the state could introduce pointless or insignificant national security

[Jess Phillips]

evidence in order to avoid paying damages under the provisions in the Bill. How will the Government safeguard against that situation? It is a perfectly reasonable to want to have safeguards against that situation in place.

Reprieve has argued that clauses 57 to 60 could limit the ability of victims of torture to seek legal redress for harm done. The state could claim, for example, that in becoming complicit in torture or abuse, the UK was seeking to prevent or limit some other risk of harm, and so reduce or erase damages for a claimant.

Clause 57 rightly excludes from the definition of "national security proceedings" any claims under the Human Rights Act 1998. Our concern is the breadth of the clauses. They potentially enable the state to avoid paying out for UK complicity in torture and abuse under UK civil law. Most survivors of torture seek redress through ordinary civil claims. I will not go into details because it is sub judice, but the case of Jagtar Singh Johal, which was debated in the House yesterday, springs to mind.

We seek reassurance that the clauses will not be used to evade accountability and redress for complicity in abuse. Furthermore, the involvement of the intelligence services in other countries is covered by the Bill, but how do the Government intend to ensure that conduct is legal and ethical under UK law? What safeguards exist around that?

Many concerns and questions remain about the drafting of this part of the Bill, and we urge that our amendment be included in it. We will seek to vote on this issue at the next Commons stage of the Bill's passage should we not be satisfied, but I have heard the Minister's words and I thank him.

2.45 pm

Maria Eagle: I endorse what my hon. Friend has just said from the Front Bench regarding the breadth of some of these provisions, but before the Minister replies I want to put another point to him. There is going to be a question about the necessity of the provisions, and whether or not they give a court any real, additional power beyond what it already inherently has.

There is a general requirement that judges would apply in any case to those coming before the court and seeking redress, which is that they have to come with clean hands. If any court has a case before it where some ne'er do well is trying to take advantage of court proceedings to get damages for something that they then intend to use for nefarious purposes, it is perfectly normal for that court, under its inherent jurisdiction and the rules of equity, to take into account, when deciding damages, whether or not the applicant has come to the court with clean hands.

Mr Jones: Does my hon. Friend agree that what tends to get the headlines in newspapers is when people bring claims in these kinds of cases? Some of the cases seem quite horrific and brazen, but what never gets reported is that they are usually thrown out, because, as my hon. Friend has outlined, the courts already have powers to do so. The fact that someone has the ability to bring a case does not necessarily mean that it is going to be successful.

Maria Eagle: Indeed. Certainly, my experience of the courts is that judges are not daft: if they have somebody arguing a case before them and seeking damages who has been a very badly behaved individual, that person is less likely to get damages in the first place, and to the extent that they get any damages, they are likely to be exceedingly small—probably not enough to cover the costs they have incurred in bringing the case. Where those cases have been legally aided, zero damages would certainly be an option in most of them.

As such, I wonder whether any of these provisions are actually necessary. They are setting out requirements for judges, telling them what they must do in all cases and creating extra procedures, but they do not go an awful lot further than the inherent jurisdiction of the court under the general rules of equity. As I say, judges are not daft: they know what their powers are, and they tend to apply them.

My other concern regarding these provisions is that, if they stay in the Bill and ossify into court procedures that have to be undertaken in each case, there will be a slippery slope. This legislation addresses instances where especially badly behaved people are coming before a court, seeking damages that they intend to use for nefarious purposes. In this particular case, it is terrorism-related offences, but what about gangsters? What about murderers? We can all think of other dodgy characters who could go to court without clean hands, seeking damages to further their nefarious behaviours.

Once all these procedures are set in aspic, in statute, it is very easy for draftsmen—well, I am not having a go at parliamentary draftsmen, who work very hard. It is easy for the next outraged junior Minister, clearly not from the Home Office but from some other Department, to say at some point in the next couple of years, "We will use those provisions that were in the National Security Bill." We may see a slippery slope, where these provisions are extended to other nefarious characters who might decide to go before the courts seeking damages. All the while, judges have an inherent jurisdiction and can make their own decisions. I am really not sure that the measures are at all necessary, and while the Minister is looking at some of these things, I invite him to think about removing them entirely. In any event, even if he decides that these unnecessary measures will remain in the Bill, they are certainly too broad.

Mr Jones: There is lots in the Bill on which there is cross-party agreement. We want to achieve a situation whereby law enforcement, our agencies and others have maximum powers to stop the real threat out there from those who wish to do us harm. Clause 57, and the ones on legal aid, which we will come to next, seem to have been plonked into the Bill as headline-grabbing measures—"We will do this because it will look as though we're tough on terrorists." I do not think they add anything to the ability of our security services to do their work; nor do they ensure that our courts deal with such cases effectively, as my hon. Friend the Member for Garston and Halewood has outlined.

My hon. Friend the Member for Birmingham, Yardley mentioned a case. I will not refer to it in detail—my hon. Friend the Member for Garston and Halewood and I are members of the ISC, which has looked at it in detail—but it comes back to the checks and balances point that I made this morning, and not just in terms of

security. When the state does something that leads to a wrong being committed against a citizen, there needs to be a redress mechanism, and I share the concern of my hon. Friend the Member for Garston and Halewood that the provision will be extended to other areas. The measures will get a nice headline for the right hon. Member for Esher and Walton, who clearly wants to be seen as tough on terrorism, but I am not sure that, in practice, they represent anything of the sort.

Increasingly—and this is a slippery slope of which politicians need to be wary— we in this country react to newspaper headlines about what the courts do, such as "They have got X, Y or Z wrong." Is the justice system or the jury system perfect? No, they are not, but they are robust. As my hon. Friend has just said, judges know in most cases when someone is pursuing a claim that is not grounded—they are experienced. I believe that we should leave that to courts and judges to decide.

When a newspaper rings up to say, "This judge has just done X, Y and Z. Isn't this terrible?", I always urge colleagues to dig into it because in most cases, the headline is completely different from the facts of the case. Without hearing the facts of the case in detail, making an instant judgment is difficult. I do not accept that our judges and judiciary are somehow woolly liberals who are prepared to turn a blind eye to justice; they are robust individuals who want not only to uphold the law, but to ensure that they get the right balance between the rights of the state and the rights of the citizen, as I mentioned earlier.

I accept that the Minister cannot accept the amendments today and that he perhaps does not want to carve out this piece of the Bill now, but discussion needs to be had on this—we will come to the next bit in a minute. If it does not get carved out here, when it goes to the other place, which is full of legal experts and people with a lifetime and huge experience in this area, it will get sliced to pieces. It is not just bad drafting; it is Ministers trying to put provisions in Bills for political purposes, rather than because they make common sense. As I said the other day, what irritates me is that, if we are going to take the provision out, we should do so in this House rather than allow it to go to the House of Lords. It will not survive that process, and we need to be honest about that. It is far better that we do it, and actually do our job, which is scrutinising legislation.

I said the other day, when the Minister was not here, that there is something that has built up over the last 21 years that I have been in the House: Ministers take it as a slight if a provision gets dropped when a Bill goes through the Commons, as though that is a weakness of the system. No, it is not: it is proper scrutiny. With a certain amount of co-operation, much of the Bill could go straight through, but measures such as this cannot, unfortunately.

Tom Tugendhat: First, I thank the hon. Member for Birmingham, Yardley for her comments. I appreciate the tone with which she approached this matter, and the intent with which she seeks to amend the Bill. She also heard my comments, and my commitment to listen more closely. There are slight differences—important differences—between terrorism and other crimes: one is a direct attack on the state, and a betrayal of the very protections that the state affords to everyone, whereas other crimes are by their nature of a different nature. That is not an absolute, and I appreciate that that raises different elements, but it is worth noting.

It is also important to remember that we have already instructed parliamentary counsel to prepare a redraft of part of the Bill, to make it narrowly drawn and to capture only those involved in terrorism. I appreciate the points that the hon. Lady made. I would argue that, as I mentioned, courts do not generally consider reducing damages in these cases, and we are not telling them to do so but inviting them to consider doing so. Courts are still independent, and I appreciate her point.

Mr Jones: I am sorry, but what is the purpose of the measure? I know judges. The Minister might want to ask them to reduce damages, but he is not going to interfere with their independence. Frankly, therefore, is it really worth it?

Tom Tugendhat: The point of this House is to indicate opinion as well. I do know two judges, under whose roofs I have lived, and both of them left me in absolutely no doubt as to who takes the decision. I appreciate the right hon. Gentleman's point.

As I said in my opening speech on the clause, the courts when awarding civil tort damages will only very rarely exercise their right to limit them. That is why we believe it is right to require the courts to consider doing so, even if they then do not do so. I hope that answers the questions at this stage, and I repeat my commitment to engage in further conversation with members of the Committee.

Jess Phillips: Given the Minister's words and the offer to work together, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question put and agreed to.

Clause 57 accordingly ordered to stand part of the Bill.

Clauses 58 to 60 ordered to stand part of the Bill.

Clause 61

Damages at risk of being used for the purposes of terrorism

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

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

Amendment 58, in schedule 10, page 140, line 12, leave out

"there is a real risk that".

This amendment would ensure the court was satisfied on the balance of probabilities that damages were to be used for terrorism purposes before frozen funds could be forfeited.

