PARLIAMENTARY DEBATES

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Public Bill Committee

PRISONS AND COURTS BILL

Fifth Sitting

Tuesday 18 April 2017

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Saturday 22 April 2017

The Committee consisted of the following Members:

Chairs: Mr Graham Brady, † Graham Stringer

Arkless, Richard *(Dumfries and Galloway)* (SNP)
† Burgon, Richard *(Leeds East)* (Lab)
† Fernandes, Suella *(Fareham)* (Con)
† Gyimah, Mr Sam *(Parliamentary Under-Secretary of State for Justice)*
† Heald, Sir Oliver *(Minister for Courts and Justice)*
† Jenrick, Robert *(Newark)* (Con)
† Lynch, Holly *(Halifax)* (Lab)
† McGinn, Conor *(St Helens North)* (Lab)
† Opperman, Guy *(Lord Commissioner of Her Majesty's Treasury)*
† Philp, Chris *(Croydon South)* (Con)
† Qureshi, Yasmin *(Bolton South East)* (Lab)
† Saville Roberts, Liz *(Dwyfor Meirionnydd)* (PC)
† Smith, Nick *(Blaenau Gwent)* (Lab)
† Swayne, Sir Desmond *(New Forest West)* (Con)
† Thomas-Symonds, Nick *(Torfaen)* (Lab)
† Tomlinson, Michael *(Mid Dorset and North Poole)* (Con)
Tracey, Craig *(North Warwickshire)* (Con)
† Warman, Matt *(Boston and Skegness)* (Con)

Katy Stout, Clementine Brown, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 18 April 2017

[Graham Stringer *in the Chair*]

Prisons and Courts Bill

Clause 23

The written information procedure

4.30 pm

Nick Thomas-Symonds (Torfaen) (Lab): I beg to move amendment 92, in clause 23, page 20, line 40, at end insert—

'(c) provision ensuring that persons charged with offences have available to them information on the suitability of the written information procedure, taking into account their particular circumstances.'

This amendment ensures the Criminal Procedure Rules include a provision requiring defendants have adequate information about the written information procedure provided to them.

The Chair: With this it will be convenient to discuss amendment 91, in clause 23, page 21, line 13, at end insert—

'(4A) Criminal Procedure Rules must include provision for a person charged with an offence, or a parent or guardian of that person, to be given in writing—

(a) notification of a defendant's right to legal assistance;

(b) notification of plea procedures available, not limited to the written information procedure;

(c) an explanation of the consequences of indicating their plea in writing.

(4B) Information provided under subsection (4A) must be presented in an accessible format using clear language.'

This amendment ensures defendants receive adequate information and notification about the written information procedure, including alternative plea procedures and the consequences of indicating their plea in writing.

Nick Thomas-Symonds: It is a pleasure to serve under your chairmanship again, Mr Stringer.

On the first day the Committee sat, I mentioned in a declaration of interest that I thought that, in the aged debt that I still bear as a barrister, fees might be owing from insurers. I was not immediately able to do the sums—I was away the next day because my baby son was having an operation—but, having checked, I know now that no fees come specifically from insurers, although some of those I represent had the benefit of after-the-event insurance. I wanted to make that clarification before I began my remarks.

I will press the Committee to Divisions only on amendments 91, 94 and 32 in the first group. My remarks will mainly be on amendments 91 and 92, but I will touch on the other amendments.

Amendment 92 deals with something we are very concerned about—I will return to it in a moment—and amendment 91 is also about adequate information and notification. Amendment 94, on which I intend to divide the Committee, is about an independent evaluation of the operation of the expanded written procedures. Amendment 32 also relates to independent evaluation and has been grouped on that basis.

The Chair: Order. May I make it clear that we are dealing with amendments 92 and 91 to clause 23? We will have separate debates as listed on the selection list: on amendment 93 on its own, and on amendments 94 and 32 and new clause 15. I am grateful to the hon. Gentleman for telling us which amendments he wants the Committee to divide on, but at the moment we are debating amendments 92 and 91.

Nick Thomas-Symonds: I am grateful, Mr Stringer. I will confine my remarks to those two amendments. I was trying to be helpful; it is a slight curiosity that although amendment 32 relates to clause 34, it is grouped with the others because it relates to independent evaluation. That is the point I wanted to clarify.

The Opposition very much appreciate the need for greater efficiencies throughout the justice system, but to ensure that our justice system is just, proportionate and accessible, it is of the utmost importance that there be access to justice—access for the most vulnerable citizens in our communities, whether they are witnesses, victims or, indeed, the accused. It is well established that high numbers of people who come into contact with our criminal justice services have multiple needs, many of which are directly related to their ability to interact with Her Majesty's Courts Service in a meaningful and effective manner using technology. To ensure that all defendants—especially the vulnerable, including children and those who suffer from mental health issues and may have addictions or learning difficulties—do not fall prey simply to the exigencies of swift and efficient resolution, robust safeguards have to be in place to ensure informed decision making and a comprehensive understanding of the nature of the decisions.

Clause 23 includes the ability of the defendant to give a written indication of their intention to plead guilty or not guilty. The aim is to save time and money. In subsection (4) there is already a provision for defendants to be given information about the written information procedure, how it works and the consequences, but we believe, in accordance with representations we have had from a variety of stakeholders, including the Bar Council, the Law Society, Justice, and the Magistrates Association, that the wording is not as explicit as we would like it to be. In addition, we wish to ensure that there is a user-friendly way in which the language is expressed. It is vital that people clearly understand their right to legal assistance before making a decision, to understand their options before they follow the online process; and, critically, that the defendant is aware of the consequences of indicating a plea in writing.

There is an additional concern that written procedures will lead to more unrepresented defendants in our system. Research by Transform Justice suggests that entering the plea is one of the points in the system where those without a lawyer are at their most disadvantaged. Unrepresented defendants did not understand when they had a viable defence and should plead not guilty, but that works in reverse as well: people can plead not guilty when the evidence against them is overwhelming, thus losing credit for an early guilty plea.

Furthermore, there are concerns that under the new written procedures defendants will no longer have access to the informal support network in courts, which includes clerks and ushers in addition to legal counsel. It is vital that we at least seek to replicate such support in the written procedures with an option to stop and seek legal advice at each stage. We need to prevent a situation where the defendant could reach the sentencing stage of their case before even seeing a judge or magistrate and for there to be a risk that a conviction should not have been entered. Of course, that could ultimately lead to an outcome that is in nobody's interest: a miscarriage of justice.

In subsection (5) there is provision for how and by whom written information may be given to the defendant, but, again, concern has been raised by Transform Justice about the minimum levels of training that individuals will receive to ensure that they are appropriately qualified to offer advice on such complex issues. It is sometimes hard to imagine a situation in which representatives would not be in that position. We all have to try to ensure that they are in a position where we can serve the interests of justice.

Clearly, there are concerns. I refer specifically to amendment 92. Justice and the Prison Reform Trust are concerned in relation to persons who are unable to follow written procedures because of their particular needs. Many people in the justice system can lead chaotic lives for a variety of reasons and have complex needs, including mental health needs and/or learning difficulties. Others may be partially or wholly unable to read or write. There is also a concern that defendants and witnesses are reluctant to declare, or may not even be aware of, a disability, and online and virtual processes can exacerbate that assessment challenge. We are concerned about the risk that a vulnerability will be missed, and we certainly want to ensure that those who have to deal with it are able to do so. There is also a concern about the incentivisation of guilty pleas owing to the ease of simply responding to written options. I hope I have set out some of the concerns in relation to clause 23.

We suggest that the two amendments in this group—the first, amendment 92, is about adequate information; the second, amendment 91, is more specific, on the notification of the right to legal assistance, consequences of a plea and notification of plea procedures available—would deal with some of the concerns that I have outlined and would be sensible for the Government to adopt.

The Minister for Courts and Justice (Sir Oliver Heald): It is a great pleasure to serve under your chairmanship again on such a momentous day, Mr Stringer. I put on the record my gratitude to the Ministry of Justice officials who have put so much work into briefing me and helping me with this Bill. I thank them all very much indeed.

I commend the hon. Member for Torfaen and his hon. Friends for seeking to ensure, in proposing amendments 92 and 91, that our planned reforms to pre-trial criminal procedures are fair, transparent and as straightforward as possible. I share the concerns about protecting the principles of justice. I hope that I can reassure them that the safeguards they seek are to be provided and are catered for by the Bill.

The first thing to say is that engaging with the written information procedure will always be entirely optional: defendants will always be free to opt out for a court hearing if that is their wish. The court will always retain the discretion to hold a hearing if it thinks that is necessary. Every defendant will be given a hearing date at the same time as they are invited to engage online. They will be provided with enough information to make an informed choice. If they choose not to engage online, they can simply attend the hearing that they have been notified about.

