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Public Bill Committee

NATIONAL SECURITY BILL

Thirteenth Sitting

Tuesday 18 October 2022

(Morning)

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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

(Morning)

[James Gray *in the Chair*]

National Security Bill

9.25 am

The Chair: Welcome back to the consideration of the National Security Bill.

Ordered,

That the order of the Committee of 7 July be varied as follows—

1. In paragraph (1)(g), leave out "13 September" and insert "18 October".

2. In paragraph (4), leave out "13 September" and insert "18 October".—*(Tom Tugendhat.)*

Mr Kevan Jones (North Durham) (Lab): On a point of order, Mr Gray. I welcome everyone back; it is very nice to see them. My point of order concerns the explanatory notes on foreign agent registration. It is customary that we have such notes at least before the Committee meets, but there do not appear to be any explanatory notes or a detailed impact assessment. I know some people think that Committees are just tick-box exercises, but they are not; we are allowed to scrutinise the Bill. Given that the foreign agent registration scheme has had a gestation period longer than that of an African elephant, there should have been time at least to make some explanatory notes.

The Chair: I am most grateful to the right hon. Gentleman for giving notice of his points of order—neither of those matters is a point of order. They are points of information, which the Minister will no doubt have heard, and will doubtless wish to act on during the course of the day. They are not matters for the Chair.

Mr Jones: On a point of order, Mr Gray.

The Chair: As long as it is a different point of order.

Mr Jones: Yes, it is definitely different. Mr Gray, you will remember that, when we were discussing clause 23, a commitment was given by this Minister or the last Minister—whoever it was. The Minister could not give the Committee details about why the agencies needed clause 23 because of the secret nature of that, and a commitment was given that the Intelligence and Security Committee would be given examples of why the clause was needed.

I am told that the examples were received late last week, yet a date has not been set for me to be briefed formally by the agencies. The reason being put around for that, I am told, is that the Chair of the ISC has made it difficult. I put on the record that that is not the case. We received them only last week, and I, and other members of this Committee who are not members of the ISC, have not yet been in a position to read those examples. If someone gives commitments, it is not good enough to have such delays.

The Chair: Although that is an important matter for the ISC and for this Committee, it is not a point of order. The Minister and others, however, will have heard the right hon. Gentleman's point, and will no doubt take it into consideration in the future.

New Clause 8

Disclosure orders

"Schedule (Disclosure orders) makes provision for disclosure orders."—*(Tom Tugendhat.)*

This new clause introduces the new Schedule inserted by NS1.

Brought up, and read the First time.

The Minister for Security (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 schedule 1—*Disclosure orders.*

Tom Tugendhat: Thank you very much for chairing this sitting, Mr Gray. It is a pleasure to be here under your chairmanship, and a great pleasure to introduce new clause 8 and new schedule 1, which introduce a suite of measures to allow law enforcement officers to apply to the courts for orders to gather information that will assist investigations into foreign power threat activity. As with the other police powers in the Bill, the Government have carefully considered relevant existing legislation, and looked to emulate it where it has proven effective in investigating other serious crimes. I will first speak more broadly about the need for the measures as a whole, before turning specifically to disclosure orders.

Most modern investigations include lines of inquiry into finances and other property, sometimes as a starting point and sometimes to enhance other leads. Financial investigations are often critical in developing evidence that is used in criminal proceedings where there is a financial element, by identifying and tracing criminal assets and uncovering the extent of criminal networks. Financial investigation has become increasingly important in criminal investigations in recent years.

In his recent letter to the Committee, the national lead for counter-terrorism policing, Matt Jukes, stated that it can be difficult for his officers to conduct effective investigations into state threats with the current powers and tools available, and that police would greatly benefit from the inclusion of financial investigative measures. The police have stated that these lines of inquiry are particularly important in state threats cases, where actors may be motivated by financial gain but also where they deploy sophisticated forms of tradecraft, meaning that their criminal conduct is even more difficult to uncover, disrupt and evidence than for other crimes. In many cases, financial and property investigations form an important part of establishing the link between the activity and the foreign power, particularly regarding investigations into obtaining material benefits from a foreign intelligence service.

Investigations into property and finances can take place in relation to any form of criminality, but Parliament has already recognised, in both terrorism legislation and the Proceeds of Crime Act 2002, that there are certain circumstances where it is appropriate for investigators to have access to broader investigatory powers. The Committee has also recognised, in particular during

our debates on schedules 2 and 3, that state threats investigations are an area where it is appropriate for investigators to have access to enhanced powers. The addition of these new financial and property investigation powers in relation to foreign power threat activity will ensure that law enforcement has the tools it needs to effectively conduct state threats investigations, prevent and mitigate harmful activity and bring those responsible to justice.

The Committee will note that these new powers are available to National Crime Agency officers, reflecting the Government's intention, as set out in the integrated review of defence and security, to ensure that the NCA has the capabilities that it needs and to pursue greater integration where there is an overlap between serious organised crime, terrorism and state threats.

I want to take this opportunity to inform the Committee that as we have finalised these provisions, we have identified other areas in the Bill where the drafting needs to be tailored to ensure that it is consistent regarding the availability of the powers to the NCA. These small amendments will be addressed on Report.

Turning to disclosure orders, as we have discussed in Committee, schedule 2 provides for a number of powers that law enforcement can use to obtain information in state threats investigations. Law enforcement investigators require disclosure orders for state threats investigations in order to access non-excluded material by compelling individuals or organisations to provide information to investigators. It is important to note that disclosure orders cannot compel someone to answer any question or provide information that is legally privileged, or to produce excluded material. Excluded material is defined under the Police and Criminal Evidence Act 1984 and includes personal records relating to physical or mental health obtained in the course of a trade or profession, human tissue held in confidence and taken for the purposes of diagnosis or medical treatment, and journalistic material held in confidence. If excluded material were required by investigators, a production order under schedule 2 would be required.

Much of the information that investigators seek under a disclosure order may be considered confidential in nature, such as payment details, but is not classed as excluded material. That may be required because the police have previously approached an organisation to ask for the non-excluded material to be provided, but the organisation has refused because it does not consider that it should disclose the information in the absence of a clear power of compulsion. It may be because the police are conducting a complex investigation involving several organisations that could require multiple requests for information over time. In such a scenario, which is likely to occur in state threats investigations, the police require a streamlined process whereby one order is available to cover separate requests for information from multiple organisations without creating an undue administrative burden on law enforcement, the courts or those who might receive such requests.

In the absence of a disclosure order, a schedule 2 production order, if applicable, would need to be made for every request for information, requiring a large amount of police resource as well as court time. Disclosure orders streamline this process and reduce the numbers of orders needed for requests for non-excluded material during an investigation. For example, if the police were conducting a state threats investigation into an individual and needed to access information from several airline companies regarding the suspect, the company may be willing to provide only basic customer information, such as the full name, without a formal court requirement. If the police required access to the suspect's payment information used for a plane journey that is suspected of being related to state threat activity, the company may refuse to provide that information, even if investigators provided the company with reassurance that providing this information was in the interests of the prevention of crime. Executing a warrant on the company may be possible, but may not be an appropriate course of action by the police. In some cases, a production order under schedule 2 might be available, but that will not always be the case. Disclosure orders will provide a more proportionate and appropriate way of providing investigators with the information required.

In another example, the police may suspect that a person is purchasing a specialist piece of computer equipment to use in the commission of a state threats offence. The police suspect that the equipment has been purchased from one of a small number of possible companies. In that case, a single disclosure order could be sought, enabling the police to seek information from the companies in question, instead of the police needing to seek multiple production orders.

We recognise that these orders could enable the police to give a notice to a wide range of organisations. As such, senior authorisation is required within law enforcement before an application can be made to the courts. In addition to the requirement for senior authorisation, a disclosure can be made only in relation to an investigation into the identification of state threats property, which is defined as money or other property that could be used for the commission of foreign power threat activity, or the proceeds from such activity. This restriction to investigations into relevant property reflects the scope of the equivalent powers in terrorism and proceeds of crime legislation.

Furthermore, the judge must be satisfied that there are reasonable grounds for believing the information being sought would be of substantial value to the investigation, and for believing that it is in the public interest for the information to be provided, having regard to the benefit of the investigation. Disclosure orders provide for an effective and flexible means of obtaining information in a state threats investigation. Sitting alongside the powers of schedule 2, they would ensure that investigators have efficient and effective access to the information that they need to conduct their inquiries.

Holly Lynch (Halifax) (Lab): It is always a pleasure to serve under your chairmanship, Mr Gray. I also welcome hon. Members back to the final day of the Committee. We welcome new schedules 1, 2 and 3, and hope that they will reflect the complex and evolving nature of state threats, and the significant technical and financial resources that provide the capability for sustained hostile activity.

For too long, our police and security services have had to use blunted tools in this regard, not designed to address adequately the challenges posed by modern day espionage. We are grateful to Counter Terrorism Policing for submitting written evidence to the Committee, and making its support for the new schedules 1, 2 and 3 very clear. Frankly, the Met provided far more in its written

[Holly Lynch]

evidence on the rationale of these provisions than the explanatory notes accompanying the new schedules from the Government—a point made by my right hon. Friend the Member for North Durham.

The fairly non-existent explanatory notes are a constant challenge from this part of the Bill onwards, affecting later amendments, which is disappointing for all hon. Members trying to follow the detail closely. As the Minister said, Assistant Commissioner Matt Jukes said in his written evidence to the Committee:

"We have requested financial investigation powers to support our investigations in this space. To this end we have articulated a clear requirement to emulate various investigatory powers within the Terrorism Act which centre on financial investigations as well as examination of material which can be used for investigatory purposes. We are assured that these will be introduced by way of a forthcoming amendment. If so, this will further ensure that we have the tools required to successfully investigate and disrupt state threat activity."

