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OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ECONOMIC CRIME AND CORPORATE TRANSPARENCY BILL

Fifteenth Sitting

Tuesday 22 November 2022

(Morning)

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not later than

Saturday 26 November 2022

The Committee consisted of the following Members:

Chairs: Mr Laurence Robertson, Hannah Bardell, Julie Elliott, Sir Christopher Chope, † Ian Paisley

† Anderson, Lee *(Ashfield)* (Con)
Ansell, Caroline *(Eastbourne)* (Con)
† Byrne, Liam *(Birmingham, Hodge Hill)* (Lab)
† Crosbie, Virginia *(Ynys Môn)* (Con)
† Daly, James *(Bury North)* (Con)
† Hodge, Dame Margaret *(Barking)* (Lab)
† Hollinrake, Kevin *(Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy)*
† Hughes, Eddie *(Walsall North)* (Con)
† Hunt, Jane *(Loughborough)* (Con)
† Kinnock, Stephen *(Aberavon)* (Lab)
† Malhotra, Seema *(Feltham and Heston)* (Lab/Co-op)
† Mann, Scott *(Lord Commissioner of His Majesty's Treasury)*
† Morden, Jessica *(Newport East)* (Lab)
† Newlands, Gavin *(Paisley and Renfrewshire North)* (SNP)
† Stevenson, Jane *(Wolverhampton North East)* (Con)
† Thewliss, Alison *(Glasgow Central)* (SNP)
† Tugendhat, Tom *(Minister for Security)*

Kevin Maddison, Anne-Marie Griffiths, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 22 November 2022

(Morning)

[Ian Paisley *in the Chair*]

Economic Crime and Corporate Transparency Bill

9.25 am

Ordered,

That the Order of the Committee of 25 October 2022 be amended in paragraph (1), by inserting after sub-paragraph (i)--

"(j) at 9.25 am and 2 pm on Tuesday 29 November;".—(*Scott Mann.*)

Clause 141

Cryptoassets: confiscation orders

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

The Chair: With this it will be convenient to discuss that schedule 6 be the Sixth schedule to the Bill.

The Minister for Security (Tom Tugendhat): It is a great privilege, as always, to be with you this morning, Mr Paisley, and to enjoy the possibility of conversing about the Proceeds of Crime Act 2002.

The clause introduces schedule 6 to the Bill, which amends the criminal confiscation powers contained in parts 2, 3 and 4 of the Proceeds of Crime Act 2002—known as POCA, not to me, but to some presumably—to make it easier for law enforcement agencies to seize, detain and recover cryptoassets in more circumstances than at present. Schedule 6 will amend the provisions in each of the three existing confiscation regimes that extend to England and Wales, Scotland, and Northern Ireland so that the measures apply in all parts of the United Kingdom. That is reflected in the three parts of schedule 6.

Key definitions in schedule 6, such as those of "cryptoasset" and "cryptoasset exchange provider", are consistent with those used elsewhere in the Proceeds of Crime Act. The schedule includes powers to update those defined terms to ensure that the measures in the Bill can keep pace with the constantly evolving criminal use of cryptoassets, the rapidly changing nature of crypto technology as well as stay aligned with other legislation dealing with similar threats.

Stephen Kinnock (Aberavon) (Lab): It is a great pleasure to serve under your chairship today, Mr Paisley. I take the opportunity to welcome the Minister to his place; I do not think that I have done so formally, although I might well have done informally. It is good to see him in his place.

I want to make some general comments about cryptocurrencies and about the clause and schedule 6. Broadly speaking, they have some positive aspects, but we also have some questions for the Minister, and I am sure that he will explain the position with his customary lucidity once I have sat down.

Cryptocurrencies and other digital assets are not new, but how they should be regulated is still very much an open question in the UK and internationally. The Government's decision to expand the legal framework for asset recovery under the Proceeds of Crime Act is a positive development. For that to work, however, we need to be clear about what the legislation intends to achieve.

It is fair to say that the Government have sent mixed messages about their approach to regulating cryptoassets. On the one hand, they have acknowledged the need to tackle the use of cryptoassets for criminal purposes, hence the decision to extend the money laundering regulations to cryptoasset businesses, which has been under the supervision of the Financial Conduct Authority since January 2020. In the factsheet published alongside the Bill, the Government set out their view:

"Cryptoassets are now increasingly being used by criminals to move and launder the profits of various crimes including drugs, fraud, and money laundering. There is also an increased risk that cryptoassets are being exploited to raise and move funds for terrorist activities."

On the other hand, earlier this year, the then Chancellor of the Exchequer, who is now the Prime Minister, said that it was his

"ambition to make the UK a global hub for cryptoasset technology".

The then Economic Secretary to the Treasury echoed that, saying in a speech at the Innovate Finance global summit in April:

"If there is one message I want you to leave here today with, it is that the UK is open for business—open for crypto-businesses";

and

"Because we want this country to be a global hub—the very best place in the world to start and scale crypto-companies."

It concerns me that the Government do not seem to have made up their mind whether as a country we should value crypto firms and want to entice them to the UK, or whether we should recognise the ease with, and scale at which, criminal activity within crypto markets is allowed to happen and therefore should prioritise tightening regulation and enforcement by cracking down on the widespread use of such assets to defraud individuals and undermine our national security. Perhaps the Minister will shed some light on that strategic dilemma or ambiguity and on how the Government plan to reconcile those two apparently competing aims.

I do not want to pre-empt what the Minister will say, but I imagine that he will claim that it is possible to do both.

Tom Tugendhat: Indeed.

Stephen Kinnock: But is it not simply the case that we are not putting enough resources into the enforcement of laws and the policing of such markets? That is fundamental to achieving the regulatory aim of that side of the equation.

Crypto-expert Aidan Larkin recently told me how the US Government's money laundering and asset recovery section brings in around $800 million a year in crypto-recovery alone, while the UK brings in close to nothing, because the UK Government fail to employ the handful of experts required simply to study the blockchains via things such as bitcoin analytics and to follow the illicit finance—"to follow the money", as the saying goes. I cannot pretend to be an expert on the technical aspects of that, but it feels like a missed opportunity to go after illegal activity. We have surely reached a point in time when that could be self-funding, if we did it properly.

I am simply not convinced that the system for regulating cryptoassets is working as well as intended. Indeed, it is pretty telling that in response to written questions 86505 and 86504, which I tabled last week, the Minister admitted that none of the 200-plus crypto businesses operating without commission had been subject to any criminal or civil penalties.

As I mentioned, since January 2020 there has been a requirement for new businesses carrying on cryptoasset activity in the UK to register with the FCA. The requirement was extended to existing businesses the following year. The implementation of the register, however, has been beset by problems, not least of which is the fact that a very large number of the firms required to register have not done so. The FCA seems to have been unable to do much about that.

Only a couple of weeks ago, the *Financial Times* reported that only 16% of applications for registration have been approved by the FCA. The FCA has said that a large number of firms that failed to meet the conditions for registration have withdrawn their applications and that many of those appear to have carried on doing business without the requisite permission. Indeed, the FCA maintains a list of unauthorised cryptoasset businesses operating in the UK. As of last week, 245 firms were on that list. Will the Minister explain what is being done to prevent those 245 firms that operate outside the money laundering rules from scamming members of the public, facilitating money laundering or assisting the evasion of economic sanctions?

The Government have been aware for some time of problems involving the use of cryptoassets to defraud members of the public. In October 2018, the Government's own Cryptoassets Taskforce published a report that identified advertising that misleads people deliberately, by overstating the potential gains from investing in such assets and downplaying the risks involved, as a significant problem for the Government to address. Only now, after four years, are new rules being introduced to expand the FCA's remit to include consumer protection in relation to misleading financial promotions.

Despite that, however, a clear gap remains between the scale of criminal activity in the sector and the ability of the FCA and police forces to respond. In recent evidence provided to the Treasury Committee, Ian Taylor of the crypto trade body, CryptoUK, said that the recent collapse of high-profile crypto exchanges such as FTX could have been prevented had a stronger regulatory system been in place. Multiple witnesses testified to the Committee that, without additional staff with the right expertise, the FCA was unlikely to be able to regulate the crypto sector effectively.

Let me turn to the substance of the clause and schedule 6. It is clearly necessary for the law to be brought up to date to reflect the use of digital assets for criminal purposes. The clause and schedule amend the Proceeds of Crime Act 2002, to extend to intangible assets the same confiscation powers that are already used to recover physical assets like cash. That is an important first step, but in many ways the Bill leaves open more questions than it answers.

For instance, the Bill provides new powers to seize cryptoasset-related items, but the definition of those items is incredibly vague, encompassing any item of property that may provide access to some kind of information that could be relevant to an effort to seize a cryptoasset. Given the broad scope of the powers, alongside the related provisions on the destruction of confiscated property, we need more information from the Minister about how the powers are likely to be used in practice.

Alison Thewliss (Glasgow Central) (SNP): I agree very much with what has been said from the Labour Front Bench. I ask the Minister about the interaction between this Bill and all the other Bills that are considering crypto at the moment, including the Online Safety Bill, which addresses some aspects of people being exposed online to financial crime. The Treasury Committee report on economic crime pushed quite strongly on having an aspect on economic crime in the Online Safety Bill, because it is important that people are not scammed online. To me and to many others, crypto seems very much a place where people do get scammed and lose all their money.

I draw the Committee's attention to an interview by Henry Mance in the *Financial Times* yesterday with Stephen Diehl, who is very cynical about the crypto industry and its ability to rip people off. We have to be incredibly careful about the areas we are getting into; we are legislating for something that is moving very quickly. Given the number of Government amendment that will be made to the schedules in this part of the Bill, we need to think carefully about what we are putting in and whether it is suitable for seizing assets and for protecting people against crypto-related fraud more widely.

My other point is about expertise. I have talked an awful lot about the Government having expertise in various areas on the enforcement side, because if there is no expertise in enforcement, the laws that we are considering will just not be enforced. In our evidence session, Andy Gould said:

> "We have been investigating cryptocurrency since 2015 or 2016. One of my sergeants has just been offered 200 grand to go to the private sector. We cannot compete with that. That is probably the biggest risk that we face within this area at the moment."—[*Official Report, Economic Crime and Corporate Transparency Public Bill Committee,* 25 October 2022; c. 24, Q37.]

If the money is not there in policing to retain the expertise to prosecute crypto crimes and to make sure that the legislation works in practice, rather than just on paper, the Government will be very much behind the curve.

I add my hesitation on the messages the Government are giving out on regulating and encouraging and on cracking down on a sector that has the potential, as we have seen with the collapse last week, of losing an awful lot of people their money and of making some people an awful lot of money out of those who have lost it.

Tom Tugendhat: If I may, I will just give a quick explanation of what crypto is because there seems to be some misunderstanding. Crypto is both a technology and a financial instrument. The financial instrument element is only part of it. Allowing for crypto technology is basically allowing for mathematics. Passing laws against crypto is like passing laws against mathematics—we can try, but it is not going to work.

What the now Prime Minister was talking about was encouraging the mathematics, the algorithms and the technology to develop in this country to create the kind of industry and the kind of infrastructure that would allow the technological use of algorithms for the transfer,

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sometimes of wealth, sometimes of knowledge, sometimes of contractual obligations. That is what blockchain fundamentally is.

On top of the blockchain, there are various forms of currency. There are bitcoins, which are proof of work, and then there is ethereum, which is proof of stake. These are different kinds of technologies and different ways in which cryptoassets use the blockchains and the technology that has underwritten them.

