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Public Bill Committee

NATIONAL SECURITY BILL

Fourteenth Sitting

Tuesday 18 October 2022

(Afternoon)

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Saturday 22 October 2022

The Committee consisted of the following Members:

Chairs: Rushanara Ali, † James Gray

† Bailey, Shaun *(West Bromwich West)* (Con)
† Bell, Aaron *(Newcastle-under-Lyme)* (Con)
† Dines, Miss Sarah *(Lord Commissioner of His Majesty's Treasury)*
† 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)
† 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

Tuesday 18 October 2022

(Afternoon)

[James Gray *in the Chair*]

National Security Bill

New Clause 11

Requirement to register foreign activity arrangements

"(1) A person ('P') who makes a foreign activity arrangement must register the arrangement with the Secretary of State before the end of the period of 10 days beginning with the day on which P makes the arrangement.

(2) A 'foreign activity arrangement' is an arrangement with a specified person pursuant to which the specified person directs P—

(a) to carry out activities in the United Kingdom, or

(b) to arrange for activities to be carried out in the United Kingdom.

(3) 'Specified person' means—

(a) a foreign power specified by the Secretary of State in regulations;

(b) a person, other than a foreign power, specified by the Secretary of State in regulations.

(4) The regulations may specify a person other than a foreign power only if—

(a) the person is not an individual, and

(b) the Secretary of State reasonably believes the person is controlled by a foreign power.

(5) A person is controlled by a foreign power if—

(a) the foreign power holds, directly or indirectly, more than 25% of the shares in the person,

(b) the foreign power holds, directly or indirectly, more than 25% of the voting rights in the person,

(c) the foreign power holds, directly or indirectly, the right to appoint or remove an officer of the person, or

(d) the foreign power has the right to direct or control the person's activities (in whole or in part).

(6) In subsection (5) 'officer'—

(a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity;

(b) in relation to a partnership, means a partner or person purporting to act as a partner;

(c) in relation to an unincorporated association other than a partnership, means a person who is concerned in the management or control of the association or purports to act in the capacity of a person so concerned.

(7) The Secretary of State may make regulations specifying a foreign power or a person other than a foreign power only if the Secretary of State considers it reasonably necessary to do so to protect the safety or interests of the United Kingdom.

(8) The requirement in subsection (1) does not apply to a foreign power.

(9) Regulations specifying a foreign power or a person other than a foreign power may provide for subsection (1) to apply, with modifications specified in the regulations, in relation to a foreign activity arrangement made with the specified person before the regulations come into force.

(10) A person who fails to comply with subsection (1) commits an offence if the person—

(a) knows, or

(b) ought reasonably to know,

that the arrangement in question is a foreign activity arrangement."—*(Tom Tugendhat.)*

NC11 to NC28 require certain arrangements with, and activities of, foreign powers and foreign persons to be registered. They are intended to form a new Part 2A, referred to in explanatory statements as the registration scheme. This new clause requires registration of arrangements with specified persons to carry out activities in the UK.

Brought up, read the First time, and Question proposed (this day), That the clause be read a Second time.

2.15 pm

Question again proposed.

The Chair: I remind the Committee that with this we are discussing the following:

Government new clause 12—*Offence of carrying out activities under an unregistered foreign activity arrangement.*

Government new clause 13—*Requirement to register activities of specified persons.*

Maria Eagle (Garston and Halewood) (Lab): As we adjourned this morning, I was expressing concern about the complexity of the two-tier scheme embodied in the new clauses. I was suggesting that it might be more effective to have one tier that applied to all countries and a broad range of covert activity, rather than this two-tier arrangement, which is more difficult to understand and which presents more barriers to the Government of the day, and to the Minister in particular, in designating those who ought to be covered by the secondary tier, which the Minister referred to as the enhanced tier. It might be more sensible to have a simpler but more extensive scheme that does not require lots of extra Government activity and inter-departmental negotiations between the Security Minister and other Ministers who are looking at relations with foreign countries and companies through a different lens. That was my basic point.

It is difficult to understand why, unlike comparable schemes in Australia and the US scheme, there are two tiers, and why the registration of harmful activity outside of political influencing—some of which is more serious—applies only where the foreign power has been designated by the Government. If it is not designated, or while the Minister is desperately trying to persuade other bits of Whitehall that it ought to be, such activity could go on unimpeded by these arrangements and the necessity for registration. That will have a consequent, knock-on effect on the transparency that should be gained, which is supposed to be one of the purposes of the scheme. If we cannot get something registered because there is no agreement in Government, we will not get the additional transparency that is supposed to be one of the major benefits of the foreign influence registration scheme.

I am questioning the entire underpinning of the way in which the scheme has been designed. I am certainly not convinced that it is better than a simpler but broader arrangement. That was the essential point that I wanted to make. I do not wish to repeat every point that my right hon. Friend the Member for North Durham or the shadow Minister, my hon. Friend the Member for Halifax,

have made. However, I believe that the scheme, as set out in the new clauses, is too complicated and could be simpler, and that, were it simpler, it would be more effective.

The Minister for Security (Tom Tugendhat): I pay tribute to the hon. Member for Garston and Halewood and the right hon. Member for North Durham for the tone with which they have approached the debate. I appreciate their comments and those of the shadow Minister, who has made similar points. They have made them in the spirit of openness, proper debate and trying to improve what they see, correctly, as a Bill that will keep our country safe. I am grateful to them for that.

I will go through some of the points that have been made. First, the right hon. Member for North Durham asked about the purpose. Part of the objective of registering under the scheme is to highlight and to be clear. This is not a sanction. The very fact that a scheme exists for foreign companies that trade with British companies does not in any way mean that it is a sanction. The intention is to bring transparency to relationships that might otherwise lie hidden. It is intended not as a punishment, but merely to promote openness.

The requirement to register an arrangement within 10 days is made so that the person acting on behalf of the Government, or the individual, makes that clear at that point or within a reasonable period of time. I am happy to hear arguments for a slightly longer or less long period, but I think 10 days is a reasonable period for a registration to be made. Again, that is not supposed to be a sanction or an obstacle, but it is merely supposed to be a way of achieving transparency. It is not really supposed to be stopping the entire process, but merely supposed to be enabling people to know what is going on. If there was a requirement, and if it was a sanction, that would be different and the process would have to stop immediately. That is not what this is about.

Holly Lynch (Halifax) (Lab): Will the Minister give way?

Tom Tugendhat: Briefly, because we have so much to get through.

Holly Lynch: Of course, and I am grateful. May I bring the Minister's attention to an example that I have had a chance to look at, and which has broken today? Up to 30 former UK military pilots are thought to have gone to train members of China's People's Liberation Army. They have been offered lucrative packages of up to £237,000 for their expertise in training Chinese pilots. Actually, a Ministry of Defence spokesperson has said that they are attempting to disrupt that activity

"while the new National Security Bill will create additional tools to tackle contemporary security challenges—including this one."

Just looking at that example of where presumably some of those involved in headhunting might need to register that activity—

The Chair: Briefly.

Holly Lynch: There is a need to try to put a stop to some of this activity, and I just wonder what the relationship is between the visibility and the need to stop it.

Tom Tugendhat: As the hon. Lady will know very well, I share her deep concern at this information, which was reported just this morning. First, may I say that there are already many different clauses in the Bill that are designed to make sure that individuals should not be co-operating with those who may be trying to steal secrets or to gain from secret information. It is possible, although I have not got the details of the case, that similar sorts of cases may be covered under other clauses in order to prevent the acquisition of information. The foreign agents element—the foreign influence element—would also come to play, but it is not the only element in the Bill that would come into play. It is absolutely correct that we do need the Bill in order to prevent such actions, which at the moment are more loosely defined, and therefore possible. The foreign influence element is not the only element, but I appreciate the spirit in which the hon. Lady has entered the discussion.

If I may, I will speed up a little.

The Chair: That would be good.

Tom Tugendhat: You are very welcome, Mr Gray.

Subsections (3) and (4) of new clause 11 make it clear that a specified person can be a foreign power or an entity that is not an individual. Parliamentary drafters use that terminology for the legislation, but detailed guidance will be prepared so that it is clear to the public and businesses who is included.

I will follow up on other questions in writing, if I may, because a whole load of questions were put before lunch and I think many of us have forgotten which elements they related to. I will therefore conclude my remarks.

Question put and agreed to.

New clause 11 accordingly read a Second time, and added to the Bill.

New Clause 12

OFFENCE OF CARRYING OUT ACTIVITIES UNDER AN UNREGISTERED FOREIGN ACTIVITY ARRANGEMENT

"(1) A person commits an offence if—

(a) the person carries out an activity, or arranges for an activity to be carried out, in the United Kingdom pursuant to a foreign activity arrangement required to be registered under section (*Requirement to register foreign activity arrangements*)(1),

(b) the arrangement is not registered, and

(c) the person knows, or ought reasonably to know, that they are acting under the direction of a specified person.

(2) Subsection (1) does not apply to a foreign power."—*(Tom Tugendhat.)*

This new clause makes it an offence to carry out activities under a foreign activity arrangement that should be, but is not, registered.

Brought up, read the First and Second time, and added to the Bill.

New Clause 13

REQUIREMENT TO REGISTER ACTIVITIES OF SPECIFIED PERSONS

"(1) A specified person must not carry out activities in the United Kingdom unless the activities are registered with the Secretary of State.

(2) The prohibition in subsection (1) does not apply to a foreign power.

(3) A person who breaches the prohibition in subsection (1) commits an offence if the person—

(a) knows, or

(b) ought reasonably to know,

that the activity in question is not registered."—*(Tom Tugendhat.)*

This new clause requires registration of activities carried out in the UK by a specified person.

Brought up, read the First and Second time, and added to the Bill.

New Clause 14

REQUIREMENT TO REGISTER FOREIGN INFLUENCE ARRANGEMENTS

"(1) A person who makes a foreign influence arrangement must register the arrangement with the Secretary of State before the end of the period of 10 days beginning with the day on which the person makes the arrangement.

(2) A 'foreign influence arrangement' is an arrangement with a foreign principal pursuant to which the foreign principal directs the person—

(a) to carry out political influence activities in the United Kingdom, or

(b) to arrange for such activities to be carried out in the United Kingdom.

(3) 'Foreign principal' means—

(a) a foreign power,

(b) a body incorporated under the law of a country or territory outside the United Kingdom, or

(c) an unincorporated association formed under the law of a country or territory outside the United Kingdom, other than an association of persons where each person is a United Kingdom national,

but does not include a person within subsection (4).

(4) Those persons are—

(a) a specified person;

(b) a body incorporated under the law of the Republic of Ireland, or an unincorporated association formed under the law of the Republic of Ireland;

(c) an international organisation.

(5) The requirement in subsection (1) does not apply to a foreign power.

(6) The requirement in subsection (1) does not apply to—

(a) a recognised news publisher, or

(b) a person who makes a foreign influence arrangement with a recognised news publisher where the purpose, or one of the purposes, of the arrangement is the publication of news-related material.

(7) Subsection (1) applies in relation to a foreign influence arrangement made before the day on which this section comes into force as if, for the words from '10' to the end, there were substituted '3 months beginning with the day on which this section comes into force.'

(8) A person who fails to comply with subsection (1) commits an offence if the person knows that the arrangement in question is a foreign influence arrangement.

(9) In this section—

'international organisation' means a person (other than an individual) which—

(a) is governed by international law,

(b) is set up by, or on the basis of, an agreement between two or more countries, or

(c) is recognised under an agreement between two or more countries and is specified by the Secretary of State in regulations;

'news-related material' and 'publish' have the meaning given by section 50(5) of the Online Safety Act 2022;

'recognised news publisher' has the meaning given by section 50 of the Online Safety Act 2022 but as if, in subsection (2)(e) of that section, 'in the United Kingdom' were omitted;

(10) Regulations under subsection (9) may specify a person or a description of persons."—*(Tom Tugendhat.*

This new clause requires registration of arrangements with foreign principals to carry out political influence activities in the UK. Political influence activities are defined in NC15.

Brought up, and read the First time.

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

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

Government new clause 15—*Meaning of "political influence activity".*

Government new clause 16—*Offence of carrying out political influence activities pursuant to unregistered foreign influence arrangement.*

Government new clause 17—*Requirement to register political influence activities of foreign principals.*

Tom Tugendhat: New clauses 14 to 17 relate to the primary registration requirement, which is the requirement for political influence activities to be registered where they are either to be carried out, or arranged to be carried out, in the United Kingdom at the direction of a foreign principal, or to be carried out by a foreign principal.

Before I get into the effect of these new clauses, I want to be clear and up front that the UK is welcoming of open and transparent engagement from foreign Governments and entities. Governments around the world, including the UK, should seek to advance their interests through the lobbying and influencing of other states—after all, that is what diplomacy is. Where this is conducted openly and transparently, it is welcome and plays a vital part in our democracy and public debate, as well as being essential to international relations and civil society.

The primary registration requirements under this scheme will play a critical role in encouraging that openness and transparency, while simultaneously deterring foreign powers that wish to pursue their aims covertly through the use of agents and proxies. It can only be right that the UK public and our democratic institutions are protected from covert influence and are better informed as to the scale and extent of foreign influence in our political affairs. Again, each of the new clauses is substantive so, as with the previous group, I will take each in turn.

New clause 14(1) requires a person to register with the scheme where they are in an arrangement with a foreign principal to carry out political influence activities within the UK, or where the person is to arrange for such activities to be carried out. The person must register within 10 days of the arrangement being made. I covered several relevant points of detail in my speech on the equivalent provision under the enhanced registration scheme relating to foreign activity arrangements, which we have already discussed today. I will not repeat those explanations, but will instead focus on key points of difference.

First, subsections (5) and (6) clarify who is not "a person" for the purpose of defining a foreign influence arrangement and who the requirement does not apply to. I have already explained, in our discussion on the previous group of new clauses, why a foreign power is not required to register, and the same principle applies here. In addition, the requirement to register does not apply to a recognised news publisher or a person who makes a foreign influence arrangement with a recognised news publisher where the purpose, or one of the purposes, of the arrangement is the publication of news-related material. The practical effect of this aspect of the new clause is to ensure that domestic and foreign news publishers cannot be in a registerable arrangement with a foreign principal, and nor can a person—for example, a freelancer—where the foreign principal is a recognised news publisher and the arrangement concerns the publication of news-related material.

I mentioned in my opening remarks on FIRS that these requirements are deliberately state and sector agnostic, and that it is the responsibility of all sectors to demonstrate transparency and accountability, but with exceptions for where existing obligations apply. This is one such example. We have a proud tradition in this country of upholding the freedom of the press. Indeed, it is our obligation to ensure that journalists are empowered to carry out their legitimate activity independent of state involvement. We do not consider it appropriate to replicate this safeguard for the enhanced measure. Unlike the primary registration requirement, specifying an entity for the enhanced assurance measure will be reserved for where the Government have determined that a greater level of scrutiny is needed to protect the safety or interests of the UK. As such, we do not consider it appropriate to replicate this safeguard for the enhanced measure.

Secondly, the clauses use different terminology from the enhanced registration requirement. The definition of arrangement requires there to be direction from a "foreign principal", rather than a specified foreign power or entity subject to foreign power control, as is the case under the enhanced registration requirement. The definition of "foreign principal" in subsection (3) includes

> "a foreign power…a body incorporated under the law of a country or territory outside the United Kingdom, or…an unincorporated association formed under the law of a country or territory outside the United Kingdom."

I will not dwell on why the requirement applies to a foreign power, as that should be obvious. Instead, I want to address the importance of this definition capturing any foreign entity rather than those subject to foreign power control, as it is perhaps one of the most complex areas of this scheme.

We know that foreign powers deploy their influence through seemingly private or independent entities. This can be achieved through formal links with such entities, which may include shares, subsidies or financing, voting rights, or through other obligations to collaborate with the state. It can also be achieved through informal links, such as understandings or verbal agreements. There are also entities that are ostensibly private, yet nonetheless act to further a foreign power's interests.

It is our intention to apply the registration requirements to all of those types of entity by requiring foreign influence arrangements to be registrable where made with any foreign entity. This is the approach taken by the Foreign Agents Registration Act in the United States, and it was the ambition of Australia's foreign influence transparency scheme before its parliamentary passage. The Australian scheme's definition of "foreign principal" was amended by its Parliament to require a formal connection between an entity and a foreign Government for activity to be carried out on its behalf to be registrable. Such a connection would need to meet technical criteria of ownership or control, or a formal obligation to act in accordance with the directions or wishes of the foreign Government.

