# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# COUNTER-TERRORISM AND SENTENCING BILL

*Seventh Sitting*

*Tuesday 7 July 2020*

*(Morning)*

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**not later than**

**Saturday 11 July 2020**

**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 the Home Department)*
† Pursglove, Tom *(Corby)* (Con)
Trott, Laura *(Sevenoaks)* (Con)

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

**† attended the Committee**

# Public Bill Committee

*Tuesday 7 July 2020*

*(Morning)*

[Mr Laurence Robertson *in the Chair*]

## Counter-Terrorism and Sentencing Bill

9.25 am

**The Chair:** Before we begin, I repeat the usual reminders about switching electronic devices to silent mode, tea and coffee not being allowed, and the importance of social distancing. Also, *Hansard* Reporters would be grateful if hon. Members sent any electronic copies of their speaking notes to hansardnotes@parliament.uk.

### Clause 37

TPIMs: condition as to involvement in terrorism-related activity

**Conor McGinn** (St Helens North) (Lab): I beg to move amendment 69, in clause 37, page 34, line 25, leave out

"has reasonable grounds for suspecting".

and insert

", on the basis of reasonable and probable grounds, believes".

*This amendment would raise the standard of proof for imposing a TPIM under the proposals in the Bill.*

**The Chair:** With this it will be convenient to discuss amendment 58, in clause 37, page 34, line 26, leave out "suspecting" and insert "believing".

*This amendment would create a higher bar for the standard of proof under these proposals.*

**Conor McGinn:** It is a pleasure to serve under your chairmanship, Mr Robertson. I am more used to serving alongside you in the all-party parliamentary group on racing and bloodstock, which you chair. I am speaking for the first time as a shadow Minister in Committee, and it gives me great pleasure that you are in the Chair.

We have said throughout proceedings on the Bill that, for all of us, our first and most important responsibility is to keep the British public safe. The Opposition believe that very firmly and we have approached the Bill in that spirit. We have to be forceful and robust in the fight against terrorism and do everything possible to keep our country safe from those who seek to attack our way of life and values or to do us harm. We have said that we will be a constructive Opposition on these matters, not seeking to divide or oppose for the sake of it, but using parliamentary scrutiny to do what this place does best and performing our important duty to seek to strengthen and improve legislation where it is right to do so. That is the spirit in which the amendments in my name to this clause and others are tabled.

The events at Fishmongers' Hall and Streatham showed that there is a need for this legislation and for examination of measures such as terrorism prevention and investigation measures, which we will discuss this morning. That the perpetrators in each case had been automatically released halfway through their sentences, with no mechanism in place to protect the public, showed that there were major holes in the legislative framework that needed to be filled, first by emergency legislation earlier this year to prevent the imminent release of offenders without appropriate assessments—legislation that we supported—and now, rightly, by this wider Bill before us.

As we discuss the aspects of the Bill that fall under the remit of the Home Office, I want to say that we support the broad principles therein, but as we highlighted on Second Reading and as has been clear in some of the expert advice and evidence received by the Committee, there remain a number of issues of concern that we wish to probe and amend during the passage of the Bill, first to ensure that it does not fall short and secondly, in the spirit of co-operation, to work with the Government to improve it. It is in that spirit that I will discuss the amendments.

The Government are seeking to alter the standard of proof required to impose a TPIM such that the Secretary of State would need to believe it necessary based only on reasonable suspicion rather than the balance of probabilities. In probing further, we have tried to find a middle way, which is "reasonable and probable grounds". We do not wish to harm the robust nature or operational utility of TPIMs. The Opposition support TPIMS and want them to be as effective as possible to keep people safe, so we welcome in principle any measures that demonstrably would help our police and security services to achieve that.

We acknowledge that the Bill puts Labour Members in a rather strange position when it comes to TPIMs, because of course it was a Labour Government who, on introducing control orders in 2005, imposed a standard of proof as proposed in this Bill, requiring only reasonable grounds for suspecting that an individual was involved in terrorism-related activity. The standard of proof was raised by the coalition Government in 2011 with the creation of the new regime, and then again by the Conservative Government in 2015. I accept and acknowledge that, and I wanted to say it in Committee. However, having heard the evidence and the Minister's explanations, we struggle to see the logic in lowering the standard of proof now, whether it is looked at from an operational, administrative or procedural perspective. We need to be clear that policy is made based on evidence and not on amending legislation for its own sake, particularly on such an important matter. We need to see the justification, which has been lacking to date.

In November 2019, just five TPIMs were in force. The police and Security Service have been clear that to date no TPIM request has been rejected on the grounds of insufficient evidence, so one could argue that the current threshold has not proved to be an impediment, even though the security landscape has evolved in recent years, with new risk profiles and challenges coming to the fore. At the same time the Government and law enforcement agencies say that they do not wish to see, nor do they foresee, a sudden spike in the number of TPIMs in operation. They are of course valuable mechanisms, but they are also very costly.

Jonathan Hall, the Independent Reviewer of Terrorism Legislation, told the Committee:

"My concern is that you are opening up a greater margin of error if the standard of proof is lowered."

That risk ought to be addressed by the Government. We have not yet heard a compelling operational or administrative case made for lowering the standard of proof. I have not heard one from the Minister or his colleagues, or from any of the Committee's witnesses, so why are the Government so intent on pressing ahead with this change? Again, in the words of Jonathan Hall,

"If it is right that the current standard of proof is usable and fair, and I think it is, in a word, if it ain't broke, why fix it?" ."—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; c. 6, Q6.]

Taken in isolation, that is a serious enough question, but when paired with the proposed changes in clause 38 on the prospective length of TPIMs, it becomes significantly more urgent.

There are concerns about the fundamental contradiction at the heart of part 2. Liberty wrote that jettisoning the limited safeguards that currently exist while ramping up the severity of the measures that can be imposed would be "a retrograde step." The Minister needs to respond to those concerns. The Opposition are not alone in being slightly confused by the Government's approach, particularly to lowering the standard of proof. Amnesty International stated:

"That lack of reasoned argument as to the need for this change mirrors the lack of appropriate evidence or justification presented…at second reading."

The Bar Council said it was not clear why the reduction in the standard of proof was said to be necessary, and the Law Society of Scotland said:

"Little evidence or justification has been provided for making the change."

Perhaps the Minister will provide clarification for the Committee, as so far the arguments put forth by the Government have not quite assuaged those reasonable concerns, which are grounded in evidence.

**Rob Butler** (Aylesbury) (Con): Does the hon. Gentleman accept that, in the evidence session, the assistant chief constable highlighted three scenarios where the Security Service believed that lowering the standard of proof would be of use? One scenario was where an individual's risk profile was rapidly increasing and they were moving towards posing an actual threat, with an attack plan in place, but there was not enough time to get to the stage of proof; the second was where somebody was returning from abroad, and the third related to sensitive material. The assistant chief constable said that all those scenarios created a need, as MI5 would see it, to lower the standard of proof. Does the hon. Gentleman accept that?

**Conor McGinn:** I accept what the hon. Gentleman says and the evidence given by the assistant chief constable. However, the assistant chief constable acknowledged that all of those circumstances currently exist, and that there has been no case where an application for a TPIM has not been granted. I think he was saying that shifting from the balance of probabilities to reasonable suspicion would inevitably make it easier, but he had not experienced, nor did he envisage, any circumstances where that practically had happened or would happen.

As I said at the outset, we come to this wanting to assist and support the Government, but we need to hear a little more justification for this measure in terms of its effectiveness and the reason for it. We will not seek to divide the Committee on the amendment. I tabled it to raise our concerns and those of groups in society, to give the Minister the opportunity to address some of those concerns, and to explain why we not only in principle but now clearly in practice support much of what the Government are trying to do.

**Joanna Cherry** (Edinburgh South West) (SNP): It is a pleasure to serve under your chairmanship, Mr Robertson, and to follow the hon. Member for St Helens North. Before I speak to the specifics of amendment 58, which I do not intend to press to a vote—it is very much a probing amendment—I will reiterate the position of the Scottish National party on the Bill.

We recognise that it is the duty of any Government to keep their citizens safe and secure, and all who serve in Parliament have an obligation to assist in that endeavour. We have already given the Government our assurance that we will attempt to be as constructive as possible, to ensure that the challenge of terrorism is met and that we keep people in all communities across these islands as safe as is reasonably possible. However, we are also mindful of our duties as parliamentarians to uphold the highest standards of human rights protections.

**The Parliamentary Under-Secretary of State for the Home Department (Chris Philp):** I thank the hon. and learned Lady for her constructive tone. Before she gets into the detail, will she tell us whether the Government in Holyrood will grant a legislative consent motion for the Bill?

**Joanna Cherry:** As the Minister knows, discussions about that are ongoing. He may take it that the constructive approach that I am indicating on behalf of the Scottish National party applies across the board, including the party in government in Scotland. He is aware from our discussions that there are certain concerns the impact of aspects of the Bill on devolved matters. They were addressed last week by my hon. Friend the Member for East Lothian in respect of the order for life-long restriction and the question of polygraph testing. We wish to be constructive on those matters, and that will be the approach of my colleagues at Holyrood.

Today I am focusing on TPIMs, which are a reserved matter. It is fair to say that my colleagues in Holyrood and Humza Yousaf, Scotland's Justice Minister, have expressed some of the concerns that I am about to elaborate on. Like the hon. Member for St Helens North, my essential concern is that we have not yet seen the case for change—the case for lowering the standard of proof. We do not believe the Government have made that case, and in so saying we are in good company.

Our amendment 58, like the official Opposition's amendment 69, seeks to raise the standard of proof, albeit it using a slightly different formulation. It is a probing amendment, but in truth, we believe that the standard of proof should stay as it is, because we do not think a case has been made out to change it. We also believe that that is where the balance of the expert evidence that this Committee has heard lies.