That schedule 10 be the Tenth schedule to the Bill.

Tom Tugendhat: The Bill contains measures that will enable a Minister to apply freezing and forfeiture orders where they assess that there is a real risk of the damages awarded being used to fund acts of terror. That will be done only at the request of law enforcement or security services, but I am sure that the whole House, and the

[Tom Tugendhat]

Committee, will appreciate the importance of avoiding accidentally enabling those acts against us. The measure is designed to meet the Government's overriding policy objective of protecting the public and society. We believe it is important, fair and proportionate that damages can be frozen at source, at the point of award, where there is a real risk of their being used to support terrorism.

3 pm

The freezing orders would last for a period of two years, and can be extended to another two years. We believe this is an appropriate, reasonable and fair approach, which disincentivises claimants from engaging with potential terrorist activity. Where UK security services assess there to be an ongoing risk that damages will be used for the purposes of terrorism, and where they have renewed the freezing order twice, they can apply for a forfeiture order. If granted, this would result in the award being permanently withheld, and paid into the consolidated fund.

We anticipate that in the main, applications will be made when the security services are already engaged in defending litigation from a claimant associated with terrorism. However, we believe it is important to make this additional power a general one, so that where there is a risk to national security from potential damages in any litigation, it can be addressed by a freezing order application. It is important to note that the Bill does not otherwise fetter a court's discretion. Judges will be able to freely assess whether, on the balance of probabilities, there is a real risk of the award being used to support terrorism, and whether to make the order. They will receive submissions from both the security services and claimant on this point, and there will be a right of appeal. The measure includes provision that a court will have discretion to award part of the damages. This is an equitable measure designed to ensure that a court may award a sum to cover legal expenses, or, for example, essential care costs, in the circumstances of an individual case. We trust our courts and judges to make these assessments while being mindful of the context of public protection. While there are existing powers in relation to freezing and forfeiture of terrorist assets, this measure will enable the award of damages to be frozen at source, removing the prospect of compensation being spirited away before proceedings in other courts can commence.

Amendment 58 seeks to raise the threshold for forfeiture orders, so that a court will grant one only where, on the balance of probabilities, the money will be used for terrorism, rather than where there is a risk that it will be so used. As I have said, the Government believe it is important, fair and proportionate that damages can be frozen at source, at the point of award, where there is a real risk of their being used to support terrorism. We believe that the same test is appropriate for forfeiture of damages, where the real risk is ongoing and where the subject has also, on two prior occasions, been found to pose that risk.

It is important to remember that the court will be dealing not with whether something happened in the past but whether something may happen in the future. The context is therefore inherently one of risk. How much risk a society will tolerate of an event happening depends on how dangerous the matter is. Terrorism is one of the most dangerous, if not the most dangerous, issue facing society. It is aimed at the very fabric of our society and all our lives, and employs horrific means to achieve its aims. A real risk of terrorism is one that society need not tolerate and should not tolerate. National security determinations are rarely made in black and white. There are always measures of risk and probability, which have to be assessed and proven. The level contained in the proposition that the hon. Member for Birmingham, Yardley is trying to introduce is not, I am afraid, appropriate. There are safeguards in place. This is not an arbitrary power of the executive but an order that an independent judiciary had to agree on the balance of probabilities, which may be appealed. The Government will have to establish the risk, and the facts that underpin that risk, and on the balance of probabilities, as the hon. Member rightly reflects.

While real risk is the same threshold for both freezing and forfeiture, we are clear that its application will be different. With respect to a freezing order, the court will be considering the risk of the duration of that order—two years—and that is what the evidence will have to address. The decision for a forfeiture order will be different. The court will be considering risk on a balance of probabilities, in the context of loss, of the award for all time. The evidential basis it considers will therefore necessarily be different. It should also be borne in mind that the forfeiture order application will not be considered in a vacuum. It will have followed two court proceedings over a four-year period, where evidence would have been assessed and properly tested by the claimant. The court will also have that evidence at its disposal to inform its conclusions. The evidential basis of a forfeiture order will therefore be much stronger.

Maria Eagle: Can the Minister tell us whether these provisions have been based on some existing case, or cases, where the Government think this has happened and needs to be stopped, or are they just being made in anticipation of the unlikely circumstances in which damages are used in the way these provision seek to prevent? Are there existing cases the Government are concerned about?

Tom Tugendhat: The hon. Lady asks a fair question. This is a plan for the future or rather a concern over the future, rather than provisions based on existing cases. It is the Government, I hope, doing a responsible thing and looking forward, which is, I hope, what we would expect them to do.

Let me give an example. When making their application, the security services will provide evidence of the claimant's involvement in terrorist activity and relevant associations, together with their risk assessment of the likelihood of the claimant's using the money to fund terror activities.

Mr Jones: I like the idea of the Government being able to look into the future. We have established that there are no cases so far, so what are the limitations of the existing legislation on the statute books? What is the difference that explains why we need this provision? I ask because I am never in favour of putting on the statute book things that are already covered by an existing freezing order, provisions on proceeds of crime, or anything else.

Tom Tugendhat: The right hon. Member will know that I am going to write to him about that, because he raises some interesting questions. I will come back to him.

At the freezing stage, the court is looking at essentially the immediate term, given that a freezing order lasts for two years, so the court will want to be satisfied that the claimant's involvement in terrorism is current and is such that an award of damages is at real risk of being used at once, or within a short timescale, for terrorist purposes. However, the court has the comfort of knowing that the money is only frozen. It may be given to the claimant at a future date if the security services assess the risk as having abated sufficiently, or if the court hearing a later application overturns this.

At the forfeiture stage, the stakes are much higher: the claimant's award would be permanently withheld. The court knows that the evidence of risk will need to justify that greater intervention. Evidence of entrenchment, of a markedly poor outlook, and that, given their activities, they are always likely to represent a risk will no doubt be uppermost in a court's mind in a way they may not be for a freezing order. Questions of alternatives to forfeiture such as periodical payments to care providers in order to remove that risk will no doubt also come to the fore. But, where the strength of the evidence cannot be avoided and points to that risk, it is right that the money is forfeited. The court will also be aware that a forfeiture order interferes with property rights under the European convention on human rights and it will need to know that interference is proportionate to the risks, in the context of the need to protect the public.

It is important to note that the Bill does not fetter a court's discretion in considering whether the risk has been proven. For the finality of the forfeiture application, the court will be able to require the Government to meet the evidentiary burden that it considers to be commensurate to it. The claimant will therefore have a total of three chances to fully challenge in court the evidence that the Government present, before forfeiture can occur. That test does not therefore reflect a low standard; instead, it reflects the right standard.

There are already terrorist freezing provisions, but the process is complicated and the compensation is not frozen at source. As I have said, and to further reassure the Committee, this measure includes provision that a court will have discretion to award part of the damages. This is an equitable measure designed to ensure that a court may award a sum to cover, say, legal expenses or essential care costs in the circumstances of an individual case. We trust our courts and judges to make these assessments while being mindful of the context of public protection. I ask the right hon. Member for Dundee East to withdraw the amendment and I will be communicating with the right hon. Member for North Durham again as well.

Stewart Hosie: I thank the Minister for his remarks on clause 61 and schedule 10. He said that these were about concern for the future. I think we are all concerned about the future. He said that they were designed to tackle something that might happen in the future. I think we all are concerned about ensuring that nothing bad happens in future, but it appears from what the Minister has said that we are measuring risk on a very subjective basis—"real risk" is not a commonly used term.

Let me speak to amendment 58 to schedule 10. The schedule relates to civil proceedings where a Minister can apply to the court to freeze a possible award of damages if the Court is satisfied that there is a real risk of those damages being used for terrorist purposes. That, of course, is lower than the ordinary standard of proof and does not require the claimant to have even been convicted of a criminal offence. It requires only that there is a possibility that they might. Therefore, they will be deprived of any compensation for other matters that they are due. That is a very challenging provision. We clearly understand the policy intent, but what about other moneys than compensatory payments: earnings, pensions, savings, a lottery win or an inheritance? If this is about freezing cash because of a real risk that it may be used for terrorism, why do we need a specific provision for damages legally and properly awarded by a court after full consideration?

Mr Jones: Also, if the money was used to support terrorism there is existing legislation about finance of terrorism, so it would fall under that legislation that exists already, rather than this provision.

Stewart Hosie: My right hon. Friend is right that there is already legislation on terrorist financing. As the Minister pointed out in his opening remarks, there is already a way of freezing terrorist assets, but he said that it was complicated. If we are not just to do things properly and legally but to be seen to be doing them properly, legally and fairly, it may be worth going through those processes to do that.

Schedule 10 proposes, as the Minister said, a freezing order for two years under paragraph (1). Then, an extension is possible for four years under paragraph (2) and, even more drastically, the funds can be forfeited altogether. But the standard of proof in the Bill—the real risk—means no criminal conviction for anything. Even if the court were to think that damages would probably be used for legitimate purposes, but there was a real possibility that they might be used for something else, the damages could be frozen or forfeited entirely.

