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Public Bill Committee

DEFENCE REFORM BILL

Eleventh Sitting

Thursday 17 October 2013

(Morning)

CONTENTS

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Monday 21 October 2013

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Mr Graham Brady, †Albert Owen

† Brazier, Mr Julian *(Canterbury)* (Con)
† Brown, Mr Russell *(Dumfries and Galloway)* (Lab)
† Colvile, Oliver *(Plymouth, Sutton and Devonport)* (Con)
Docherty, Thomas *(Dunfermline and West Fife)* (Lab)
† Donaldson, Mr Jeffrey M. *(Lagan Valley)* (DUP)
† Dunne, Mr Philip *(Parliamentary Under-Secretary of State for Defence)*
† Ellwood, Mr Tobias *(Bournemouth East)* (Con)
† Gilbert, Stephen *(St Austell and Newquay)* (LD)
† Hamilton, Mr David *(Midlothian)* (Lab)
† Harvey, Sir Nick *(North Devon)* (LD)
† Hinds, Damian *(East Hampshire)* (Con)
† Jones, Mr Kevan *(North Durham)* (Lab)
† Lancaster, Mark *(Lord Commissioner of Her Majesty's Treasury)*
† Mordaunt, Penny *(Portsmouth North)* (Con)
† Pawsey, Mark *(Rugby)* (Con)
† Phillipson, Bridget *(Houghton and Sunderland South)* (Lab)
† Seabeck, Alison *(Plymouth, Moor View)* (Lab)
† Wheeler, Heather *(South Derbyshire)* (Con)
Woodcock, John *(Barrow and Furness)* (Lab/Co-op)

Georgina Holmes-Skelton, *Committee Clerk*

† attended the Committee

Public Bill Committee

Thursday 17 October 2013

(Morning)

[Albert Owen *in the Chair*]

Defence Reform Bill

11.30 am

The Chair: We have a point of order.

Alison Seabeck (Plymouth, Moor View) (Lab): On a point of order, Mr Owen. Members of the Committee will have seen an increasing number of articles in the media—there was one this morning in the *Financial Times*—which cast significant doubt on the viability of one of the two consortia bids for the GoCo. I would welcome the Minister either making a short statement on his confidence in the process, or writing to the Committee, prior to Report, to set out the Department's overall confidence that the process will proceed. We clearly cannot have a GoCo if there is not a competition.

The Chair: As that is in order, does the Minister wish to respond?

The Parliamentary Under-Secretary of State for Defence (Mr Philip Dunne): Thank you, Mr Owen, for giving me notice that there would be a point of order—even if I did not know what it would be. At this stage, I have every confidence in the competition, but it is appropriate for me to write a note to the Committee before Report and I will undertake to do that.

The Chair: I am grateful to the Minister. We will now continue our line-by-line consideration of the Bill.

Clause 24

Reports on overheads and forward planning etc.

Alison Seabeck: I beg to move amendment 40, in clause 24, page 17, line 10, after 'planning', insert

'applicable to qualifying defence contracts'.

Not surprisingly, this is a probing amendment. We are seeking to find out whether the clause's wording needs to be more narrowly defined by relating specifically to qualifying defence contracts. The regulations that apply to the clause cover six pages; they oblige companies or corporate groups party to one or more QDCs with a value of more than £50 million to provide more general reports on the overhead costs and forward planning associated with a QDC.

As would be expected, industry is concerned and will need reassurance that the discretions in subsection (7), for example, which allow the Bill's reporting requirements to be limited by secondary legislation, are not likely to be unduly onerous or disproportionate at the point at which they will apply. I am sure that the Minister will explain the logic behind the clause.

In the Minister's contribution on the previous clause on Tuesday, he set out the thinking behind the general need for reporting on QDCs. However, the ongoing concerns about the open-endedness of the clause's wording have caused us to seek to amend line 10. The amendment is designed to probe the Minister so that he can clarify the requirements of those reports.

Finally, on a positive note, we welcome the inclusion of regulation 42, which requires large contractors to produce small and medium-sized enterprise reports. That will prove useful to the Ministry of Defence and the Government as a whole in trying to ensure that SMEs are given the best possible chance to flourish, especially in the defence sector.

Mr Dunne: It is a great pleasure to be back in the Committee again and to see such strength in numbers on the Government Benches. I feel for the hon. Member for Plymouth, Moor View, as she seems to have been rather let down by her own side. We welcome the hon. Member for Houghton and Sunderland South, who I do not think has joined the Committee's sittings before. We wish the hon. Member for Plymouth, Moor View courage in pursuing the rest of the clauses without the assistance that she has been reliant upon thus far.

Alison Seabeck: I hope that the Minister will accept that the reasons for the absence of Opposition Members were many and varied. They included, in the case of my hon. Friend the Member for Houghton and Sunderland South, a close bereavement.

Mr Dunne: I am grateful for that clarification. I was not in any way suggesting that that is not a perfectly appropriate reason not to be present.

The Chair: Order. I think we will continue our discussion of the amendment.

Mr Dunne: Thank you, Mr Owen. I would like to get back to the purpose of this discussion, which is to consider the hon. Lady's probing amendment to the clause, which specifies the standard reports required, not in relation to individual contracts but to wider aspects of a supplier's business. We have previously discussed how the main element of a contract's price is the allowable costs. There are two broad types of cost: direct costs, such as materials or subcontract costs; and other costs, generally overhead costs that are not incurred solely for that contract. Those include the maintenance costs of land and buildings, which can support many contracts, and the supplier's head office costs.

Overall, overhead costs account for a substantial proportion of our single-source expenditure—roughly one third, estimated to be around £2 billion a year. That pays for large parts of the defence sector's key industrial facilities. Although many sites support a mix of competitive and single-source work, there are other sites where we pay for the majority, if not all, of the costs. Through clause 23, we are seeking transparency over contract costs; it is therefore appropriate that we also seek transparency over costs relating to sites and facilities used to deliver those contracts, through clause 24.

The amendment would restrict reports under the clause to information applicable to qualifying defence contracts. The hon. Lady has said that this is a probing amendment, so it might help her if I summarise how we

envisage the operation of the reports referred to in the regulations. For contracts between £5 million and £50 million in value, the following reports must always be provided: the contract pricing statement in regulation 25; the contract reporting plan in regulation 26; the contract notification report in regulation 27; and the contract completion report in regulation 30. The following three reports must be provided if specifically requested: the contract costs report in regulation 31; the interim contract report in regulation 32; and the contract pricing statement, also in regulation 32. That is in addition to what must always be provided at the contract's start—for example, if there is a major contract amendment.

For contracts in excess of £50 million in value, all those seven reports are required. In addition, two other reports must be provided: a quarterly contract report, to give us more regular updates on the large contracts; and an interim contract report, required annually unless both parties agree otherwise—to align with key milestones, for example. As indicated in the clause, supplier reports are required only if a supplier group has at least one individual qualifying defence contract with a value of or above £50 million. There is no aggregation in those limits: they refer to the size of individual contracts, so at least one contract must be greater than £50 million in value for the supplier reports to apply.