2.30 pm

I encourage the Committee to read the Australian Attorney-General's Department's submission to the ongoing review of FITS by the parliamentary Joint Committee on Intelligence and Security. The submission, which is available online, explains that the technical definitions that I have just described, as imposed by the Australian Parliament, have undermined the ability of the scheme to meet its objectives in relation to such entities. That is because it is not only difficult for the public to understand when the definitions apply, but because the information on an entity's ownership and governance is not readily available to the public or Government, making it incredibly challenging to enforce the requirements to an evidential standard. Put simply, it would be unreasonable for us to expect members of the public to know the ownership and governance structures of an entity such that they could assess whether it is controlled by a foreign power, for the purposes of registration.

We are in the fortunate position of being able to learn from the Australian experience. We must be grateful for the candour expressed in the submission that I have just mentioned, and I thank our Australian partners for their advice and guidance on these points as we have developed our own scheme.

I will briefly mention who the definition of foreign principal does not apply to, as outlined in subsection (4). The definition excludes a person specified under the enhanced measure, to avoid the duplication of requirements, as well as a body incorporated, or an unincorporated association, formed under the law of Ireland, for the reasons I gave earlier. It also excludes international organisations.

Similar to the principles that I set out earlier regarding our obligations relating to the protection of diplomatic, consular and routine Government-to-Government activity, we do not intend for the scheme to undermine our obligations relating to the United Kingdom's relationship with multilateral organisations. That is why international organisations are not included within the scope of the definition of foreign principal.

The definition of foreign principal is also clear that it does not include an association formed under the law of a country or territory outside the United Kingdom where it is made up entirely of UK nationals. It cannot be right that we would treat such an association as "foreign" for the purposes of this scheme.

Finally, I will briefly summarise the procedural elements of this new clause. The requirement is to register a foreign influence arrangement within 10 days of it being made, or otherwise before that activity is carried out. As we intend for there to be a public register associated with this registration requirement, prior

registration of arrangements provides the benefit of informing the UK public as to who the person is acting under the direction of. This is important because it may not be obvious to the targets of such activity and so offers some opportunity for members of the public to be informed prior to an influence activity taking place. As I mentioned in relation to the foreign activity arrangements, it also offers an opportunity to enforce the requirements of the scheme prior to an attempt to carry out covert influence activity.

An offence under subsection (8) is committed where a person who fails to comply with the requirement to register knows that the arrangement is a foreign influence arrangement. This goes to my point earlier about ensuring that there is a higher bar to meet than the enhanced measure for an offence to be brought. Therefore, the test for this offence provides a key safeguard against criminalising the unwitting or those who could not have been aware of the requirement.

It is important to reiterate that it is not the Government's intention to obstruct or interfere with a legitimate activity where persons and sectors are trying to comply with the transparency requirements. We see the offences as providing options where there is an intention to engage in covert arrangements and evade these registration requirements.

Maria Eagle: New clause 14(9) includes definitions that refer to "the Online Safety Act 2022", but that is a Bill, not an Act, and it is not on the statute book, is it?

Tom Tugendhat: It will be very soon.

Maria Eagle: Will it?

Tom Tugendhat: That is the plan.

Maria Eagle: Is it correct for this Bill to make reference to another Bill as being an Act of Parliament when it is not?

Tom Tugendhat: It is not entirely unheard of to make reference to other legislation that is going through at the moment. Should there be issues, then there may be obstacles, but—

Mr Kevan Jones (North Durham) (Lab): The Minister needs to clarify—he can do so in writing, if he wants—whether that Bill is going through. It has been stayed, has it not? It has been pulled, so it will not even go forward. Therefore, I think we need some clarification.

Tom Tugendhat: That is simply not correct. It is going forward. *[Interruption.]* I commit to writing to hon. Members should there be any changes, but the Bill is still going forward.

New clause 15 defines "political influence activity" for the purposes of the scheme's primary registration requirements. This relates to new clause 14, which we have just considered, as well as the other new clauses in this group. The overarching aim of the definitions in this new clause is to ensure that activities are registrable if they intend to affect political decision making, proceedings and those with the right to engage in UK electoral processes. I will break that down into four points: three points governing the relevant activities, which include lobbying, public communications and disbursements; and one covering the intended purpose.

Lobbying, for the purpose of this scheme, is defined under proposed new subsection (2)(a) as "making any communication to" a listed person. Capturing "any communication" is important in this context, as we do not want to provide an easy way for those engaged in state act threat activity to avoid the requirement to register by adopting a different means of communication. The listed persons include His Majesty's Government and devolved Ministers; Members of the legislature; officers, trustees or agents of a registered political party; candidates at national, devolved or local elections; and senior officials or special advisers. We recognise that there are existing rules and regulations to ensure transparency and accountability around such activity. They include the provisions of the Lobbying Act 2014, as well as codes of conduct for those listed, including Ministers, officials, special advisers and Members of the legislature.

The foreign influence registration scheme will offer an extra layer of protection against those seeking to engage in covert lobbying for foreign powers directly, or indirectly through other foreign entities. These offences and penalties reflect that. They will require people to be transparent about who they are acting for, and will inform the public of the nature and scale of foreign influence in UK's political affairs.

The persons listed in this new clause have been identified as those most likely to be of use to foreign powers in effecting change in our political system or proceedings. The primary registration requirement under FIRS will not only hold those persons to high standards while they are in public office or service, or engaging in our proceedings and elections, but will seek to protect them from those who would seek to influence them covertly. Of course, it may be necessary to amend the list and adapt it in the light of the trends and behaviours we see; that is why we propose including an ability to amend the list by regulations, so that the scheme is future-proofed against emerging threats.I remind hon. Members that for lobbying to be in scope of the scheme, it must be at the direction of a foreign principal, and must be for a political purpose. It is hoped that that constraint will ensure that the scheme delivers its objectives without unnecessarily bringing a wider range of activities within scope.

Public communications activity is registerable under proposed new subsection (2)(b) where it is not already reasonably clear that it is made at the direction of a foreign principal. This applies to the dissemination, or production for publication, of information, a document or other article. The ability to mobilise public opinion can be a powerful means of engaging with our political system and effecting change. The intention behind this limb of activity is to ensure that the public are aware of who is behind a communication that may influence the way they exercise their rights in this country, or the way they engage with our political system. It is to guard against those who seek to manipulate public opinion for the benefit of foreign powers and to the detriment of UK interests and security.

I emphasise, however, that a public communication is registerable only where it is not already reasonably clear that it is made at the direction of a foreign principal.

Where a foreign principal is itself undertaking the activity—we will come to that shortly—that would already be clear to the public. A foreign charity making a public communication in its own name would not need to be registered. However, where a foreign charity directs a public relations firm to make the public communication, that firm would have a choice: either it makes it reasonably clear through the communication that it has been directed to make that communication by the foreign charity, or it registers that arrangement with the scheme.

Providing this choice offers a practical option to prevent all public communications for foreign principals from needing to be registered. By its very nature, a communication to the public is visible to the public; it therefore achieves the transparency aims of the scheme, so long as it is clear who it is for. We do not think that same rationale applies to the lobbying and disbursement limbs of political influence activities, which are naturally less visible to the public.

Thirdly, I will address disbursement activity. Under proposed new subsection (2)(c), this includes

"distributing money, goods or services to UK persons",

and "UK persons" is defined in the Bill as including

"(a) a United Kingdom national;

(b) a body incorporated under the law of a part of the United Kingdom;

(c) an unincorporated association formed under the law of a part of the United Kingdom."

As with public communications, targeted incentives can be a key method of deploying influence—for example, through the provision of money or hospitality.

The intention behind this limb of activity is to ensure that the public have greater visibility of how that influence is deployed by foreign principals. Under electoral law, political donations from or on behalf of individuals not on the electoral register, such as foreign donors, are prohibited, but the disbursement of money, goods and services to mobilise sections of the public for a particular cause is not. The definition of "political influence activity" in this scheme is cast more widely than the scope of electoral law.

For example, if a foreign principal was to distribute funds to organisations in the UK with the intention of influencing a Government decision, that would be covered by the foreign influence registration scheme. If foreign principals make or direct such disbursements that are not regulated by electoral law, with the intention of affecting the way in which a UK person exercises their democratic rights or how they engage with the UK political system, the Government are of the view that such activity should be transparent. That is to strengthen our resilience against those who seek to manipulate or mobilise the public for the benefit of foreign powers and to the detriment of the United Kingdom's interest and security.

Finally, there is the purpose of the activity that makes it registerable. Whether the activity is lobbying, a public communication or disbursement, the purpose, or one of the purposes, of it must be to influence a matter or person listed in proposed new subsection (3). Those matters and persons include: the conduct of a UK election or referendum; a decision of the UK Government or Ministers in the devolved Administrations; the proceedings of Parliament or the devolved Administrations; the proceedings of a registered UK political party; or a Member of Parliament or the devolved Administrations.

The list is intended to limit the circumstances in which registration is required to circumstances in which there is an intention to influence UK political decision making, proceedings and those with the right to engage in UK electoral processes. The list is sufficiently broad to capture all the areas that we think require greater scrutiny, while maintaining proportionality. The measures should give the Government and the public greater clarity on the scale and extent of foreign influence in our political and governmental processes, while strengthening their resilience against covert foreign influence.

New clause 16 is the corresponding offence for the primary registration requirement to that which we discussed in the previous group of new clauses relating to the enhanced registration requirement in new clause 12. I will not repeat all the points I made earlier. New clause 16 makes it an offence to carry out a political influence activity, or to arrange for it to be carried out, pursuant to a registerable foreign influence arrangement that has not been registered. The main difference between this offence and that under the enhanced registration requirement is that this would require a person to know that they are acting pursuant to an arrangement that is not registered. As I explained earlier, we have deliberately created a higher bar for prosecution compared with the enhanced measure. It would need to be evidenced that a person knew an arrangement was unregistered and yet continued to carry out the activity.

New clause 17 is the corresponding registration requirement to that which we discussed in the previous group of new clauses relating to the enhanced registration requirement in new clause 13. Again, I will not repeat all the points I made earlier. New clause 17 requires foreign principals to register their political influence activities that are to be carried out in the UK. This prevents there being an obvious gap in the requirement to register, and will support the scheme's objective of strengthening the resilience of the UK political system against covert influence. As with the enhanced registration requirement, foreign powers would not be expected to register under FIRS, so this requirement will apply only to a foreign entity that is to undertake political influence activities within the UK. The requirement will also not apply to a recognised news publisher for the same reasons that they are not required to register a foreign influence arrangement.

An offence would be committed if the foreign entity fails to register their political influence activities, and they know that the activity in question is not registered. Again, as I explained earlier, we have deliberately created a higher bar for prosecution, compared to the enhanced measure. I ask the Committee to support these new clauses.

2.45 pm

Holly Lynch: I thank the Minister for giving us a comprehensive understanding of this group of new clauses. Before I talk about them, it is crucial that we have clarity on the outstanding issue of when an arrangement has been registered, because new clause 12 creates an offence of undertaking such activity before it has been registered. I put on record that the Minister was not able to respond to that point and said that he would follow up in writing.

[Holly Lynch]

It feels as though there has been a surge in hostile states seeking to infiltrate our political discourse. They are prepared to allow years for their efforts to bear fruit, in an attempt either to align our values with theirs or to sow division and polarisation across our country. That has become more salient following Russia's abhorrent invasion of Ukraine.

Only days ago, a report from a German newspaper stated that the Federal Office for the Protection of the Constitution is looking into the case of two civil servants who

"are involved with energy supply in key positions"

and are suspected of having Kremlin links, and I think a further and even more serious report from Germany has just broken. The allegation is that these individuals were advocates of Russian gas and highly supportive of Nord Stream 2. If confirmed, this case would represent exactly the type of security breach we have to protect ourselves against. Without wanting to repeating myself, there is just a single line in new clause 15 on the meaning of "political influence activity" by way of explanatory note. It is a crucial but operationally complex area.

I want to pull out subsection (6) of new clause 14, which explicitly states that the requirement to register a foreign influence arrangement does not apply to "a recognised news publisher" or

"a person who makes a foreign influence arrangement with a recognised news publisher where the purpose, or one of the purposes, of the arrangement is the publication of news-related material."

Many civil liberties organisations and the National Union of Journalists have expressed concern over the need to ensure press freedom in relation to this Bill. That is absolutely right, and the Minister quite rightly put his strength of feeling about that on the record. But how do we protect ourselves and ensure transparency when blatant mouthpieces for hostile states present as news outlets, or when someone on the payroll of a hostile state seeks to place their pro-regime opinion pieces or articles in mainstream media? We have had assurances from officials that there are circumstances in which people in such situations may still have to register, and I would be grateful for clarity from the Minister on that.

Further to a point that my hon. and right hon. Friends have made, we gave one of the Minister's predecessors some grief in discussion on Government amendment 9, which meant that this Bill would amend the "Online Safety Act 2022" by making online interference a priority offence. That was certainly a very welcome measure, but we said at the time that it was presumptuous to amend an Act when it was still a Bill in the Commons. Members might remember that the Online Safety Bill was on the Floor of the House while we debated it in this Bill Committee, so not to have made the change directly in the Online Safety Bill was somewhat cack-handed.

In subsection (9)(c) of new clause 14, we are referred once again to the "Online Safety Act 2022" for definitions. As things stand—I heard the Minister's comments—what has happened to the Online Safety Bill is a bit of a mystery, and it seems to have been paused indefinitely. The last time it saw the light of day was that day in the Chamber, when we were in this Bill Committee. Can the Minister confirm that we will see that Bill again, and that the definitions in these new clauses will remain unchanged? Can he confirm that he is committed to ensuring that there is a future for making disinformation a priority offence, whether in that Bill or this? He will be aware that there are national security considerations in the Online Safety Bill that are of interest to him and to me, so we have an interest in ensuring that that Bill emerges once again.

Maria Eagle: Does my hon. Friend agree that for this clause to be accurate in referring to the "Online Safety Act 2022", that Bill, which seems to have disappeared for now, has to have Royal Assent by the end of the year?

Holly Lynch: My hon. Friend is absolutely right. We thought that that was quite an aspiration at the time, but now it is looking even more unlikely. I just make the point to the Minister that that needs consideration to make sure we do not lose the definitions, or something more substantial under Government amendment 9.

Government new clause 15 defines "political influence activity" for the purposes of the new registration scheme. Members will be aware of the Security Service interference alert sent from MI5 to MPs and peers back in January regarding Christine Lee. The alert stated that Lee knowingly engaged in political interference activities on behalf of the United Front Work Department of the Chinese Communist party. The warning read that the UFWD was seeking to covertly interfere in UK politics by establishing links with established and aspiring parliamentarians across the political spectrum and cultivating relationships with influential figures. Can the Minister confirm that such conduct would need to be registered under these new clauses?

Proposed new subsection 3(a) states that

"the conduct of an election or referendum in the United Kingdom"

falls under the criteria of political influence activity. This is a welcome inclusion and reflects the evidence provided to the Committee by several of the expert witnesses we heard from at the start, which feels like a lifetime ago—it was certainly four Chancellors ago! One of the expert witnesses was former deputy national security adviser Paddy McGuinness. He stated,

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

We welcome the fact that the registration scheme will go some way toward addressing these concerns, but I want to again make the case for new clause 3, because the Minister was not here for that debate. His predecessor gave us a commitment to look further at it. Alongside this new clause, new clause 3 would provide for an annual review on disinformation, with particular consideration of interference in elections. That would

help with the transparency and awareness piece that needs to sit alongside the provisions. In a similar spirit, we want to tighten Government new clause 15 with our new clause 29 on the registration of former members of intelligence services, and with new clause 5 on ministerial conduct when meeting with representatives of foreign intelligence services. We will come to those.

I would be grateful for clarity on when we can expect the new clauses to come into effect, as we are hearing that it might be some time. Will we seek to backdate them to capture political influence activity already in motion? I think I heard the Minister say that he could not yet say when the measures would come into effect, and essentially the Government would not be rushed on that matter. I asked the relevant agencies the same question, and the working assumption seems to be that we will not backdate the requirements. I ask the Minister to consider looking at that again. Surely we stand to miss much political influence activity that is already under way—not even necessarily activity that has started and come to an end, but conduct that may have started some time ago. We would create a loophole whereby people could claim, as a cover for failing to register, that the activity predated the introduction of the scheme, whether or not it actually did, and could thus commit an offence under new clause 16.

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): I do not want to repeat anything the shadow Minister said, but I have a couple of short points. I am supportive of the goal of the political tier, though I am somewhat struggling with the design of the scheme. In debate on new clause 11, I asked questions about how the provisions would apply when intermediaries were used. It would be useful if the Minister could write on that, as I do not think we got an answer to that in his summing-up speech. The same concerns arise here. We have a lot of information to go away and take on board, but I am struggling to understand how these measures will apply in all sorts of situations. Lots of case examples will be essential if we are to get to the bottom of how this is going to work.

