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Public Bill Committee

COUNTER-TERRORISM AND SENTENCING BILL

Fourth Sitting

Tuesday 30 June 2020

(Afternoon)

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Saturday 4 July 2020

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The Committee consisted of the following Members:

Chairs: † Steve McCabe, Mr Laurence Robertson

† Bacon, Gareth *(Orpington)* (Con)
Butler, Rob *(Aylesbury)* (Con)
† Cadbury, Ruth *(Brentford and Isleworth)* (Lab)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
Cherry, Joanna *(Edinburgh South West)* (SNP)
† Courts, Robert *(Witney)* (Con)
† Cunningham, Alex *(Stockton North)* (Lab)
† Dines, Miss Sarah *(Derbyshire Dales)* (Con)
† Everitt, Ben *(Milton Keynes North)* (Con)
† MacAskill, Kenny *(East Lothian)* (SNP)
† McGinn, Conor *(St Helens North)* (Lab)
Mak, Alan *(Havant)* (Con)
† Marson, Julie *(Hertford and Stortford)* (Con)
† Owatemi, Taiwo *(Coventry North West)* (Lab)
† Philp, Chris *(Parliamentary Under-Secretary of State for Justice)*
† Pursglove, Tom *(Corby)* (Con)
† Trott, Laura *(Sevenoaks)* (Con)

Kevin Maddison, John-Paul Flaherty, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 30 June 2020

(Afternoon)

[Steve McCabe *in the Chair*]

Counter-Terrorism and Sentencing Bill

2 pm

The Chair: Members should feel free to take their jackets off if they are so inclined. We now begin line-by-line consideration of the Bill. The selection list for today's sitting is available on the table. It is helpful to proceedings if hon. Members who want to push an amendment, other than the lead amendment in a group, to a vote could indicate that to me in advance. If they could supply your speaking notes to the *Hansard* reporters, I think they would be most grateful.

Clause 1

Offences aggravated by terrorist connection

Alex Cunningham (Stockton North) (Lab): I beg to move amendment 35, in clause 1, page 1, line 8, at end insert—

"(ab) In subsection (3), after 'if' insert 'the court has found beyond reasonable doubt that'".

This amendment determines that a court must decide beyond reasonable doubt that an offence has a terrorist connection.

It is a pleasure to serve under your chairmanship yet again, Mr McCabe. *Hansard* should have our notes, as we have already forwarded them.

We support the Bill but, as hon. Members can see, we have identified some ways in which we believe it could be made better. We will get into the details of that over the coming weeks. Terror attacks have shaken this country: people have lost their lives; people have lost their livelihoods; loved ones have been lost; people have suffered life-changing injuries. Nothing we do or say in this House can bring back those people who have died or heal those people who have been so badly injured, but we can try to ensure that justice has been achieved.

In his speech on Second Reading, my right hon. Friend the Member for Tottenham (Mr Lammy) talked specifically about some of the terror incidents that we have seen in this country and the conclusions we can draw from them. Two possible conclusions were that prison sentences are not long enough and that deradicalisation programmes in prison are not working.

That is why Labour seek to work with the Government on this Bill, starting with amendment 35. We hope to make the case for why we believe there are some amendments that would improve the Bill. Ensuring that Government legislation does not discriminate unfairly against protected characteristics is a key part of what we will try to achieve throughout the process.

Terrorism is often conflated with Islamic extremism, yet the fastest-growing terrorist threat comes from the far right. We want to ensure that the legislation is fair and proportionate. It must go hand in hand with a coherent deradicalisation strategy alongside the Bill, working to minimise the risks of an offender committing further terrorism offences once they leave prison.

Many of the amendments that we will ask the Committee to consider are simply probing amendments to better understand the Government's thinking, and to give the Minister more time to think about the different issues as we progress through this stage of the Bill. However, there are other amendments that we believe the Government should adopt, if the Bill is to achieve what it sets out to do and be seen to be fair. We will go further into the detail, but I hope we can have healthy and robust debate about how to move forward, and prove to the public out there that politicians from different parties can work together.

Amendment 35 determines that a court must decide "beyond reasonable doubt" that an offence has a terrorist connection. The purpose of this probing amendment is simply to clarify that the finding of a terrorist connection for the new offences that the Bill brings into scope will be subject to the same "criminal standard of proof" as is currently the case, and would effectively amend section 69(3) of the sentencing code, covering offences aggravated by terrorist connections.

We believe we should spell out in the Bill the need to ensure that there can be no reasonable doubt about the connection, because it can have serious ramifications for the offender and the legal system. The House of Commons Library briefing on the Bill states, under the provisions in clause 1:

"If the court determines that there was a terrorist connection, it must treat that as an aggravating factor when sentencing the offender. The presence of an aggravating factor may result in a higher sentence (within the statutory maximum) than would otherwise be the case."

The Library briefing paper goes on to say:

"The finding of a terrorist connection can also trigger terrorist offender notification requirements and may result in the court ordering forfeiture in a wider range of cases."

The briefing goes on:

"Such a finding also engages the restrictions on release contained"

in the Terrorist Offenders (Restriction of Early Release) Act 2020, which

"requires that all determinate terrorist or terrorism-related offenders must be referred to the Parole Board at the two thirds point of their sentence before they can be considered for release."

The Bill's equality statement acknowledges that

"Asian/British Asian and Muslim individuals within the Criminal Justice System (CJS) have been disproportionately affected by terrorism legislation relative to the percentage of Asian/British Asian and Muslim individuals in the total population."

The equality statement goes on to the say that the provisions in the Bill are

"unlikely to result in indirect discrimination within the meaning of the Equality Act".

However, the Lammy review highlighted evidence of disproportionate outcomes for BAME individuals at the sentencing stage and in decision making by judges and magistrates.

While the review found decision making by juries to be largely fair and proportionate, the same was not found when considering decision making by sentencers. That is relevant to the clause, given that the finding of a terrorist connection is at the discretion of the judge,

taking account of any representations made by the prosecution or the defence. That is concerning, given the findings of the Lammy review, which are currently being discussed on the Floor of the House. We believe that BAME individuals may be at increased risk of discrimination, with their crime considered to have a terrorist connection.

Amendment 35 would amend section 69(3) of the sentencing code to require that the court must find "beyond reasonable doubt" that an offence has a terrorist connection. The House of Commons Library briefing paper, which colleagues will have read, says that clause 1 would

"greatly increase the number of non-terrorist offences that can be found to have a terrorist connection",

whereas currently only specified offences can be found to have such a connection. The widening of what can be found to have a terrorist connection will, I fear, disproportionately affect ethnic minorities. That is why we must press the Minister on how he will guarantee decisions are made on the measure of "beyond reasonable doubt".

There is also the question of what case law is used to guide sentencers as to what constitutes terrorism, as well as what constitutes a connection to it. Some of the commentators on the Bill are not entirely convinced about what the Government are trying to achieve. I can understand that, as there are already a lot of specific terrorism offences.

Unamended, the Bill seems to create the potential for sentencers to grow their own definitions, both of "terrorism" and "connection". Can the Minister give examples of where the absence of the provision addressed in clause 1 has resulted in an injustice or an insufficient response? There are concerns that the provision could do more damage than anything else. A wrongfully determined terrorist connection could fuel or develop a grievance against the authorities that might not have existed before. We cannot ignore the impact a wrongful terrorism sentence would have on an individual's life. We cannot take that sort of chance. We must be sure; we must be beyond reasonable doubt.

Taiwo Owatemi (Coventry North West) (Lab): It is a pleasure to serve under your chairmanship, Mr McCabe. I share the concern expressed by my hon. Friend the Member for Stockton North in relation to the burden of proof and the potential implications of the Bill in disproportionately convicting ethnic minorities by widening the scope of what a terrorist connection is under this legislation.

This is a sensitive subject. Terrorism and the actions of extremists have instilled fear, caution and a sense of doubt in many communities across our country. An act of terror and of any extremist is abhorrent. Those individuals should indeed be brought before a court of law and tried for their crimes, not least because of their direct action causing injury, committing murder or traumatising those who come anywhere near their path and because of the wider implications that will be felt across the country and the world in our age of quick-fire communications and social media.

In my generation, I have seen this in how the Oklahoma bombing instilled fear; in how 9/11 changed the world; and in how 7/7 changed my perspective and that it could happen here at home. The murder of Lee Rigby proved that even those who protect us are not always safe. The slain nine churchgoers at Emmanuel African Methodist Church and the Manchester concert bombings showed that no one, even those in the most innocent of settings, is off limits. The hateful act of violence that took Jo Cox proved that our own political discourse has taken an awful turn.

These acts by rampant extremists and the murderous death toll that they leave behind, the radical ideas that brought them to this path and the many plots that have been foiled that we will never know about show us that these crime, or crimes yet to be committed, are heinous. They also prove that we must determine, as this amendment seeks to do, that these crimes or plots are not small and should be taken with the utmost seriousness.

I have three concerns about widening the terrorist connection provision under this legislation and lowering the burden of proof. First, we are leaving it to sentencers to determine their own definition of what constitutes a terrorist connection. Secondly, it creates a form of suction like a vacuum that will imprison even more ethnic minorities and put them behind bars under terrorist legislation which will see them lose their freedom longer than they need to. Thirdly, and even worse, it potentially radicalises them while they are in prison.

There is a danger, as seen in clause 1, that by allowing any offence to be capable of having a terrorist connection, one's judgement will inevitably come into play. This punishment carries a sentence of two or more years. It would not be amiss to say that everyone holds biases, including those who administer our laws and hand down sentences. By widening the scope and effectively leaving it open to interpretation, the Government want us to believe that we will capture individuals who may have slipped through the net thus far as ordinary criminals or should have been convicted of terrorism. Can the Minister point us to data that back this assumption? The likelihood is that we will just imprison people for the sake of being seen to be attacking the issues of terrorism and extremism.