I hope that gives some sense of the tiering of reporting that we envisage through the regulations. The vast majority of contractors have contracts worth less than £5 million, so the reporting will not apply to them; when contracts are worth below £50 million, the obligations are confined to those reports that I have indicated.

Alison Seabeck: The Minister has been very helpful in running through the nature of the regulations in some detail. As regards suppliers, we are talking about a single contract over a certain price. I hope he will forgive me for not being sure about this, but will he say whether there is any provision in the regulations for a situation in which the initial contract is worth, say, £48 million but circumstances beyond the contractor's control mean that the contract overruns and its cost goes over £50 million? What will happen in that sort of situation?

Mr Dunne: I can confirm to the hon. Lady that in the event that, as a result of a contract amendment, a contract exceeds a threshold that it previously did not meet, the reporting requirements relating to contracts in excess of that threshold will apply to the contract from that point, but not retrospectively.

The hon. Lady's amendment reflects concerns expressed by industry in our consultations. One concern was that if we were to seek information too broadly we could risk being guilty of industrial voyeurism—I think that was the expression that was used. That is a rather fanciful notion. I reassure the Committee that we have absolutely no such intent, and the regulations already ensure that that will not be the case. As I have said, supplier level reports are required only if a person holds a qualifying defence contract worth over £50 million, which immediately exempts all but our largest suppliers from that reporting requirement, which is the most onerous in terms of forward-looking information. Based on the value of our current single-source contracts, we estimate that no more than 25 suppliers will be required to provide reports specified under clause 24, so only the largest contractors would be caught by the clause.

The regulations also identify which supplier business units must provide the overhead cost reports. This is done in regulation 34(6), in part 5 of the regulations, which makes it clear that reports are not required for business units that do not contribute costs to qualifying defence contracts. We are interested only in directly relevant expenditure. If the intent of the amendment is to ensure that we seek only information relevant to the costs that we pay for, it is not necessary, as I hope I have explained, and I encourage the hon. Lady to withdraw her amendment.

Alison Seabeck: I thank the Minister. He has given a full and clear explanation and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 24 ordered to stand part of the Bill.

Clause 25

Records and reports: restrictions

Mr Dunne: I beg to move amendment 22, in clause 25, page 18, line 11, leave out 'or 24' and insert ',24 or 26'.

The Chair: With this it will be convenient to discuss Government amendment 23.

Mr Dunne: Government amendments 22 and 23 have been tabled specifically in response to a request from industry. I shall be brief, as the effect of these two amendments is straightforward. The transparency provisions of part 2 put statutory requirements on to a supplier to provide copies of records and further informational explanation under clause 22 to provide the standard reports that we have just been discussing under clauses 23 and 24, and the duty to report events, circumstances and information under clause 26.

Under each of these requirements, it is possible that a conflicting requirement not to disclose information might arise. This could be through another statutory requirement, such as the Data Protection Act, or through a contractual requirement, such as a non-disclosure agreement that the company might have entered into for some other purpose. Clause 25 is intended to address this. It is a necessary safeguard to prevent contractors from being put in a difficult situation, in which they must either fail to comply with their obligations under this framework or be in breach of other obligations.

As drafted, clause 25 applies only to clauses 22, 23 and 24; it does not apply to clause 26. There is no reason why information provided by suppliers under clause 26 should not be dealt with in the same way as other information that suppliers must provide. The information required to be disclosed under clause 26 could conflict with duties placed on that supplier by statute or by contractual confidentiality obligations. The principle on which clause 25 is based should therefore apply in exactly the same way to the information that suppliers must disclose under clause 26.

[Mr Dunne]

Amendments 22 and 23 allow for this and address this important concern which was raised by industry, which I fully recognise and support. I therefore hope that the Committee will accept the two amendments. As a consequence of these amendments, parliamentary counsel have suggested a transfer motion to transfer clause 25 so that it appears after the current clause 26, to which it now refers. This will reduce any forward referencing in the Bill, which is a normal parliamentary convention for legislation.

Alison Seabeck: I thank the Minister for clarifying amendments 22 and 23 and the reason for the transfer motion. This is another clause which, although necessary to protect confidentiality, goes round in circles. It starts by enabling the removal of a requirement that was imposed, and ends up with the Secretary of State or an authorised person being able to refer the obligation of confidentiality back to the SSRO. However, we have no objections to the clause or the amendments.

Amendment 22 agreed to.

Amendment made: 23, in clause 25, page 18, line 31, leave out 'or 24' and insert ',24 or 26'.—*(Mr Dunne.)*

Clause 25, as amended, ordered to stand part of the Bill.

Ordered,

That Clause 25 be transferred to line 9 on page 19.—*(Mr Dunne.)*

Clause 26

DUTY TO REPORT RELEVANT EVENTS, CIRCUMSTANCES AND INFORMATION

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

11.45 am

Alison Seabeck: This is an interesting clause which is a little vague in its intentions. What does it actually mean? What type of occurrence or event is considered likely to be relevant and have a material effect on the qualifying defence contract to which the primary contractor is party? I am sure the Minister will give some examples and correct me if the sort of example I describe is incorrect. Is this a catch-all for the Secretary of State and the SSRO? Are we talking about a decision to make half the work force redundant, close the shipyard, change the chairman or perhaps merge with another company? All of the above could indirectly have an impact on the cost and their ability to perform. I assume that issues like the failure of one link of their supply chain would be material. Perhaps the Minister could clarify whether that falls within the remit of the clause.

If information is passed out from a private boardroom discussion on such issues, would a company have to alert the stock exchange? Information that has been passed to the Ministry of Defence and is therefore outside the boardroom could potentially be viewed as public and could affect the share price and so is something that the stock exchange should be made aware of. The clause is also, on the face of it, quite one-sided. If I were industry I would be asking, "What happens if Government take decisions that could materially affect the contractor as well?" A decision by the Ministry of Defence to shift a project to the right, for example, as we have seen time after time, can have serious effects on contractors. These are often very political decisions, such as rolling over finance and projects to the next financial year, something which the Secretary of State mentioned only last week when pressed on the current budget.

I am a little surprised, given that the Bill will be scrutinised in the other place by former chiefs of defence staff and other high-ranking military people, that the Secretary of State is quoted as saying that his critics, including some senior ex-service personnel,

"have no idea how defence budgets now work"

and are

"financially illiterate".

I am not sure that will be conducive to friendly debate in the other place. What we have here is standard ministerial speak, which those of us in the Opposition who have been behind the scenes in Government sadly recognise. I am sure my hon. Friend the Member for North Durham will agree. It is a question of, "Oh dear, we've got a problem. We are rolling x, y and z over to next year." However, that could be considered within the clause by the contractors to be a material event over which they have no control but which could affect them negatively.