It is important to remember that, as has been alluded to, the changes in the Bill align the TPIMs regime more closely with its predecessor, the control orders regime. It

*[Joanna Cherry]*

is also important to remember that the concerns about control orders were widely shared across the House by Members from all parties. Those concerns are legitimate, because TPIMs restrict some of our most fundamental freedoms, such as freedom of expression, freedom of association, and freedom to have a private and family life. All these fundamental freedoms are restricted when somebody is sent to prison and convicted, but with a TPIM the person involved does not need to have been convicted of any crime for those freedoms to be restricted.

A TPIM is really just a step away from imprisonment, and depending on the package of restrictions, it can amount to a deprivation of liberty for the purposes of article 5 of the European convention on human rights, which for the time being at least is still a part of our domestic law. As none of the exceptions to the right to liberty in article 5 is applicable to the TPIMs regime, if the package of restrictions around a TPIMs regime amount to a deprivation of liberty, article 5 of the ECHR is breached. It is vital, therefore, that the TPIMs regime remains subject to the strictest of safeguards.

The current safeguard whereby a TPIM can only be imposed on the balance of probabilities is something that the Government are seeking to reduce considerably. We are concerned that the low threshold is disproportionate, and we do not think the Government have made out the case for lowering the threshold. It may well be that lowering the threshold would ease the administrative burden on the Government in terms of the evidence that is required for an application for a TPIM to be granted, but easing administrative burdens is not a sufficient reason to lower the standard of proof so drastically.

As I said, I will not push amendment 58 to a vote today, but if the Government continue to fail to deliver any compelling justification for their action, I anticipate that when the Bill returns to the Floor of the House, similar amendments will be tabled and there may even be a vote on whether this change should be made. The concerns that I am expressing are widely held. The hon. Member for St Helens North has told us that they are shared by the official Opposition and by the respected bodies that he listed. I know that some Conservative Back Benchers also share these concerns. Indeed, the Joint Committee on Human Rights, of which I am a member, is anxious, regarding this change as a lowering of the safeguards in relation to TPIMs. I am indebted to that Joint Committee for assisting me in my understanding of these issues.

Perhaps the most significant evidence this Committee has heard was from the current Independent Reviewer of Terrorism Legislation, Jonathan Hall QC. He has said that

"there is reason to doubt whether there exists an operational case for changing the TPIM regime at this point in time."

I would submit that, notwithstanding the intervention on the hon. Member for St Helens North, we have heard nothing in evidence that has convinced Mr Hall QC otherwise. I asked him whether the Government had given him a business case or a justification for lowering standards of proof. He replied:

"I have obviously had discussions, but I have not been able to identify a cogent business case." —[*Official Report, Counter-terrorism and Sentencing Public Bill Committee,* 25 June 2020; c. 15, Q31.]

That is what is missing here.

The lack of cogency or reasoned argument for the need for change mirrors the lack of appropriate evidence or justification that was presented to the House on Second Reading. If we look at the impact assessment, we see that certain questions are posed, such as:

"What is the problem under consideration? Why is government intervention necessary?"

However, the answers given to such questions relate solely to convicted offenders, with only a later reference to the policy objective to "better protect the public" and a link to the issue of

"individuals of terrorism concern outside of custody."

Then, there is a vague explanation that the Bill will allow for more effective intervention when that is required. On the changes to TPIMs, the impact assessment says that they

"will enhance the ability of operational partners, such as counterterrorism policing, to manage the risk posed by individuals subject to TPIMs."

It says that the change to the standard of proof will simply

"help ensure that operational partners are better able to impose TPIM notices on individuals where there is a requirement to protect national security."

No further justification is given.

9.45 am

If the three examples that were mentioned in the intervention on the hon. Member for St Helens North are central to the Government's business case, let us see a business case to that effect, with a bit more flesh on the bones and a bit more explanation, because, as he said, it seems that all three of those concerns can be dealt with under the current regime. I acknowledge that there are particular demands in our current national security climate. No one can gainsay the terrible suffering and horror caused by incidents such as the one at Fishmongers' Hall. However, it is notable that back in the days when we were discussing what became the Counter-Terrorism and Border Security Act 2019, in the aftermath of equally dreadful attacks in 2017, no such proposals were made to change the standard of proof. That is the point that Mr Hall makes in his recent notes.

It is not just Jonathan Hall who holds that view. His predecessors, including Lord Carlile, also supported a higher threshold. However, the current Independent Reviewer of Terrorism Legislation has said that

"it is not clear why there is any need to change the law in the manner proposed"

and added that

"where harsher measures are to be imposed, safeguards should be encouraged, not jettisoned. Moreover in these cases the current standard of proof does not make TPIMs impractical".

He said that

"even administrative convenience does not appear to provide a basis for reversing the safeguard of a higher standard of proof."

If there were a cogent business case, we might have expected to hear it on Second Reading, but we did not. Even with questioning from the hon. Member for Bromley and Chislehurst (Sir Robert Neill), the Chair of the Justice Committee, we did not hear a cogent business case. Rather, we heard references to agility, which comes under the heading of administrative convenience. That is not an adequate justification for the removal of such

a critical safeguard, particularly when, under clause 38, the measures to be imposed could be indefinite. When Jonathan Hall gave evidence in the first sitting of the Committee I asked him whether the Government had been able to give him an example of a case in which the protection of the public that a TPIM affords had been hampered by the existing standard of proof. He said no, the Government had not been able to give him the example of such a case. He said his understanding was that a lower standard of proof was just something that the Government wanted in their toolbox for the future, and they could not say when they would need to use that tool—just that it would be nice to have it.

Well, that is not good enough, and until a proper cogent business case is presented, either to the Committee or the whole House, I do not think that the evidence we have heard so far justifies that significant change—particularly in view of the evidence from the current Independent Reviewer of Terrorism Legislation, as well as the views of his predecessors Lord Carlile and David Anderson QC, as he then was. They supported the current standard of proof.

**Rob Butler:** The hon. and learned Lady seems to be arguing for not reducing the burden of proof at all, but the amendment in her name suggests changing "suspecting" to "believing". "Believing" would still be a reduction from the current standard of proof, so does she accept that there is potentially a halfway house, or is she arguing for no reduction at all?

**Joanna Cherry:** My primary position is that there should be no reduction at all. That is why I have gone to some lengths to set out the lack of a cogent business case for any reduction. The purpose of the amendment is very much like that of the amendment from the hon. Member for St Helens North: to suggest a halfway house and to probe whether the Government can come up with the business case. I will not push the amendment to a vote.

I end by reiterating what the hon. Member for St Helens North said, which is that it does not seem to be the case that the current standard of proof has been an impediment to the security services. We have had no evidence that it has prevented the security services from seeking a TPIM where they considered it necessary and appropriate to do so. To use the words of Jonathan Hall, until we have that sort of cogent business case, I do not think the Government have made their case for reducing the standard of proof.

I will not press my amendment at this stage, but I expect to see similar amendments when the Bill returns to the Floor of the House. Without such amendments, I would suspect that clause 37 would face a challenge on the Floor of the House.

**Julie Marson** (Hertford and Stortford) (Con): It is a pleasure to serve under your chairmanship again, Mr Robertson. I have listened very carefully to hon. Members. I appreciate the comments, concerns and the constructive way in which they have made their arguments. I support the Government, and I support the principle of TPIMs and of using every tool that we have in our armoury to protect the public, which I know is a concern for hon. Members.

I would like to try to put this into context, which is important, today of all days. Today is 7 July—7/7—and the 15th anniversary of one of the worst attacks that this country and this city have ever faced. It is an important reminder of why we are here doing this and why the Government want to bring in this legislation to protect the public.

With the indulgence of the Chair and the Committee, I would like to talk about my friend Louise—I will not get emotional. Fifteen years ago today, my friend Louise was on a train from Aldgate to Liverpool Street. The night before, she had had a great night out. She had been in Trafalgar Square, celebrating the fact that London had just won the bid to host the Olympics.

It was a very busy train. She was standing when the train was rocked by an explosion in the next carriage to her. Louise's carriage filled with smoke. The lights went out and the train screeched to a juddering halt. She says her heart was beating so much she thought it was going to come out of her chest, but she fought to keep calm amid the screams and the panic around her.

Some people managed to control their panic and started helping each other. They were calling up and down the train for doctors and nurses—anyone who could come and help. Some people had fallen. Some had hit their heads. It was chaos. Some people tried to get out. They were trying to get out of the windows between the carriages. They tried to prise the doors apart. None of that would work. Someone cried out that there was a body on the track.

They waited in the dark. Some emergency lights were going on, but it was mainly dark, for over an hour, until Louise says she saw the top of a policeman's helmet outside the tunnel. From that moment—seeing the policeman—she felt safe. All of a sudden, she felt that she was going to get out and that everything would be all right.

They could not open the doors, so those who were able to moved out of the way to make way for the injured to be carried or to walk past them. They were bloodied, black, bewildered. Many of them were bandaged with commuters' possessions, like belts and scarves and ties. After what seemed like forever, Louise was able to get off the train, but she had to walk past the bombed carriage. She said it looked like it had just been ripped apart like a can of Coke.

She passed two bodies on the track, covered up by a fluorescent transport worker's jacket. She saw a man who was badly injured being tended to by paramedics. He was barely clothed and was propped up against the tunnel wall—his entire body blackened by bomb blast.

She said it was very surreal to come from that black, hellish atmosphere into the light, where it was light, there were helicopters above, there were blue lights and sirens, and there was a triage unit on the pavement where people were being treated. Quite surreally, she was told to give her details to the police and she walked off into London, trying to find her husband and blackened by soot. She said she just wanted a cup of tea, very weirdly.

