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Public Bill Committee

POLICE, CRIME, SENTENCING AND COURTS BILL

Sixteenth Sitting

Thursday 17 June 2021

(Afternoon)

CONTENTS

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Monday 21 June 2021

The Committee consisted of the following Members:

Chairs: † Steve McCabe, Sir Charles Walker

† Anderson, Lee *(Ashfield)* (Con)
† Atkins, Victoria *(Parliamentary Under-Secretary of State for the Home Department)*
Baillie, Siobhan *(Stroud)* (Con)
† Champion, Sarah *(Rotherham)* (Lab)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
† Cunningham, Alex *(Stockton North)* (Lab)
† Dorans, Allan *(Ayr, Carrick and Cumnock)* (SNP)
† Eagle, Maria *(Garston and Halewood)* (Lab)
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
Higginbotham, Antony *(Burnley)* (Con)
† Jones, Sarah *(Croydon Central)* (Lab)
† Levy, Ian *(Blyth Valley)* (Con)
† Philp, Chris *(Parliamentary Under-Secretary of State for the Home Department)*
† Pursglove, Tom *(Corby)* (Con)
† Wheeler, Mrs Heather *(South Derbyshire)* (Con)
† Williams, Hywel *(Arfon)* (PC)

Huw Yardley, Sarah Thatcher, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 17 June 2021

(Afternoon)

[Steve McCabe *in the Chair*]

Police, Crime, Sentencing and Courts Bill

2 pm

The Chair: I remind Members of the usual things about devices, masks, seating, drinks and so on.

Clause 141

Locations for sexual offender notification

Question (this day) again proposed, That the clause stand part of the Bill.

The Chair: I remind the Committee that with this we are discussing the following:

Clause 142 and 143 stand part.

New clause 65—*Registered sex offenders: change of name or identity—*

"(1) The Secretary of State must commission a review of how registered sex offenders are able to change their name or other aspects of their identity without the knowledge of the police with the intention of subverting the purpose of their registration.

(2) The review must consult persons with expertise in this issue, including—

(a) representatives of police officers responsible for sex offender management,

(b) Her Majesty's Passport Office, and

(c) the Driver and Vehicle Licensing Agency.

(3) The scope of the review must include consideration of resources necessary for the long-term management of the issue of registered sex offenders changing their names or other aspects of their identity.

(4) The review must make recommendations for the long-term management of the issue of registered sex offenders changing their names or other aspects of their identity.

(5) The Secretary of State must report the findings of this review to Parliament within 12 months of the day on which this Act is passed."

This new clause would ensure that the Secretary of State must publish a review into how registered sex offenders are changing their names or other aspects of their identity and propose solutions for how the government aims to tackle this issue.

I think the Minister was just about to respond.

The Parliamentary Under-Secretary of State for the Home Department (Victoria Atkins): I was, Mr McCabe—thank you very much. I understand that the Opposition do not oppose clauses 141 to 143, but I will obviously respond to new clause 65, tabled by the hon. Member for Rotherham and signed by more than 30 other Members. I understand the message of how seriously Members across the House take the issue. We are very alive to the ability of sex offenders to manipulate systems, build trust, groom, and use many evil, awful methods in order to commit their crimes.

I am not naive to the risks that the hon. Lady put forward in her very well argued speech about the motivations of sex offenders in changing their name. As she said, there are very strict rules: sex offenders are required to notify the police within three days of changing their name—indeed, failure to do so is a criminal offence punishable by imprisonment for a maximum of five years. I note her concerns, and those of others, about what can be done, if a sex offender does not so notify, to ensure that there are not consequences further down the line.

In fairness, parliamentarians have been having this debate for some time. I have received a great deal of correspondence on this matter, particularly in conjunction with the campaign run by the Safeguarding Alliance. As a result, I have commissioned officials to look into the matter very carefully. I have written to the Master of the Rolls requesting that a judicial working group set up by the Ministry of Justice should consider how the deed poll process can be exploited for criminal ends.

The work of that group includes considering whether amendments to the Enrolment of Deeds (Change of Name) Regulations 1994 are required. I raise that because the regulations for changing name by deed poll are made by the Master of the Rolls, not a Minister, and I must of course respect and honour that; it is not as straightforward as me signing my name and changes happening. The ball has already started rolling with the Master of the Rolls, and indeed the Ministry of Justice, to try to find ways of addressing the concerns that the hon. Lady and many other Members have voiced in recent months.

Sarah Champion (Rotherham) (Lab): I hope the Minister recognises my concerns around enrolment, and the fact that the data then gets published. The enrolled deed poll does not include the question whether someone has a criminal past. I am still concerned that that could be a loophole.

Victoria Atkins: Interestingly, the point that the hon. Lady has highlighted about, for example, victims of domestic abuse having to publish their addresses is one of the factors that we are very much having to bear in mind as we look at this. I have also received a great deal of correspondence from hon. Members concerned about the safety of transgender people, for example, and victims of domestic abuse. We can think of other examples of where people have changed their name and there are security issues therein as well as the fact of the name being changed. It is a very complicated area.