Could the Minister assure the Committee that the clause does not apply to just one side of the contract? How will the GoCo with its ability to change the circumstances fit into the clause? Something will put a spanner in the works of even the best laid plans and the simplest projects. Does the offering of sweeteners, or the necessity to offer sweeteners, have offset arrangements which may not have been considered at the start of the negotiations? Will that be likely to be required to be reported? Several defence companies have traded in things like Tunisian olive oil from military transport planes or invested in fledgling airlines in Kazakhstan and Jordan. There have been a whole series of offset deals. Are they likely to be relevant to the clause in any way? Will the Ministry of Defence or the SSRO require all that information to be out there and up front as early as possible? I would like to hear what the Minister has to say about how the clause applies, because it is slightly worrying.

Mr Dunne: I am glad the hon. Lady wanted to discuss the clause. She has raised wider concerns about its application, which it is important that we discuss in Committee.

The clause is important to ensure that the MOD is able to identify potentially failing defence projects and take fast and effective action to address them. One flaw of the current "Yellow Book" framework is that it provides little transparency once a contract has been signed.

A key objective of the new framework is that the MOD should be able to monitor the health of single-source contracts on an ongoing basis, getting early warning of failing projects. That is vital to improve efficiency and performance in defence procurement. There have been too many examples in the past where the MOD has discovered far too late crippling cost or time overruns on single-source projects. I am sure the hon. Lady's colleagues who were in the MOD under the previous

Government would have felt that all too painfully. One of the best examples is that of the ill-fated Nimrod project, with which the hon. Member for North Durham may be more familiar than I am.

Mr Kevan Jones (North Durham) (Lab) *rose—*

Mr Dunne: I would like to welcome him to Committee and give him an opportunity to respond.

Mr Jones: First, I would like to apologise that I might not be here this afternoon, as I will be in the Chamber. I think the Minister's argument is a bit weak. For example, on Nimrod the costs were known, not only by the MOD. The Select Committee report on procurement from the previous Parliament also included most of those issues. So I think Nimrod is a bad example.

Mr Dunne: As I anticipated, the hon. Gentleman was more intimately involved with that contract than I was. The fact that the contract went wrong over a prolonged period does not detract from either my point or his that the Select Committee investigated it some way down the track.

Mr Jones: The issue was a poor contract entered into at the beginning by the previous Conservative Government. That does not take away from the fact that possibly some brake should have been put on the project throughout its life. That was one recommendation of the Select Committee report.

Mr Dunne: I think we have probably covered that example enough on this clause. The point remains that getting earlier notification of failing contracts will give the MOD the opportunity to take action to avoid or minimise the impact of projects that get into difficulties as they arise, rather than at the end of the contract or at a time when a decision is taken, as in the Nimrod case, to cancel the contract.

Clause 26 places an onus on suppliers to let the MOD know in a timely fashion of material risks or changes to the three fundamental elements of any project: time, cost and performance. Putting the onus on single-source suppliers in that way means that the new framework can be lighter-touch than it would be if the only means by which alarm bells could be sounded on a project was through the MOD's monitoring powers. The duty on suppliers under clause 26 encompasses the various ways in which the alarm bells should be sounded on qualifying defence contracts. It imposes a duty to notify where the supplier becomes aware of events occurring or being likely to occur, circumstances or information that are likely to have a material effect on a qualifying single-source contract. In any of those circumstances a supplier must notify the Secretary of State.

The hon. Member for Plymouth, Moor View asked for some examples of the type of event envisaged. We have in mind only events that have a material effect on performance of the equipment, the cost of delivery of equipment or the time it will take to deliver that equipment within the terms of the contract. That could include corporate changes if there is a material effect or the risk of one. It could also, as the hon. Lady suggests, be triggered by the failure of the supply chain or a problem with systems integration relating to equipment. All of those we would regard as appropriate events.

The hon. Lady also asked whether there is a duty in relation to other obligations on suppliers that are listed on the stock exchange, and whether that might trigger an event. In response to an industry concern, we looked at whether the obligations of a listed company to disclose to the stock exchange by virtue of its listing agreement should be a trigger for events within this contract—

Alison Seabeck: I apologise, but we may be at odds with each other here. My question was about at what stage the Ministry of Defence would have to be informed in the event of a circumstance that is likely materially to lead to an event, such as losing the supplier of an important piece of equipment. Telling the MOD something that would ordinarily be kept and managed within the boardroom would certainly lead to a requirement also to inform the stock exchange. That may be something that the company may not want to do at that time, so it will be caught between feeling that it must tell the MOD, because things will be changed materially and there is a statutory duty, and wanting to manage the matter within the boardroom and not inform the public. I am not quite sure how that would work.

Mr Dunne: That is a legitimate point. It will all be a matter of materiality. A £50 million contract to some of our large suppliers is not material in the context of a stock exchange announcement and they will have to form a view. That is the situation we are in today. Some contracts have sufficient materiality with the Ministry of Defence or with other customers whereby contractors feel obliged under their listing obligations to make public announcements if material events happen to that contract. We are in that situation today. We have examined the listing obligations to see whether they should become a triggerable event for notification under these clauses and concluded that there is no conflict there, and that the listing rules do not restrict the disclosure of information to Government Departments. It will be up to each contractor's board to form its own view as to whether a notification to the MOD is sufficiently material in the context of the overall value of the company to trigger a listing obligation as well.

Quite reasonably, the hon. Lady asked whether decisions taken by the MOD would also be caught by clause 26. If we change our requirements for a contract, we must naturally inform suppliers or they will continue to deliver to the previous obligations of the contract. If such a move resulted in a cost increase, a price change will result. To that extent, it would be covered.

Alison Seabeck: I appreciate the Minister's patience. Regarding his last comment, the role of the Ministry of Defence in relation to suppliers is not actually written into the Bill unless it appears earlier in the SSRO part. It may be worth taking that away and looking at whether it needs to be put into the Bill.

Mr Dunne: I do not think so, because the clause places duties on the contractor to notify the Secretary of State in the event of various things happening. If the Secretary of State, by virtue of a decision of the Ministry of Defence through capability-setting requirements, makes a change, it is not beholden on the Secretary of State to notify the contractor because he will do that anyway. If

[Mr Dunne]

we make a change, we are by definition notifying the contractor, so it is not appropriate to include such a measure in the clause.

On the subject of the Secretary of State, the hon. Lady also suggested that he had made some comments on current and former service chiefs, but I am afraid that she took them out of context. I would like to use this opportunity to reinforce the fact that the Secretary of State enjoys excellent relations with both current and former chiefs of all services. I am pleased to be able to put that on the record.

12 noon

Finally, the hon. Lady asked about offset arrangements. She might be confused; companies are obliged to undertake offset arrangements when they are engaged in winning export orders, rather than orders from the Ministry of Defence. MOD procurement does not generate offset requirements, particularly for single-source suppliers in the UK. It is conceivable, but I think it is very rare. I am seeking inspiration, so if anyone can come up with an example—

Mr Jones *rose—*

Mr Dunne: I will give way if the hon. Gentleman can give me an example of when procurement from an overseas company would impose an offset obligation on the MOD.

Mr Jones: I am just wondering about Government-to-Government contracts such as, for example, the al-Yamamah contract with Saudi Arabia. That is quite a broad contract, in that it involves not only the supply of equipment but also support mechanisms. Would such contracts be covered by offset obligations?