We are already aware that ethnic minorities are disproportionately sent to prison under our legal system. We are also acutely aware that black and Asian men, particularly those of Islamic faith, are more likely to be seen as threats and harbouring extremist views. The Lammy review conducted by my right hon. Friend the Member for Tottenham highlighted some concerns about how our criminal justice system sees these individuals. The odds of receiving a prison system were around 240% higher for black, Asian and minority ethnic offenders compared with white offenders. Research commissioned by the review also found that at the magistrates court, black, Asian, mixed and Chinese women were all more likely to be convicted than white women.

The number of Muslim prisoners has more than doubled over the past 17 years. In 2002, 5,502 Muslims were in prison. By 2019, this had risen to 13,341. While in prison, Muslim prisoners described having their faith viewed by prison authorities through a lens of risk, according to the research, which also found that prisoners believed that this put them at greater threat of being radicalised. Given the biases in the system and the extraordinary likelihood of women from ethnic minorities receiving a prison sentence, what do the Government think this legislation will mean for ethnic minorities?

[Taiwo Owatemi]

Do they really think that lowering the burden of proof and expanding the scope of what constitutes a terrorism offence will do anything to keep these young men and women away from the hands of those who wish to radicalise them?

2.15 pm

On this side of the debate, we want to reduce the threat of extremists and ensure that appropriate punishment is handed down to those who commit or seek to commit an act of terror. However, we should not pursue that by reducing the seriousness of this heinous crime, just to be seen to be doing something about it. The burden of proof is important, as is ensuring that courts, whether juries or sentencers, reach a solid burden of proof, such as "beyond reasonable doubt", before coming to such a serious conclusion. We seek clarity, and the purpose of the amendment is to ensure that terrorist connections will be subject to the same criminal standard of proof as we currently know it. Otherwise, I fear that this measure will undermine our efforts to keep us safe and let down individuals, particularly from an ethnic minority, who are already disproportionately sent to prison under the criminal justice system.

The Parliamentary Under-Secretary of State for Justice (Chris Philp): It is a pleasure to serve under your chairmanship, Mr McCabe, in our line-by-line consideration of the Bill. I thank the shadow Minister for his opening remarks, in which he expressed general support for the objectives of the Bill. I hope that we can, as he said, provide an example of constructive cross-party working, although I am sure he will have many questions about the detail. As the shadow Minister has said, and as the hon. Member for Coventry North West said in her speech, the threat that terrorism poses is a serious one, and one of our heaviest responsibilities as Members of Parliament is to protect our fellow citizens from such attacks, but in a way that is lawful, fair and just.

Amendment 35 seeks to specify a beyond-reasonable-doubt standard of proof in making the terrorist connection, as clause 1 does. I am happy to confirm for the shadow Minister that existing criminal court procedure already requires the criminal standard of proof to be met in making a determination of a terrorist connection, or indeed any finding of fact in relation to sentencing. If, after conviction by a jury, there is a finding of fact to be made by the judge prior to sentencing in what is known as a "Newton" hearing, under existing procedures the criminal standard of proof is applied. On the request that the shadow Minister and his colleagues make, I am happy to confirm that it is already inherent in the operation of our criminal justice system, and rightly so, for all the reasons that the shadow Minister and the hon. Member for Coventry North West have outlined. I trust that on the basis of that assurance they will see fit not to press the amendment, given that the provision they call for is already enshrined in law.

One further point: both the shadow Minister and the hon. Member for Coventry North West raised the question of what happens if the judge makes an error or exhibits some form of conscious or unconscious bias. That is extremely rare, but, if it did happen, there are of course appeal rights against both the sentence and any erroneous finding of fact associated with it. If a defendant or, by this point, an offender who has been convicted feels that the sentence is genuinely unfair or that an unfair determination has been made of a terrorist connection, they can appeal, so a safety mechanism by way of appeal also exists. I hope that on that basis the shadow Minister will not press the amendment to a vote.

Alex Cunningham: I am grateful to the Minister for his explanation. He believes that the matters are already covered in existing law, but perhaps he will accept that later in the Bill we will be discussing how we make sure that what has happened over a period of time has in fact demonstrated that the judges have got it right. In other words, we will revisit this matter with a view to seeking a form of review of how the legislation is working to ensure that we do not have the particular problems that might well be possible. I am also grateful to him for reminding us that in criminal proceedings we still have an appeal process in this country, and I am sure that that would operate appropriately. On the basis of what the Minister has said and on the basis that we will seek reassurance through a review process later in the Bill, I am content to beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Alex Cunningham: I beg to move amendment 36, in clause 1, page 3, line 30, at end insert—

'(8) Before this section comes into force, the Secretary of State must commission an analysis of the impact of this section on people with protected characteristics, including but not limited to—

(a) the impact on people from minority faith groups, including the numbers received into prison and the length of the sentence served;

(b) the impact on people from BAME communities, including the numbers received into prison and the length of the sentence served; and

(c) the consequences of any disproportionate impact on people with protected characteristics on efforts by the prison authorities to rehabilitate prisoners convicted of terrorism offences.

(9) A copy of the analysis must be laid before both Houses of Parliament."

This amendment requires the Secretary of State to commission an analysis of the equality impact of extending the ability of the court to identify a terrorism connection.

The Chair: With this it will be convenient to discuss amendment 42, in clause 21, page 18, line 23, at end insert—

'(3) Before this section comes into force, the Secretary of State must conduct an analysis of the impact of this section on people with protected characteristics, including but not limited to—

(a) the impact on people from minority faith groups, including the numbers received into prison and the length of the sentence served;

(b) the impact on people from BAME communities, including the numbers received into prison and the length of the sentence served; and

(c) the consequences of any disproportionate impact on people with protected characteristics on efforts by the prison authorities to rehabilitate prisoners convicted of terrorism offences.

(4) A copy of the analysis must be laid before both Houses of Parliament."

This amendment requires the Secretary of State to commission an analysis of the impact of extending sentences for offenders of particular concern on people with protected characteristics.

Alex Cunningham: These amendments would require the Secretary of State to commission an analysis of the impact of this section of the Bill before it comes into force on people with protected characteristics, as well as the consequences of any disproportionate impact on efforts by the prison authorities to rehabilitate prisoners convicted of terrorism offences. With this amendment, we seek to address the issue that was highlighted by the probing amendment and to clarify whether the same criminal standard of proof would apply to determining a terrorist connection for all offences, as is currently the case for listed offences. In particular, we seek to determine whether the clause may have a disproportionate impact on people from minority faith and BAME communities, including on the numbers who are received into prison and the length of the sentence served.

There are significant risks involved in expanding the number of individuals who fall under the provisions of separate terrorism legislation, particularly if the imposition of additional sanctions is seen as neither fair nor proportionate and is found to have a disproportionate impact on minority faith and BAME communities in particular. As I said during my speech on amendment 35, the equality statement on the Bill acknowledges that

"Asian/British Asian and Muslim individuals within the Criminal Justice System (CJS) have been disproportionately affected by terrorism legislation relative to the total percentage"

of those individuals "in the total population."

In 2016, a Ministry of Justice study of Crown court decision making found that, under similar criminal circumstances, the odds of imprisonment for offenders from self-reported black, Asian, Chinese or other minority ethnic backgrounds were higher than for offenders from self-reported white backgrounds. My hon. Friend the Member for Coventry North West spelled that out in some detail.

Bambos Charalambous (Enfield, Southgate) (Lab): I do not know whether my hon. Friend was in the Chamber to hear the urgent question asked by my right hon. Friend the Member for Tottenham about the Lammy review, but he pointed out that, when the review was done in 2017, the proportion of BAME people in prison was 41%; it is now 51%. Does my hon. Friend have any thoughts about that?

Alex Cunningham: Unfortunately, I was not in the Chamber for that statement, but I bow to the superior knowledge of my boss and my Whip on this matter. It is absolutely essential that we never lose sight of the facts that my hon. Friend has just outlined.

Unfortunately, when it comes to magistrates courts, systematic scrutiny of magistrates' decisions is hindered by the absence of reliable data collected on a number of key issues. For example, magistrates courts keep no systematic information about whether defendants plead guilty or not guilty, although there are similar disparities at the Crown court level. Magistrates courts also do not keep proper records of defendants' legal representation, which means that no one knows whether particular ethnic groups are more or less likely to appear in court facing criminal charges without a lawyer.

The cliché suggests we are all equal under the law, but it would be foolish to deny that our justice system has a certain bias. We must make sure that when we amend or introduce legislation, we do so with our eyes and ears open. Particular attention needs to be paid to the equality impact of the Bill, to ensure that the House is as informed as possible about its impact. We must also ensure that the provisions do not have a disproportionate effect on minority faith or racial groups.

During the oral evidence session, one of my questions was to Peter Dawson from the Prison Reform Trust. We talked about the expansion of sentences for offenders of particular concern and how they would work. Peter Dawson said in written evidence:

"The expansion of SOPCs and the expansion of the number of offences able to be identified as having a 'terrorist connection' will need careful monitoring for their impact on prison security and on people from minority faith and ethnic communities".

I asked:

"How can we improve the Bill to achieve that careful monitoring?"

Mr Dawson replied:

"It may not be something that the Bill can achieve, but I think it is reasonable to ask the Government, after the Bill becomes law, to provide a report on what the impact has been. I entirely take the point that the nature of terrorism at the moment means that certain communities are likely to be more heavily represented, but the point is that all criminal justice agencies need to go beyond that to guard against the unconscious bias that will otherwise creep in."—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; c. 38, Q88.]

Other witnesses talked about similar things during the evidence sessions. It is important that we do not lose sight of that.

Along with the expansion of sentences for offenders of particular concern, the clause has the potential to increase significantly the number of individuals in prison who are subject to separate terrorist sentencing. Many of those individuals are vulnerable to radicalisation and they have experienced a steady accumulation of institutional discrimination.