I can just about live with a general scheme—none of us is naive and none of us wants to see money from any source used to finance terrorism—but, surely, such a drastic step requires actual proof, at least on the balance of probability, that there is a risk of the funds being used for terrorism. That is precisely what the amendment, which removes reference to "real risk", would achieve.

Jess Phillips: I want to speak to the amendment and to the desire of my hon. Friend the Member for Garston and Halewood, who is momentarily not in her place, to speak to a case, although the Minister said that the schedule was not based on any particular case.

The right hon. Member for Dundee East asked about other moneys, specifically a lottery win. Why should the schedule be just for damages? What if we thought somebody's lottery win, for example, was going to be used? That seems outrageous and unlikely, except it happened to me. The only time I have ever had any personal relations with anti-terror police was when they turned up mob-handed to my office, because of threats to my life that I had received from inside a prison. The threats were jihadist in nature and largely about how the

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person in prison—obviously a risk factor, on the balance of probabilities—was working with people on the outside to kill me and my family. The terror police came and we undertook a case against the man.

It came to pass—through the process of convicting the man, who is now in prison for a term of another 10 years for the crime against me—that the reason why the police had such grave concerns, even though they were not sure whether he was part of a particular network or indeed working with anyone else, was that while on mental health day release, he had won the lottery and had access to quite substantial sums that could have been used in the commission of crimes against me while still in prison.

3.15 pm

Mr Jones: I do not know whether my hon. Friend is aware of the international comparison with the gangster in Boston called Whitey Bulger. He was a notorious gangster whose unexplained wealth was explained by a lottery win, which was outside the jurisdiction of the courts in the United States.

Jess Phillips: That is brilliant. I am in good company with Chicago gangland—

Mr Jones: Boston.

Jess Phillips: With Boston bosses.

One of the risk factors in the case was that issue of a lottery win. There was a certain evidential threshold in the case that was easy to prove in court, because he was threatening to kill me! Please excuse me laughing—one has to laugh at such things, because life becomes ridiculous otherwise.

Why stop with damages? Why should we have a different rule? Nothing could be done in the case that I outlined. I think it is a one in 1.8 million chance of my case happening, so if we have no cases to base it on, I wonder why the focus is on this and not on the case that I outlined.

Mr Jones: The Ministry of Justice and the Home Office employ a wide variety of talents among the individuals whom they recruit, but I did not realise that they actually recruit fortune tellers. That is what we are into here. We have established that there have been no such cases. I am not aware—perhaps the Minister can provide some examples—of why the security services think this is a risk. If that does not exist, this is in the realms of predicting the future, and if there is one thing that we can all agree on—possibly everyone—it is that we cannot predict what happens in the future.

As my hon. Friend the Member for Birmingham, Yardley just said, why only the damages? There is already extensive legislation on the statute books to freeze proceeds of crime and bank accounts if they are to be used for criminal activities. What extra weapons will we give to the courts? I do not see anything that is not there at the moment.

As for using the measure—as opposed to freezing, for example, as I said to the right hon. Member for Dundee East—there is already legislation on the statute book to prevent someone from financing terrorism. In such a situation, what evidence would the Government or the state actually put before the courts? They cannot say simply, "We think he or she might use their proceeds for terrorist activity in future"; it has to be based on intelligence. Again, putting the evidence into court would still expose the state. I presume the existing process would be followed, but it would still mean that we might be putting intelligence in the courts that is not just historical, but actually live, in terms of things such as associations. I just think it is a very clumsy way of trying to proceed. We do not want any money, wherever it comes from, to be used for financing terrorism, but I do not understand where the proposal has come from in the first place. I would be interested if the Minister could find out, because I am also clear that we should not put measures on the statue book unless we have to.

Another point—it is quite amusing in one respect—is the idea that we can decide that an individual who is going to potentially fund terrorism is only going to get half or part of their settlement. I am reassured that the lawyers will be getting their fees, because it would be dreadful if they were having to go to food banks after not getting their pay from a case. However, the Minister then said that care costs and other things would be taken into account. How would the decision be made? Using care costs as an example, if a person gets a certain amount in damages, they might need them for a few years to come if their care costs are ongoing. So, we could not really cap where that is going to go, and that affects the individual's ability to claim on the state for their care costs. This is a mess. It is one of the examples in the Bill where the odd thing is just thrown in that is not needed. If the Minister could demonstrate to me why this is so important to include in the Bill, I would back him 100%. However, I think that the measure is clumsy, that it will never be used, and that it will damage the reputation of this Bill, which some people have done a good enough job of doing as it is. The Minister certainly will not accept the amendment, but this is another issue that he might want to cogitate on, and decide whether it is worth the candle.

Tom Tugendhat: I welcome Committee members' comments. I notice that Occam has many cousins in this place, and that his razor is very sharp. On that basis, I merely mention that the issue is with not just damages payments, but the enormous resource currently used in fighting such claims.

Mr Jones: That is absolute tosh. If this gets on the statute book, what on earth would it cost if somebody challenges and appeals? The initial damages will be completely insignificant compared with what it will cost to have special courts and everything else like that.

Tom Tugendhat: The right hon. Member and I will delight in having a conversation about this when I have written to him.

The reality is that this is looking at an identifiable risk, which is from court proceedings, rather than an unidentifiable risk, which is lottery winnings. I have put that on record and we will no doubt discuss this later. It is also worth making the case that the courts are experienced in calculating case costs and ongoing costs. I will leave it there.

Stewart Hosie: I am not sure that we are particularly enlightened by the Government's response. I must say I share the scepticism of the right hon. Member for North Durham. How many times are the Government going to have to spend huge amounts of money to fight against somebody who has been awarded some damages on the grounds that they may then wish to use those damages to support terrorism? I am not dreadfully convinced by that argument.

I will not press the amendment, but given we are into the sphere of crystal balls, subjectivity and a judicial threshold that is far too low for this action, I would not be at all surprised if a similar amendment to this one sees the light of day at a later stage of the Bill.

Question put and agreed to.

Clause 61 accordingly ordered to stand part of the Bill.

Schedule 10 agreed to.

Clause 62

Legal aid for individuals convicted of terrorism offences

Jess Phillips: I beg to move amendment 61, in clause 62, page 44, line 21, leave out "F" and insert "G".

This amendment is a paving amendment for Amendment 60.

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

Amendment 60, in clause 62, page 45, line 3, at end insert—

"(7A) Condition G is met where the offender is seeking legal aid for the purposes of—

(a) pursuing a civil order, where the purpose of the order is to protect a victim of domestic abuse, or

(b) participating in family court proceedings, and where the offender is a victim of domestic abuse."

Amendment 62, in clause 62, page 45, line 42, at end insert—

""domestic abuse" has the same meaning as in the Domestic Abuse Act 2021;"

This amendment provides a definition of "domestic abuse" for the purposes of Amendment 60.

Clause stand part.

Clauses 63 and 64 stand part.

Jess Phillips: The second element of part 3 of the Bill would prevent people with terrorism convictions from receiving civil legal aid—it is important to stress that it is civil, not criminal. Again, the breadth and consequences of such a broad-brush approach cause me some alarm. Our amendments would address some of those concerns.

Once again, I am looking at the issue through a gendered lens and considering the impact on domestic abuse victims and their children, who are directly referred to in my amendments—amendment 62 refers to the Domestic Abuse Act 2021. My right hon. Friend the Member for North Durham commented about things being dropped and changed in Committee and during Commons stages, and the passage of the 2021 Act was a good example of where that was done completely and utterly. Obviously, I still think that more things should have been included in that legislation, but what we sent to the other place was the work of everybody in Committee. My amendment 62 draws directly on the definition of domestic abuse contained in that Act.

The clause suggests that restrictions disallowing offenders from accessing civil legal aid will last for 30 years for adult offenders and 15 years for youth offenders, and will apply to any person convicted, irrelevant of the severity of the crime or the sentence imposed for the offence. Those restrictions apply to terrorists who commit the most heinous of mass murders, and also to those who participate in crimes that receive non-custodial sentences, such as encouraging terrorism, disseminating publications or downloading terror manuals. It is an automatic restriction—a court has no discretion to apply or revoke it in any circumstances. The restrictions do not require that the seeking of legal aid be related to the terrorist conviction of the claimant, or specify what the purpose of the civil proceedings might be. It is a blanket restriction covering any civil proceedings; it could be absolutely anything in the civil courts.

The disproportionate and oppressive nature of the drafting becomes stark when we place it in the context of the types of civil cases that legal aid can be needed for. People find themselves in civil proceedings and family court proceedings, and in need of legal aid support, for a multitude of reasons, with housing issues, debt problems and domestic abuse being just a few examples. It is a realm that not everyone may know much about, but anyone who has worked in domestic abuse for as long as I have realises the role that civil and family cases, and the courts, play in people's lives and their ability to live in the free and safe society that the Government have claimed that they are trying to protect all the way throughout our consideration of the Bill.

For example, a victim of domestic abuse might need legal aid to help her to seek an injunction against her abuser. Non-molestation orders protect a victim or their child from being harmed or threatened by their abuser, while occupation orders decide who can live in a family home or enter the surrounding area. Such injunctions protect victims and children in particular. They protect women. They save women's lives—huge improvements are needed in how they are served and upheld, but that is not an argument for today. Funnily enough, I noticed on BBC News today that the Government were heralding some of the changes in domestic violence protection orders in cases of domestic abuse, which are usually handed out in a civil environment, and how they were helping to prevent domestic abuse. That was this morning's news. These injunctions are not some unnecessary add-on or bonus; they are legal measures that protect women from violence and are crucial for the type of society we desire to build and protect.