Mr Dunne: I think that the hon. Gentleman is referring to Government-to-Government contracts, whereby the British Government provide support to a contractor that is supplying a service to another nation. The offset arrangements for contracts that fall within Government-to-Government arrangements typically fall on the contractor, not the MOD.

Mr Jones: I might be out of date, but I think that the arrangements in the al-Yamamah contract did not fall on the contractor. Although it is a Government-to-Government contract, some of it involves not cash but other offsets, such as oil. Although it is a Government-to-Government contract, it is delivered mainly by BAE Systems, in consultation with other companies.

Mr Dunne: We are talking about a duty on a primary contractor to report events relating to procurement by the MOD to the Secretary of State. The example given by the hon. Gentleman does not concern the supply of services to the MOD; it concerns the supply of services to armed forces in another country.

Mr Jones: It does, but we perhaps need clarity on the fact that the lead Department in that case, in terms of the Government-to-Government relationship, is the MOD. It might be a unique set of circumstances, and I hear what the Minister is saying, but it would be interesting to see what would happen in such circumstances.

Mr Dunne: The hon. Gentleman is right that he has highlighted a distinctly unique contract. I hope I can reassure him that all the provisions of part 2 are excluded from Government-to-Government contracts. That would cover the contract to which he refers.

In conclusion, the clause is vital to ensure much more effective routine management and oversight of single-source contracts, many of which are hugely significant in terms of the cost and delivery of vital military capability. I therefore encourage the Committee to endorse the clause and let it stand part of the Bill.

Question put and agreed to.

Clause 26 accordingly ordered to stand part of the Bill.

Clause 27 ordered to stand part of the Bill.

Clause 28

Determining whether a contract is a qualifying sub-contract

Mr Dunne: I beg to move amendment 24, in clause 28, page 20, line 18, after 'State' insert ', an authorised person'.

The Chair: With this it will be convenient to discuss Government amendment 25.

Mr Dunne: Government amendments 24 and 25 relate to a specific aspect of single-source subcontracts. When debating amendment 32 on Tuesday, we discussed pre-notification. I said that because we are not in control of the subcontracting process, there is a risk that a subcontractor might not be aware that their contract falls under part 2 until after they have signed. In our view, that would not be reasonable. Clause 28 requires prime contractors to notify a prospective subcontractor prior to contract let. If they do not, the provisions of part 2 will not apply.

The prime contractor must also notify the Secretary of State, so that we are aware of all the contracts under the framework and can make appropriate use of our rights. However, under current drafting, a supplier could not fulfil their duty by notifying the GoCo, if we went down the GoCo route. We have ensured that part 2 is consistent with part 1 by allowing the Secretary of State to delegate some of his powers under part 2 to an authorised person, who will be the GoCo, should we go down that route. We had missed the inclusion of an authorised person when first drafting clause 28. Monitoring the flow down the supply chain of the single-source framework would be a procurement activity delegated to a GoCo. We would like to correct that anomaly through the amendments, and I urge the Committee to support them.

Amendment 24 agreed to.

Amendment made: 25, in clause 28, page 20, line 40, after 'State' insert ', an authorised person'.*—(Mr Dunne.)*

Clause 28, as amended, ordered to stand part of the Bill.

Clause 29

APPLICATION OF PART TO QUALIFYING SUB-CONTRACTS

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

Mr Dunne: Let me outline briefly the object of the clause. The clause is the mechanism that will apply the framework to subcontracts at all levels in the supply chain of a qualifying defence contract. It will also enable regulations to provide for the circumstances in which the framework ceases to apply.

Crucially, the clause will ensure that the framework applies to qualifying subcontracts and subcontractors in the same way that it does to qualifying defence contracts and prime contractors. It will allow modifications to part 2, and to the regulations in their application to qualifying subcontractors. The effect will be that each provision of the Bill that reads "qualifying defence contract" can also be read as "qualifying subcontract", and each occurrence of "prime contractor" can be read as "subcontractor". That may seem unduly pedantic, but such is the nature of drafting legislation. I thought it was important that members of the Committee were aware that that was why we included the clause, and I encourage them to support it.

Alison Seabeck: I thank the Minister for pointing out the reason behind the clause. Whatever side we are on in this Committee, our thanks have to go to the people who draft our legislation for us.

Question put and agreed to.

Clause 29 accordingly ordered to stand part of the Bill.

Clause 30

COMPLIANCE NOTICE

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

Alison Seabeck: The clause is relatively straightforward. I have only one question, about time scales. What is the time scale in which person P is expected to respond to a compliance notice issued by the Secretary of State? What is the period by the end of which person P has to have lodged a request with the SSRO for a determination?

Mr Dunne: I am grateful to the hon. Lady for allowing a discussion on the compliance regime. Before addressing her question, I would like to explain briefly how we envisage it will work.

If we are to maximise the benefits of single-source procurement through the framework, in particular to ensure that good value for money is obtained from Government expenditure on qualifying defence contracts, it is essential that qualifying defence contractors comply with provisions set out in part 2 of the Bill and in the regulations. A contractor is incentivised to fulfil their obligations under the Bill and the regulations through a compliance regime supported by civil penalties.

The regime will give the Secretary of State the power to impose a financial penalty on a contractor that he considers has failed to comply with specified provisions. The regime will also give the contractor the right to appeal to the SSRO against a penalty that it thinks has been wrongly imposed or is excessive, so there is balance in the relationship. It is not the intention of the Secretary of State for penalties to be imposed unnecessarily. He will apply a penalty only as a last resort.

The clause places a duty on the Secretary of State to allow a contractor a period within which it can take steps to remedy the contravention. The steps and the time period will be set out in a compliance notice specific to the breach, issued by the Secretary of State to the contractor. The compliance notice provides the contractor with a further opportunity to comply with the legislation prior to the Secretary of State issuing a penalty notice under clause 31.

Alison Seabeck: The Minister is clearly endeavouring to answer my relatively straightforward question in some detail. It appears, however, from what he has said that the Secretary of State has a degree of discretion in how long he is prepared to give person P to comply. Are there any parameters within which he will be working?

Mr Dunne: If the hon. Lady will allow me, I will come on to that shortly. The clause requires a compliance notice to be issued if a contractor is in contravention of a requirement under the new framework, but only if the contractor can take steps to remedy that contravention. An example of where a notice cannot be issued is if the contractor has failed in its duty under clause 26 to notify the Secretary of State of a material event that has occurred, and a significant period of time has elapsed since that event. The Secretary of State may then decide that given the lapse of time, the contravention cannot be remedied. He may then decide to proceed directly to issuing a penalty notice under clause 31; clause 30 lists the circumstances in which the Secretary of State has the power to issue a compliance notice.