Clause 23(4), mentioned by the hon. Gentleman, states that the criminal procedure rules may specify what information is to be given to defendants about the nature of the written information procedure and the consequences of following it as well as about seeking legal representation. It states that this information can also be given to a parent or guardian where a defendant is under 18.

The Criminal Procedure Rule Committee, independent of the Government, is chaired by the Lord Chief Justice and is full of expertise, given that it has representation from other judges, magistrates, justices' clerks, barristers, people from voluntary organisations and so on. It will have the power to stipulate the information that it considers to be pertinent to the defendant's ability to make an informed choice. We believe that it is appropriate to give that committee the power because it has that expertise, and also because it will be able to refine the rules once it sees how the written information procedure works in practice. Section 69(4) of the Courts Act 2003 already requires that the rules be accessible, fair, simple and efficient. Those rules, of course, come before Parliament as secondary legislation.

In terms of accessibility, Her Majesty's Courts and Tribunals Service is determined that the written information procedure shall be straightforward and comply with government digital service accessibility standards. User research has been at the heart of developing the technology. There will also be assisted digital provision for those, mentioned by the hon. Gentleman, who are unable to use digital services; they will be able to get help either over the phone or in person if they need it. I commend the hon. Gentleman for seeking reassurance and hope that I have provided it. On that basis, I ask him to withdraw the amendment.

Nick Thomas-Symonds: On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Nick Thomas-Symonds: I beg to move amendment 93, in clause 23, page 21, line 6, at end insert—

"(3A) Where a person is unrepresented the written information procedure will only apply if the person is charged with a summary, non-imprisonable offence."

This amendment ensures the written information procedure can only be used in limited circumstances in cases where the defendant is unrepresented.

I will be brief in my remarks on this amendment, having set out some of my concerns in my previous remarks. Amendment 93 states specifically that the written information procedure can be used only in limited circumstances in cases when the defendant is unrepresented. It deals with the Opposition's long-standing concern about the increasing number of unrepresented people in our courts system and the increasing number of unrepresented people coming into contact with these new procedures. The restriction is a sensible measure to enact at this stage, and I commend it to the Minister.

4.45 pm

Sir Oliver Heald: Again, I commend the hon. Gentleman on putting forward a protection, but I hope to be able to satisfy him that the Bill tackles the issue.

I start by saying that I agree it is desirable for defendants to seek legal representation in the case of serious crimes. Engaging with the court online at pre-trial stages will be voluntary, and if a defendant wants to speak to a lawyer at a hearing before indicating a plea, he will be perfectly entitled to do that. Similarly, if he wants to obtain legal advice before indicating a plea online, he can do that. The measure does not fundamentally undermine the current system. In fact, it is probably better.

It is also relevant that, save when specific procedures apply in respect of summary offences—those are very limited—the defendant will have to enter a plea at the court hearing rather than simply indicating what their plea is online. So before trial or sentencing, a plea will have been entered at court.

If a defendant withdrew a previously indicated guilty plea, the previous admission of guilt could not be admitted as evidence in the proceedings, and no defendant who attended a court hearing rather than engaging online would be disadvantaged for the purposes of the early guilty plea discount.

Amendment 93 is undesirable to some extent because it would restrict the defendant's right to self-representation, which has always been there, and I ask the hon. Gentleman to withdraw the amendment.

Nick Thomas-Symonds: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 91, in clause 23, page 21, line 13, at end insert—

"(4A) Criminal Procedure Rules must include provision for a person charged with an offence, or a parent or guardian of that person, to be given in writing—

(a) notification of a defendant's right to legal assistance;

(b) notification of plea procedures available, not limited to the written information procedure;

(c) an explanation of the consequences of indicating their plea in writing.

(4B) Information provided under subsection (4A) must be presented in an accessible format using clear language." —(*Nick Thomas-Symonds.*)

This amendment ensures defendants receive adequate information and notification about the written information procedure, including alternative plea procedures and the consequences of indicating their plea in writing.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 7.

Division No. 4]

AYES

Lynch, Holly	Smith, Nick
Saville Roberts, Liz	Thomas-Symonds, Nick

NOES

Fernandes, Suella	Opperman, Guy
Gyimah, Mr Sam	Philp, Chris
Heald, rh Sir Oliver	
Jenrick, Robert	Swayne, rh Sir Desmond

Question accordingly negatived.

Nick Thomas-Symonds: I beg to move amendment 94, in clause 23, page 22, line 13, at end insert—

"(11) Within two years of this Act coming into force, the Secretary of State shall commission an independent evaluation of the operation of the expanded written procedure made under this section and shall lay the report of the evaluation before each House of Parliament."

This amendment ensures the expanded use of the written procedure is reviewed within two years.

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

Amendment 32, in clause 34, page 33, line 22, at end insert—

"(1A) Within two years of this Act coming into force, the Secretary of State shall commission an independent evaluation of matters under section 34 and shall lay the report of the evaluation before each House of Parliament."

This amendment ensures the Secretary of State will undertake a review within two years of the Bill's provisions relating to public participation in proceedings conducted by video and audio.

New clause 15—*Review of expansion of availability of live links*—

"( ) Within two years of this Act coming into force, the Secretary of State shall commission an independent evaluation of the expansion of availability of live links in—

(a) criminal proceedings under section 32, and

(b) other criminal hearings under section 33,

and shall lay the report of the evaluation before each House of Parliament."

This new clause ensures the Secretary of State will undertake a review within two years of the Bill's provisions to expand the availability of live links in criminal proceedings and other criminal hearings.

Nick Thomas-Symonds: The amendments and new clause deal with independent evaluation. Amendment 94 is about independent evaluation of the operation of the expanded written procedure, and it would require the Government to lay the report of the evaluation before each House of Parliament within two years. I referred previously to amendment 32; it relates to the independent evaluation of the matters in clause 34, which deals with public participation in proceedings conducted by video and audio. New clause 15 also concerns the principle of review. It is about the expansion of the availability of live links. Again, there would be an independent review within two years of the coming into force of the Act, and that would have to be laid before both Houses of Parliament.

The amendments are sensible, and the Government should not be afraid of them. We are all united in our wish that there should be access to justice. We are of course aware of, and embrace, the new technology that is available. However, two arguments arise. First, we should ensure that there are proper safeguards to protect people, and secondly we should evaluate how the system works as we take it forward.

We heard substantial evidence on the first day of the Committee, and there was also substantial written evidence, much of which highlighted various worries. A two-year review would not in any way impede the Government's progress on the central aspects of the Bill, but it would ensure that the Government were held to account properly for whether the measures work as we want them to and do not impede access to justice. It would also be a useful reference point for the Government to look again at where the system was not working as well as it should.

Sir Oliver Heald: Again, I acknowledge the concerns that have been expressed. I support the idea of reviewing and monitoring measures put in place in legislation. However, the proposals have all been developed alongside extensive user research, and we already intend to review and monitor the new processes on a continuing basis to make sure that they are used properly. We consider that that iterative approach is better than conducting a one-off evaluation of the matters that we are discussing.

We also have plans to monitor performance data and gather feedback on all our new systems. Both Her Majesty's Courts and Tribunals Service and the Ministry of Justice publish annual reports and accounts, reviewing performance against the year's priorities and objectives, which are available to Parliament and the public. Defendants engaging online will be given the same information and warnings that they would receive in court, and will have access to the same legal advice. Of course, the court has discretion to conduct its proceedings at a hearing whenever it wishes.

The measures concerning audio and video technology in the criminal courts are very specific about the circumstances in which live links and virtual hearings may and may not be used, so sentencing hearings may not take place wholly as audio hearings. We have also invited the Criminal Procedure Rule Committee, which I mentioned before—an independent body chaired by the Lord Chief Justice—to consider the new powers and whether the current rules should be amended to set out additional factors that the court should consider when deciding the appropriate mode of hearing. The court will always have the final say on that, and assisted digital provision will be in place to support users to interact with Her Majesty's Courts and Tribunals Service using digital channels, and to support access to the necessary technology and digital skills, so that it can be easily used.

I turn to public participation. Open justice is a fundamental principle of our justice system. It is vital that we maintain transparency, which is why we propose to enable access to fully virtual hearings that do not take place in a physical courtroom, using terminals, which will be located in court buildings across England and Wales. We have conducted extensive research with stakeholders to help develop our proposals, and we will be testing the provision with court users.

As we make virtual hearings available, HMCTS will carefully monitor observer demand to ensure that we are providing the appropriate levels of access. We anticipate that observer numbers for virtual hearings will generally be low but we will ensure, as far as we can, that provisions are flexible in order to accommodate interested observers of a virtual hearing.

I hope I have been able to reassure hon. Members that the appropriate arrangements and safeguards are in place, and that the written information procedure of virtual hearings will be used effectively and appropriately and to enable access to fully virtual hearings.

Nick Thomas-Symonds: I intend to push amendment 94 to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 7.