I have also listened to the concerns about the Disclosure and Barring Service system. As colleagues will know, the DBS conducts criminal records checks and maintains lists of people who are barred, by virtue of their previous convictions, from working with either children or vulnerable adults—sometimes both. That is an incredibly important process. My right hon. Friend the Member for Bromsgrove (Sajid Javid) has done a great deal of work on the issue as well.

I have asked my officials to work with the Disclosure and Barring Service, employers and others, including the General Register Office, to examine whether, for example, requiring birth certificates would help assure employers such as schools of a person's history and previous names. The work is very complicated, not least because we have to bear in mind, for example, that 20% to 25% of records checks involve applicants born overseas.

Although one would hope that it is easy in this country to obtain a copy of a birth certificate if one has lost it, that may not be the case elsewhere in the world.

Sarah Champion: The Minister has been going through the same process that I have been going through. Rather than putting a blanket demand for birth certificates on everybody, is there the potential to flag all sex offenders? I am not sure about the Minister's view, but mine is that when someone carries out a sexual offence, they lose some of their rights. If all sex offenders had a flag on them that automatically triggered the check, either with the Driver and Vehicle Licensing Agency or the Passport Office, that would seem a more manageable way forward administratively.

Victoria Atkins: The Passport Office can already refuse to change the names on a passport under the existing regulations, but this whole area is incredibly complicated; it involves not just regulations but the common law as well. There is a great tradition in common law of people being able to change their names, and we would not want to trespass upon that. What we are trying to do is target sex offenders who are not doing what they should be—namely, notifying the police of any changes to their names.

I have gone through some of the work that we are conducting, albeit quietly; we have not gone to the lengths of describing it as a review. Given the wording of her new clause, I hope that the hon. Member for Rotherham takes comfort from the fact that we are looking at the issue seriously. We are working across the MOJ, the Home Office and other agencies relevant and important to the issue to try to find answers that are proportionate and protect the rights of the very people we are not trying to target.

My right hon. Friend the Member for Scarborough and Whitby gave the example of someone who changes their name on getting married. I am sensitive to the resource implications of having blanket orders. We will continue with this work. I am happy, as always, to involve the hon. Member for Rotherham because I know of her great interest and expertise on these matters, but I hope I can persuade her not to push her new clause.

Question put and agreed to.

Clause 141 accordingly ordered to stand part of the Bill.

Clauses 142 to 144 ordered to stand part of the Bill.

Clause 145

List of countries

Sarah Champion: I beg to move amendment 3, in clause 145, page 143, line 16, leave out "may" and insert "must".

This amendment would place a requirement on the Secretary of State to prepare (or direct someone to prepare) a list of countries and territories considered to be at high risk of child sexual exploitation or abuse by UK nationals and residents, rather than leaving at the Secretary of State's discretion to produce such a list.

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

Amendment 4, in clause 145, page 143, line 20, after "residents", insert

", including those who commit those crimes online, remotely or via the internet".

This amendment would ensure the list prepared by the Secretary of State includes countries and territories where children are considered at high risk of child sexual exploitation by UK nationals and residents who commit those crimes online, remotely or via the internet, and is not limited to in-person offending.

Amendment 5, in clause 145, page 143, line 24, after "residents", insert

", including those who commit those crimes online, remotely or via the internet".

This amendment would ensure the list prepared by a relevant person directed by the Secretary of State includes countries and territories where children are considered at high risk of child sexual exploitation by UK nationals and residents who commit those crimes online, remotely or via the internet, and is not limited to in-person offending.

Amendment 6, in clause 145, page 144, line 16, leave out subsection (9).

This amendment would remove the ability of the Secretary of State to withdraw the list of countries and territories considered to be at high risk of child sexual exploitation or abuse by UK nationals and residents.

Clause stand part.

Clause 146 stand part.

Sarah Champion: I previously spoke about the horrific nature of online exploitation and the need for an urgent and robust response from the UK to disrupt the cycle of supply and demand fuelling that abuse. As I previously argued, the Bill is an important opportunity for the Government to take action in this area, and clause 145 is no different. I very much welcome the measures set out in the Bill and particularly in clause 145, which provide for the establishment and maintenance of a list of countries and territories in which children are considered to be at high risk of sexual exploitation or abuse by UK nationals or residents. Tied to this, clause 146 would require applicants—for example, the police—for a sexual harm prevention order or sexual risk order to have regard to that list. These important measures should be welcomed. They give effect to a recommendation made by the Independent Inquiry into Child Sexual Abuse.

It is vital that we do all we can to tackle contact offending overseas, but we must also take into consideration online offending against children overseas. My amendments 4 and 5, to clause 145, would require the Secretary of State to produce a list of high-risk countries for both in-person and online abuse. As currently drafted, the Bill grants the Secretary of State the ability to publish a list of countries and territories in which UK nationals pose a high risk of sexual exploitation and abuse. Through my amendments, I am seeking to clarify that that relates to both in-person and online abuse. Through amendment 6, I would make it a requirement that the Secretary of State do this; currently, it is a matter of discretion.