A simple example would be a case where an international NGO incorporated in another European country had a sister NGO in the United Kingdom. Both have employees of their own, some here and some in Europe. Both have Members, some here and some in Europe. How do all these provisions and this scheme apply to them if they have a month of action? An international NGO may take part in some direct engagement, so it would have to register that. What if it encourages its sister NGO to do that? What if either of them contact their members? The Minister has reassured us that employees would not have to register anything individually. It is not absolutely clear which part of the Bill makes that clear; it would be useful to know that.

I presume, as well, that members who are urged by an international NGO to email their MPs will not have to register any sort of activity like that. Again, it would be useful to know precisely where that is made clear in the Bill. Although I dare say we would all be quite happy not to have quite so many emails prompted by NGOs, equally, I do not think any of us would want them to have to register their schemes under the Bill. It would really be useful if we could get a handle on how the legislation will apply to these typical sorts of situations.

Tom Tugendhat: I want to start by addressing the point about disinformation, which is also about fake journalism. Hon. Members are absolutely right that that is a point that needs to be addressed by the Online Safety Bill, which I am sure is coming back—although I am but a Minister, so what would I know? I hope very much that it will. I accept that there may be a need for a drafting adjustment from "2022" to "2023". I certainly anticipate that acts that are fundamentally propaganda activities rather than acts by journalists need to be covered by the Online Safety Bill.

It is also worth saying that any journalist who is not acting as a journalist but is instead acting as a lobbyist—some people do have dual roles—could perfectly legitimately not be covered as a journalist, but be covered as a lobbyist for certain elements of their activity. That is also important.

The applicable registration requirements will apply to arrangements that have already been entered into, but where the activity has not yet been commenced or completed. It will not be post-dated, as it were, but it will go from today forward, and therefore activities ongoing from the moment the Bill comes into force will be covered.

It is worth saying that the scheme will be introduced through regulations once the Bill has received Royal Assent. That will be done with the appropriate administrative and investigative resources that have been established. Existing arrangements will need to be registered within three months from the initial off.

It is also worth pointing out that although the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East and I may sometimes share frustration about the volume of emails, neither of us would seek to silence legitimate campaigning by organisations. That is covered by the "public" element. If it is a public campaign—a campaign general to everyone and therefore not targeted at any one particular individual or asking one particular individual to act—it is not covered. It is already public, by definition, because we know who is doing it and who is paying for it.

Question put and agreed to.

New clause 14 accordingly read a Second time, and added to the Bill.

New Clause 15

MEANING OF "POLITICAL INFLUENCE ACTIVITY"

'(1) An activity is a "political influence activity" if—

(a) it is within subsection (2), and

(b) the purpose, or one of the purposes, for which it is carried out is the purpose of influencing a matter or person within subsection (3).

(2) The activities within this subsection are—

(a) making any communication to—

(i) a Minister of the Crown, a Northern Ireland Minister, a Scottish Minister or a Welsh Minister,

(ii) a Member of either House of Parliament, the Northern Ireland Assembly, the Scottish Parliament or Senedd Cymru, or an employee or other member of staff of such a Member,

(iii) an officer, trustee or agent of a UK registered political party or a member of such a party who exercises executive functions on behalf of the party,

(iv) a candidate at an election for a relevant elective office or a relevant Scottish elective office,

(v) a senior official or a special adviser, or

(vi) a person within a description of persons exercising functions on behalf of the Crown which is specified in regulations made by the Secretary of State;

(b) making a public communication, except where it is reasonably clear from the communication that it is made at the direction of the foreign principal;

(c) distributing money, goods or services to UK persons.

(3) The matters and persons within this subsection are—

(a) the conduct of an election or referendum in the United Kingdom,

(b) a decision of the government of the United Kingdom, a Northern Ireland Minister or Northern Ireland Department, the Scottish Ministers or the Welsh Ministers,

(c) the proceedings of either House of Parliament, the Northern Ireland Assembly, the Scottish Parliament or Senedd Cymru,

(d) the proceedings of a UK registered political party, or

(e) a Member of either House of Parliament, the Northern Ireland Assembly, the Scottish Parliament or Senedd Cymru.

(4) For the purposes of subsection (2)(b) a person makes a public communication if the person—

(a) publishes or disseminates information, a document or other article, or

(b) produces information, a document or other article for publication or dissemination.

(5) In this section—

"Northern Ireland Minister" includes the First Minister and the deputy First Minister;

"relevant elective office" and "relevant Scottish elective office" have the same meanings as in section 37 of the Elections Act 2022;

"senior official" means a member of the Senior Civil Service or a member of the Senior Management Structure of His Majesty's Diplomatic Service;

"special adviser" means a person who serves the government in a position in the civil service of the State and whose appointment to that position meets the requirements applicable to that position set out in section 15(1) of the Constitutional Reform and Governance Act 2010;

"UK person" has the same meaning as in section 2;

"UK registered political party" means a political party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000;

"Welsh minister" includes the First Minister, the Counsel General to the Welsh Government and a Deputy Welsh Minister.'—*(Tom Tugendhat.)*

This new clause defines "political influence activity" for the purposes of the new registration scheme.

Brought up, read the First and Second time, and added to the Bill.

New Clause 16

OFFENCE OF CARRYING OUT POLITICAL INFLUENCE ACTIVITIES PURSUANT TO UNREGISTERED FOREIGN INFLUENCE ARRANGEMENT

"(1) A person commits an offence if—

(a) the person carries out a political influence activity in the United Kingdom pursuant to a foreign influence arrangement required to be registered under section (Requirement to register foreign influence arrangements) (1),

(b) the arrangement is not registered, and

(c) the person knows that the arrangement is not registered.

(2) Subsection (1) does not apply to—

(a) a foreign power;

(b) a recognised news publisher;

(c) a person within section (Requirement to register foreign influence arrangements)(6)(b)."—*(Tom Tugendhat.)*

This new clause makes it an offence to carry out political influence activities under a foreign activity arrangement that should be, but is not, registered.

Brought up, read the First and Second time, and added to the Bill.

New Clause 17

REQUIREMENT TO REGISTER POLITICAL INFLUENCE ACTIVITIES OF FOREIGN PRINCIPALS

"(1) A foreign principal must not carry out political influence activities in the United Kingdom unless the activities are registered with the Secretary of State.

(2) The prohibition in subsection (1) does not apply to—

(a) a foreign power;

(b) a recognised news publisher;

(c) a person within section (Requirement to register foreign influence arrangements)(6)(b).

(3) A person who breaches the prohibition in subsection (1) commits an offence if the person knows that the activity in question is not registered."—*(Tom Tugendhat.)*

This new clause requires registration of political influence activities carried out by a foreign principal.

Brought up, read the First and Second time, and added to the Bill.

New Clause 18

GENERAL EXEMPTIONS

'(1) The registration requirements do not apply—

(a) in relation to an arrangement that is a UK arrangement;

(b) to the extent that an arrangement relates to the provision of legal services.

(2) The prohibitions do not apply—

(a) to activities carried out in accordance with a UK arrangement or a UK agreement;

(b) to the provision of legal services.

(3) A "UK arrangement" or "UK agreement" is an arrangement or agreement to which—

(a) the United Kingdom is a party, or

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

(4) The registration requirement in section (Requirement to register foreign activity arrangements)(1) does not apply to the extent that the arrangement relates to the provision of goods or services which are reasonably necessary to support the efficient functioning of—

(a) a diplomatic mission,

(b) a consular post, or

(c) the permanent mission to a UK-based international organisation of a country which is a member of the organisation,

(for example, the provision of catering or maintenance services).

(5) The registration requirements do not apply to persons who—

(a) are members of the family of a principal person forming part of the principal person's household, and

(b) make a foreign activity arrangement or a foreign influence arrangement pursuant to an activity carried out by the principal person in that capacity.

(6) The prohibition in section (Requirement to register political influence activities of foreign principals) does not apply to persons who—

(a) are members of the family of a principal person forming part of the principal person's household, and

(b) carry out an activity pursuant to an activity carried out by the principal person in that capacity.

(7) For the purposes of subsections (5) and (6)—

(a) "principal person" means a person who is a member of staff of—

(i) a diplomatic mission,

(ii) a consular post, or

(iii) the permanent mission to a UK-based international organisation of a country which is a member of the organisation;

(b) the members of the family of a principal person forming part of the principal person's household include a person who is living with the principal person as their partner in an enduring family relationship.

(8) "Member of staff"—

(a) in the case of a diplomatic mission, means a member of the mission within the meaning given by Article 1 of the Vienna Convention on Diplomatic Relations (set out in Schedule 1 to the Diplomatic Privileges Act 1964);

(b) in the case of a consular post, means a member of the consular post within the meaning given by Article 1 of the Vienna Convention on Consular Relations (set out in Schedule 1 to the Consular Relations Act 1968).

(9) The Secretary of State may by regulations make provision for further cases to which the registration requirements or the prohibitions do not apply.

(10) In this section—

"consular post" has the meaning given by Article 1 of the Vienna Convention on Consular Relations (set out in Schedule 1 to the Consular Relations Act 1968);

"diplomatic mission" is to be read in accordance with the Vienna Convention on Diplomatic Relations done at Vienna on 18 April 1961;

"legal services" has the meaning given by section 8(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

"the prohibitions" means the prohibitions in sections (Requirement to register activities of specified persons) and (Requirement to register political influence activities of foreign principals);

"the registration requirements" means the requirements in sections (Requirement to register foreign activity arrangements)(1) and (Requirement to register foreign influence arrangements)(1);

"UK-based international organisation" means an international organisation which has its headquarters in the United Kingdom and on which privileges and immunities have been conferred under section 1 of the International Organisations Act 1968.'—*(Tom Tugendhat.)*

This new clause creates exemptions to the registration requirements in NC11 and NC14 and the prohibitions in NC13 and NC16.

Brought up, and read the First time.

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

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

Government new clause 19—*Registration information.*

Government new clause 20—*Information notices.*

Government new clause 21—*Confidential material.*

Government new clause 25—*Publication and copying of information.*

Government new clause 28—*Interpretation.*

Tom Tugendhat: This group relates to scheme exemptions; the power for the Secretary of State to set what information needs to be registered with the scheme; the power for the Secretary of State to issue notices requesting information from registrants and those believed to be in scope of the requirements; provisions protecting confidential material from disclosure; the power for the Secretary of State to make regulations about the publication or copying of information provided through registration; and definitions for terms used in relation to FIRS. The majority of the new clauses in this group are substantive, so, as with the previous two groups, I will take each new clause in turn.

3 pm

I will now address new clause 18, which contains the proposed exemptions from the requirements to register under FIRS. These are in addition to the carve-outs we have already discussed for foreign powers and recognised news publishers. There are three areas of exemptions that I will walk through. First, I have already described the importance of ensuring that the scheme is compliant with the UK's obligations under international law regarding the diplomatic and consular relations between countries as well as international organisations. That is why a foreign power is not required to register with the scheme, and nor is an international organisation considered a foreign principal under the primary registration requirement.

These international obligations require the UK to accord full facilities for the performance of the functions of a mission or consular post. That is why, under the enhanced registration requirement, we propose exempting the registration of arrangements with a specified foreign person that concern the provision of reasonably necessary goods and services to an embassy, consulate or permanent representation to an international organisation headquartered in the UK. This is set out at subsection (4) and could include catering or building facilities. It is not necessary for the exemption to apply to the primary registration requirement, as that requirement is concerned only with the registration of political influence activities.

We also consider that our obligations are to avoid interference with the functioning of a diplomatic or consular post where partners, both married and unmarried, provide key support to the diplomat they accompany. A spouse—a married partner—will derive privileges and immunities from the accreditation of the principal person. However, in subsections (5) and (6), we have included a specific exemption to recognise the equal contribution to the functioning of the mission that can be provided by unmarried partners in an enduring relationship. That would apply to both the primary and enhanced registration requirements.

Secondly, we propose to exempt the provision of legal services such as advice and representation in legal proceedings, as set out in subsections (1) and (2). The right to a fair trial and the equitable administration of justice may depend on the confidentiality of the provision of legal services, which is generally protected by legal professional privilege, as discussed previously. However, the exemption does not cover all activities that could be undertaken by a legal professional as part of an

arrangement with a foreign principal, and activities that are not strictly legal services, such as lobbying, may still need to be registered.

Finally, the Government also propose an exemption under subsection (1) for arrangements that the UK, or anyone acting on behalf of the Crown in their official capacity, is party to. The exemption is also for activities that are in accordance with a UK agreement, as set out in subsection (2). Let me provide an example of each. First, if the UK Government or a person acting under the Crown were to invite a group of stakeholders, some of which were foreign companies, to participate in a policy-making discussion with individuals such as senior civil servants or a Government Minister—for example, discussing draft legislation or a policy proposal—the exemption would apply such that the foreign companies would not be required to register their activities carried out in the course of their participation. In agreeing to participate at the specific request of the United Kingdom Government, they would be party to an arrangement with the UK and taking direction from UK officials. Requiring the arrangements to be registered would disrupt significant amounts of routine UK Government activity of which the Government are already aware.

Secondly, the exemption also covers arrangements that flow from an agreement made with the UK. For example, the UK Government could enter into an agreement with a foreign country to provide overseas aid. The foreign country could enter into a subsequent arrangement with an NGO to discuss with the UK Government where the overseas aid should be provided to support prioritisation of the funding. As that activity would be carried out in accordance with the original agreement between the UK and the foreign country, the arrangement between the foreign country and the NGO would not be registerable. That will avoid registrations of activities and arrangements that the UK Government would already reasonably expect to take place as a result of arrangements that they have made. The Secretary of State will have the power, as provided by subsection (9), to add further exemptions by regulation as necessary in the future. This will ensure that where further exemptions are needed, they can be added in a timely manner while still enabling parliamentary scrutiny.

Hon. Members will note that there are several exemptions in similar international schemes—notably those in the United States and Australia—that are not included in FIRS. No exemption for registered charities or commercial activity is being proposed in FIRS, for example.

Those exemptions were included in those schemes as an attempt to narrow their scope. It is important, however, to take a cautious approach to exemptions, as they are capable of undermining the aims of the scheme and creating loopholes to be exploited. I refer again to the submission of the Australian Attorney General's Department to the ongoing review of the Australian scheme. One of the points of learning expressed in that submission is:

"Certain exemptions do not have a clear justification, have unclear scope, or lead to inconsistent outcomes for similar relationships."

As I explained in discussion on the previous two groups of new clauses, the Government's view is that it is the responsibility of all sectors to demonstrate transparency and accountability. The exemptions and exceptions under FIRS have been included to ensure that we do not undermine existing obligations or protections. On scope, we have taken alternative steps to ensure the proportionality of the scheme while ensuring that it meets its objective of deterring those who seek to engage in covert arrangements and activities. We have done so by not requiring communications activities to be registered where it is reasonably clear who they are being directed by, as well as by ensuring that entities, rather than their employees, are responsible for registration.

New clause 19 would give the Secretary of State the ability to make regulations to outline the information required from a person as they comply with their registration obligations under the scheme. It will be important to strike the balance between ensuring that sufficient information is provided by a registrant to deliver the scheme's objectives, while not creating a substantial administrative burden for those who will need to comply with the scheme's objectives. We have consulted on that point with sectors, and we have reviewed the approach taken by our international partners in the US and Australia.

We intend to keep the administrative burden of registration to a minimum. The process will require personal information that would allow the scheme management unit to differentiate between those who are registered—for example, the names and contact details of those who are party to the arrangement. Information will also need to be provided on the arrangements and areas of activity to be undertaken, either pursuant to the arrangement in question or by an entity that has been specified or is a foreign principal. The level of detail provided will depend on the specific context and nature of the arrangement, but we do not expect registrants to provide a detailed account of every activity that they undertake as part of the arrangement.

Finally, it is critical for the aims of the scheme that the information provided does not become misleading, false or deceptive. That is why, if there is a material change to the information provided, subsection (3) requires registrants to inform the Secretary of State within 14 days from the day on which the change takes effect. The Secretary of State would be able to issue guidance on what constitutes a material change. Although it will often be context-specific, the focus will be on whether the registered arrangement or type of activity has changed in a material way. To ensure that we are able to enforce that, we propose including an offence that would be committed if, as a result of a failure to notify the Secretary of State of a material change, the information provided is misleading, false or deceptive in a material way.

We consider it appropriate for that level of detail to be outlined in regulations, because it is largely administrative in nature. Any information provided to the scheme will be held in compliance with the Data Protection Act 2018 and UK general data protection regulation.

Stewart Hosie (Dundee East) (SNP): Will the Minister give way?

Tom Tugendhat: Very, very briefly.

Stewart Hosie: The Minister has just described subsection (6) of new clause 19, which states:

"A person who fails to comply with subsection (3) commits an offence if, as a result of the failure, the information provided…is misleading, false or deceptive in a material way."