Division No. 5]

AYES

Lynch, Holly	Smith, Nick
Saville Roberts, Liz	Thomas-Symonds, Nick

NOES

Fernandes, Suella	Opperman, Guy
Gyimah, Mr Sam	Philp, Chris
Heald, rh Sir Oliver	
Jenrick, Robert	Swayne, rh Sir Desmond

Question accordingly negatived.

Nick Thomas-Symonds: I beg to move amendment 95, in clause 23, page 22, line 13, at end insert—

"(11) Persons under the age of 18, when charged with the relevant offence, are exempt from this section."

This amendment removes children from provisions allowing defendants to engage with a court in writing.

The Chair: With this it will be convenient to discuss Government amendments 51 and 50.

Nick Thomas-Symonds: I will not unduly delay the Committee on this amendment, because I intend to speak in a little more detail on clause 30, which relates to the same matter. None the less, we appreciate the opportunity to remark on amendment 95, which I do not intend to push to a vote. It is about removing children from the provisions allowing defendants to engage with a court in writing.

There are a number of concerns about those provisions, which I hope the Minister will acknowledge and be able to deal with to an extent. For example, there is nothing in the Bill to ensure that children's parents or guardians will be informed about the written procedure before a child indicates their plea. Evidence seems to suggest that children are more likely than adults to enter guilty pleas for offences that they have not committed. Our concern is that indicating pleas online will make that significantly worse.

We worry about peer pressure to indicate a guilty plea, for example, in cases in which an offence is committed by a group of children and a particular child is being bullied. We are also concerned by something that came through in both the Taylor and Carlile reviews, with which the Minister will be familiar—the fact that children do not necessarily understand court proceedings and their implications.

Our real worry is about children participating in court proceedings in writing, without any real understanding of them. It is not clear how written proceedings will be intelligible to children who may be as young as 10. That is before we even consider children who offend who may have difficulties in communication, and of course one in three children in custody have special educational needs. We worry that there is a problem in children's engagement in the criminal justice system in any event, which will be exacerbated by their involvement in written procedures. I will not go any further at this stage, because I will come back to this point on clause 30, but that is the outline of my concerns and why I commend amendment 95 to the Committee.

5 pm

Sir Oliver Heald: I will speak to Government amendments 51 and 50, but amendment 95 raises the important issue of whether the written information

[Sir Oliver Heald]

procedure in the Bill should apply to young defendants. Government amendment 51 clarifies how the court might proceed if a youth is on the cusp of turning 18, and Government amendment 50 looks at how the expanded power to remit cases from the youth court should apply when a defendant turns 18.

The written information procedure means that a person charged with offences may choose to give specified information to the court, including an indication of a guilty or not guilty plea. The plan is that that will usually occur online through the Government's digital channel, which is a unified digital case management system that is currently being developed by HMCTS. Although young defendants may therefore indicate a plea earlier than now, amendment 51 makes sure that the court will retain discretion in relation to those on the cusp of turning 18 so that it can still treat them as youths, because they will no longer have to wait until the first courtroom hearing. Therefore when a defendant turns 18 having previously indicated a plea online, the youth court may still treat them as a youth and deal with them using the powers under the Children and Young Persons Act 1963.

Amendment 50 clarifies how the expanded power to remit cases from the youth court to another criminal court will apply when a defendant turns 18 between charge and trial. If a defendant turns 18 post-charge and the youth court decides pre-trial to remit the youth to the mainstream magistrate's court, the receiving court will not be able to continue to treat them as a youth, and for example use the more extensive custodial powers of a youth court. As a result, defendants will have greater certainty about what will happen as a result of the youth court's decision to remit. They will therefore be in a better position to decide whether at the time of remittal they want to elect for jury trial. From time to time the age of a defendant may be unclear, and there are young defendants who, for example, are also victims of human trafficking. In some such cases, fresh information may arise later on that allows the court to more accurately determine age. Amendment 50 caters for those scenarios and allows a case to be remitted back to the youth court.

Turning to Opposition amendment 95, the purpose of clause 23, combined with clause 30 and schedule 3, is to reduce the number of times young defendants and their parents or guardians need to travel to court. That is part of the distinct service model that is being developed for young persons. For example, when a case must be sent to the Crown court because it can be tried only with an indictment, young defendants will no longer have to travel to a youth court to allow that simple process to occur.

That is important, because there has been a 70% decline in the number of proceedings against young people in the criminal courts since 2006-07. Although that reduction is welcome, its scale does pose logistical challenges. In some areas, sittings of the youth court are in fewer locations and are already occurring less frequently, causing delays. Allowing case management at the pre-trial stages of cases to take place outside the courtroom means that young defendants ought only have to travel to court for a trial or for a sentencing hearing. Through its six-year reform programme, HMCTS is developing a specific service model for young defendants, including those who provide information in writing. It is a distinct youth justice system for children and young persons. Young defendants will therefore continue to be subject to procedures and processes that are different from those for adults.

The Bill provides a number of safeguards applicable to young defendants who choose to provide information in writing. I will not say more about those at this stage, as we have clause 30 to come. In the light of those safeguards and the distinct service model that is being developed, I ask the hon. Gentleman to withdraw amendment 95.

Nick Thomas-Symonds: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 23 ordered to stand part of the Bill.

Clause 24

CHARGE BY POLICE OR PROSECUTOR: NON-APPEARANCE IN COURT AFTER GUILTY PLEA

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

Sir Oliver Heald: The purpose of clause 24 is to extend the current procedure of pleading guilty in writing, which is in section 12 of the Magistrates' Courts Act 1980, to summary offences that are charged by the police. Under the procedure, a defendant can indicate a guilty plea in writing, and then the court can convict him or her of the summary offence in question without the defendant's having to appear before it for a hearing.

Under existing law the procedure applies only to summary offences begun by summons or written charge. Clause 24 provides that a defendant can adopt the procedure in cases begun by police charge. In all cases, opting to plead guilty in writing and to be convicted in absence will remain entirely voluntary. Clause 24 reaffirms and continues the important safeguard that a magistrates court cannot sentence a defendant to custody, or impose a driving disqualification, without first bringing him or her to court.

Under the clause it will also remain the case that the section 12 procedure can apply only where the defendant has been served with the information about the charge and the evidence against him. Where there is reason to do so, clause 24 allows the court, relevant prosecutor, or police to decide not to apply the procedure whereby a defendant pleads guilty and is convicted in their absence, so that they are brought before the court to enter a plea.

Question put and agreed to.

Clause 24 accordingly ordered to stand part of the Bill.

Clause 25

EITHER WAY OFFENCE: CHOICE OF WRITTEN PROCEDURE FOR PLEA BEFORE VENUE

Nick Thomas-Symonds: I beg to move amendment 98, in clause 25, page 24, line 7, leave out paragraph (d) and insert—

"(d) explain that, if the person chooses not to give a written indication of plea or fails to do so within 21 days of the date on which the document was sent, the court must proceed under section 17A upon the expiry of the 21 day period;"

This amendment gives greater clarity and certainty about the timeframe in which a court hearing must be held where a person does not give a written indication of plea.

The purpose of the amendment is to give greater clarity and certainty about the timeframe in which a court hearing must be held where a person does not give a written indication of plea. Clause 25 inserts into the Magistrates' Courts Act 1980 a section that provides for the defendant charged with a summary, indictable or either way offence to have a choice to engage with the "plea before venue" procedure in writing, without having to attend court, provided that they have been equipped with certain information. Under the section, where the defendant indicates a guilty plea in writing, the offence is treated as if it were a summary offence.

In the case of a guilty plea, the defendant can be convicted without the hearing of any evidence, and the magistrates court can proceed to sentencing or refer the proceedings to the Crown court, if it considers its powers inadequate. Where the defendant indicates a not guilty plea in writing, they are given the choice of agreeing that the court should proceed to decide mode of trial outside court in their absence. Clause 25 also provides that where the defendant fails to give any written indication of plea, the proceedings continue in accordance with existing court-based procedures. There is a concern that that is likely to build in delay, rather than reduce it.

The clause provides a safeguard, in that it allows a defendant who has given an indication of plea in writing to withdraw it in writing at any time before the case is heard. However, it is our view that further safeguards should be added, to ensure that assistance is provided for those who are not able to engage with a written or online procedure. It is well established, as I mentioned in my remarks on clause 23, that high numbers of people in contact with the criminal justice system have multiple needs, many of which are directly related to their ability to interact with Her Majesty's Courts Service in a meaningful and effective manner using technology. For example, literacy rates among prisoners are low, with about half at or below level 1 in reading, and four fifths at or below level 1 in writing.

It is generally acknowledged that between 5% and 10% of adult offenders have a learning disability of some kind, thus support is required in reading, writing, communication and comprehension. There is also a worry that someone with a learning disability before the justice system may be suggestible. We have to ensure that they are not in a situation where they fail to understand what they are accused of and the implications of decisions they are being asked to make.

There is a worry that someone may plead guilty in order to expedite proceedings in the hope of being allowed, for example, to leave custody and return home quickly, without appreciating the implications of entering a guilty plea.