We welcome the new schedules, and now that the long overdue Economic Crime and Corporate Transparency Bill has been published, no doubt the new schedules are intended to work alongside some of the part 5 provisions in that legislation. Currently, terrorism disclosure orders can be made under schedule 5A of the Terrorism Act 2000. Counter Terrorism Policing has called for an explicit disclosure order for state threats, stating that it will help investigators benefit from a streamlined process, whereby one order is available to cover separate requests for information from multiple organisations, without the need to return to court. I want to push the Minister on oversight. I have made the case for an independent reviewer of all the new measures in the Bill. As those will be investigatory powers, will the Minister confirm that the investigatory powers commissioner will have responsibility for overseeing their use?

Turning to paragraphs 7 and 17 of new schedule 1, paragraph 7 outlines offences in relation to disclosure orders. Sub-paragraph (3) states that 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."

By comparison, paragraph 17(1) states that 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."

I cannot quite square that off. I am keen to better understand why the information provided by a person under a disclosure order could not be used as evidence in criminal proceedings.

Before concluding, as I have said before, I accept that it is standard to refer to a police officer as "constable" in legislation, despite the fact that in doing so we are referring to police officers of any rank, not the rank of constable, which seems problematic. New schedule 1 is a prime example of where it gets messy. Paragraph 1(5) says that an appropriate officer for the purposes of these powers is either a constable or a National Crime Agency officer. It is not until paragraph 2(10) that the provision states that an appropriate officer must be a senior officer or authorised by a senior officer. Not until paragraph 9(4) does it confirm that "senior officer" must be a superintendent or above. Would it not be clearer to be explicit about the stipulated rank required to exercise certain powers at the earliest opportunity, instead of allowing for the ambiguity of the word "constable"? The last thing any of us want is for any ambiguity to be exploited by defence lawyers in the courts.

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): It is a pleasure to serve under your chairmanship, Mr Gray. My apologies for missing the previous Committee sitting. I can now welcome the Minister to his place at this very interesting and challenging time. I do not doubt that we wish him well. We have a tricky job in Committee today. We are looking at fairly substantial new schedules and new clauses for the first time. It would be helpful to hear what the Minister has to say about them. On the whole, we are supportive of most of what we will be discussing today, but we will have to take away what the Minister says and consider it further. Ultimately, we reserve our position until the Bill reaches its final stages in the House of Commons.

The Minister has outlined a number of case studies and scenarios to illustrate how this new clause and new schedule would work. More of that information would be really helpful to understand what the Government are getting at. With that proviso in mind, we would say that new schedule 1 seems to provide the necessary powers to investigate foreign threat activity. The Minister referenced the fact that this was based on other provisions, which is interesting to know, but I two have two or three questions about precisely what statute and provisions these measures are modelled on. Some of them seem fairly unusual, so it would be useful to know where else they can be found in order to analyse how they work there.

The Minister provided some examples of how the new clause and schedule would work. The first question is how is it to be decided that property is

"likely to be used for the purposes of foreign power threat activity"

or proceeds of that? Is that essential analysis to be based on the nature of the property, or is more required, such as intelligence about who may have had ownership or possession or some other link to it? Again, the illustrations which the Minister gave during his introductory speech may answer that question. I will have to go away and have a think about that, but the more illustrations we can have, the better. Otherwise, his scheme seems pretty reasonable.

I have a couple of questions about some of the supplementary provisions. Is there not an issue with being able to ask questions that could lead to self-incriminating answers? I think the shadow Minister almost had the opposite concern from me. She asked why that would be protected from use in a criminal trial. My question is about whether the safeguard goes far enough. The Government are basically saying that someone can be asked a question that may lead to a self-incriminating answer. There are protections elsewhere in paragraphs 8 and 17 of the new schedule about the non-use of those statements, but is this formulation used in other legislation? It would be useful to have a specific reference to a provision in another Act of Parliament.

In a similar vein, what is the thinking around ensuring that disclosure orders have effect, despite restrictions in another enactment? That seems a very broad provision. Again, is that found elsewhere in another piece of legislation? What other Acts of Parliament are going to be impacted or undermined by this? Finally, part 2 includes the provisions in relation to Scotland and how these would be put into practice. I wanted to check that there has been consultation with the Scottish Government. The broad thrust of new schedule 1 seems fine, but there are one or two questions for the Minister.

9.45 am

Maria Eagle (Garston and Halewood) (Lab): I have a minor point to raise with the Minister in respect of part of the supplementary provision in new schedule 2, which the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East has referred to, about disclosure orders—

The Chair: Order. I am sorry to interrupt you, but we are discussing new schedule 1 rather than new schedule 2.

Maria Eagle: Sorry; it is in new schedule 1. That was my mistake, Mr Gray, and I apologise. I am not seeking to confuse proceedings any more; it is confusing enough to have to scrutinise the provision without an explanatory memorandum. That makes this kind of provision very difficult to scrutinise with any real sense. The point I wanted to make is about paragraph 3(4) of schedule 1, which says,

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

The words "by an enactment" seem to make it pretty clear that unless it excludes material, the provision is designed to enable the investigating authority to look at anything. Can the Minister give an example of what that aims to remedy? What lacuna is it aimed at preventing? We are talking about waving through a provision that allows a disclosure order to ignore another enactment, and that seems to me to be a large power.

The provision goes on to say, "or otherwise", which is an absolute catch-all phrase. Can the Minister can explain why the provision is drafted so widely, as well as what kind of "otherwise" arrangement it seeks to get around and why? It seems to me to be extraordinarily wide. We might have seen the rationale for that in an explanatory memorandum, had there been one, but we do not have one to hand. Perhaps the Minister can tell us whether we will have an explanatory memorandum before the completion of the Commons stages of the Bill. I think that waving through extraordinarily wide arrangements is cause for concern if we are trying to scrutinise what the Government seek to do and why.

Tom Tugendhat: I thank hon. Members for their comments so far. I will first touch on the point that has been raised about the explanatory notes. I am told that it is normal procedure for that to be published before the Bill is introduced to the Lords—

Mr Jones: Not true!

Tom Tugendhat: I will bow to the superior knowledge of age and give way.

Mr Jones: That is complete nonsense. Usually, there are explanatory notes for amendments, so I do not know where that suggestion has come from.

Tom Tugendhat: I will be taking that up with officials later, and I will find out why that has been said.

Mr Jones: And stop making things up.

Tom Tugendhat: The right hon. Gentleman knows that I would never do such a thing. In response to the provision on oversight, we discussed in the last sitting that we are looking at different forms of oversight. While that has not yet been clarified, I will engage with the hon. Member for Halifax to ensure that we have a form of oversight that works, be that from one of the existing oversight bodies or from another body. There are various different arguments, so I will come back to the hon. Member on that.

The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East asked what the measures were based on. The Bill is based on the Terrorism Act 2000, but we also looked at the Proceeds of Crime Act 2002. We sought consistency in the schedules by using the so-called TACT and the Proceeds of Crime Act as their basis. It is important to note that Police Scotland has been involved in this endeavour and is content. It has been a very important part of the conversation.

The hon. Member for Halifax asked where these orders could come from. Police need to compel individuals or organisations to answer questions. Because of the different natures of potential production orders, they may involve not just a single individual, but multiple sources; that is why I mentioned multiple companies. In this case, one may be following a particular individual but not be certain which airline they travelled on. Therefore, this could include either multiple companies that may have produced a good or a service, or multiple agencies that have supplied it. That is where it comes from.

Question put and agreed to.

New clause 8 accordingly read a Second time, and added to the Bill.

New Clause 9

CUSTOMER INFORMATION ORDERS

"Schedule (*Customer information orders*) makes provision for customer information orders."—*(Tom Tugendhat.)*

This new clause introduces the new Schedule inserted by NS2.

Brought up, and read the First time.

The Chair: With this it will be convenient to consider Government new schedule 2—*Customer information orders.*

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

New clause 9 and schedule 2 seek to insert customer information orders into the Bill as part of the suite of investigatory measures. Those who engage in state threats activity are highly trained individuals who have knowledge of tradecraft that can obfuscate their identity and real intentions.

[Tom Tugendhat]

For example, the tradecraft could be used to conceal transactions by creating secret bank accounts under false identities, or accounts registered to different addresses, in order to send or receive money for conducting activity. The operational objective of a customer information order is to enable an investigator to identify accounts and other account information in relation to state threats investigations. For example, this could be where a foreign agent is paying others to conduct state threats activity in the United Kingdom and police need to identify where the agent's account is held, or it could be where a suspect is using a covert account under a false identity to receive funds to use for the purposes of state threats activity.

The customer information order is therefore intended for use as a tool of discovery during an investigation, often in the early stages. Once accounts have been identified through a customer information order, they could, where appropriate, be subject to further monitoring or investigation through a schedule 2 production order or an account monitoring order. Without customer information orders, accounts used by those conducting state threats activity may go unidentified, reducing investigative opportunities and, in turn, the ability for law enforcement to disrupt harmful activity and bring offenders to justice. We recognise that such orders could potentially require any financial institution to provide information about relevant customers. As such, senior authorisation is required within law enforcement before an application can be made to the courts.

We expect that, in practice, the powers will be used by police and NCA officers who have received relevant financial investigator training, and we are continuing to work with the police and NCA on creating the relevant guidance. Again, we have modelled the provisions on the terrorism equivalent and the measures used in the Proceeds of Crime Act 2002, and the consistency of these processes will ensure that law enforcement officers can make the most effective use of the powers. As I have set out, the customer information orders are another important investigative tool, opening new lines of inquiry and ensuring that law enforcement can run effective state threats investigations.