3.30 pm

Under the Bill as it stands, a domestic abuse victim who received a non-custodial sentence for a terror offence two decades previously would not be allowed to access legal aid to seek a protective injunction against an abusive partner. Another example is in the family courts. It is well documented that abusive partners use the family courts to continue their abuse. They weaponise the process, dragging their victims and their children back time and again. Under the Bill, a domestic abuse victim convicted two decades previously would not be allowed to seek legal aid for such family law proceedings

involving an abusive partner. She might lose her children to a man who has beaten, abused and raped her because she was unable to access any advocacy.

I am sure that the Government will argue certain claims can be made through the exceptional case funding process but, speaking as somebody who has tried, the bureaucracy and inaccessibility of the process, and the uncertainty created, mean that my fears are not allayed in the slightest. Furthermore, the ECF application process is usually done on a pro bono basis, which is something many solicitors—hon. Members will have seen the news recently—might not currently be in a position to do. The ECF does not provide the answer to my concerns.

Let me make a broader point. Funnily enough, when I talked to my husband about some of this, he said, "Oh, you know, don't be a terrorist if you want access to legal aid"—that was partially his attitude.

Tom Tugendhat: Sounds about right to me.

Jess Phillips: I am not sure he would agree with the Minister on many other things, but maybe we will get the two of you together. I am sorry to slag off my husband in here—although, actually, it is the perfect place, as he cannot do anything about it, can he?

This is incredibly naive. The reality is that anyone who has worked with female offenders, as I have for many years—this is why we ran their services out of Women's Aid—recognises that the pathway to offending for the vast majority of women offenders is an abusive man.

So, yes, "Don't be a terrorist," is a great thing to say if your abuser is a terrorist. It is very easy to say that when the person who has complete and utter control over your every waking minute is also involved in something you do not necessarily agree with. For example, say that you made a phone call on his behalf. It is easy for everybody to sit and say, "I wouldn't do that, because I am not a terrorist," but we all might if we were terrorised. The fundamental thing we should all seek is to prevent that, and to prevent the idea that somebody might then fall into terrorism. The actions in the Bill mean it is much more likely that women in these cases will end up stuck with a terrorist making them be a terrorist, rather than being able to escape them.

There is a broader point to highlight about the connection between domestic abuse and terrorism, because of how commonly terrorists are also abusers in a domestic setting, and also because of female offender patterns, which I have already alluded to. Research carried out by the Home Office in 2021 showed more than a third of suspected extremists referred to the Government's anti-radicalisation programme Prevent had experienced domestic violence. The police said that of 3,045 people referred to the scheme in 2019, 1,076 had a link to domestic abuse as an offender, victim or both. The male referrals were more likely to be offenders; the female referrals were more likely to be victims. As the national co-ordinator for Prevent, Detective Chief Superintendent Vicky Washington, said:

"This initial research has resulted in some statistically significant data which cannot, and should not, be ignored. Project Starlight has indicated a clear overrepresentation of domestic abuse experiences in the lives of those who are referred to us for safeguarding and support. It is absolutely vital that we use this information to shape what we do, and strengthen our response across all of policing, not just in counter terrorism."

In short, tackling domestic abuse is critical to tackling terrorism. Any legislation, such as the current draft of this Bill, that undermines our ability to protect domestic abuse victims and stop domestic abuse perpetrators does nothing for the security of our country. Our amendments seek to address the breadth of the current drafting, and to tackle the issues and protect victims of domestic abuse.

I have two further points. Many people have raised concerns about the removal of legal aid. They argue that these clauses are counterproductive in protecting the public, due to the impact of effective rehabilitation. I have a deep concern for individuals who, years after a conviction and successful rehabilitation, find themselves in difficulty, facing homelessness, or are victims of abuse, or are in debt. Okay, if someone has been convicted of something to do with terrorism, they get what they deserve, but there are people working for organisations such as HOPE not hate who have completed rehabilitation pathways and who have then been used to protect the lives of people who work in this building, lest we forget. I have real worries that the blanket provision in the Bill over people who may very well have been rehabilitated could well stop them being able to get the support they might need to continue to be productive members of society. Does it help the rehabilitation, or does it create an environment where a person may make bad choices and cause harm?

As Jonathan Hall argued in the evidence session,

"I have certainly come across cases where the terrorist risk from the individual—the chance of their stabbing someone, for example—goes up if they are not taking their medication or if they are homeless.

My concern about the legal aid is that it will make it harder, for example, for a terrorist offender, maybe 10 years after they have been released and who is facing eviction, to get legal aid. That means that you might have less good decisions made…My real concern is people becoming homeless or falling into debt when they might otherwise be able to get legal assistance."—[*Official Report, National Security Public Bill Committee,* 7 July 2022; c. 11, Q19.]

If our primary driver is to protect the public and reduce risk, we must consider that point. The breadth of the Bill could undermine the very thing that it is trying to protect: a society where people do not live in fear of violence and danger.

Mr Jones: The media's portrayal of legal aid is of giving out huge sums of money to the undeserving and those who are guilty of crimes, but we should start from the basis, as I always do, that people are innocent until proven guilty. The other motive for the Bill is clearly to get some headlines that say, "We are being tough on terrorists." I will come on to some examples, especially the issue of under-18s, but the Bill does nothing of the sort.

There is also a more fundamental point: if someone is accused of a crime, we want to ensure that the facts are put before the court and that they are properly legally represented so that they can argue their case, and the Crown can argue its case against that evidence. At the end of the day, it is then up to the jury and the courts to decide whether that person is innocent or guilty, and the courts then decide on sentencing. That process is not just some woolly notion of a justice system that this country is proud of; it is actually fundamental to the victims. It is important that the

victims of terrorism, or any crime, are assured that a person who is guilty is sentenced and gets the appropriate punishment.

When we talk about terrorists, we are talking about the appalling individuals who perpetrated the Manchester bombing or the London atrocities. As my hon. Friend the Member for Birmingham, Yardley has just said, that is not the spectrum we are talking about here, as the Bill sets a broader one.

I suggest people read the Intelligence and Security Committee's report on extreme right-wing terrorism. In taking evidence for that, the most disturbing fact was that the people who are now being drawn to extreme right-wing terrorism are youngsters, some as young as 14 or 15. It is mainly online, but they are committing offences. There are quite a few—some have been reported publicly—who have been, rightly, imprisoned because they have met the threshold for the court to decide that they committed an offence.

Suppose a 15-year-old is found guilty of a terrorism offence. We are saying that, for the next 15 years, whatever they do—whether another terrorist-related incident or, as my hon. Friend the Member for Birmingham, Yardley said, a criminal case or a civil case such as eviction—they will be barred from access to legal aid. I might be unpopular for saying this, but legal aid helps the system of justice. The idea that it is doled out willy-nilly to everyone is absolute nonsense: it is hard to meet the thresholds that have been introduced over the last few years. Those thresholds have gone too far, because they are basically a tax on justice for a lot of innocent people. I do not understand where that comes from.

I come back to the point about youngsters and rehabilitation that my hon. Friend made. It is possible that there is a perception that there is an average terrorist. We know what a terrorist is: someone who carries out horrific bombings or activities. However, that is not the case with some of the other thresholds for terrorism offences. For some youngster—a 15-year-old, or someone even a bit older—who has been imprisoned for that type of terrorism, our aim surely is to work with them to get them out of that pathway. The legal aid measures will do nothing at all to help that rehabilitation process. I am sure that many people in the room made decisions when they were 15 that they would perhaps regret now. I am sure that the Minister was a perfect child, but people make mistakes, and they hold views that 15 years later they will not hold. The idea that we penalise those people for life is unacceptable.

The measures have been parachuted into the Bill, and I would like to know the rationale for including them in the Bill. They will not make the process very easy for the Crown, either. If someone cannot get legal aid, what are they going to do? Represent themselves? All that does is make the trial very expensive and not a good process for the victims who are watching.

The broader issue is that there are many people whom we—and, I am sure, the tabloids and others—do not like. We do not like murderers, paedophiles or rapists. If we apply the measures to terrorists, why not extend them to the other people we do not like? I am not proposing that we should. If we did, that is fine: the right hon. Member for Esher and Walton (Dominic Raab) might think that he will get a newspaper headline for being tough on terrorism. But it would make the situation worse. It would slow down the legal process; it would victimise people for many years. What we should be doing with those youngsters is working with them to try to get them away from some of the sick ideologies outlined in the right-wing extremism report from the ISC. We should get them back into society. Look at some of the best examples around the world of rehabilitation of terrorists or extremists—it is about rehabilitation, not punishment.

If someone has carried out an horrific terrorist attack and killed people, I am happy for them to stay in prison for the rest of their lives. I have no problem with that. However, there are those who are on the verge of doing that. It is worse these days because of the internet and social media, which is slowly corrupting some young minds; it leads them to hold ideologies and, in some cases, take steps that cause them to meet that terrorist threshold.