It is hoped that, through consultation with law enforcement and civil society, we will enable an accurate list of high-risk areas to be gathered together. That would be an immeasurably useful resource for targeting resources in the future. This process will also help us to better understand the nature of exploitation and abuse by UK nationals, enabling us to ensure that interventions are effective in achieving prevention.

As with my other amendments on online sexual exploitation of children, these amendments are supported by the International Justice Mission. I am very grateful for its support on this matter, but also for all the work that it does around the world to protect children. It knows only too well the horrific nature of online abuse carried out by UK offenders against children overseas.

[Sarah Champion]

I really hope that the Minister is minded to add a provision about online abuse to the Bill or is able to give reassurance that the online proliferation of abuse will be included in the list.

Victoria Atkins: Again, I am mindful that the clauses are not opposed by the Opposition, so I hope that I can move straight to the amendments tabled by the hon. Member for Rotherham. However, I should just say, for those who are not familiar with why we are putting together a list of countries, that it was a recommendation of the Independent Inquiry into Child Sexual Abuse that we as a country must look very carefully and seriously at how sexual offenders within the UK travel abroad to rape and sexually assault children overseas. That is an incredibly important matter and one that we take very, very seriously.

The inquiry recommended that we bring forward legislation providing for the establishment of a list of countries where children are considered to be at high risk of sexual abuse and exploitation from overseas offenders—I underline that. This is a list to help people regarding offenders from the United Kingdom, not a commentary on offenders within the countries that are so listed.

The purpose of the list is to help the police and courts identify whether a civil order with a travel restriction should be made. The list has been created. We commissioned the National Crime Agency to develop the list of countries, and it brought together insights from sensitive law enforcement data, open-source intelligence analysis and the expertise of those who work with the victims of child sexual exploitation, in drawing it together.

2.15 pm

On amendment 3, I assure the hon. Lady that it is very much the Government's intention that a list of countries should be prepared, and we are committed to doing so in our tackling child sexual abuse strategy and our response to the IICSA recommendations. We have commissioned the agency to create the list. Although we fully intend to establish and maintain the list, providing for a power, rather than a duty, in clause 145 mitigates any unforeseen future risk that the list may no longer be of practical use.

I very much understand the hon. Lady's intentions behind amendments 4 and 5. Children outside the UK should be protected from all forms of child sexual abuse, both offline and online. The specific purpose of the list is to enable the courts and the police to make civil orders to prevent people from travelling overseas. The courts will have to consider the necessity and appropriateness of imposing travel prohibitions via the orders to limit opportunities for such people to travel overseas to abuse children. That is why clause 146 places a requirement on applicants and the courts to have regard to the list in those circumstances.

The inclusion of additional countries at risk of online offending would not be appropriate and may confuse the intended function of the list. It could also, I am told, reduce its effect, as it would become less relevant to a court in considering whether to impose a travel restriction.

Sarah Champion: I understand the logic of the argument that the Minister is putting forward, but what I hear anecdotally from the police is that there is that escalation. I would have thought that knowing, for example, that they are able to watch children being abused in the Philippines would be a draw for UK abusers who want that escalation to go to the Philippines. Having the word "online" there would make the police recognise the very severe damage that happens, whether it is done in person or is being directed by a UK national. It is about the recognition of how this escalates.

Victoria Atkins: Yes, I do understand that point, but there has been very careful consideration of the effects of an order to prohibit a person from travelling overseas. I am told that adding "online" to the clause would undermine the appropriateness of such orders.

I also draw the Committee's attention to the Online Safety Bill, which will help more generally in the online world. It will place a duty of care on tech companies to target grooming and the proliferation of child sexual abuse material. Of course, Members will in due course scrutinise the draft Bill that has been put before the House for its consideration.

On amendment 6, the effectiveness of the list is dependent on its reflecting the current global intelligence picture. The Secretary of State must retain the right to withdraw the list in the unforeseen event that the intelligence picture changes rapidly or that the list becomes no longer of practical use. I stress, however, that our intention is to maintain the list, and any decision to withdraw it would be taken on an exceptional basis.

I welcome the hon. Lady's, and indeed the Opposition's broad support for the clauses, and invite her to withdraw the amendment.

Sarah Champion: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 145 ordered to stand part of the Bill.

Clause 146 ordered to stand part of the Bill.

Clause 147

STANDARD OF PROOF

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

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

Amendment 162, in clause 148, page 150, line 14, at end insert—

"(1B) A sexual harm prevention order must require the offender to participate in a treatment programme approved by the Secretary of State for the purpose of reducing the risk of sexual harm that a person may pose."

Amendment 163, in clause 148, page 152, line 34, at end insert—

"(1B) A sexual harm prevention order must require the defendant to participate in a treatment programme approved by the Secretary of State for the purpose of reducing the risk of sexual harm that a person may pose."