Holly Lynch: New clause 9 and new schedule 2 establish customer information orders, which authorise the police and NCA officers to obtain customer information from financial institutions. In its written submission to the Committee, for which we are all grateful, Counter Terrorism Policing has welcomed the provision, stating that it will

"enable investigators to identify accounts in relation to state threat investigations, or where an individual is using a covert account under a false identity to receive funds to use for the purposes of state threats."

As the Minister outlined, the tool has been available to law enforcement for terrorism investigations thanks to schedule 6 to the Terrorism Act 2000, and it has been available for criminal investigations through the Proceeds of Crime Act. However, according to Counter Terrorism Policing, it has not been possible to use either Act in relation to state threats investigations, so we welcome the provision. It prompts the question of why we have not addressed this issue sooner.

Subsection (2) states that the judge may grant the order if they are satisfied that

"the order is sought for the purposes of an investigation into foreign power activity",

and that

"the order will enhance the effectiveness of the investigation."

We have spoken a lot about the value of an independent reviewer, and I welcome the substance of the Minister's comments. It is worth keeping under review the threshold of a judge being satisfied that the order is sought for the purposes of investigation into foreign power activity. We cannot use these orders without good cause, but if we need them to be able to find evidence of foreign power activity, will investigators be able to satisfy a judge prior to that? It will be interesting to see how many applications are granted and rejected once we start to work with the orders. Aside from those points, I am happy with new schedule 2.

Stuart C. McDonald: I will make a couple of brief points. The broad thrust of the new schedule and the intention behind it seem absolutely fine, but I am interested in the tests that must be satisfied before an order is made. Under the previous schedule on disclosure orders, the judge has to be satisfied that there are reasonable grounds for suspicion, that there is substantial value in the information gained under the order and that the order would be in the public interest.

In contrast, here in new schedule 2, the judge has to be satisfied only that the order is sought for the purposes of an investigation and that it will enhance the effectiveness of that investigation. That seems a pretty low bar to allowing this pretty invasive procedure to be gone through. Why that choice of language? I guess it is modelled on the provisions that have been mentioned. I have probably not been as diligent as the shadow Minister has in doing my homework and tracking through the previous bits of legislation, and I will now do that. The information gained under these orders could be pretty intrusive, so we need to ensure we are not giving carte blanche to all sorts of intrusive investigations. I am a little bit concerned about the low level of test, compared with the test for disclosure orders.

My second, brief point is that paragraph 4 of the new schedule suggests that the person whose records are about to be trawled through can seek to vary or discharge the order. It is not clear to me how they would go about doing that, given that I suspect most orders will be made without any notice, and they can even be made by a judge in chambers. What assurance can we have that people will be able to challenge this potentially intrusive investigation?

Tom Tugendhat: The question as to why we have not addressed this sooner is a fair one. The UK's investigation legislation is complex, as the hon. Member for Halifax knows only too well from the homework she has obviously done for our sittings. For example, in the Proceeds of Crime Act there are more than seven investigatory orders used in criminal and civil investigations. The consideration that has gone into this has naturally been complex, and it has required a lot of time and input. This Bill, as she knows very well, has been some years—and, indeed, some Ministers—in the making.

Mr Jones: More to come!

Tom Tugendhat: Let us see. The fact that there are no recorded uses of the information orders in TACT demonstrates how sparing the use of these provisions will be.

Question put and agreed to.

New clause 9 accordingly read a Second time, and added to the Bill.

New Clause 10

ACCOUNT MONITORING ORDERS

'Schedule (*Account monitoring orders*) makes provision for account monitoring orders'.—*(Tom Tugendhat.)*

Brought up, and read the First time.

The Chair: With this it will be convenient to consider Government new schedule 3—*Account monitoring orders.*

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

I turn to new clause 10 and schedule 3—

The Chair: New schedule 3.

Tom Tugendhat: My apologies; I meant new schedule 3. New clause 10 and new schedule 3 provide for account monitoring orders for certain investigations into state threats. Police need to be able to obtain information relating to accounts held by a suspect in real time in order to identify and act on disruptive opportunities related to state threats activity. An account monitoring order will require a financial institution to provide specified information in relation to an account—for example, details of all transactions passing through the account—for a specified period not exceeding 90 days.

10 am

The information will normally be provided in the form of a bank statement at regular intervals, which could be every few hours. That provides police with real-time information that can be used to react quickly and intervene if necessary, potentially stopping the state threats activity from taking place.

For example, if police were investigating an individual for foreign power threat activity and had intelligence to suggest that the suspect was being paid by a foreign power to conduct the activity, the account monitoring order would be a key investigative tool for police to monitor if and when the money had been transferred by the foreign power. That would provide key evidence regarding whether the foreign power condition had been met for use in a future prosecution of the suspect, but it would also provide police with the real-time intelligence to suggest that the activity might be imminent, which would identify the need for disruption.

As well as payments from a foreign power, account monitoring orders might identify other activities of concern, such as a person purchasing a travel ticket, which might require immediate intervention. In the absence of an account monitoring order, the police would need to rely on other powers, such as a production order under schedule 2. That could require a financial institution to hand over the financial records it has in its possession, for example a monthly statement. However, that could mean a significant delay in police identifying and being able to respond to an activity of concern.

The process for applying for an account monitoring order will broadly follow that used in terrorism cases and investigations under the Proceeds of Crime Act 2002. That means that applications are subject to judicial approval and only available where the judge is satisfied that the order will enhance the effectiveness of an investigation into foreign power threat activity. Police have stated that this order is a critical tool required to successfully investigate offences within the National Security Bill, and that account monitoring orders may assist investigators in preventing harmful activity from occurring.

Holly Lynch: In our debates on new schedules 1 and 2, we have been through arguments similar to those that apply to new schedule 3. Once again, CT Policing states that these account monitoring orders will provide:

> "investigators with real-time information that can be used to react quickly and intervene if necessary, potentially stopping the state threat activity from taking place."

Of course, that is enormously welcome. I draw the Minister's attention to one small matter, concerning the use of the word "constable". For account monitoring orders, new schedule 3 stipulates that an appropriate officer is a constable or an officer of the NCA under paragraph 1(3). When we get to interpretation, paragraph 7(2) states:

> "'Appropriate officer' has the meaning given by paragraph 1(3)",

which refers us back to the word "constable" with no stipulation about rank whatsoever. That is very different from the requirements in new schedules 1 and 2, which stipulate that the officer needs to be a senior officer, meaning a superintendent or above. Is this an oversight? Should the officer be a senior officer, in line with new schedules 1 and 2, or can a police officer of any rank apply for an account monitoring order?

Mr Jones: These are sensible proposals to give our law enforcement agencies the powers they require, but I would like clarification about definitions. The Minister referred to a bank, and it is clear that this is about monitoring bank accounts. The explanatory statement, expansive as it is—I think it is one line—says:

> "These orders may require financial institutions to provide specified information relating to accounts."

I want to clarify the definition of financial institution. If we go back 20 or 30 years, it was quite clear: we had bank accounts and financial products. Today, though, there is a complex environment of organisations that work and deal with financial accounts. For example, Bitcoin is now traded between organisations, some of which are covered by the Financial Conduct Authority and others not. I am trying to get some understanding of how widely this will go.

The other issue is about bank accounts that are not in the UK. I am particularly thinking about bank accounts in the overseas territories, and what happens there. We need clarification about the remit. The measure might work very simply with banks and other financial institutions, but in an ever-changing world we have a lot of organisations that deal with people's "accounts" where they are not regulated.

Tom Tugendhat: The hon. Member for Halifax asks again about the term "constable". She is right to ask, but that is not an oversight; it is accurate. There are different levels at which different officers are allowed to warrant things. As she rightly identifies, "constable" is the generic term, and then at various points different ranks of officer are required for different levels of

[Tom Tugendhat]

authority. That is in line with the TACT powers. This area of authorisation is considered less intrusive, and that is why a lower-ranking officer is allowed to ask for it.

On financial institutions, the right hon. Member for North Durham identified that banking has changed somewhat since he and I had post office accounts in the early—I will leave that there. Schedule 3 uses the same definition as that used in paragraph 6 of schedule 6 of the Terrorism Act 2000; it is designed to align. The definition of financial institution in the Proceeds of Crime Act 2002 can be found in paragraph 1 of schedule 9. Account monitoring orders can be used as part of a broader set of purposes, such as civil recovery, and they are applicable to a broader range of financial institutions. Such breadth is unnecessary in respect of state threats, which is why that is slightly narrower, but the definition is there.

Obviously, these powers cannot be used to compel institutions overseas, so we are asking for co-operation from police forces.

Mr Jones: I appreciate that in terms of overseas bank accounts, but there has been a lot of controversy about individual using overseas territories. If the Minister does not know the answer, he can write to the Committee to clarify the point. I just want to see how far these orders could go in terms of their effect.

Tom Tugendhat: The right hon. Gentleman knows very well that overseas territories come under slightly different jurisdictions, whether they are Crown dependencies or overseas territories. It depends on the jurisdiction, but I will be happy to write to him.

Question put and agreed to.

New clause 10 accordingly read a Second time, and added to the 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, 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 12—*Offence of carrying out activities under an unregistered foreign activity arrangement.*

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

Tom Tugendhat: New clauses 11, 12 and 13 are the first of a series of amendments relating to the foreign influence registration scheme announced by the Home Secretary on Second Reading. I will come to the new clauses shortly, but first I want to make some introductory remarks about the scheme itself.

In the 2020 Russia report of the Intelligence and Security Committee, it was recommended that future counter-state threats legislation should address the issue of those acting on behalf of a foreign power and seeking to obfuscate their links or relationship. The director general of MI5 strongly emphasised the importance of legislating to ensure that those acting covertly could

be pursued through criminal means to make the operating environment harder for those who intend to disguise or obfuscate who they are acting for. The ISC's report identified the need for stronger transparency legislation, akin to that in place in the United States—namely, the Foreign Agents Registration Act 1938, known as FARA.