That is absolutely correct. New clause 22, however, contains a range of offences that are committed if someone provides information that is "false, inaccurate or misleading". Is there a reason why we have "deception" in new clause 19 but "inaccurate" elsewhere? Is there a different burden of proof for deception and inaccuracy?

Tom Tugendhat: If the right hon. Gentleman will forgive me, I will come to that in a moment.

New clause 20 provides the Secretary of State with the ability to give a notice to a person who has registered with FIRS, or who should have registered with FIRS but has not. On receipt of an information notice, the person will be required to provide the information requested within the specified timeframe. Failure do so without a reasonable excuse will be an offence. Receiving an information notice does not mean that an individual is guilty of a FIRS offence or that they are engaged in wrongdoing. It is, fundamentally, a tool to provide reassurance that individuals are meeting their registration requirements.

Stuart C. McDonald: I have a question about the new clause, and it may save the Minister from having to make a speech. With power, unlike with other notice powers, there seems to be virtually no limit on the nature of information that can be requested. There is no judicial oversight or right to challenge. It seems to be an incredibly broadly drafted power, and I do not understand why.

Tom Tugendhat: The hon. Member for Halifax has raised the question of oversight on various occasions and I have already committed to discussing it with her, so I will come back to that point. As for the nature of the information required, that will depend on the nature of the business. It is broad, as the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East correctly identified.

Where a person is suspected of committing a FIRS offence, the information gathered as a result of these notices can be used to support the investigation and prosecution of a FIRS offence. New clause 21 makes provisions clarifying that a person does not have to disclose any information that is protected by legal professional privilege or confidential journalistic material, or that would require them to identify or confirm a source of journalistic information.

Legal professional privilege, commonly referred to as LPP, or as confidentiality of communications in Scotland, is a fundamental tenet of UK law and protects those seeking legal advice and representation in the UK. It ensures that material such as communications between clients and their lawyers—and, in some circumstances, third parties—is protected from disclosure. LPP does not arise where a lawyer's assistance has been sought to further a crime or fraud. Any disclosure requirement in FIRS that could have the effect of breaching LPP would fundamentally infringe the rights of individuals to receive confidential legal advice, where that advice is not for the purposes of enabling a crime, and their rights to a fair hearing.

There is also legal precedent for protecting against the disclosure of confidential journalistic material or sources of journalistic information, unless the power to require disclosure has been subject to prior or immediate after-the-event judicial or other independent or impartial scrutiny. The Government consider that protections for such material should also be included in FIRS to ensure adequate protections for journalists and their sources. The protections will apply even if a journalist or a recognised news publisher has to register under the enhanced tier of the scheme. The Government propose this new clause to ensure that FIRS upholds the rule of law and fair access to justice. It will ensure that there is adequate protection for confidential journalistic material and information related to journalistic sources.

New clause 25 allows the Secretary of State to make regulations about the publication or copying of information provided through registration. The ability to publicise certain information registered with the scheme is vital to delivering the aims of FIRS, by ensuring that the influence of foreign powers and entities is open and transparent. We intend to publish information registered under the primary or enhanced requirements that relates to the carrying out of political influence activities. The regulation-making powers also provide the flexibility to publish information registered about a wider range of activity under the enhanced requirements.

As I said earlier, however, that is to be determined alongside the decision to specify a foreign power or entity subject to a foreign power or control. Ensuring information can be publicised where it relates to the carrying out of political influence activities will help to strengthen the resilience of the UK political system against covert foreign influence. After all, sunlight is the best disinfectant. Not only will this ensure that the UK public are better informed of the scale and extent of foreign influence in our political affairs, but it will put a person actively seeking to avoid being transparent in a difficult position. Either they comply with the scheme's requirements and expose their arrangements or activities, or they face potential enforcement action.

The information published will be limited to what is necessary to achieve the transparency aims of the scheme: for example, the name of the registrant, which could be an individual or an entity; the foreign power or principal for which political influence activities are to be carried out; or the nature and duration of such activity. Subsection (2) would allow the Secretary of State to specify or describe information or material that is not to be published. That is likely to include a situation where publishing the information would threaten the interests of national security, put an individual's safety at risk or risk disclosure of commercially sensitive information.

Subsection (1)(b) would allow the Secretary of State to make provision for the copying of information provided through registration. It an important provision that will ensure data can be managed by the scheme management unit and shared with other enforcement agencies when necessary. As already mentioned, data will be managed in accordance with the Data Protection Act 2018 and GDPR. As with other parts of the registration scheme, we consider it appropriate for this level of detail to be outlined through regulations, which will also provide the Government with the flexibility to adapt should there be a need to make changes to what information is to be provided in order to meet the objectives of the scheme.

New clause 28 provides the definitions relevant to the registration scheme requirements. As we have discussed these terms in detail in relation to the requirements to which they apply, I do not consider that further examination is needed.

[Tom Tugendhat]

In my opening remarks, I explained that any arrangement with the Republic of Ireland or with a body incorporated or association under the laws of Ireland will be exempt from registration, as are activities to be carried out by such entities. This, again, ensures that the letter and spirit of the Belfast/Good Friday accord are protected, by avoiding interference with the right of citizens in Northern Ireland to identify as Irish. To achieve that in the drafting, subsection (2) clarifies that the Republic of Ireland is not to be considered a foreign power for the purposes of FIRS.

3.15 pm

Finally, subsection (3) makes provisions to ensure that where a person, company or entity is exempt from FIRS, that exemption extends to the employees or office holders of that entity acting in their official capacity. We consider that requiring these individuals to register with the scheme would be disproportionate if their employer was themselves exempt. I ask the Committee to support the six amendments that I have outlined.

Holly Lynch: There is an awful lot in this group that is still to be determined in regulations, which is always a shame because it does not allow for the same scrutiny as when we consider everything as a package.

Government new clause 18 creates exemptions to the registration requirements laid out in the previous clauses. There is merit to each of those exemptions, but my concern is that we are creating a grey area, particularly when a person engages in both exempt activity and registrable activity. For example, I note that in subsection (4), we do not require those who support the functioning of a diplomatic mission or consular post to register. However, we know that we have potential weaknesses here following the case of one of our own British embassy security staff, who was arrested and charged in Germany with spying for Russia under the Official Secrets Act 1911; it is good to know that that legislation is not totally out of date. That raises the question: do we go as far as we need to on the networks surrounding the vital work of embassies, and can we ensure that an exemption by role does not automatically exempt activity that we would certainly want to know about?

I have had the opportunity to discuss with officials my mixed views about the complete exemption of family members of a principal person under subsections (5) and (6) of new clause 18. While it is right to create a distinction between those we are interested in and their family members, I worry that if we are explicit about this in legislation, we are presenting them as perfect potential spies to the regimes that their principal family member is associated with, bearing in mind that we are dealing with some fairly unscrupulous hostile states.

In new clause 19, again, we are waiting for a great deal more information to be set out in regulation. Under subsection (3), where there is a material change to any information already registered, the Secretary of State has to be notified within 14 days of the material change's coming into effect. Why 14 days after? Why not in advance of the material change, as is the case in other clauses—for example, within 10 days of the agreement being made when first registering?

Subsection (6) states that a person commits an offence if

"the information provided to the Secretary of State in relation to the registered arrangement or registered activity is misleading, false or deceptive in a material way."

To come back to my earlier point, who will be undertaking those investigations? We are presumably creating a whole range of new responsibilities here, so who will lead that work, and will they have the corresponding resources?

Government new clause 20 permits the Secretary of State to give a notice to a person to provide information in connection with arrangements or activities registrable under the registration scheme. Subsection (3) states that the Secretary of State may permit an information notice

"requiring the person to whom it is given to supply the information specified in the notice."

I have no doubt that information notices will be a powerful tool, but there is still a lot to be specified in the new clause.

The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East made a good point about oversight. I want to push the Minister on what means the public will have to query or raise concerns about an arrangement. If someone is aware of an arrangement that has either not been registered or not registered in full, what mechanism is there for them to raise that with the Home Office?

One of the examples that we discussed yesterday with officials was if a journalist writes an article that appears to be a blatant sales pitch for a hostile state. It would probably take an information notice to get to the bottom of whether it was commissioned by a hostile state, but how would a member of the public raise such a query? How would an employee of a company who is growing increasingly concerned about the nature of a joint project that they are working on raise those concerns with the Home Office? Currently, the mechanism is lacking from the provisions. I would be grateful to hear how the Minister intends to address that concern.

Government new clause 25 allows the Secretary of State to make regulations in relation to the publication and copying of information provided to the Secretary of State under the registration provisions. What really worries me about the registration scheme is that submissions will be made to the Home Office and they will go into some sort of electronic black hole and never see the light of day. We will not properly assess the arrangements or activities to see whether we are worried about them, and we will not publish them for months because we do not have the right back office resources to do so.

Any MP who has casework with the Home Office on almost any front—from visas to asylum and the national referral mechanism—will have experienced a similar service, despite, I have no doubt, the best efforts of civil servants. Can the Minister confirm that the register will be kept up to date in relative real time, and that it will be published online, which I think is what he said in his opening remarks? Can he also suggest a target turnaround time between registration and publication, which I am sure would be welcome and would set an early standard for what people can expect from the scheme?

Stuart C. McDonald: I will briefly emphasise how incredibly broadly and dangerously drafted new clause 20 is. All sorts of organisations will fall within the scope of the provisions; it could be a local business or a UK non-governmental organisation. Unless I am missing

something, under the clause they can be asked by the Secretary of State in an information notice for virtually any information that she fancies helping herself to, with virtually no restriction whatsoever.

The new clause does not even require a link to some sort of ongoing investigation. There is no court oversight of the nature of the request, and there is absolutely no mechanism to challenge or appeal against any sort of information notice. If someone has been handed an absurd information notice and they refuse to comply with it, they can end up being prosecuted. As it stands, new clause 20 seems to be incredibly difficult and should be revisited.

Tom Tugendhat: I will come to the point made by the right hon. Member for Dundee East. He is absolutely right. Forgive me—that is a drafting error, which we will look at and tidy up.

On diplomatic staff, the hon. Member for Halifax makes a fair point. This is, however, diplomatic staff and their spouses acting in an official capacity—when they are conducting duties on behalf of their nation, and on behalf of the mission that they are sent to support. It is not supposed to be a blanket exemption; it is merely when they are acting in their role.

Who will manage the unit? A scheme management unit is expected to sit within the Home Office—that is, at least, the current plan—which will administer the scheme. It is unlikely that every registration will need to be scrutinised. More likely, the register will be a resource for public scrutiny. That is where the right hon. Member for North Durham, who is not currently present, was absolutely right: sunlight is the best disinfectant, and indeed disinfectant is the best sunlight.

Jess Phillips (Birmingham, Yardley) (Lab): I am sure that the Minister has heard, just as I have, about cuts to Government Department budgets. This being a new additional spend, I wonder whether there has been any assessment of the cost of it, and whether he thinks the cost of it will survive.

Tom Tugendhat: As with the whole Bill, the way to think about it is as a public register, and because it is a public register the scrutiny will be provided, no doubt, by our friends in His Majesty's press corps, who will look through every detail, as they look through every detail of the Register of Members' Financial Interests and ensure that they keep us on our toes. They will no doubt do the same for businesses.

I will have a look at the question of the 14 days as opposed to 10. I am not quite sure why there is that difference, so I will come back to the hon. Member for Halifax on that, and with further details on the management of the scheme.

Question put and agreed to.

New clause 18 accordingly read a Second time, and added to the Bill.

New Clause 19

Registration information

"(1) The Secretary of State may by regulations make provision about the information a person is required to provide to the Secretary of State when registering—

(a) a foreign activity arrangement under section (Requirement to register foreign activity arrangements),

(b) an activity under section (Requirement to register activities of specified persons),

(c) a foreign influence arrangement under section (Requirement to register foreign influence arrangements), or

(d) a political influence activity under section (Requirement to register political influence activities of foreign principals).

(2) Regulations under subsection (1) may, in particular, require the person to provide information about any arrangements made by the person pursuant to the arrangement or activity which is required to be registered.

(3) Where there is a material change to any information provided to the Secretary of State under this section or section (Information notices) in relation to a registered arrangement or a registered activity, the person who registered the arrangement or activity must inform the Secretary of State of the change before the end of the period of 14 days beginning with the day on which the change takes effect.

(4) The Secretary of State—

(a) may by regulations make provision about the information to be provided to the Secretary of State under subsection (3),

(b) may issue guidance about what may or may not constitute a material change.

(5) The provision which may be made by regulations under this section includes provision about the form in which information is to be provided.

(6) A person who fails to comply with subsection (3) commits an offence if, as a result of the failure, the information provided to the Secretary of State in relation to the registered arrangement or registered activity is misleading, false or deceptive in a material way."*—(Tom Tugendhat.)*

This new clause provides for the information to be provided when registering arrangements and activities under the registration scheme.

Brought up, read the First and Second time, and added to the Bill.

New Clause 20

Information notices

"(1) The Secretary of State may give an information notice to—

(a) a person who is a party to a foreign activity arrangement registered under section (Requirement to register foreign activity arrangements);

(b) a person who is a party to a foreign activity arrangement which is required to be, but is not, registered under that section;

(c) a person who has registered activities under section (Requirement to register activities of specified persons);

(d) a person the Secretary of State reasonably believes to be carrying out an activity in breach of the prohibition in that section.

(2) The Secretary of State may give an information notice to—

(a) a person who is a party to a foreign influence arrangement registered under section (Requirement to register foreign influence arrangements);

(b) a person who is a party to a foreign influence arrangement which is required to be, but is not, registered under that section;

(c) a person who has registered activities under section (Requirement to register political influence activities of foreign principals);

(d) a person the Secretary of State reasonably believes to be carrying out a political influence activity in breach of the prohibition in that section.

(3) An information notice is a notice requiring the person to whom it is given to supply the information specified in the notice.

(4) An information notice must—

(a) specify the form in which the information must be supplied, and

(b) specify the date by which the information must be supplied.

(5) Where an information notice has been given to a person, the Secretary of State may cancel it by giving written notice to that effect to the person.

(6) The Secretary of State may by regulations make provision about—

(a) the minimum period between the date on which an information notice is given and the date specified under subsection (4)(b);

(b) other matters which may be specified in an information notice;

(c) the cancellation of information notices.

(7) A person commits an offence if, without reasonable excuse, the person fails to comply with an information notice.

(8) The Secretary of State may not give an information notice to a foreign power."—*(Tom Tugendhat.)*

This new clause permits the Secretary of State to give a notice to a person to provide information in connection with arrangements or activities registrable under the registration scheme.

Brought up, read the First and Second time, and added to the Bill.

New Clause 21

CONFIDENTIAL MATERIAL

"(1) Nothing in this Part is to be taken to require any person to disclose any information that the person is entitled to refuse to disclose in legal proceedings on grounds of legal professional privilege (in Scotland, confidentiality of communications).

(2) Nothing in this Part is to be taken to require any person to disclose confidential journalistic material or to identify or confirm a source of journalistic information.

(3) In this section—

"confidential journalistic material" has the same meaning as in section 264 of the Investigatory Powers Act 2016;

"source of journalistic information" has the same meaning as in section 263 of that Act."—*(Tom Tugendhat.)*

This new clause ensures that the obligations in connection with the registration scheme do not affect legal professional privilege or require the disclosure of confidential journalistic material.

Brought up, read the First and Second time, and added to the Bill.

New Clause 22

OFFENCE OF PROVIDING FALSE INFORMATION

"(1) A person commits an offence if—

(a) the person provides information to the Secretary of State under section (Registration information) or (Information notices) in connection with a foreign activity arrangement, and

(b) the information is false, inaccurate or misleading in a material way.

(2) A person commits an offence if—

(a) the person provides information to the Secretary of State under section (Registration information) or (Information notices) in connection with an activity which is required to be registered under section (Requirement to register activities of specified persons), and

(b) the information is false, inaccurate or misleading in a material way.

(3) A person commits an offence if—

(a) the person provides information to the Secretary of State under section (Registration information) or (Information notices) in connection with a foreign influence arrangement,

(b) the information is false, inaccurate or misleading in a material way, and

(c) the person knows, or ought reasonably to know, that the information is false, inaccurate or misleading in a material way.

(4) A person commits an offence if—

(a) the person provides information to the Secretary of State under section (Registration information) or (Information notices) in connection with a political influence activity which is required to be registered under section (Requirement to register political influence activities of foreign principals),

(b) the information is false, inaccurate or misleading in a material way, and

(c) the person knows, or ought reasonably to know, that the information is false, inaccurate or misleading in a material way."—*(Tom Tugendhat.)*

This new clause creates offences of providing false or misleading information in connection with the registration scheme.

Brought up, and read the First time.

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

The Chair: With this it will be convenient to discuss Government new clause 23—*Offence of carrying out activities under arrangements tainted by false information.*

Tom Tugendhat: I turn to new clauses 22 and 23, which relate to the offence of providing false information and of carrying out activities under arrangements tainted by false information.