The danger with these provisions is that they could create a significant population of individuals in prison and under supervision in the community who will receive longer sentences and be subject to more onerous and lengthy supervision requirements and forfeiture orders than others who may have received shorter sentences for equivalent offences because the terrorist connection to their offence has not been identified.

That could place those individuals at greater risk from people who would seek to exploit that sense of grievance, in order to radicalise them in support of an extremist ideology. It could also undermine the effective management and supervision of this group in prison, increasing the currently small number of people designated as terrorism offenders to a substantial proportion of the population. This morning, we heard from a representative of the Prison Officers Association, who talked in some detail about the difficulties that prison officers now face in trying to manage particular groups in the prison establishment.

It is right that we commission analysis of the impact of our legislation and if such an analysis proves that there is a disproportionate impact on certain groups, Ministers need to act to correct any discrimination and, if required, change the law. Amendment 42 would require the Secretary of State to commission analysis of the impact of extending sentences for offenders, which is a particular concern regarding people with protected characteristics, and for that analysis to be laid before Parliament before the section comes into force.

[Alex Cunningham]

Clause 21 replaces schedule 13 of the sentencing code, with the schedule set out in schedule 6 to the Bill. That schedule lists offences that require the imposition of an SOPC where an extended sentence or life sentence is not imposed. This will bring a wider number of offences into the SOPC regime, removing the possibility of those committing such offences from being eligible for a standard determinate sentence. That would mean that only the most minor terrorism offences—those with a maximum sentence of two years or less—would not require an SOPC where an extended determinate sentence is not imposed.

The Bill will also create new sentences—the equivalent of an SOPC for adult offenders in Scotland and Northern Ireland, and for under-18s throughout the UK. Clause 21 addresses a problem created by the TORER Act, which made all terrorist offenders serving a custodial sentence eligible for release two thirds of the way through their sentence, subject to the discretion of the Parole Board. There remained an issue with offenders who were not granted a release until the end of their sentence, and who, as a result, would be released into the community without any form of supervision. The amendment would address this anomaly by requiring that terrorist offenders in the UK would have a minimum period of supervision on licence of 12 months following release, even if they serve the full custodial part of their sentence in custody.

The combined impact of the TORER Act and the provisions of this clause, along with the provisions of clause 1 that allow for the court to determine a terrorist connection for any offence, is to significantly increase the number of individuals subject to separate and more onerous terrorist-sentencing legislation. This includes a longer period in custody, release subject to the discretion of the Parole Board, and a minimum 12 months' supervision in the community.

There are significant risks involved in increasing the number of individuals who fall under the provisions of a harsher sentencing regime, particularly if the imposition of additional sanctions is seen as being neither fair nor proportionate, and is found, as I have said, to have a disproportionate impact on minority, faith, and BAME communities in particular.

The amendment also seeks to determine the consequences of any disproportionate impact on people with protected characteristics of efforts by the prison authorities to rehabilitate offenders convicted of terrorism offences. Many of those vulnerable to radicalisation have experienced a steady accumulation of institutional discrimination. The danger with the provisions is that they could create a significant population of individuals in prison and under supervision in the community who will receive longer sentences and who will be subject to those more onerous and lengthy supervision requirements than others who receive shorter sentences for equivalent offences. I have already covered that point. That could place them at greater risk from people who seek to exploit that sense of grievance to radicalise them in support of an extremist ideology. It could also undermine the effective management and supervision of this group in prison by increasing a currently small number of people designated as terrorism offenders to a substantial proportion of the prison population.

2.30 pm

As hon. Members know, groups such as this are already untrusting of the auspices of the state. Should it be found, through the impact assessment we seek, that these groups are again subject to further over-representation, we have the potential for a perfect storm, whereby young BAME men who ordinarily would not be radicalised, and who potentially spend longer in jail than comparable white offenders, bear a resentment to the state and eventually leave radicalised. As my hon. Friend the Member for Birmingham, Perry Barr (Mr Mahmood) pointed out during the emergency debate on the early release of terrorist offenders, if we put prisoners of the same background and offence together, they become a unit, and if they are then put with other prisoners, who are often incarcerated for non-terror-related offences, they radicalise them. That is hugely concerning in itself, but more so if prisoners feel they have been victimised in the way they were treated by the criminal justice system before being incarcerated.

The Government's duty under the Equality Act 2010 goes further than the Bill's equality statement acknowledges—it includes the duty to foster good relations between people who share a characteristic and those who do not. Given the evidence of institutional discrimination across the criminal justice system, the Bill carries a severe risk of reinforcing stereotypes that result in unfair treatment and the stigmatising of a large group of people on the basis of their religious belief and ethnicity. The amendment invites the Government to describe the actions they will take, and subsequently review, to ensure that that risk is averted.

Chris Philp: I thank the shadow Minister for his detailed exposition of some of the risks that we must seek to navigate and overcome. For justice to function, we must make sure that it is truly even-handed and fair in assessing anyone who comes before the court, regardless of their background, race or religion.

Taiwo Owatemi: Is the Minister not concerned that, without proper consideration of the impact of the Bill on many BAME communities, relationships between these communities and authorities may worsen?

Chris Philp: Let me come on to that point, which is the substance of the amendment. The amendment calls for an assessment prior to the clause coming into effect; it does not ask for an assessment afterwards but beforehand. I submit to the Committee that the impact assessment published with the Bill and the accompanying equality statement, which looks specifically at questions of racial and religious discrimination—or the potential for those things to happen—has already thoroughly analysed the Bill's potential impact. That detailed analysis, which obviously included a review by Government lawyers and others, concluded that nothing in the Bill would unlawfully discriminate against people of a particular ethnic or religious background within the meaning of the Equality Act 2010.

Of course, the provisions in the Bill are simply based on a measure of criminality—has somebody committed a specified offence? Is there a terrorist connection? Nothing in any of those provisions is biased for or against anyone from any particular background, as is the case with all laws that Parliament passes.

Alex Cunningham: The Minister says that nothing in the Bill would lead to further discrimination. I should hope that that would be the case for any legislation we pass. However, the fact remains that there are certain groups within our society—BAME and other groups—who are disproportionately disadvantaged in the legal system. The amendment asks the Minister to recognise that there could be even more of that as a direct result of the provisions of the Bill.

Chris Philp: Where there are concerns of the nature of those raised in the Lammy review, which I think the shadow Minister or the hon. Member for Coventry North West mentioned earlier, the Government are committed to responding to those. Indeed, in a sense, we are in the wrong room in Parliament today to raise that, because there was an urgent question earlier on exactly that topic, to which the Under-Secretary of State for Justice, my hon. Friend the Member for Cheltenham (Alex Chalk) responded.

The Government are committed to acting in response to the Lammy review to make sure that no unconscious biases discriminate against any particular group. I have not had a chance to read the *Hansard* of the debate, and I suspect the shadow Minister has not either, but based on the conversations that I have heard taking place in the Ministry of Justice, I think that the Government generally and the Ministry of Justice in particular are committed to taking action where needed. I would have expected the response of my hon. Friend the Member for Cheltenham to the urgent question an hour or two ago to have confirmed that.

Alex Cunningham: The fact remains that the Lammy review talked about a whole range of provisions that were supposed to be implemented, but very few of them have been. Some have been partially implemented and others have not. Can the Minister simply accept that we are failing as a Government and a Parliament to ensure that discrimination does not exist in our system? We are simply not taking the action to do that. Does he further accept that the more legislation we have where particular groups of people, BAME or otherwise, feel that they are being discriminated against, the greater the discord in society?

Chris Philp: Recent events obviously tell us how important it is to maintain social cohesion and confidence in the criminal justice system. The hon. Gentleman raises a point that goes far beyond the scope of the Bill, but it is a fair point none the less. If he listens to what my hon. Friend the Member for Cheltenham, my fellow Justice Minister, said in the House of Commons Chamber earlier, he will see that the Government are resolved to act where necessary to address issues of that kind.

The substance of the Bill is obviously public protection. It makes no distinction between any kind of terrorism, whether rooted in a twisted religious ideology or a far-right ideology, or terrorist acts committed for any other reason. The Bill, as with all Bills, as the hon. Gentleman says, is even-handed between different kinds of offence and different kinds of offenders. Where we need to do more systemically, not just in relation to the Bill but across the whole range of the criminal justice system, to make sure that everybody gets a fair hearing and fair treatment, the Government will do that. I hope that the response of my hon. Friend the Member for Cheltenham to the urgent question earlier will give assurance on that point. No doubt there will be many more opportunities to debate it.

Alex Cunningham *rose—*

Chris Philp: On the specific question of amendment 36 to clause 1 and amendment 42 to clause 21, which call for an impact assessment prior to the commencement of those clauses, I repeat what I said earlier. We have already done that. It has been published as the impact assessment together with the Bill and the equality statement that went with it. The obligation being requested by the amendments has already been discharged, but of course we must remain mindful, as the shadow Minister eloquently said, of potential unconscious biases. We must be vigilant and make sure that our justice system is not in any way besmirched by them. I am confident that the measures my hon. Friend the Member for Cheltenham laid out earlier will achieve that.

Alex Cunningham: I am sorry that the Minister would not give way, because I wanted to press him on that particular matter. We have several days of debate, so we have plenty of time to deal with these issues. It is a bit disappointing.

Chris Philp: I apologise; I did not realise that the hon. Gentleman was trying to intervene. Had I realised, I would, of course, have given way.

Alex Cunningham: Fair enough; I accept that.

The Minister was talking about how the Bill is important for public protection and I agree. It is essential to protect the interests of the public, but if the Bill results in a growing number of terrorists in prison, and if we are releasing into the community people who are still radicalised—or even new people who they managed to radicalise when they were in prison—perhaps public protection will not gain in the way that the Government hope.