Clause 148 stand part.

Amendment 164, in clause 149, page 154, line 42, at end insert—

"(7A) A sexual risk order must require the defendant to participate in a treatment programme approved by the Secretary of State for the purpose of reducing the risk of sexual harm that a person may pose."

Clauses 149 to 152 stand part.

Sarah Champion: Amendments 162 to 164 were tabled in not only my name but that of my right hon. Friend the Member for Kingston upon Hull North (Dame Diana Johnson). They amend clauses 148 and 149, which relate to sexual harm prevention orders and sexual risk orders. The Government are introducing the clauses to expand the role of those orders so that positive requirements can be placed on individuals, and we welcome that. Currently, the law allows only for individuals to be ordered to stop things.

Given that the Government are introducing changes to the orders, I believe that the law could be strengthened even further, which is why I am speaking to the amendments in the name of my right hon. Friend. The amendments would impose a positive duty to refer to a treatment programme all individuals who are subject to a sexual harm prevention order where they have been convicted, or a sexual risk order when a conviction has not yet been obtained. For example, that could be prior to a court hearing when there is sufficient concern for an order to be made before a conviction is obtained.

Under the amendments, a mandatory referral to treatment services would be required for all those engaged in criminal sexual behaviour and where a SHPO or SRO is to be put in place. That is an attempt to intervene at the earliest opportunity, and in particular to stop non-contact sexual offending behaviour escalating. Starting with non-contact sexual offending, such as indecent exposure or voyeurism, is necessary as it is often a gateway to more serious offending. There is a great deal of evidence that those who commit low-level or non-contact sexual offences will often escalate their behaviour and take more risks, with the potential for increasingly violent sexual crimes.

That pattern of behaviour is encapsulated by the case of a University of Hull student, Libby Squire, who was out in Hull one night when she was picked up by a man who went on to rape and murder her and then dumped her body in the River Hull. She was not found for many weeks. It was later revealed that the man who murdered Libby had been prowling the streets of Hull for many months committing low-level sexual offences such as voyeurism and burglary of women's underwear and sex toys. Those crimes took place between 2017 and January 2019.

The last known non-contact sexual offence that the man committed happened just 11 days prior to the murder of Libby Squire. Unfortunately, very few of his crimes were reported to the police before Libby went missing. Even if the offender had been charged or convicted of those non-contact sexual crimes, the police believe that little would have been done to address his offending behaviour, as his actions did not meet the high threshold for referral to specialist treatment.

The amendments would address that issue and make referrals mandatory for all sexual offending, including lower-level or non-contact sexual offending. That would effectively interrupt a pattern of behaviour at the earliest possible point and help to prevent an escalation of sexual offending, thus helping to reduce the risk of sexual harm to women and girls and the wider public. I look forward to hearing what the Minister says about this group of amendments, as I know that she too is very concerned about these matters.

Victoria Atkins: Again, I am not going to address the clauses, because I understand they are not opposed. If I may, I will deal with the amendments. I am extremely grateful to the hon. Member for Rotherham and the right hon. Member for Kingston upon Hull North, who has rightly brought to the fore the case of Libby Squire. Although I am not a Hull Member of Parliament, I have some knowledge of it because it is in my part of the country, and everyone in our region watched the facts of that case unfold with growing dismay, gloom and horror when it was eventually clear what had happened to poor Libby, so I very much appreciate the chance to put on the record our condolences to her family. I also completely understand why the right hon. Lady has tabled the amendments.

We are not able to agree to the amendments because we are concerned that for each offender, even of so-called low-level offences, one has to be very, very careful to make it clear that those offences are still by their very nature serious. Sadly, the depravity and gravity of sexual offences is such that there is a range, and the lower-level offences are ones that are particularly troubling to the right hon. Member for Kingston upon Hull North in the context of this clause.

It is important to make an individual assessment of the value of a treatment programme in each case, using risk assessment and risk management plans to inform the decision. Sadly, not all offenders will respond appropriately to a treatment programme. Indeed there are fears that, in some cases, it could exacerbate their offending behaviours. At the moment and for the foreseeable future, we intend that treatment programmes should be directed towards offenders who would benefit most. When I say "benefit", it is for the wider benefit of the community that these perpetrators are stopped, but it is for those offenders who will respond best to the programmes. That means that a case-by-case assessment must occur, rather than the universal approach proposed by the right hon. Lady.

I have spoken to the right hon. Lady and received a letter from her setting out her concerns. I know that her principal concern is how we manage effectively the risk presented by sex offenders whose offending behaviour starts with non-contact sexual offences such as indecent exposure, but which then escalates. There is a growing understanding that there is a range of behaviours that can escalate, and we very much want to address that escalation in behaviour.