FARA requires any person, regardless of nationality, to disclose to the Department of Justice where they represent the interests of foreign powers in a political or quasi-political capacity, as described by the report. It is a disclosure requirement that applies far beyond a situation in which a person acts for a foreign intelligence service, extending to activities undertaken for foreign powers as well as other entities and individuals.

Only four years ago, the Australian Parliament passed its contemporary equivalent to FARA, the Foreign Influence Transparency Scheme Act 2018. The Australian scheme requires the registration of political influence activities undertaken for, or on behalf of, a foreign power or other individuals or entities subject to foreign power control. Both schemes contain a range of exemptions, offences and enforcement powers to further shape and support enforcement of the scheme. Although not like-for-like schemes, they share the principle of tackling covert influence through greater transparency.

There is evidence of the value of these schemes. A submission from the Australian Attorney-General's Department to an ongoing review of FITS, which commenced in August last year, describes the behavioural changes that it has seen as a result of the scheme's implementation: some organisations and individuals have adopted better transparency practices, while others have seemingly ceased activities that would be registrable. Enforcement of the US's FARA has increased in recent years. That has also resulted in behavioural change, as well as prosecutions for non-compliance, including of one very high-ranking former military officer.

I am delighted to be before the Committee today to talk through the proposed UK scheme. This is an important piece in our package of measures and is the area of legislation that calls on sectors to play their part in making it difficult for foreign powers to operate covertly in the United Kingdom. Similar to the position with the precedents that I have just described, its overarching aim is to deter foreign power use of covert arrangements, activities and proxies by requiring greater transparency around certain activities that they direct, as well as where those activities are directed or carried out by entities established overseas or subject to foreign power control.

Put simply, where a foreign state deploys its influence in the UK, either directly or through third parties, that will now be subject to registration and more transparent. I must stress that the scheme's requirements are not identical to those of the United States and Australian schemes. Although we have worked with our US and Australian colleagues to understand the lessons learned from implementation of their schemes, our scheme's requirements reflect our own experience and the threats that we face.

The overarching aim of the scheme is to be delivered through two separate objectives and requirements. The first is to strengthen the resilience of the United Kingdom's political system against covert foreign influence. Openness and transparency are vital to the functioning of our democracy. Where covert influence is deployed by foreign powers, directly or through third parties, it undermines the integrity of our politics and institutions. The scheme will therefore require the registration of political influence activities where they are to be undertaken within the United Kingdom at the direction of any foreign power or foreign entity, or by a foreign entity itself. I will refer to these obligations as the "primary registration requirements".

Certain registered information will be made available to the public via a scheme website, similar to the position with the schemes of our Australian and US partners. This requirement is deliberately state and sector agnostic, as the source of foreign influence should be transparent no matter where it originates or manifests. The only exceptions, which I will come to, are where exemptions are necessary to protect existing obligations.

The second objective is to provide greater assurance around the activities of specified foreign powers or entities. The scheme contains a power to specify a foreign power, part of a foreign power, or an entity—such as a company or organisation—subject to foreign power control, where the Secretary of State considers it necessary to protect the safety or interests of the United Kingdom. It would require a person acting within the United Kingdom at the direction of a specified power or entity to register with the scheme. It would also require a specified entity to register activities to be undertaken within the UK with the scheme. I will refer to this as the "enhanced registration requirement". Its use will be limited and subject to parliamentary approval.

These requirements will apply to certain arrangements and activities, regardless of the nationality of those carrying out the activity, and will be enforced through a range of offences and penalties, as well as powers to request information.

I also want to tell the Committee about the scheme's exemptions, which are as follows.

Stewart Hosie (Dundee East) (SNP): Before the Minister tells us about the exemptions, it would be helpful to know how the enhanced registration—let us call it tier 2—will actually work. So far, we are in the dark. The basic registration seems eminently sensible, but what will the procedure be to specify a country, entity or person to whom enhanced registration will apply? How will it work? We need to know that before we find out who might not be expected to register in that way.

10.15 am

Tom Tugendhat: The right hon. Gentleman will see that I have a number of pages of text that I will be coming to. If he will forgive me, I will explain all these elements as we get to them.

The scheme's exemptions are as follows: individuals to whom privileges and immunities apply in international law, as provided by, for example, the Vienna convention on diplomatic and consular relations; legal services, as well as information subject to legal professional privilege; domestic and international news publishers, including confidential journalistic material and sources; and arrangements to which the UK Government are party.

The scheme has also been designed to uphold the letter and spirit of the Belfast/Good Friday agreement. To that end, any arrangement with Ireland, or with a body incorporated or associated under the laws of Ireland, will be exempt from registration, as are activities to be carried out by such entities. That will avoid

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interference with the rights of citizens of Northern Ireland who identify as Irish, as well as the activities of cross-border entities and institutions.

I want to close my opening remarks—that is right; we are just starting—by mentioning George Brandis, the former Attorney General for Australia who was responsible for passing the Australian scheme. He was recently reported as commenting on the announcement of the UK scheme:

"This ought not to be in the cockpit of political controversy in the U.K. It ought to be something, because it is necessary for the protection of the national interest, that commands bipartisan support."

That is certainly the sentiment that I have taken from Second Reading and our deliberations in Committee so far, and I look forward to working with all sides to ensure the requirements are effective and proportionate.

With that, I turn to the group of new clauses relating to the enhanced registration requirement. Each of the new clauses is substantive and so, after setting out the benefits of the enhanced requirement, I will take each in turn. The enhanced registration requirement will provide greater scrutiny of the activities of specified foreign powers or entities while deterring the use of covert arrangements. I describe it as "enhanced" because it creates wider requirements to register than the primary registration requirement, which we will come to later. That is proportionate to the aim of this part of the scheme: to provide greater assurance around the activities of specified foreign powers or entities.

The enhanced registration requirement will provide three principal benefits. First, it will provide the Government and the public with a greater understanding of the scale and extent of activity being undertaken for specified foreign powers and entities within the United Kingdom. Secondly, the offences and penalties for non-compliance will increase the risks to those who seek to engage in covert activities for foreign powers, either directly or through specified entities. Finally, the requirement offers potential for earlier disruption of state threats activity, where there is evidence of a covert arrangement between a person and a specified foreign power or entity but it is not yet feasible to bring charges for a more serious state threats offence.

Mr Jones: Will the Minister give way?

Tom Tugendhat: I will, very briefly, but the right hon. Gentleman may find that the point is covered—

Mr Jones: If the Minister wants to come here and just read his speech to us, that is fine, but that is not what scrutiny is. I am fully supportive of the proposals under tier 1, but I find it difficult to understand how tier 2 will work in practice. Putting countries or companies on the list will cause huge diplomatic incidents. Let us say we put Huawei on the list, for example; I am sure there would be fallout from that. As well-meaning as tier 2 is, practically, I do not think it will ever be used.

Tom Tugendhat: The right hon. Gentleman and I have had many debates on the nature of different foreign influence in the seven years that I have been here. We have discussed many different companies and countries in various ways. I know he shares my absolute passion for protecting the United Kingdom from foreign influence and knows the difficulty that that causes in diplomatic areas. He appreciates better than almost anyone how difficult it is sometimes to match the economic needs and requirements of the United Kingdom with the need to protect ourselves from foreign influence. He is right that this will cause difficulty. There is no getting around the fact that making a decision on the enhanced tier will have diplomatic repercussions. But the reality is that if we do not make those decisions, the implications for our economy and domestic security will be very high.

The right hon. Gentleman is absolutely right that there are companies that some of us have stood up to and made a point of identifying as actors for a foreign state—he mentions Huawei; there are others—and which are in many ways difficult examples. I am not going to say whether Huawei would or would not be subject to the enhanced tier, as we have not looked at any determinations on that, but it is quite clear that there are some countries—Russia is a good example today—that would absolutely require the enhanced tier. Different elements of Russian business would no doubt fall within it.

Mr Jones: Yes, but the Minister knows that there are many countries in the world that, although they are not comparable with Russia, would also cause economic harm but are not in the higher tier. Would it not be better to have a broader scheme that mirrored tier 1, with tight definitions of what needs to be registered, and apply it to all countries? We would then give ourselves protection and avoid the diplomatic pitfalls every time we wanted to follow this process.

Tom Tugendhat: People have to register under tier 1 anyway. That will be a public scheme that already identifies many areas. Tier 2 will make sure that there is an enhanced aspect that allows us to be clear what exactly is going on, rather than relying on a general identification. That is an important distinction.

Maria Eagle: Is my understanding correct that tier 1 is about capturing arrangements and activity undertaken for the purpose of influencing a political event or decision, but that the second tier will capture all other behaviour beyond political influencing, such as acting as a foreign intelligence officer? Is it correct that the scheme as set out at present is aimed at making everyone apply at the lowest level—the political influencing level—but that only more serious incidents will be dealt with by designating individual countries or companies? We are going to immediately run into the difficulty of upsetting diplomatically any person, company or country that is designated for more serious activity.

Tom Tugendhat: The hon. Lady is not noted for her shyness. I am surprised that she feels that the diplomatic repercussions of designating a company or country should dissuade the UK Government from defending themselves. I know she does not think that, and I know the right hon. Member for North Durham does not think that.

The different schedules identify the different natures of influence being used. As the hon. Lady rightly identifies, schedule 1 is about political influence. As I think we all appreciate in this House, that should be public. Those who seek to influence anyone in this House or anyone else by political means, whether through lobbying or in

different ways, should identify on whose behalf they are doing so. I do not think that is a very contentious provision.