I accept the Minister's statement that he believes the law covers that, but I am disappointed that we cannot accept that a review, although it might cost a few pounds and take some time to commission, would at least give us some information to enable us to understand how well or how badly the legislation is working. I accept what he said, however, and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Chris Philp: We touched on many of the purposes of clause 1 in our debate on amendments 35 and 36. Very briefly, clause 1 seeks to give judges the power to make a factual finding after conviction that a particular offence has a terrorist connection, to the standard of proof beyond reasonable doubt, as has been discussed, rather than simply referring to a fixed schedule of offences. If, for example, somebody commits an offence that is a serious offence but is not currently on the list of terrorist offences, the finding of terrorist connection can none the less be made. That has consequences in the rest of the Bill, and we will debate them in due course.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Schedule 1 agreed to.

Clause 2

MEANING OF "SERIOUS TERRORISM OFFENCE": ENGLAND AND WALES

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

Chris Philp: The purpose of clause 2 is to create new categories of offences in relation to the new serious terrorism sentences. It defines the meaning of a "serious terrorism offence" in England and Wales, so that a sentencing court can establish whether an offender has committed a qualifying offence for the purpose of applying the serious terrorism sentence, which we will discuss more in due course.

The clause will amend section 306 of the sentencing code to include a new category of serious terrorism offence, with two subsets of offences: those in part 1 of schedule 17A, which specifies offences with a life penalty that are terrorist or terrorist-related; and those in part 2, which specifies offences with a life penalty that may be found to have a designated terrorist connection further to section 69 of the sentencing code, as amended.

Clause 2 inserts new schedule 17A into the sentencing code that is currently making its way through Parliament, so that those offences can be identified as serious terrorism offences by the sentencing court for the purposes of setting a serious terrorism sentence or, alternatively, an extended sentence.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Schedule 2 agreed to.

Clause 3

OFFENCES RELEVANT FOR PROVISIONS OF THIS ACT RELATING TO NORTHERN IRELAND

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

Chris Philp: Clause 3 has essentially the same purpose as clause 2. Clause 2 applied to England and Wales; clause 3 does essentially the same thing in relation to Northern Ireland, by amending article 12 of the Criminal Justice (Northern Ireland) Order 2008.

Conor McGinn (St Helens North) (Lab): There is a specific point on this and some other measures in this Bill pertaining to Northern Ireland: they will require a legislative consent motion in the Northern Ireland Assembly. To start as we mean to go on, and so that I do not have to ask the Minister this at every juncture, will he outline what representations he has received from the Northern Ireland Executive, specifically the Justice Minister? For the benefit of the Committee, will he also set out what it means to have to go through the legislative consent motion process?

2.45 pm

Chris Philp: Under the Sewel convention, where a provision in UK legislation touches on a matter that is devolved to one of the nations of the United Kingdom, one applies for a legislative consent motion. Most of the Bill, relating as it does to terrorist offences, is reserved to the UK Government, but some relatively limited elements of it touch on matters that are ordinarily devolved. For them, we will of course seek a legislative consent motion under the Sewel convention. In that context, we have made contact with the Scottish Government in Holyrood and with the Northern Ireland Administration—in particular, with Justice Minister Naomi Long. We have entered into fairly extensive correspondence, which is ongoing, about the provisions in the Bill. The Justice Minister in Northern Ireland has raised various matters, which she has asked questions about, asked for clarification about and wanted to discuss further. Those discussions and that correspondence are ongoing.

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Schedule 3 agreed to.

Clause 4

SERIOUS TERRORISM SENTENCE FOR ADULTS AGED UNDER 21: ENGLAND AND WALES

Alex Cunningham: I beg to move amendment 37, in clause 4, page 5, line 32, at end insert—

"(7) The pre-sentence report must—

(a) take account of the offender's age;

(b) consider whether options other than a serious terrorism sentence might be more effective at—

(i) reducing the risk of serious harm to members of the public, or

(ii) rehabilitating the offender.

(8) The court must take account of any points made by the pre-sentence report in relation to the matters in subsection (7) and consider whether they constitute exceptional circumstances under subsection (2)."

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

Amendment 45, in clause 6, page 9, line 20, leave out subsection (11) and insert—

"(11) In forming an opinion for the purposes of subsections (1)(d) and (6), the court must consider a report by a relevant officer of a local authority about the offender and the offender's circumstances.

(11A) Where the offender is under 21 years of age, the report must—

(a) take account of the offender's age; and

(b) consider whether options other than a serious terrorism sentence might be more effective at—

(i) reducing the risk of serious harm to members of the public, or

(ii) rehabilitating the offender;

and the court must take these factors into account when forming its opinion under subsection (6).

(11B) In considering the report, the court must, if it thinks it necessary, hear the relevant officer."

Amendment 46, in clause 7, page 10, line 13, at end insert—

"(2A) Where the offender is under the age of 21, in forming an opinion for the purposes of paragraph (2), the court must consider and take into account a pre-sentence report within the meaning of Article 4 which must—

(a) take account of the offender's age; and

(b) consider whether options other than a serious terrorism sentence might be more effective at—

(i) reducing the risk of serious harm to members of the public, or

(ii) rehabilitating the offender."

Alex Cunningham: I am sure that these amendments come as no surprise to the Minister and other members of the Committee, given my interrogation of our witnesses during the oral evidence sessions over the past few days. This area needs particular attention from the Government, and I intend to press the amendment to a vote—unless, of course, the Minister comes up with an appropriate answer. On the basis of all this kindly co-operation and friendliness that we are sharing, and our intention to prove to the public that we can work across parties, perhaps he might surprise me a little.

Amendment 37 would require that when a court considers a serious terrorism sentence for a young adult under the age of 21, the pre-sentence report must take account of the offender's age and consider options other than a serious terrorism sentence for rehabilitation and reducing harm. It means that the court must also take into account the issues raised in the pre-sentence report and whether it constitutes exceptional circumstances under proposed new section 268B(2).

We need a basic recognition in the Bill's sentencing framework that, simply put, young adults and adults are inherently different, not only in terms of maturity, but in their potential for rehabilitation. Regarding the level of maturity, numerous organisations, such as the Howard League, have advocated for this proposal. It has been recognised in reviews such as the Lammy review, and by the Justice Committee. Why is it not recognised in the Bill?

As we have said from the outset, serious terrorist offences deserve a serious sentence, but it is still important to consider the age of the offender when other offences of a non-terrorist nature are committed. Although the amendment is specific to under 21s, in line with the Bill, evidence of maturation suggests that young adults up to the age of 25 ought to be considered as a separate group requiring a distinct response from criminal justice agencies.

The work in this area continues apace, and I have no doubt that Ministers may well have to address their approach to all manner of sentences for people up to the age of 25 when we can all be satisfied that the science proves, beyond reasonable doubt, that they ought to be treated differently. We had a considerable amount of evidence on that. I asked Peter Dawson from the Prison Reform Trust for his view on the different factors relating to young people. He said:

"The Bill should have a different sentencing framework for children and for young adults. At the moment, the law defines a young adult as someone aged between 18 and 20. It is not for this Bill to do, but at some point that should change to between 18 and 24."

I think that is his opinion. He continued:

"At least taking account of the detention in a young offender institution provisions would allow some recognition of the fact that young adults are different from more mature people."—[*Official Report*, *Counter-Terrorism and Sentencing Public Bill Committee*, 25 June 2020; c. 34, Q75.]

We also discussed that issue with Jonathan Hall, the Independent Reviewer of Terrorism Legislation, who said that the point he was making was that

"there is recognition that people who are young and immature are probably more susceptible to change than adults." —[*Official Report*, *Counter-Terrorism and Sentencing Public Bill Committee*, 25 June 2020; c. 10, Q15.]

I asked him whether the bottom line was that with young people, there was perhaps a greater chance of change; he had said that there might be greater opportunity for reform than with those who are considerably older. Mr Hall responded:

"That is what judges are increasingly finding."—[*Official Report*, *Counter-Terrorism and Sentencing Public Bill Committee*, 25 June 2020; c. 10, Q16.]

I want to refer to a little more of Jonathan Hall's evidence. He said that he believed that a younger person dimension needed to be considered in the Bill:

"One of the final points I make in my note about removing the Parole Board's role is that, again, if it is right that children are more likely to change, and as a matter, perhaps, of fairness, one ought to give them the opportunity, then removing the opportunity to say, at the halfway or two-thirds point, 'I have now genuinely changed; that was me then and this is me now,' where it can be shown to the satisfaction of the Parole Board, does seem a little bit—I would not necessarily say 'unfair', but it fails to recognise the difference between adults and children."—[*Official Report*, *Counter-Terrorism and Sentencing Public Bill Committee*, 25 June 2020; c. 11, Q18.]

The current science and evidence tend to relate to people under 21, some of whom are a long way from full maturity. Analysis from the Royal College of Psychiatrists states that in terms of brain physiology, the development of traits such as maturity and susceptibility to peer pressure appear to continue until at least the mid-20s. That view was supported by the Justice Committee, which reported in 2016 that the growing body of evidence drawing on criminological, neurological and psychological research had led the Committee to conclude that young adults' characteristics and needs made them distinct from older adults in terms of both their needs and their outcomes. There is no distinction in the Bill that recognises what the Justice Committee had to say.

The "Judging Maturity" report by the Howard League for Penal Reform also cited research that found the following:

"For the purposes of informing sentencing practice, the neurological and psychological evidence that development of the frontal lobes of the brain does not cease until around 25 years old is particularly compelling. It is this area of the brain which helps to regulate decision-making and the control of impulses that underpins criminal behaviour."

As the Minister knows, I support trusting the experts where there is a significant trend. The trend of opinion from experts seems to be that we need to recognise the differences in maturity and development of young adults. In 2016, the Justice Committee reported:

"Dealing effectively with young adults while the brain is still developing is crucial for them in making successful transitions to a crime-free adulthood."