As the hon. Member for Plymouth, Moor View, will have read, there are four areas where contraventions may arise: a failure of the contractor in its duty to keep relevant records under clause 22; a failure of the contractor to provide contract and supplier-level reports under clauses 23 and 24; a failure of the contractor to notify the Secretary of State of a relevant event under clause 26; and a failure of a contractor to provide notification that a prospective qualifying subcontract exists in its supply chain. It is important that a contractor identifies any prospective qualifying subcontracts and provides notification of their existence, as it is only after such notification that the provisions of part 2 of the Bill can apply to qualifying subcontractors in the same way as to a prime contractor. Clause 30 also gives the Secretary of State the power to issue a compliance notice if the contractor is deemed to have issued a contract-level report that is knowingly or recklessly misleading in a material respect.

The clause requires the Secretary of State to issue a compliance notice within three months, as specified in regulation 52 of the single-source contract regulations. I apologise to the hon. Lady for taking some time to answer the question directly, but that is the answer she has been looking for. The clause also sets out what the Secretary of State must put in a compliance notice, which includes details of the contravention, the period within which the contractor has to take the steps specified,

[Mr Dunne]

and confirmation that a penalty notice may be issued if steps have not been taken or reasonable excuses not given. Three months is a long-stop date, but it is open to the Secretary of State to give a different period for the issuing of a penalty notice, if that is appropriate. Those elements will ensure consistency in the Secretary of State's procedures in issuing compliance notices and transparency for the contractor.

The clause establishes an important initial step in the compliance regime. It supports the overall functioning of clauses 31 and 32 and is needed to allow their effective operation, and to give a contractor the opportunity to remedy a contravention within a reasonable period, thereby avoiding the risk of incurring a penalty.

Question put and agreed to.

Clause 30 accordingly ordered to stand part of the Bill.

Clause 31

PENALTY NOTICE

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

Alison Seabeck: This clause follows on quite nicely from the previous one, thanks to the beautiful drafting of the Bill. Although the reasons given for the provisions on compliance were straightforward, we have one or two questions about how the penalty notice provisions will work.

12.15 pm

The Minister set out the reasons why somebody might contravene the various rules in previous clauses, and therefore why compliance would be necessary. I assume that it would be necessary extremely rarely, but I would be interested to know whether, when this part of the Bill was being drafted, evidence was provided to him about that expectation, and whether companies in the "Yellow Book" would have found themselves on the wrong side of a compliance order. Does he have any idea how many companies the Secretary of State might expect to find beating a path to his door to discuss compliance and penalty notices?

Although there is a clear need to have provision for a penalty notice at the end of the compliance period, what happens if the armageddon clause kicks in and person P flatly refuses to pay? Who is responsible at that point for pursuing the money? Does the matter have to go through the courts? What is the ultimate endgame if somebody says, "I do not agree with you, and I am not going to pay"?

Mr Dunne: Clause 31 gives the Secretary of State the power to give a penalty notice and sets out the two circumstances in which the Secretary of State can issue such a notice. The first, as we have just discussed, is when a compliance notice has been issued under clause 30, and the contractor

"(a) has failed to take the steps specified in a compliance notice, and

(b) does not have a reasonable excuse"

for their failure to take those steps. The second circumstance is when a compliance notice has not been issued by the Secretary of State because he does not consider that the contractor is able to remedy the contravention. In those circumstances, the Secretary of State has the power to issue a penalty notice directly without first issuing a compliance notice if he is of the opinion that a contravention has occurred. The clause provides transparency about the circumstances in which the Secretary of State can issue a penalty notice and sets out his responsibilities in doing so.

Clause 31 requires a contractor to pay the penalty within six months of the issuance of the notice. We feel that a six-month period is more than sufficient for a contractor to either pay the fine or refer the matter to the SSRO for independent determination. That period can be amended by regulations, for example if the SSRO were to recommend a change during one of its periodic reviews. The clause also places on the Secretary of State a duty to issue a penalty notice within a period to be specified in the regulations. That is important, because it places a restriction on the time during which the Secretary of State can issue a penalty notice. Failing to include that in the Bill would leave an open-ended period in which the Secretary of State could impose a penalty notice following a contravention, which would, in our view, be inappropriate.

The clause specifies what the Secretary of State must include in a penalty notice. That includes details of the contravention, the amount of the penalty, the date by which the penalty must be paid, how it can be paid, the interest payable on overdue amounts and how the contractor can apply to the SSRO for a determination. That ensures transparency for the contractor.

The appeal process is a vital part of any civil penalty regime, and the clause sets out the circumstances in which a contractor can apply to the SSRO for a determination. That includes a determination on: whether a contractor has committed the contravention; whether a contractor has taken the steps set out in the compliance notice; whether a contractor has a reasonable excuse for either the contravention or failing to take the steps in the compliance notice; and the amount of penalty.

The clause is also important because it sets out the powers and responsibilities of the SSRO when it receives a request for a determination. It sets out that the SSRO must provide a determination and, in doing so, can substitute a decision made by the Secretary of State with one of its own. It gives the SSRO the power to set a new date by which the penalty must be paid and, in doing so, allows it to defer the penalty due date as set out by the Secretary of State in the penalty notice. The clause also provides that the SSRO's determination is final.

The clause gives the Secretary of State the power to specify in the penalty notice circumstances in which a reduced penalty amount will be payable. For example, the Secretary of State may allow a reduction in the penalty value if a contravention is subsequently remedied within a certain period. Ultimately, of course, the contractor can undertake the judicial review process if it is dissatisfied with the SSRO's determination.

The hon. Member for Plymouth, Moor View, asked whether we have any idea of how often the penalty regime might apply. Not for the first time in this Committee, I am asked to apply my crystal ball gazing skills, which

it is not possible to do. We cannot take any precedent from the current regime, because although we have plenty of examples of inappropriate costs being charged to us, under the new regime most of those costs would fall out anyway, so we do not have a precedent that we can use to guide us. We have estimated that 1,000 reports a year may be undertaken under this regime once it is fully up and running. We would expect the number of failures that would result in a penalty notice arising from those reports to be very low, but I will not hold myself hostage to the future by giving the hon. Lady the benefit of a number.

Clause 31 is a critical step in the overall compliance regime. It establishes not only the right of the Secretary of State to impose a penalty, but the right of the contractor to appeal against such a penalty. We think that the clause has appropriate balance and we urge the Committee to endorse it.

Alison Seabeck: I did suspect that, when it came to trying to guess how many instances might find their way through to the final part of the process, the Minister would say, "How long is a piece of string?". The question was simply whether, when the impact of the legislation was examined, there had been a read-across to previous examples occurring under the "Yellow Book". The work clearly has been done and some assumptions have been made. One would assume that, at the end, the numbers would be very small, because ultimately there is a reputational issue for some of these companies. The last thing they want is to go down the judicial review route with a potential customer. There is quite a lot of pressure from the Ministry on that. On that basis, I shall not oppose the clause.

Question put and agreed to.

Clause 31 accordingly ordered to stand part of the Bill.

Clause 32

AMOUNT OF PENALTY

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

Alison Seabeck: I think that I am correct in saying that the calculation of the penalty to be charged, at the culmination of the process, is limited under the general law of contract. Perhaps the Minister could, for the benefit of the Committee, set out a little of the detail of exactly what that means—the guidance and parameters that could apply if someone failed to comply at the end.