Having regulation for the currency is not the same as having regulation for the underlying mathematics. We would not say that we have regulation for the economist in the same way that we have regulation for the bank—they are different things. The Government are doing the right thing. We recognise that there is technology, and supporting it; we recognise that there are financial instruments, and are looking to work with others to make sure that those financial instruments are regulated in a sensible way. Now, that is difficult: I will be honest. It is difficult because the technology and its use are changing remarkably. The hon. Member for Aberavon spoke about FTX. As he may know, other companies such as Celsius and Gemini have stopped trading in various different ways, as well. It is not just about one instrument. It is certainly arguable that FTX got into difficulties for reasons other than lack of regulation.

The hon. Member's point about advertising is extremely valid. There is a real challenge. That is different—it does not quite relate to this element of the Bill. We are seeing increasing amounts of financial advertising online in different ways. I do not know how many members of the Committee have Instagram accounts, but the number of Instagram messages I get advertising foreign exchange trading is frankly bizarre.

Liam Byrne (Birmingham, Hodge Hill) (Lab): No one else gets those!

Tom Tugendhat: I do not want to know what they advertise to the right hon. Gentleman. They don't do it by pigeon.

The reality is that there are different ways in which people are trying to hack and attack, to steal from individuals in our country and around the world. That is why the work we are doing on the Joint Fraud Taskforce, which met yesterday, and on many other aspects of regulation, such as the Online Safety Bill, which the hon. Member for Glasgow Central quite rightly spoke about, is so important. The FCA has moved forward on many of those areas, in a sensible way, to balance the need of the technology to advance with the protection of society. It is certainly true that many people have lost a lot in recent weeks and months. I do not think anybody was under any great illusion, though, that cryptocurrencies were not a high-risk item, to put it politely. Anything worth about $1 10 years ago and $60,000 a few years later is probably not a stable currency. It may be many things, but it is probably not stable. It is now worth about $10,000 or so—

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Kevin Hollinrake): Thirteen.

Tom Tugendhat: So, $13,000. That certainly speaks to the level of volatility. It has been up and down like a yo-yo in between times, so it is not exactly as though anybody would have been recommended it as an investment vehicle. I understand the hon. Lady's points about online safety and fraud, and she is completely correct, but that is being addressed in different aspects of Government policy. What the Bill does is make sure that those assets that are held in cryptocurrency can be seized, as other assets can. It is certainly true that they are held in different ways, as the gentleman who is going through the waste dump in Wales is discovering. That means that seizing the assets needs a certain ambiguity in the legislation in order to keep it updated for the future. The Government have made a sensible series of suggestions to balance that need for advancing the technology and protecting consumers.

Stephen Kinnock: The Minister is being very generous. On that point about seizing the assets, will the Minister comment on the feedback that Aidan Larkin, an expert in this area, gave me, which is that in the United States money laundering and asset recovery measures bring in about $800 million per year? He says that we do not employ enough people doing block chain analytics. We are missing a big opportunity to generate revenue for the Exchequer.

Tom Tugendhat: I am delighted that the hon. Gentleman will now be supporting this element of the Bill, because that is exactly what it is for.

Stephen Kinnock: I thank the Minister for sitting down even before I had intervened.

Tom Tugendhat: I thought I had finished.

Stephen Kinnock: It seems that this is an issue around resourcing and having the people in place—the handful of experts that we need to study the blockchains. Will the Minister assure the Committee that that resourcing will be provided?

Tom Tugendhat: I can assure the hon. Gentleman that the National Crime Agency, working alongside partners in places such as GCHQ, has enormous amounts of technology to look at cryptoassets in various different ways. The Bill—which I am delighted to hear the hon. Gentleman supports so enthusiastically—will indeed give the powers that he looks for.

Question put and agreed to.

Clause 141 accordingly ordered to stand part of the Bill.

Schedule 6 agreed to.

Clause 142

CRYPTOASSETS: CIVIL RECOVERY

9.45 am

Tom Tugendhat: I beg to move amendment 121, in clause 142, page 125, line 18, at end insert—

"(2) It also contains related amendments.".

This amendment provides for Schedule 7 (cryptoassets: civil recovery) to contain related amendments.

The Chair: With this it will be convenient to discuss Government amendments 51 to 64, 156, 157, 65 to 67 and 158 to 161.

Tom Tugendhat: This is a series of small wording and technical amendments that make no substantial changes to schedule 7, but simply ensure clarity and maintain consistency in the Bill's drafting.

Stephen Kinnock: The use of enhanced powers to seize and detain digital assets, as set out in schedule 6, will be subject to a court order. Clause 142 and schedule 7 and the related Government amendments extend civil recovery powers, which may be used in the absence of a criminal conviction, to a range of organisations including the National Crime Agency, His Majesty's Revenue and Customs and the Serious Fraud Office, in addition to police forces. It would be helpful if the Minister could explain how the Government will ensure that these enforcement powers will be used effectively in a way that avoids duplication of effort and ensures that there is a clear division of responsibilities of the different agencies. As I have said before, numerous additional powers are provided for in the Bill that require further clarification.

The Chair: Order. I encourage you to speak to amendment 121. We will come to the other amendments in the next group.

Stephen Kinnock: I apologise—I thought we were already on that.

The Chair: I do not want to stop you in case you have something material to put on the record on amendment 121.

Stephen Kinnock: I have no substantial comment on the Government amendments. I should have made that clear. As the Minister says, these are technical amendments that do not have a huge amount of consequence.

I return to the issue of powers provided for in the Bill that require further clarification. I would be particularly grateful if the Minister could explain how the provisions enabling a digital asset to be converted into its equivalent value in cash might be used in practice.

In my view, there are other important issues in this area, which the Bill fails to address. I would be grateful if the Minister could set out what plans, if any, the Government have to update the asset confiscation powers we have been discussing and to extend the scope of the money laundering regulations to reflect technological developments such as non-fungible tokens and the use of digital works of art as a means of disguising illicit financial transactions.

Tom Tugendhat: I was rather under the impression that we had not voted on the amendment.

The Chair: We are not voting yet—we will be coming to a vote in a moment. It is for you to now conclude the debate.

Tom Tugendhat: It feels a bit sentence first, verdict afterwards, but all right.

The Chair: We have been doing it for thousands of years. Don't worry—you will get used to it.

Tom Tugendhat: What clause 142 and schedule 7 does—

The Chair: Order. We are on amendment 121.

Tom Tugendhat: I have nothing further to add on that.

Amendment 121 agreed to.

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

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

That schedule 7 be the Seventh schedule to the Bill.

Government new clause 23—*Cryptoassets: terrorism*.

Government new schedule 1—*Cryptoassets: terrorism.*

I call the Minister to speak to clause 142 stand part, although that might seem a bit déjà vu for some folk now.

Tom Tugendhat: It is unusual to have the Opposition argument before the ministerial one—

Stephen Kinnock: I apologise for jumping the gun, but I thought we had already debated the group.

Tom Tugendhat: I am delighted to have had the position set out so clearly.

Perhaps it would be helpful if I answered some of the hon. Gentleman's questions. The reality is that this part of the Bill is to allow law enforcement agencies to search for physical items linked to cryptoassets. As I said in answer to an earlier point, many of the assets are held in different ways. Therefore, seizing physical assets in order to link to cryptoassets is often necessary.

To use the proposed powers, officers will need reasonable grounds to suspect that the cryptoassets have been obtained through unlawful conduct or are intended for use in unlawful conduct. The powers to search for and detain assets are supplemented by powers to ultimately forfeit the cryptoassets where a magistrates court, or a sheriff court in Scotland, can be satisfied that they have been obtained through, or are intended for use in, unlawful conduct. The powers to seize or freeze and ultimately recover cryptoassets may be used irrespective of whether the asset holder has been convicted of a criminal offence. They are, therefore, an important tool for disrupting criminal activity.

Government new clause 23 and new schedule 1—which we have just heard the Opposition debate—mirror in counter-terrorist legislation the civil recovery powers in schedule 7 to the Bill by introducing new provisions into the Anti-terrorism, Crime and Security Act 2001 and the Terrorism Act 2000. That addresses a gap in existing counter-terrorism legislation and ensures that the UK's world-leading counter-terrorism framework keeps pace with modern technology.

The creation of cryptoasset-specific civil forfeiture powers in both the Proceeds of Crime Act and counter-terrorism legislation will, importantly, mitigate the risk posed by those who cannot be prosecuted under the criminal system, but who use their proceeds stored as cryptoassets to perpetrate further criminality. Key definitions in the measures inserted by schedule 7 and new schedule 1 are in line with existing legislation and with schedule 6 to the Bill. Similarly, they include powers to update the

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defined terms and adapt the process for forfeiture of frozen cryptoassets, if needed. With that, I believe I have answered the Opposition's questions before they were even asked.

Stephen Kinnock: The Opposition are concerned about enforcement. As the Minister and I have agreed throughout the debate, and as his ministerial colleague has frequently said, legislation without implementation is not worth the paper it is written on. There is little point in us passing a law that cannot or will not be enforced effectively. I am, and the Opposition are, genuinely concerned about the real risk in the proposals, partly because so much detail has yet to be made clear, but mostly because of the huge gap between what we expect of law enforcement and what resources the Government are prepared to put in.

As I said about the FCA, even the most basic requirement for cryptoasset firms to register is starting to appear unworkable. Will the Minister explain, if we cannot even get such businesses to register, how on earth will we ever be able to identify which ones are breaking the law, much less impose any penalties? I look forward to his clarification.

Tom Tugendhat: I am pleased that the hon. Gentleman is so supportive of the work of the NCA, because it, GCHQ and others have been working extremely hard on identifying the movement of cryptoassets around not just the UK, but wider areas and jurisdictions. That is enormously important for the element of seizure to which he is referring.

It is also important that the conversion powers that the hon. Gentleman spoke about are understood for what they are. A few moments ago, the hon. Member for Glasgow Central asked about market volatility. That is true at any point, including at moments of seizure. Therefore, in order to avoid market volatility at moments of seizure—particularly when assets have been taken, converted to crypto in order to be moved abroad and then seized—having control of those assets means that one needs to put them into cash in order to have a recoverable asset, so this provision is extremely sensible.

The new powers are modelled on existing powers that many law enforcement agencies use to disrupt criminal and terrorist networks. They exercise proportionality and investigatory powers that are absolutely necessary, and no more.

Question put and agreed to.

Clause 142, as amended, accordingly ordered to stand part of the Bill.

Schedule 7

Cryptoassets: civil recovery

Amendments made: 51, in schedule 7, page 206, line 42, leave out "Chapter" and insert "Part".

This amendment makes a minor technical correction to inserted section 303Z42 of the Proceeds of Crime Act 2002, which relates to the procedure for applying for the forfeiture of cryptoassets.

Amendment 52, in schedule 7, page 206, leave out lines 45 to 47 and insert—

"(3) Where an application is made under section 303Z41 in relation to cryptoassets held in a crypto wallet that is subject to a crypto wallet freezing order—

(a) subsections (4) and (5) apply, and

(b) the crypto wallet freezing order is to continue to have effect until the time referred to in subsection (4)(b) or (5)."

This amendment amends inserted section 303Z42 of the Proceeds of Crime Act 2002 to provide that a crypto wallet freezing order continues to have effect until the end of any forfeiture proceedings started in respect of cryptoassets held in a crypto wallet that is subject to such a freezing order.

Amendment 53, in schedule 7, page 207, line 12, leave out "(4)" and insert "(4)(b)".

This amendment is consequential on Amendment 52.

Amendment 54, in schedule 7, page 211, line 24, leave out from "applies" to end of line 28 and insert "—

(a) the magistrates' court or sheriff decides—

(i) to make an order under section 303Z41(4) in relation to some but not all of the cryptoassets to which the application related, or

(ii) not to make an order under section 303Z41(4), or

(b) if the application is transferred in accordance with section 303Z45(1), the High Court or Court of Session decides—

(i) to make an order under section 303Z45(3) in relation to some but not all of the cryptoassets to which the application related, or

(ii) not to make an order under section 303Z45(3)."