Research into the success of interventions aimed at tackling radicalisation suggests that approaches that encourage young people to engage in education and training may be particularly beneficial, and that early interventions to encourage young people to undertake that education and training can be capable of successfully challenging radicalisation.

We talk a lot about rehabilitation, but we do not do enough of it. Labour Members do not want young offenders to be condemned to a life with no opportunity

[Alex Cunningham]

for rehabilitation when it has been reported to be successful in early adulthood. We can reform and rehabilitate, but doing so is a choice.

Bambos Charalambous: My hon. Friend is making an excellent speech on this point. On the point about young people's brains still developing, there is potential for grooming and undue influence by adults. With the Justice Committee, I visited a young offenders institution in Kent, where a young woman who was being held for terrorism offences had been influenced by her mother. Will he comment on that?

Alex Cunningham: Indeed, that is very much the case. I am grateful to my hon. Friend, because he reminds me of some evidence we heard this morning about young people being more susceptible to being radicalised. Another important point raised this morning was that our prison system is not yet properly equipped to deal with young offenders in a suitable environment that prevents radicalisation. They are housed—wherever they are—with people who have committed similar offences, who will be aiming to build on their insecurities and their immaturity to encourage them into further wrongdoing. We must never lose sight of that important point. That is why I will talk about young people throughout our proceedings on the Bill, because young people have to be given a chance.

I will talk about this later, but if a 20-year-old is sentenced to14 years in prison, that will make them 34 on their release. Add another 25 years to that, and they are almost pensioners before they are clear of the shackles of the state. They have not been given the opportunity to reform, because they are constantly looking over their shoulder, perhaps with an attitude of, "Why on earth should I change when the authorities are always on my back?"

Julie Marson (Hertford and Stortford) (Con): We talk about children as victims in this context, but the experts who gave evidence told us that these young people are also extremely dangerous. They said that rehabilitation is extremely important—of course that can take place in prisons—but that sentencing has other objectives, such as the protection of the public, including young people walking the streets who also deserve the protection of the law.

Alex Cunningham: The hon. Lady is entirely correct. We must, first and foremost, protect the public. We need to understand that we may never be able to rehabilitate some young people, and they may be a problem to society for the rest of their lives. However, there will also be young people in the system who have done some horrible, terrible and tragic things but who can be rehabilitated and recognise that they got it wrong. They should be given the opportunity to live their life to its full extent.

3 pm

When those young people are released from prison, they are pinioned into a box and told, "You are a terrorist". They might go into approved accommodation for a while, but they will have difficulty with housing, family relationships, forming new relationships and getting a job. We need to be able to rehabilitate young people to the point where they are employable, so that we can talk to organisations that are prepared to take on former criminals to give them a better chance in life.

I spent a large part of my career in the gas industry. I am a journalist by profession, so I am no lawyer. When I worked in the gas industry, an amazing scheme was operated by what was originally British Gas but had become the Lattice Group, which had the Transco organisation within its group. It had an amazing scheme and worked with Reading prison. It took offenders from the prison into the community—this was during their sentence—and trained them to do real jobs. When they left prison, the organisations were even providing employment for them, providing bridges and real rehabilitation, so I do not think that anybody, particularly young people, should be written off. We can reform and rehabilitate, but it is a choice for us to do so.

Instead, the sentencing framework for young adults is the same as that for other adults, in that beyond the age of 18 the same guidelines and principle apply irrespective of age. This might pander to some public opinion, rather than focus on what works and what is best for the individuals concerned and for the wider society. It is worth noting that the MOJ's own impact assessment of the Bill recognises that

"Longer periods in custody could disrupt family relationships"—

I talked about that earlier—

"which are often critical to reducing the risk of reoffending. This would be more severe for young offenders and children convicted of terrorist offences."

The way in which the Bill is currently framed throws the key away and lets them suffer in that particular way. The Government's assessment goes on:

"There will be a need to provide offender management in custody to adults for longer, which may require an adjustment to the resources required in custody."

I am sure we will come to resources later.

As a consequence of not focusing on what would work best for them with an appropriate pre-sentence report taken into consideration, young adults have to rely on the extent to which they can persuade a sentencer that their age and/or immaturity is a mitigating factor. Should we not recognise the fact that these are not often hardened adult offenders, but young, often immature adults who have made a mistake, albeit a very, very serious one? There is no doubt that serious offences must result in serious sentences, but surely not all young offenders should be written off by the state.

Chronological age has long been accepted as a mitigating factor in sentencing for both the very young and the very old. More recently, the concept of lack of maturity has been introduced into formal sentencing guidance as a mitigating factor. The most obvious way for the maturity of a person facing sentence to be assessed is by the person preparing a pre-sentence report for the court. Section 156 of the Criminal Justice Act 2003 gives courts the power, and indeed the obligation, to order a pre-sentence report prior to sentencing an offender to a custodial or community sentence.

Jonathan Hall, the Independent Reviewer of Terrorism Legislation, has said:

"The requirement of a minimum mandatory sentence for all adult offenders, however young, puts in doubt whether judges can properly reflect the fact that an adult of 18 years and one month

may not be any more mature than a child of 17 years and 11 months (for whom these sentences are not available). Age may or may not result in 'exceptional circumstances' being found, which is the only basis on which the 14-year minimum can be avoided."

It is also the case that a minimum term of 14 years will have a disproportionate impact on young adults, representing a much larger proportion of the total years lived by a young person than it would for an older adult. We on the Labour Benches want to recognise the differences between adults over the age of 21, those between 19 and 21, and those who are under 18, all at very different stages in their lives. The evidence points towards there being different approaches to deal with such offenders. Evidence on desistance shows that young adults are more susceptible to change and more capable of desistance from crime than older adults. The research that exists on deradicalisation programmes suggests that approaches focused on education and training can be effective with young people in particular.

I hope the Minister agrees that where we can save the future of a young offender and direct them towards a life free of crime, we should do that. But we cannot do that if we condemn them to remain in prison and then effectively on licence until they are past middle age. I do not kid myself—as I said in answer to the hon. Member for Hertford and Stortford earlier—that there may be some young people for whom such a sentence is necessary. This amendment does nothing at all to prevent a judge from imposing such a sentence. However, by requiring the pre-sentencing report to look at the specific items listed in the amendment and for the court to consider it before sentencing, we will provide the courts with the opportunity of recognising exceptional circumstances and acting in an appropriate and fair manner.

This is about a young person's future life. They may well have done the most horrible and tragic things, but even those people deserve an opportunity to prove that they can do better. This amendment would help to achieve that.

Ruth Cadbury (Brentford and Isleworth) (Lab): It is a pleasure to serve under your chairmanship, Mr McCabe. I rise in support of amendments 37, 45 and 46, standing in the name of my hon. Friend the Member for Stockton North. I want to cover some general principles in what is my first opportunity to speak in this Bill Committee. Like the Government, we are committed to keeping the public safe and we share the desire to ensure that attacks such as those at Fishmongers' Hall and in Streatham never happen again—attacks where convicted but released terrorists were able to kill and maim innocent people.

We recognise the importance of adequate and appropriate punishment in sentencing, but punishment and sentencing must go alongside rehabilitation. As my right hon. Friend the Member for Tottenham said on Second Reading:

> "We must not lose faith in the power of redemption—the ability of people to renounce the darkest chapters of their lives and move towards the light."—[*Official Report,* 9 June 2020; Vol. 677, c. 213.].

For that, those offenders need an effective deradicalisation programme tailored to their motivation and circumstances, and they need hope—hope that before too long they can rejoin their family; that they can get meaningful work. They could even steer others away from the path they took before. I point out that programmes have operated in prisons in Northern Ireland with convicted paramilitaries on both sides of the troubles. In the later years of the troubles, those men became beacons of peace and reconciliation, educating young people towards positive paths.

Some contributions on Second Reading sometimes felt like support for a policy that almost veered on "Lock 'em up and throw away the key". However, as many submissions and expert witnesses to this Committee have said, removing hope from these offenders and the opportunity to prove they are safe does not make the rest of us safer. I might add, even locking up people indefinitely, as the hon. Member for Hertford and Stortford said earlier, does not protect us anyway. It does not prevent them from radicalising others. It spawns martyrs, not to mention the cost to the public purse of incarcerating prisoners for ever longer periods. As we heard this morning from the Prison Officers Association, there is also the danger to prison officers of attacks from angry men who have no hope of release in the foreseeable future.

I fear that some aspects of the Bill are born from a reaction to the terrorist atrocities in the last seven months and have been brought in without due research into what might work to further reduce the risk of attack from radicalised individuals, whether they are of a Daesh/ISIS persuasion, from the far right or, as a number of terrorists in the UK still are, rogue Irish paramilitaries.

The Fishmongers' Hall and Streatham attacks were both committed by offenders who had been released automatically halfway through their sentence with no involvement of the Parole Board. Of course, with Labour support, the Government have now brought in the Terrorist Offenders (Restriction of Early Release) Act 2020, which ends the automatic early release of terrorist offenders and ensures that any release before the end of a sentence is dependent on a thorough risk assessment by the Parole Board. I am therefore not quite sure why the Government want to take the Parole Board out of sentencing now, without any adequate alternative provision being put in place.

Before I make some specific remarks, Dave, the father of Jack Merritt, who was killed in the Fishmongers' Hall attack, wrote poignantly about how his son would have perceived the political reaction to his death, because of course Jack Merritt worked in the criminal justice system on the rehabilitation of offenders. Dave wrote:

> "What Jack would want from this is for all of us to walk through the door he has booted down, in his black Doc Martens. That door opens up a world where we do not lock up and throw away the key. Where we do not give indeterminate sentences, or convict people on joint enterprise. Where we do not slash prison budgets, and where we focus on rehabilitation not revenge. Where we do not consistently undermine our public services, the lifeline of our nation. Jack believed in the inherent goodness of humanity, and felt a deep social responsibility to protect that."