Many people with mental health problems have conditions that fluctuate. That, of course, means that they may engage well with technology on one occasion but not on another. That can vary, not just day to day, but over the course of a day. It is vital that, where a defendant does indicate a plea, they must be able to choose between using a written, online or court procedure and that that is a legitimate choice, free of pressure or prejudice of any kind.

There are concerns that indirect pressure will be applied to defendants to opt for the written procedures by unduly delaying in-person proceedings. On that basis, I seek assurance that, where a person does not indicate his plea in writing or online, a clear and reasonable timeframe is offered in which a court hearing must be held. That is precisely what the amendment would do. It would make clear in circumstances where a person does not indicate his or her plea in writing or online that the timeframe of 21 days is given in which a court hearing must be held, so as not to discriminate against those who opt for an in-person hearing.

Sir Oliver Heald: The point underlying the amendment is, again, valid. Clearly, defendants will have to be told that, if they wish to indicate a plea online, they must do so before the date to which they have been bailed to appear at court. The time allowed for that purpose must not be so long as to lead to increased delay. However, the deadline set by reference to the date when documents were sent would not in my view work.

The date to which defendants are bailed after charge, pending their first court appearance, is governed by the criminal practice direction, issued by the Lord Chief Justice. It is significant that the date set for a hearing depends on the circumstances of the case and varies according to whether a guilty or not guilty plea is likely: respectively, 14 days or 28 days after charge.

The 21-day deadline specified in the amendment would expire a week before the hearing date in the case where a not guilty plea was expected or, less practically, a week after the date to which a defendant would be bailed to appear where a guilty plea was anticipated.

There are two conclusions. The first is that a single deadline, set by reference to the date when the documents were sent, would not work. The second conclusion is that, whatever deadlines may be suitable, it is probably not for primary legislation. I know that the Criminal Procedure Rule Committee has started to look at this matter. I therefore invite the hon. Gentleman to agree that this could more appropriately be prescribed in the criminal procedure rules and so ask for the amendment to be withdrawn.

Nick Thomas-Symonds: I hope that something like that will be prescribed in the criminal procedure rules, as indicated by the Minister. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 25 ordered to stand part of the Bill.

Clause 26

EITHER WAY OFFENCE: CHOICE OF WRITTEN PROCEDURE FOR MODE OF TRIAL

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

The Chair: With this it will be convenient to consider clauses 27 to 29 stand part.

5.15 pm

Sir Oliver Heald: The purpose of clause 26 is to provide for defendants to choose to have mode of trial dealt with in writing outside court and without being present. It will allow the court to hold fewer pre-trial hearings and to deploy its time more effectively and proportionately. As the Committee no doubt knows, mode of trial is the procedure for offences classified as triable either way when there is a decision to be made as to whether the case is more suitable for a magistrates court hearing or a Crown court hearing.

As part of the mode of trial procedure, the defence and prosecution have the chance to make representations to court concerning, for example, previous convictions. The defendant may have the right to ask whether a custodial sentence would be likely if he pleaded guilty. After such communication, the magistrates court makes a decision about whether summary trial at the magistrates court or Crown court trial is more suitable. If the magistrates reject jurisdiction, the defendant is sent to the Crown court for trial and their consent is not required. If the court decides that summary trial is more suitable, the defendant is asked to choose whether they wish to elect for trial at the Crown court.

Clause 26 makes it possible for all these interactions with the court to be conducted in writing if the defendant so chooses. As such, it plays an important role in allowing the criminal court to streamline case management procedure. It also amends the provision dealing with police bail after arrest. The date, time and place at which a defendant is remanded to attend court is to be that fixed by the court officer. This gives the court the flexibility to allow the defendant a reasonable opportunity to engage in the written procedure.

I turn to clauses 27, 28 and 29. Clause 27 would enable magistrates courts to decide mode of trial for either way offences in the absence of an adult defendant. It is needed to allow the courts to continue to progress cases when defendants have failed to appear. When mode of trial is to be decided in the defendant's absence, he or she is deemed to have indicated a not guilty plea and the court then proceeds to allocate the case for summary or Crown court trial as appropriate. If the court allocates the case for summary trial, the defendant retains the right to elect for Crown court trial up to the start of that trial.

Clause 27 provides a safeguard in that the court can proceed to decide mode of trial in absence only if it is also satisfied that all the relevant documents have been given to the defendant and that he or she has been made aware of the date of the mode of trial hearing. Moreover, the court does not have to allocate the case in the defendant's absence in accordance with this provision, but may choose to adjourn.

Under existing law, theft from a shop of goods worth less than £200—known as low-value shoplifting—is triable only summarily unless the defendant exercises the right to elect for trial in the Crown court. Clause 28 gives defendants in such cases the choice of exercising that right in writing without attending court.

Clause 29 enables indictable offences to be sent to the Crown court without a hearing and the defendant to be notified in writing that this has been done. A so-called sending hearing in the magistrates court—sending to the Crown court—would be superfluous in either way cases that are allocated for Crown court trial pursuant to clause 26 when the defendant has engaged online. Such a hearing would also be superfluous in any indictment-only case, which has to be sent to the Crown court for trial regardless of the defendant's consent.

Clause 29 also provides that the circumstances when joined cases or co-defendants are to be sent to the Crown court along with the main offence are to be dealt with by criminal procedure rules, which may also include provision for related summary-only offences to be sent to the Crown court.

Question put and agreed to.

Clause 26 accordingly ordered to stand part of the Bill.

Clauses 27 to 29 ordered to stand part of the Bill.

Clause 30

CHILDREN AND YOUNG PEOPLE

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

Sir Oliver Heald: We have already had some discussion of the clause when considering amendment 95. The clause introduces schedule 3 to the Bill, which permits preliminary proceedings for defendants aged 10 to 17 charged with criminal offences to be conducted in writing. A person charged with offences may choose to give specified information to the court in writing, including the indication of a guilty or not guilty plea. It is planned that the giving of that information will usually occur online through a common platform—a unified digital case management system—currently being developed by Her Majesty's Courts and Tribunals Service.

Through its six-year reform programme, Her Majesty's Courts and Tribunals Service is developing a specific service model for young people, including those who provide information of the sort I mentioned in writing. That is in recognition of the fact that there is already a distinct youth justice system for children and young persons, with separate procedures and processes applying to them when they come to court. The future service model for young people takes account of the 70% decline in the number of young people proceeded against in the criminal courts since 2006-07. While that reduction is welcome, its scale poses the logistical challenges I have mentioned before, which can lead to delays; for young people, it is particularly important that cases are heard as quickly as possible.

The purpose of the clause and schedule is to reduce the number of times young defendants and their parents or guardians need to travel to court, so reducing the burden of travel. The Bill will allow for case management at the pre-trial stages of cases to take place outside the courtroom, so that young defendants preferably travel to court only for trial and sentencing hearings—for example, where a case must be sent to the Crown court, it will no longer require a court hearing to do so.

The Bill provides a number of safeguards applicable to young defendants who provide information in writing. For example, having regard to the circumstances of the case and the age of the young defendant, the court will ascertain whether the parent is aware of the written proceedings, and if not, will make them aware. The aim is to ensure that, taking into account the young defendant's

age and maturity, he or she is given enough information to make an informed decision when choosing to participate in the preliminary proceedings in writing. Courts must therefore also provide the young defendant, and as appropriate, their parents, with information that explains the written procedure, the choices available to them and the effects of those choices.

Where a plea of guilty or not guilty is indicated in writing, courts will also subsequently have to make sure, at the first hearing in the courtroom, that the young person has understood and confirms their written indication of plea before proceeding further. It is worth underlining that the young person is indicating their plea, not pleading in writing; they have to do that in court. As with any case involving a young defendant, when dealing with preliminary matters in writing, courts must have regard to the overarching statutory duties to prevent offending by young people and to have regard to their welfare.

Nick Thomas-Symonds: We oppose clause 30. As the Minister has indicated, we have already discussed children being involved in written proceedings when we discussed amendment 95 to clause 23 a moment or two ago. I am grateful for some of the safeguards the Minister has set out, but for the Opposition they remain insufficient. I indicated in our discussion about amendment 95 concerns about the awareness of parents and guardians, the likeliness of children entering guilty pleas, peer pressure and, most fundamentally, children being able to understand proceedings.

I want to deal specifically with the Taylor and Carlile reviews, with which the Minister will be familiar. The Taylor review, which was commissioned in 2015, looked at the youth justice system and was published in December last year alongside the Government's response, which included a commitment to implement the spirit of the review. The Taylor review was highly critical of the court system, which it found was

"not set up to ensure the full participation of children in criminal proceedings."

It should trouble the Committee that Taylor found that court procedures and outcomes are frequently not understood by children. He stated:

"On many occasions children leave the court confused by the outcome and need to have their sentence explained to them by a YOT"—

youth offending team—

"worker… Too often children are the passive recipients of justice and do not understand the process to which they have been subjected."