This amendment provides that an application under inserted section 303Z46 of the Proceeds of Crime Act 2002 (continuation of crypto wallet freezing order pending appeal) may be made in circumstances where a forfeiture application under section 303Z41 of that Act is transferred in accordance with section 303Z45 of that Act to be heard by the High Court or the Court of Session.

Amendment 55, in schedule 7, page 211, line 31, leave out "(1)(a) or (b)" and insert "(1)".

This amendment is consequential on Amendment 54.

Amendment 56, in schedule 7, page 211, line 37, leave out "under section 303Z47" and insert

"(whether under section 303Z47 or otherwise)".

This amendment is consequential on Amendment 54.

Amendment 57, in schedule 7, page 211, line 39, leave out "(1)(a) or (b)" and insert "(1)".

This amendment is consequential on Amendment 54.

Amendment 58, in schedule 7, page 213, line 2, leave out "with the approval of" and insert

"if the officer is a senior officer or is authorised to do so by".

This amendment amends inserted section 303Z48 of the Proceeds of Crime Act 2002 to provide that an enforcement officer may destroy forfeited cryptoassets only if the officer is a senior officer or is authorised to do so by a senior officer.

Amendment 59, in schedule 7, page 214, line 44, after "may" insert ", subject to subsection (7A),".

This amendment and Amendments 60 and 62 amend inserted section 303Z51 of the Proceeds of Crime Act 2002 to provide that cryptoassets may not be released under that section while forfeiture proceedings are ongoing in respect of those cryptoassets.

Amendment 60, in schedule 7, page 215, line 8, after "may" insert ", subject to subsection (7A),".

See Amendment 59.

Amendment 61, in schedule 7, page 215, line 24, at end insert "or".

This amendment makes a minor technical correction to the release condition in inserted section 303Z51(7) of the Proceeds of Crime Act 2002.

Amendment 62, in schedule 7, page 215, line 29, at end insert—

"(7A) If an application under section 303Z41 is made for the forfeiture of the cryptoassets, the cryptoassets are not to be released under this section until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded."

See Amendment 59.

Amendment 63, in schedule 7, page 226, line 18, after "cryptoassets" insert—

", or of property which they represent,".

This amendment amends inserted section 303Z63 of the Proceeds of Crime Act 2002 (converted cryptoassets: victims and other owners) to provide that the condition in subsection (5)(a) of that section is met where the applicant was deprived of cryptoassets or of property which those cryptoassets represent.

Amendment 64, in schedule 7, page 227, leave out lines 1 to 5 and insert—

"(a) if the conditions in this Chapter for the detention of the converted cryptoassets are no longer met, or".

This amendment amends the release condition in inserted section 303Z63(8) of the Proceeds of Crime Act 2002 (converted cryptoassets: victims and other owners) to provide that the release condition is met where the court is satisfied that the conditions in Chapter 3F of Part 5 of that Act for detention of the converted cryptoassets are no longer met.

Amendment 156, in schedule 7, page 230, line 22, at end insert—

"*Amendments to the Proceeds of Crime Act 2002*

1A In section 2C(3A) of the Proceeds of Crime Act 2002 (prosecuting authorities), for 'or 303Z19' substitute ', 303Z19, 303Z53 or 303Z65'.

1B (1) Part 2 of the Proceeds of Crime Act 2002 (confiscation: England and Wales) is amended as follows.

(2) In section 7 (recoverable amount)—

(a) in subsection (4)(c), for 'or 303Z14(4)' substitute ', 303Z14(4), 303Z41(4), 303Z45(3) or 303Z60(4)';

(b) in subsection (4)(d), after '303Q(1)' insert 'or 303Z44(1)'.

(3) In section 82 (free property)—

(a) in subsection (2)—

(i) in paragraph (ea), for 'or 10Z2(3)' substitute ', 10Z2(3), 10Z7AG(1), 10Z7BB(2), 10Z7CA(3), 10Z7CE(3) or 10Z7DG(3)';

(ii) in paragraph (f), for 'or 303Z14(4)' substitute ', 303Z14(4), 303Z32(1), 303Z37(2), 303Z41(4), 303Z45(3) or 303Z60(4)';

(b) in subsection (3)—

(i) after paragraph (b) insert—

(ii) in paragraph (c), after '303Q(1)' insert 'or 303Z44(1)';

(iii) after paragraph (e) insert—

(iv) in paragraph (f), after '10I(1)' insert 'or 10Z7CD(1)'.

1C (1) Part 3 of the Proceeds of Crime Act 2002 (confiscation: Scotland) is amended as follows.

(2) In section 93 (recoverable amount)—

(a) in subsection (4)(c), for 'or 303Z14(4)' substitute ', 303Z14(4), 303Z41(4), 303Z45(3) or 303Z60(4)';

(b) in subsection (4)(d), after '303Q(1)' insert 'or 303Z44(1)'.

(3) In section 148 (free property)—

(a) in subsection (2)—

(i) in paragraph (ea), for 'or 10Z2(3)' substitute ', 10Z2(3), 10Z7AG(1), 10Z7BB(2), 10Z7CA(3), 10Z7CE(3) or 10Z7DG(3)';

(ii) in paragraph (f), for 'or 303Z14(4)' substitute ', 303Z14(4), 303Z32(1), 303Z37(2), 303Z41(4), 303Z45(3) or 303Z60(4)';

(b) in subsection (3)—

(i) after paragraph (b) insert—

(ii) in paragraph (c), after '303Q(1)' insert 'or 303Z44(1)';

(iii) after paragraph (e) insert—

(iv) in paragraph (f), after '10I(1)' insert 'or 10Z7CD(1)'.

1D (1) Part 4 of the Proceeds of Crime Act 2002 (confiscation: Northern Ireland) is amended as follows.

(2) In section 157 (recoverable amount)—

(a) in subsection (4)(c), for 'or 303Z14(4)' substitute ', 303Z14(4), 303Z41(4), 303Z45(3) or 303Z60(4)';

(b) in subsection (4)(d), after '303Q(1)' insert 'or 303Z44(1)'.

(3) In section 230 (free property)—

(a) in subsection (2)—

(i) in paragraph (ea), for 'or 10Z2(3)' substitute ', 10Z2(3), 10Z7AG(1), 10Z7BB(2), 10Z7CA(3), 10Z7CE(3) or 10Z7DG(3)';

(ii) in paragraph (f), for 'or 303Z14(4)' substitute ', 303Z14(4), 303Z32(1), 303Z37(2), 303Z41(4), 303Z45(3) or 303Z60(4)';

(b) in subsection (3)—

(i) after paragraph (b) insert—

(ii) in paragraph (c), after '303Q(1)' insert 'or 303Z44(1)';

(iii) after paragraph (e) insert—

(iv) in paragraph (f), after '10I(1)' insert 'or 10Z7CD(1)'."

This amendment contains consequential and other amendments to Parts 1 to 4 of the Proceeds of Crime Act 2002 in relation to the civil recovery of cryptoassets.

Amendment 157, in schedule 7, page 230, line 24, at end insert—

"(1A) In section 278 (limit on recovery)—

(a) in subsection (7)(a), for 'or 303Z14' substitute ', 303Z14, 303Z41, 303Z45 or 303Z60';

(b) after subsection (7A) insert—

'(7B) If—

(a) an order is made under section 303Z44 instead of an order being made under section 303Z41 for the forfeiture of recoverable property, and

(b) the enforcement authority subsequently seeks a recovery order in respect of related property,

the order under section 303Z44 is to be treated for the purposes of this section as if it were a recovery order obtained by the enforcement authority in respect of the property that was the forfeitable property in relation to the order under section 303Z44.'"

This amendment contains a consequential amendment to section 278 of the Proceeds of Crime Act 2002 in relation to forfeited cryptoassets.

Amendment 65, in schedule 7, page 231, line 3, after "may" insert ", subject to subsection (7A),".

This amendment and Amendments 66 and 67 amend inserted section 303Z17A of the Proceeds of Crime Act 2002 to provide that money may not be released under that section while forfeiture proceedings are ongoing in respect of the money.

Amendment 66, in schedule 7, page 231, line 13, after "may" insert ", subject to subsection (7A),".

See Amendment 65.

Amendment 67, in schedule 7, page 231, leave out lines 25 to 36 and insert—

"(7) The release condition is met—

(a) in relation to money held in a frozen account, if the conditions for making an order under section 303Z3 in relation to the money are no longer met, or

(b) in relation to money held in a frozen account which is subject to an application for forfeiture under section 303Z14, if the court or sheriff decides not to make an order under that section in relation to the money.

(7A) Money is not to be released under this section—

(a) if an account forfeiture notice under section 303Z9 is given in respect of the money, until any proceedings in pursuance of the notice (including any proceedings on appeal) are concluded;

(b) if an application for its forfeiture under section 303Z14 is made, until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded."

See Amendment 65. This amendment also replaces the release condition in inserted section 303Z17A(7) of the Proceeds of Crime Act 2002 to include changes for consistency with equivalent provisions in Part 5 of that Act.

Amendment 158, in schedule 7, page 235, line 5, at end insert—

"(20A) In section 386 (production orders: supplementary), in subsection (3)(b), for 'or a frozen funds investigation' substitute ', a frozen funds investigation or a cryptoasset investigation'."

This amendment contains a consequential amendment to section 386 of the Proceeds of Crime Act 2002 in relation to production orders and cryptoasset investigations.

Amendment 159, in schedule 7, page 236, line 11, at end insert—

"(30) In section 416 (other interpretative provisions), in subsection (1), after the entry for 'confiscation investigation' insert—

'cryptoasset investigation: section 341(3D)'."

This amendment contains a consequential amendment to section 416 of the Proceeds of Crime Act 2002 in relation to the meaning of "cryptoasset investigation" in Part 8 of that Act.

Amendment 160, in schedule 7, page 236, line 11, at end insert—

"3A In section 438 of the Proceeds of Crime Act 2002 (disclosure of information by certain authorities), in subsection (1)(f), for 'or 3B' substitute ', 3B, 3C, 3D, 3E or 3F'.

3B In section 441 of the Proceeds of Crime Act 2002 (disclosure of information by Lord Advocate and by Scottish Ministers)—

(a) in subsection (1), for 'or 3A' substitute ', 3A, 3C or 3F';

(b) in subsection (2)(g), for 'or 3B' substitute ', 3B, 3C, 3D, 3E or 3F'.

3C In section 450 of the Proceeds of Crime Act 2002 (pseudonyms: Scotland), in subsection (1)(a), for 'or a frozen funds investigation' substitute ', a frozen funds investigation or a cryptoasset investigation'.

3D In section 453A of the Proceeds of Crime Act 2002 (certain offences in relation to financial investigators), in subsection (5), at the end of paragraph (dc) (before the 'or') insert—

'(dd) section 303Z21 (powers to search for cryptoasset-related items);

(de) section 303Z26 (powers to seize cryptoasset-related items);

(df) section 303Z27 (powers to detain cryptoasset-related items);'."

This amendment contains consequential amendments to Parts 10 and 12 of the Proceeds of Crime Act 2002. The amendments relate to the disclosure of information obtained during cryptoasset investigations, the use of pseudonyms during such investigations and offences against accredited financial investigators exercising powers in connection with such investigations.

Amendment 161, in schedule 7, page 236, line 21, at end insert—

"*Amendments to the Civil Jurisdiction and Judgments Act 1982*

5 (1) Section 18 of the Civil Jurisdiction and Judgments Act 1982 (enforcement of UK judgments in other parts of UK) is amended as follows.

(2) In subsection (2)(g), for 'or a frozen funds investigation' substitute ', a frozen funds investigation or a cryptoasset investigation'.