However, one of the challenges is that, as the right hon. Lady acknowledges, the lower-level non-contact sexual offences might not be reported. If they are not reported, the police cannot deal with an offender if they do not know about that offender. They cannot manage the risk presented by such offenders if the behaviour is not reported and prosecuted as appropriate. So, from this afternoon, let us all encourage people who see the voyeurism or indecent exposure that concerns us in this particular area to please report that to the police. If it is reported, it begins to build a picture of that offender so that appropriate and necessary action can be taken.

[Victoria Atkins]

Where such offences are reported and lead to convictions, the offender will be made subject to the notification requirements under the Sexual Offences Act 2003 and risk-assessed and managed under a multi-agency public protection arrangement. That plan will be implemented with support from other relevant agencies within the MAPPA framework.

2.30 pm

The risk assessment will identify the risks presented by that individual and the appropriate level of assessment that they require. For those who have not been convicted, the police should still be using local safeguarding processes to risk-assess and manage those who are a cause of concern and, in appropriate cases, apply for a sexual risk order. It is important that the courts consider, on a case-by-case basis, the appropriate restrictions and requirements attached to any such order, rather than adopt the blanket approach provided for in these amendments.

I understand the motivations behind the amendments, but we have concluded that they would not achieve the results that the right hon. Lady and the hon. Lady so understandably wish to see.

Question put and agreed to.

Clause 147 accordingly ordered to stand part of the Bill.

Clauses 148 to 156 ordered to stand part of the Bill.

Schedule 17 agreed to.

Clause 157

TERRORIST OFFENDERS RELEASED ON LICENCE: ARREST WITHOUT WARRANT PENDING RECALL DECISION

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

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

Clauses 158 to 161 stand part.

That schedule 18 be the Eighteenth schedule to the Bill.

Clause 162 stand part.

Sarah Jones: I want to speak briefly to the clauses, which we support. I begin by paying tribute to Saskia Jones and Jack Merritt, whose lives were so tragically cut short at the Fishmonger's Hall attack. Protecting the public is the overall and overriding priority for us all, and clauses 157 to 162 would help law enforcement and counter-terror policing to better manage and monitor the risks when terrorist offenders are released on licence.

Lone attackers intent on causing carnage have taken the lives of innocent people, injured more and caused enormous suffering to all those affected. In the year ending June 2020, 34 sentenced terrorist offenders were released from prison custody. Between July 2013 and June 2020, 265 terrorist prisoners were released from a custodial prison sentence, but the statistics do not show which of those were released on licence. It would be helpful if the Minister had any statistics on the number of terrorist prisoners released on licence in recent years.

As we know, this is an issue of heightened importance since the atrocities at Fishmonger's Hall and Streatham. The perpetrators were terrorist risk offenders or were on the authorities' radar to a certain degree. The Opposition have repeated called for a review into lone actor terrorism and the need for a clearer strategy to tackle it.

It emerged in the spring that the Home Office had in fact conducted a review of that kind but through an internal unit, so few details are known about it. My hon. Friend the Member for St Helens North (Conor McGinn) pressed Ministers for more details about the review and for its key findings to be shared confidentially with us, but we have had no response. All along, we have said that we want to work with the Government to get these crucial matters right and to strengthen national security, which is our top priority. We can do that better if we have the right information and if there is full transparency by the Government about where the system needs to improve.

Overall, we welcome the provisions in clauses 157 to 162 that will insert four new sections into the Terrorism Act 2000, providing for new powers to manage terrorist offenders. We were pleased that the Government asked the Independent Reviewer of Terrorism Legislation, Jonathan Hall, QC, to review multi-agency public protection arrangements regarding the management of terrorist offenders and other offenders of terrorism concern. In the joint letter by the Justice Secretary and the Home Secretary to Jonathan Hall, QC, they wrote that

"officials consulted all operational agencies, including counter-terrorism, police and the National Probation Service, which confirmed how useful the new powers would be and in what circumstances they might be used."

Labour welcomes this statement.

In the evidence sessions for the Bill Committee, Jonathan Hall, QC, made some important points, one about a specific safeguard, which I would like the Minister to respond to. Jonathan Hall, QC, said on the power in clause 159 to apply for a warrant to search the premises of a released offender, which he supports, that

"it would be possible to apply to a judge for a warrant that would allow you to enter on any number—potentially an infinite number—of occasions. If you think about released terrorist offenders on licence, their licences can last a very long time—for example, 10 or 15 years—so perhaps the Committee may want to think about whether it is appropriate to have a power that would authorise multiple entries into a person's premises throughout 10 or 15 years. The power of multiple entry under warrant does exist when you are talking about a live operation, and the police find that quite useful. I am not quite sure whether it is justified in the context of this particular risk."—[*Official Report, Police, Crime, Sentencing and Courts Public Bill Committee,* 18 May 2021; c. 51.]

Since this is our first chance to discuss small points of detail in the Bill, it would be helpful if the Minister could respond to the point that Jonathan Hall, QC, made.