In addition, he found that the youth justice system

"has a statutory aim to prevent offending, but the criminal courts are not equipped to identify and tackle the issues that contribute to and prolong youth offending… Magistrates frequently report that they impose a sentence without having a real understanding of the needs of the child, and they rarely know whether it has been effective."

The phrase "frequently report" is important; it is not simply a problem that a minority worry about, but a frequent problem.

Taylor recommended the introduction of a new system of children's panels to sentence children. Those panels would have greater powers to identify and tackle the causes of offending, and panel members would oversee a child's progress. In 2014 a major review of the children's court system, chaired by the noble Lord Carlile, made similar findings—particularly that children were not engaged in proceedings—and advocated a problem-solving approach.

The Opposition's concern is that the Bill does nothing to rectify the very serious problems that both Taylor and Carlile identified. We worry that those problems of engagement, participation, understanding and comprehension will be made worse by introducing proceedings in writing in this way. Our position is therefore that clause 30 should not stand part of the Bill and should be deleted altogether.

Sir Oliver Heald: I agree with the hon. Gentleman that the reports to which he refers are well worth considering. The Government responded warmly to the Taylor review.

Young people lead their lives in a more online way than some of us older folk, so having an online procedure that explains things to young people, with the safeguard of their having to attend court so that they give only an indication of plea in writing—they do not actually plead—will help.

Nick Thomas-Symonds: On online procedure, in the initial evidence session Professor Susskind referred to the fact that children interact with one other in a very different way from the way they did 20 or 30 years ago. My only slight concern about that is that we often urge caution on children when they engage with people online, particularly when that online contact is transferred to offline contact.

The Chair: Order. I remind the hon. Gentleman that interventions should be short and to the point.

Nick Thomas-Symonds: We should therefore perhaps exercise some caution about the way that children engage online.

Sir Oliver Heald: I do not disagree with the hon. Gentleman about being cautious—as a Conservative, it comes naturally. Having said that, there are a range of safeguards in the Bill, for example the fact that the parents and guardians are involved and that the parent has to be made aware of the written proceedings if they are not already aware. That has to be investigated. The online procedure will explain matters, as well as the oral explanations that always take place in the youth courts.

We obviously do not agree about this, but I invite the Committee to support clause 30, which will help rather than hinder the cause of young people in the courts, and schedule 3.

5.30 pm

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

The Committee divided: Ayes 7, Noes 4.

Division No. 6]

AYES

Fernandes, Suella	Opperman, Guy
Gyimah, Mr Sam	Philp, Chris
Heald, rh Sir Oliver	
Jenrick, Robert	Swayne, rh Sir Desmond

NOES

Lynch, Holly	Smith, Nick
Saville Roberts, Liz	Thomas-Symonds, Nick

Question accordingly agreed to.

Clause 30 ordered to stand part of the Bill.

Amendment made: 51, in schedule 3, page 72, line 49 , at end insert—

"( ) If—

(a) the person gives a written indication of plea before attaining the age of 18 years, and

(b) after the person attains that age, the court is considering whether to deal with the person as an adult,

the court may only deal with the person in a way that it could have dealt with the person if he or she had indicated that plea at a hearing which took place before the person attained 18 years."
—(Sir Oliver Heald.)

The amendment provides that, if the defendant reaches 18 after giving a written indication of plea, the court must exercise its powers to deal with the defendant as an adult in a way that it could have if the plea had been given at a hearing before the defendant turned 18.

Schedule 3, as amended, agreed to.

Clause 31

CONDUCT OF CRIMINAL PROCEEDINGS ON THE PAPERS

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

Sir Oliver Heald: Clause 31 creates a power for the Lord Chancellor to make regulations to enable or facilitate the making of preliminary and enforcement decisions in criminal proceedings by a court on the papers—that is, without a hearing. Regulations may only be made under that power with the agreement of the Lord Chief Justice and will not be able to remove from the court the option of holding a hearing. The regulations may be used to amend primary or secondary legislation.

Courts already have an inherent power to determine matters on the papers in some circumstances, but existing provisions preclude that in certain cases. In order to give the court greater flexibility to manage criminal proceedings, it may be appropriate to remove those barriers, so that the court can decide whether a hearing is required. I should emphasise that any regulations made under this power will be subject to affirmative resolution. Both Houses of Parliament will therefore have the opportunity to scrutinise any proposed change and will be invited to approve it.

Given the wider court reform proposed in the Bill, we believe that the merits of removing legislative requirements for a hearing will be best assessed once the reforms have come into force and have bedded in. It is therefore not possible to say exactly which matters we would like to enable the courts to deal with on the papers, but Members can be assured that the necessary safeguards are in place to ensure that this power will only be exercised where it is appropriate to do so.

Nick Thomas-Symonds: It is not my intention to oppose the clause, but perhaps the Minister could comment on one or two concerns. It is doubtful whether this provision would save time overall in highly complex cases, but I can see the case for it in numerous other eventualities. We should always remember that case management decisions are judicial, not administrative, decisions. What flows from that is that we have to ensure that the relevant information is available to the judiciary in deciding that, and that interested parties always have the opportunity to contribute, should they wish. Of course, in this, as in other situations, the court has to be able to respond to the individual circumstances of a particular case.

Sir Oliver Heald: I agree that these are judicial decisions, but I believe there is a case for flexibility. Where appropriate, any legislation that requires that a pre-trial or enforcement matter be determined at a hearing, if that is to be removed, the courts can still on a case-by-case basis decide whether a hearing is required. That, of course, is a provision that requires the support not just of the Lord Chancellor but of the Lord Chief Justice. I certainly take the hon. Gentleman's point but still commend the clause to the Committee.

Question put and agreed to.

Clause 31 accordingly ordered to stand part of the Bill.

Clause 32

EXPANSION OF AVAILABILITY OF LIVE LINKS IN CRIMINAL PROCEEDINGS

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

Sir Oliver Heald: I had understood that it might be the case that the amendments would be dealt with next, but I am more than happy to move straight to the clause if I should.

The Chair: I think you should.

Sir Oliver Heald: Then I will. I propose to deal with clause 32 and schedule 4 together, as the clause simply gives effect to that schedule. Schedule 4 expands the court's powers under section 51 of the Criminal Justice Act 2003, to make better use of live audio and video links in trials, appeals and other specified hearings in criminal proceedings. At present, section 51 enables a witness, but not the defendant—

The Chair: Order. May I help the Minister? At the moment we are dealing only with the debate that clause 32 stand part of the Bill; we will come to amendment 104 to schedule 4 next. I hope that is helpful to the Minister.

Sir Oliver Heald: I beg to move clause 32.

Question put and agreed to.

Clause 32 accordingly ordered to stand part of the Bill.

Schedule 4

LIVE LINKS IN CRIMINAL PROCEEDINGS

Nick Thomas-Symonds: I beg to move amendment 104, in schedule 4, page 77, line 14, at end insert—

"(aaa) in the case of a person who has not attained the age of 18 years, a live audio link or a live video link is in the individual's best interests,"

This amendment ensures the court will only give direction to under 18 year olds to take part through a live audio link or a live video link, when it is in their best interests.

The Chair: With this it will be convenient to discuss amendment 110, in schedule 5, page 87, line 30, at end insert—

"(aa) in the case of a person who has not attained the age of 18 years, a live audio link or a live video link is in the individual's best interests,"

This amendment ensures the court will only give direction to under 18 year olds to take part through a live audio link or a live video link, when it is in their best interests.

Nick Thomas-Symonds: The amendments seek to ensure that the court will give directions for under-18-year-olds to take part in either live audio or live video links only when it is in their best interests to do so.

Schedule 4 expands the court's powers under the Criminal Justice Act 2003 to use technology across a wider range of hearings and participants. The provisions allow for the conduct of certain preliminary aspects of criminal proceedings to be conducted in writing, as we have previously discussed. The court is required to be satisfied that the live link is in the interests of justice before making one, and that parties are given the opportunity to make representations to the court as to whether to make such direction.

Paragraph 2(7) of the schedule specifies that the court must give reasons for not giving live link directions, which we say reverses the presumption in favour of physical hearings and is of real concern. We believe it should be standard that for a fair hearing all participants are in the same room, although, of course, alternative forms can be considered alongside that.

For many stakeholders—in the experience of the Bar Council and the Law Society, for example—virtual hearings can diminish the ability of the parties to follow proceedings and understand each other. That can inevitably have consequences for the quality of justice as it is done and as it is seen to be done. Court etiquette—I say this from experience—can be difficult to follow at the best of times, and that is exacerbated if the individual cannot follow visual and non-verbal cues.