(3) In subsection (4ZB)—

(a) after paragraph (b) insert—

'(ba) a crypto wallet freezing order made under section 303Z37 of that Act;

(bb) an order for the forfeiture of cryptoassets made under section 303Z41 or 303Z45 of that Act;';

(b) after paragraph (d) insert—

'(da) a crypto wallet freezing order made under paragraph 10Z7BB of that Schedule;

(db) an order for the forfeiture of cryptoassets made under paragraph 10Z7CA or 10Z7CE of that Schedule.'

(4) In subsection (5)(d)(i)—

(a) after '(a)' insert ', (ba)';

(b) for 'or (c)' substitute ', (c) or (da)'."—*(Tom Tugendhat.)*

This amendment amends the Civil Jurisdiction and Judgments Act 1982 to include provision about the enforcement of certain cryptoasset-related orders in different parts of the UK.

Schedule 7, as amended, agreed to.

Clause 143

Money laundering: exiting and paying away exemptions

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

The Chair: With this it will be convenient to discuss clause 144 stand part.

Tom Tugendhat: In a most unusual role, I shall start this time. Clauses 143 and 144 expand the types of case in which businesses can deal with clients' property without first having to submit a defence against money laundering suspicious activity report—a so-called DAML. The changes will reduce nugatory regulatory burdens on businesses and help focus private sector and law enforcement resources on proactive, high-value activity, while removing disproportionate delays to businesses and customers.

A DAML effectively freezes a transaction until the UK Financial Intelligence Unit in the National Crime Agency—the UKFIU—decides to provide consent for the transaction to go ahead. Alternatively, the UKFIU could refuse it and pursue further investigation. If the UKFIU does not respond within seven working days, the business can assume that they have consent and proceed with the transaction. That means businesses regularly waiting seven working days before being able to proceed with a transaction. Businesses cannot inform customers that the delay is due to a DAML, as doing so may amount to a criminal offence.

The volume of DAMLs submitted by businesses to the UKFIU rose by 80% to 62,341 in the last year that data was available, which is creating a disproportionate burden on staff in the regulated sector, as well as in the

NCA and wider law enforcement. The clauses will ensure that we are taking action to handle those rising volumes and that the DAML reporting system is used proportionally.

The exemption created by clause 143 will apply when a business in the anti-money laundering regulated sector ends a relationship with a customer and pays away any money or property suspected to be the proceeds of criminal conduct. The clause enables the business to pay back money or property under the value of £1,000 without first submitting a defence against money laundering suspicious activity report to the UKFIU and without committing a money laundering offence.

DAMLs below £1,000 are of limited value to law enforcement. That is because £1,000 is the minimum amount for law enforcement to pursue an account freezing order under the civil recovery provisions, and because of the need to prioritise higher volume cases. As a result, DAMLs below £1,000 are rarely refused consent by the UKFIU, but they place a burden on reporters to submit.

The exemption created by clause 144 will apply when a person carrying out business in the anti-money laundering regulated sector suspects that only part of their customer's property is the proceeds of criminal conduct. The clause enables the business to allow the customer access to their property without the business committing one of the principal money laundering offences or first submitting a defence against money laundering suspicious activity report. This is provided that the conditions of the exemption are met, including the condition that, as a minimum, the value of the suspected criminal property in the account is withheld when allowing a customer access to their funds.

10 am

The Chair: Thank you, Minister. It is not unusual to start when your name is on the clause.

Stephen Kinnock: According to the Government's impact assessment, the purpose of clauses 143 and 144, which expand the scope of exemptions from money laundering offences, is to reduce the number of ineffective defence against money laundering reports submitted to the NCA's financial intelligence unit. It is worth bearing in mind that the purpose of the reporting system is to enable regulated firms to notify the FIU when they are asked by a client to make a financial transaction that may amount to a money laundering offence. The FIU has seven days to review the report, and if it turns out that there is a connection to money laundering, it can ensure that appropriate enforcement action is taken.

The reports can, and often do, serve as a valuable means of identifying criminal activity. The Government's wish to reduce the number of DAML reports is understandable, but we must not throw the baby out with the bathwater. It is important for the Minister to explain to the Committee how those measures are sufficiently targeted that they reduce the number of unnecessary or unhelpful reports without causing a similar reduction in reports that might help to identify serious crime.

Clauses 143 and 144 provide exemptions from money laundering offences for certain transactions involving property worth less than £1,000, and in cases where some but not all of a client's assets may involve criminal funds. I would be grateful if the Minister would explain the Government's reasoning in setting the relevant thresholds at the specific levels provided for in those clauses.

I want to touch on a couple of broader points. The Government are right that the SARs process is in need of considerable reform. There are many steps the Government could take to improve the quality of reporting in addition to the measures set out in those clauses. For instance, the Solicitors Regulation Authority published a report last month in which it noted that, in two thirds of the reports it reviewed, the firms making the report did not include the glossary codes that enable the NCA to triage reports effectively and ensure an appropriate enforcement response. Additionally, the SRA found that as many as a quarter of the DAML reports it reviewed failed even to describe the criminal conduct that was suspected. Those findings are clear evidence that many law firms do not have an adequate level of understanding of the laws they are expected to help enforce. The same may well be true in other regulated sectors.

Will the Minister set out what steps the Government are taking to ensure that regulated firms have a better understanding of their obligations under the law, and how official guidance might be improved to help firms to submit better quality reports? I point out that significant improvements could be made to the speed and efficiency of the SARs process by making use of new and emerging technologies. If the FIU could use more cutting-edge software applications and algorithms to help identify the most serious crimes, it would go a long way towards addressing the problems that the Government seek to tackle. Perhaps the Minister might comment on the Government's work in that area.

Tom Tugendhat: I am delighted to respond to that. The rising volume of DAMLs being submitted has already had an impact on effectiveness. That is welcome, in that businesses are taking their responsibilities extremely seriously, and the UKFIU is responding appropriately when it receives them. Although, as the hon. Member quite rightly says, technology can help, the reality is that there is still an awful lot of work to be done. That is why these provisions are so reasonable.

The provisions are reasonable because property or criminal funds worth less than £1,000 are already exempt from asset seizures in different circumstances. It makes absolute sense to have a restriction on that in the Bill and apply the same threshold to allow the UKFIU to target, as much as possible, those serious money laundering accusations and investigations appropriately—and, indeed, to arrest more criminals.

Stephen Kinnock: I thank the Minister for that response. Would he care to comment on the feedback from the Solicitors Regulation Authority, which points particularly at the fact that many of the firms doing the reports were not including key information such as glossary codes and sometimes did not even describe the criminal conduct that they suspected? Is there something more that could be done so that the information at source was in a better state? Does he think that the feedback from the SRA could be a good basis on which to achieve that?

Tom Tugendhat: I am sure that having data at source in as clean and fluent a fashion as possible, so that it is complete and allows investigation, is absolutely essential. I am sure that solicitors will feel the responsibility to do that. I am grateful to the hon. Gentleman for raising that point.

[Tom Tugendhat]

Question put and agreed to.

Clause 143 accordingly ordered to stand part of the Bill.

Clause 144 ordered to stand part of the Bill.

Clause 145

INFORMATION ORDERS: MONEY LAUNDERING

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

The Chair: With this it will be convenient to discuss clause 146 stand part.

Tom Tugendhat: Clause 145 amends the existing information order power in the Proceeds of Crime Act 2002 to bolster the UKFIU intelligence-gathering powers. Clause 146 addresses a gap in counter-terrorism legislation by mirroring those in the Terrorism Act 2000. The clauses will align the UKFIU more closely with the international standards of the Financial Action Task Force, known as FATF—including to me, actually—and enable greater collaboration with international financial intelligence units. That aids public safety in the UK and overseas, and furthers the UK's efforts to combat illicit financial flows entering the UK economy.

FATF is the international body devoted to developing and promoting policies to combat money laundering and terrorist financing. As a member, the UK agrees to promote FATF's anti-money laundering standards, which are expressed in the form of recommendations. FATF, the global money laundering and terrorist financing watchdog, evaluated the UK in 2018 and rated it only "partially compliant". That rating was affected by the UKFIU's limited ability to conduct operational strategic analysis in cases where a business has not already submitted a suspicious activity report.

Clause 145 amends the existing information order power by removing the requirement for a preceding suspicious activity report, or SAR, before an application can be made to a magistrates or sheriff court. Clause 146 mirrors that for counter-terrorism legislation. The information order will compel business in the anti-money laundering regulated and terrorist financing regulated sectors to provide information about a customer or client. That information will enable the UKFIU to conduct its operational strategic analysis functions by proactively gathering financial intelligence rather than relying on the reporting sector to have submitted information already. Further, the clauses will enable the UKFIU to better assist international counterparts to gather information, for example, relating to sanctions evasion and maximising the effort to prevent terrorist finances from entering the UK's economy.

The information sought under an information order is designed for intelligence purposes only. To ensure the power is used appropriately, a code of practice must be made by the Secretary of State. The person making the application must have had regard to the code of practice when applying to the court for an information order. The measure has been developed collaboratively with the UKFIU.

Stephen Kinnock: I thank the Minister for including the provisions in the Bill, which should make it easier for the NCA to access the information that it needs to gather intelligence and conduct analysis of the range of threats that we face from money laundering and terrorist financing. The provisions in the clauses should also help to ensure that the UK is able to provide more effective assistance to law enforcement bodies in other countries in response to requests for information.

Given that so much economic crime is inherently an issue that cuts across international borders, it is absolutely right for the Government to do all that they can to enforce the law within our own borders and to help Governments in our partner countries overseas to do the same.

Question put and agreed to.

Clause 145 accordingly ordered to stand part of the Bill.

Clause 146 ordered to stand part of the Bill.

Clause 147

ENHANCED DUE DILIGENCE: DESIGNATION OF HIGH-RISK COUNTRIES

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

Tom Tugendhat: The clause amends the Sanctions and Anti-Money Laundering Act 2018 to allow the Treasury to directly publish and amend the UK's high-risk third countries list on gov.uk.

Under the 2017 money laundering regulations, businesses are required to conduct enhanced checks on business relationships and transactions with high-risk third countries. High-risk third countries are those identified by the Financial Action Task Force as having poor controls and significant shortcomings in their anti-money laundering and counter-terrorist financing regimes.

Currently, a statutory instrument needs to be laid several times a year to update the UK's list each time the FATF's own list is amended. The clause will allow for more rapid updates to the list, helping the UK to be even more responsive to evolving money laundering threats by ensuring that risks are communicated and mitigated by the regulated sector as soon as possible. By removing the need to introduce legislation for each update, the change will also ease pressures on ministerial and parliamentary time, thereby responding to Parliament's call to streamline the process—very much like this Committee.

Stephen Kinnock: Clause 147 raises a number of concerns for us, which I hope the Minister will be able to address. It aims to change the procedure for updating the Treasury's list of countries designated as high risk due to serious deficiencies in their anti-money laundering and counter-terrorist financing systems, which was established by the Sanctions and Anti-Money Laundering Act 2018. The clause will enable the Treasury to update the list directly, without the need for regulations, in effect removing the opportunity for Parliament to scrutinise any changes to the list.

During the passage of the 2018 Act, there was cross-party consensus on the need for any UK list of designated high-risk countries to reflect international standards, primarily by mirroring the lists maintained by the Financial

Action Task Force. The problem with clause 147 is that it appears to enable the Treasury to make any future updates to the UK list, even in ways that diverge from the FATF lists, without any opportunity for Parliament to scrutinise or debate the proposals. Given the zeal for deregulation that we have often seen from the current Government, it takes no great stretch of the imagination to foresee a situation in which the Treasury determines that the FATF lists are unduly stringent and that certain countries and territories should be removed from the UK's list of high-risk countries, even in cases where issues identified by the FATF remain unresolved.