As I said, I support the amendments in the name of my hon. Friend the Member for Stockton South—

Alex Cunningham: Stockton North!

Ruth Cadbury: My apologies.

Amendments 37, 45 and 46 relate to under-21s. I wish that they went a little older, possibly to 25, because they consider the issue of maturity. I declare a certain interest because for many years I was a trustee and, latterly, the

[Ruth Cadbury]

chair of the Barrow Cadbury Trust, which initiated and funded the Transition to Adulthood Alliance about 15 years ago. Over a number of years, the alliance worked with a number of non-governmental organisations, the Ministry of Justice, Ministers, Opposition Members and so on to the point where maturity has now been introduced into sentencing practice and several other areas of the criminal justice system. I fear that we are going to lose that in this Bill.

When considering maturity, it is really important that we work on the basis of all the research that my hon. Friend the Member for Stockton North mentioned and use that research to reduce the risk of serious harm to members of the public and to enhance the rehabilitation of the offender. The Committee has heard powerful evidence, particularly this morning, about the different motivations that people have for becoming terrorists or terrorist sympathisers, such as political, religious or psychiatric.

Sentences and rehabilitation must take account of the different motivations of different offenders. As we heard this morning, we probably also need to have tailored support, which needs to come into the pre-sentencing reports. One of the amendments says that the court must also take account of reports from local authority officers who have worked with the offender prior to the point of considering sentencing.

Alex Cunningham: I thank my hon. Friend for her comprehensive speech. She talks about resources and specialised facilities. The evidence we heard from some people in earlier sittings suggests that the system is not fit for purpose. Would she welcome from the Minister, as I would, a statement about how the Government will ensure proper provision for rehabilitation in our prison system?

3.15 pm

Ruth Cadbury: I absolutely agree with my hon. Friend. As others have said, it would have been better if there had been proper risk assessments of a number of aspects of the Bill, because many clauses do not seem to be evidence-based. We know that we have funding problems within the prison system. We know that we have, as we heard this morning, disjoints between various elements of the course through the system for offenders. There is an awful lot of work to do, and there are a number of respects in which I do not feel that the Bill is fit for purpose. It would have been better if it had been based on proper evidence of what works to reduce the threat to the public and improve rehabilitation.

Children have long been treated differently in sentencing considerations, and the amendments would enable particular considerations for young adults, particularly of their maturity. Mr Hall, the independent reviewer, was concerned that, unless these considerations are taken into account, we risk locking people up for too long, building bitterness and a refusal to engage in the prison system, and actually, on eventual release, potentially a greater risk. He considered that longer and more punitive sentences do not in themselves ensure that people are less dangerous on release, and that while extending sentences for serious offenders may, of course, keep them out of our harm's way for a temporary period, we do not want them to leave prison more dangerous than when they entered.

Early release provides prisoners with the incentive to behave and show that they are capable of reform. We heard powerful evidence that prison staff are at increased risk of harm where hope is lost. As my hon. Friend the Member for Stockton North said, many studies show that young terrorist offenders are much more likely to reform than older offenders, yet the Bill treats a young adult who has just turned 18 the same as an older offender. Are the Secretary of State and the Minister concerned that the Bill effectively gives up on those offenders?

We need to look at the evidence, not the tabloids. We need a flexible response that is offender-based, and it must be tailored. If we really want to enable rehabilitation and reduce the harm to the public, I hope that the Minister will consider the amendment.

Chris Philp: I will speak to the amendments relating to younger offenders. There are a couple of things to be clear about first of all. For the sake of absolute clarity, offenders who are under the age of 18 are not subject to the 14-year minimum prison sentence. Only offenders over the age of 18 are subject to those provisions. The amendments relate to offenders aged between 18 and 21, so we are discussing a very specific cohort.

I agree and concur with many points that the shadow Minister and the hon. Member for Brentford and Isleworth made about rehabilitation, and about the increased opportunity for rehabilitation for younger people. It is of course the case that younger people are more open to change—particularly as their brains mature—than older people, and it is right that we try to work with them to achieve that. I would not dispute that as a general principle, but clause 4 as drafted applies to an extremely small subsection of those offenders aged between 18 and 21. It by no means applies to the generality of offenders, including terrorist offenders, aged 18 to 21. It applies to that narrow subsection who have committed a serious terrorist offence, as we have discussed already, but it also requires a finding by the judge, following a pre-sentence report—something the shadow Minister referred to in his amendment and in his speech—of dangerousness. What a finding of dangerousness means in law is that there is a significant risk of the offender causing serious harm by committing further serious terrorism or other specified offences.

There are already two hurdles to jump: a serious terrorist offence, followed by a finding of dangerousness based on a pre-sentence report. However, there is also a third hurdle that must be jumped before a younger offender aged 18 to 21 would fall into the scope of this clause, which is that, at the time of committing the offence. they were aware, or should have been aware, that their offence was very likely to result in or contribute to multiple deaths. That is a well-established test dating back to section 1 of the Terrorism Act 2000. We are talking about an extremely small subsection of offenders aged 18 to 21 and a very small subsection even of terrorist offenders—those who meet all three of those criteria.

Alex Cunningham: I wonder whether it really is true that it is such a small cohort of offenders, because the Bill opens up the number of offences that can be considered severe enough for this sentence to be passed. There may currently be very few, but this new law

extends the offences quite considerably—in fact, in some ways, it leaves it quite open for people to determine that a terrorist offence or a terrorist connection is involved. Surely there is more opportunity now for people to be serving this sort of sentence.

Chris Philp: The provisions open it up for judges to make a finding of a terrorist connection, but the impact assessment for the Bill refers to a potential increase in the prison population of 50 people. Of course, that is for all ages over 18; if we consider how many of those estimated additional 50 places might be occupied by people aged between 18 and 21, one might reasonably assume that the number at any one time will certainly be less than 10 and possibly even less than five. That is an estimate, but none the less, it appears in the impact assessment.

Alex Cunningham: It might be helpful, as the Bill progresses, if the Minister could publish some of the facts and the evidence for the claim he has just made about the 50 people and the relatively small number of younger people.

Chris Philp: I think the number 50 appears in the impact assessment, and I would be happy to look into the basis for that estimate. As for the number of younger people, that was something that I spontaneously generated, based on the fact that we are talking about a three-year range from 18 to 21, whereas the number of offenders will generally cover all ages, from 18 upwards.

The point I am making is that, while I accept the generality of what the shadow Minister and the hon. Member for Brentford and Isleworth say about the need to have hope and to have an opportunity to rehabilitate, we are talking about a very small number of very serious offenders, who have been assessed as dangerous following a pre-sentence report and who have engaged in activity likely to cause multiple deaths. In those very serious circumstances, I think it is appropriate, and I think the public would also think it is appropriate, that we protect the public for an extended period, as this Bill does.

If we are talking about other offenders, including terrorist offenders who do not meet that level of seriousness—there are many—all the comments made about rehabilitation and the chance to reform do legitimately apply. Indeed, we heard in evidence earlier today that the proven reoffending rate on release for that sort of offender is between 5% and 10%, which is an extraordinarily low figure compared with other cohorts. That suggests that the rehabilitation work done in prison is effective, as I think our last witness this morning suggested.

It is important, given the assessment of dangerousness that is made, that the pre-sentence report fully reflects the offender's ability to change and the changes to the brain and so on that take place around the early 20s. That is a point that my hon. Friend the Member for Aylesbury, who is not with us this afternoon as he is attending the Justice Committee, has made to me. I will discuss with the Minister of State, Ministry of Justice, my hon. and learned Friend the Member for South East Cambridgeshire (Lucy Frazer)—I would not like to get my north, south, east and west muddled up—who is the prisons and probation Minister, whether there is any more we can do to make sure that these pre-sentence reports fully reflect the points that the shadow Minister and the hon. Member for Brentford and Isleworth have made about people's ability to change. Those points are relevant in the context of assessing dangerousness, because if someone is undergoing changes, they may be less dangerous than someone who is fixed in their ways. I will take up that point with my hon. and learned Friend.

Alex Cunningham: The Minister may well be considering whether he is prepared to take the risk with this small cohort of people. As my hon. Friend the Member for Brentford and Isleworth outlined earlier, these individuals, who could reach middle age before there is any prospect of the state being off their back, are susceptible to further radicalisation in prison and might radicalise others. Surely, therefore, there is an element of risk that needs to be considered so that we can try to balance things.

Chris Philp: The cohort that I have described are dangerous, have been found to be dangerous by a judge following a pre-sentence report and have tried to kill multiple people. With this very small number of very dangerous people, who are endangering the lives of our fellow citizens, it is appropriate to prevent them for an extended period of time—a minimum of 14 years—from attacking our fellow citizens in the future. It is a truly exceptional and small cohort.

Speaking of the word "exceptional", if there are circumstances in relation to these people that a judge thinks are truly exceptional—some extraordinary extenuating circumstances—and that, despite the fact that they have done the terrible things I have described and despite the finding of dangerousness, merit different treatment, the judge has open to them the possibility to make a finding that there is an exceptional circumstance and can derogate from the 14-year minimum. We would expect that to be extremely unusual—indeed, truly exceptional, as the word implies.

Given how dangerous and damaging this very small number of people are, and given our obligation to protect the public, this measure is couched appropriately. There is the ability to not make a finding of dangerousness, having read the pre-sentence report. There is also the ability for the judge to find that an exceptional circumstance applies. That provides more than adequate protection, bearing in mind how dangerous these people are.

As for other offenders, however, I take the point about the need to rehabilitate; rehabilitation is often successful, as we have seen from the figures. As I said, I will talk to my hon. and learned Friend the prisons and probation Minister to make sure that all the relevant information is collected in probation reports, which will help a judge when making a determination on the question of dangerousness.