3.45 pm

I know that the Minister will not agree to scrub this section today. However, for the sake of the hon. Member for Stevenage (Stephen McPartland), who did a valiant job picking this Bill up, I urge the Minister to drop this entire section of the Bill later on. It would be a testament to the hon. Gentleman.

Tom Tugendhat: I appreciate enormously what right hon. and hon. Members opposite have said. As I have been familiarising myself with the detail of this Bill, I will be asking questions and engaging in conversation with colleagues from all parts of the House. I will absolutely be engaging with Opposition colleagues.

I am sure right hon. and hon. Members will appreciate it if I cover the clauses as they stand. Clause 62 will narrow the range of circumstances in which individuals convicted of specified terrorism offences can receive civil legal services. That includes individuals convicted of terrorism offences listed under schedule A1 to the Sentencing Code, where there is a minimum penalty of imprisonment for two years or more, as well as for offences where a judge has found a terrorism connection.

The restriction will apply to future applications for legal aid for individuals convicted of terrorism or terrorism-connected offences from 2001 onwards. The restriction will not affect ongoing cases.

Mr Jones: Is the Minister suggesting that this measure is going to be retrospective to 2001 for some individuals?

Tom Tugendhat: My understanding will be clarified in a letter to the right hon. Gentleman very shortly, unless it is clarified in the moments to come.

Mr Jones: I find that very difficult. If it gives him time for his civil servants to provide the answer, I will say that it is very unusual to have retrospection in a law such as this. If the Minister does not have the answer in time, I am sure he could send us all a note.

Tom Tugendhat: I am assured that it is retrospective. I will, of course, be looking at this as part of the whole. *[Interruption.]* It is retrospective to 2001 for past offences. I will come back to the right hon. Gentleman on that.

[Tom Tugendhat]

The effect of the restriction is a suspension on accessing civil legal aid from the date of conviction. The restriction will last for 30 years for individuals convicted when aged 18 years old or over, and 15 years for individuals convicted when under 18. The restriction will not apply to individuals under 18 years old, but will take effect when they turn 18 and make a new application for civil legal aid.

As the clause is drafted, access to the exceptional case funding scheme will remain available for those subject to the restriction who can demonstrate that, without legal aid, there is a risk of a breach of their ECHR rights or their retained enforceable EU law rights. Applications for exceptional case funding are generally subject to means and merits tests.

Clause 63 ensures that—

Mr Jones: Will the Minister give way on the point he just made?

Tom Tugendhat: Go on.

Mr Jones: In effect, this measure is going to be useless, isn't it? I would think that if, for example, someone with no means is subject to one of these orders, it would not take a great legal genius to argue in a court that it infringed their rights to a fair trial. Is it not therefore the case that, in most cases, they will get special legal aid anyway? It is a bit odd to implement a thing that might sound tough but, in practice, will end up with people getting legal aid anyway.

Tom Tugendhat: Occam is making his case. The right hon. Gentleman will be assured that I will respond in full, and in kind, as soon as we have had the opportunity to have this discussion among a slightly wider party of colleagues.

Clause 63 ensures that the correct data-sharing and data-processing powers are available to enforce the restriction on access to civil legal aid for those convicted of specified terrorism offences. To enforce the restriction effectively, we must be able to check that an individual has a relevant conviction that would prevent them from accessing funding. To do this, a legal gateway must exist within the legislation to use conviction data for the purposes of administering legal aid. The clause will allow the details of an individual's conviction status to be requested from the director of legal aid casework and shared from a competent authority that holds the criminal conviction data. This data can be used only for the purpose of identifying whether an applicant for legal aid has been convicted of a specified terrorism offence, in order to determine whether the restriction will apply. Such information may include an individual's name and date of birth, and the dates of any convictions.

Jess Phillips: The Minister has described the process, which, as with all Government processes, always works smoothly. Will they have to do that check on every single person who applies for legal aid?

Tom Tugendhat: Yes.

Jess Phillips: It is going to be quite a slow process. The suggestion is that, for every single person who applies for legal aid in any civil remedy or order, we will start writing to a competent authority to get any previous terrorism convictions.

Tom Tugendhat: I will clarify the process for the hon. Lady. It is not that unreasonable, frankly—

Mr Jones: What?

Tom Tugendhat: Hang on a minute. It is not that unreasonable to check with competent authorities before various provisions are made. It is pretty standard, and this measure is another check. I appreciate the hon. Lady's point, and I will come back to her with how this is done and how it is followed up.

Finally, clause 64 makes a minor amendment to clarify how civil legal aid is available for terrorism prevention and investigation measures proceedings. I want to make it clear that the clause will not change that fact. The clause seeks to reduce unnecessary complexity in the administration of the legal aid scheme, and it will ensure that all legal aid decisions for TPIMs are made under one paragraph of the statutory framework, rather than being funded under multiple paragraphs. The clause will also remove references to "control orders" in the legal aid legislation; control orders were the predecessors to TPIMs and have now been phased out.

Mr Jones: Why?

Tom Tugendhat: Because the term "control orders" has been phased out.

Mr Jones: No, I mean why is it for TPIMs? Why one and not the other? It is what we said earlier: it is pushing one way and pulling the other way, surely.

Tom Tugendhat: I see the right hon. Gentleman's point. We are going to move on, because he knows that we will be talking about this later.

I thank both the right hon. Gentleman and the hon. Member for Birmingham, Yardley for tabling their amendments, which seek to carve out an exception from the restriction where the case type involves domestic abuse. I recognise the strength of voice that the hon. Lady has brought to the scourge of domestic violence, and the voice that she has given to so many victims in the House. It is an enormous tribute to her that she is recognised around the country for it, and I certainly listen to her very carefully on this issue. I reassure her that I will be looking at not just the provisions in the clause but the amendment she has tabled. I will also be looking at the exceptional case funding scheme, and I will be discussing it. It is certainly true at the moment that 74% of applications to the ECF are granted, but she has already made the point that there is a hurdle before approaching the 74%. I accept that, and I will be looking at it. I will be taking it seriously. I ask her to withdraw the amendment ahead of future conversations.

Jess Phillips: I appreciate the tone that the Minister has taken, and I will withdraw the amendment with a view to see where we get before Report and Third Reading. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 62 ordered to stand part of the Bill.

Clauses 63 and 64 ordered to stand part of the Bill.

Clause 65

MINOR AND CONSEQUENTIAL AMENDMENTS

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

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

Government amendments 39 to 44.

That schedule 11 be the Eleventh schedule to the Bill.

Clause 66 stand part.

Government amendment 64, in clause 67, page 48, line 25, at end insert—

"(za) regulations under section (Requirement to register foreign activity arrangements);

(zb) regulations under section (Meaning of 'political influence activity');

(zc) regulations under section (General exemptions);"

This amendment provides that regulations made under the specified provisions are to be made using the affirmative procedure.

Amendment (a) to Government amendment 64, line 4, at end insert—

"(zd) regulations under section (Registration information);

(ze) regulations under section (Information notices);"

Government amendment 65.

Clauses 67 to 73 stand part.

Tom Tugendhat: Clause 65 introduces schedule 11, which makes minor and consequential amendments to other legislation. I will not dwell on paragraphs 1 to 3, which repeal the Official Secrets Acts 1911, 1920 and 1939, and which are no longer needed in the light of the Bill. I am aware that the Committee has already touched on paragraphs 4, 5, 7 and 8 when discussing the powers of arrest, detention and biometrics.

I will briefly speak about paragraph 6, which makes a necessary consequential amendment to the Official Secrets Act 1989. The 1989 Act already, and quite rightly, provides that it is an offence under the Act to make an onward disclosure of material obtained through an offence under section 1 of the Official Secrets Act 1911 —that is, espionage. The Bill replaces the reference to the 1911 Act provision, which has been repealed, with the relevant provisions in the Bill, which are designed to criminalise the same conduct. Other references to the 1911 and 1920 Acts have also been replaced with the relevant provisions in the Bill.

Turning to the Government amendments, the Police and Criminal Evidence Act 1984 contains a list of offences, referred to as "qualifying offences", whereby when a person is arrested but not convicted of such an offence police have the option to retain biometric data such as fingerprints for three years. Qualifying offences currently include terrorism offences, murder, rape and kidnap. Schedule 11 of the Bill already amends the Police and Criminal Evidence Act to include the most serious offences in the Bill, such as obtaining or disclosing protected information and sabotage, in the list of qualifying offences, which also includes attempts or conspiracy to commit those offences.

Schedule 11 amends PACE to insert the most serious offences in the Bill under the heading of "National security-related qualifying offences". Amendments 39 to 44 seek to add the offence of preparatory conduct in clause 15 to the list of qualifying offences, as well as to the definition of national security-related qualifying offences. As we have already discussed in Committee, malign actions by states have the potential to cause significant damage to the United Kingdom and its interests, and the preparatory conduct offence ensures that law enforcement can intervene at an early stage when preparatory activities are under way. I ask the Committee to support all the amendments.