Looking at the relevant impact assessment, it seems that the intention is to enable Ministers to update the list "more swiftly" when needed, thus making the UK's list more "responsive" to emerging developments than is possible under the current system. But even if the aim is reasonable, the methods are questionable. For one thing, the 2018 Act stipulates that regulations updating the list of high-risk countries are subject to the affirmative procedure, under which Parliament is given the opportunity to retrospectively review changes that have already been made by the time the regulations are published. Together with the fact that updates are generally needed no more frequently than once every three months, this does not seem to place an undue burden on Ministers.

The changes made by clause 147 do not seem proportionate to any identifiable problem with the current system. The Opposition therefore strongly encourage the Minister and his colleagues to revisit the clause, on the basis that a convincing case for the need to remove Parliament's oversight of this process has not been made.

Dame Margaret Hodge (Barking) (Lab): I concur entirely with the remarks by my hon. Friend the Member for Aberavon, but I want to ask a couple of questions.

First, the Minister will know that we are considering how we can move from freezing the assets of people who are sanctioned to seizing them. One of the ways in which that could be facilitated, from the advice I have received from various non-governmental organisations and lawyers, is to have a sort of kleptocrats list. I wonder if he would take that idea away and, in considering the request for greater parliamentary oversight, look at whether we could designate particular jurisdictions as kleptocracies. All the advice I get indicates that that would make it easier to do the seizing as well as freezing. Of course, in relation to Ukraine, that would mean that some of the £18 billion that has been seized from Russia could be recommissioned and used to help us rebuild Ukraine.

10.15 am

Secondly, it is quite odd that Kazakhstan, for example, will not be on a list of high-risk countries, given everything we know about how that country is run by an elite. I am using figures from memory, but I think 150 people own over 50% of the country's wealth. That is money that has been robbed from the citizens of Kazakhstan. In those circumstances, I do not understand why that is not a high-risk country and how our relationship with that jurisdiction remains friendly. Going back to what my hon. Friend the Member for Aberavon said, therefore, I feel there needs to be parliamentary oversight of how we classify countries as high-risk countries—and, in my view, as kleptocracies. I do not understand how that is done by the Foreign Office at present.

Tom Tugendhat: The idea of a kleptocrats list is an interesting one. It is not one I have heard before. If the right hon. Lady will forgive me, I will look into it and respond to her in writing; I have not thought about the matter, so I will have to give it some thought.

The list of high-risk third countries is based on the FATF list, which, as the hon. Member for Aberavon knows, has provided the basis for all the statutory instruments that have passed with no objection or issue. This measure will not save much ministerial time, if any at all, but it will save parliamentary time. Given how hard-pressed Parliament is to debate so many issues, I think it is a reasonable provision. Given the alignment between the UK regime and the international FATF standards, that seems to be a pretty standard change.

On the question of debating other areas, there is often cause to debate other countries' inclusion or exclusion from such lists, and the Treasury, the Foreign Office and other Departments and organisations often have views. I am not sure this is the Bill in which to do that; this Bill is simply about correcting a slight bump in the road and speeding up the process.

The Chair: I call Neil Kinnock—I beg your pardon, Stephen. People used to do that to me and they always got it wrong.

Stephen Kinnock: Don't worry, Mr Paisley—we could probably exchange notes on that at great length.

I thank the Minister for those points. I recall his time as chair of the Foreign Affairs Committee, when he pushed relentlessly and convincingly for parliamentary scrutiny of a whole range of key issues and decisions. Given that parliamentary scrutiny was built into the 2018 Act, it seems difficult to justify its deliberate removal from the process by this Bill. It seems like it would be good to have those guard rails in place to avoid the risk of somebody in the Treasury deciding at some point that big decisions should be made without any parliamentary scrutiny at all. Does he not agree that this is a real missed opportunity?

Tom Tugendhat: No, I do not. I always found that when I wanted to get parliamentary scrutiny as Chair of a Committee, I managed to find ways to do that—often through debates, in which the hon. Gentleman was a wonderful speaker—and to change Government policy by using not only Parliament, but the media and other forms of pressure. There is a difference between seeking to change Government policy on various aspects of areas that should really be considered as wider policy, and seeking to implement these changes, which are, let us be honest, rather technical and not issues of major parliamentary debate.

Question put and agreed to.

Clause 147 accordingly ordered to stand part of the Bill.

Clause 148

Direct disclosures of information: no breach of obligation of confidence

Tom Tugendhat: I beg to move amendment 122, in clause 148, page 136, leave out lines 22 and 23 and insert—

[Tom Tugendhat]

"(1) The protections set out in subsection (1A) apply in relation to a disclosure made by a person ('A') to another person ('B') if—".

This amendment and Amendments 125 and 135 provide that disclosures mentioned in clause 148(1) do not give rise to any civil liability, on the part of the person making the disclosure, to the person to whom the information disclosed relates. There is an exception for liabilities under the data protection legislation.

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

Government amendments 123 to 135.

Clause stand part.

Government amendments 136 to 142.

Amendment 167, in clause 149, page 138, line 8, at end insert—

"(vi) a firm or individual carrying on statutory audit work or local audit work,

(vii) an individual appointed to act as an insolvency practitioner,

(viii) a firm or sole practitioner providing to other persons accountancy services, or providing material aid, or assistance or advice, in connection with the tax affairs of other persons, or

(ix) an auditor, external accountant or insolvency practitioner as defined in Section 11 of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017."

This amendment includes accountants in various roles in the indirect information sharing provisions set out in clause 149, allowing them to pass on information regarding suspicious activity.

Government amendments 143 to 152.

Clauses 149 to 152 stand part.

Government amendments 153 to 155.

Clause 153 stand part.

That schedule 8 be the Eighth schedule to the Bill.

Tom Tugendhat: Large amounts of financial data flow through the United Kingdom every hour. The majority relate to entirely legitimate and proper activity; however, a small proportion involve criminal activity. As hon. Members heard from several witnesses to the Committee, the sharing of information regarding criminal activity between businesses is currently constrained by duties of confidentiality. These clauses and the associated Government amendments address that constraint.

Clause 148 enables direct disclosure of information between two businesses in the anti-money laundering regulated sector for the purposes of preventing, investigating and detecting economic crime, without a breach of their obligation of confidence to their customers.

Kevin Hollinrake: Hear, hear.

Tom Tugendhat: I am glad to have support from further down the Treasury Bench.

To request information, a business must have reason to believe that the other business holds information that will, or may, assist in carrying out its relevant actions. Relevant actions include deciding whether further customer due diligence is needed, restricting access to products, or terminating a business relationship with the customer as a result of the additional information obtained.

Amendments 122 to 135 amend clause 148 to expand the provisions to offer protection from civil liability owed by the person sharing information to the person to whom the disclosure relates. As the Committee heard when UK Finance gave evidence, the banking sector maintains that without greater protection, information is unlikely to be shared, as doing so creates limited benefit in comparison with the risk of potential protracted and expensive litigation from customers. Greater use of the provisions will make it harder for criminals to exploit UK businesses. We have listened to the sector and tabled these amendments.

Clause 149 enables indirect information sharing by certain businesses via a third-party intermediary, on a similar basis to elements of clause 148. A business may share information about a current or former customer whom they have already decided to take action against due to an economic crime risk—or who would have been subject to that decision were they still a customer—either by terminating a business relationship or by refusing or restricting access to a product or service. The business must be satisfied that sharing the customer's information will assist other businesses in carrying out their relevant actions. As with clause 148, the Government have tabled amendments 136 to 141 and 143 to 151 to disapply civil liability for a person who discloses such information.

Government amendments 142, 152 and 155 extend the scope of the indirect information-sharing provisions to cover large and very large accountancy and legal businesses. The benefit of bringing those businesses within the scope of the provision is that those firms have experience of dealing with high-risk clients. Criminals are known to exploit the information gaps that currently exist between businesses in these sectors, and encouraging further information sharing creates greater opportunities to prevent economic crime.

Clauses 148 and 149 do not disapply any liabilities arising under data protection legislation. The hon. Member for Feltham and Heston tabled amendment 167, which would expand clause 148 to include the accountancy sector. I hope that she is reassured that the Government amendments that I have just described achieve that objective.

Government amendments 153 and 154 make express provision for aiding, abetting, counselling and procuring in the definition of economic crime. Schedule 8 sets out the offences that are included in the definition of economic crime for the purposes of direct and indirect disclosures of information, the Law Society's fining powers, and the objectives of regulators of legal services. The schedule is divided into common-law and statutory offences. No new offences are created by the Bill; the schedule has been included because there is no existing relevant definition of economic crime. The schedule is essential to provide clarity and certainty about the meaning of economic crime, in order for individuals, regulators and businesses to use the disclosure of information provisions effectively and to properly apply the new measures relating to legal services.

Seema Malhotra (Feltham and Heston) (Lab/Co-op): It is a pleasure to serve under your chairship, Mr Paisley, and to speak to this rather large group. I thank the Minister for his comments, which I find reassuring. I will deliver my own remarks for the record, but his comments, particularly on our amendment 167, were helpful.

This important group of clauses and amendments relates to supporting disclosures to prevent, detect or investigate economic crime. The Minister is absolutely right about the concerns—raised by UK Finance specifically—that the clauses go a considerable way to addressing.

Clause 148 concerns direct disclosure of information and, as the Minister outlined, disapplies the duty of confidentiality owed by a business where the business making the disclosure knows the identity of the recipient and certain conditions—broadly outlined in subsection (1)—are met. The explanatory notes contain the example of a bank that identifies a transaction that it believes is irregular and wants further information from another party—perhaps more information on the identity of the payer or more clarity on the source of the funds. We understand why such information might be wanted and the importance of being able to get such clarity. In effect, clause 148, along with clause 149, about which I will say a few words separately, removes the civil liability for an institution in sharing that information with another entity for the purposes of detecting and preventing economic crime.

Given the concerns about the difficulties with information sharing, and the resistance that there has been to sharing information because of lack of clarity about the law or about where liability lies under data protection rules, these measures are welcome. They have perhaps taken longer to be introduced than we would have liked, but they are certainly welcome, and we hope that they will increase the detection of economic crime and reduce moves by those involved in it to seek to use our institutions to launder and hide money.

Although I welcome the removal of barriers to information sharing, I wonder whether the clauses give regulated sectors or actors so-called safe harbour as comprehensively as they might. Helena Wood of the Royal United Services Institute said in her evidence to the Committee:

"Although the provisions in the Bill will go some way towards increasing private-to-private information sharing and, in particular, the risk appetite in the banking sector, they really do not keep pace with the global standard. What we would like in the next economic crime plan"—

I think we are all hoping to see that soon; shortly is the word used in this Committee—

"is something much more ambitious. In many ways, I would say that while it is welcome, the Bill is a slight missed opportunity with regard to information sharing, given that it really does not push forward to this big data analytics model that others are moving towards." —[Official Report, Economic Crime and Corporate Transparency Public Bill Committee, 27 October 2022; c. 90, Q170.]

10.30 am

As a result, while we welcome and support the clause, there are questions about whether the Government may pursue more advanced models and rules around those models and data analytics.

Let me come back to a couple of questions, clarifications and concerns. The clauses do not highlight whether there is any time expectation for a person to respond to an information request. What if an innocent person were caught by the provisions? As well as the time taken, there may be some complexity in finding out information. Different financial institutions may have invested less in robust procedures; the information may not always be easily to hand. Is there any expectation of how quickly person A has to respond to the request by person B?

A reasonable scenario might arise involving somebody who is not guilty of economic crime. There might be a question of source of funds. It could be someone seeking a mortgage for the first time—it could be anything—and there may be a timeline to which they are subject. Sometimes, we have to test legislation on what would happen if an innocent was caught up in it. That could happen to anybody—I shall highlight an example from my constituency. It would be helpful to understand the speed of response required, particularly if there is an innocent involved and a reason for a more speedy transaction by person B with their customer.