The "Sliding Doors" moments, and the fear, panic and shock, came later. The overriding feeling she was left with was why did she get into that carriage, why did she not get into the next carriage and why did she survive, when so many others did not. She was determined

*[Julie Marson]*

not to change her way of life, so she got straight back on the tube and went straight back to work. I think she personifies bravery, and what we always say, that in the face of terrorism we just get on with it and we will not let our way of life be changed.

Today, 15 years to the day afterwards, Louise will be leaving flowers at Aldgate, as she does every year. Many of her fellow passengers and other victims who were affected by the incident have never been back on a tube. Some are still suffering from anxiety and depression, some suffered life-changing injuries, some lost a loved one and some will never see the light of day again. Over the weekend, I asked Louise what she would say to the Committee. This is what she said:

"Terrorism is the biggest threat we face to our way of life. I have so much faith in our intelligence and security services. I feel they should be given whatever powers and resources they need to fight it. Whilst there will always be those who slip through thej net, especially the lone wolves, we need to feel safe and learn lessons, and let our police and courts have the authority to act and protect us."

Today I wanted to talk about Louise and pay tribute to her, and all of those affected, not just in that incident but in others. My belief is that the best tribute we could all pay is to pass this Bill.

**Taiwo Owatemi** (Coventry North West) (Lab): It is a pleasure to serve under your chairmanship, Mr Robertson.

The No. 1 priority for all of us here is to keep ourselves and our constituents safe. On this side of the House, we recognise the seriousness of this crime and we will do everything that we can to ensure we can effectively and robustly tackle the threat of extremism, and the terrorists who threaten our national security. As emphasised by my hon. Friend the Member for St Helens North, we aim to be a constructive Opposition in identifying areas in which we can support the Government. In other areas, where we have questions and concerns about the legislation that comes before the House, we seek to strengthen and improve that legislation, where it is right to do so.

In support of amendment 69, I will briefly highlight some of my concerns about the imposition of TPIM notices, as outlined in the Bill. Terrorist offences are especially heinous and it is incumbent on us to ensure that we maintain a good, high standard in believing that an individual falls within this threat category. Having that standard for TPIMs, which we would support to keep our constituents safe, would protect the measures and not impede their robust or operational nature.

As my hon. Friend outlined, this standard of proof has been raised twice before, by the coalition Government in 2011 and by the Conservative Government in 2015. We have to wonder why the Government seek to implement the lowering of the standard of proof in clause 37. That would inevitably broaden the category of people who are suspected of being terrorists, but who may not pose a threat at all.

Jonathan Hall QC, the Independent Reviewer of Terrorism Legislation, has serious concerns that this clause could work on the assumption that courts have and could interpret "reasonable grounds for suspecting" as

"a belief not that the person *is* a terrorist, only that they *may be* a terrorist."

There is a strong possibility that some TPIM subjects would not be actual terrorists and, by virtue of that, be innocent.

Mr Hall, who has access to highly sensitive national security information, said that the current standard of proof "has not proven impractical" and has expressed doubt that there is an operational justification for making these changes to the regime at this time. The Opposition are firm believers in evidence-based policy making and in not amending legislation for its own sake, but these are no small matters. The threat and the serious nature of terrorist activities have implications we are all too familiar with. However, we do not see the merits of targeting individuals for the sake of it. That would see a disproportionate number of ethnic minorities and potentially innocent people subject to quite intrusive measures.

We also do not think it appropriate to add strain to the security services and to the public purse, particularly when resources are already stretched. It prompts the question of why, despite the evidence and the advice of independent reviewers, we are making this change. I urge the Minister to outline his case.

10 am

**Chris Philp:** It is a pleasure to serve once again under your chairmanship, Mr Robertson. Let me once again welcome the shadow Minister to his well-deserved place on the Opposition Front Bench.

The speech given a few moments ago my hon. Friend the Member for Hertford and Stortford outlined with incredible power how important it is that we in this House and in government discharge our duty to protect the public. I thank her for sharing the experience that her friend Louise had 15 years ago today. I ask her to pass on the House's thanks to Louise for the bravery and fortitude she showed on that day and subsequently, and for sharing her experience with the Committee. Hearing direct first-hand testimony of the kind we did a few moments ago brings to life how important this topic is and how seriously we must take our responsibility to protect our fellow citizens, so I ask my hon. Friend to pass on our thanks to Louise.

It is, of course, right that we take this moment to remember the 52 members of the public who lost their lives 15 years ago, and the 784 who were injured and who will often carry not just physical scars, but mental and psychological scars for many years to come. The shadow cast by terrorism is not just a physical shadow; it is a psychological and emotional shadow.

I turn to clause 37 and the proposed amendments. The first point I want to make, beyond reiterating that protecting the public is our primary duty, is that TPIMs are not something the Government, Ministers or the police reach for first. The first option is always to prosecute where we have evidence to do so, and that is what happens in the vast majority of cases—criminal prosecution before a judge and a jury, to the criminal standard of proof beyond reasonable doubt, is the preferred and first option. We should always keep that in mind. We fall back on TPIMs only where we believe there is a real threat to the public and where they are in fact necessary. The word "necessary" appears in the original 2011 legislation, and that test of necessity is not being changed by this new Bill. It is a last resort.

The hon. Member for St Helens North and the hon. and learned Member for Edinburgh South West both asked about the business case. Why are we introducing this change, and what is the need for this measure? I will begin by answering that question directly. As we have briefly heard from my hon. Friend the Member for Aylesbury, the answer is best found in the evidence that the Committee heard on the morning of Thursday 25 June from Assistant Chief Constable Tim Jacques. I asked him something twice in general terms, and then he answered more specifically. I asked him twice whether this legislation will

"make the public less or more safe".

He answered very clearly,

"yes, I believe it will make the public safer."—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; c. 20, Q48.]

To be absolutely sure, I asked him again whether it will make the public safer. He said:

"That is the view of the security services…that is their clear view."—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; c. 21, Q50.]

**Conor McGinn:** The witness did say that. The Minister might recall that I then pushed the witness on the specifics of it, and he said he was talking about the totality of the package contained within the Bill—more specifically around sentencing, rather than what was proposed around TPIMs.

**Chris Philp:** I will elaborate on the questions a little further. Question 50 was specifically about TPIMs and the burden of proof. To clear that up, I will read question 50 in full—it is not very long. "For those three reasons", which I will go through in a moment,

"you are being categorically clear with this Committee and with Parliament that the proposed lower standard of proof"—

which we are now discussing—

"would be a benefit to the police and the security services, and that it would make the public safer."

I was expressly referring not just to TPIMs but to the standard of proof. Assistant Chief Constable Jacques replied:

"That is the view of the security services…that is their clear view."—[*Official Report*, *Counter-Terrorism and Sentencing Public Bill Committee*, 25 June 2020; c. 22, Q50.]

He was answering specifically on TPIMs and on the burden of proof in question 50.

**Joanna Cherry:** If the evidence of the assistant chief constable and the three examples are so central to the Government's business case, why were they not in the impact assessment and why were they not mentioned on Second Reading, when others and I were probing the Minister? For instance, the hon. Member for Bromley and Chislehurst, who is Chair of the Justice Committee, asked for the justification for the change. It seems to me the Government are seizing on this now as a justification. If it is the justification, flesh it out, put it in a business case but also, answer the question: why was it not there originally as a justification?

**Chris Philp:** I thank the hon. and learned Lady for her intervention. First, some of the details I am about to take the Committee through were mentioned on Second Reading. My right hon. Friend the Member for New Forest East (Dr Lewis) and I expressly mentioned the possibility of people returning from conflict zones such as Syria. In response to repeated interventions from the right hon. Member for Normanton, Pontefract and Castleford (Yvette Cooper), I gave the justification in general terms, which have been borne out subsequently by the detailed evidence.

**Joanna Cherry:** The problem of people returning from Syria, which I accept, is a significant one that has existed for a number of years. Is the Minister saying in terms that the current TPIM regime—the current standard of proof—has prevented the security services from dealing with the problem of people returning from Syria? If that is what he saying, he should say so in bald terms, rather than seizing on something after the fact to justify this significant change.

**Chris Philp:** I will finish dealing with the hon. and learned Lady's previous intervention and then I will answer her second one. She was asking why the case was not made more fully on Second Reading. I said it was made in general terms and the example of Syria was given. I will come on to that in a moment. The reason we have witnesses appearing before Public Bill Committees is precisely to serve this purpose: to bring out the detail and let them give their testimony to the Committee and the House. The detailed testimony given by Assistant Chief Constable Tim Jacques on the morning of 25 June is precisely why we have witnesses. It is serving the function it should have done, which was to give the Committee and the House the details they asked for on Second Reading and which hon. Members are asking for today.

I turn to the detail of Tim Jacques's testimony and give the specific and precise reasons why he and the security services believe this is important, one of which is the Syrian example, which I will elaborate on in just a moment. Assistant Chief Constable Jacques's first reason for why the lower standard of proof is necessary to protect the public is that we may find that there are individuals whose

"risk profile is rapidly increasing"—[*Official Report*, *Counter-Terrorism and Sentencing Public Bill Committee*, 25 June 2020; c. 20, Q49.]

If someone's behaviour is quickly changing they may go from posing a potential threat to an actual threat to actually offending very quickly. He says that it is that rapid change of circumstances that necessitates a lower burden of proof. He then goes on to give a second reason, which was mentioned by the hon. and learned Lady a moment ago, which is the threat of somebody returning from overseas. He says that where someone has been overseas—for example, in Syria—it is extremely difficult, as one can readily imagine, to gather evidence that would meet the criminal standard of proof beyond reasonable doubt.

Clearly, if someone has been operating in Syria, there will typically be no signals intelligence or eye-witness testimony, because it is very hard to get witnesses from Syria to come here, and there will be no results of other forms of surveillance: all the evidence that would normally be presented in a criminal prosecution enabling somebody's guilt to be established beyond reasonable doubt. It is difficult—impossible, I would say—to achieve that when someone is returning. That is why, in those thankfully

*[Chris Philp]*

relatively rare circumstances, we might need to work to a lower standard of proof and reasonable suspicion in order to protect the public.