Maria Eagle *indicated assent.*

Tom Tugendhat: I am glad to see the hon. Lady nodding. The second point is the enhanced scheme. That is where influence may come in different ways, where co-operation and interaction with different businesses that pose a particular and distinct threat may be required. That is why—we will come to this later—the political register will be public and the second register will be private, but the identification of those who are required to be registered will of course have to be public and there will be a political and a diplomatic decision that will go with that.

Mr Jones: I sympathise with what the Government are trying to do, and I think my hon. Friend the Member for Garston and Halewood does too, but I am never in favour of putting things on the statute book that look tough but that, frankly, will never be used. There must be a more direct way of doing this—a broader measure that applies to all countries, which is then used against relevant countries. My fear is that the measure as it is written at the moment looks tough but will not be usable.

Tom Tugendhat: The right hon. Gentleman raises a fair point, but I simply do not believe that if he were in my position, he would not use the powers. I would use them, and I am sure he would use them in a situation where they were required. I know that he has never shrunk from a fight or diplomatic argument, but I think that this is important. The problem is that if the enhanced power were to be used for every nation, the volume of data produced would be enormous and the imposition on companies would be huge.

Mr Jones: I agree with the Minister, but he has a problem. He and I have dealt with the Foreign Office and other diplomatic entities over many years: he knows that the pressure that the power will come under, and the competing arguments against security, will make it unusable.

Tom Tugendhat: I do not accept that, so I think we will have to end this discussion with an agreement to disagree.

Mr Jones: Not for the first time.

Tom Tugendhat: Indeed. But I entirely respect the right hon. Gentleman's position, and I do understand the point he is making.

New clause 11 will require Ministers—specifically, the Secretary of State—to be willing to engage in a strong discussion with other Departments that rely on investment or, indeed, diplomatic leverage. Yes, I am afraid that is a balance that the Government have to make; the right hon. Gentleman is absolutely right to identify it, but I simply do not accept that that means the power will not be used. It is true that the power will be constrained, but that does not mean that it will be unused—Ministers who see the threats before them will be willing to use the powers that they have. We will no doubt continue this discussion later.

New clause 11 will provide three principal benefits. The first is that it will provide the Government and public with a greater understanding of the scale and extent of activity being undertaken for specified foreign powers and entities within the United Kingdom.

10.30 am

Stewart Hosie: The Minister explained just a few moments ago that the tier 1 registrations would be public but the tier 2 enhanced registrations would be private. I am not sure how he can argue that the tier 2 enhanced registration would give the public much more confidence if it is a secret.

Tom Tugendhat: The nature of the registration will not be a secret, but who has had to register will be kept private at the moment. I am already keeping this matter under discussion, so I am glad that the hon. Gentleman sympathises with my concerns. He and I are fully aware that journalism is a very powerful force in many of these areas.

Mr Jones: This baffles me, as it does the hon. Member for Dundee East. Tier 2 registration will not be private, will it? The order will have to be moved to put them on the list in the first place. Everyone will know, so what is the problem with providing transparency? I do not think you can have two tiers with different levels of transparency.

Tom Tugendhat: Let me clarify. Whoever is identified as being on the enhanced tier will be identified publicly. It is those companies that may be co-operating; at the moment, there is a discussion as to whether that should be public or private. The reason for that discussion is that some companies will be co-operating and we may feel that we wish to see that co-operation continue, even though we wish to have the compliance and registration so that we know who is doing what. The argument is that the Government should have the ability to have that information.

Mr Jones: If I am the CEO of a company and the Government put my company on the list, surely that will get out anyway. I would have to report it to my shareholders or board, so I am not sure about the benefits of keeping it a secret.

Tom Tugendhat: Forgive me, but I think the right hon. Gentleman has got this slightly the wrong way round. By definition, the company that would be identified would be a foreign company, not a UK company.

Mr Jones: Yes, but if I headed a French company—I am not suggesting that we use this power against the French for one minute—and had shareholders, surely I would have to tell them, and report at board meetings, that I had been on the list. It will get out anyway, so what is the point of keeping it quiet?

Tom Tugendhat: We are clearly speaking at cross purposes. The state that is on the enhanced register would be public. The company would be public. Those UK companies that are registering may not be. The right hon. Gentleman has it the wrong way round.

Mr Jones: I don't think I have.

Tom Tugendhat: Okay. I am going to carry on, but I am very happy to continue this discussion on a later occasion.

New clause 11 will provide three principal benefits. First, it will give the Government and the public greater understanding of the scale and extent of the activity. Secondly, the offences and penalties for non-compliance will increase the risk to those who seek to engage in covert activities for foreign powers, either directly or through specified entities. Finally, it offers potential for earlier disruption of state threat activity where there is evidence of a covert arrangement between a person and specified foreign power or entity but it is not yet feasible to bring charges for a more serious state threat offence.

I want to be clear that we expect use of the enhanced registration requirement to be limited. It is an additional tool of assurance to bolster the package of measures within the wider Bill. The power to specify a foreign power or entity will be available to the Secretary of State when the Secretary of State considers it reasonably necessary to do so to protect the safety or interests of the United Kingdom. It will be subject to the affirmative procedure.

It is also vital to stress that the use of this requirement should not be taken to imply that every national of a specified foreign power or person associated with a specified foreign entity is to be mistrusted. The message here is quite the opposite: any person who complies with the obligation to declare an arrangement with a specified foreign power or entity is contributing to the safety and security of the United Kingdom by being open and transparent about that arrangement.

Although I am sure that members of the Committee will be keen to understand which foreign powers will be in scope of the enhanced registration requirement, I am sure they appreciate that it would be premature—if not damaging—to make undertakings on that at this stage. The Government will decide when the scheme is ready to be brought into force. For now, I will cover each amendment.

New clause 11 is the requirement to register foreign activity arrangements. A foreign activity arrangement is where activity is to be carried out, or arranged to be carried out, within the United Kingdom at the direction of a specified foreign power, part of a foreign power or an entity subject to foreign power control. The requirements could apply to any activities, but subsection (9) provides for this to be modified through regulations where necessary.

I wish to bring four key points to Members' attention. First, I want to reflect on what we mean by a person required to register in this context under subsection (1). A person can be an individual, regardless of their nationality, or an entity. However, if a company or organisation is being directed by a foreign power or entity, the company or organisation would be responsible for registering the arrangement, not its individual employees.

We will shortly discuss new clause 13, which includes a requirement for specified entities to register their own activities. That is important because it makes clear our intention that an employee of a specified entity cannot be considered as being in a registrable arrangement with that entity. The approach was taken in response to sector feedback during our public consultation as a means of reducing the potential registration burden on companies and other organisations that may have many employees all engaged in the same activities.

Importantly, subsection (8) clarifies that there is no requirement for a foreign power itself to register. The scheme intends to increase assurance and transparency of activities being carried out for a foreign power where the involvement of that power might otherwise not be apparent.

Stewart Hosie: In new clause 11(1), "A person ('P')" might, as the Minister said, be an individual, an entity or a business. This is not at all clear. Is this the UK individual, entity or business or is it the overseas individual, entity or business that is directing a UK citizen? Is it a combination of the two?

Tom Tugendhat: Let me be completely clear, because subsection (8) makes it completely clear: there is no requirement for a foreign power itself to register. We cannot compel foreign powers or entities to register; this is a compulsion on UK entities or individuals.

The scheme intends to increase assurance and transparency to activities being carried out for a foreign power, where the involvement of that foreign power might otherwise not be apparent. As such, we would not expect other Governments to register with the scheme in respect of activity that they themselves are undertaking. As the later "interpretation" clause will make clear, that includes any person acting in the capacity of an office holder, employee or other member of staff of the foreign power, or a person whom the Secretary of State reasonably considers to be exercising such functions.

This scheme has been designed to avoid interference with our obligations under international law regarding the diplomatic and consular relations between countries, as well as the need to protect routine Government-to-Government engagement—the official visits of officials, military and other agencies of a state, for example.

Secondly, subsection (2) sets out the definition of "arrangement", which requires there to be direction from a specified foreign power or entity to a person. That element of direction is important because it envisages a power relationship between the specified foreign power or entity and the person. The specified foreign power or entity has told the person to carry out the activity, or arranged for it to be carried out. While in practice it is entirely likely for a direction to be delivered in the language of a request, the context of the relationship between the specified foreign power or entity and the person being directed will ultimately determine whether it falls within scope.

Stuart C. McDonald: What happens if an intermediary is involved? What if a designated state power says to someone locally, "You arrange for these activities", rather than saying to someone in the United Kingdom, "I want you to undertake these activities"? That falls within the terms of the new clause. That intermediary then instructs people in the United Kingdom to undertake activities. Does that not mean there is a gap in the clause and that people in the UK undertaking those activities would not have to register anything? It would be almost impossible to enforce against that intermediary requirement to register. Is there not a potential problem there?

Tom Tugendhat: My understanding is that—in fact, I will come back to that when I sum up, because the hon. Gentleman has raised an interesting point.

We consider a power relationship to include, for example, where the specified foreign power or entity has formally contracted a person's support for an activity, or where it is paying a person to deliver a service. It could also include a situation where a specified entity is making a request of its subsidiary—again, the direction might be in the language of a request, but the power relationship would make it a direction. Where such formal structures are not established, a direction should include where a person is requested to act, but through the promise of compensation or coercion—for example, future payment, benefit or favourable treatment.

To be clear, though, it would not be enough for a specified foreign power or entity to simply provide funding in support of an activity—through subsidy or donation, for example. Nor could a generic request from a specified foreign power or entity be considered a "direction"—a request made through a public communication to a large distribution or mailing list, for example.

A power relationship, whether formal or informal, is necessary to ensure that unilateral activity on the part of the person is not within scope and nor is activity that is part of a collaboration and absent a power relationship. We shall set out in guidance what we intend by a direction so that it is clear to the public and to the courts what arrangements are registrable.