Furthermore, on clause 158 Jonathan Hall, QC, had a question about the purpose of this search, in that the clause is drafted in a way that makes its scope wider than that of the Terrorism Prevention and Investigation Measures Act 2011. Can the Minister say what precisely is the purpose of the search, and can she respond to the point made by Jonathan Hall, QC, that it may be that the purpose of the search goes a bit wider than necessary?

Finally, Jonathan Hall, QC, said in March that the Government have not taken any steps in the Bill to address the fact that there is no proof that the desistance and disengagement programme for released terrorists is working. Can the Minister point us to anything in the Bill or elsewhere that addresses that point?

Victoria Atkins: I join the hon. Lady in paying tribute to Saskia Jones and Jack Merritt, whose lives were tragically cut short in a horrific manner in Fishmongers' Hall. I am really pleased that these clauses meet with the approval of both the Government and the Opposition parties, so that we are able to make some very substantial changes, as recommended by Jonathan Hall, QC. He examined the legislation with great care and attention following the commission from the Home Secretary and the Lord Chancellor.

The hon. Lady asked me a few questions. If I may, I will write to her on the point about the statistics; I do not have the statistics to hand, I am afraid, but I will write to her with them. She asked about the ability under clause 159 for officers to apply for a multiple entry ability warrant. The reason for that ability is that we anticipate that there will be a very small number of cases in which counter-terrorism police officers believe that a warrant permitting multiple entry is required. An application by the police will only be made following cross-agency work, including discussion with probation services on the justification for a warrant and its appropriate scope. Ultimately, of course, it would be for the court to decide, and clause 159 is clear that the court should issue the warrant only if it is satisfied that such authorisation is necessary for purposes connected with protecting members of the public from a risk of terrorism.

To reassure colleagues, Parliament has previously agreed to the creation of premises search powers that permit multiple entries. For example, the search power under section 56A of the Counter-Terrorism Act 2008 provides for that, and it was inserted by the Counter-Terrorism and Border Security Act 2019. I hope that as we felt able to do that in that legislation, we will feel able to do the same in the Bill, given all the safeguards.

The hon. Lady asked about the purpose of a search. The personal search will provide the police with the means of conducting assurance checks. We envisage that in the majority of cases, they will be checks on whether a relevant terrorist offender is in possession of something that could be used to harm or threaten a person—a weapon or a fake suicide belt, for example—but there may be other limited scenarios in which a personal search for something that appears innocuous may be necessary for purposes connected with protecting members of the public from a risk of terrorism. An example would be a personal search to check whether the offender was in possession of a mobile phone in violation of their licence conditions.

This provision gives a better means of monitoring risk, because a contraband phone would be unlikely to meet any definition of something that could be used to threaten or harm, but depending on the offender's background, it might embolden them to make contact with their previous terrorist network, enable them to access materials useful in preparing an act of terrorism, or provide a route for them to radicalise others. I hope that I have addressed the hon. Lady's concerns.

Question put and agreed to.

Clause 157 accordingly ordered to stand part of the Bill.

Clauses 158 to 161 ordered to stand part of the Bill.

Schedule 18 agreed to.

Clause 162 ordered to stand part of the Bill.

Clause 163

REHABILITATION OF OFFENDERS

The Parliamentary Under-Secretary of State for the Home Department (Chris Philp): I beg to move amendment 134, in clause 163, page 180, line 23, at end insert—

"(A1) The Rehabilitation of Offenders Act 1974, as it forms part of the law of England and Wales, is amended as follows."

This amendment is consequential on Amendment 143.

The Chair: With this it will be convenient to discuss Government amendments 135 to 143.

Chris Philp: It is, as always, a pleasure to serve under your chairmanship, Mr McCabe, and an equal pleasure to follow the Under-Secretary of State for the Home Department, my hon. Friend the Member for Louth and Horncastle.

Amendment 142 relates to the Rehabilitation of Offenders Act 1974, which sets out a rehabilitation period for orders on conviction that impose prohibitions and other penalties. The rehabilitation period is equal to the duration of the period for which the order is specified to have effect. The amendment seeks to put beyond doubt that where the court imposes any provisions in an order, that attracts a rehabilitation period and requires disclosure in a way that is similar to when orders impose prohibitions and penalties. A provision may say, for example, that a person should, or should not, engage in a particular activity. Any provision, of whatever nature, triggers the disclosure requirement until such time as the provision ends. Amendment 142 makes that clear.

Amendment 138 is in a somewhat similar spirit. It relates to orders that set out that they have effect until the occurrence of a specified event. The court may make provision for some orders to have effect indefinitely, or until a further order is made in respect of the subject. Those orders might include disqualifications, restraining orders, sexual harm prevention orders and criminal behaviour orders. The amendment is intended to put beyond doubt that where such provision is made in the order, the rehabilitation period and the accompanying disclosure requirement end only when the order ceases to have effect, so once again, it is clarifying. The rest of the amendments in this group—134 to 137, 139 to 141, and 143—are technical amendments that make corrects to various cross-references.

2.45 pm

Amendment 134 agreed to.

Amendments made: 135, in clause 163, page 180, line 24, leave out

"of the Rehabilitation of Offenders Act 1974".