New clause 22 would create offences for where a registrant provides false or misleading information under the primary registration requirement or the enhanced registration requirement, or in response to an information notice. These offences are important to reduce the risk that the person is able to appear as if they have complied with the obligations under the scheme through the provision of false or misleading information. The delivery of the scheme's objectives is undermined if a registrant is able to provide false or misleading information through registration or in response to an information notice without consequence. We should expect that those who seek to obfuscate their arrangements and activities will attempt to that, and we must be able to respond.

Such offences are not new or novel—indeed, they are common to requirements that place a positive obligation on members of the public to provide information. As with other offences we have considered, those that relate to the primary registration requirement have a higher bar for the prosecution to meet: that the registrant knows or ought reasonably to know that the information is false, inaccurate or misleading in a material way. By comparison, offences of the provision of false information in relation to the enhanced measure are to be strict liability. It should not be acceptable that such information is provided in relation to activity carried out for a specified foreign power or entity.

New clause 23 creates offences for carrying out activities under a registrable arrangement where false or misleading information has been provided in connection with the arrangement. I have already explained that the requirement to register an arrangement under the primary or enhanced registration requirements falls on the person who has made an arrangement with the specified foreign power or entity, or foreign principal.

We have also discussed the possibility that the registration of an arrangement could be made with false or misleading information: for example, where a person wants to appear as if they have complied with their registration obligations but is actively trying to conceal the true nature of their arrangements or activities.

These additional offences are important because they will allow for enforcement action to be taken against those who are acting pursuant to a falsely registered arrangement and are either complicit or in a position where they ought reasonably to know that the arrangement has been registered. As I explained in relation to the offences for carrying out activity pursuant to an unregistered arrangement, this will reduce the likelihood that unregistered activity is carried out, as well as providing a means of disrupting all levels of an organisation that has been identified as engaged in a covert arrangement or activity.

I want to reassure hon. Members that where an individual could not reasonably know that the information registered relating to the arrangement is false or misleading, they will not be prosecuted. It will be up to the courts to decide on a case-by-case basis whether someone charged with an offence ought reasonably to have known about the false information. I commend the new clause to the Committee.

Holly Lynch: It is right that new clauses 22 and 23 set out new offences that are created as a means of promoting compliance with the registration scheme. On that basis, we are satisfied that new offences are in order.

Question put and agreed to.

New clause 22 accordingly read a Second time, and added to the Bill.

New Clause 23

OFFENCE OF CARRYING OUT ACTIVITIES UNDER ARRANGEMENTS TAINTED BY FALSE INFORMATION

"(1) A person commits an offence if—

(a) the person carries out an activity in the United Kingdom pursuant to a foreign activity arrangement required to be registered under section (Requirement to register foreign activity arrangements)(1),

(b) information provided to the Secretary of State under section (Registration information) or (Information notices) in connection with the arrangement, whether by the person or by another person, is false, inaccurate or misleading in a material way, and

(c) the person knows, or ought reasonably to know, that the facts are as mentioned in paragraph (b).

(2) A person commits an offence if—

(a) the person carries out a political influence activity in the United Kingdom pursuant to a political influence arrangement required to be registered under section (Requirement to register foreign influence arrangements) (1),

(b) information provided to the Secretary of State under section (Registration information) or (Information notices) in connection with the arrangement, whether by the person or by another person, is false, inaccurate or misleading in a material way, and

(c) the person knows, or ought reasonably to know, that the facts are as mentioned in paragraph (b).

(3) Subsections (1) and (2) do not apply to a foreign power.

(4) Subsection (2) does not apply to—

(a) a recognised news publisher;

(b) a person within section (Requirement to register foreign influence arrangements)(6)(b).".—*(Tom Tugendhat.)*

This new clause creates offences of carrying on activities under a registrable arrangement where false of misleading information has been provided in connection with the arrangement.

Brought up, read the First and Second time, and added to the Bill.

New Clause 24

OFFENCES: PENALTIES

"(1) A person who commits a foreign activity offence is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine (or both);

(b) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or to a fine (or both);

(c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum (or both);

(d) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both).

(2) "Foreign activity offence" means—

(a) an offence under section (Requirement to register foreign activity arrangements)(10);

(b) an offence under section (Offence of carrying out activities under an unregistered foreign activity arrangement);

(c) an offence under section (Requirement to register activities of specified persons)(3);

(d) an offence under section (Registration information)(6) committed in relation to a foreign activity arrangement registered under section (Requirement to register foreign activity arrangements) or an activity registered under section (Requirement to register activities of specified persons);

(e) an offence under section (Information notices)(7) committed in relation to an information notice given under section (Information notices)(1);

(f) an offence under section (Offence of providing false information)(1) or (2);

(g) an offence under section (Offence of carrying out activities under arrangements tainted by false information)(1).

(3) A person who commits a foreign influence offence is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both);

(b) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or to a fine (or both);

(c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum (or both);

(d) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both).

(4) "Foreign influence offence" means—

(a) an offence under section (Requirement to register foreign influence arrangements)(8);

(b) an offence under section (Offence of carrying out political influence activities pursuant to unregistered foreign influence arrangement);

(c) an offence under section (Requirement to register political influence activities of foreign principals)(3);

(d) an offence under section (Registration information)(6) committed in relation to a foreign influence arrangement registered under section (Requirement to register foreign influence arrangements) or a political influence activity registered under section (Requirement to register political influence activities of foreign principals);

(e) an offence under section (Information notices)(7) committed in relation to an information notice given under section (Information notices)(2);

(f) an offence under section (Offence of providing false information)(3) or (4);

(g) an offence under section (Offence of carrying out activities under arrangements tainted by false information)(2).".—*(Tom Tugendhat.)*

This new clause sets out the penalties for the offences created under the registration scheme.

Brought up, and read the First time.

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

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

Government new clause 26—*Offences: supplementary provision.*

3.30 pm

Tom Tugendhat: New clauses 24 and 26 deal with the penalties and supplementary provisions for the offences under the scheme. I start by reminding the Committee of one of the scheme's aims: to deter foreign power use of covert arrangements, activities and proxies.

FIRS will play an important role in countering state threats. It is therefore important that the scheme should have penalties that reflect the seriousness of non-compliance within that context. The new clause makes provision for two separate maximum penalties for the two parts of the scheme. It is proposed that any offence committed under the primary registration requirement should be capable of attracting a custodial penalty of up to two years on indictment, or a fine; that is compared with an offence committed under the enhanced registration requirement, which we propose should be capable of attracting a custodial penalty of up to five years on indictment, or a fine.

The availability of a custodial penalty is a necessary reflection of the seriousness of seeking to hide or obfuscate influence or activity in the United Kingdom directed by foreign powers or entities. The penalty must be taken seriously by those engaged in the state threats activity that we are trying to counter; that would be unlikely if, for example, we were to impose only financial penalties. The offences under the enhanced measure would be capable of a higher maximum custodial penalty. This distinction is to reflect the seriousness of hiding or obfuscating arrangements and activities, carried out on behalf of foreign powers or entities, that the Secretary of State has identified as being necessary to specify in order to protect the safety or interests of the United Kingdom. I have covered the issue to some extent through my earlier explanations about the differing thresholds for offences.

I will not spend long speaking to new clause 26, given that it extends the application of clauses 28 and 29 to the offences under this part and mirrors the approach taken to exclude the public from legal proceedings in clause 31—clauses that have all been debated by the Committee already.

The new clause has several functions. First, it extends the application of clause 28 to this part so that the officers of bodies corporate and other bodies may be held liable for offences committed by those bodies. Given that a body corporate or other bodies can make either a foreign activity arrangement or foreign influence arrangement, it is crucial for the enforceability of the scheme that these bodies and their officers can be held liable should they breach the conditions set out under these provisions.

Secondly, the new clause extends the application of clause 29 to an offence under this part that is capable of being committed outside the UK. In the context of FIRS, that relates to where a foreign activity or foreign influence arrangement has been made outside the UK but has not been registered within the 10-day period. Although the activity pursuant to the arrangement must take place in the UK, the offence for failing to register can therefore be committed overseas. We have already debated the necessity of this in respect of the new clauses relating to the registration of arrangements.

Finally, this provision grants the court the power to exclude the public from proceedings for offences under this part, where necessary in the interests of national security; it is important to be clear, however, that this does not apply to the passing of a sentence. Excluding the public from proceedings might be necessary in circumstances where the Crown needs to adduce sensitive evidence as part of the prosecution—evidence that may be harmful to national security if shared more widely with the public.

For example, if a person provided false information in connection with an activity that is required to be registered in relation to a foreign influence arrangement, it might be necessary to rely on sensitive evidence to demonstrate why that information was considered to be false and what the person's actual activities included. The provision would ensure that such sensitive evidence could be examined without the public being present. The decision to exclude the public would be made by the court, not the prosecution, and it is important to note that the power does not grant the use of closed material proceedings.

Holly Lynch: Government new clause 24 lays out the penalties for offences committed under the registration scheme. Subsection (1) states that a person who commits a foreign activity offence is liable on conviction or indictment to a maximum five years of imprisonment. Subsection (3) states that a person who is found to have committed a foreign influence offence is liable to a maximum two years of imprisonment. My hon. Friend the Member for Garston and Halewood raised this point yesterday with officials: why the marked difference in sentencing between the different strands of activity?

Subsection (1) of Government new clause 26 states that officers of bodies corporate may be held liable for offences committed by those bodies in relation to the registration scheme. That is a welcome measure that will ensure that corporate officers and organisations will remain accountable to the registration scheme. Like the inclusion of body corporate offences in part 1 of the Bill, it reflects the seriousness with which UK businesses must treat the provisions.

Subsection (3) provides that the public may be excluded from proceedings for an offence under part 1. As the Minister said, we discussed at previous stages of the Bill that it is right to have that option where matters prejudicial to the UK's national security may need to be cited for prosecution. However, we stress that it is a power that should be exercised only when necessary.

Tom Tugendhat: The difference between the tariffs is purely down to the different importance of a general registration and an enhanced registration.

Question put and agreed to.

New clause 24 accordingly read a Second time, and added to the Bill.

New Clause 25

PUBLICATION AND COPYING OF INFORMATION

"(1) The Secretary of State may by regulations make provision about—

(a) publication of information provided to the Secretary of State under this Part;

(b) copying of information provided to the Secretary of State under this Part.

(2) The power under subsection (1) includes in particular power to make provision about a description of information or material which is not to be published."—*(Tom Tugendhat.)*

This new clause allows the Secretary of State to make regulations in relation to the publication and copying of information provided to the Secretary of State under the registration provisions.

Brought up, read the First and Second time, and added to the Bill.

New Clause 26

OFFENCES: SUPPLEMENTARY PROVISION

"(1) Section 28 (offences by body corporate etc) applies in relation to offences under this Part as it applies in relation to offences under Part 1.

(2) Section 29(1) and (3) to (5) (offences committed outside the United Kingdom) applies in relation to offences under this Part as it applies in relation to offences under Part 1.

(3) If it is necessary in the interests of national security, a court may exclude the public from any part of proceedings for an offence under this Part, except for the passing of sentence."—*(Tom Tugendhat.)*

This new clause provides that officers of bodies corporate and other bodies may be held liable for offences committed by those bodies, that offences may be committed outside the United Kingdom, and that a court may exclude the public from proceedings for offences.

Brought up, read the First and Second time, and added to the Bill.

New Clause 27

ANNUAL REPORT

"(1) The Secretary of State must, as soon as is practicable after the end of each relevant period—

(a) prepare a report in relation to that period, and

(b) lay a copy of the report before Parliament.

(2) The report must provide details of—

(a) the total number of arrangements registered with the Secretary of State under section (Requirement to register foreign activity arrangements) or (Requirement to register foreign influence arrangements),

(b) the number of arrangements registered with the Secretary of State under section (Requirement to register foreign activity arrangements) or (Requirement to register foreign influence arrangements) during the relevant period,

(c) the total number of specified persons and foreign principals who have registered activities with the Secretary of State under section (Requirement to register activities of specified persons) or (Requirement to register foreign influence activities of foreign principals),

(d) the number of specified persons and foreign principals who have registered activities with the Secretary of State under section (Requirement to register activities of specified persons) or (Requirement to register foreign influence activities of foreign principals) during the relevant period,

(e) the number of information notices issued under section (Information notices) during the relevant period,

(f) the number of persons charged with an offence under this Part during the relevant period, and

(g) the number of persons convicted of an offence under this Part during the relevant period.

(3) 'Relevant period' means—

(a) the period of 12 months beginning with the day on which this section comes into force, and

(b) each subsequent period of 12 months."—*(Tom Tugendhat.)*

This new Clause requires the Secretary of State to provide an annual report to Parliament on matters relating to the registration scheme.

Brought up, and read the First time.

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

New clause 27 requires the Secretary of State to prepare and publish an annual report to Parliament on the operation of FIRS. I have already spoken about the importance of transparency. Indeed, transparency is essential to the functioning not only of our democracy but of our entire state. The hon. Member for Halifax raised that issue on numerous occasions, and I have committed to working with her. The commitment to publish information about the scheme's operation will help to ensure that the UK public is more informed about the scale and extent of foreign influence in our political affairs, as well as activity being undertaken for specified foreign powers or entities.

The information that the Secretary of State would be required to provide is as follows: the total number of foreign activity and foreign influence arrangements registered with the Secretary of State; the number of foreign activity and foreign influence arrangements registered with the Secretary of State over the previous year; the total number of specified persons and foreign principals who have registered activities with the Secretary of State; the number of specified persons and foreign principals who have registered activities with the Secretary of State over the previous year; the number of information notices issued over the previous year; the number of persons charged with a FIRS-related offence over the previous year; and the number of persons convicted of a FIRS-related offence over the previous year. The new clause acts as a safeguard by inviting parliamentary and public scrutiny of the operation of FIRS.

Holly Lynch: I thank the Minister for that explanation. We very much welcome new clause 27. My understanding is that the different elements of the scheme could come into effect at different times. Will the Minister confirm that if, for example, the requirement to register foreign influence arrangements becomes operational before the requirement to register foreign activity arrangements, or vice versa, the annual report will be due a year from the start date of the specific scheme, not a year after both parts of the scheme come into effect?

Tom Tugendhat: Yes, there is no question but that it should be according to when the first part of the scheme comes into effect, not when the whole scheme is done.

Maria Eagle: Briefly, I welcome the provisions for an annual report to give information to Parliament. I wonder whether the Minister might consider extending the requirements, when it comes to those who are charged and convicted, to include a need to make it clear which countries they come from, to give an overall view on the extent to which there are difficulties with particular places?

Tom Tugendhat: I take that point in the spirit in which it was made. I think that makes sense, but it should be possible to refer back through the registrations. If registrations have not been made, I take her point entirely.

Question put and agreed to.

New clause 27 accordingly read a Second time, and added to the Bill.

New Clause 28

INTERPRETATION

'(1) In this Part—

"foreign activity arrangement" has the meaning given by section (Requirement to register foreign activity arrangements);

"foreign influence arrangement" has the meaning given by section (Requirement to register foreign influence arrangements);

"foreign power" has the same meaning as in Part 1 (see section 25), subject to subsection (2);

"foreign principal" has the meaning given by section (Requirement to register foreign influence arrangements);

"political influence activity" has the meaning given by section (Meaning of "political influence activity");

"recognised news publisher" has the meaning given by section (Requirement to register foreign influence arrangements);

"registered activity" means an activity registered with the Secretary of State under section (Requirement to register activities of specified persons) or (Requirement to register political influence activities of foreign principals);

"registered arrangement" means an arrangement registered with the Secretary of State under section (Requirement to register foreign activity arrangements) or (Requirement to register foreign influence arrangements);

"specified person" has the meaning given by section (Requirement to register foreign activity arrangements).

(2) For the purposes of this Part references in section 25 to a foreign State, or a foreign country or territory, do not include the Republic of Ireland.

(3) Any provision of this Part which does not apply in relation to a person ("P") does not apply in relation to—

(a) a person who holds office in or under, or is an employee or other member of staff of, P (acting in that capacity);

(b) a person whom the Secretary of State reasonably considers to be exercising functions on behalf of P as if they are a person who holds office in or under, or as if they are an employee or other member of staff of, P (acting in that capacity).' —*(Tom Tugendhat.)*

This new clause contains definitions relevant to the registration scheme.

Brought up, read the First and Second time, and added to the Bill.

New Clause 4

PROCEEDINGS RELATING TO SAFETY OR INTERESTS OF THE UNITED KINGDOM

"(1) This section applies where a court is considering proceedings under Part 1 of this Act, where the proceedings involve the safety or interests of the United Kingdom.