An arrangement also captures where a person is to arrange for activity to be carried out at the direction of a specified foreign power or entity, as well as where the person is to carry out the activity themselves. That is to ensure that a person in a direct arrangement with a specified foreign power or entity cannot avoid registration by simply contracting out the activity to a third party, creating a degree of separation between the specified foreign power or entity and the ultimate person who will carry out the activity.

Thirdly, I turn to the definition of "control", where a specified entity is said to be subject to foreign power control. It is important that we capture the commonly used practice of foreign powers channelling state threat activity through private entities. To capture this effectively we have defined "control" under subsection (5) as being where a foreign power holds, be it directly or indirectly, more than 25% of the shares or voting rights of the entity, or the foreign power can appoint or remove officers of the entity.

Control can also be demonstrated where the foreign power has the right to direct or control the entity's activities, allowing the Secretary of State flexibility if foreign powers exercise other significant forms of control that fall below those thresholds. The more than 25% threshold is in line with existing legislation on substantial control over an entity.

Mr Jones: I appreciate that it is difficult to identify control, but how would we get around the situation of a Russian oligarch who is clearly under the influence of the Kremlin, but whose company is owned through myriad different offshore companies? Would it have to be proven that the ultimate beneficiary was that individual to fall under this legislation? Those people, and even states, are very clever and hide who ultimately controls that company.

Tom Tugendhat: The right hon. Gentleman is identifying a problem that we have had with foreign ownership of companies for a very long time. That is why the Economic Crime and Corporate Transparency Bill is very important, because the ownership of companies is something that has been a challenge and he is correct to identify it. This Bill addresses certain elements of that control, but he is right that it does not address the totality, although it provides an important brick in the wall that we are building. That is why the Economic Crime and Corporate Transparency Bill and the companies registration are important.

Mr Jones: So, really, what we are enacting in this legislation will have to be dovetailed with the Economic Crime and Corporate Transparency Bill. The issue around Scottish limited partnerships has been quite controversial. Is the Minister saying that when the two come together, they will form the toolkit to tackle these individuals?

Tom Tugendhat: The right hon. Gentleman knows that there is not a single tool to deal with every task. The Bill will certainly help with a lot of things that already exist; the Economic Crime and Corporate Transparency Bill will add to it, and no doubt, in future years, different Governments will add further tools.

May I finally come to my fourth point? *[Interruption.]* I hear the hon. Member for Birmingham, Yardley chuntering. I will briefly summarise the procedural element of the new clause. The requirement is to register a foreign activity arrangement within 10 days of its being made, or otherwise before the activity is carried out. That is important because it may not be obvious to the Government under whose direction the person is acting. The prior registration of arrangements offers some opportunity for the Government to be informed before an activity pursuant to a foreign activity arrangement takes place. It also offers an opportunity to enforce the requirements of the scheme prior to an attempt to carry out covert influence activity.

Subsection (10) makes clear that an offence is committed if a person fails to comply with the requirement to register, and knows—or ought reasonably to know—that the arrangement is a foreign activity arrangement We will discuss the proposed range of offences shortly.

The offences relating to the other part of the scheme—where the registration of political influence activities are concerned—come with a higher bar for the prosecution to meet. Given the likely attention that the measure will receive if a foreign power, part of a foreign power or an entity subject to foreign power control is specified through regulations under subsections (3) and (4), a person should not be capable of avoiding prosecution by claiming they were unaware of the requirement to register. That said, we are mindful that a person who is unwittingly acting for a specified foreign power or entity should not be criminalised. That is why the test is such: a person can be prosecuted only if they ought reasonably to know that they were acting for a specified foreign power or entity.

New clause 12 makes it an offence to carry out activities, or arrange for an activity to be carried out, in the UK pursuant to a foreign activity arrangement that has not been registered. The requirement to register a foreign activity arrangement, which is an arrangement with a specified foreign power, part of a foreign power

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or entity subject to foreign power, applies to the person who is party to that arrangement—in such a case, that is the person directed by the specified person.

In practice, many other people could be involved in the activity or activities pursuant to that arrangement. For example, if the person party to an arrangement with a specified foreign power is a company, multiple employees could be all engaged in registerable activities within the UK under the arrangement. While I have already explained that the responsibility for registration would rest with the company in this example, and that that is necessary to avoid the burden of each individual employee being required to register separately, the effect of the new clause is to make it an offence to carry out an activity, or arrange for the activity to be carried out, pursuant to a registerable arrangement that has not been registered.

There are two main justifications for the offence. First, it will reduce the likelihood that activities pursuant to an unregistered arrangement with a specified person will be carried out, supporting the overall aims of the scheme. It makes it clear that all individuals have a role to play in ensuring that the requirements of the scheme have been complied with. Where there is doubt that an organisation or company has registered its arrangement with a specified person, it is a good outcome if its employees take necessary steps to clarify that their registerable activities are covered by registration.

10.45 am

Secondly, the offence will provide an important means of disrupting all levels of an organisation that has been identified as being engaged in a covert arrangement with a specified foreign power, part of a foreign power, or entities subject to foreign power control. If there was solely an offence for failing to register an arrangement, with the organisation solely liable for registration, a prosecution could be brought only against the organisation and its directing mind. The offence allows for a prosecution to be brought at any level.

The offence will be subject to a knowledge test that a person knows or ought reasonably to know that they are acting under the direction of a specified person. That will guard against the prosecution of individuals who could not have known that they were being directed by a specified person, and so could not have been expected to take steps to check whether their activity was pursuant to an unregistered arrangement before carrying it out.

There is no intention for the offence to obstruct or stifle the daily activities of businesses or organisations. Rather, it is to encourage a culture of responsibility and compliance. Clearly, where employees of a company or members of an organisation could not know they are acting under the direction of a specified foreign power or entity—for example, if they are at a level in the company where they would not ordinarily be privy to such information—they would not be in danger of committing an offence

The offence is important for cases in which there is evidence that an organisation is complicit in acting covertly for a foreign power. Being able to pursue the prosecution of the organisation and its directing mind is clearly beneficial, but being able to act against any level of an organisation will help to strengthen the deterrent and disruptive benefits of the scheme against very capable adversaries.

Mr Jones: How does the Minister define "foreign power control"? What would be the evidential test? I have heard him argue, for example, that all Chinese companies are ultimately under the control of the Chinese Communist party. Is that the evidential test? Or to take the Russian example, would the evidential test be a company being owned by an oligarch who is close to Putin? Clearly, if the Chinese Communist party wants to control a Chinese company, it can. Would that be the threshold at which a company would be caught by the measures?

Tom Tugendhat: The right hon. Gentleman is right to ask. Control over an entity means 25% of a shareholding—that is one thing that we have already identified—or it could also be formal mechanisms within the company, including voting power or other forms of control. Some foreign powers enact legislation to oblige entities to comply with their security services or intelligence agencies—the right hon. Gentleman knows what I am referring to—giving them a right to exercise an element of control over those entities outside formal governance structures.

Stewart Hosie: Further to the point made by the right hon. Member for North Durham, the control criteria could be indirect control of more than quarter of the stock, indirect control of more than a quarter of the voting rights, or an indirect ability to appoint or remove an officer of the entity. That is dreadfully subjective. Unless the criteria are really nailed down, people could absolutely fall foul of the measures without knowing that they are being controlled in any way.

Tom Tugendhat: I do not think that is the case. The hon. Gentleman should realise that foreign control of any kind is under the general provision of the so-called ordinary provision, while the enhanced provision would be specifically identified, so individuals required to register under the enhanced provision would be aware that they are contracting within an organisation or entity that falls under it. All those contracting with a foreign entity will know that they have to register under the ordinary provision, so the legislation covers both cases.

Mr Jones: That does not clear things up for me. I have mentioned China. I am sure if I googled long enough I would find a speech that the Minister has given where he suggests that all Chinese companies are controlled by the Chinese Government, if they wish to have foreign influence. There is clear, direct evidence about doing business in Russia—it is not the law, but there is coercion regarding the individuals around Putin. If we are saying that the Chinese Communist party can control most companies, is the Minister saying that all those companies will have to register?

Tom Tugendhat: The right hon. Gentleman knows very well that what we express in private and what we say from the Dispatch Box cannot always be absolutely aligned. I am not going to identify every single Chinese company in one go. He knows that there are different elements of control. The Companies Act 2006 sets out the nature of those different elements.

Mr Jones: I am sure the Minister will get some China hawks on the Back Benches of the Conservative party arguing that all Chinese companies should have to be registered under the scheme. I think the measure needs some clarification before it goes any further. There are also certain individuals that the Minister's party has taken money off who very clearly have connections with the Kremlin and who control companies in this country through front people; the ownership is actually individuals who we would not want to be associated with.

Tom Tugendhat: The right hon. Gentleman knows very well my own views on foreign influence on political parties. Sadly, we have seen such influence in all political parties, where parties or members of political parties have unwisely, sometimes rashly and often extremely foolishly, taken money off Chinese, Russian or other individuals. That is completely wrong and I know he and I share complete revulsion at it. I am very glad that we are sorting some of that situation out. It is a problem that the whole of the United Kingdom and many other political parties around the world have to face. We need to deal with it, and that is what the Bill is doing.

New clause 13 is the second aspect of the enhanced registration requirement. It will require the registration of activities to be carried out within the United Kingdom by a specified person. The first aspect of the enhanced measure, which we dealt with earlier, was the registration of arrangements with a specified person. Although arrangements are important, we recognise that activities within the United Kingdom will be carried out by the specified person themselves and not just those they direct. I should be clear: "specified person" in the context of the requirement can only be a specified entity subject to the foreign power control. I have already explained that foreign powers themselves are not required to register under the foreign influence registration scheme. We are therefore proposing that the specified entity subject to foreign power control, for example a company or organisation, be required to register its activities within the United Kingdom before they are carried out. An offence would be committed where the specified entity had failed to register its activity and it knew or ought reasonably to know that the activity in question was not registered.