Amendments 104 and 110 focus, again, on children and under-18s. I set out in previous remarks the issue with children engaging and participating in court proceedings, as recognised in the Carlile and Taylor reviews. Children in the justice system exhibit especially high rates of communication difficulties, which should trouble us. Those problems will be exacerbated by the expansion of the use of video and audio links. As I indicated in my overly long intervention on the Minister earlier, while I totally accept that children now engage with one another online far more, we none the less have to treat that with caution, particularly when we are talking about children and live links.

The Youth Justice Board issued a statement voicing its concerns about this in April 2016, which is worth pausing on. It said that

"a 'digital by default' approach to court hearings is not appropriate for children and young people. Consideration must first be given to the nature of the hearing in question. The use of video links is not appropriate for trial, sentencing or appeal hearings involving children. Suitability of a preliminary hearing for video technology must be assessed on a case-by-case basis and be subject to a robust decision-making process involving the judiciary, the young person's youth offending team, the defence representative, the CPS and other relevant parties. The assessment must take into account the individual needs and requirements of each child or young person, including whether the young person has any speech, language or communication needs. Where the use of digital technology is deemed suitable, defence representation must be guaranteed."

We must therefore guard against the creation of a new legal fiction that participation by audio link is the absolute equivalent of in-court participation.

Under schedule 4, courts are prohibited from refusing or revoking bail at a live audio link hearing, and they cannot deal with a person for contempt of court at hearings that are also audio attended. We worry that those restrictions are not extensive enough and would like to see further safeguards, to avoid mission creep in the scope of offences under these provisions.

Transform Justice has raised concerns regarding the lack of examination of the equality aspect of virtual courts, particularly for vulnerable defendants. As I set out in my earlier remarks, victims, defendants and witnesses can be reluctant to declare, or may not be aware of, their disability. We worry that vulnerability can be missed, and virtual processes exacerbate that.

The aim of the virtual courts proposals is to improve efficiency and reduce costs, but there has been little in the way of consultation, research or costing to establish that the measures will achieve those aims. In one of the Committee's initial sittings, we discussed the 2010 evaluation of the virtual court pilot, and I recall the Minister having a discussion with one of our witnesses. I appreciate that that occurred in 2010, and we had a subsequent discussion as to how technology has evolved since, which I take on board, but the concern remains that the evidence available does not point to as positive an outcome as we all wish for.

Indeed, the evaluation of the virtual court pilot concluded that virtual courts are more expensive and may lead to more guilty pleas, longer sentences and impeded lawyer-client communication. The Bar Council said:

"We have seen no evidence in the Impact Assessment, or elsewhere, to support the assertion that virtual hearings confer benefits on victims and witnesses. Whilst some may be less likely to have to travel to court, it is not clear what proportion of victims and witnesses would instead prefer to have their 'day in court'."

There is also a concern regarding the reliability and fitness for purpose of IT and product design. The Government have to be held to account on that. Indeed, the recent "Justice Denied" report by the TUC showed that only 4% of staff who responded to a survey agreed that IT in courts works effectively. We worry that the provision has not been effectively costed.

5.45 pm

Specifically on the amendments, the Opposition think that requiring the provision of a live audio or video link to be in the individual's best interests when dealing with those under the age of 18 would be an entirely sensible reform and safeguard for young people in our justice system.

Sir Oliver Heald: Again, I think that, across the Committee, we are seeking to achieve the same result. The Government sympathise with and share the intention behind the amendment. We want young people only to take part in proceedings that use such technology where it is appropriate for them to do so. I will reassure Committee members as to how the provisions in the Bill, and other protections, will achieve that objective.

Under the provisions in the Bill, a court may direct that a young person participate through a video link only where it considers that it is in the interests of justice for that person to do so. In exercising that power,

[Sir Oliver Heald]

the court also has a statutory duty under section 44 of the Children and Young Persons Act 1933 to have regard to the welfare of the young person. Furthermore, safeguards set out in the Bill will help to make sure that the court has adequate information with which to make that decision.

Schedules 4 and 5 provide that the court can make a direction to use a live link in respect of a young person only where the relevant youth offending team has been given the opportunity to make representations. Overall, it would be considered to be in the interests of justice for a young person to participate in proceedings through a live link where it could also be said that it was in their best interests to do so. The interests of justice test will consider the entire proceedings, and a detrimental impact on the young person would be, in my view, inconsistent with considerations of justice and having regard to the welfare of the young person.

Of course, where the defendant, victim or witness would not give their best evidence through appearing in person in the courtroom, it would likely neither be in the interests of justice or in their best interests to not use a video link. Conversely, where a young defendant's mental condition is so disturbed that his or her production would be a significant detriment to his or her welfare, it would be difficult to argue that the use of the video link as an alternative—on medical advice—might not be in his or her best interests.

It is also worth noting that the recent amendments made by the Lord Chief Justice to the criminal practice directions of 2015 currently state that it will usually be appropriate for the young person to be produced in person in court. The directions suggest, where it may be appropriate, using video links on a case-by-case basis. They also refer to the need to ensure that the court can engage properly with the youth, and that the necessary level of engagement can be facilitated with the youth offending team, the defence representative and an appropriate adult. Those are the protections in place.

The hon. Gentleman asked whether there will be more use of the live link, but I think the key point is that the means through which a young defendant attends court proceedings will be and should be determined on a case-by-case basis. Courts have to consider whether it is in the interests of justice for a young defendant to participate, and I think we can rely on our courts to take those decisions with great care. Personally, I think one of the strengths of our independent legal system is that we have such expertise in our youth courts.

The 2010 study was mentioned, but 2010 is a lifetime ago in modern technology. That study did not cover the range of virtual hearings that we are talking about; it simply covered cases that were dealt with between the police station and the magistrates court. It came out in the evidence that the hon. Gentleman mentioned—many witnesses made this point—that that was not comparing apples with apples. Well, they did not use those words, but that is the way I put it. I therefore ask hon. Members to withdraw amendments 104 and 110.

Nick Thomas-Symonds: I am still not entirely satisfied, so I will press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 3, Noes 6.

Division No. 7]

AYES

Saville Roberts, Liz	Thomas-Symonds, Nick
Smith, Nick	

NOES

Gyimah, Mr Sam	Opperman, Guy
Heald, rh Sir Oliver	Philp, Chris
Jenrick, Robert	Swayne, rh Sir Desmond

Question accordingly negatived.

Nick Thomas-Symonds: I beg to move amendment 105, in schedule 4, page 78, line 36, leave out "not".

Together with amendments 98 to 109, this amendment would require that reasons be given for issuing live link directions, rather than for not giving them.

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

Amendment 106, in schedule 4, page 78, line 38, leave out "not".

See explanatory statement for amendment 97.

Amendment 107, in schedule 4, page 78, line 41, leave out "not".

See explanatory statement for amendment 97.

Amendment 108, in schedule 4, page 78, line 43, leave out "not".

See explanatory statement for amendment 97.

Amendment 111, in schedule 5, page 89, line 1, leave out "not".

See explanatory statement for amendment 97.

Amendment 112, in schedule 5, page 89, line 3, leave out "not".

See explanatory statement for amendment 97.

Amendment 113, in schedule 5, page 89, line 6, leave out "not".

See explanatory statement for amendment 97.

Amendment 114, in schedule 5, page 89, line 8, leave out "not".

See explanatory statement for amendment 97.

Amendment 115, in schedule 5, page 91, line 10, leave out "not".

See explanatory statement for amendment 97.

Amendment 116, in schedule 5, page 91, line 13, leave out "not".

See explanatory statement for amendment 97.

Amendment 117, in schedule 5, page 93, line 1, leave out "not".

See explanatory statement for amendment 97.

Amendment 118, in schedule 5, page 93, line 3, leave out "not".

See explanatory statement for amendment 97.

Amendment 119, in schedule 5, page 93, line 6, leave out "not".

See explanatory statement for amendment 97.

Nick Thomas-Symonds: This group of amendments seeks to require courts to give reasons for issuing live link directions rather than reasons for not issuing them.

Our position is straightforward: we do not want a "digital by default" system to arise. We believe that the best method of achieving justice is having all participants in the same room. We suggest that that is a simple, well established proposition on which we should all be able to agree.

The amendments would still allow live links where appropriate, but they would build into the Bill an assumption in favour of the physical majesty of the courtroom rather than of digital technology being used most of the time. I suggest that the amendments would create the right balance in our court system, so that courts are able to utilise new technology when it is appropriate to do so but we do not lose sight of the fact that having all participants in the same room is the most appropriate way of producing a just outcome.

Sir Oliver Heald: I understand that hon. Members are concerned, as the hon. Member for Torfaen said, that the Bill will have the effect of making virtual hearings the default mode, but I assure them that that is not the case. Instead, it will enable the use of virtual hearings in a wider range of circumstances to improve accessibility and efficiency. Live link technology is already used by the courts to great effect. It reduces inefficiencies for court users and time-pressed citizens, and it makes the court process less intimidating for vulnerable or intimidated witnesses and young people, as we recently discussed.