(2) In proceedings to which this section applies, the court must take account of how the interests of the Secretary of State or of the Government of the United Kingdom may differ from the interests of the United Kingdom, in order to satisfy itself that the interests of the United Kingdom have been appropriately identified and considered."—*(Holly Lynch.)*

Brought up, and read the First time.

Holly Lynch: I beg to move, That the clause be read a Second time.

New clause 4 is an attempt to make a clear distinction between what is in the Government's interest and what is in the national interest, so that the two cannot be conflated. There are a number of new offences created under part 1 of the Bill, and a key condition running throughout those offences is that a person knows, or ought reasonably to know, that their conduct is prejudicial to the safety or interests of the United Kingdom. There are other conditions that must be met, with the foreign power condition perhaps being the most substantial.

The aim of new clause 4 is to ensure that a court considering proceedings in relation to part 1 offences must take account of how the interests of the Secretary of State, or the Government of the United Kingdom, may be slightly separate from the interests of the United Kingdom, in order to satisfy itself that the interests of the United Kingdom have been appropriately identified and considered. Members will recognise that there is already a difference between the safety of the United Kingdom and the interests of the United Kingdom, with the new offences encompassing both. I suspect there will be a great deal of consensus on safety, but to explicitly define and agree on interests I imagine would be much harder.

We worked through various examples as part of the deliberations on part 1 offences. One such example was whether, if the Government faced deliberate disruption enacting policy they deemed to be in the national interest, that would be enough to meet the threshold? If, for example, a deportation flight—the stuff of the Home Secretary's dreams—was prevented from taking off because of protesters, would that be enough to meet the prejudicial to the national interest threshold? The Government might wish to argue that case, although it would be far from compromising national security.

We got some assurances from the Minister's predecessor that national security laws would not transgress into conduct that may be irritating for the Government but lawful, or into prosecuting other criminal offences by treating them as unduly having national security implications. Beyond the specifics of the new offences created by the Bill, we also believe that new clause 4 would establish in principle the distinction between the Government's political interests and the country's national security.

I am explicit that the new clause, alongside new clause 5 and new clause 29, have at least in part been shaped by the meeting that we now have confirmation took place between the former Prime Minister, the right hon. Member for Uxbridge and South Ruislip (Boris Johnson),

when he was Foreign Secretary, and former KGB officer Alexander Lebedev, at the height of the Salisbury poisoning. It is worth remembering that we did not have confirmation of that meeting when the Bill Committee first started, and the right hon. Member was still the Prime Minister. I do not know if that is an indication of how quickly things move in politics or of how long this Bill Committee has been going on for. However, it is the sort of example that warrants the separating out of Government and individual Minister's political interests and national security interests. It has become too easy to suggest that answers could not be provided on that matter and others for security reasons, when actually getting to the bottom of what had gone on was very much in the national interest. It may not have been in the Government's political interest, but that is the distinction that is important to put on a proper statutory footing.

3.45 pm

Before the then Prime Minister confessed to the Liaison Committee that the meeting had indeed taken place, followed up with confirmation in writing, I had asked the question seven times either in writing or orally in the chamber, as well as asking other questions surrounding the issue. On each occasion, variations on, "We can't answer this for security reasons," were used as a means of obstructing the truth. Once we had the facts, or at least some of them, it was the meeting itself that stood to be the threat to national security. Having that information in the public domain was a threat to the Prime Minister's interests, not the country's.

I know the Minister takes those matters seriously, and I hope he will recognise that for these reasons new clause 4 is a sensible distinction, proposed for the right reasons in an attempt to protect rather than undermine the national interest.

Stuart C. McDonald: I support the objective of the new clause. When we were debating some of the offences in part 1, the SNP tabled various amendments to try to make it clear that the national interest and the interests of the Government are not necessarily the same thing—often, they are not the same thing at all. It appears that judicial authority says that, in essence, it is for the Government to decide what the national interest is; that does not really assist the position. Whether or not this new clause is the answer is something we will have to revisit again, but I express sympathy with the intention behind it.

Tom Tugendhat: I welcome the spirit with which the hon. Member for Halifax has entered into this discussion, and I appreciate her points. Making illegal those matters that irritate Ministers of the Crown would certainly make my life at home significantly quieter, as it would silence my children. Sadly, I think that trying to make case law for my family would be problematic.

It is certainly true that there is a difference between the interests of Ministers and the interests of an individual Minister, whether that be an ordinary Minister or a Prime Minister, and national security. Case law in the United Kingdom already recognises that in considering any prosecution in relation to offences to which the provisions regarding prejudice to the safety of the interests of the UK apply. The UK courts already consider the nature and risk to the safety and interests of the UK. Case law already makes clear that

"the safety or interests of the United Kingdom"

should be interpreted as the objects of state policy determined by the Crown on the advice of Ministers. That is notably different from protecting the particular interests of those in office.

Again, I appreciate the spirit with which the hon. Lady has entered into the conversation, but the provisions in part 1 to which the safety or interests test applies are measures that disrupt and respond to serious national security threats, such as those from espionage, sabotage and threats to the UK's most sensitive sites. As I am sure hon. Members will agree, it is right that appropriate conditions—such as the test of whether conduct is carried out for, on behalf of, or with the intention to benefit a foreign power—are in place to limit the scope of the offences to the types of harmful activity we are targeting.

The combination of the conditions we apply to measures in the Bill mean that not only are the offences themselves proportionate, but an appropriately high bar has to be met to bring a prosecution. These conditions take us firmly outside the realm of merely leaking embarrassing or unauthorised disclosures, or indeed whistleblowing or domestic political opposition. The Law Commission shared that sentiment in the evidence it gave to the Committee—of course I was not present, but given her reference to the length of time in politics I am sure she will understand that.

Individuals and groups might not agree with Government policy, but it still represents the policy that the Government have been elected to carry out, so disclosing protected information from a foreign power can never be the right response to that. It would not be appropriate for the courts to second guess the merits of Government policy in this way. On the basis that the courts are well able to judge the difference between national interest and personal interest, I hope that the hon. Member will withdraw the amendment.

Holly Lynch: I suspect the Minister understands the points I am making and is sympathetic to what I am trying to get at. I put him on notice that, where I think there is information that could and should be in the public domain and I meet barriers relating to national security reasons preventing it from being in the public domain, I will be a thorn in his side every step of the way. With that veiled threat—

Jess Phillips: It wasn't veiled.

Tom Tugendhat: Not very veiled, no.

Holly Lynch: I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 5

MINISTERIAL CONDUCT

"(1) This section applies in relation to any Minister of the Crown who engages with, or intends to engage with, or ought reasonably to know that they are about to engage with, a person who is a part of a foreign intelligence service.

(2) A Minister of the Crown may only engage with such a person if either of the following conditions are met—

(a) a senior civil servant is formally present at or party to the engagement, and a formal record of the engagement has been made by the senior civil servant; or

(b) a senior civil servant is not formally present at or party to the engagement, and a formal record of the engagement has not been made by a senior civil servant, but the written consent of the Prime Minister has been sought by the Minister of the Crown, and has been granted and formally recorded in writing.

(3) In this section 'engagement' includes meeting in person or via electronic means, and corresponding in writing or via electronic means."—*(Holly Lynch.)*

Brought up, and read the First time.

Holly Lynch: I beg to move, That the clause be read a Second time.

New clause 5 is similar to the previous new clause and would mean that a Minister of the Crown may only engage with a person who is a part of a foreign intelligence service if either a senior civil servant is formally present at or party to the engagement, and a formal record of the engagement has been made by the senior civil servant; or a senior civil servant is not formally present at or party to the engagement, and a formal record of the engagement has not been made by a senior civil servant, but the written consent of the Prime Minister has been sought by the Minister of the Crown, and has been granted and formally recorded in writing. That would apply both to meetings in person and via electronic means. It would apply to any Minister of the Crown who engages with, or intends to engage with, or ought reasonably to know that they are about to engage with, a person who is a part of a foreign intelligence service. Failure to follow these rules should be a resignation matter.

The measures proposed throughout the Bill promise an extensive overhaul in establishing what constitutes meeting with and assisting a foreign power threat, including new offences and regimes covering almost all aspects of society. It is entirely right that we also consider the role of Ministers. I am afraid that, once again, the need for such a provision was born out of the conduct of the right hon. Member for Uxbridge and South Ruislip when he was the Foreign Secretary. However, there are other examples.

The right hon. Gentleman confirmed to the Liaison Committee that he met with former KGB officer Alexander Lebedev without officials and without permission at the height of the Salisbury poisoning back in 2018. To set the scene, that was immediately after the then Foreign Secretary had attended a meeting of NATO Foreign Ministers at NATO headquarters in Brussels to discuss the collective response to Russia's use of Novichok on UK soil. In advance of that meeting, NATO Secretary-General Jens Stoltenberg outlined that Russia would be the first item on the agenda, after what he said were several years of Moscow's "pattern of dangerous behaviour", confirming, as the Prime Minister had already done, that:

"It is also highly likely that Russia was behind the nerve agent attack in Salisbury."

That NATO meeting was on 27 April 2018.

The Foreign Secretary went straight from that NATO meeting to Palazzo Terranova in Italy for a weekend-long party hosted by Evgeny Lebedev, now Lord Lebedev. There he met with Evgeny Lebedev's father, Alexander Lebedev, an ex-KGB officer. The Foreign Secretary attended the party with no security and no officials, despite his position being deemed to require round-the-clock protection from the Metropolitan police. There is a brief entry of ministerial interests on the Foreign Office website, where he declared an "overnight stay" at the party on 28 April, which is the only official record in existence.

While the Foreign Secretary was partying with Lord Lebedev and his father, the ex-KGB officer, the Novichok was still waiting to be found in a bin seven miles north of Salisbury. It was found by Charlie Rowley on 30 June, who survived his exposure to the Novichok. However, his partner, Dawn Sturgess, did not, having sprayed it directly on to her skin, believing it to be perfume.

In September 2018, the Prime Minister returned to update the House of Commons to confirm that, based on a body of intelligence, the Government had concluded that the two individuals named by the police and the Crown Prosecution Service were officers from the Russian military intelligence service, the GRU. The right hon. Member for Uxbridge and South Ruislip followed up in writing to the Liaison Committee in his letter dated 21 July 2022, saying:

"As far as I am aware, no Government business was discussed"

at that encounter with Alexander Lebedev. Needless to say, that one line presented far more questions than answers.

We have decided to keep the definition tight to someone who is a member of a foreign intelligence service. Committee members might point out that, in this particular scenario, given that Alexander Lebedev would describe himself as a former KGB officer, the right hon. Member for Uxbridge and South Ruislip would not necessarily be covered by the new clause. However, this new clause, new clause 4 and new clause 29 would work in combination to ensure that the gap in procedure exposed by the meeting I have just outlined would be closed down.

It is right to ensure that the Government and officials act with accountability and transparency. The new clause does not prevent such meetings taking place; it only formalises expectations around how any such encounter should be managed. The Government may argue that it is not necessary, as similar expectations are already provided for by the ministerial code, but the ministerial code was very much degraded in recent months, and was in effect when the meeting that I outlined took place, so there is very much a case for tighter measures.

The public have a right to expect the highest possible standards from their Government officials, in both their public and private lives. The new clause will ensure that Government officials adhere to strict clearance systems when dealing with the intelligence services of hostile foreign states. I hope the Government will welcome this opportunity to tighten standards and will support new clause 5.

Tom Tugendhat: I welcome the spirit in which the new clause was tabled. I understand the points made by the hon. Member for Halifax. As she knows very well, Ministers are already expected to uphold the ministerial code. I am not going to seek to defend the Administration of the right hon. Member for Uxbridge and South Ruislip; as the hon. Lady will know, we had our

disagreements at that time, when I was chairing the Foreign Affairs Committee, and I put them on the record. Indeed, I attended the Liaison Committee hearing to which she referred.

It is important to look at where we are today and to recognise that the re-issuing of the ministerial code in May this year, which included proportionate sanctions, should be taken into account. It is also worth pointing out that the Bill already includes several measures to counter hostile activity, including updated espionage offences for disclosing or providing access to protected information and offences for engaging in preparatory conduct relating to espionage. That could just be a simple meeting and a cup of coffee.

In clause 3, the Bill also seeks to criminalise activity whereby a person either engages in conduct that they intend will materially assist a foreign intelligence service or knows or reasonably ought to know that conduct that they are engaged in is of a kind that it is reasonably possible may materially assist a foreign intelligence service. As the former head of GCHQ put it, this is all about making sure that others cannot construct a haystack in which to find a needle. It means that, for the first time, it will be a criminal offence to be a covert foreign agent and engage in activity that assists a foreign intelligence service.

To be clear to the Committee, the offences would capture Ministers of the Crown if they engaged in conduct that falls outside their official functions or capacity as a Minister. Moreover, ministerial conduct is principally a matter for the ministerial code and there are already transparency measures in place for Ministers of the Crown to formally record their engagements with external parties and declare any gifts and hospitality. If a Minister is with an external organisation or individual and finds themselves discussing official business without an official present—for example, at a social occasion—any significant content should be passed back to the Department as soon as possible after the event.

Although it would not be appropriate to comment on security or intelligence matters, what I can say is that Ministers are made fully aware of their responsibility to safeguard national security, including in respect of the standards of conduct expected of Ministers and how they discharge their duties in maintaining the security of Government business, as set out in the ministerial code. Although the new clause may seek to provide further accountability and propriety, it would not be appropriate to create new, separate provisions.

Overall, I consider that the existing mechanisms that are already in place to increase transparency around foreign influence in the UK political and governmental system, as well as the measures already in the Bill aimed at tackling and responding to the malign nature of seeking to assist a foreign intelligence service, are sufficient. I ask the hon. Member for Halifax to withdraw the new clause, although I recognise the pattern of actions that brought her to table it.

Holly Lynch: The Minister has gone through the pre-existing frameworks that should have prevented such a meeting from taking place, and suggests that those should be enough. Unfortunately, the example I gave shows that they were not enough. We still do not have all the answers we would like about what was discussed and what the nature of that engagement was, and the clarity that would satisfy us that there were no breaches of national security as part of that interaction. The Minister is right that all that should have been enough, but it was not in those circumstances, and as far as we can tell there were no real consequences in real time of that having taken place.

I have made my case strongly; however, as the Minister has put his personal views on the record and given his assurance that he understands the points I made and will continue to bear them in mind as we look at some of the protections in the round, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 6

Defences

"(1) In any proceedings for an offence under section 2 of this Act or section 5 of the Official Secrets Act 1989, it shall be a defence—

(a) that the disclosure in question was in the public interest, and

(b) the manner of the disclosure was also in the public interest.

(2) Whether a disclosure was in the public interest shall be determined having regard to—

(a) the subject matter of the disclosure,

(b) the harm caused by the disclosure, and

(c) any other relevant feature of the disclosure.

(3) Whether the manner of disclosure was in the public interest shall be determined having regard to—

(a) whether the disclosure has been made in good faith,

(b) if the disclosure relates to alleged misconduct, whether the individual reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,

(c) whether the disclosure is made for the purposes of personal gain,

(d) the availability of any other effective authorised procedures for making the disclosure and whether those procedures were exercised, and

(e) whether, in all the circumstances of the case, it is reasonable for the disclosure to have been made in the relevant manner."—*(Mr Jones.)*

This new clause introduces a public interest defence to the new disclosure offence created by clause 2, and the section 5 disclosure offence in the Official Secrets Act 1989. The proposed defence is modelled on the public interest defence in the Public Interest Disclosure Act 1998.

Brought up, and read the First time.

4 pm

Mr Jones: I beg to move, That the clause be read a Second time.

It will come as no surprise to the Committee that I am not moving the new clause as some bleeding-heart liberal, and I would certainly do nothing to undermine the security of our country. However, as can be seen from the names put to the new clause, it has cross-party support throughout the House, including on the Government Benches.

The new clause even has support in the Cabinet, from the Secretary of State for Wales, the right hon. and learned Member for South Swindon (Sir Robert Buckland),

[Mr Kevan Jones]

the former Justice Secretary. While he was off the Cabinet carousel—the system at the moment—he was clear in arguing for why we need a public interest defence. To quote from the opening paragraph of his article on "ConservativeHome" in December 2021:

"The principle of open government is too often seen as an issue for the left, but I firmly believe that it is profoundly Conservative to believe that transparent administration is what should lead to higher standards, greater efficiency and better value for taxpayers' money. As Conservatives, we believe that the State should be our servant, not our master."

I could not agree more.

Such a measure as this is long overdue. There are basically three arguments against it, which I have deduced over the past few months since I tabled the new clause: first, it will be too difficult, which is the obvious one that always comes out; secondly, if we are in favour of it, we will open the floodgates to leaks and will be a leakers' charter; and finally, it will make it difficult for our security forces, because evidence would have to be put into court to defend such actions, even though that has to happen now anyway. In a minute, I will come on to reasons why that argument is nonsense.