To ensure that the requirement is practical and proportionate, the requirement to register is to be fulfilled by the entity and not its individual employees. Although we recognise that an employee is also capable of being directed by its employer to engage in the same registerable activities, we considered it disproportionate to require each individual to register in such a scenario. There would also be practical difficulties, not just in administration but also in consistency. If each individual employee were required to register the same activity, that increases the likelihood that the information provided is materially different and possibly even contradictory.

Finally, hon. Members may wonder why, compared with the requirement to register an arrangement, there is no 10-day period within which the registration must be made. The requirement to register an arrangement within such a period is necessary, as it may not be immediately clear that a person is acting at the direction of a specified person, as the person receiving the direction is separate to the specified person directing the activity. Where the specified person—the entity subject to foreign power control—is acting itself, it should already be clear and it is therefore enough that the registration takes place before the activities are carried out.

I want to finish my remarks by reiterating that if we did not include that requirement there would be a clear gap. A person who is separate from the specified entity, for example a different organisation, would be required to register an arrangement that involves being directed to act in the United Kingdom, but there would be no requirement for the specified entity itself to register its own activities. Leaving such a gap would not make sense in the context of countering state threats. I also want to stress again that we intend the use of the enhanced measure to be limited. It is there as an additional tool of assurance and its use will be subject to parliamentary approval through affirmative procedure. I ask the Committee to support the clauses.

The Chair: Before we move on to the debate, may I raise a matter to the Committee that has been brought to my attention? The 1922 Committee elections for Select Committees happen at 2 o'clock this afternoon, which is an obvious clash with the meeting of this Committee. I understand that it would be possible for the Minister to move an amendment to the sitting time this afternoon to 2.15, if he wished to do so. Any objection from any member of the Committee would of course make that fall. Before we enter a discussion—although I would rather not discuss it too long—would the Minister be prepared to move that the Committee should sit at 2.15?

Tom Tugendhat: I would be prepared to move that, if the Committee were supportive.

Maria Eagle: Would it be possible to extend the sitting by 15 minutes, so that no time is lost? If we were to do that, I would have no objection.

The Chair: If the Minister so moves, it would be a question of starting 15 minutes later and ending 15 minutes later this evening.

Ordered, That the Committee shall meet at 2.15 pm until no later than 5.15 pm.—*(Tom Tugendhat.)*

Holly Lynch: I have listened very carefully to everything the Minister has said. I will speak to all of the new clauses in the group, which is the first of several additions to the Bill concerning the foreign influence registration scheme, as well as raising some more general issues which will need ironing out about the scheme as we move into this section of the Bill. First, I assure our Australian friends that beyond making sure that we have provided our scrutiny and ensured that the registration scheme does everything that we need it to do, we are very much in support of the introduction of it.

I appreciate that the Minister is not responsible for the publishing of the provisions after Committee stage has already started, but I am going to have to come back to the issue of explanatory notes. To assist the Minister, I suspect that the feedback he has had from his officials is that it would appear we only get a technical explanatory statement when an amendment is published on the amendment paper. The more complex explanations are in the explanatory notes published alongside the Bill. I expect that that is the way it has happened in the past, in anticipation of Governments

[Holly Lynch]

not tabling substantial additions to pieces of legislation so late in the Commons scrutiny process. That may be the feedback he has had from his officials. However, so important are the types of explanations and examples that we are asking for, I do not think that there would be anything out of order if those examples were provided to Members of the Committee directly, or that anything prevents that.

Mr Jones: Also, a commitment was given on the Floor of the House on Second Reading that those notes would indeed be introduced. There is no real reason why those explanatory notes could not have been produced.

Holly Lynch: My right hon. Friend is quite right. Let me turn to the explanatory notes provided with the Bill as examples, for instance. If person A is contacted by person B to organise activity X, those examples are on page 14, 16, 17, 18 and so on, to try to add some colour and operational understanding of part 1. We have then got nothing to accompany an outline in real-world terms of how so many of these provisions about the foreign influence registration scheme, which is complicated, for the reasons that hon. Members have already outlined, would work in effect. I just put it on the record that that has been a real frustration for Committee members and is disappointing. We understand from officials that efforts will be made to correct it by the time the Bill gets to the Lords, but that is of no use to us, so let me gently suggest that some of those examples be provided before we get to Report, which I know would be enormously welcome.

11 am

Government new clause 11 is the first of the new clauses that will make up a new part 2A of the Bill. This is the introduction of the long-awaited registration scheme. I have already said that, generally speaking, the registration scheme is very welcome—although complicated, for the reasons that right hon. and hon. Members have raised. It is worth reflecting on. It has been one of the key recommendations of the Intelligence and Security Committee's 2020 Russia report.

New clause 11 requires registration of arrangements with specified persons to carry out activities in the UK. Subsection (1) states:

"A person…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"

the person "makes the arrangement." As it stands, there is potential for loopholes all over the place, but it is clear that we are expecting much more detail to be outlined in regulations, so we will be following that process very carefully.

New clause 11(4) states:

"The regulations may specify a person other than a foreign power only if…the person is not an individual, and…the Secretary of State reasonably believes the person is controlled by a foreign power."

Subsection (5) then outlines the conditions that need to be met in order for a person to be controlled by a foreign power, including the foreign power holding

"more than 25% of the voting rights in the person"

or

"more than 25% of the shares in the person".

Those quite formal thresholds do not really reflect some of the murky ways in which this type of activity manifests. As my right hon. Friend the Member for North Durham has already pointed out, in relation to Chinese companies, the lines are even more blurred because of new laws under the CCP. It very much seems that we are talking about businesses, entities and bodies corporate, as they are referred to in subsection (6). I can only imagine that the Government have taken legal advice on the drafting, but I do not know why we cannot be clearer when distinguishing between individuals and entities and businesses when describing a "person" in these provisions of the Bill. These are exactly the types of areas where those examples would have been incredibly helpful.

Returning to the point about registering within 10 days, I would like to push the Minister for absolute clarity that it is 10 days after the arrangement has been made, not the activity commencing. My reading is that someone would have to register no later than 10 days after the agreement is made, and before the activity commences, but there is no set period as to how long is required between registering the activity and commencement of the activity. My concern is this. If an arrangement is made on something that we would be very unhappy to see go ahead, it is registered on day 9 and the activity starts on day 10, where is the opportunity for our agencies to have properly had a look at that arrangement and to intervene if necessary? Should there not be a buffer, so to speak, to prevent what we would be concerned about from happening? I am talking about a specified period between registration and commencement, to give the agencies the space to do that work.

On new clause 12 and the new offence of carrying out activities under an unregistered foreign activity arrangement, we need absolute clarity as to exactly when an arrangement is deemed to have been registered. This has been one of the lessons of the American scheme under the Foreign Agents Registration Act—FARA, as it is known—which was first enacted in 1938. From speaking to partners, we know that criticisms have in the past been publicly made of an arrangement that appears to be unregistered because the details are not in the public domain, yet the responsible party will be able to demonstrate that they have made the appropriate registration within the specified timeframes. Here in the UK, will an arrangement be registered at the point at which the documentation is submitted? Will it be at the point at which the submission is acknowledged? Does it need to be approved? Or does it need to be published in some form before someone has the necessary green light?

The Economic Crime and Corporate Transparency Bill is currently between Second Reading and Committee and is partly born out of necessity, it having been realised that if Companies House is to act solely as a registration scheme for companies, it is wide open to abuse. The Second Reading debate last week was rife with examples of that abuse. My concern about the foreign influence registration scheme is that, unless someone is truly evaluating the arrangements registered under new clause 11, what confidence will it give us about the foreign activity arrangements being undertaken?

That brings me to resourcing. The efficacy of this scheme relies on its being properly resourced. I would be grateful if the Minister explained what the back-office function will be. Who will oversee the roll-out of the scheme? Will it be the Home Office leading, and what

resources will the team have? We only need to look at business questions on Thursday last week, or any week for that matter, to see the number of colleagues raising complaints about how long it takes the Home Office to deal with anything. The Department has publicly said that it does not believe it can return to its 20-day service standard until March next year.

That is why we need clarity on when an arrangement is registered—to prevent anyone from inadvertently committing an offence under new clause 12 and to ensure that legitimate arrangements are not stuck in limbo forever, unable to progress because of delays and backlogs in the Home Office, despite, I am sure, the best efforts of civil servants. I think it is the minimum we can expect from the Committee process to understand from the Minister exactly when a scheme is registered under these proposals.

Stuart C. McDonald: We are now turning to some of the most important provisions in the Bill. I do not think anybody here would argue that we do not need some sort of foreign influence registration scheme. The question for us today is, is this the right scheme? This debate gives us a lot of food for thought, and we will have to go away and think about it further. We have had the benefit of some very useful meetings with officials, for which I am extremely grateful.

I understand the thinking behind the two-tier system, with a broad primary political tier followed by a narrower but all-encompassing enhanced one. Obviously, the Minister is right about political transparency being essential and something we all support. It is the enhanced tier and how it would operate that challenges Members slightly more. Designating states or organisations for the enhanced tier will clearly be an incredibly serious issue, with profound implications for everyone impacted, as well as the diplomatic challenges highlighted by Members.

Many of the questions raised are ones that I would have asked, so for the moment I want to focus on the question I posed in my intervention, which is about precisely how this would work in circumstances where there are various intermediaries. Again, the hon. Member for Halifax made a very valid point: this could be helped by real-world case studies and examples, otherwise we are just using our imagination to try to come up with examples of how this will apply in practice, and my imagination is probably not up to the task. However, I will try to give a fairly mundane example of where this legislation might have implications.