The hon. and learned Lady essentially said that people have been going to Syria for five years now, and indeed returning for four or five years. We heard in evidence from both Jonathan Hall and Tim Jacques that, historically, there have not been any examples where a TPIM was desired but not obtained owing to the burden of proof. In fact, that observation applies more generally and not only to the Syrian example. Let me directly answer the criticism immediately.

It is true, I accept, that there have been no occasions historically when a TPIM was desired but not granted owing to the burden of proof that currently exists. However, we are not seeking simply to cater for circumstances that occurred historically; we seek in this legislation, and as parliamentarians, to cater for risks that may arise in the future that may not have arisen in the past. The absence of such risks having happened in the last five or six years does not establish definitively that they will not happen in the future—such a risk might arise in the future. Indeed, the assistant chief constable effectively said that he thinks that is possible, which is why he is advocating for the lower burden of proof.

We must cater for risks, not historical certainties. That is why the evidence of the assistant chief constable is so important and why the Syrian example is a good one, even though historically we have not been inhibited. We might be in the future. A few moments ago, we heard a powerfully eloquent description of the devastating consequences that follow when the public are not protected.

Assistant Chief Constable Jacques laid out a third reason in his evidence concerning sensitive material—material that is gathered covertly, or the disclosure of which might prejudice investigations or the security services:

"The disclosure of sensitive material would potentially compromise sensitive techniques and therefore make our job and that of the Security Service harder".—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; c. 21, Q49.]

He says that, with a lower standard of proof, that disclosure would be required less frequently so there would not be such a requirement to disclose sensitive information.

In answer to a question posed by both Opposition Front-Bench shadow Ministers, Assistant Chief Constable Jacques laid out the business case powerfully in those three examples that I have just taken the Committee through.

**Joanna Cherry:** I have the greatest respect for the assistant chief constable and for the assistance he was able to give the Committee, but in a court of law we would call that hearsay evidence. He is not actually dealing with seeking TPIMs. The Independent Reviewer of Terrorism Legislation, who is charged by the Government with the responsibility of overviewing all this, said that there is no cogent business case.

Can the Minister explain why the independent reviewer is not convinced by the assistant chief constable's three examples? Mr Hall said that he has had discussions with the Government—presumably the Government have put those examples to him if they are so central to the business case. Can the Minister explain to us why the Independent Reviewer of Terrorism Legislation is not convinced that there is a cogent case?

**Chris Philp:** I was not present at those meetings, so I cannot comment on what was discussed. However, the hon. and learned Lady has herself already observed that Assistant Chief Constable Jacques's critical testimony was ventilated in such details—publicly at least—for the first time in his evidence; of course, Jonathan Hall gave evidence just before Assistant Chief Constable Jacques. As I say, I was not privy to the conversations that took place between Jonathan Hall and my colleagues in the Home Office, so I do not know what case was presented to him, but I do know that the case presented by Tim Jacques was, at least in my view, compelling.

**Conor McGinn** *rose—*

**Chris Philp:** Before I move on to the second leg of my support for these measures, I will of course give way to the shadow Minister, who wants to intervene.

**Conor McGinn:** To echo what the hon. and learned Member for Edinburgh South West said, the evidence of the assistant chief constable was incredibly useful—he is hugely respected across law enforcement. But he was one witness. He made it clear, in response to the Minister's questions about TPIMs, that it was the view of the security services that the lowering of the standard of proof might have "utility" when it came to the examples that he outlined—but he was also clear that the police are not the applicant.

10.15 am

I caution the Minister about hanging the Government's rationale on the evidence of one witness, who also agreed with points made by the hon. and learned Member for Edinburgh South West and me: he said clearly that in no case that he knew of had a TPIM been refused based on the current standard. I pushed him on making the public safer, and he was clear that that was not solely on the basis of the proposed measure—the lowering of the standard of proof—but on the package more generally, on TPIMs and sentencing. We need to do justice to the assistant chief constable without dissecting his evidence, all the while acknowledging his incredible service and expertise on such matters.

**Chris Philp:** I have made this point already, in response to an earlier intervention, but at question 50 I asked the assistant chief constable expressly about TPIMs and the burden of proof. He expressly said that it would make the public safer—he was talking there not about the generality of the Bill, but about TPIMs specifically. Of course, I welcome the fact that in more general terms he feels that the Bill will help, but that question related specifically to TPIMs.

**Conor McGinn:** Read the whole answer.

**Chris Philp:** The assistant chief constable said:

"That is the view of the security services. We are not the applicant, but that is their clear view."—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; c. 21, Q50.]

Although he was not applying for TPIMs, he is a senior police officer involved in counter-terrorism policing, he had been briefed by the security services before giving evidence, and he is responsible for monitoring and

managing TPIMs subsequently. To dismiss his evidence as hearsay—the hon. Gentleman did not, but the hon. and learned Member for Edinburgh South West did—is rather unfair, given that he had the briefing from the security services in front of him when he gave evidence and given the close role he and counter-terrorism police play in managing and monitoring TPIMs.

**Joanna Cherry:** There is no insult in saying that someone's evidence is hearsay; it is simply that they are giving evidence about what someone else has told them. I am not undermining the witness in any way, but he is only giving evidence about what he has been told. Let us look at what he said at question 58, when I said:

"So where there is a rapidly escalating situation or where there is a need to manage sensitive material, we already have available to us the option of a new variant TPIM without changing the standard of proof."

He responded:

"Well, a TPIM is a TPIM. We have the option of a TPIM to manage that case, yes, as it currently stands. MI5 has pointed out that there is no case thus far where the standard of proof has been a blocker."—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; c. 23, Q58.]

As I said to him, that is an important answer, albeit that it is hearsay. He is telling us that MI5 has said, in respect of two of the examples that the Minister is giving us as a justification for this significant change, that in no case so far has the current standard of proof been a blocker. Does that not perhaps explain why we have three distinguished Independent Reviewers of Terrorism Legislation supporting the existing standard of proof, rather than this Government's variation?

**Chris Philp:** I have already accepted, a few minutes ago, that there have not been any historical examples. That was clear from the evidence. I also said, in response to an earlier intervention on Syria, that just because there have not been any historically—we are talking about very small numbers—does not mean to say that there will not be such a situation in the future. We need to guard against potential future risk. That is what we seek to do.

Let me go on to the second plank of my rationale for why this proposed burden of proof is appropriate. It is because there are significant mitigants to any risks of abuse of process, miscarriages of justice or inappropriate behaviour. I rest my case for those mitigants on two legs or stands.

The first is that we do not need to hypothesise about how a Government—any Government—might behave with access to TPIMs, or control orders, with a lower standard of proof. As the hon. Member for St Helens North pointed out, we had control orders, passed by then Labour Government in 2005, which had the lower standard of proof—the reasonable suspicion. Those persisted for approximately six years, from 2005 to 2011. During that period, 52 control orders were issued. On the morning of 25 June, I also asked Jonathan Hall whether he was aware of any misuse in that six-year period—I said seven then, but it is six—when the lower burden of proof prevailed. He said:

"I am not aware of any misuse".—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; c. 7, Q9.]

I also asked him whether he was aware of the Government ever having misused the powers or used them without care and circumspection; I actually asked whether, as far as he could see, the Government had used the powers "with care and circumspection". He said:

"I am quite satisfied that the Government are doing that."—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; c. 6, Q5.]

So the control orders, as they were then, operated with a lower standard of proof for six years with no abuse or misuse identified.

The hon. and learned Member for Edinburgh South West raised a question about ECHR article 5 compliance and whether the lower burden of proof would potentially infringe that. I checked that during the debate. During the six years when 52 control orders were used, at no point, despite some challenges, were they found to be not compliant with the ECHR. The Committee can satisfy itself that when they operated previously, they did so without abuse and were not struck down as an instrument as a whole by the court.

The second set of mitigants is to be found in the Terrorism Prevention and Investigation Measures Act 2011, in which the Committee probably knows there are five conditions, labelled A to E, that have to be met for a TPIM to be granted. We are seeking to amend only one of those five conditions, condition A, which pertains to the burden of proof in so far as it touches on terrorism-related activity.

The four other conditions still have to be met and are not being changed by the Bill. For example, condition C requires the Secretary of State to reasonably consider "that it is necessary"—I labour that word "necessary"—

"for purposes connected with protecting members of the public from a risk of terrorism".

The Secretary of State must be satisfied that there is necessity. It must not be done on a whim or because it might or may be required. It must be necessary. That is in section 3(3) of the 2011 Act, which is not being amended.

In section 3(4), condition D makes a similar point that the Secretary of State must reasonably consider

"that it is necessary, for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity".

Again, it uses the word "necessary"—not "possible", "maybe" or "might", but "necessary". It is a very strong word.

Moreover, in section 3(5), condition E says that the Secretary of State must seek permission from the court, as described further in sections 6 and 9 of the Act. They must go to a court of law and make sure that it feels it is reasonable that a TPIM should be granted. At the outset, there is judicial oversight of the process. The Home Secretary cannot, just by a stroke of a pen, give out a TPIM and thereby restrict someone's liberty. That is a serious matter, as the hon. and learned Member for Edinburgh South West has already said. There is judicial oversight of the process. I say again that four of the five tests laid down in section 3 of the 2011 Act are not changing. They will stay the same.

Moreover, those subjected to a TPIM have a right of appeal against it. The 2011 Act, which, again, is not being amended, provides that they can go to a court if they feel that a TPIM has been unreasonably imposed, unreasonably varied or unreasonably extended. They

*[Chris Philp]*

can ask a court for relief and the court proceedings can carry on according to the principles used in judicial review. Beyond the simple question of burden of proof around terrorist-related activities, there are those further protections in the Bill and from the courts.