In its 2015 report, the Law Commission argued for a public interest defence. Are there strong reasons why there should be criminalisation of the leaking information under the Official Secrets Act 1989? Yes, there are, but I would also strongly argue that there has to be a defence in the public interest where someone is disclosing serious wrongdoing in Government—that individual needs to be able to have recourse to that defence in the courts. The problem I have is that if we do nothing—which seems to be the Government's approach—what we will have, which is what we have already, is leaving it up to juries. I would sooner have the defence outlined in law, so that people can use it and so that it is impossible for certain other people to use it.

The Law Commission said in its report,

"we cannot be certain that the current legislative scheme"

in the 1989 Act, which does not provide for a public interest defence,

"affords adequate protection to Article 10 rights under the ECHR."

That is the right to freedom of speech. We have a recommendation from the Law Commission and we have the opportunity to act on it in this Bill. It seems that, like lots of things in the Bill, it has been put on a pile on somebody's desk of things that are too hard to manage. It is a missed opportunity.

The other side to it is that the defence would act as a safety valve. I have said in earlier sittings that the Bill is a missed opportunity to reform the 1989 Act, and I am still bemused to know whether the Bill and that Act will work alongside one another. The 1989 Act is outdated: it does not recognise modern technology, as the Intelligence and Security Committee outlined in its Russia report in 2020. It also fails to protect the individual in cases in which they know of wrongdoing and release it into the public domain because they feel there is no other course of action.

We then come to how we define the defence. I am not suggesting that what I have put in the new clause is ideal, but the argument "It is far too difficult and we could never do this"—which is what certain individuals have said to me—is not right. If we look at what is already in law—employment law, I hasten to add—we see that there is a definition in the Public Interest Disclosure Act 1998. Can we cut and paste that definition? No, I do not think we can, but it certainly provides a template. It is a piece of employment law that prevents whistleblowers from being negatively treated or unfairly dismissed when reporting concerns. That is a starting point.

There are other aspects we could look at in terms of a definition. The subject matter of the disclosure will obviously have to be part of it, as will the seriousness of the misconduct exposed. We must consider the harm caused by the disclosure and the proportionality in that respect, as well as whether the disclosure was made in good faith. Certainly, if someone just dumped a load of data into the public domain, we could argue that that was not done in good faith and would not meet the test at all.

We must consider whether the disclosure is made for the purpose of personal gain. If someone is selling something, that certainly would not meet the criteria. There are factors such as whether the extent of the disclosure is no more than responsible and necessary for the purpose of exposing the relevant conduct, and whether the individual reasonably believes that the information disclosed and any allegations it contains are true. There is the availability of any other effective authorised proceedings; if there are no other ways to do it, that would be a defence. Lastly, we must consider whether in all circumstances and cases it is reasonable to disclose, as well as the manner in which the information was disclosed.

The Law Commission recommended another safety value, which is something I am open to, but it seems that the Government completely ignored that. The issue will not go away—that is the point. We want to protect our security services; I am sorry, but having done jury service myself I would not leave it to a jury to decide what the arguments are. At least if we had this defence, people could argue the legal points and use it as a defence. It is supported by many lawyers, by the right hon. and learned Member for South Swindon and by many newspaper editors. That is why I have moved the new clause.

My other two points are about the argument that if we cross this Rubicon, somehow the floodgates will open and there will be a green light for everyone to release information. There is no evidence of that at all. In Australia, New Zealand and Canada, where they have a similar public interest defence, there is no evidence that its use is increasing. The other argument that has been put to me is that introducing the defence would allow people like Julian Assange to use it as a defence, but that is absolute nonsense. The new clause would actually make the Bill Assange-proof, because anyone who data dumped could not use the public interest defence.

Finally, there is an argument that I find remarkable. I do not know where it has come from, but the argument is that if we put a public interest defence into law, we will somehow have a situation whereby the security services will have to disclose things in court. My response is that if there is a data dump or somebody is prosecuted under the Official Secrets Act, we still have to go to court, but we have closed hearings, which protect sensitive

sources. I honestly do not understand why this has just been left off. I think it has been left in the "hard to do" pile and some people think, "Do we really want to upset the status quo?" We need to get the balance right between protecting our national secrets, which I would certainly argue we should, and allowing a legitimate balance between the powers of the state. That would perhaps not be a problem under the usual conventions, but in the previous debate my hon. Friend the Member for Halifax clearly demonstrated that we have a Government who seem to ignore every convention.

It is in that spirit that I move the new clause. I know that U-turns are in fashion at the moment among the current Government, and I wish and hope that if the Minister—with a new set of eyes on this matter—cannot agree to the new clause today, he will at least look at how we can incorporate a public interest defence into the Bill.

Holly Lynch: I thank my right hon. Friend for tabling new clause 6, and I thank you, Mr Gray, and Ms Ali for allowing a debate on its merits.

As my right hon. Friend has outlined, the new clause seeks to add a public interest defence to the new disclosure offence created by clause 2 and to the section 5 disclosure offence in the Official Secrets Act 1989. There is of course an undeniable requirement to protect from public disclosure information that, if revealed, could be harmful to our national security. However, for the security services to be able to function as they should within a democracy, they rely on the trust of the British people and their elected representatives, with enough transparency and oversight to make accountability a real part of their work.

As has been mentioned, three of our four Five Eyes partners already have a mechanism that provides a public interest defence with regard to disclosures of this nature. It is also well documented—this is a point made on Second Reading—that, as a country, we have increasingly asked juries to make their own determinations on public interest defences when considering judicial proceedings. We have seen that result in varied outcomes, with a great deal of discretion afforded to jury members in the absence of a clear legislative framework for them to start from.

We might also make the case that, in the event that someone feels they have an obligation to share information but there is no agreed and structured route through which to do that, the absence of an alternative whistleblowing procedure leaves them with limited options, often resulting in a decision to go public and take their chances in the courts.

The Law Commission examined all this in its incredibly detailed 2020 "Protection of Official Data" report—specifically, in chapter 8—and we are grateful to the authors of that report for their evidence at the start of the Committee stage. With the commission having engaged with a significant number of stakeholders, its report is clear in its recommendation to have a public interest defence.

The report's authors deal with the complexities head on, saying:

"The public interest in national security and the public interest in transparent, accountable government are often in conflict. While, no doubt, public accountability can ensure that government is protecting national security, the relationship between security and accountability is nonetheless one of tension."

They go on to say:

"Our concern in this part of the Report is to reconcile these competing interests (so far as possible). It is to propose a legal model that ensures that the price of protecting national security is not to undermine the rule of law (and vice versa). We are concerned to ensure that those with evidence of wrongdoing in Government do not feel that they must commit a serious criminal offence and take the law into their own hands, risking both the national security, and people's lives, in order to have that evidence properly investigated."

4.15 pm

Interestingly, the Law Commission does not disguise that it began its consultation

"aware that there were advantages in a public interest defence, we provisionally concluded that those advantages were outweighed by the disadvantages."

However, as it worked through the submissions and issues, it adopted the position that a new mechanism in favour of a public interest defence would be an improvement on the existing system. It is clear in its recommendations that a statutory public interest defence should be available for anyone, including civilians and journalists, charged with an unauthorised disclosure offence under the Official Secrets Act 1989. If it is found that the disclosure was in the public interest, the defendant would not be guilty of the offence.

Public servants and civilians should be able to report concerns of wrongdoing to an independent statutory commissioner, who would be tasked with investigating those concerns effectively and efficiently. The right hon. and learned Member for South Swindon, prior to his reappointment back into Government, hit the nail on the head on Second Reading, as part of his advocacy on this issue, when he said:

"this is not an attempt to try to open the door to create a free-for-all; it is an attempt to allow people to act carefully and in good conscience."—[*Official Report*, 6 June 2022; Vol. 715, c. 608.]

The Law Commission goes on to add that Parliament should consider increased maximum sentences for the most serious offences in relation to leaks, ensuring that an individual always has to consider the responsibility of the information they are in possession of when deciding what to do with it. On Second Reading, the then Home Secretary, the right hon. Member for Witham (Priti Patel), did address the issue, which was raised by my right hon. Friend the Member for North Durham and others. She said:

"We are not shy of the issue and are certainly not ignoring it, but it is important that we focus on ensuring that individuals can make disclosures safely, which means protecting them through safeguards and proper routes. That work is still under way, and we need to go through it in the right way."—[*Official Report*, 6 June 2022; Vol. 715, c. 571.]

We understand that the Home Office has engaged with trusted partners on what options look like in this space. I suspect that the Minister will not adopt my right hon. Friend's new clause, but I want to push him on what his plan is for how we move this important issue forward.

Stuart C. McDonald: We support the new clause on a public interest defence.

Tom Tugendhat: I am conscious that another Minister is on their feet and a vote may be imminent so, if I may, I will whizz through my response.

Many people have looked at the public interest defence. Although there are differences of opinion, I would be happy to immediately assure the right hon. Member for North Durham that I will accompany him to a meeting with senior officials that he has requested in the past, but which has not yet happened. I will make sure that happens very soon; it is important that he hears the explanations of others and not just ministerial colleagues. I will make sure that happens imminently, because this is an important element. I appreciate the tone with which he has approached the issue; he is trying to be serious and sober in his reflection of the defence of those who are trying to do their best for our country but may indeed be doing harm as well.

I am not a believer argument in the floodgates argument—I do not believe that is a correct assessment of what could happen. It is, however, true that even a single release of some of this information could be extremely damaging to the national interest, as he is aware and would no doubt wish to avoid. I am very happy to have this conversation further and to cover various other issues.

It is also worth noting that other countries have a public interest defence, and we looked at them and the legislation. When considering reform, we looked particularly at the Five Eyes countries, but it is important to recognise the UK context in wider circumstances, so it would not be right to assume that a public interest defence that works for others is exactly the same as for this instance. I appreciate the right hon. Gentleman's points, but I ask, on that basis, that he withdraw the clause and that we engage in further conversation.

Mr Jones: I thank the Minister. This issue is not going to go away, so we need to have further discussions. The Law Commission's recommendations seem to have been ignored, and I think engagement with them would be useful before the passage of the Bill is complete. With the undertaking I have been given, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

The Chair: Before we move on, I should say that if we have a Division, or several Divisions, the Committee will be suspended for 15 minutes for the first one and 10 minutes for subsequent ones. If the discussion goes beyond 5.15 pm, which is of course our cut-off time, there will be no further time for debate thereafter, but we must return here for the decisions to be made whenever the Divisions are over.

New Clause 29

Registration of former employees of foreign security services

"(1) A former employee of a security or intelligence service of a foreign power who is present in the United Kingdom for more than 2 months must register their presence with the Secretary of State.

(2) The Secretary of State may by regulations make provision about the information a person is required to provide to the Secretary of State when registering under this section.

(3) Failure to register as required by subsection (1) is an offence.

(4) A person commits an offence if, without reasonable excuse, the person fails to provide information required by virtue of subsection (2).

(5) A person commits an offence if—

(a) the person provides information to the Secretary of State by virtue of subsection (2),

(b) the information is false, inaccurate or misleading in a material way, and

(c) the person knows, or ought reasonably to know, that the information is false, inaccurate or misleading in a material way.

(6) An offence under this section is a foreign influence offence under section (Offences: penalties)."—*(Holly Lynch.)*

Brought up, and read the First time.

Holly Lynch: I beg to move, That the clause be read a Second time.

On considering the foreign influence registration scheme and its intended use, we felt that there was room to go further in relation to former employees of the intelligence services of other nations. New clause 29 will require all former employees of a security or intelligence service of a foreign power who are present in the United Kingdom for more than two months to register their presence with the Secretary of State. The Secretary of State has the discretion of making provisions by regulations about what information is required. We know that we are dealing with countries that are tasking their people to engage in a multitude of influence activities, from the loud and overt to the barely seen and covert, and everything in between.

Turning specifically to oligarchs and that culture, we have seen some individuals establish themselves almost as London celebrities. They are incredibly wealthy, and for some their status is built partly on the back of having been a former employee of an intelligence service. They make that clear as part of their persona, and it is the "former" bit that gives them a degree of cover. They have the connections and insight to be an interesting and potentially helpful ally to some of our politicians and decision makers, especially if they are incredibly wealthy, as so many oligarchs are, yet are deemed to be arm's length enough for there to be the confidence for those relationships to grow largely unabated.

The notion of systemic opposition in Russia in particular provides for a degree of criticism of Putin and his regime as a means of occupying the space where actual opposition should be, and once again provides a degree of cover for those oligarchs overseas who engage in some criticism—enough to satisfy those they need to satisfy that they are indeed critics—before later mounting staunch defences of their former regimes when necessary. In addition to the FIRS framework set out in the Government's new clauses, this is another intended layer of transparency, aimed precisely at those people, to put on a formal footing both those who are open about their previous work and those we may not otherwise know about.

We have discussed that those engaged in espionage are often not typical in any way. They will have received training, and will be incredibly capable and resourceful. Even those who have truly moved away from careers in the intelligence services will not lose overnight the ability to exercise those skills. I take on board that those

working for security services have the right to a life after those careers; however, given that there are regimes known to pressurise, blackmail, or force co-operation from their people, even if they have truly walked away from that environment, there would be merit in the Secretary of State knowing where those vulnerabilities lie. I hope that the Minister will see the merit in this addition to the foreign influence registration scheme and adopt new clause 29.

Tom Tugendhat: I note the proposed new clause, and I hope that the hon. Member for Halifax will take my response in the way I intend it. Either foreign intelligence agents are already declared, in which case they are actively engaged in conversations with our intelligence services, or they are undeclared, in which case asking them to register may be something that we can hope for, but would be unlikely. I understand the intention behind the new clause, although I question whether it is proportionate, given that we are already trying to get anybody who is connected to a foreign agent to be registered. I feel that it may be more hopeful and aspirational than a realistic attempt to change other people's actions.

Holly Lynch: The Minister absolutely understands the point that I was making. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Schedule 1

Disclosure orders

Part 1

England and Wales and Northern Ireland

Introductory

1 (1) This Part of this Schedule applies in England and Wales and Northern Ireland.

(2) "Relevant investigation" means an investigation into the identification of relevant property or its movement or use.

(3) "Relevant property" means—

(a) money or other property which is likely to be used for the purposes of foreign power threat activity, or

(b) proceeds of involvement in foreign power threat activity.

(4) The reference to proceeds of involvement in foreign power threat activity includes a reference to any money, other property or benefit in money's worth, which wholly or partly, and directly or indirectly, represents the proceeds of the involvement (including payments or rewards in connection with the involvement).

(5) "Appropriate officer" means—

(a) a constable, or

(b) a National Crime Agency officer.

Disclosure orders

2 (1) An appropriate officer may apply to a judge for a disclosure order.

(2) The application must state that a person or property specified in the application is subject to a relevant investigation and the order is sought for the purposes of the investigation.

(3) The judge may grant the application if satisfied that conditions 1 to 3 are met.

(4) Condition 1 is that there are reasonable grounds for suspecting that the property specified in the application is relevant property.

(5) Condition 2 is that there are reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value, whether by itself or with other information, to the investigation.

(6) Condition 3 is that there are reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

(7) A disclosure order is an order authorising an appropriate officer to give to any person the officer considers has relevant information notice in writing requiring the person to do any or all of the following with respect to any matter relevant to the investigation—

(a) answer questions, either at a time specified in the notice or at once, at a place so specified;

(b) provide information specified in the notice, by a time and in a manner so specified;

(c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

(8) "Relevant information" means information (whether or not contained in a document) which the appropriate officer considers to be relevant to the investigation.

(9) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced.

(10) An appropriate officer may not make an application under this paragraph unless the officer is a senior officer or is authorised to do so by a senior officer.

Supplementary provision

3 (1) A disclosure order does not confer the right to require a person—

(a) to answer any question,

(b) to provide any information, or

(c) to produce any document or other material,

which the person would be entitled to refuse to answer, provide or produce on grounds of legal professional privilege in proceedings in the High Court.

(2) But a lawyer may be required to provide the name and address of a client.

(3) A disclosure order does not confer the right to require a person to produce excluded material.

(4) A disclosure order has effect despite any restriction on the disclosure of information imposed by an enactment or otherwise.

(5) An appropriate officer may take copies of any documents produced in compliance with a requirement to produce them imposed under a disclosure order.

(6) The documents may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the investigation for the purposes of which the order was made.

(7) But if an appropriate officer has reasonable grounds for believing that—

(a) the documents may need to be produced for the purposes of any legal proceedings, and

(b) they might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

(8) An appropriate officer may retain documents under sub-paragraph (7) only if the officer is a senior officer or is authorised to do so by a senior officer.