A specified Government or institution in country X decides that they want a sympathetic professor or tech boss in the UK to try to corral some experts in a particular industry into an association or team, with the purpose of providing regular updates on developments in said industry in the United Kingdom. They might have longer-term goals for how they could use that information and these people. That seems exactly the type of situation that the clause is aimed at. At the stage that the professor or tech boss is tasked with putting together this team on behalf of Government X, he is under an obligation to register that arrangement, as I understand it. That then enables people to keep an eye on that activity, if it is thought necessary, in an attempt to stop anything untoward happening before it is too late. If he does not register, that obviously raises a big red flag, perhaps if the security services are aware of some of his other activities.

That all seems pretty straightforward. The problem is what happens if that professor or tech boss is not situated in the United Kingdom but is in country X? There seems little prospect of enforcing these rules against him in country X if he does not register the arrangement. If I have interpreted it correctly, the new clause does not put any obligation on the people in the UK who are undertaking the activity to register the arrangement. That seems to be a potential gap, because that seems a far more likely scenario than a simple instruction straight from a specified Government or company to people in the United Kingdom saying, "You do this". There will always be intermediaries involved, and that potentially sets up a problem.

I appreciate that there will be issues with what the state of knowledge of the persons in the UK who are doing this via the intermediary might be. Other parts of the Bill, including new clause 11 itself, refer to a person who

"knows, or ought reasonably to know".

That formulation might be used to fill the gap—if I have interpreted the measures correctly and there is a gap. Basically, my point is that if persons further down the line know full well that they will be asked to do activities for Government X—albeit via an intermediary—perhaps that obligation should be placed on them.

It is not clear how the criteria specified in new clause 12 would amount to an offence. Clearly, the intermediary would be committing an offence for arranging various activities without having registered them, but they are away in country X, so there is no chance of our enforcing the law against him or her. Are industry experts in the UK who have been corralled into the organisation by that intermediary committing an offence by undertaking activities that the intermediary has not registered? That comes down to the question of whether they are acting

"pursuant to a foreign activity arrangement",

but it is not clear that they are. A little more clarity on that would be useful. Would it depend, for example, on their state of knowledge?

The Minister suggested that new clause 13 could close a gap, but it does not apply to Governments for a start, so it does not fill the hole that we are talking about. If it is not a Government who have been specified but another company, there are questions about whether that company would bother to comply with the measures and about how the measures would be enforced anyway.

More profound concerns about the enhanced tier, including the diplomatic issues and what impacts the measures might have on research and collaboration, have been raised by organisations such as Universities UK. The Government may well say, "That's something we have to weigh in the balance, and if it is required for the security of the United Kingdom, tough—so be it." However, there is provision for regulations to tailor precisely the list of activities that could be exempted on a country-by-country basis, and I would be interested to know the Government's thinking on that.

What will be the process leading up to a decision to take this very serious step of designating either a foreign Government or another institution? I guess that there would have to be significant consultation about that—or would there? Would the list of activities that have to be registered be tailored depending on the country, or will the list be for everything?

Mr Jones: The Minister said that he was delighted to bring the new clauses to the Committee. I think it is disappointing that we did not have sight of them on Second Reading. It is not as if the Government have not had time to come up with the scheme. In 2020, we on the Intelligence and Security Committee reported that the United States have had a system since 1939 and that the Australians brought in their legislation in 2018. I am delighted that we have it, but it has taken too long, and I am surprised that, even at this stage, we are still scrabbling around on the detail.

One thing that concerns me a little is that Committee stage has become a tick-box exercise. We should be able to scrutinise the proposals in detail. Most of the provision will be introduced as secondary legislation, so even when the Bill receives Royal Assent, we will not have the detail of how it will operate in practice. I say gently to the Minister that we should have more detail before the Bill reaches Report and the other place, where it will quite clearly be torn to shreds because of the outstanding issues.

The Minister referred to the former high commissioner of Australia, who said that he hoped the provisions had cross-party support. That is the problem with the way the Government have approached this entire Bill. I am not suggesting for a minute that the Minister would, but other people try to score political points by saying that one party is more concerned about national security. Certainly, my hon. Friend the Member for Halifax, my party and I have known for many years that we would not do anything that would weaken our national security. We want to enhance it. There have been missed opportunities throughout the Bill. I know that is not the Minister's fault, because the succession of Ministers has not helped. I hope that with current things happening, we do not get another Minister before the Bill reaches its final stages.

11.15 am

The first part of the Bill is very sensible. Tier 1—the primary tier—is very simple. The only thing I would like to understand relates to the Australian and US systems. I hate to use a David Cameron phrase, but disinfectant is the best sunlight. Sorry, transparency's best disinfectant is sunlight. Sorry, sunlight is the best disinfectant.

Ben Everitt (Milton Keynes North) (Con): I think your version is better.

Mr Jones: I am sorry; it is an odd quote. That will be the test for tier 1: to make sure that it is publicly available and people know it and can see. That has worked in both those systems.

I have real problems with the secondary tier. I understand what the Government are trying to do, but they are making it very complicated. I worry that we are putting in provisions that will not be helpful in practice. It goes beyond political influence, for which I think there is a need. One example is acting as a foreign intelligence officer. Those arrangements need inquiry, but we are left not really knowing, because a lot of that will be looked at in secondary legislation, and it does not apply to all countries. That will create some problems. I have already mentioned the diplomatic problems when a country is added to that list.

When I met officials yesterday I used the analogy of being put on the naughty step: there is no real understanding of what criteria would be used to do that. I have no problem with the Minister's robustness in using this measure, but because it is getting into economics and other areas, there will be huge problems with pressures from the Department for Business, Energy and Industrial Strategy, the Foreign and Commonwealth Office and others. I would like to understand what a country would have to do to get on the naughty step.

On named countries, I am sure the Minister will not mention the exact countries today, but once the Bill secures Royal Assent, are there any countries that will automatically be added? I am sure no one will be surprised to see North Korea on it. The more problematic country is China, on which I know the Minister has strong views. That will create some problems. I am struggling to understand which countries will end up on this tier.

How will the list work in practice? If the Minister were to put a country that is hostile to us on this list, that is one thing, but what happens if the relationship with that country changes? The example I gave to officials was Iraq. During the Iran-Iraq war, it was our ally. When it invaded Kuwait, it was certainly not our ally. What would be threshold to take someone off that tier? What is the practical way in which that will be done?

Holly Lynch: My right hon. Friend is making a powerful case for doing things slightly differently. In the conversations we have had with officials, one of the issues we have worked through is, if our relationship changes with a country at quite a pace, how quickly could we make additions to that enhanced tier to reflect that? Some of the feedback was that it could take a number of weeks, if not months, to address that through the enhanced tier. Is that another area of consideration that we would like to get a grip on?

Mr Jones: My hon. Friend makes an interesting point. That is why I do not think the provision will be used in practice. That is the problem and, as I have said, I am never in favour of putting such provisions on the statute book. A more narrowly defined set of criteria applied to all countries would be better than the complicated system that we have here.

The other point is about transparency. Clearly, the public record for tier 1 will be there—it is published. Why the second tier should be done differently, I do not know. The information is going to get out anyway. It is not going to be a great surprise if a company is on this list. If I was running a company and was suddenly put on the register, I would not tell people that—I would not tell the investors and shareholders. I do not understand why the Government are treating the second tier differently from the first tier.

Tom Tugendhat: May I interrupt with a point of fact? Any company that is designated under the highest tier will be public by definition. That element will be public. It is the UK element that is having to register. The right hon. Gentleman gave an example of a completely spurious French company, which would of course never be on the enhanced list, as we are such good allies with the French. That company would be publicly declared. That is not the bit that is being kept out of the publication. It is the UK element registering it.

Mr Jones: Why not include the UK company? I do not understand why there are different levels in the two schemes.

I support the measure—when we did the Russia report, the right hon. Member for Dundee East and I were very clear that there was a gap, where international partners had provisions and we did not, so this is welcome. I just think that the Government are making it unnecessarily complicated.

I press a final point about secondary legislation. More information about how the measures are going to work in practice before the Bill gains Royal Assent would help the process.

Maria Eagle: I endorse what my right hon. Friend has just said about the complexity of the proposed scheme, which concerns me as well. I very much favour our having a scheme, and I think we should have had one sooner. It is a shame that we were not able to see on Second Reading what was being proposed, because we could have had some of these debates at an earlier stage, when there was still a chance to make changes.

I have a concern about the two tiers being different. It is confusing and complex—much more confusing and complex than it needs be. It might have been more effective to have one tier applying to all countries, and a broader range of covert activity specified as having to be registrable. That might have then meant we would have needed more exclusions, but it would have had the benefit of being simple, straightforward, transparent, all on a level and more obvious, both to those to whom it applies and to those who wish to see the benefit of being able to consult the publicly available information, from a transparency point of view.

It is hard to understand the need for this level of complexity, particularly when it comes to the second tier. Why is the registration of harmful activity outside political influencing, some of which is worse than political influencing, only registrable when a foreign power is set out in the secondary legislation? What we are doing is putting an additional burden on the Government. The Security Minister might always be up for registering the right companies and organisations and countries, but he has got to persuade the whole Government. Other Departments have their own interests and their own work to pursue, which could be made much more difficult by designating in this manner. We seem to be setting ourselves a barrier that might be quite hard to overcome. The eventual outcome of the discussions within Government might not be in accordance with the best security interests. I am not talking about this particular Minister or this particular Government, but there are always competing issues and concerns.

Ordered, That the debate be now adjourned.—*(Miss Sarah Dines.)*

11.25 am

Adjourned till this day at quarter-past Two o'clock.