Clause 32 provides that, for people or companies who fail to comply under clause 26, and provide a misleading report as described in clause 23, the breach will be calculated as if it were a breach of a qualifying defence contract. In those cases, no upper limit is set, so clearly this is a very serious offence. In both situations, the loss to the Secretary of State could vary enormously, as we can see if we look at the amounts potentially involved. Although the imposition of a penalty is clearly designed to send the message "Don't go there" to those who might be thinking about breaching the rules, the penalty needs to be proportionate. I seek reassurance from the Minister that that will be the case.

Mr Dunne: As the hon. Lady says, clause 32 sets out that the Secretary of State, when setting a penalty amount, must not exceed a maximum amount specified in the penalty regulations, which are distinct from the single-source contract regulations. That is another important part of the compliance regime, as it puts in place a maximum that the Secretary of State must adhere to when penalising a contractor for non-compliance. It also serves to give industry certainty that the Secretary of State, when issuing a penalty notice, has regard to penalty limits stated in legislation.

Exceptions to a maximum penalty amount—a tariff penalty—are made in circumstances where the contractor has failed to comply with the duty to notify the Secretary of State of a material event or provided a misleading report. In both situations, a tariff penalty is not considered appropriate, as the losses the Secretary of State may have incurred as a result of the contravention may exceed any maximum tariff penalty set in the penalty regulations. The legislation therefore allows the penalty to be calculated as if there were a breach of contract.

In setting the penalty amount, the clause requires the Secretary of State to have regard to guidance issued by the SSRO. The clause also places an obligation on the SSRO to publish the guidance, to which it must refer if a contractor appeals to the SSRO for a determination in relation to the amount of the penalty, as set out in subsection (5). Again, that introduces additional certainty in the penalty-setting process, including about the involvement of the SSRO—an independent party.

Clause 32 gives the Secretary of State the power in the penalty regulations to apply different penalty amounts in different circumstances. It specifically makes reference to the value of the contract to which the failure relates. That is considered an important part of the penalty regime, as it allows the Secretary of State the power to impose a penalty value commensurate with the value of the contract. That will help to ensure consistency in the value of the penalty relative to the value of the contract.

The clause requires the penalty regulations to be made under the affirmative procedure. That is because we recognise that regulations setting out maximum fines are considered more contentious than other regulations, so greater parliamentary oversight is appropriate.

Clause 32 establishes an important step in the overall compliance regime. It provides certainty for the contractor, in that it sets limits on the value of the tariff penalty that can be imposed and sets out the circumstances in which a penalty value can be based on breach of contract. If we did not have such a clause, we would render the remaining compliance clauses inoperable, which is clearly not the intent of the hon. Lady.

In the context of breaches of contract, we are bringing forward from contract law the concept of damages. In cases of breach of contract, there is not an upper limit, but penalties must relate to the actual damage done to the Ministry of Defence; information on that would be part of any evidence that we provided to the SSRO to help it make its determination. However, I would point the hon. Lady to the penalty regulations for guidance on penalty amounts.

Question put and agreed to.

Clause 32 accordingly ordered to stand part of the Bill.

Clause 33

AMOUNT OF PENALTY

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

Alison Seabeck: The final part of the picture is enforcement. It is interesting that the clause references the Judgments Act 1838, when hanging and transportation may have been the order of the day for those caught stealing a loaf of bread, let alone for non-compliance with a defence contract with a Government office or a quango. Section 17 states:

"every Judgment Debt shall carry Interest at the Rate of"

x

"Pounds per Centum per Annum from"

such time as prescribed by rules of court and

"until the same shall be satisfied, and such Interest may be levied under a Writ of Execution on such Judgment."

It also says:

"Rules of court may provide for the court to disallow all or part of any interest otherwise payable".

That is just for the benefit of members of the Committee, who are, I am sure, absolutely riveted and fascinated to hear what was in the 1838 Act.

It therefore appears that, apart from the reputational threat to person P for contravention of the rules, which we have discussed, there is also the possibility of the use of punitive interest rates on the penalty charge. Will the Minister give us some idea of how and by whom the rates will be set? I am assuming that the SSRO could set them. Will the moneys raised go to the Ministry of Defence, to the SSRO or to the Treasury?

12.30 pm

Mr Dunne: As the hon. Lady has said, enforcement is an essential part of any compliance regime. The clause gives powers to the Secretary of State to enforce the civil penalty regime through two possible courses of action. First, it allows the Secretary of State to charge the contractor interest on any overdue unpaid amounts. As the hon. Lady has correctly observed, the rate will be calculated with reference to section 17 of the Judgments Act 1838—a fine example for keen students of Parliament and the legislative process of our ability to search back through approximately a century and a half of legislation for rules that have guided legislation and parliamentary business ever since. That is one of the strengths of this great democracy in which we live. The inclusion of the power gives a contractor who has received a penalty notice a financial incentive to pay the penalty by the due date stated in that notice, thereby avoiding an interest charge. The due date is defined as the date specified in the penalty notice or that given by the SSRO in the event of an appeal, whichever is later.

Secondly, the clause gives the Secretary of State the power to enforce the compliance and civil penalty regime by recovering an unpaid penalty and associated accrued interest from a contractor as a debt due to the Secretary of State. That action would be taken by the Secretary of State only as a last resort. The clause establishes an important step in the overall compliance regime. Through the power to apply interest to an outstanding debt, it provides further incentive for a contractor to settle a penalty notice and also gives the Secretary of State the power to pursue non-payment through the courts.

The hon. Member for Plymouth, Moor View asked to whom any penalties would be payable. The answer is to the Ministry of Defence, acting on behalf of Her Majesty's Treasury. The document "Managing Public Money" gives guidance that sums due to the Ministry are, regrettably, passed immediately to Her Majesty's Treasury. She was also looking for guidance as to what interest rate might apply. Although I am not a keen student of legislation passed in the Victorian era, I will endeavour to give her some indication of the rate currently prevailing. I believe it is of the order of 7%. That would be the rate if such a regime were in force today.

Question put and agreed to.

Clause 33 accordingly ordered to stand part of the Bill.

Clause 34

OPINIONS AND DETERMINATIONS

Alison Seabeck: I beg to move amendment 53, in clause 34, page 24, line 29, after 'contract', insert

'a qualifying sub-contract or a proposed sub-contract,'.

The Chair: With this it will be convenient to discuss amendment 54, in clause 34, page 24, line 39, at end add—

'(e) the sub-contractor (in the case of qualifying sub-contract);

(f) the prospective sub-contractor (in the case of a proposed sub-contract).'

I have selected these two starred amendments because they missed the tabling deadline owing to a printing error rather than the actions of the Member.

Alison Seabeck: I appreciate your decision to select the amendments in the light of the error that occurred, Mr Owen.