This amendment is consequential on Amendment 143.

Amendment 136, in clause 163, page 180, line 25, leave out from "sentences)" to "is".—*(Chris Philp.)*

This amendment is consequential on Amendment 143.

Alex Cunningham (Stockton North) (Lab): I beg to move amendment 9, in clause 163, page 180, line 30, leave out from "for" to "or" in line 32 and insert

"a serious violent, sexual or terrorism offence specified in regulations made by the Secretary of State by statutory instrument".

[Alex Cunningham]

This amendment would make the list of offences subject to lifelong disclosure specified in regulations rather than set in primary legislation.

Clause 163 would allow some custodial sentences of over four years to become spent after a certain period of time, excluding convictions for serious sexual violence and terrorist offences. It would also reduce the existing rehabilitation periods for certain other disposals given or imposed on conviction. I am pleased to say that we are very supportive of the Government's direction of travel on criminal record reform, although as ever, I wonder whether it can go that little bit further, and do all the more good for it. The focus on employment discrimination is correct: we know that employment is a critical factor in preventing reoffending and maintaining the wider wellbeing of people with criminal records. One proven way to help people with criminal records into work is to reduce the period for which they have to disclose their record. These changes will impact as many as 50,000 people a year, and will make an appreciable difference to their life.

While we are supportive of the Government's efforts to help people with criminal records into work, I note that the charity Unlock, which specialises in this area, has said that it

"cannot agree that the white paper proposals alone will have an appreciable impact on reoffending or employment."

The reforms are welcome, but a major concern of ours is that they are not necessarily grounded in evidence. Let me be clear: there is evidence that reducing spending periods will reduce discrimination and help people with criminal records into employment, and that being in employment is one of the most important factors in preventing reoffending. However, there is not evidence that the specific reductions that the Government have proposed are the most effective way of reducing employment discrimination and/or preventing reoffending. As Unlock noted in its response to the White Paper,

"Even where there are reductions, the MoJ has not discussed how or why they have arrived at these figures. While Unlock do support these reductions, it is concerning not to see a base of evidence offered for those choices, or even a broader public policy justification. To see disclosure reduced from two years to one year is positive; but why is one year the correct length? Why not six months, or 18 months?"

Policies are more likely to achieve their aims if they are rooted in clear evidence. Can the Minister share with us the Department's reasoning in coming up with these numbers? I agree that a shorter spending time is better, but I am interested in why the Government have chosen to place the limits where they have.

It has been only a few years since the Government's previous set of radical reforms in this area came into force under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, having been proposed in the 2012 Ministry of Justice "Breaking the Cycle" White Paper. I am sure the Government would agree that it is preferable to get it right this time, and not need another set of so-called radical reforms a few years hence.

I turn to the impact on children's spending periods. Under the Bill, children's rehabilitation periods continue to be half those of adults. The Youth Justice Board queries whether that is the correct way to do it and advocates instead for an approach that takes into account the differences in child offending patterns. It sounds eminently sensible to me that the Government should base child rehabilitation periods on evidence of child reoffending and what actually works to rehabilitate children, rather than simply halving the number in the adult model. I would be interested to hear from the Minister whether his Department has given any consideration to that, or might look at it in the future.

That said, the Opposition are certainly in favour of the proposals on child rehabilitation periods, as we would like them to be reduced. As the Howard League notes in its briefing, the impact of the childhood criminal record system in England and Wales is

"extremely punitive by international standards".

These proposals will help more people who commit an offence as children to turn their lives around and move away from offending behaviour, so we are glad to support them. However, I put on record the Opposition's concern that these proposals for child rehabilitation periods will still exclude those who turn 18 before conviction. I will speak further on this next week when we come to the relevant new clauses that we have tabled, but it causes us disquiet that not every child who commits an offence will have a child rehabilitation period. That is especially relevant because the number of children who turn 18 while awaiting trial is increasing as a result of the unprecedented court backlog.

Finally, before I turn to the amendments, I want to touch on the fact that this direction of travel, welcome though it certainly is, makes some disparities in the disclosure regime even wider. One example is motoring offences, which I will speak about shortly in relation to amendment 165. I would welcome information about the work ongoing in the Department on this topic that could reassure us that the Government's ambitions are not limited to these proposals.

I will be relatively brief on amendment 9, but first I thank Unlock for its helpful input. Amendment 9 would mean that the list of offences that are subject to lifelong disclosure was specified in regulations, rather than in primary legislation. This is effectively a future-proofing amendment, which will make future Government reforms in this area easier to achieve. The list could be more easily amended over time in response to changing needs and circumstances.

The Bill provides that some convictions that previously led to a sentence of more than four years should become spent after seven years. Before this, all sentences of more than four years had to be disclosed for life. There will be a tremendous positive impact on the lives of people with criminal records covered by this proposal. The reach of the policy is clearly restricted, because the Ministry of Justice proposes that

"serious sexual, violent and terrorist offences"

be excluded, and I make it clear that we have no opposition to that restriction.