Asking the court to give its reasons for not giving a live link direction is the established practice—for example, in respect of an accused person in custody at a preliminary hearing under section 57B(6) of the Crime and Disorder Act 1998. Although it does not create the presumption that live links must be used, it encourages the court at least to consider whether it would be more proportionate or in participants' interests to make use of live audio or video link technology. With the status quo of the court hearing there is really no need for that particular measure.

We want to encourage the court and other participants to make greater use of live audio and video links, but at the same time there will be rigorous safeguards in place to ensure that those are used only appropriately and that defendants get a fair hearing. The court will always have the final say on mode of hearing and will need to be satisfied that it is in the interests of justice and compatible with the defendant's right to a fair trial, having considered representations from the parties and, in the case of young people, the youth offending team.

I hope I have been able to reassure hon. Members that asking the court to give its reasons for not issuing a live link direction is the established practice. It will not have an impact on the court's determination and it will, of course, provide useful information to Her Majesty's Courts and Tribunals Service on what limitations there may be to the use of live audio and video links, according to the reasons given by the court. I therefore ask the hon. Gentleman to withdraw the amendment.

Nick Thomas-Symonds: We think that this is a very important point of principle in the Bill, so I propose to push amendment 105, but none of the others, to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 3, Noes 6.

Division No. 8]

AYES

Saville Roberts, Liz	Thomas-Symonds, Nick
Smith, Nick	

NOES

Gyimah, Mr Sam	Opperman, Guy
Heald, rh Sir Oliver	Philp, Chris
Jenrick, Robert	Swayne, rh Sir Desmond

Question accordingly negatived.

6 pm

Nick Thomas-Symonds: I beg to move amendment 109, in schedule 4, page 79, line 5, leave out paragraph (10) and insert—

'(10) A court may not deal with bail, sentencing or any hearing where a remand decision is to be made, other than for the purposes of giving evidence, through a live audio link."

This amendment would prevent live audio links being used in bail or sentencing proceedings, or at any hearing where a remand decision is to be made, except for the purposes of giving evidence.

The amendment is on the same theme of safeguards with regard to the use of live links. It would prevent live audio links from being used in bail or sentencing proceedings or at any hearing where a remand decision is to be made, except for the purposes of giving evidence.

We put this forward as part of the battery of concerns about the use of live links. Live links can be utilised by courts to speed up a process but we are firm believers in robust safeguards, as shown again in this amendment.

Sir Oliver Heald: We say that the safeguards are there. Schedule 5 provides that sentencing hearings may not take place with participation through a live audio link, except to enable persons other than the defendant to give evidence where there are no suitable video facilities available. We believe that has the same effect as that intended by the amendment.

In relation to live audio links more generally, they can be used at a hearing where conditions of bail are in dispute but not the principle of bail. The protections in schedule 5 deal with the points that have been raised and I ask the hon. Gentleman to withdraw the amendment.

Nick Thomas-Symonds: Having pressed amendments 104 and 105 to a vote, I do not propose to divide the Committee further on amendment 109. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Schedule 4 agreed to.

Clause 33 ordered to stand part of the Bill.

Schedule 5

LIVE LINKS IN OTHER CRIMINAL HEARINGS

Sir Oliver Heald: I beg to move amendment 52, in schedule 5, page 96, line 14, leave out "accused" and insert "offender".

The amendment makes the terminology of this provision consistent with other provision in Part 1 of Schedule 5.

The Chair: With this it will be convenient to discuss Government amendments 53, 54 and 55.

Sir Oliver Heald: I proposed to deal with clause 33 and schedule 5 together as the clause simply gives effect to that schedule, but we have already dealt with the clause. Schedule 5 expands the courts' powers under part 3A of the Crime and Disorder Act 1998 to make better use of live audio and video links in preliminary sentencing and enforcement hearings.

Amendment 52 agreed to.

Amendments made: 53, in schedule 5 page 96, line 16, leave out "accused" and insert "offender".

The amendment makes the terminology of this provision consistent with other provision in Part 1 of Schedule 5.

Amendment 54, in schedule 5, page 97, line 32, leave out "deals with" and insert "is minded to deal with a person for". *—(Sir Oliver Heald.)*

The amendment makes the terminology of this provision consistent with other provision in Part 1 of Schedule 5.

Schedule 5, as amended, agreed to.

Clause 34

PUBLIC PARTICIPATION IN PROCEEDINGS CONDUCTED BY VIDEO OR AUDIO

Amendment proposed: 32, in clause 34, page 33, line 22, at end insert—

'(1A) Within two years of this Act coming into force, the Secretary of State shall commission an independent evaluation of matters under section 34 and shall lay the report of the evaluation before each House of Parliament."*—(Nick Thomas-Symonds.)*

This amendment ensures the Secretary of State will undertake a review within two years of the Bill's provisions relating to public participation in proceedings conducted by video and audio

The Committee divided: Ayes 3, Noes 6.

Division No. 9]

AYES

Saville Roberts, Liz	Thomas-Symonds, Nick
Smith, Nick	

NOES

Gyimah, Mr Sam	Opperman, Guy
Heald, rh Sir Oliver	Philp, Chris
Jenrick, Robert	Swayne, rh Sir Desmond

Question accordingly negatived.

Clause 34 ordered to stand part of the Bill.

Schedule 6

PUBLIC PARTICIPATION IN PROCEEDINGS CONDUCTED BY VIDEO OR AUDIO

Question proposed, That the schedule be the Sixth schedule to the Bill.

Sir Oliver Heald: Schedule 6 facilitates the observation of fully virtual hearings by members of the public and the media. The measures also prohibit unauthorised recording of virtual hearings in order to protect the solemnity of the court as well as the rights of victims, defendants and other participants. We propose to enable members of the public to view virtual hearings using screens located in court buildings.

Question put and agreed to.

Schedule 6 accordingly agreed to.

Clause 35

CHANGES TO INSTITUTION OF PROCEEDINGS BY WRITTEN CHARGE

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

Sir Oliver Heald: The clause replaces the single justice procedure notice with the new written procedure notice. The new notice will be used to initiate proceedings that may proceed as now or, if eligible and appropriate, by way of the new automatic online conviction and standard statutory penalty procedure introduced by clause 36. If it is offered, defendants will need to actively opt into using the procedure and will be provided with all the information they need to make an informed decision about whether to use it.

Question put and agreed to.

Clause 35 accordingly ordered to stand part of the Bill.

Clause 36

AUTOMATIC ONLINE CONVICTION AND STANDARD STATUTORY PENALTY

Nick Thomas-Symonds: I beg to move amendment 101, in clause 36, page 35, line 6, leave out subsection (2) and insert—

'(2) The person is convicted of the offence by virtue of—

(a) accepting the automatic online conviction; and

(b) not revoking this acceptance during the period of 14 days following, but not including the day of, acceptance."

This amendment would enable a person convicted of an offence and who accepts the automatic online conviction to revoke that decision within a period of 14 days.

The Chair: With this it will be convenient to discuss amendment 102, in clause 36, page 35, line 13, at end insert—

"(ba) the accused has been made aware of their right to seek legal advice;

(bb) the consequences of a guilty plea have been clearly explained;

This amendment ensures individuals are made aware of their rights before they accept an online conviction.

Nick Thomas-Symonds: This pair of amendments relates to the theme of safeguards, which the Opposition are attempting to push throughout the Bill's passage.

Amendment 101 would enable a person convicted of an offence who accepts the automatic online conviction to revoke that decision within a period of 14 days. Amendment 102 would insert a provision to ensure that individuals are made aware of their rights before they accept an online conviction.

In the evidence we have had, stakeholders have expressed concerns about the creation of a new automatic online conviction process where a defendant who pleads guilty and agrees to be dealt with under the process would be convicted automatically and sentenced automatically. The Bar Council referred to concerns about a lack of provisions for ensuring the defendant's knowledge of their right to legal advice; the range of offences in the scope of this scheme; and the Secretary of State's power to put new offences in scope.

Under clause 36, the online conviction would be applicable to summary-only, non-imprisonable offences specified in a positive statutory instrument by the Secretary of State that would need to be approved by both Houses. Fines, compensation, costs, surcharges and, where relevant, driving endorsements could be included. Those would be fixed by order of different classes of offence and, potentially, different circumstances for the same offence. They would be specified in a statutory instrument under the negative resolution procedure.

Clause 36 inserts six new sections into the Magistrates' Courts Act 1980. It is clear that the definition of offences in the "Transforming our Justice System" consultation has been shortened to summary, non-imprisonable offences. The definition no longer excludes offences where there is an identifiable victim, which removes an important safeguard for victims and should be remedied.

Adequate safeguards are also lacking to ensure that defendants are aware of the consequences of entering an online plea. That is vital if an offence results in a criminal record, which can have serious and long-term implications, such as restrictions on employment, travel and the ability to obtain insurance. The Opposition say that offences under the scope of the clause should be restricted to non-recordable offences only.