I will conclude, Mr Robertson—always welcome words during one of my speeches—by saying that the powers are used sparingly. There were 52 of the old control orders in total over six years, but at any one time no more than 15 were ever in force. As the shadow Minister has said, as of November last year there were five TPIMs in force, although I think that we heard in evidence that the number might subsequently have gone up to six.

We use such powers very sparingly, for the reason that the hon. and learned Member for Edinburgh South West mentioned: they touch on an individual's liberty. However, they are occasionally, in the words of the Act, "necessary"—necessary to protect the public, necessary to protect people such as Louise who might otherwise be killed, injured or traumatised and necessary to protect our fellow citizens. It is for those reasons of necessity that I respectfully say that the clause as drafted is an integral and an important part of the Bill.

**Conor McGinn:** I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 37 ordered to stand part of the Bill.*

**Clause 38**

TPIMs: EXTENSION OF TIME LIMIT

**Conor McGinn:** I beg to move amendment 60, in clause 38, page 34, line 31, at end insert—

"(za) in subsection (3)(a), for "and D" substitute ", D and E";"

*The amendment would require the Secretary of State to seek permission from the High Court for any TPIM extension beyond the two-year mark, as when a TPIM notice is first issued.*

**The Chair:** With this, it will be convenient to discuss amendment 64, in clause 38, page 34, line 31, at end insert—

"(za) in subsection (3)(a), after 'met' insert 'and the court gives the Secretary of State permission';

(zb) after subsection (3)(a), insert '(ab) In determining the extension, the court must apply the principles applicable on an application for judicial review.'"

**Conor McGinn:** Let me say at the outset that this amendment is intended to probe and provoke some of the debate that we had on the previous clause, although perhaps not in quite as lengthy a way. I will not be pushing any of the amendments in my name to a vote.

The amendments cover another critical aspect to the changes proposed by the Government, which we approach in a constructive manner in the hope of aiding the Government to make a case for them by understanding them and providing proper and effective scrutiny. I know the Minister accepts and welcomes that as the role of the official Opposition.

The proposed changes to TPIMs in clause 38, when taken together, have quite a profound impact on the regime as we currently understand it. If the standard of proof is to be lowered, while simultaneously making it possible to potentially indefinitely detain someone under a TPIM by removing the current two-year limit, scrutiny, oversight and safeguards take on a new-found and even more significant role.

We have therefore tabled a number of amendments to tighten the scrutiny, oversight and effectiveness of TPIMs where they are to be extended beyond the two-year period. We believe amendment 60 would help to ensure adequate scrutiny and oversight of notices that are in place for prolonged periods of time. As the independent reviewer made abundantly clear in his note of 5 June 2020, the current system and the proposed changes lack a sense of continuing judicial oversight, which is only exacerbated by the fact that many individuals subject to a TPIM opt out of the High Court review. The independent reviewer goes on to say:

"The prospect of individuals being subject to administrative measures for many years without robust scrutiny is unappealing".

With this amendment, we seek to address that problem. As is the case where a TPIM notice is first issued, it would compel the Secretary of State, whether now or under a future Government, to seek permission from a High Court judge where a TPIM notice is to be extended beyond the critical two-year mark.

10.30 am

Let me be clear, if there is a compelling case for renewing a TPIM for a longer period on grounds of an individual's threat to our security and public safety, we on these Benches absolutely support that action. The amendment does not seek to prevent that. It is important to stress, however, that it would ensure a robust but flexible approach, backed by an important sense of continuing judicial oversight. This would not only improve the quality of the TPIM process, but crucially ensure that a TPIM regime extended beyond the current limit of two years is proper, lawful and useful.

Amendment 61, at its core, is about securing those strong and robust safeguards, which we should promote rather than jettison in legislation of such grave importance. Under the proposals, we face the prospect of a TPIM notice enduring for a prolonged or indefinite period. But it is important that we remember what a TPIM can actually—

**The Chair:** Order. I am terribly sorry to interrupt you. We are only discussing amendment 60 to clause 38 and amendment 64, not amendment 61 at this stage.

**Conor McGinn:** Thank you, Mr Robertson, for your guidance. I look forward to discussing amendment 61 later.

The Minister will not be unaware of the concerns raised around the extent of the two-year period, given what a TPIM entails. We hope to provide some scrutiny around that, to underscore the effectiveness and credibility of the entire process by judicial oversight review, and maintain those safeguards, to reassure the public that they are protected by TPIMs—we believe they are a hugely important part of this legislation and keeping the public safe—and that this is being done properly, with due diligence and oversight.

**Chris Philp:** Allow me to explain why the current two-year maximum does not work from a security services perspective. As matters stand, if a TPIM comes to the end of two years and thereby automatically lapses, a brand-new application has to be made, requiring completely fresh evidence, without simply reusing the evidence used at the outset. New evidence must be obtained, which takes some time, particularly if during the two-year period of the TPIM, the subject has been careful to behave themselves, which is the purpose of the TPIM in the first place.

We have had examples of a gap caused by the renewal requirement. Jonathan Hall acknowledged that in answer to my question in his evidence on 25 June,. I asked him about gaps when TPIMs had expired and he said that he had found a couple of examples. He added:

"In one case it was a gap of a year, and in the second it was a gap of 16 months."

In response, I said:

"It is fair to say that the risk would have existed in that 12 to 16-month period."—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; Q2, c. 6.]

I was not asking about things that had actually happened; I was asking about risk—what might have happened. In response to that point, Jonathan Hall replied, "Yes."

I went on similarly to ask Assistant Chief Constable Jacques whether a risk might exist in that gap. He said:

"Because we jointly manage TPIMs once imposed, I can speak on this. Yes, we do see an increase in the threat if that gap occurs, and that gap has occurred, as Jonathan has pointed out previously."—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; Q51, c. 21.]

We therefore have clear evidence, from both the independent reviewer, Jonathan Hall, and counter-terrorism expert Assistant Chief Constable Jacques, telling us that the gap that follows the two-year expiration of a TPIM poses a risk to the public. It is right that in the Bill we seek to close that risk by allowing for carefully considered annual extensions.

In terms of protecting the subject and ensuring that the extensions are not used unreasonably, let me make the following comments to reassure the Committee and, I hope, the whole House. First, the old control order regime did not have the two-year limit. In the period when the control orders introduced by the Labour Government in 2005 were enforced, 30 lasted for two years or less, eight lasted for between two and three years, four lasted for between three and four years, and only three lasted for between four and five years. The clear majority lasted for less than two years. Only a small number—15, according to the figures that I have—lasted for more than two years, and the bulk of those lasted for three or four years. Once again, when the powers are available, they are used circumspectly and sparingly.

Further protections are laid out in statutory provisions in the Terrorism Prevention and Investigation Measures Act 2011, which will continue. The first is found in section 11 of the Act, which requires the Secretary of State to keep TPIMs under review, in particular conditions C and D, which I mentioned earlier. That is given practical effect via a quarterly review process, once every three months, in which the security services and counter-terrorism police participate. Secondly, there is an ongoing right of appeal by the subject laid out in section 16 of the 2011 Act. Section 16(1), which will continue in force, says that if

"the Secretary of State extends or revives a TPIM",

the right of appeal will apply, so every time a TPIM is extended, the subject, if they think the extension is unreasonable, has the right to go to court to seek protection.

Given that the current gap is posing a risk to the public, as Jonathan Hall and Assistant Chief Constable Jacques very clearly said, and given that there are good and strong safeguards in place, I believe that the provisions in clause 38, allowing considered, thoughtful annual extensions, serve the purpose of protecting the public.

**Joanna Cherry:** I am not going to speak to amendment 64, but I will speak in support of Labour's amendment 61 when we get to it.

**The Chair:** We are on amendment 60 at the moment, so I call Conor McGinn.

**Conor McGinn:** I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Conor McGinn:** I beg to move amendment 61, in clause 38, page 34, line 31, at end insert—

"(za) for subsection (3)(a), substitute—

'(a) may be extended under subsection (2) only if—

(i) the Secretary of State believes on the balance of probabilities that the individual is, or has been, involved in terrorism-related activity;

(ii) conditions C and D are met.'"

*This amendment requires the standard of proof for renewing a TPIM notice beyond two years to be "on the balance of probabilities", where no new terrorism-related activity can be demonstrated.*

Thank you, Mr Robertson, for your gentle guidance in navigating our way through the numerous amendments. Although they are linked, it is important that we examine them on their own merits. At its core, amendment 61, like the amendment we have just discussed, is about securing strong and robust safeguards, which, as I said, we should use the Bill as an opportunity to promote rather than jettison. We should show confidence in the process and procedures that we are introducing to keep the public safe.

The prospect of a TPIM notice enduring for a prolonged or even indefinite period deserves scrutiny. It is important to remember what a TPIM can involve: overnight residence requirements, relocation to another part of the country, police reporting, an electronic monitoring tag, exclusion from specific places, limits on association, limits on the use of financial services, limits on the use of telephones and computers, and a ban on holding travel documents. Even in the dying part of the Labour party that is the traditional old right, I balk a little at some of that. I accept that it is necessary to monitor very dangerous individuals and keep the public safe, but these are some pretty fundamental liberties that we are talking about denying people. There is a responsibility on all of us to acknowledge that, and to make sure that we give it proper scrutiny. These are, rightly, robust measures, and to reiterate: we do not believe there should be impediments

*[Conor McGinn]*

in cases where a longer TPIM notice that would genuinely be in the interests of keeping the public safe and secure, which is of course our first priority, should be extended. It is also important to say that these sanctions, effectively, are imposed on people who have not been convicted of any crime, and that they are being taken in addition to the lowering of the standard of proof and the extension of the period without, it appears, due oversight needs to be properly looked at.