Clause 66 provides a mechanism for the Secretary of State to make, via regulations, additional consequential amendments to other legislation where necessary. That will ensure that the legislative framework remains coherent. Clause 67 makes provision in relation to the powers to make regulations in the Bill, including specifying the parliamentary procedure applicable to specific provisions. The powers that, when exercised, will require regulations made under them to be subject to the affirmative procedure are specified in paragraph 6. These are regulations that make consequential amendments to primary legislation, and that require the use of, and bring into force, a code of practice on making video recordings of interviews of detained suspects under schedule 3.

Government amendments 64 and 65 are technical amendments relating to the foreign influence registration scheme. While I will briefly set out the practical effect of the amendments, I am mindful that the next Committee sitting will consider the substantive amendments—so we will touch on them then in greater detail—and the new clauses relating to the scheme. I therefore do not intend to cover the substance at this point.

Government amendment 64 provides that three powers to make regulations under the foreign influence registration scheme are to be subject to the affirmative procedure. The first is where a foreign power, part of a foreign power, or an entity subject to foreign power, is to be specified by the Secretary of State for the purposes of enhanced registration requirements. The second is where the Secretary of State wishes to make provision for further cases, in addition to several proposed exemptions, to which the registration requirements or prohibitions do not apply. The final power is where the Secretary of State wishes to specify a person exercising functions on behalf of the Crown for the purpose of extending provisions relating to registerable political influence activities to capture communications made to that person.

4 pm

The powers I have described are capable of having significant effect on the scheme's scope and operation, as well as on members of the public who will need to comply with the requirements. It is therefore appropriate that their use should be subject to Parliament's scrutiny and approval. As they are all powers that have been designed to allow the scheme, and the requirements as tabled, to adapt to the evolving nature of state threats, there is necessarily no further detail in the legislation. Members will also be aware that this is a power for which I have campaigned, from my position as Chair of a Committee, and I am very pleased to be here introducing it. It is an enormously important act to protect our nation.

The amendment proposed by the hon. Member for Halifax would subject regulations regarding registration information, and information notices, to the affirmative

procedure. As I have just detailed, the powers that are subject to the affirmative procedure could have substantial impact on the scheme's scope and operation, and thus on the volume of arrangements and activities that are registerable. While the regulation-making powers relating to information to be provided as part of the registration and the operation of information notices are important procedural aspects of the scheme, I do not consider it necessary to subject them to the affirmative procedure. Those powers cannot be used to impact the scheme's scope. Our intention for those powers will be set out in further detail as we consider the relevant substantive new clauses on Tuesday.

Government amendment 65 provides that if a draft statutory instrument containing regulations under new clause 11, which introduces the requirement to register foreign activity arrangements, is treated as a hybrid instrument in either House of Parliament, this SI should proceed in that House as if it were not a hybrid instrument. That relates to the enhanced registration requirements I have just mentioned. It is critical that the Secretary of State can move quickly in making such regulations by ensuring that those SIs are not delayed by proceeding as hybrid instruments. Furthermore, it would not be appropriate to consult those countries or entities, as would be required under a hybrid instrument, given that a specification would only be made to reflect a state threats concern. I appreciate that debates on all of those areas are to follow and so I will not delve into them further at this point.

Clause 68 sets out that the Bill expressly binds the Crown. That means that the provisions apply to the Crown; for example, it clarifies that Crown servants cannot commit offences under the Bill. Clauses 69 and 70 of this Bill set out the extent of the Bill, which is explained in detail in the explanatory notes accompanying the Bill. Clause 71 provides that, save for this part that comes into force on Royal Assent, the Act will come into force on a day appointed in regulations.

Clause 72 provides that the Secretary of State may, by regulations, make transitional or savings provision in connection to the coming into force of the Act. Transitional and savings provisions contain rules to ensure a smooth transition from the current law to the new law, for example, to transition from the current to the new prohibited places regime. Finally, clause 73 simply sets out the short title of this legislation. I hope the Committee supports clauses 65 to 73 of the Bill, along with the Government amendments that I have set out.

Holly Lynch: I am grateful to the Minister for that comprehensive run-through of the different elements within this part 4 grouping. I will speak to the collection of clauses and amendments, which encompass the remaining provisions in part 4. Clauses 65 and 66 give powers to the Government to consequentially amend legislation based on the content of the Bill. We spoke to the House of Commons Library in order to assure ourselves that this was a conventional allocation of powers, and did not go beyond what was necessary. I am grateful to the Library staff for their feedback.

Government amendment 64 provides that regulations made under the specified provisions for the foreign influence registration scheme, which we have not yet got to, are to be made using the affirmative procedure. It seems an odd arrangement that we are debating the process for the regulations without having first considered in detail the substance of those provisions. However, here we are. We will come to the FIRS provisions; despite how long the scheme has been in the pipeline, it is fair to say that a great deal of the detail of those measures is still to be determined—and is yet to be determined in regulation. It is right that they are subject to the affirmative procedure and to proper scrutiny when that detail has been worked through. We hear and understand that it may take some time yet, but it is an important point.

Further to Government amendment 64, there are two more provisions for regulations on registration information and information notices, which merit the same approach for the reasons I have just outlined. Our amendment to Government amendment 64 seeks to extend it only to ensure a consistent level of scrutiny of what will be serious new measures. It would allow the measures to be considered by hon. Members in Committee and would ensure that they deliver what is needed. On that basis, I ask the Minister to adopt our small, but entirely appropriate, change to Government amendment 64.

Tom Tugendhat: I am grateful for the hon. Lady's point. I want to correct a comment that I made. I said the provisions apply to the Crown and this meant that Crown servants could not commit the offences. What I meant was they can commit the offences in the Bill, and that is the whole point of the regulation and this change to allow the freedom that is required.

Question put and agreed to.

Clause 65 accordingly ordered to stand part of the Bill.

Schedule 11

MINOR AND CONSEQUENTIAL AMENDMENTS

Amendments made: 39, in schedule 11, page 141, line 29, after "offence" insert "under section 15 of the National Security Act 2022 or".

This amendment inserts a reference to offences under clause 15 (preparatory conduct) into the definition of "national security-related qualifying offence".

Amendment 40, in schedule 11, page 141, line 30, leave out

"the National Security Act 2022"

and insert "that Act".

This amendment is consequential on Amendment 39.

Amendment 41, in schedule 11, page 142, line 8, after "offence" insert

"under section 15 of the National Security Act 2022 or".

This amendment inserts a reference to offences under clause 15 (preparatory conduct) into the definition of "qualifying offence".

Amendment 42, in schedule 11, page 142, line 8, leave out

"the National Security Act 2022"

and insert "that Act".

This amendment is consequential on Amendment 41.

Amendment 43, in schedule 11, page 142, line 15, after "offence" insert

"under section 15 of the National Security Act 2022 or".

This amendment inserts a reference to offences under clause 15 (preparatory conduct) into the definition of "qualifying offence".

Amendment 44, in schedule 11, page 142, line 15, leave out

"the National Security Act 2022"

and insert "that Act".—*(Tom Tugendhat.)*

This amendment is consequential on Amendment 43.

Schedule 11, as amended, agreed to.

Clause 66 ordered to stand part of the Bill.

Clause 67

REGULATIONS

The Chair: Does the hon. Member for Halifax wish to move amendment (a) to Government amendment 64?

Holly Lynch: I will continue to engage with the Government on that issue, but I will not move the amendment.

Amendments made: 64, in clause 67, page 48, line 25, at end insert—

"(za) regulations under section (Requirement to register foreign activity arrangements);

(zb) regulations under section (Meaning of "political influence activity");

(zc) regulations under section (General exemptions);"

This amendment provides that regulations made under the specified provisions are to be made using the affirmative procedure.

Amendment 65, in clause 67, page 49, line 2, at end insert—

"(11) If a draft of a statutory instrument containing regulations under section (Requirement to register foreign activity arrangements) would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument."—*(Tom Tugendhat.)*

This amendment provides that regulations under NC11 are not to be treated as hybrid instruments.

Clause 67, as amended, ordered to stand part of the Bill.

Clauses 68 to 73 ordered the stand part of the Bill.

New Clause 7

OBTAINING ETC MATERIAL BENEFITS FROM A FOREIGN INTELLIGENCE SERVICE

(1) A person commits an offence if—

(a) the person—

(i) obtains, accepts or retains a material benefit which is not an excluded benefit, or

(ii) obtains or accepts the provision of such a benefit to another person,

(b) the benefit is or was provided by or on behalf of a foreign intelligence service, and

(c) the person knows, or ought reasonably to know, that the benefit is or was provided by or on behalf of a foreign intelligence service.

(2) A person commits an offence if—

(a) the person agrees to accept—

(i) a material benefit which is not an excluded benefit, or

(ii) the provision of such a benefit to another person,

(b) the benefit is to be provided by or on behalf of a foreign intelligence service, and

(c) the person knows, or ought reasonably to know, that the benefit is to be provided by or on behalf of a foreign intelligence service.

(3) Material benefits may include financial benefits, anything which has the potential to result in a financial benefit, and information.

(4) A material benefit is an excluded benefit if—

(a) it is provided as reasonable consideration for the provision of goods or services, and

(b) the provision of those goods or services does not constitute an offence.

(5) A benefit may be provided by or on behalf of a foreign intelligence service directly or indirectly (for example, it may be provided indirectly through one or more companies).