I would like to briefly respond to a point made by the hon. Member for Brentford and Isleworth about indeterminate sentences and throwing away the key, as she put it. Of course, the coalition Government legislated—I think it was in 2012—to get rid of the former sentences of imprisonment for public protection, which had been introduced in the early 2000s, whereby people could be left in prison forever, despite not having been given a life sentence. Those sentences were replaced with extended

[Chris Philp]

determinate sentences, so the coalition Government, which of course was Conservative-led, legislated to remove, or significantly reduce, that problem of locking people up and throwing away the key, which the hon. Member referred to in her speech.

I hope that I have explained why this measure is appropriate, bearing in mind the small numbers and the extreme danger that these people represent, and I express my support for the Bill as it is currently drafted.

3.30 pm

Alex Cunningham: I am grateful to the Minister for his response. However, I am not convinced that we are talking about only a handful of people. The fact that this piece of legislation grows the number of offences that could potentially fall into this cohort suggests that many more people could be caught up in it in the longer term—some of them perhaps not quite such serious offenders as some of those the Minister has described this afternoon.

The Minister says he agrees that we should have an eye to rehabilitation and that we should work hard to achieve rehabilitation. However, if I am right and he is wrong, and we do have dozens or perhaps even more young people falling into this category because of the way the Bill is drafted, there surely need to be some protections there and some opportunity for a pre-sentence report to explore specific issues around age and maturity before reporting to a judge who will make the ultimate decision.

On the basis that this measure could affect many more people than the Minister suggests, and that some of them might not be the most serious offenders, I wish to press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 8.

Division No. 1]

AYES

Cadbury, Ruth	MacAskill, Kenny
Charalambous, Bambos	McGinn, Conor
Cunningham, Alex	Owatemi, Taiwo

NOES

Bacon, Gareth	Marson, Julie
Courts, Robert	Philp, Chris
Dines, Miss Sarah	Pursglove, Tom
Everitt, Ben	Trott, Laura

Question accordingly negatived.

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

Chris Philp: In my response to the amendment, I described the effect of the clause and the tests to be applied. If those tests are met, the minimum sentence of 14 years will be imposed, followed by a licence period of not less than seven years and not greater than 25. I beg to move that the clause stand part of the Bill.

Question put and agreed to.

Clause 4 accordingly ordered to stand part of the Bill.

Clause 5

SERIOUS TERRORISM SENTENCE FOR ADULTS AGED 21 OR OVER: ENGLAND AND WALES

Alex Cunningham: I beg to move amendment 38, in clause 5, page 7, line 35, after "25 years.", insert—

"(5) Where—

(a) a prisoner is subject to a licence for an extension period under this section, and

(b) the qualifying period has expired,

the Secretary of State shall, if directed to do so by the National Probation Service, order that the licence is to cease to have effect.

(6) Where—

(a) the prisoner has been released on licence for an extension period under this section;

(b) the qualifying period has expired; and

(c) if the prisoner has made a previous application under this subsection, a period of at least twelve months has expired since the disposal of that application,

the prisoner may make an application to the National Probation Service under this subsection.

(7) Where an application is made under subsection (6) above, the National Probation Service—

(a) shall, if it is satisfied that it is no longer necessary for the protection of the public that the licence should remain in force, direct the Secretary of State to make an order that the licence is to cease to have effect;

(b) shall otherwise dismiss the application.

(8) In this section, 'the qualifying period', in relation to a prisoner who has been released on licence, means the period of ten years beginning with the date of his release."

The main area of concern that has led to the amendment relates to the maximum 25 years on licence specified by the Bill. We of course accept that we cannot have a cliff-edge situation whereby someone leaves prison without any further monitoring, particularly offenders in this cohort. There must be a licence period once the offender leaves prison. The issue is whether a licence period of up to 25 years is reasonable and whether it is a proportionate way of addressing the problem. There is also the concern over the lack of any review mechanism.

A licence for 25 years is equivalent to a licence for life. As well as severely curtailing the human rights of the offender after they have already completed their full custodial sentence, a licence for life also fundamentally constrains their ability to play an active part in society. For example, it would be a constant barrier to employment and—who knows?—perhaps new relationships. We would essentially be telling people that there is no point in them rehabilitating or contributing to society, because they will always be under suspicion—always under the careful watch and restriction of the state. A life on licence reduces individuals' capability to reform and take positive action. It can have a detrimental impact on the joys of life that can keep an individual on the straight and narrow.

There is also the issue of the administrative burden on an already overworked National Probation Service, which has a financial cost, and which requires additional trained probation officers to deal with those released on licence. I would be interested to know where the idea for a term of 25 years on licence comes from. Is the Government's intention simply that anyone convicted and sentenced to a determinate sentence of 14 years,

with 25 years on licence, should have a life sentence, with the state constantly on their case and without any prospect of being released from it? If so, the Minister should say so. Can he confirm that there is logic in the period that he has decided on? Has he looked at the costs and at whether 20-year licenses, which would naturally be less expensive for the state, might be just as effective?

As I have said, the main area of concern that these amendments address is the maximum 25 years on licence specified by the Bill, which is effectively a licence for life under an indeterminate sentence for public protection. However, unlike the licence for life, the Bill does not allow for the licence to be terminated in certain circumstances. That creates an issue of unfairness, as well as a huge administrative burden, at a cost to the public purse.

I agree with the Independent Reviewer of Terrorism Legislation, Jonathan Hall, who said:

"determining whether a 7-year, 15-year or 25-year licence is appropriate at the point of sentencing for dangerous individuals who have committed the most serious offences may be asking courts to engage in guesswork."

I personally would not feel confident in making such a decision. Would the Minister?

As I said earlier, there is a concern about existing case law and guidance available for sentencers on identifying terrorism connections when sentencing. We cannot expect sentencers to feel truly comfortable and informed if the frame of what licence they can impose is so broad. It is worth reiterating that a 25-year licence period is not so different from a licence for life. However, whereas licences for life imposed on imprisonment for public protection prisoners could be terminated in appropriate cases, that does not apply to serious terrorism sentences. It feels like the principle of rehabilitation is again being somewhat missed.

I spoke earlier this afternoon about young people. Is it the Minister's intention that they are effectively to remain on licence until within a few years of the state retirement age? A 14-year term for a 20-year-old means that they will be 59 before they are free of the licence. Will the Minister clarify the merits of 25-year licensing and address young people in particular?

I am a strong believer in people doing their time for violent offences, but with a strong focus on rehabilitation. Our amendment would give them some hope that their good behaviour has paid off after time. Perhaps we need to give people sight of a future where they would live their lives in a very different way—an honest and crime-free way. What, if anything, can the Minister offer those people—particularly younger ones?

Chris Philp: The shadow Minister posed a question: why a maximum of 25 years? Therein lies the answer.

Alex Cunningham: Maybe I misunderstood, but I thought the 25 years was mandatory.

Chris Philp: No, it is a maximum. The licence period is between seven and 25 years; within that, the judge has discretion to choose the most appropriate length of time. The point that I was about to make is that it is up to judicial discretion to decide the appropriate length of time. We ask the judge to make that determination, as we do when setting any licence condition. That is the way the licence system works at the moment. The judge sets the licence period at the point of sentence.

The shadow Minister, quoting the independent reviewer, asked, "How can the judge know in advance what a suitable length of time may be, looking potentially as far as 25 years into the future?" The answer to that question is that although the licence period cannot and in my view should not be varied by the Probation Service acting administratively—that is for the judge to decide—the Probation Service can, and frequently does, vary the terms of the licence conditions; as an offender behaves better over time and matures, or as their radical or criminal behaviour more generally changes as they get older, the licensing conditions can be and are relaxed. The Probation Service does that as a matter of routine, and I would expect and hope for that to happen as time passes.

Were we to give the Probation Service the ability to change the length of licence period, it would be overriding a judicial decision, which is wrong in principle and would possibly infringe article 6 of the European convention on human rights, which says that the Government should not be allowed to interfere with or alter a sentence handed down by the court.

The shadow Minister mentioned the arrangements for terminating licence conditions for indeterminate sentences—that is, the old imprisonment for public protection I referred to previously. As the name implies, those IPPs are indeterminate and indefinite. A judge has not imposed a time limit, so they could go on for the duration of somebody's life. Some termination mechanism is needed.

Where a judge has made a decision—and it is up to the judge to choose, at their discretion, somewhere between seven and 25 years—it is right that licence condition is applied for that length of time. However, to reassure the Committee and the shadow Minister, I should say that the Probation Service can, as appropriate, relax and change those licence conditions as time passes. That is the right way of handling the issue.

Alex Cunningham: I accept the Minister's explanation and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Chris Philp: We have covered many of the operative provisions. They are rather similar to the ones we debated in clause 4, in relation to people under the age of 21.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

Clause 6

Serious terrorism sentence: Scotland

Kenny MacAskill (East Lothian) (SNP): I beg to move amendment 43, in clause 6, page 8, line 10, at end insert—

"(ea) the court does not impose an order for lifelong restriction under section 210F of the Criminal Procedure (Scotland) Act 1995, and".

This amendment disapplies Clause 6 if an order for lifelong restriction, a sentence unique to Scotland, has been imposed.

[Kenny MacAskill]

It is a pleasure to serve under your chairmanship, Mr McCabe. Before I move to the specifics of amendment 43, I will say by way of preface where my party and I are coming from. As the Minister is aware, we recognise that it is the duty of not just a Government to keep their citizens safe and secure; it is the obligation of all who serve in Parliament. At the outset, we have given the Government our assurance that any opposition will attempt to be as constructive as possible, to ensure that the challenge of terrorism that we now see, sadly, all too regularly in our communities, is addressed and that we keep our people as safe as they can be.