The other point is that TPIMs are resource-intensive instruments. Assistant Chief Constable Jacques clearly said that additional resources would need to be provided. It would be good to hear a commitment from the Minister that that would the case and that, whatever law enforcement would need, and notwithstanding that a spike in TPIMs is not envisaged, the extension thereof and any addition to the current number will be properly and fully resourced.

As the hon. and learned Member for Edinburgh South West said earlier, there is testimony not just from the current reviewer of terrorism legislation, but also from previous ones. Someone as respected as Lord Carlile, for example, said that a differentiated standard of proof, effectively, would be created for extending a TPIM beyond the two-year point. That would add another layer to the complexity of what proof is required at what point, and to what extent. Jonathan Hall also noted on 5 June that that would be the case.

As I said previously, not a single TPIM measure has been rejected to date based on insufficient evidence of the higher standard of proof, so the safeguard would not operationally hinder the TPIM regime, which we agree needs to be strong and flexible. We need to ensure that those TPIMs extended for prolonged periods are subject to an extra level of scrutiny and oversight and that they are applied in reasonable and proportionate terms, fundamentally in keeping with the thrust of what they are designed to do, which is to keep the public safe.

**Joanna Cherry:** I am grateful for the opportunity to speak in support of amendment 61, and to remind hon. Members of what the current Independent Reviewer of Terrorism Legislation said in his evidence to us. I will look in particular at his response to my question 33, when he said that the combination of clause 37 and clause 38 is a "double whammy",

"not just lowering the standard of proof but also allowing TPIMs to endure forever."—[*Official Report, Counter-terrorism and Sentencing Bill Committee*, 25 June 2020; Q33, c.15.]

Indeed, he suggested the very safeguards set out in amendment 60 and 61. I support to amendment 61 for that reason. I take hon. Members back to what he said in response to my question 33. I said:

"What about looking at balancing out the changes made in this Bill to TPIMs by introducing some safeguards to ensure that TPIMs do not breach the human rights of a subject of a TPIM? Have you thought about that? We should always remember that the subject of a TPIM has not been convicted of any crime."

He answered:

"As far as safeguards are concerned, you will probably have seen from my notes that here you have a double whammy. It is not just reducing the standard of proof but allowing TPIMs to endure forever. Something that was proposed by my predecessor"—

he meant Lord Anderson, as the hon. Member for St Helens North said—is that

"if it were right that a TPIM should continue beyond two years, at least at that stage the authorities should be able to say, on the balance of probabilities, that the person really is a terrorist. That is an example of a safeguard."

He went on:

"Turning to the question of enduring TPIMs, another safeguard could be to ensure that a judge would have to give permission—in other words, to treat going beyond the two years without any additional proof of new terrorism-related activity as requiring a higher threshold, or some sort of exceptionality or necessity test, as a further safeguard for the subject."

Again, in fairness, he also said:

"I do not think the authorities will be unwise in the way that they use that, but there is a risk that people will be on TPIMs for a very long time indeed. As you say, they have not been prosecuted, and it seems to be right in principle and fair that there should be some additional safeguards for those individuals."—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; Q33, cc. 15-16.]

10.45 am

As the hon. Member for St Helens North said, it is worth noting that the existing time limits were strongly supported by Mr Hall's predecessors, including Lord Carlile. In 2011, in his sixth report, Lord Carlile agreed that there should be a maximum duration of two years for these interventions before a new order has to be applied for, and suggested that should only happen if there is new evidence that the individual has continued to be engaged or re-engaged in terrorism-related activities. In my respectful opinion, amendment 61 imposes the sort of additional safeguard envisaged by Lord Anderson and supported by the current independent reviewer of terrorism legislation and his predecessors. I therefore ask the Government to consider it very seriously indeed.

**Chris Philp:** Amendment 61 seeks to introduce a higher standard of proof—the balance of probabilities—if a TPIM is to be extended beyond two years. We debated at some length the relative merits of reasonable suspicion and the balance of probabilities in relation to clause 37, so I do not propose to repeat those arguments at great length. However, I hope I established in my previous remarks the importance of the reasonable suspicion burden of proof, rather than the balance of probabilities.

On the issue of extension, I gave the reasons why it is important to avoid this two-year cliff edge a few minutes ago, during the debate on amendments 60 and 64. I also drew attention to the protections that exist, particularly the review process in section 11 of the TPIM Act, which is an internal process that goes on on a quarterly basis. I also drew attention to the right of appeal under section 16 of the same Act. Every time one of these orders gets extended by a year, the subject has a right to go back to the court if he or she feels they are being treated unreasonably and unfairly. For all those reasons, I think the annual renewal process, with a right of appeal should the subject feel the renewal is unreasonable, provides adequate protection.

The shadow Minister, the hon. Member for St Helens North, asked about counter-terrorism resources. As I am sure he is aware, counter-terrorism police expenditure was significantly increased earlier this year. The police have a great deal more resources than they had previously, and as Assistant Chief Constable Jacques said in evidence,

"Neither we nor the Security Service envisage a large increase in those numbers—

the numbers of people on TPIMs—

"as a result of the provisions in the Bill"—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; Q49, c. 20.]

although as the shadow Minister said, some may endure longer. We are absolutely committed to making sure the resources required are available.

**Conor McGinn:** I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Conor McGinn:** I beg to move amendment 67, in clause 38, page 34, line 33, at end insert—

"(ab) after subsection (3)(b) insert—

(3A) Where a TPIM notice has been extended under subsection (3), the Secretary of State must review, at 6 monthly intervals, whether it is appropriate to issue a revocation notice under section (13)(1).

(3B) A review under subsection 3A will include a memorandum to—

(a) the chief officer of the relevant police force;

(b) the Security Service,

(c) the Secret Intelligence Service, and

(d) the Government Communications Headquarters

outlining a tailored exit strategy.

(3C) A 'tailored exit strategy' under subsection (3B) shall include—

(a) an assessment of the individual's current security threat, which must include an assessment of the current evidence and investigative steps as provided by the bodies listed in subsection (3B);

(b) a plan for agencies and public services to engage with the individual to promote rehabilitation for the duration of the TPIM; and

(c) a plan for how TPIM measures may be removed if no new evidence of terrorist related activity is provided."

*An amendment to require the Secretary of State to specify a provisional exit strategy for a TPIM notice, upon any renewal beyond the two-year mark.*

It always struck me as a strange and inflexible design flaw of TPIMs that they had a set limit of two years. My right hon. Friend the Member for Normanton, Pontefract and Castleford, who chairs the Select Committee on Home Affairs, reminded the House on Second Reading that

"Control orders were set for a year but could be renewed",

but

"TPIMs were fixed at two years."—[*Official Report*, 9 June 2020; Vol. 677, c. 229.]

As far back as 2011, my right hon. Friend was raising concerns about what that would mean for the small number of people who might be extremely dangerous after two years, and what provisions would be in place to ensure the public were protected.

It would be good to introduce a measure of flexibility to TPIMs, but my concern is that by doing so that way, the Government leave a very open-ended approach, which could see cases effectively kicked into the long grass, often at great expense and with no realistic strategy for resolution of any kind. When imposing a TPIM, we must always have sight of what resolution is—whether prosecution or the removal of the notice—rather than the idea that we can indefinitely extend the TPIM and leave those who are subject to them in a sort of terrorism-suspect limbo.

The amendment seeks to address the open-ended nature of the Government's changes by requiring the Secretary of State to specify what we have called a provisional exit strategy for a TPIM notice upon any renewal beyond the two-year mark. Under the provision in the amendment, the Secretary of State would be obliged to undertake a review every six months to set out whether it is appropriate to issue a revocation notice and to draw up, with police and security services, a tailored exit strategy. That strategy would involve an assessment of the individual's current security threat, which should be the most fundamental and overarching aspect to the TPIM; a plan for agencies and public services to engage with the individual to promote rehabilitation for the duration of the TPIM if possible; and a plan for how TPIM measures can be removed if no new evidence of terrorist-related activity is provided.

It is not in anyone's interest to allow individuals to remain indefinitely on TPIMs, not just for their own sake but for that of wider society because, crucially, they should be brought to justice and put through the judicial process. As Jonathan Hall said:

"There is the risk that, once a TPIM has been made and someone has been identified as a risk, that takes priority—in other words, the TPIM is the best way of protecting the public—over trying to get criminal evidence to prosecute".—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; c. 17, Q37.]

Having heard the wide-ranging evidence from witnesses, as well as what the security services and others have said, I am in no doubt that that is far from being the motivation of anyone involved in overseeing a TPIM, but those are important points to bear in mind none the less.

The idea of an indefinite TPIM means that someone convicted of a terrorist offence could conceivably be free of constraints before someone who is placed on an enduring TPIM. As we legislate in this place, we need to be cognisant of the potential for that to occur, which would be quite perverse and bizarre, albeit quite unlikely. The idea of leaving someone subject to a TPIM indefinitely is not cost-effective for the taxpayer and, notwithstanding all the amendments that we have tabled, does nothing to tackle the issues that have brought the individual to the point that they are subjected to the TPIM—namely, entering dangerous extremism and being suspected, as the lower standard of proof would say, of becoming engaged in criminal and terrorist activity.

I worry that the indefinite TPIM discourages a move towards seeking a conviction when that is appropriate, and increases the risk of individuals slipping under the radar over time if their cases are not regularly reviewed by those tasked with implementing the TPIM. An exit strategy would keep that small number of cases at the forefront of the Secretary of State's mind and would ensure that, if there were enduring or extended TPIMs, we would not allow them to become indefinite beyond that which is reasonable.