Applications

4 An application for a disclosure order may be made without notice to a judge in chambers.

Discharge or variation

5 (1) An application to discharge or vary a disclosure order may be made to the Crown Court by—

(a) the person who applied for the order;

(b) any person affected by the order.

(2) If the application for the disclosure order was made by a constable, an application to discharge or vary the order may be made by a different constable.

(3) If the application for the disclosure order was made by a National Crime Agency officer, an application to discharge or vary the order may be made by a different National Crime Agency officer.

(4) An appropriate officer may not make an application to discharge or vary a disclosure order unless the officer is a senior officer or is authorised to do so by a senior officer.

(5) The Crown Court may—

(a) discharge the order;

(b) vary the order.

Rules of court

6 Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to disclosure orders.

Offences

7 (1) A person commits an offence if without reasonable excuse the person fails to comply with a requirement imposed under a disclosure order.

(2) A person guilty of an offence under sub-paragraph (1) is liable—

(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the maximum term for summary offences or a fine (or both);

(b) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

(3) A person commits an offence if, in purported compliance with a requirement imposed under a disclosure order, the person—

(a) makes a statement which the person knows to be false or misleading in a material particular, or

(b) recklessly makes a statement which is false or misleading in a material particular.

(4) A person guilty of an offence under sub-paragraph (3) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both);

(b) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);

(c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).

Statements

8 (1) A statement made by a person in response to a requirement imposed under a disclosure order may not be used in evidence against that person in criminal proceedings.

(2) Sub-paragraph (1) does not apply on a prosecution for—

(a) an offence under paragraph 7(3),

(b) an offence under section 5 of the Perjury Act 1911 or Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statements), or

(c) some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in sub-paragraph (1).

(3) A statement may not be used against a person by virtue of sub-paragraph (2)(c) unless—

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by or on behalf of the person in the proceedings arising out of the prosecution.

Interpretation

9 (1) This paragraph applies for the interpretation of this Part of this Schedule.

(2) "Disclosure order" has the meaning given by paragraph 2.

(3) "Judge" means—

(a) in relation to England and Wales, a judge entitled to exercise the jurisdiction of the Crown Court;

(b) in relation to Northern Ireland, a judge of the Crown Court.

(4) "Senior officer" means—

(a) a constable of at least the rank of superintendent;

(b) the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose.

(5) "Document" means anything in which information of any description is recorded.

(6) "Excluded material"—

(a) in relation to England and Wales, has the same meaning as in the Police and Criminal Evidence Act 1984;

(b) in relation to Northern Ireland, has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

(7) The terms defined in paragraph 1 have the meanings given in that paragraph.

Part 2

Scotland

Introductory

10 (1) This Part of this Schedule applies in Scotland.

(2) In this Part of this Schedule "relevant investigation" and "relevant property" have the same meaning as in Part 1 of this Schedule.

Disclosure orders

11 (1) The Lord Advocate may apply to the High Court of Justiciary for a disclosure order.

(2) The application must state that a person or property specified in the application is subject to a relevant investigation and the order is sought for the purposes of the investigation.

(3) The court may grant the application if satisfied that conditions 1 to 3 are met.

(4) Condition 1 is that there are reasonable grounds for suspecting that the property specified in the application is relevant property.

(5) Condition 2 is that there are reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value, whether by itself or with other information, to the investigation.

(6) Condition 3 is that there are reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

(7) A disclosure order is an order authorising the Lord Advocate to give to any person the Lord Advocate considers has relevant information notice in writing requiring the person to do any or all of the following with respect to any matter relevant to the investigation—

(a) answer questions, either at a time specified in the notice or at once, at a place so specified;

(b) provide information specified in the notice, by a time and in a manner so specified;

(c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

(8) "Relevant information" means information (whether or not contained in a document) which the Lord Advocate considers to be relevant to the investigation.

(9) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced.

Supplementary provision

12 (1) A disclosure order does not confer the right to require a person—

(a) to answer any question,

(b) to provide any information, or

(c) to produce any document,

which the person would be entitled to refuse to answer, provide or produce in legal proceedings on grounds of confidentiality of communications.

(2) A disclosure order has effect despite any obligation as to secrecy or other restriction on the disclosure of information imposed by an enactment or otherwise.

(3) The Lord Advocate may take copies of any documents produced in compliance with a requirement to produce them imposed under a disclosure order.

(4) The documents may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the investigation for the purposes of which the order was made.

(5) But if the Lord Advocate has reasonable grounds for believing that—

(a) the documents may need to be produced for the purposes of any legal proceedings, and

(b) they might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

Applications

13 An application for a disclosure order may be made without notice to a judge of the High Court of Justiciary.

Discharge or variation

14 (1) An application to discharge or vary a disclosure order may be made to the High Court of Justiciary by—

(a) the Lord Advocate;

(b) any person affected by the order.

(2) The High Court of Justiciary may—

(a) discharge the order;

(b) vary the order.

Rules of court

15 (1) Provision may be made in rules of court as to the discharge and variation of disclosure orders.

(2) Rules of court are, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995, to be made by act of adjournal.

Offences

16 (1) A person commits an offence if without reasonable excuse the person fails to comply with a requirement imposed under a disclosure order.

(2) A person guilty of an offence under sub-paragraph (1) is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

(3) A person commits an offence if, in purported compliance with a requirement imposed under a disclosure order, the person—

(a) makes a statement which the person knows to be false or misleading in a material particular, or

(b) recklessly makes a statement which is false or misleading in a material particular.

(4) A person guilty of an offence under sub-paragraph (3) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both).

Statements

17 (1) A statement made by a person in response to a requirement imposed under a disclosure order may not be used in evidence against that person in criminal proceedings.

(2) Sub-paragraph (1) does not apply on a prosecution for—

(a) an offence under paragraph 16(3),

(b) perjury, or

(c) some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in sub-paragraph (1).

(3) A statement may not be used against a person by virtue of sub-paragraph (2)(c) unless—

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by or on behalf of the person in the proceedings arising out of the prosecution.

Interpretation

18 (1) This paragraph applies for the interpretation of this Part of this Schedule.

(2) "Disclosure order" has the meaning given by paragraph 11.

(3) "Document" means anything in which information of any description is recorded."—*(Tom Tugendhat.)*

This new Schedule provides for disclosure orders to be made. These orders authorise constables and NCA officers (the Lord Advocate in Scotland) to require information for the purpose of relevant investigations as defined in paragraph 1 of the Schedule.

Brought up, read the First and Second time, and added to the Bill.

New Schedule 2

CUSTOMER INFORMATION ORDERS

1 (1) An appropriate officer may apply to a judge for a customer information order.

(2) The judge may grant the application if satisfied that—

(a) the order is sought for the purposes of an investigation into foreign power threat activity, and

(b) the order will enhance the effectiveness of the investigation.

(3) "Appropriate officer" means—

(a) in relation to England and Wales or Northern Ireland, a constable or a National Crime Agency officer;

(b) in relation to Scotland, the procurator fiscal.

(4) The application must state that—

(a) a person specified in the application is subject to an investigation within sub-paragraph (2)(a) and the order is sought for the purposes of the investigation;

(b) the order is sought against the financial institution or financial institutions specified in the application.

(5) The application may specify—

(a) all financial institutions,

(b) a particular description, or particular descriptions, of financial institutions, or

(c) a particular financial institution or particular financial institutions.

(6) A customer information order is an order authorising an appropriate officer to give to a financial institution covered by the application notice in writing requiring it to provide any customer information it has relating to the person specified in the application.

(7) The financial institution must provide the information at or by the time, and in a manner, specified in the notice.

(8) A financial institution is not bound to comply with a requirement imposed by a notice given under a customer information order unless evidence of authority to give the notice is produced.

(9) An appropriate officer may not make an application under this paragraph unless the officer is a senior officer or is authorised to do so by a senior officer.

(10) Sub-paragraph (9) does not apply in relation to Scotland.

Supplementary provision

2 A customer information order has effect despite any obligation as to secrecy or other restriction on the disclosure of information imposed by an enactment or otherwise.

Applications

3 An application for a customer information order may be made without notice to a judge in chambers.

Discharge or variation

4 (1) An application to discharge or vary a customer information order may be made to the court by—

(a) the person who applied for the order;

(b) any person affected by the order.

(2) If the application for the customer information order was made by a constable, an application to discharge or vary the order may be made by a different constable.

(3) If the application for the customer information order was made by a National Crime Agency officer, an application to discharge or vary the order may be made by a different National Crime Agency officer.

(4) An appropriate officer may not make an application under this paragraph unless the officer is a senior officer or is authorised to do so by a senior officer.

(5) Sub-paragraph (4) does not apply in relation to Scotland.

(6) The court may—

(a) discharge the order;

(b) vary the order.

Rules of court

5 (1) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to customer information orders.

(2) In Scotland rules of court are, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995, to be made by act of adjournal.

Offences

6 (1) A person commits an offence if without reasonable excuse the person fails to comply with a requirement imposed under a customer information order.

(2) A person guilty of an offence under sub-paragraph (1) is liable—

(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the maximum term for summary offences or a fine (or both);

(b) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both);

(c) on summary conviction in Scotland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

Statements

7 (1) A statement made by a person in response to a requirement imposed under a customer information order may not be used in evidence against them in criminal proceedings.

(2) Sub-paragraph (1) does not apply on a prosecution for an offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in sub-paragraph (1).

(3) A statement may not be used against a person by virtue of sub-paragraph (2) unless—

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by or on behalf of the person in the proceedings arising out of the prosecution.

Interpretation

8 (1) This paragraph applies for the interpretation of this Schedule.

(2) "Appropriate officer" has the meaning given by paragraph 1(3).

(3) "The court" means—

(a) in relation to England and Wales or Northern Ireland, the Crown Court;

(b) in relation to Scotland, the sheriff.

(4) "Customer information"—

(a) in relation to England and Wales or Northern Ireland, has the meaning given by section 364 of the Proceeds of Crime Act 2002;

(b) in relation to Scotland, has the meaning given by section 398 of that Act.

(5) "Financial institution" has the same meaning as in Schedule 6 to the Terrorism Act 2000 (see paragraph 6 of that Schedule).

(6) "Judge" means—

(a) in relation to England and Wales, a judge entitled to exercise the jurisdiction of the Crown Court;

(b) in relation to Northern Ireland, a judge of the Crown Court;

(c) in relation to Scotland, the sheriff.

(7) "Senior officer" means—

(a) a constable of at least the rank of superintendent;

(b) the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose."*—(Tom Tugendhat.)*

This new Schedule provides for customer information orders to be made. These orders authorise constables and NCA officers (the procurator fiscal in Scotland) to obtain customer information from financial institutions.

Brought up, read the First and Second time, and added to the Bill.

New Schedule 3

ACCOUNT MONITORING ORDERS

1 (1) An appropriate officer may apply to a judge for an account monitoring order.

(2) The judge may grant the application if satisfied that—

(a) the order is sought for the purposes of an investigation into foreign power threat activity, and

(b) the order will enhance the effectiveness of the investigation.

(3) "Appropriate officer" means—

(a) in relation to England and Wales or Northern Ireland, a constable or a National Crime Agency officer;

(b) in relation to Scotland, the procurator fiscal.

(4) The application must state that the order is sought against the financial institution specified in the application in relation to information which—

(a) relates to an account or accounts held at the institution by the person specified in the application (whether solely or jointly with another), and

(b) is of the description so specified.

(5) The application may specify information relating to—

(a) all accounts held by the person specified in the application at the financial institution so specified,

(b) a particular description, or particular descriptions, of accounts so held, or

(c) a particular account, or particular accounts, so held.

(6) An account monitoring order is an order that the financial institution specified in the application must—

(a) for the period specified in the order,

(b) in the manner so specified,

(c) at or by the time or times so specified, and

(d) at the place or places so specified,

provide information of the description specified in the application to an appropriate officer.

(7) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

Applications

2 An application for an account monitoring order may be made without notice to a judge in chambers.

Discharge or variation

3 (1) An application to discharge or vary an account monitoring order may be made to the court by—

(a) the person who applied for the order;

(b) any person affected by the order.

(2) If the application for the account monitoring order was made by a constable, an application to discharge or vary the order may be made by a different constable.

(3) If the application for the account monitoring order was made by a National Crime Agency officer, an application to discharge or vary the order may be made by a different National Crime Agency officer.

(4) The court may—

(a) discharge the order;

(b) vary the order.

Rules of court

4 (1) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.

(2) In Scotland rules of court are, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995, to be made by act of adjournal.

Effect of orders

5 (1) In England and Wales and Northern Ireland, an account monitoring order has effect as if it were an order of the court.

(2) An account monitoring order has effect in spite of any obligation as to secrecy or other restriction on the disclosure of information imposed by an enactment or otherwise.

Statements

6 (1) A statement made by a person in response to an account monitoring order may not be used in evidence against them in criminal proceedings.

(2) But sub-paragraph (1) does not apply—

(a) in the case of proceedings for contempt of court;

(b) on a prosecution for an offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in sub-paragraph (1).

(3) A statement may not be used against a person by virtue of sub-paragraph (2)(b) unless—

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by or on behalf of the person in the proceedings arising out of the prosecution.

Interpretation

7 (1) This paragraph applies for the interpretation of this Schedule.

(2) "Appropriate officer" has the meaning given by paragraph 1(3).

(3) "The court" means—

(a) in relation to England and Wales or Northern Ireland, the Crown Court;

(b) in relation to Scotland, the sheriff.

(4) "Financial institution" has the same meaning as in Schedule 6 to the Terrorism Act 2000 (see paragraph 6 of that Schedule).

(5) "Judge" means—

(a) in relation to England and Wales, a judge entitled to exercise the jurisdiction of the Crown Court;

(b) in relation to Northern Ireland, a judge of the Crown Court;

(c) in relation to Scotland, the sheriff."—*(Tom Tugendhat.)*

This new Schedule provides for account monitoring orders to be made. These orders may require financial institutions to provide specified information relating to accounts.

Brought up, read the First and Second time, and added to the Bill.

Tom Tugendhat: I beg to move amendment 66, Title, line 3, after "2007;" insert

"for the registration of certain arrangements with, and activities of, specified persons and foreign principals;"

This amendment amends the long title to add a reference to the registration scheme.

Tom Tugendhat: This is a simple change in the title of the Bill and I hope that everyone can support it.

Amendment 66 agreed to.

Holly Lynch: On a point of order, Mr Gray. If I may—

The Chair: Order. No, no—we have not finished yet. Hang on.

Question proposed, That the Chair do report the Bill, as amended, to the House.

Holly Lynch: I am so grateful for your guidance, Mr Gray. I want to put on the record my thanks to some of those who have supported the Committee's deliberations and made our scrutiny possible. I thank the Clerks—Bradley Albrow in particular has been utterly unflappable, often in the face of absolute chaos. He has been a massive help to me and, I am sure, to many other Members, and I thank him for his services.

I also thank Home Office officials and the UK intelligence community, who, I think all Members will agree, have been transparent and engaged in this process, ensuring that we are—given the subject matter—as informed as we can be. I have met several members of the security services over the course of the Bill Committee; funnily enough, I do not have full names for any of them. I thank MI5 director general Ken McCallum and his team for all their support. I also thank Detective Superintendent Darren Hassard and Commander Richard Smith from counter-terrorism policing for their insight on provisions relating to their work, as well as Professor Thom Brookes and senior lecturer and retired police office Owen West for their invaluable assistance. May I also thank my incredibly dedicated parliamentary assistant, Jamie Welham?

I have been very ably assisted by my fellow shadow Front-Bench colleagues as well as by Labour Back Benchers, and I am eternally grateful to them. As we reach Report, I look forward to following up with the Minister on the detail of exactly what has been promised.

Tom Tugendhat: May I thank the shadow Minister, the Member for Halifax—she has been of tremendous assistance to me in the very unusual position that I have found myself in—as well as Opposition Members? I also thank enormously my hon. Friends, who have been extraordinarily generous supporters at times when I have been quite literally learning on the job.

I also thank the Clerks—particularly Chris, who was my first Clerk on the Foreign Affairs Committee, which brought me right back home—Home Office officials, the intelligence community, with whom it is such a pleasure to work again, and of course all those who have contributed to the Bill, including you, Mr Gray. Thank you very much indeed.

Mr Jones: On a point of order, Mr Gray. I think it would be remiss not to thank the two previous Ministers—

Dame Angela Eagle: And the previous Whips!

Mr Jones: And the previous Whips, yes. One previous Minister was thrown a little more into the deep end than this one, so I want to put on the record my thanks to him.

Tom Tugendhat: Quite right.

The Chair: I will ensure that those thanks are passed on.

Question put and agreed to.

Bill, as amended, to be reported.

4.28 pm

Committee rose.

Written evidence reported to the House

NSB08 National Union of Journalists, Index on Censorship, Reporters Without Borders and openDemocracy

NSB09 BBC

NSB10 Channel 4 Television Corporation