Clause 149(2)(c) notes that

"due to concerns about the risk of economic crime, A has decided to—

(i) terminate a business relationship with the customer,

(ii) refuse the customer a product or service, or

(iii) restrict the customer's access to elements of a product or service".

We can fully understand that situation, particularly if there is a pronounced concern of risk, where there might be some threshold of evidence—a considerable amount of evidence—that there is economic crime taking place.

I raise the point about safeguards and redress where an innocent is caught by the provisions is because in the last few months I have had a constituent whose bank was concerned about some of the payments made into his account over a period of time. He had a very clear explanation for the payments. When I talked to him and explained why those transactions were picked up and how he had to explain them, the situation was clearer to him.

This person lives and works in my constituency, who had not done anything wrong. The transactions had a very clear explanation, but it was a very stressful situation, because the bank froze his assets completely, including the bank account from which he was paying the household bills, the mortgage, and that he was using to take cash out to buy food. His credit cards were also stopped. What does someone do in that situation? He was phoning the bank and not getting a clear answer, his bills were due to go out and he would default on them, and he had no idea what would happen next. It was incredibly stressful. The bank knew that I had been approached; it can sometimes help when a constituent approaches an MP knowing that they are prepared to support them to intervene, if the situation is not resolved and quickly moved forward through the customer complaints or concerns procedure. I had a letter ready to go and the bank knew that. It came back and said that it accepted the explanation and had gone through, in the process of a week to 10 days, to seek to check what my constituent had said. Without some protections from a Member of Parliament and the ability to raise or question concerns, what do people do?

I do not have the evidence for this, but I have concerns about how people from ethnic minorities or less conventional backgrounds and their word are treated, where those transactions are from people who are from other ethnic minorities. People do not always have a relationship with banking institutions, and this is a diversity question

as well. That situation got resolved, but what if it had not been? What if that person had then been in an incredibly difficult position of having their mortgage put at risk, and all the other questions, without a speedy resolution? These questions are important and serious. We must test legislation against the different scenarios—and what the expectations might be of financial institutions rightly and importantly sharing this information—but we must look at necessary safeguards for consumers, who may have an important need to question, redress or explanation, and where a procedure is needed to make clear the expectations and the timeline in which it should happen. I would grateful if the Minister can confirm if the Government have considered this, and whether there are some checks and balances for an innocent who may get caught up in this.

There can sometimes be concerns about the risk of economic crime where the customer is refused a product or service. I had a situation with an insurance policy where, due to some of the extra checks that there may be for Members of Parliament, the underwriter changed and their policy was different. I was suddenly seen as high risk, as a Member of Parliament, and due to my job the policy was terminated. I had to go and find another provider. It struck me as extremely odd when I found out that that had happened. I had been a customer for a long time, but the underwriter and policy had changed without clear explanation. I subsequently found out the reason from someone who generously told me when I phoned up; they did not know any great detail, but they said, "It says it is due to their occupation." Suddenly we realise how vulnerable someone can be, when they have no means of redress against decisions that can sometimes be made without explanation—the wording of the clause says

"due to concerns about risks of economic crime"—

without strengthening, to some extent, where there might be a threshold to do what we want the legislation to do without others being caught without some form of redress or ability to ask questions. I would be grateful if the Minister could address that in his response.

I will turn to the question of reactive versus proactive information sharing where there are genuine concerns, and being able to evidence those concerns about money laundering. Will the Minister clarify the "request" conditions and the "warning" conditions in clause 148(3) and (4) and the way to interpret them, as I was not fully clear about that? Clause 148(3) is fairly self-explanatory and says the response is reactive when, for example, person B approaches person A when they think there is information it would be helpful to share. Clause 148(4) says:

"The warning condition is that A, due to concerns about risks of economic crime, has decided to take safeguarding action (or would have decided to take such action but for the customer having ceased to be a customer of A)."

Can the Minister clarify the extent to which subsections (4) and (5) imply proactive information sharing? I was not clear how to interpret the use of those subsections in relation to "the warning condition."

I will not go into detail, but we support amendments 112, 115, 123, 124, 126 to 128, 130, 132 and 135 to clause 148. We are also discussing amendments 129, 131, 133 and 134.

We support Government amendments 136 and 152 to clause 149, which we support, and I will speak to amendment 167. Clause 149 focuses on the "indirect disclosure of information" where there is no breach of obligations of confidence and we welcome its introduction. I have raised concerns in relation to subsection (2) and the way some of the definitions around risk of economic crime can be helpfully used and interpreted.

In relation to amendment 167, the Minister alluded to including accountants in various roles in the indirect information sharing provisions set out in clause 149, allowing them to pass on information regarding suspicious activity. The Institute of Chartered Accountants in England and Wales has called for this provision and spoken about the importance of enabling accountants to share information with each other, in order to ensure people committing economic crimes are not able to continually do so by simply changing their accountant and restarting the process. On indirect information sharing provisions, amendment 167 includes

"a firm or individual carrying on statutory audit work or local audit work, an individual appointed to act as an insolvency practitioner, a firm or sole practitioner providing to other persons accountancy services, or providing material aid, or assistance or advice, in connection with the tax affairs of other persons, or an auditor, external accountant or insolvency practitioner as defined in Section 11 of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017."

I am grateful to the Government for tabling amendments 137, 138, 140 to 142, 144 and 147. They extend clause 149 disclosures to apply in relation to persons with a large or very large UK revenue who carry out legal or accountancy services in the regulated sector. The amendments have the same principle as amendment 167, and the Minister has broadly said that he thinks they cover the same area, but I would be grateful if he specified whether the Government amendments would apply more detail about whom we are specifying in relation to information-sharing provisions, in order to provide assurances that the Government amendments will include all the various roles set out in amendment 167. If any are not covered, it is important to clarify that and for us to have a further debate about that.

10.45 am

I will make a few minor comments about the remaining clauses in this group. Clause 150 sets out the meaning of "privileged disclosure", which is also referred to in clauses 149(2)(g) and 148. It is helpful to define "privileged disclosure" as the

"disclosure of information made by a professional legal adviser or relevant professional adviser…where the information disclosed came to the adviser in privileged circumstances."

The Minister spoke to this, but I would be grateful if he clarified whether clause 150 would cater for all instances where information should be shared for the purposes of preventing or detecting economic crime.

Clause 151 defines the term "relevant actions", as set out in the early information-sharing provisions. Clause 152 defines the term "business relationship", which is referred to in clauses 148 and 149. I would welcome an assurance from the Minister that relevant stakeholders are included in the indirect information-sharing provisions, as set out in clause 149. It would be helpful to know whether there is any consultation on defining the term.

Clause 153 defines other terms used in clauses 148 and 149 regarding information sharing, including a definition of "economic crime", which refers to acts

that constitute offences, as listed in schedule 8. I would be grateful for the Minister's response to the few points that I have made about this group of clauses and amendments.

Tom Tugendhat: I am sorry to hear that the hon. Lady was considered a risk to public safety, a danger or a threat to the nation in any way. She is none of those things; she is a highly valued Member of this House and a friend to many of us. I can only imagine the unwisdom of whoever it was who decided to terminate a relationship with her. I hope that the decision is being reviewed and that the person is now enjoying a holiday on the Falkland Islands.

It is worth pointing out that the comparisons that this has with other jurisdictions should be looked at carefully. Not every jurisdiction has the same application of the ECHR, GDPR or various other constraints on sharing information and protecting privacy that the UK has. In the Netherlands, the transaction monitoring scheme has so far involved only the sharing of business data, so there are various different ways in which these applications are not exactly applicable. It is worth pointing out that, under the provisions, an individual's right to a basic bank account, as established by the Payment Accounts Regulations 2015, is unaffected.

That means that affected individuals will be able to continue to access basic accounts, providing their account is not being used or has not been used for criminal activity, or that maintaining the account would breach any other legal obligations under the money laundering regulations. Moreover, the clause stipulates that before information is shared about a customer, the sharer must have taken action against the customer, or would have if they were still a customer. As a result, no one will have information shared unless the bank has already decided to take action against them or would have decided to do so.

We do not foresee a significant increase in the number of new individuals being denied access to services. Certainly, the hon. Lady's comments about her constituent should be viewed in that context. However, if there are individual cases that she feels that I—or, indeed, my hon. Friend the Member for Thirsk and Malton—can help with, I would be very happy to look at them, as I am sure my hon. Friend would be as well.

The forms of redress that the hon. Lady raises are important. That is where going through the Information Commissioner's Office or the Financial Ombudsman Service, depending on the nature of the complaint, is important. She raised many other questions, and although I will not be able to get to them right now, I will be happy to write to her on some of those individual items.

Seema Malhotra: I thank the Minister for his comments. If he is happy to write to me, I would be grateful for that. Can I clarify whether that will also cover some of the questions I raised about the expected timing of sharing information and the procedures for those who may have been caught up inadvertently? Procedurally, we need to understand how they can be dealt with. Rather than Ministers having to deal with individual cases, we want a mechanism that will make the system work fairly.

Tom Tugendhat: The hon. Member is making a perfectly reasonable point. I agree, and I will write to her about those timings so they are clearly on the record and we understand what is being asked and what the expected timeframes are.

It is also worth saying that the warning condition is more active because a business has already taken or would have taken a decision where a person is a customer. That is different from the request condition, where it is sharing in response to a specific request. The two are not quite identical, but I hope that answers the hon. Lady's questions. I will write to her shortly.

Amendment 122 agreed to.

Amendments made: 123, in clause 148, page 136, line 24, leave out 'to which' and substitute 'in circumstances where'.

This amendment and Amendments 124, 126, 127, 128 and 130 extend the power to expand the kinds of business in relation to which the provision can apply, so that it can describe attributes of the person as well as the business.

Amendment 124, in clause 148, page 136, line 25, leave out 'to which' and substitute 'in circumstances where'.

See Member's explanatory statement for Amendment 123.

Amendment 125, in clause 148, page 136, line 31, at end insert—

'(1A) The protections are that, subject to subsection (9), the disclosure does not—

(a) give rise to a breach of any obligation of confidence owed by A, or

(b) give rise to any civil liability, on the part of A, to the person to whom the disclosed information relates.'

See Member's explanatory statement for Amendment 122.

Amendment 126, in clause 148, page 136, line 32, leave out 'to'.

See Member's explanatory statement for Amendment 123.

Amendment 127, in clause 148, page 136, line 33, after '(a)' insert 'where the business carried on is'.

See Member's explanatory statement for Amendment 123.

Amendment 128, in clause 148, page 136, line 34, leave out 'business of a description prescribed' and insert 'in circumstances prescribed, in relation to the business or the person carrying it on,'.

See Member's explanatory statement for Amendment 123.

Amendment 129, in clause 148, page 137, line 12, leave out 'A' and insert 'The protections set out in subsection (7A) apply in relation to a'.

This amendment and Amendments 131, 133 and 135 provide that the disclosures mentioned in clause 148(7) do not give rise to any civil liability, on the part of the person making the disclosure, to the person to whom the information disclosed relates. There is an exception for liabilities under the data protection legislation.

Amendment 130, in clause 148, page 137, line 12, leave out 'to which' and substitute 'in circumstances where'.

See Member's explanatory statement for Amendment 123.

Amendment 131, in clause 148, page 137, line 14, leave out from 'request' to 'R' in line 15 and insert 'if'.

See Member's explanatory statement for Amendment 129.

Amendment 132, in clause 148, page 137, line 16, leave out 'to which' and substitute 'in circumstances where'.

See Member's explanatory statement for Amendment 123.