**Chris Philp:** On the point about potential perpetuity TPIMs, once again I assure the Committee that history from the old control order regime teaches us that the number of TPIMs enduring beyond two or three years is exceptionally small, and the subject always has a right of appeal to the court. On the question about reviews and the exit strategy, which is the topic of the amendment,

*[Chris Philp]*

the Government essentially agree with the comments about their importance but, in fact, that is precisely what happens already. I have referred to the fact that section 11 of the TPIM Act requires the Secretary of State to keep under review whether conditions C and D are being met—that is, whether there is terrorist-related activity or whether the public need to be protected. That is given practical effect by a TPIM review group, a so-called TRG, that meets on a quarterly basis. The topics that it discusses are exactly those that the shadow Minister quite rightly and eloquently laid out a few minutes ago, including the exit strategy.

That was reviewed and commented on in the 2018 report of the then Independent Reviewer of Terrorism Legislation, Max Hill QC, who is now, of course, the Director of Public Prosecutions. In relation to the TPIM review group's activity, he said that

"the TRG meets at three-monthly intervals",

which is twice as often as the amendment calls for, and that

"very careful consideration is given to every aspect of the TPIM in force, including…the individual measures, each in turn…the exit strategy, in other words timely preparation for returning the TPIM subject to his"—

or her—

"home life at the end of the TPIM."

I am delighted to be able to say to the Committee that exactly the review mechanisms, including the exit strategy, that the shadow Minister is calling for are already in place and were validated by the then independent reviewer, Max Hill, in 2018.

**Conor McGinn:** I do not have anything to add except to say that that was a rare example of a probing amendment that probed and received assurances, so I do not seek to press it to a vote. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Conor McGinn:** I beg to move amendment 68, in clause 38, page 34, line 35, at end insert—

'(3A) After section 10 (Criminal investigations into terrorism-related activity) insert—

*"Report on terrorism-related activity*

10A (1) The chief officer of the appropriate police force must produce a report to—

(a) the Secretary of State; and

(b) the Intelligence and Security Committee of Parliament, as set out in section (1) of the Justice and Security Act 2013.

(2) A report under subsection (1) must address the—

(a) current evidence, and

(b) investigative steps that—

(i) have been, and

(ii) may still be taken

in relation to the TPIM.

(3) A report under subsection (1) must be produced two years after the imposition or extension of a TPIM.

(4) Section (3) (Reports of the ISC) of the Justice and Security Act 2013 is amended as follows.

(5) After subsection (3)(1) insert—

'(1A) An annual report to Parliament must contain a statement as to whether it is satisfied with the content of a report produced under section (10A) of the Terrorism Prevention and Investigation Measures Act 2011.'

(6) In this section—

(a) 'appropriate police force';

(b) 'chief officer'; and

(c) 'police force'

have the meaning as set out in section 10."'

*An amendment requiring the chief officer of the relevant police force to produce a report, at a TPIM's two-year mark, to the Secretary of State and the Intelligence and Security Committee of Parliament on the current evidence and investigative steps that had been and may still be taken in relation to the TPIM.*

This amendment, which I tabled on behalf of the official Opposition builds on previous amendments to ensure not only that there is judicial oversight of the extension, as well as an exit strategy, but that the latest evidence and investigative steps, as provided by the local police, can and are thoroughly explored by the Secretary of State.

We reference the Secretary of State directly because the Bill vests a lot of power in the individual who holds that office with regard to the decision about whether to impose a TPIM. I know that the Secretary of State is busy, certainly if she is doing even half the work of the shadow Secretary of State, but it applies only to a small number of individuals. It is right, given the authority that the Secretary of State has to impose TPIMs, that he or she is therefore responsible for their continuing oversight as well.

The Minister and Committee members will know that section 10 of the 2011 Act provides for a process of evidential review whereby the Secretary of State consults the relevant chief officer of the respective police force to determine whether a criminal prosecution at any given moment is viable, credible and practical, yet the independent reviewer writes in his note of 5 June that

"for the review process I found that neither the Home Secretary nor her officials saw anything other than a tick in the box to show that the relevant chief officer had performed this role."

If the relevant chief officer says that they have fulfilled that duty, I have full and total confidence in that. It may have become an unfashionable view in some quarters, but I trust the police, their judgment and their assessment on such matters, because they are the experts. They are the people who are tasked with overseeing, implementing and doing that work on the ground. Procedurally and practically, however, it would be of real benefit, not just for Ministers and officials in the Home Office, but for the police and the security and intelligence services more widely, if they had access to comprehensive and detailed information from the local police at that critical stage.

The amendment would, in effect, remedy an existing gap. It would strengthen the rigour of the existing process by compelling the chief officer of the appropriate force to produce a detailed report, once again at that crucial two-year mark, to the Secretary of State, outlining the latest evidence and the investigative steps that have been or might still be taken in relation to the TPIM notice. It would allow for a better informed view on the current circumstances of an individual TPIM, but also give greater encouragement and clarity to law enforcement more widely on what the next steps, including the chance of criminal prosecution, might be, which brings us back to the exit strategy that we talked about.

11 am

As the West Midlands police and crime commissioner David Jamieson made clear in his recommendations to the Committee, a strong sense of local oversight and review of the TPIM regime, as I believe the amendment would bring, would go some way towards ensuring that TPIMs, which we know are resource intensive measures, can be applied in proportionate ways wherever possible.

In addition, the report in question would go to the Intelligence and Security Committee. I think we used to have one of those, but it has not been seen in a while and I am not sure when it is coming back. Perhaps the Minister might enlighten us on when the ISC is to be reconstituted because it has not met since the election. It fulfils a critical role in relation to this and, more widely, its work in overseeing the work of the intelligence community is valuable. It would be compelled to make a statement on its own annual report, which I think would ensure a good level of parliamentary scrutiny and oversight in this procedure.

Overall, the amendment would put in place a more rigorous and substantial process than already exists; one which would ensure the focus of the police force, the Secretary of State and the vanquished and much-missed but hopefully soon returning Intelligence and Security Committee would remain in these significant cases. Fundamentally, as I have said, if a TPIM notice is to endure, it cannot simply mean putting it over there and forgetting about it. It must always be subject to a rigorous process of analysis and assessment.

**Chris Philp:** I will be brief, because we have discussed at some length the question of extensions and an exit strategy. I echo the comments about section 10 of the 2011 Act. As the shadow Minister said, section 10 places a duty on the Secretary of State to consult the relevant chief officer of police as to whether there is sufficient evidence to prosecute a terrorism-related offence before imposing a TPIM. The chief officer must then consult the relevant prosecuting authority. Once the TPIM has been imposed, section 10 says that the chief officer

"must ensure investigations of the TPIM subject's conduct is kept under review throughout the duration of the TPIM with a view to prosecution for an offence related to terrorism if the evidential threshold can be met".

Essentially, I think that what the hon. Gentleman reasonably asks for is enshrined in section 10 of the 2011 Act. I point again to the operation of the TPIM review group, to which I referred to in the previous debate, which meets regularly every three months and has input from police and the security services to do exactly what the shadow Minister asks.

On oversight and reporting, the hon. Gentleman mentioned the ISC. I believe it will be constituted soon, but that is not in my gift or purview. I think the most suitable person to oversee, monitor and scrutinise the activities of the Government in this area is the Independent Reviewer of Terrorism Legislation, whom we have all been quoting very frequently. He clearly does a very energetic and active job in this sphere.

**Conor McGinn:** I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 38 ordered to stand part of the Bill.*

**Clause 39**

TPIMs: VARIATION OF MEASURES

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

**Chris Philp:** Clause 39 inserts an additional ground for variation into section 12 of the old TPIM Act that I have been quoting from. By virtue of that, it will be possible for the Secretary of State to vary the relocation measure in a TPIM notice, if considered strictly necessary,

"for reasons connected with the…effective use of resources in relation to the individual."

The new ground for variation will apply only where the individual has already been relocated away from their home address and where the national security reason for requiring relocation still exists.

**Conor McGinn:** I want briefly to draw the Minister and the Committee's attention to the fact that, when these relocation orders were previously challenged by those subject to them, one sixth of those cases were upheld. In introducing this measure, the Government need to ensure that their legal processes are very robust in that regard.

*Question put and agreed to.*

*Clause 39 ordered to stand part of the Bill.*

**Clause 40**

TPIMs: EXTENSION OF RESIDENCE MEASURE

**Conor McGinn:** I beg to move amendment 70, in clause 40, page 36, line 31, at end insert—

"(c) after paragraph (1)(5) insert—

'(5A) Where the Secretary of State has imposed on an individual a requirement to reside at a specified residence which is shared with another individual or individuals, the Secretary of State shall provide for an assessment to be made of the suitability of these individuals to reside together.'"

*Requirement for a report on approved premises putting offenders in shared accommodation together.*

This amendment puts forward a requirement for a report on approved premises putting offenders in shared accommodation together. That is an issue of real concern: the most effective sentencing policy or preventive intervention can be meaningless, frankly, when pitted against the pressure, manipulation or radicalisation that a vulnerable person might be exposed to from a friend, associate or, sadly, even a family member.

We heard throughout the witness sessions that custody can only have a protective impact by taking that particular person off the street, so to speak, for that specified period, and that it is on release that they are exposed. As Peter Dawson, from the Prison Reform Trust, said,

"people are going to be released, and that is when the risk arises".—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; c. 35, Q79.]

The importance of positive relationships cannot be undervalued. As Mr Dawson said,

"particularly after a long sentence, a stable home and relationships with people who have kept faith with you and who have belief in your future are absolutely the things that help someone as a mature person."—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; c. 36, Q82.]

All the evidence supports that view, so it is also the case that negative association and exposure to extremist pressure within shared accommodation carries real risks, particularly for young offenders.

*[Conor McGinn]*

We are therefore tabling this amendment to ensure that:

"Where the Secretary of State has imposed on an individual a requirement to reside at a specified residence which is shared with another individual or individuals, the Secretary of State shall provide for an assessment to be made of the suitability of these individuals to reside together."