Some issues concern us. The burden of proof has been mentioned in terms of TPIMs. The balance of the burden of proof has been an issue for over 40 years, since my involvement in the law—and, in a way, since the legal profession and legal systems came about. We recognise that there is good reason why there has to be some distinction when it comes to terrorism and that standards that might normally apply in a wider criminal trial cannot be expected, especially with regard to TPIMs. However, there still has to be an element of proportionality, and we have to ensure that we protect the rights of those who face considerable periods of loss of liberty. That is why we have concerns and are watching the situation.

Sadly, the issue disproportionately impacts BAME communities; we are conscious of that. It is clear that we are required not only to protect our people from terrorism—and, indeed, to punish those who perpetrate it—but to prevent it from happening in the first instance. If we have a system that is perceived, whether it in fact is or not, as prejudicial and impacting harshly, even sometimes deliberately, on one community, issues arise. Those of us old enough to remember the consequences of internment in Northern Ireland will realise that a community's feeling of being discriminated against can be a recruiting sergeant rather than the method of preventing such recruitment.

3.45 pm

We are anxious that Prevent should be on board, and that we should balance and take into account the injustice that BAME communities suffer abroad. It is also perhaps appropriate for us to remember that, whatever terrorist atrocities we face in this country—there are far too many—they are as nothing to what those communities who a minority in our country would abuse and put the blame of terrorism upon suffer on a daily basis. We are required to remember that many communities who are blamed for terrorism are also the victims of it on a far greater basis than us.

That brings us to the specific question of amendment 43. I realise that there is a difference and a distinction in Scots law. Although terrorism is reserved, which we accept until such time as that changes, the management of the Scottish Prison Service and the Scottish legal system are devolved, and there are matters where the two come together.

Obviously, a mandatory sentence may impact on a sentence of an order for lifelong restriction. An order for lifelong restriction has not been in Scotland forever and a day—indeed, it had only just come in when I became Justice Secretary back in 2007. The number of orders of lifelong restriction is actually very small, because they are meant to be used rarely. Those who originally brought in the concept, to be fair to them—this is not a criticism—had not considered that it would apply to terrorism. It was meant to apply to serious sex offenders and those who perpetrate violence, who we know are a risk and will continue to be a risk, perhaps throughout their lives. That cohort to which the Minister referred is even smaller in Scotland, with our Barnett share, as it were. They are capable of being counted on one or two hands at most.

However, the benefit of an order for lifelong restriction is that it allows for what was raised by Mr Fairhurst, our witness today: that opportunity for redemption for those perceived to be genuinely undertaking rehabilitation schemes, so that they can be released early, albeit under licence. Alternatively, the court may decide to impose an order for lifelong restriction throughout the entire lifetime of someone who has served their full determinate sentence. That is also appropriate—there is no obligation for such a person to be released, unless the court is satisfied that they are no longer a risk.

I tend to trust the judgment of the Parole Board and the Risk Management Authority in Scotland. I have not been Justice Secretary for more than six years now, but I recall two particular cases; I take into account comments made earlier about people being capable of redemption. Two of the highest-profile offenders in Scotland—I will not name them—were released by the Parole Board, and it is fair to say that, despite the heinous nature of the crimes they perpetrated, they have not since come to its attention.

Risks can be taken, people can reform and rehabilitation can be successful. I accept that the crimes of the individuals I am talking about were not related to terrorism, but those individuals show that rehabilitation can take place. That is why I think that the order for lifelong restriction is a better opportunity for the Scottish courts to consider. They may not wish to. We are not seeking to ensure that such an order should be mandatory or to take away the mandatory sentence that the legislation would put in; we want the Scottish courts to have the opportunity to use an order for lifelong restriction if they think that might be a better sentence than what the Bill would impose.

I ask the Minister to reflect on that. The issue has probably come about because those drafting the Bill were not cognisant of the Scottish legal system or the sentencing policies in Scotland. If the order for lifelong restriction, which we think gives advantages to a court and those who monitor, were brought on board and made available as an opportunity, we, as the party of government in Scotland, and those in the judiciary and the prison and legal services in Scotland, would view that as appropriate for our particular circumstances.

Chris Philp: I thank the hon. Member for East Lothian for his constructive comments at the beginning of his speech. As the shadow Minister said, in many respects the work on the Bill demonstrates Parliament and public life at its best, as we work together to protect our fellow citizens throughout the whole United Kingdom. Protecting our fellow citizens from violent attack is, thankfully, a principle on which we all agree, regardless of our differences on various other topics that often come before us. I am grateful for the constructive approach of the hon. Member

for East Lothian, accepting, of course, that he wishes to discuss further points in due course, a few of which he mentioned.

There is clearly a question about how this legislation interacts with the order for lifelong restriction, which is applicable in Scotland. Indeed, the sentence that a Scottish court might hand down in the absence of this legislation could conceivably be longer—lifelong, as the name implies—than the period required by this legislation. The Government essentially accept the principle that there is an interaction that requires further work, and—let me be clear—further amendment.

On the detail of how the interaction will work best, discussions are ongoing between Ministry of Justice officials and officials in the Justice Directorate in Scotland about the technicalities. For example, although the clause as it is drafted would make it possible for an OLR to be imposed and, therefore, a lifelong restriction to be in place, we would lose the 14-year minimum sentence. What we would like to try to achieve technically is an amendment that preserves the concept of the 14-year minimum, but allows the lifelong restrictions to apply thereafter if a Scottish judge sees fit.

Those technical discussions are taking place. If the hon. Member for East Lothian or his colleague, the hon. and learned Member for Edinburgh South West, wish to participate in those technical discussions, they are welcome to do so.

The fact that we would lose the 14-year minimum is problematic, but I accept the principle that an amendment is needed. If we can put such an amendment together quickly enough, we will be happy to bring it forward, in consultation with the hon. Gentleman, on Report. If we cannot get it ready fast enough for that, perhaps their lordships will be kind enough to consider making an appropriate amendment down at their end of the building.

I hope that my comments illustrate that I recognise the validity and the reasonableness of the point being raised. I hope that we can find a way to amend the Bill to preserve the 14-year minimum but not take away any ability that Scottish judges currently have to impose longer restrictions, should they see fit.

Kenny MacAskill: I am happy to accept that parliamentary drafting has its complexities; it is a skill way beyond my level of competence, but I appreciate the difficulties that go with it. I am happy to accept the undertaking given by the Minister, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Chris Philp: Clause 6 has the same operative effect as clause 5 has in relation to England and Wales.

Question put and agreed to.

Clause 6 accordingly ordered to stand part of the Bill.

Schedule 4 agreed to.

Clause 7

Serious terrorism sentence: Northern Ireland

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

The Chair: With this it will be convenient to discuss Government amendment 31.

Chris Philp: Clause 7 and associated Government amendment 31 essentially do all the things we have just debated in relation to England, Wales and Scotland, but apply to Northern Ireland. The Government amendment is to ensure that we interact with Northern Irish sentencing law in a consistent way. It is rather the same issue that we debated a moment ago in relation to Scotland, where similar thinking clearly needs to be developed a little further. Government amendment 31 makes, I think, five technical changes to ensure that the measures that we have already debated apply consistently and coherently in Northern Ireland.

Question put and agreed to.

Clause 7 accordingly ordered to stand part of the Bill.

Clause 8

Reduction in appropriate custodial term for guilty pleas: England and Wales

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

Chris Philp: Clause 8 relates to a reduction to the minimum custodial term for a serious terrorist sentence where the offender makes a guilty plea at the earliest opportunity. Ordinarily, when such a guilty plea is entered for most offences—not quite all, but most—a discount of up to 33% of the sentence is possible. However, reflecting the very serious nature of the offences we are debating, the clause limits the discount for an early guilty plea to 20% of the custodial term. By way of illustration, if a 14-year minimum were imposed—it could be more, of course—the reduction could be to 11 years and 73 days, but no less. Practically, that is implemented by inserting a new subsection into section 73 of the sentencing code.

Question put and agreed to.

Clause 8 accordingly ordered to stand part of the Bill.

Clause 9

Reduction in appropriate custodial term for guilty pleas: Scotland

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

Chris Philp: Clause 9 has the same effect as the one we have just discussed, but in relation to Scotland.

Question put and agreed to.

Clause 9 accordingly ordered to stand part of the Bill.

Clause 10

Reduction in appropriate custodial term for assistance to prosecution: England and Wales

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

Chris Philp: Clause 10 provides for the court to apply a reduction to the custodial term for a serious terrorist sentence in England and Wales from the 14-year minimum in cases where the offender assists the prosecution. It does so by inserting a new subsection into section 74 of the sentencing code. The subsection notes that nothing in the STS sentencing provisions affects the court's ability or power to take into account the extent and nature of any assistance given to the prosecution.

In keeping with the approach to all other sentences, including other minimum sentences and mandatory life sentences, there is no maximum reduction rate in relation to the flexibility that I have just described. While we are determined to ensure that serious terrorists receive the appropriate penalties for their offending, it is also important to ensure that an incentive remains for guilty offenders to assist the prosecution with other cases it may be pursuing.

This is a well-established process within the sentencing procedure across the whole United Kingdom. It can, and indeed often does, play a pivotal role in helping our prosecutors and the police to secure guilty verdicts in other, often more significant, related cases where the defendants may be a higher risk to the public than those in the case under direct consideration. We think it appropriate to continue that judicial discretion in cases where defendants assist the prosecution and where that assistance may help to convict other, even more dangerous people.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —(*Tom Pursglove.*)

4.1 pm

Adjourned till Thursday 2 July at half-past Eleven o'clock.

Written evidence reported to the House

CTSB06 Muslim Engagement and Development (MEND)

CTSB07 Amnesty International UK

CTSB08 Sharee Watson

CTSB09 Law Society of Scotland (suggested amendments)