Amendment 133, in clause 148, page 137, line 19, at end insert—

'(7A) The protections are that, subject to subsection (9), the disclosure does not—

(a) give rise to a breach of any obligation of confidence owed by R, or

(b) give rise to any civil liability, on the part of R, to the person to whom the disclosed information relates.'

See Member's explanatory statement for Amendment 129.

Amendment 134, in clause 148, page 137, line 22, leave out from 'applies,' to the end of line 23 and insert 'does not—

(a) give rise to a breach of any obligation of confidence owed by them, or

(b) give rise to any civil liability, on the part of R, to the person to whom the disclosed information relates.

This is subject to subsection (9).'

This amendment and Amendment 135 provide that use of information disclosed under clause 148(7) to enable a clause 148(1) disclosure to be made does not give rise to any a civil liability, on the part of the person making use of the information, to the person to whom the information relates. There is an exception for liabilities under the data protection legislation.

Amendment 135, in clause 148, page 137, line 25, after 'contravene' insert ', or prevents any civil liability arising under,'.—*(Tom Tugendhat.)*

See Member's explanatory statement for Amendments 122, 129 and 134.

Clause 148, as amended, ordered to stand part of the Bill.

Clause 149

INDIRECT DISCLOSURE OF INFORMATION: NO BREACH OF OBLIGATION OF CONFIDENCE

Amendments made: 136, in clause 149, page 137, leave out lines 27 to 29 and insert—

'(1) The protections set out in subsection (2A) apply in relation to a disclosure made by a person ("A") to another person ("B") if—'.

This amendment and Amendments 139 and 151 provide that the disclosures mentioned in clause 149(1) do not give rise to a civil liability on the part of the person making the disclosure, to the person to whom the information disclosed relates. There is an exception for liabilities under the data protection legislation.

Amendment 137, in clause 149, page 137, line 30, leave out 'to which' and substitute 'in circumstances where'.

This amendment and Amendments 138, 140, 141, 142, 144 and 147 extend clause 149 disclosures so they apply in relation to persons with a large or very large UK revenue who carry on legal or accountancy services in the regulated sector.

Amendment 138, in clause 149, page 137, line 39, leave out 'to which' and substitute 'in circumstances where'.

See Member's explanatory statement for Amendment 137.

Amendment 139, in clause 149, page 138, line 1, at end insert—

'(2A) The protections are that, subject to subsection (9), the disclosure does not—

(a) give rise to a breach of any obligation of confidence owed by A, or

(b) give rise to any civil liability, on the part of A, to the person to whom the disclosed information relates.'

See Member's explanatory statement for Amendment 136.

Amendment 140, in clause 149, page 138, line 2, leave out 'to'.

See Member's explanatory statement for Amendment 137.

Amendment 141, in clause 149, page 138, line 3, after '(a)' insert 'where the business carried on is'.

See Member's explanatory statement for Amendment 137.

Amendment 142, in clause 149, page 138, line 8, leave out from 'provider,' to 'by regulations' in line 9 and insert—

'(aa) where—

(i) the business carried on is business in the regulated sector within paragraph 1(1)(l) or (n) of Schedule 9 to the Proceeds of Crime Act 2002 (accountancy or legal services), and

(ii) the UK revenue of the person carrying on the business is large or very large for the relevant financial year (see subsection (10)), and

(b) in circumstances prescribed, in relation to the business or the person carrying it on,'.

See Member's explanatory statement for Amendment 137.

Amendment 143, in clause 149, page 138, line 11, leave out from 'to B,' to end of line 14 and insert

'the protections set out in subsection (5A) apply in relation to a further disclosure of that information made by B to another person ("C") if—'.

This amendment and Amendments 145 and 151 provide that the disclosures mentioned in clause 149(4) do not give rise to a civil liability, on the part of the person making the disclosure, to the person to whom the information disclosed relate. There is an exception for liabilities under the data protection legislation.

Amendment 144, in clause 149, page 138, line 15, leave out 'to which' and substitute 'in circumstances where'.

See Member's explanatory statement for Amendment 137.

Amendment 145, in clause 149, page 138, line 18, at end insert—

'(5A) The protections are that, subject to subsection (9), the disclosure does not—

(a) give rise to a breach of any obligation of confidence owed by B, or

(b) give rise to any civil liability, on the part of B, to the person to whom the disclosed information relates.'

See Member's explanatory statement for Amendment 143.

Amendment 146, in clause 149, page 138, line 22, leave out 'A' and insert

'The protections set out in subsection (7A) apply in relation to a'.

This amendment and Amendments 148, 149 and 151 provide that the disclosures mentioned in clause 149(7) do not give rise to a civil liability, on the part of the person making the disclosure, to the person to whom the information disclosed relates. There is an exception for liabilities under the data protection legislation.

Amendment 147, in clause 149, page 138, line 22, leave out 'to which' and substitute 'in circumstances where'.

See Member's explanatory statement for Amendment 137.

Amendment 148, in clause 149, page 138, line 24, leave out from 'person' to 'at' in line 25 and insert 'if'.

See Member's explanatory statement for Amendment 146.

Amendment 149, in clause 149, page 138, line 28, at end insert—

'(7A) The protections are that, subject to subsection (9), the disclosure does not—

(a) give rise to a breach of any obligation of confidence owed by R, or

(b) give rise to any civil liability, on the part of R, to the person to whom the disclosed information relates.'

See Member's explanatory statement for Amendment 146.

Amendment 150, in clause 149, page 138, line 31, leave out from 'applies,' to end of line 32 and insert 'does not—

(a) give rise to a breach of any obligation of confidence owed by them, or

(b) give rise to any civil liability, on their part, to the person to whom the disclosed information relates.

This is subject to subsection (9).'

This amendment and Amendment 151 provide that the use of information disclosure under clause 149(7) for the purposes of making a disclosure under clause 149(1) does not give rise to a civil liability, on the part of the person making use of the information, to the person to whom the information relates. There is an exception for liabilities under the data protection legislation.

Amendment 151, in clause 149, page 138, line 34, after 'contravene' insert ', or prevents any civil liability arising under,'.

See Member's explanatory statements for Amendments 136, 143, 146 and 150.

Amendment 152, in clause 149, page 138, line 34, at end insert—

'(10) In subsection (3)(aa) "relevant financial year"—

(a) for the purposes of subsection (1)(a), means the financial year immediately preceding that in which the disclosure by A is made;

(b) for the purposes of subsection (4)(a), means the financial year immediately preceding that in which the disclosure to C is made.

And, for the purposes of subsection (3)(aa), the question of whether a person's UK revenue is large or very large for a particular financial year is to be determined in accordance with sections 55 to 57 of the Finance Act 2022 (calculation of UK revenue for the economic crime (anti-money laundering) levy).'—(*Tom Tugendhat.*)

This amendment include a definition of "relevant financial year" and explains how to determine if a person's UK revenue is large or very large for the purposes of the new provision added by Amendment 142.

Clause 149, as amended, ordered to stand part of the Bill.

Clauses 150 to 152 ordered to stand part of the Bill.

Clause 153

OTHER DEFINED TERMS IN SECTIONS 148 TO 151

Amendments made: 153, in clause 153, page 140, line 19, at end insert—

"(ba) constitutes aiding, abetting, counselling or procuring the commission of a listed offence, or".

The amendment makes express provision about aiding, abetting, counselling and procuring in the definition of economic crime.

Amendment 154, in clause 153, page 140, line 21, after "(b)" insert "or (ba)".

This amendment is consequential on Amendment 153.

Amendment 155, in clause 153, page 140, line 34, at end insert—

""financial year" means a period of 12 months ending with 31 March;".—(*Tom Tugendhat.*)

This amendment adds a definition of "financial year" and is consequential on Amendment 152.

Clause 153, as amended, ordered to stand part of the Bill.

Schedule 8 agreed to.

Clause 154

LAW SOCIETY: POWERS TO FINE IN CASES RELATING TO ECONOMIC CRIME

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

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

Clause 155 stand part.

Government new clause 47—*Scottish Solicitors' Discipline Tribunal: powers to fine in cases relating to economic crime.*

Tom Tugendhat: His Majesty's Government's national risk assessment for 2020 assessed the legal services sector as being at high risk of exposure to money laundering. The crisis in Ukraine has highlighted that the sector is exposed to further-reaching risks, such as sanctions breaches. The Bill therefore contains measures that strengthen the legal sector's response to economic crime.

Clause 154 removes the statutory limit on the Solicitors Regulation Authority's financial penalty powers for disciplinary matters related to economic crime, as delegated by the Law Society. Currently, the SRA can direct a solicitor or traditional law firm to pay a penalty up to £25,000. The limit is set out in primary legislation and can be amended only by an order made by the Lord Chancellor. This measure will remove the need for the Lord Chancellor to make an order, thereby ensuring greater flexibility to, if required, amend penalty limits for disciplinary matters relating to economic crime.

New clause 47 gives the Scottish Solicitors' Discipline Tribunal parity with England and Wales in respect of the fining powers available to it for economic crime-related solicitor misconduct. Currently, the SSDT may impose a maximum fine of £10,000. In comparison, the equivalent tribunal in England and Wales—the Solicitors Disciplinary Tribunal—has the power to impose an unlimited financial penalty. This change will provide the SSDT with fining powers that act as a proportionate deterrent against breaches of the rules and legislation related to economic crime, including offences linked to money laundering, terrorist financing and sanctions. The exercise of this power will be subject to the oversight of the Court of Session to ensure that the SSDT acts in an effective and proportionate way. The changes sought in clause 154 and new clause 47 are needed to ensure that the SRA and the SSDT have the enforcement tools required in the context of economic crime compliance.

Clause 155 enshrines in legislation the duty of legal services regulators to promote the prevention and detection of economic crime. Our legal sector is internationally renowned for its high standards of excellence and professional conduct. The vast majority of the sector is compliant with its economic crime duties. However, it is crucial that regulators have the right tools to effectively promote and monitor compliance. The clause puts it beyond doubt that it is the duty of legal services regulators to take appropriate action to ensure that their regulated communities comply with economic crime rules. It will give frontline regulators a clear basis for any supervision or enforcement action they may carry out to uphold the economic crime regime.

11 am

Stephen Kinnock: Clause 154 would lift the current statutory cap on the penalties that may be imposed by the Solicitors Regulation Authority, as delegated by the Law Society, for breaches of the law on economic crime. I am sure that Members on both sides will welcome the change if, as the Government argue in their impact assessment, it increases the deterrent effect of the financial penalties that may be levied for disciplinary matters. Although the Government provide limited evidence to support that claim, it is at least a reasonably logical conclusion.

[Stephen Kinnock]

However, the proposals raise a number of questions, principally around the degree to which clauses 154 and 155 reflect the input received from the sector in response to consultation earlier this year. Specifically, a number of serious concerns were expressed by the Solicitors Disciplinary Tribunal when the SRA consulted on planned increases to its powers to impose fines.

The tribunal argued that the SRA's powers should be limited to imposing relatively low penalties for minor technical or administrative errors. It argued that increasing the maximum level of fines that the SRA could impose would erode transparency by preventing cases of serious misconduct from coming before a public hearing, which could also remove the scope for a detailed, publicly accessible explanation of any penalties, as is generally provided by the tribunal's decisions under the current system. In summarising its concern, the tribunal argued that the diminution in the transparency of decision making and detailed reason would be in neither the public's nor the profession's interest.

It should be noted that those objections were raised, not in response to the proposed changes set out in this Bill, but in the context of the increase in the maximum level of financial penalties that the SRA may impose from £2,000 to £25,000, which came into effect in July. That change in itself begs a number of questions. In particular, can the Minister explain how many and what proportion of the fines imposed by the SRA since July have been at the £25,000 maximum? Could it not be argued that the Government have not provided enough time for the effectiveness of recent changes to be adequately assessed?