It would be pointless and perverse for the state to designate specific accommodation as part of a directive, only for that accommodation and those contained therein to be a major influence on increasing reoffending risks. Due diligence must be done on the appropriateness of the residence and those individuals.

The state cannot be responsible for ordering someone into a dangerous or radicalising environment; that would undermine all the other measures contained in the Bill. Therefore, I hope the Government will reflect on this amendment. I do not intend to push it to a vote, but I felt none the less it was important to move it.

**Chris Philp:** Relocation measures are on occasion a very important way of protecting the public. As Jonathan Hall said in his evidence to us on 25 June:

"Relocation is an important power. It is regrettable, in the sense that it is a very strong measure and causes a lot of disruption, but I am quite satisfied that in a small number of cases it is needed."—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; c. 18, Q40.]

The necessity of relocation on occasion is not in dispute.

In relation to the point that the shadow Minister makes about not putting people into multi-occupancy premises, let me say that the Government and the police never put people into multi-occupancy premises—that is to say, we do not impose a requirement on the subject to reside with other individuals. They would never be put into accommodation with other people, for all the reasons that he mentioned.

Of course, we do regular risk assessments of TPIM subjects, including via the auspices of the TPIM review group that I mentioned a little earlier, which meets quarterly. The group looks not only at the issues we have talked about previously to do with exit strategy and so on, but at various other matters, including the relocation measures and how those are working.

As I have said previously, a former Independent Reviewer Of Terrorism Legislation has commented positively, saying that these quarterly TPIM review groups entail robust discussion of every aspect of the TPIM, including residency, and consider every individual part of that TPIM in turn. I hope that gives the shadow Minister the assurance he requires that people are not compelled to live in multi-occupancy premises, with the potentially adverse consequences that may flow from that.

**Conor McGinn:** I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 40 ordered to stand part of the Bill.*

**Clause 41**

TPIMs: POLYGRAPH MEASURE

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

**The Chair:** With this, it will be convenient to discuss new clause 12—*Additional provision in relation to polygraphs when applicable to individuals under 25—*

(1) Where, in accordance with section 28 of the Offender Management Act 2007, as it applies to terrorist offenders, or Schedule 1 to the Terrorism Prevention and Investigation Measures Act 2011, a polygraph session is required of an individual aged between 18 and 25, that polygraph session must be attended by a counsellor.

(2) For the purposes of this section, a counsellor is a person who can assess the appropriateness of the application of the polygraph session and support the person to which the polygraph condition has been applied.

(3) Where the counsellor has concerns about the appropriateness of a polygraph session, these shall be reported to the Secretary of State.

(4) The Secretary of State shall lay in Parliament a report that includes—

(a) a summary of the concerns raised by counsellors on an annual basis; and

(b) a description of the actions proposed or taken to address the concerns raised."

**Alex Cunningham** (Stockton North) (Lab): It will be a pleasure to speak under your chairmanship, Mr Robertson.

New clause 12 would require that a counsellor be present during the time that any individual aged between 18 and 25 is having a polygraph test. As subsection (2) of new clause 12 says:

"a counsellor is a person who can assess the appropriateness of the application of the polygraph session and"—

This is the most important part of all—

"support the person to which the polygraph condition has been applied."

It is only right that we ensure that someone is present for the participant in a clearly stressful situation. The young person undergoing the polygraph test may not have the knowledge, the confidence or even the ability to speak out if they are not comfortable. Having a counsellor present would provide an extra layer of support and establish more confidence in the process. The counsellor would be required to report

"concerns about the appropriateness of a polygraph session…to the Secretary of State."

That would mean that the Government would remain on top of any key or alarming issues that arise with polygraph tests, the equipment or even the testers, to ensure that their use is fair and proper in relation to young people.

The new clause would require the Secretary of State to lay in Parliament an annual report containing a summary of the concerns raised by counsellors and setting out the actions proposed or taken to address them. As colleagues will be aware, from time to time we have discussed the use of polygraph tests and how the Government plan to use them in the future. It is a contentious issue and one that we must keep under regular scrutiny. The reason that we specify that there should be a counsellor present when the person undergoing

the polygraph is under 25 is in response to the evidence that has already been presented to this Committee that there is a difference in maturity between those under 25 and those over 25. That is why we believe that this extra level of safeguarding—this is a safeguarding issue—is important. I would prefer that we were too cautious and that we focused on ensuring that people undergoing a polygraph test have the appropriate measures in place to provide a sense of trust in the process than that we were not cautious enough and did not put any protective measures in place.

This is a reasonable new clause, with the safeguarding of young people at its heart. I hope that the Minister will be able to recognise what a positive change it would make. Perhaps this time he will also recognise that younger people are different, and that he and we have a duty to protect them.

11.15 am

**Chris Philp:** It is worth reminding the Committee that the purpose of using polygraphs in this context, rather like the monitoring of licence conditions that we discussed earlier in our proceedings, is simply to seek to prompt new disclosures that might otherwise not happen, or to elicit an indication that might suggest that further investigation by the relevant authority should be undertaken. The purpose of using polygraphs is nothing more nor less than to achieve those very limited objectives.

The provisions of the new clause might be somewhat beyond the scope of the Bill, because it would apply not just to the people we are talking about here, but to sex offenders where polygraphs are used. When the Domestic Abuse Bill receives Royal Assent—it had its Third Reading last night—it would apply to domestic abuse offenders as well, so the scope is significantly beyond just terrorism.

The central point of the new clause is to ensure is that people under the age of 25 have some kind of counsellor present during a polygraph test. The main assurance I can give the Committee and the shadow Minister is the fact that, as we heard from Professor Grubin in his compelling evidence, the people who administer the polygraph tests are highly trained. The regulations that we already use in relation to sex offenders, and that are likely to form the basis of the regulations here, require high levels of training and quality assurance for those who administer the tests. They are expert people who are selected and trained very carefully, and they use their powers and authority in a carefully managed and circumspect manner. I hope the fact that the person who administers the test is well trained and carefully regulated gives the Committee and the shadow Minister confidence that the proposed additional measure of having a counsellor present is an extra level of protection that is essentially nugatory, bearing in mind the expertise of the person doing the test in the first place.

**Alex Cunningham:** The Minister, apart from the fact that he does not think the safeguarding is necessary, has just made a grand speech in support of my amendment. He has recognised very clearly that, although there may be experts, there are issues that need to be addressed. He actually talked about how the scope of the amendment would go far beyond the issues covered in the Bill. That is a good thing. Why should young sex offenders or young offenders covered by the Domestic Abuse Bill not also have the protection of having a counsellor present at their session? I will not push the new clause to a vote, but I believe that the Minister needs to start to focus very specifically on young people. We will return to the issue of young people on Report, because the Minister seems to dismiss the fact that a small number of young people are different. He does not recognise the difference. We will withdraw the new clause for now, but we will most certainly return to this issue.

*Question put and agreed to.*

*Clause 41 accordingly ordered to stand part of the Bill.*

**Clause 42**

TPIMs: DRUG TESTING MEASURE

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

**Chris Philp:** Clause 42 adds a new drug testing measure to schedule 1 of the TPIM Act 2011. A TPIM subject will be required to submit to drug testing by way of providing a relevant sample. Under the clause, testing is limited to testing for the presence of specified class A and class B drugs. These drugs are the same as the class A and class B drugs specified in the Criminal Justice and Court Services Act 2000. The definition of "permitted sample" sets out an exhaustive list of the non-intimate samples that may be taken, mirroring the definition of "non-intimate sample" in section 65 of the Police and Criminal Evidence Act 1984. Drug testing under the clause may be carried out only by a constable at a police station, but the clause contains a power for the Secretary of State to make regulations prescribing additional or alternative testers and places of testing.

*Question put and agreed to.*

*Clause 42 accordingly ordered to stand part of the Bill.*

**Clause 43**

TPIMs: PROVISION OF INFORMATION

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

**Chris Philp:** Clause 43 amends an existing measure and inserts a new measure into schedule 1 of the TPIM Act 2011 to allow the Secretary of State to require the TPIM subject to provide additional information.

*Question put and agreed to.*

*Clause 43 accordingly ordered to stand part of the Bill.*

**Clause 44**

ADDITIONAL OFFENCES ATTRACTING NOTIFICATION REQUIREMENTS

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

**Chris Philp:** Clause 44 amends the Counter-Terrorism Act 2008 by adding a breach of TPIM notice and a breach of a temporary exclusion order to the list of terrorism offences that attract registered terrorist offender notification requirements. That ensures that individuals convicted of those offences on or after the day that the Bill comes into force will be subject to registered terrorist offender notification requirements following their release from prison. That will support the police to manage the ongoing risk posed by such individuals, and to take mitigating action as is necessary to protect the public.

*Question put and agreed to.*

*Clause 44 accordingly ordered to stand part of the Bill.*

**Clause 45**

POLICE POWERS TO APPLY FOR SERIOUS CRIME PREVENTION ORDERS IN TERRORISM CASES

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

**Chris Philp:** Clause 45 introduces schedule 12, which amends the Serious Crime Act 2007 to allow the police to make a direct application to the High Court for a serious crime prevention order in terrorist-related cases. That will streamline the application process and is intended to support an increased use of SCPOs in the circumstances I have just described.

*Question put and agreed to.*

*Clause 45 accordingly ordered to stand part of the Bill.*

*Schedule 12 agreed to.*

**Clause 46**

SERIOUS CRIME PREVENTION ORDERS: REVIEW OF OPERATION OF POLICE POWERS

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

**Chris Philp:** Clause 46 requires the Secretary of State to review the operation of the changes to the Serious Crime Act 2007 made by clause 45, and to publish a report on the outcome.

*Question put and agreed to.*

*Clause 46 accordingly ordered to stand part of the Bill.*

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

11.22 am

*Adjourned till this day at Two o'clock.*