Of course, individuals may mistakenly plead guilty through lack of adequate or any legal advice, which is a concern. We therefore say that defendants must be made explicitly aware of their right to seek legal advice and of the implications of pleading guilty. Not providing such information could have very serious consequences for the defendant's right to a fair trial and the quality of justice that they receive. For example, many defendants will not know that an offence such as fare evasion, which we believe will be under the scope of the online process, is significantly more serious than a minor motoring offence because of the intention to evade payment.

We are also concerned that the Bill gives the Secretary of State the authority to specify that any summary offence not punishable by imprisonment can be eligible for online conviction. That leaves the door open for an alarming expansion of the scope of offences included without proper scrutiny. Any extension of the range of offences beyond those that attract fixed penalty notices should be made the subject of consultation, at which stage a full evaluation of the existing scheme should be provided. Further concerns have also been raised by stakeholders—including Liberty, for example—that the clause would transfer to the Government the power to sentence individuals convicted, as opposed to the independent judiciary. Looking at the clause in the round, I suggest that the amendments are sensible safeguards.

Sir Oliver Heald: I welcome the hon. Gentleman's objective to protect defendants who may choose the new procedure as a way of dealing with their case. The amendments raise important issues, but they are issues that I am satisfied we are conscious of and will be addressing in the design of the process and the system.

Amendment 101 seeks to provide that the person to be convicted must accept the online conviction, and it then provides for a cooling-off period. The prospect of being able to accept a conviction and its associated penalty, and then undoing it two weeks later, undermines an element of certainty in the judicial process. However, I believe I can point to protections that the hon. Gentleman will find compelling. Amendment 102 proposes to make it a qualifying condition of an automatic online conviction that the accused has been made aware of their right to seek legal advice. In our view, that is not necessary; it may help if I set out the process a bit more fully.

A defendant charged with an offence that may proceed either by way of the single justice procedure—where a magistrate deals with a case on the basis of a guilty plea—or the automatic online conviction procedure will be sent a notice that formally commences proceedings and sets out the procedures available for dealing with their charge. That notice will advise defendants that they have a set period of time to respond to the charge; we expect something like 21 days, as it is with the single justice procedure notice. That notice will advise defendants, as requested by the hon. Gentleman, to use that time to obtain legal advice should they wish to—again, as the current single justice procedure notice does. The details of the timing and what is contained in the notice will be set out in criminal procedure rules.

Amendment 102 also seeks to make it a qualifying condition of an automatic online conviction that the consequences have been clearly explained to the defendant. For the sake of clarity, I note that it is not only a guilty plea that will lead to a conviction, but that plea combined with an agreement to be convicted and penalised in accordance with proposed new sections 16H and 16I to the Magistrates' Courts Act 1980. Defendants will be presented with all the information that they will need to make an informed decision, and they will also be given details of the range of sentences available to the court. That will all be set out in clear and simple terms. They will be able to opt out of the procedure at any time, up until the point that they accept the conviction. I mentioned the other protections.

6.15 pm

Secondly, we believe that the level and clarity of information provided to users will enable them to make an informed decision. Clause 36 grants the court a new power to set aside a conviction in the event that it appears to the court that the conviction is unjust—for example, if the defendant had clearly not understood the consequences of accepting an automatic online conviction. That application to set aside a conviction can be made by the defendant, the prosecutor or the court, of its own motion.

Having provided that overview of the process and additional details of the safeguards, I ask the hon. Gentleman to withdraw his amendment.

Nick Thomas-Symonds: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Nick Thomas-Symonds: I beg to move amendment 100, in clause 36, page 35, line 18, leave out

"a summary offence that is not punishable with imprisonment"

and insert

"a non-recordable offence, and where there is no identifiable victim"

This amendment ensures the automatic online conviction option includes only offences which are non-recordable offences and where there is no identifiable victim, providing an important safeguard for victims.

The Chair: With this it will be convenient to discuss amendment 103, in clause 36, page 35, line 19, at end insert—

'(4A) Prior to making any order under subsection (3)(a), the Secretary of State must commission an independent evaluation of any changes to the offences for which automatic online conviction may be offered and shall lay the report before each House of Parliament."

This amendment requires the Secretary of State to consult and seek independent advice prior to extending the range of offences for which the automatic online conviction option may be offered.

Nick Thomas-Symonds: Again, the amendments relate to the safeguards that we are pressing upon the Minister.

Amendment 100 would ensure that the automatic online conviction option includes only offences that are non-recordable offences for which there is no identifiable victim, which would provide an important safeguard for victims. Amendment 103 would require the Secretary of State to consult and seek independent advice prior to extending the range of offences for which the automatic online conviction option may be offered.

Those two safeguards are important. Amendment 100 is very important in terms of how we treat victims in our criminal justice system. Amendment 103 would deal with the concern about mission creep and the idea that the range of offences will keep being extended. The requirement to consult and seek independent advice would provide reassurance to many who are worried about that aspect of the Bill.

Sir Oliver Heald: Amendment 100 seeks to define differently the features of offences in scope of the new procedure. As hon. Members will know, we propose to test this procedure with just three offences. Those are non-recordable and will be in the initial phase of introduction. This procedure will be used to prosecute, in any event, only the most straightforward summary offences in our criminal justice system.

We have stipulated that the offences for which the automatic online conviction procedure can be offered will only be summary-only, non-imprisonable offences. That means automatic online conviction can never apply to indictable either way offences, and a sentence of imprisonment will never be imposed by this procedure. Those are important safeguards.

To address the hon. Gentleman's particular request that the Bill exclude offences where there is no identifiable victim, I should say that we have taken a policy decision that cases involving identifiable victims will not be specified for prosecution by way of the automatic online conviction procedure, just as such offences are not prosecuted by way of the single justice procedure. We are referring here to individual victims, rather than corporate victims.

Likewise, on the matter of non-recordable offences, the majority of offences intended to be in scope are non-recordable, including the first three that I mentioned—failing to produce a ticket for travel on a train, failing to produce a ticket for travel on a tram and fishing with an unlicensed rod and line.

Amendment 103 would commit the Government to commission an independent evaluation of any changes to the offences in scope of the procedure and to lay the report before Parliament. We have been clear from the start that we propose to test the automatic online conviction procedure with a small number of offences in the initial phase, so that we can review how well it works. We have already committed to reviewing the procedure 24 months following its implementation. If that initial phase is successful, we will consider widening the scope to other offences. Any decision to extend to other offences would, of course, also be based on the assessment of what impact any changes to the offences and scope would have.

Finally, the Committee will be aware that the clause provides that future offences need to be specified in secondary legislation made by the Secretary of State, which has to be agreed by Parliament through the affirmative procedure. It is the Government's view that the amendments are not necessary, and on that basis I ask the hon. Gentleman to withdraw them.

Nick Thomas-Symonds: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Nick Thomas-Symonds: I beg to move amendment 33, in clause 36, page 38, line 35, at end insert—

"(4) Within two years of this Act coming into force, the Secretary of State shall commission an independent evaluation of the implementation of the automatic online conviction option made under subsection (1) and shall lay the report of the evaluation before each House of Parliament."

This amendment ensures the Secretary of State will review automatic online conviction within two years of its implementation.

I will be extremely brief. We will push the amendment to a vote. It concerns an independent review of the automatic online conviction process within two years of the Act coming into effect, on exactly the same principle as we have suggested for other independent reviews: to facilitate good governance and the opportunity to look at how well these new procedures are working.

Sir Oliver Heald: I have just given a commitment to review this 24 months following its implementation. On that basis, I invite the hon. Gentleman to withdraw the amendment.

Nick Thomas-Symonds: We are in favour of an independent evaluation within two years of the Act coming into effect. I will put the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 3, Noes 6.

Division No. 10]

AYES

Saville Roberts, Liz	Thomas-Symonds, Nick
Smith, Nick	

NOES

Gyimah, Mr Sam	Opperman, Guy
Heald, rh Sir Oliver	Philp, Chris
Jenrick, Robert	Swayne, rh Sir Desmond

Question accordingly negatived.

Ordered,

That the Order of the Committee of 28 March be amended as follows: in paragraph (1)(c), leave out 'and 7.30 pm'.—*(Guy Opperman.)*

Ordered, That further consideration be now adjourned. —*(Guy Opperman.)*

6.23 pm

Adjourned till Thursday 20 April at half-past Eleven o'clock.

Written evidence reported to the House

PCB 13 Magistrates' Association

PCB 14 DWF

PCB 15 Professors Erika Rackley, Rosemary Hunter and Kate Malleson

PCB 16 Zurich Insurance

PCB 17 DAC Beachcroft Claims Ltd

PCB 18 British Medical Association (BMA)

PCB 19 Lord Chief Justice of England and Wales and Senior President of Tribunals, Courts and Tribunals Judiciary

PCB 20 Association of British Insurers (ABI)

PCB 21 Family Justice Council

PCB 22 British Humanist Association