Can the Minister also set out the Government's reasoning in lifting the cap on the SRA's fining powers, with specific regard to the objections raised by the Solicitors Disciplinary Tribunal, and other stakeholders, around the transparency of the process?

Clause 155 would amend the Legal Services Act 2007 to set an additional objective for regulators in the legal sector to prevent economic crime. Given the objections that have been raised in the sector relating to clause 154, I would be grateful if the Minister provided further details of any consultation between his Department and providers of legal services, as well as the Legal Services Board, on this proposal.

Finally, it would be helpful if the Minister explained the rationale for the decision to set out, in this Bill, an explicit objective to prevent economic crime for providers of legal services, but not for other sectors covered by the money laundering regulations. The impact assessment sheds limited light on the Government's thinking in this area, so any additional detail that the Minister could provide today would be welcome.

Alison Thewliss: My understanding is that the Law Society of Scotland has no particular objections to the amendments.

Tom Tugendhat: The hon. Member is asking about various of the different fining elements. Clearly, the fines discussion is a matter for the individual cases, and would be determined on a case-by-case basis, but I think that removing the cap, which, in modern terms, is actually relatively low—certainly, when compared with financial abuses and other forms of regulation—is entirely reasonable. The Solicitors Regulation Authority does not, in any way, have any power to strike off a suspended solicitor, so the SDT remains an extremely important part of the disciplinary process. There are various different aspects at play here, but the proposals make good sense and are reasonable. I will happily write to the hon. Member on the issue he raised separately and come back to him about it later.

Stephen Kinnock: I thank the Minister for that clarification, and I am grateful for his offer to write with further details. On the point about using the Bill to prevent economic crime with respect to providers of legal services, but not for any other sector covered by the money laundering regulation, would he care to shed more light on the rationale for that decision?

Tom Tugendhat: The other sectors are already covered by the money laundering regulation. That element is focusing on legal services because that was a lacuna in the law.

Stephen Kinnock: I thank the Minister for that clarification. There is a broader scope to economic crime, not just a specific focus on money laundering, and that covers a wider range of aspects of economic crime, although there is an explicit objective in the Bill that it is limited to providers of legal services. I wonder why that broader scope will not be applied beyond the money laundering concerns.

Tom Tugendhat: The changes are being made and the new clause is important for exactly the reasons the hon. Gentleman has highlighted. The new clause will remove an obstacle with respect to the SRA exercising its judgment and punishing appropriately those who might be committing any number of different crimes, which I hope they will not be doing. The measure will give us a provision to enable us to deal with that. The reality is that much of the money laundering regulation has already been covered, along with different aspects of financial services. The proposals specifically address legal services and particular aspects. They are an important addition, and I am happy to support them.

Question put and agreed to.

Clause 154 accordingly ordered to stand part of the Bill.

Clauses 155 to 157 ordered to stand part of the Bill.

Clause 158

POWER TO MAKE CONSEQUENTIAL PROVISION

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

Tom Tugendhat: I would have been pleased to speak to any of those clauses.

The Chair: The Minister did not indicate that he wanted to do so.

Tom Tugendhat: Let us go with clause 158, Mr Paisley.

The Chair: To be clear, we are debating clause 158 stand part.

Tom Tugendhat: Indeed, and I am delighted to be called to speak to it.

The clause provides the Secretary of State with the power to make consequential amendments that arise from the Bill. The power is necessary to ensure that other provisions on the statute book properly reflect and refer to the provisions in the Bill once it is enacted and to ensure that there are no legislative inconsistencies. If regulations are made under the clause that do not amend primary legislation, they will be subject to the negative resolution procedure. If regulations are made under the clause that amend primary legislation, they will be subject to the affirmative resolution procedure. This, I hope, will provide the appropriate parliamentary scrutiny.

Seema Malhotra: I thank the Minister for his comments. May I clarify the process, Mr Paisley? In previous sittings, during each clause stand part debate the Minister has been called followed by the Opposition spokesperson. Perhaps that has had some variation, but it would be helpful to understand whether we need to do anything differently.

The Chair: No, nothing at all; it is just that the Minister did not indicate that he wished to speak. Members can speak at that point. Those clauses have been dealt with.

Seema Malhotra: I think that there was a slight misunderstanding, but we will move on.

Clause 158 confers on the Secretary of State a regulation-making power to make consequential amendments that arise from the Bill. I want to raise a general point: the Minister did speak to this, but perhaps he could say a little more about examples of where the Secretary of State might need to use the power. Perhaps it is written somewhere, but I am not fully clear whether any changes that come through secondary legislation to the Act itself—I think that is a Henry VIII power in this clause—would be taken through the affirmative procedure.

It has been a general theme of debate though our proceedings that we need to make sure that there is sufficient provision for the transparency, scrutiny and accountability of changes, as well as for accountability of the Secretary of State's use of powers for the reporting that there should be on how well the provisions are working. The power to make consequential amendments comes at the end of the Bill in clause 158, but it is a Henry VIII power that means that amendments to primary legislation can be made. That is different from the power to make regulations under secondary legislation, which we have been debating.

The Government have said that the power is needed to ensure that other provisions on the statute book properly reflect and refer to provisions in the Bill once it is enacted. I want to be clear about what the scope of the use of this power would be, how it is intended and how it would be reported on. Would an affirmative or negative procedure be used to make any changes under this clause?

Dame Margaret Hodge: We have raised a number of amendments to the Bill during the course of consideration in Committee, many of which I consider to be technical and things that would improve the processes. All those amendments so far have been rejected. I wonder whether, rather than bringing us back at a later stage as the clause proposes, the Minister would undertake, together with his ministerial colleague, to look again at some of those amendments, which are really just practical, pragmatic amendments, with a view to bringing them back. Would he bring them back on Report?

Tom Tugendhat: I will answer the second question first, if I may. I am absolutely certain that my hon. Friend the Member for Thirsk and Malton and I will look with great interest at the suggestions that the right hon. Lady has made. As she knows, we share many similar ambitions. We will have a look at those suggestions with officials. Certainly, there are some that we think could improve the Bill—I do not think there is any great debate about that—and I will make sure that we keep her informed. Her contribution and help, not just today and on the Bill, have been enormous, and I pay enormous tribute to the work that she has done over many years in fighting money laundering and different forms of economic crime.

On this specific power, the hon. Member for Feltham and Heston raises a very important point, which is that the clause does give large consequential provision to the Government to change aspects of the Bill. I understand the concerns that she raises. The nature of the Bill, however, is that it has quite a consequential impact on other elements of legislation, as she herself has highlighted. Therefore there are knock-on elements that will no doubt require minor redrafting and changes at various different points as the Bill goes into law. I am afraid that is slightly the nature of these operations, as she understands extremely well. That is what this power is for.

It is worth saying that any significant or substantial changes that really do change the intent of the Bill should be brought back in primary legislation, because this is clearly a provision in order to enable the Bill to operate, not to change the intent that this House gives it.

Seema Malhotra: I thank the Minister for his comment, which puts that clarification on the record for successive generations of those who will sit in his seat—perhaps he will be promoted to higher office. It is important that that comment is on record, because we have to create legislation for not just today but tomorrow.

11.15 am

Question put and agreed to.

Clause 158 accordingly ordered to stand part of the Bill.

Clause 159

REGULATIONS

Tom Tugendhat: I beg to move amendment 43, in clause 159, page 144, line 21, at end insert—

> "(ba) regulations under section (registration of qualifying Scottish partnerships), unless they are regulations under that section that only make provision that corresponds or is similar to provision made or capable of being made by a statutory instrument that is itself subject to annulment in pursuance of a resolution of either House of Parliament;".

This provides for regulations under NC22 to be subject to the affirmative procedure unless they only make provision corresponding or similar to provision make by a statutory instrument that is itself subject to the negative procedure.

The Chair: With this it will be convenient to discuss Government new clause 22—*Registration of qualifying Scottish partnerships.*

Tom Tugendhat: Clause 159 provides that regulations made under the Bill are to be made by statutory instrument. The clause also sets outs the parliamentary procedure for how regulations under the Bill should be made, including situations in which legislation must be subject to the affirmative resolution procedure or the negative resolution procedure. The clause is a standard provision to enable regulations to give the intended effect to the measures in the Bill. It is necessary to ensure appropriate parliamentary scrutiny of such regulations.

Seema Malhotra: Clause 159 provides that regulations under the Bill are to be made by statutory instrument. To a large extent, we have had clarification that any subsequent changes will be made through the affirmative procedure in Parliament, enabling greater scrutiny and transparency over the Bill's implementation. I am not sure if there is a list anywhere of all the regulation-making powers that have been specified in the Bill. I feel like there is probably a summary somewhere of all of those powers, and whether any are subject to the negative procedure. I think that would be a helpful review for the Committee to have.

New clause 22 allows regulations to be made about the registration of certain Scottish partnerships, and to apply law related to companies or limited partnerships. It will allow the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 to be amended or replaced in relation to those partnerships. We welcome the inclusion of amendment 43 alongside the new clause, which provides for regulations under new clause 22 to be subject to the affirmative procedure, unless they make provisions corresponding to provisions made by statutory instruments that are subject to the negative procedure. In light of my previous comments, I think it is healthy for us to clarify and have a clear summary of which are affirmative and which are negative, and the safeguards around them. That would ensure the transparency of regulation making subsequent to the passing of the Bill.

Kevin Hollinrake: It is a pleasure to speak with you in the Chair, Mr Paisley. I will speak briefly to amendment 43 and new clause 22, which are minor technical changes necessary due to the European Communities Act 1972 having been repealed. They give the Secretary of State the power to apply company or limited partnership law by regulations to Scottish qualifying partnerships, as well as to impose new requirements of Scottish qualifying partnerships not included in company or limited partnership law, such as identity verification. It allows the Government to retain the measures introduced by the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 in relation to SQPs and to amend them in the future. Provisions about the registration of Scottish qualifying partnerships exist in the 2017 regulations, made using powers under now repealed section 2(2) of the European Communities Act 1972.

That has two consequences. First, there is no existing power to amend the regulations, other than by an Act of Parliament. Secondly, if not replaced under section 1 of the proposed retained EU law Bill, the 2017 regulations will be revoked at the end of 2023. This power will allow us to keep the existing requirements on Scottish qualifying partnerships and to add new ones. Without the amendment and new clause, it will not be possible to extend key measures introduced via the Bill, such as identity verification, to Scottish qualifying partnerships, thereby creating a dangerous loophole. I hope that my explanation has provided further clarity.

It is clear that regulations made under the Bill may make consequential, supplementary, incidental, transitional or saving provisions and regulations under specified clauses must be subject to the affirmative resolution procedure. I am sure we can write to the hon. Lady to set out exactly what those situations are.

Alison Thewliss: I am glad to see any loopholes getting closed, even if the amendment is sneaking in at the end of the Bill. It is good to see it. As I have said at many points in Committee, enforcement needs to be laid down on all these things, because at the moment all things to do with Scottish partnerships are not being enforced. People are not being fined for not complying with the regulations. I hope that it will result in some tightening up and some fines being issued—and, if required, in some people being jailed for not complying with the regulations as set out.

Tom Tugendhat: My hon. Friend the Under-Secretary has spoken to a lot of the issues, so I will just list clauses covered by the affirmative resolutions briefly—the others will be negative. That will include regulations under clauses 33, 35, 140(1), 141 and schedule 6, on powers to amend certain definitions relating to cryptoassets, clause 142 and schedule 7, on powers to amend certain definitions relating to cryptoassets and then clauses 143, 148, 149, 153 and 158. I am happy to write to the hon. Lady so that she has those details.

Amendment 43 agreed to.

Clause 159, as amended, ordered to stand part of the Bill.

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

11.23 am

Adjourned till this day at Two o'clock.