(6) Subsections (1) and (2) apply to conduct outside the United Kingdom, but apply to conduct taking place wholly outside the United Kingdom only if—

(a) the material benefit is or was, or is to be, provided in or from the United Kingdom, or

(b) in any case, the person engaging in the conduct—

(i) is a UK person, or

(ii) acts for or on behalf of, or holds office under, the Crown, or is in Crown employment (whether or not they engage in the conduct in that capacity).

(7) In proceedings for an offence under subsection (1) by virtue of retaining a benefit, it is a defence to show that the person had a reasonable excuse for retaining the benefit.

(8) In proceedings for an offence under subsection (1) or (2) it is a defence to show that the person engaged in the conduct in question—

(a) in compliance with a legal obligation under the law of the United Kingdom,

(b) in the case of a person having functions of a public nature under the law of the United Kingdom, for the purposes of those functions, or

(c) in accordance with an agreement or arrangement to which—

(i) the United Kingdom was a party, or

(ii) any person acting for or on behalf of, or holding office under, the Crown was (in that capacity) a party.

(9) A person is taken to have shown a matter mentioned in subsection (7) or (8) if—

(a) sufficient evidence of the matter is adduced to raise an issue with respect to it, and

(b) the contrary is not proved beyond reasonable doubt.

(10) A person who commits an offence under subsection (1) is liable on conviction on indictment to imprisonment for a term not exceeding 14 years or a fine (or both).

(11) A person who commits an offence under subsection (2) is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or a fine (or both).

(12) The following terms have the same meaning as in section 3—

"financial benefit";

"foreign intelligence service";

the "law of the United Kingdom";

"UK person"."

Brought up, and read the First time.

Tom Tugendhat: I beg to move, That the clause be read a Second time.

The new clause contains two offences concerned with obtaining, accepting, agreeing to accept or retaining a material benefit from a foreign intelligence service. These

[Tom Tugendhat]

offences add to the new toolkit for law enforcement and the intelligence agencies in responding to espionage activity.

FIS operations in the UK run contrary to our safety and interests. In order to operate successfully, a FIS needs to recruit, fund and support networks of agents to support their undeclared activity in the United Kingdom. One of the most important motivating factors that a FIS is able to deploy to recruit agents is financial inducement or the provision of benefits in kind. It is often the case—this is reflective of the tradecraft of such organisations—that only the money or other material benefits can be evidenced to a satisfactory criminal standard. The new offence will enable early intervention to prevent further harm from being caused and will further strengthen our ability to prevent FIS activity, building on clause 3.

The first offence, in subsection (1), concerns a person who obtains or accepts a material benefit for themselves or another person, or who retains a material benefit, from a FIS. That could involve obtaining or accepting legal or school fees intended for someone else's benefit. Some benefits are excluded benefits, which I will come on to in a moment. That offence would attract a maximum penalty of 40 years.

The second offence, in subsection (2), concerns a person who agrees to accept a material benefit from a FIS for themselves or another person, which is not an excluded benefit. This offence, where no benefit is obtained, accepted or retained, would attract a maximum penalty of 10 years. For both offences, the benefit must also be provided by or on behalf of a FIS, and the person must know, or ought reasonably to know, that the benefit came from a FIS.

We must be alive to the tradecraft of foreign intelligence services and their ability to adapt and potentially overcome any narrow definitions in this area. Accordingly, we have drawn the meaning of "material benefit" wider than just financial benefit. Material benefit will include money and money's worth, such as gifts. It will also capture wider benefits such as information, including information on a business arrangement, as well as anything that has the potential to result in a financial benefit. We have safeguards in place to ensure that legitimate activity is not brought into scope of the new clause.

Subsection (8) replicates the defences in clause 3, which means that a person does not commit an offence if they are complying with a legal obligation, conducting public functions or acting in accordance with an agreement to which the UK is a party. As with other offences in the Bill, Attorney General consent must be obtained before prosecution.

In addition to those protections, the new offences have an additional layer of protection in the form of the excluded benefit for those who have legitimate reason for receiving a material benefit—for example, because they provide services to diplomatic missions in the United Kingdom that are known to accommodate declared intelligence officers.

Under subsection (4), a benefit is an excluded benefit if it is provided as reasonable consideration for the provision of goods or services and the provision of goods and services does not constitute an offence. For example, a shopkeeper does not commit an offence by selling groceries to a person who happens to be a member of a FIS. Another example of the type of contact that is excluded through this exemption is a person who lives in Northern Ireland and works in the Republic of Ireland for the police force.

The effect of introducing the concept of an excluded benefit will mean that in cases where someone is believed to have committed an offence of obtaining a material benefit, the prosecution would need to prove beyond reasonable doubt that the benefit was not an excluded benefit.

In addition to the concept of an excluded benefit, we have made provision for a reasonable excuse defence in subsection (7), which relates only to the offence of retaining a benefit contrary to subsection (1). This has been done to allow people who, for example, may be unable to return a benefit and so are forced to retain it. It will also enable law enforcement and the intelligence agencies to target those people who do not have a legitimate reason for retaining such a benefit. Although, crucially, subsections (4), (7) and (8) allow us to take a wide range of legitimate activity out of scope, we have been careful to ensure that the offence captures all types of activity we are concerned about.

The definition of a FIS would include a police force or other body with intelligence functions, which is the same definition found in clause 3. As I said when I introduced that clause to the Committee, we have drawn it in that way because it is increasingly common for organisations and foreign Government agencies to undertake activity more traditionally associated with intelligence services.

4.15 pm

Espionage activity is not solely the domain of intelligence services, reflecting the whole-state approach we see in countries around the world. In terms of the territorial scope of the clause, as set out in subsection (6), we have ensured that material benefits received in the UK are captured by the offence, regardless of where they are provided from.

We consider that the conduct in subsection (1) is sufficiently serious to warrant the availability of the enhanced tools and powers in the Bill, including the powers of arrest and detention, the new financial powers the Government seek to introduce by amendment, and state threats prevention and investigation measures. The Government intend to achieve that through the addition of this offence to the definition of foreign power threat activity in clause 26 at Report stage.

While the conduct in subsection (2) is also serious, we do not consider there to be an operational need to make the full suite of powers available in relation to this aspect of the offence, given that including the offence in subsection (1) within the definition of foreign power threat activity means that those powers are available in relation to the commission, preparation, instigation and facilitation of that offence.

In summary, we must provide the tools for our world-class law enforcement and intelligence agencies, whose heroism and courage does so much to protect us, to respond to the modern espionage threat posed by foreign powers. We cannot allow covert intelligence activity in the UK to go unpunished, and nor can we allow UK nationals

and companies, as well as embassy staff overseas, to be co-opted into working for a foreign intelligence service. Tackling the whole-state approach to state threats and espionage is of huge importance to protecting our safety and interests.

Holly Lynch: Before I turn to the detail of new clause 7, I appreciate that the Minister is not responsible for some of these challenges, but throughout the process of the Bill there has been a great deal of support for seeing the detail of the legislation scheme that makes up the basis of most of these new Government clauses. We probed consistently and asked that we could see the detail of that as soon as possible, given that as we came into the presentation of the legislation prior to Second Reading, it was a key factor that the Government promised would be a component part of the Bill.

The Minister's predecessor, the hon. Member for Stevenage, made a commitment that that would be added to the Bill before we returned from recess for the second Committee sittings of line-by-line scrutiny. Most of the Government new clauses were tabled just last week—I think they were tabled last Tuesday and published on Wednesday. In that sense, his predecessor upheld that commitment in principle but not in spirit.

The new clauses were tabled only last week and there is a great deal in them to get through. We certainly want to support these provisions, but there is a lot to interpret and understand, and we want to have the opportunity to engage with those who can make use of these provisions so that we can do our due diligence at this point. I am not being unreasonable and I am being kinder to the Minister than the Chair of the Intelligence and Security Committee, the right hon. Member for New Forest East (Dr Lewis), was to the Minister's predecessor's predecessor, the right hon. Member for East Hampshire (Damian Hinds), on Second Reading, but I want to put it on record that we may be forced to return to the Committee with more detail once we have had the opportunity to consider these provisions further.

Turning to the detail, as the Minister has said, Government new clause 7 creates new offences of obtaining, accepting, retaining and agreeing to accept a material benefit from a foreign intelligence service. The clause is explicit in referencing material benefits from a "foreign intelligence service". In relatively recent instances finances have been traced back, not to intelligence agencies as such but to forms of Government Departments, such as the United Front Work Department, referred to by the Chinese Communist Party as one of its "magic weapons". Are the definitions in this clause too narrow to capture those kinds of transactions?

Subsection (7) says:

"In proceedings for an offence under subsection (1) by virtue of retaining a benefit, it is a defence to show that the person had a reasonable excuse for retaining the benefit."

Given just how tight the definitions in relation to this offence are as the Bill stands, referring exclusively to a foreign intelligence service, I am keen to understand what might constitute a "reasonable excuse" in that situation.