We have tabled the amendments to seek some clarity from the Minister on the reasoning behind the lack of inclusion of subcontractors in subsection (2). Although clause 28(5) allows a prospective subcontractor to appeal against an assessment made by virtue of clause 28(1) or clause 28(3), clause 34(2) does not list a prospective subcontractor as a person for whom the SSRO must determine an appeal, should they make a reference to the SSRO.

I am not sure whether that is logical. It might be a drafting error, or perhaps there is a really good reason why the Minister feels that the provisions in the clause are irrelevant to subcontractors. Perhaps it is because the issue is covered somewhere else in the Bill, or because he feels that subcontractors should not be entitled to an appeal. It might refer back to clause 29, where the role of subcontracts is covered, because if in clause 29(3) the single-source regulations apply to a qualified subcontractor, surely that subcontractor needs the same right as a primary contractor to make reference for an opinion or a determination by the SSRO. In the clause as it stands, justice does not seem to be served, so will the Minister explain the rationale for seeming to omit subcontractors from the appeal and determination process? Whether we press the amendments to a vote will depend on the response we receive.

Mr Dunne: I am pleased that you have allowed these amendments to be discussed today, Mr Owen, because it is important to get this matter on record. I think that I can allay the hon. Lady's fears. The clause relates to opinions and determinations by the SSRO. Subsection (1) provides that, upon a referral, it must give an opinion or determination where a matter is specified in the regulations. Such referrals may be made by the Secretary of State, an authorised person or any contractor or prospective contractor.

As drafted, the clause allows for matters to be specified in relation to either a qualifying defence contract or a proposed qualifying defence contract. Amendment 53, as the hon. Lady explained, would add a qualifying subcontract or a proposed subcontract to that list. Correspondingly, amendment 54 would add a subcontractor and prospective subcontractor to the list of persons in subsection (2) who may make such a referral. We agree that the clause should provide for opinions and determinations to be specified in relation to qualifying subcontracts and prospective qualifying subcontracts, and to allow the subcontractors to make such referrals. As it happens, however, these amendments are not needed to give that effect. I touched on that earlier and I will now explain.

Throughout the Bill, reference is made to the terms "primary contractor" and "qualifying defence contract". Clause 29, as the hon. Lady rightly identified, provides for the application of part 2 and the regulations to subcontracts, effectively allowing for all of the framework to flow down to subcontracts, subject to any necessary modifications. The effect of that is that reference to a qualifying defence contract in the Bill should be read as referring to both a qualifying defence contract and a qualifying subcontract. Similarly, "primary contractor" should be read as referring to both a primary contractor and a subcontractor.

The effect of clause 29, taken together with clause 34(1), is the power for referrals to be specified in relation to qualifying defence contracts or proposed qualifying defence contracts and, with the substitution of terms, it also allows for referrals to be specified for subcontracts and proposed subcontracts. Amendment 53 therefore has no additional effect. For the persons who make a referral, listed under subsection (2), the same applies: subcontractors are already included. Proposed subcontractors are also covered because provision to that effect can be made in the regulations using the "applies with modifications" power in clause 29(2)(a). We agree with the intent of the amendments to ensure that all subcontractors have rights equal to those of primary contractors, but the Bill already provides for that, so the amendments are not necessary. I encourage the hon. Lady to withdraw them.

Alison Seabeck: The Minister will be aware of this, because he spent many months—possibly longer—looking at the nature of the Bill and going through it with expert teams.

Mr Dunne: I would like to reassure the hon. Lady that it will not require many months or years for our subcontractors to get the benefit of this protection. We will issue clear guidance and an explanation of the provisions' effect for subcontractors as well as primary contractors. I accept that this is complicated legislation, but we want to make it as clear as possible for our suppliers when they will be caught by it.

Alison Seabeck: The point I was going to make was that during the Bill development process, one can glaze over when first looking at it. Then, the scales start to fall away and one starts to realise how the different pieces work together. In the case of our amendments to clause 34, I accept what the Minister has said. It is much clearer. I appreciate his explanation and the fact that he has acknowledged that the provisions for subcontractors were perhaps less than clear, even though they are safely buried within the Bill. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 34 ordered to stand part of the Bill.

Clause 35

RECORDING, REVIEW AND ANALYSIS FUNCTIONS

Alison Seabeck: I beg to move amendment 42, in clause 35, page 25, line 29, at end add 'and to a primary contractor on request of that primary contractor'.

The Chair: With this it will be convenient to discuss Government amendment 26.

Alison Seabeck: Our amendment is a probing one that simply seeks an answer to the question why primary contractors do not appear to have the same access to benchmarking information as the Secretary of State, which should be part of the bargain of offering access to contractors' records. As the Minister might expect, this amendment is based on conversations with industry, prompted by questions from me to them. I am not sure whether there is an unfairness that needs to be rectified, and the Minister's comments will obviously be of interest both inside and outside the House.

The amendment would enable the primary contractor to request results of the analysis of the reports provided under clauses 23 and 24. How, out of interest, is the SSRO expected to keep its records: electronically or by some other means? We discussed the other day the keeping of data and records electronically, or in hard form.

Mr Dunne: As the hon. Lady says, the amendments to clause 35 concern the analysis undertaken by the Single Source Regulations Office, the purpose of which is to help ensure that the new information we get from suppliers is translated into better value for money for the Ministry of Defence and taxpayers. The SSRO will publish independent defence benchmarks and we will use these to identify where a supplier's cost estimate is higher than expected, given past experience from similar projects. This will assist us in our negotiations with suppliers on contract pricing.

The Ministry of Defence will also analyse supplier reports and use them in many different ways. As a Department with substantially more than the 35 people whom we envisage will be employed by the SSRO, we will almost certainly be doing more analysis than the SSRO. However, some analysis has greater value if it is produced independently of the Ministry of Defence, such as defence benchmarks. When negotiating a significant element of the contract price, it is one thing for us to say that our analysis suggests that this cost is too high, but quite another to say, "According to independent analysis,

[Mr Dunne]

this cost looks substantially above average for comparable suppliers in the defence sector". The analysis supplied by the SSRO will have much greater weight.

The reports required under clauses 23 and 24 will therefore be provided to the SSRO, which will use them as the basis for its analysis. The SSRO will then provide the Secretary of State with the results of its analysis. Amendment 42 would place an obligation on the SSRO also to provide this analysis to suppliers if they request it. The hon. Lady admitted that she has discussed this issue with industry, and it is something industry would be keen to receive.

As we see it, the difficulty with this proposal is that defence benchmarks will be based on analysis of the costs of different suppliers. In the defence sector, there are sometimes perhaps only two suppliers engaged in the manufacture or maintenance of a particular kind of equipment. If this analysis could be provided to any supplier, the information could be used to infer the costs and performance of competitors within the sector, which we think would be wrong. We would be providing the potential for access to confidential information between one contractor and another, which we do not consider the purpose of these regulations, or appropriate in the context of a competitive marketplace. I am, however, sympathetic to the aims of the hon. Lady's amendment. Other price regulators, such as Ofwat and Ofgem, let suppliers know about their comparative performance, which helps them to focus their improvement activities. Our single-source suppliers will be informed of that through the contract price negotiations, when we highlight how their costs are above the expected benchmark.