We have worked through the notion of and the thresholds of proof around the phrase "ought reasonably to know" in earlier proceedings of this Committee, which I appreciate the new Minister might not yet be across. In subsections (10) and (11), pretty serious custodial sentences are outlined, as the Minister said, for committing offences under subsections (1) and (2). So I would be grateful to learn what the fines would be for those offences.

A query was also put to me following a specific overseas case as to whether someone who is in receipt of benefits of a sexual nature could be prosecuted under this new clause. If someone were to offer sex in exchange for information in such a way that it could be proven that they knew or ought reasonably to have known the purpose of that activity, could that lead to a prosecution on the basis of the sex being a material benefit, in principle, under the Government's new clause?

Mr Jones: I broadly welcome the new clause, because it is obviously another weapon in the armoury to counter foreign state interference, but I just want some clarification to be made in terms of the broad nature of what is actually being proposed.

One of the examples that I want to raise is the issue of academia. As my hon. Friend the Member for Halifax has already said, the United Front Workers Department of the Chinese Communist party is active across the globe and influencing academics and even legislators here in this country and in other countries, for example, Australia. So I just want some clarification about how someone would get caught under this measure.

As I say, one example is academia. I cannot remember who—I was trying to rack my brains to think of the name of the academic at Harvard University who I think is currently being prosecuted in the United States. It relates to the definition of "intelligence service". We know that the Chinese Communist party does not work directly; it will work through front organisations. As I say, I am trying to think of the name of the academic in the US; it will come back to me in a minute.

However, let us suppose a British academic is approached by an entity in China or an individual based here, who then says to that academic, "Will you do some academic research? Will you write a paper for us?" And they give the academic money for that. There are examples of this happening, and I think that in the example from the United States, which is currently ongoing, the academic then received a retainer for providing research information for a Chinese university. I think there is evidence that suggests that that was a way in which the Chinese Communist party or the Chinese security services were funnelling money to academics.

I would be really interested to know how we will differentiate between the academic who quite clearly wants to do research, and co-operation with China. The benefit they get—for example, being paid for a visit to a conference, for an academic paper or for research—does not fall within the scope of this measure, because, to be fair to the academic, the source of the funding might not be clear—it might be clear in some cases, but not in all.

I can understand if, for example, the security services approach an academic and say, "Are you aware that your money for your paper is coming from x intelligence agency?", and the academic says, "Oh well, I'm not bothered. I'll keep on doing it." That is fine. However I just want to know—and I think some guidance has to be given to academics.

[Mr Kevan Jones]

The other example is a bit closer to home, which is my hon. Friend the Member for Brent North (Barry Gardiner), who received large amounts of money from a woman called Christine Lee. She made quite a substantial donation for him to run his office. I am still baffled as to the reason why, but still. It was proven later that that she was working on behalf of the Chinese Communist party and the Chinese Government. Would an individual like that—a Member of Parliament—be dragged into this, under the new clause?

Certainly, I am sure that most of us, if someone offered us half a million pounds, would actually want to know why we were getting it, but people make their own decisions. Would that be classed under this? There are clear examples of the Chinese in particular using academia as a cover for intelligence gathering and actually funding things that will obviously influence, such as stealing academic research. For example, if a paper is normally worth £1,000 and someone is getting £20,000 for it, does that mean that the rest is a bung and that they should really raise questions about it? I doubt many academics are going to be saying, "I am not worth £20,000". It comes back to the point on this, which I would like some more information on. I am not against what is being proposed, but I think that it has some issues that will raise alarm bells in certain sections, and academia is certainly one of them.

Tom Tugendhat: I will pick up on the second set of points first, if the hon. Member for Halifax does not mind. I will pick up on those points because I am glad that it is not just me who is baffled at what the United Front thought it was gaining from this relationship. I think we are all equally mystified, but it appears that they had the resources not to care.

It does suggest, however, that we have to take this extremely seriously in all of our duties—not just when we talk about people outside this place, but when we talk about people inside this place because we have a particular responsibility to the service of our country and our communities. So I think that this needs to be looked at extremely carefully. I am not going to go into individual cases for various reasons, except to express surprise.

Mr Jones: It is wider than just that one case because, when the ISC did its Russia report, there was clear evidence of certain Members of the House of Lords, for example, being given posts as consultants and other things. Whether there is any proof that they were actually given by the intelligence services, I do not know, but it has certainly, in some cases, raised certain questions that ought to be asked.

Tom Tugendhat: The right hon. Gentleman is absolutely right that there are certain individuals in our society—some of whom, sadly, have seats in this Parliament—whose actions are questionable and demand further investigation. He can be absolutely assured that that is something that I take extremely seriously. He knows that I drafted a policy paper a long time ago on updating our Terrorism Acts. This debate is not about that, but there are various reasons why I took that seriously so many years ago and why I am very pleased to be doing this job. I accepted this job from the Prime Minister because this is a matter that I think is of enormous importance in the United Kingdom, particularly today. I will not go into the details of it, but he can be absolutely assured that I will be looking at it as soon as I have got my feet a little bit further under the desk, if he will forgive me.

These provisions, of course, do apply in various different ways, and he has highlighted some of the ways in which foreign intelligence services pay agents. Disproportionate or excessive payments can be considered in different ways, such as bribery. While the individual in question may of course claim that they were worth what they were paid, I think a reasonable benchmarking process would normally establish that they were, at best, surprised, if not actually encouraging the situation, which was not conducive to the safety of our country.

I am not, as I have said, going to go through individual cases, but this entire new clause refers to benefits in various different ways, such as to a benefit received through a business; it does not have to be direct. I am going to have to come back to the hon. Member for Halifax on her question about the nature of sexual inducements. I cannot answer that question now, but I will come back to her.

Mr Jones: I accept that the Minister has done a lot of work in this area. Would it be possible for Committee members to be briefed on the reason for this provision, but also how it will act in practice because, once it is implemented, guidance is going to have to be given to companies and to academia? I think just getting some understanding of how it would work in practice would reassure many of us in Opposition.

4.30 pm

Tom Tugendhat: Personally, I commit, absolutely, to engaging with Committees, not just the right hon. Gentleman's own. The Intelligence and Security Committee is an important one. This Committee is another one, of course, but the Business, Energy and Industrial Strategy Committee and various other Committees would, I am sure, have an interest in this area. I absolutely do commit to engaging to ensure that this clause is understood properly.

I would add, however, that to be a benefit in this area, and to be in scope of the offences, it would need to be a material benefit, so either money or money's worth. Forgive me, I have received an answer. Before bringing a prosecution, a careful consideration of the nature of the benefit and the circumstances would be undertaken. A person has to know that they are obtaining a benefit from a foreign intelligence source, and there are several protections to avoid capturing legitimate activity. Legitimate activity, of course, as I said, refers to supporting an embassy that is in pursuit of its diplomatic functions or working with a police force, for example in the Republic of Ireland when an individual lives in Northern Ireland.

The hon. Member for Halifax also made points about the timing of this. I appreciate that entirely, and I entirely respect her position. We must ensure that this goes through with the consent of the House.

Mr Jones: The Minister is being very helpful, but could I clarify something? If, for example, somebody received a benefit from a university, but it was subsequently

found that the money was coming from a foreign intelligence agency—or if someone did work for a company then found out that it had been involved—that person perhaps did not know that. Am I assuming that, as it is written, if they continued after they were made aware of it, then they would fall into scope? If they could actually say that they did not know about it, is that a defence?

Tom Tugendhat: The right hon. Gentleman is exactly right. The point of the defence of "reasonable" is that, in order for this to be an offence, the individual needs to be aware that the benefit is supplied by a foreign intelligence source. Therefore, so long as they are unaware of it, it is not an offence. When they become aware of it, it is an offence.

The last point that I wish to make is on the delays. I know that the hon. Member for Halifax will understand that the Ukrainian situation, and a certain change of Government office holders most recently, may have interrupted the provisions. However, on that note—

Holly Lynch: Before the Minister closes, will he take an intervention?

Tom Tugendhat: Yes.

Holly Lynch: I am really grateful to the Minister. I appreciate that he is winding up. I think, if I have understood his response to my question about sex in exchange for information, that, for something to be a benefit, it would have to have a monetary value. Therefore, if there was an exchange of sex for information, that could not be prosecutable under this new clause.

I just wanted to say that because a case was brought to my attention. Partly because I am reluctant to gather any further information by typing the word "sex" into a search engine on the parliamentary estate—I am always incredibly reluctant to do that, for obvious reasons—I could not establish any further details about a specific case. Will the Minister undertake to have a look at that in a bit more detail, just to ensure that we have not missed anything through narrow definitions within this clause?

Tom Tugendhat: The hon. Lady can be absolutely assured that there is no way that I would like to leave out any form of inducement that a foreign intelligence service could use to entice somebody to commit a serious crime. Therefore, of course, I would be very happy to look into that.

The clause, as written, says:

"Material benefits may include financial benefits, anything which has the potential to result in a financial benefit, and information."

Therefore, it is pretty broadly worded. I will talk to officials about how we could make it clearer if that is necessary, but I will certainly undertake to do that. Before I sit down, I will just say, God save the Queen.

Question put and agreed to.

New clause 7 accordingly read a Second time, and added to the Bill.

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

4.35 pm

Adjourned till Tuesday 13 September at twenty-five past Nine o'clock.