12.45 pm

We asked industry during our consultations whether that would be helpful to them. Somewhat to our surprise, they did not express any particular appetite for a wider, industry-wide analysis. However, nothing in the Bill will stop us asking the SSRO to perform a suitably generic and anonymised analysis that could be passed back to suppliers. Indeed, I would support that if it encouraged suppliers to look for further efficiencies. We could ask the SSRO to perform the analysis in the framework document and, provided that it did not breach the disclosure obligations of schedule 5, provide it both to suppliers and to the Secretary of State.

However, I do not support the proposal that suppliers be empowered to ask for all and any analysis performed by the SSRO, because that would include the detailed and non-anonymised information that we will need to ensure value for money in our single-source contracts. For those reasons, I urge the hon. Lady to withdraw her amendment.

Turning to Government amendment 26, clause 35(5) allows the Secretary of State to provide the results of the SSRO's analysis to an authorised person, but that they may not otherwise be disclosed. The first part of the subsection is unnecessary, because schedule 5, under paragraph 5(1)(c), already allows the Secretary of State to provide any protected information to the GoCo.

The problem is the second part of subsection (5), and the amendment will remove the subsection. As drafted, the statement that information

"may not otherwise be disclosed"

places a full statutory bar on the provision of such information, rather than letting the information be dealt with under schedule 5, which allows certain permitted disclosures, including a freedom of information request.

In effect, clause 35(5) provides a specific exemption from freedom of information and any of the authorised disclosures under schedule 5 for a tiny proportion of all the information given under part 2. The exemption does not apply to any of the standardised reports or records. It also does not apply to the same information—the analysis results under clause 35(3)—when that information is provided to the GoCo or the SSRO.

A freedom of information request for the reports would have to be considered, but not a request for the report that analyses the information in those reports. We never intended to apply that additional restriction to that small subset of information. Government amendment 26 will correct that anomaly, so I urge the Committee to accept it.

The hon. Lady asked whether we had a view on how the SSRO will keep its records. We anticipate that it will receive information electronically, so it would be appropriate to store it electronically within its records. Clearly, it is important that adequate security be placed around the SSRO's systems to safeguard the information it receives. We will look to ensure that adequate security and protection are provided to maintain the confidentiality of the information the SSRO receives within the framework agreement between the MOD and the SSRO.

Alison Seabeck: The Minister mentioned the security of the data held by the SSRO. The security systems could be quite expensive. Does he expect those to be part of the up-front support provided by the MOD? Will he write to us about how they are likely to be funded—whether they will come out of the budget the office is working to?

The Minister's earlier point in response to my amendment was interesting. The information he has picked up from industry through consultation is slightly different from more recent information I have received, which suggests that we should all be having further conversations with industry about whether a mechanism—it is not currently in the Bill—similar to Ofgem might be created at some point. The other place might want to discuss that further.

Mr Dunne: On the question whether the Ministry of Defence would fund the establishment of the SSRO's security arrangements concerning confidential information that it will obtain and retain, as we have committed to fund the SSRO for the first three years, I confirm that we intend to fund its purchase of relevant security structures.

Alison Seabeck: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment made: 26, in clause 35, page 25, line 33, leave out subsection (5).—*(Mr Dunne.)*

Clause 35, as amended, ordered to stand part of the Bill.

Clauses 36 and 37 ordered to stand part of the Bill.

Schedule 5

RESTRICTIONS ON DISCLOSING INFORMATION

Mr Dunne: I beg to move amendment 27, in schedule 5, page 44, line 32, after 'State' insert ', an authorised person'.

The Chair: With this it will be convenient to discuss Government amendment 28.

Mr Dunne: Amendments 27 and 28 relate to the scope of information that may be covered by the disclosure protections under schedule 5. Their intent is clear, so I will be brief.

As discussed earlier in relation to amendments 24 and 25, while no decision has yet been made on the GoCo route, part 2 must ensure that appropriate provision is made in relation to a GoCo in the event that it is selected, and that has been achieved by the use of the phrase "an authorised person". As drafted, the protections provided under paragraph 1(1) of schedule 5 apply to information provided by a supplier, under the provisions of part 2, only if that information is provided to the Secretary of State or the SSRO. Once provided, the protection stays with the information, so if the Secretary of State provides it to the GoCo, which he can under paragraph 5(1)(c) of schedule 5, then it remains information to which the offence applies.

The current drafting of schedule 5, however, will not apply when information is provided directly to the GoCo by a supplier. That gap in the protection offered by schedule 5 was not our intent. A work-around would be for a supplier to provide information to the Secretary of State and for the Secretary of State to pass it on to the GoCo. That would ensure that the information was, as intended, protected under schedule 5, but it would regrettably place an unnecessary overhead on to the Ministry of Defence, as in many cases it would make much more sense for the information to be passed directly to the GoCo. Therefore, I hope the Committee will recognise that this is a minor drafting correction and will accept the amendment.

Alison Seabeck: The Minister has made clear the reasons why he needs to make these drafting changes. Our interest in the schedule was discussed at length earlier in the debate, so we are not going to oppose it.

Amendment 27 agreed to.

Amendment made: 28, in schedule 5, page 45, line 7, after 'State' insert ', an authorised person'.—*(Mr Dunne.)*

Schedule 5, as amended, agreed to.

Clause 38

REVIEW OF PART AND REGULATIONS UNDER IT

Alison Seabeck: I beg to move amendment 43, in clause 38, page 26, line 10, at end insert—

'(1A) Before undertaking a review under this section the SSRO must consult the industry body and those persons as it thinks fit and must have regard to the results of that consultation.

(1B) Where by virtue of subsection (2) the SSRO has held consultations in relation to proposals for this Part and regulations under this Part, it must, when recommending changes to the Secretary of State, in accordance with subsection (4) below, publish a report of the results of those consultations, and of its conclusions.'.

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

Amendment 44, in clause 38, page 26, line 16, at end insert—

'(3A) Changes made to this Part and to the regulations under this Part must not be made unless a draft of a statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament. The Secretary of State must when laying the instrument before Parliament also publish the reasons for any differences between the recommendations made by SSRO and terms of the draft statutory instrument so laid.'.

Clause stand part.

Alison Seabeck: These amendments were intended to bring a degree of consistency with amendments tabled to earlier clauses relating to the possible need for regulations under this part of the Bill to be updated in a more transparent way through consultation and visibility to Parliament. However, this is now very well-trodden ground, so I will withdraw the amendment.

Mr Dunne: I am grateful to the hon. Lady.

Alison Seabeck: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 38 ordered to stand part of the Bill.

Clause 39 ordered to stand part of the Bill.

Clause 40

SINGLE SOURCE CONTRACT REGULATIONS: GENERAL

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

Alison Seabeck: This clause is absolutely straightforward and as with the previous one, we will not oppose it.

Question put and agreed to.

Clause 40 accordingly ordered to stand part of the Bill.

Clause 41 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —*(Mark Lancaster.)*

12.59 pm

Adjourned till this day at Two o'clock.