The offences that will be excluded are those covered by schedule 18 of the sentencing code. That in itself illustrates why it would be simpler to keep the list in regulations. After the sentencing White Paper was published, but before the sentencing code became law, the Lord Chancellor intended to use the list from schedule 15 of the Criminal Justice Act 2003 to determine which offences would be excluded. This list fulfils a similar purpose, but I think that demonstrates the point I am trying to make.

In fact, I hope that schedule 18 of the sentencing code is more appropriate, because Unlock has estimated that around 65% of all sentences of over four years are imposed for crimes on the list in schedule 15 of the Criminal Justice Act, meaning that the Government's proposals would affect only a minority of those with criminal records. Furthermore, the offences listed in schedule 15 had a very wide range of outcomes: 27% of schedule 15 offences in 2019 received only community orders, despite being classified as serious. It would be helpful to hear some reassurance from the Minister that schedule 18 is more fit for purpose. Regardless, I am sure that he can understand the benefits of future flexibility. I hope that he will support this simple amendment.

I turn to amendment 165.

The Chair: No, I think it would be better to stick to the sequence on the selection list.

Chris Philp: Given your direction, Mr McCabe, I will not speak to clause 163 substantively just yet—or, indeed, to amendment 165—but will speak narrowly and specifically to amendment 9.

I understand the spirit of the shadow Minister's amendment, but I observe that it is not often that the Opposition propose conferring on Government regulation-making powers that they have not asked for. It is usually the other way around, is it not?

The Government take the view that schedule 18 of the sentencing code sets out the list of most serious offences. They are the same offences used to assess dangerousness. Using schedule 18 ensures simplicity and consistency between assessing dangerousness and requiring longer disclosure. We think it is more straightforward and transparent for those people subject to disclosure requirements to know that that is not a moving target; they know the list is fixed and will not change.

The power that the shadow Minister generously proposes conferring on the Government might lead to unpredictable changes for the people affected. For those two reasons—predictability and consistency—we prefer to set things out in statute, as is currently proposed, via schedule 18 of the sentencing code.

I will briefly answer one question that the shadow Minister posed—I might address some other questions later—on research on whether these are the right lengths of time, or whether more can be done in future. Yes, I confirm that we will continue to look at this, and to conduct research as appropriate to ensure that the balance is struck between rehabilitation and protecting the public.

Alex Cunningham: The fact that the Government have missed the point about the narrow application of the measure and how very few people will be caught by it is lamentable. I will not press the amendment to a vote at this stage, but we may well revisit the matter in future. It is great to have such provisions, but they affect only a minority of people in the criminal justice system, when they could benefit so many more. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments made: 137, in clause 163, page 181, line 27, at end insert—

"(3A) In subsection (2) (rehabilitation periods), in the words before paragraph (a), for '(3) and' substitute '(2A) to'."

This amendment and Amendments 138 to 140 make provision about the rehabilitation period that applies to a person who is subject to a relevant order where the last day on which the order is to have effect is not provided for by or under the order.

Amendment 138, in clause 163, page 182, line 8, at end insert—

"(4A) After subsection (2) (and after the table in subsection (2)(b)) insert—

'(2A) Subsection (2B) applies where provision is made by or under a relevant order for the order to have effect—

(a) until further order,

(b) until the occurrence of a specified event, or

(c) otherwise for an indefinite period.

(2B) The rehabilitation period for the order is the period—

(a) beginning with the date of the conviction in respect of which the order is imposed, and

(b) ending when the order ceases to have effect.'"

See the explanatory statement for Amendment 137.

Amendment 139, in clause 163, page 182, line 9, leave out subsection (5) and insert—

"(5) For subsection (3) (rehabilitation period for community etc order which does not provide for the last day on which the order has effect) substitute—

'(3) The rehabilitation period for a relevant order which is not otherwise dealt with in the Table or under subsections (2A) and (2B) is the period of 24 months beginning with the date of conviction.'"

See the explanatory statement for Amendment 137.

Amendment 140, in clause 163, page 182, line 11, at end insert—

"(5A) In subsection (4)(b) (rehabilitation period for other sentences), for 'subsection (3)' substitute 'any of subsections (2A) to (3)'."

See the explanatory statement for Amendment 137.

Amendment 141, in clause 163, page 182, line 29, after "order" insert "—(a)".

This amendment and Amendment 142 make provision about the rehabilitation period that applies to a person who is subject to an order which imposes requirements or restrictions on the person or is otherwise intended to regulate the person's behaviour.

Amendment 142, in clause 163, page 182, line 31, at end insert ", and

(b) for paragraph (g) substitute—

'(g) any order which—

(i) imposes a disqualification, disability, prohibition, penalty, requirement or restriction, or

(ii) is otherwise intended to regulate the behaviour of the person convicted,

and is not otherwise dealt with in the Table,'."

See the explanatory statement for Amendment 141.

Amendment 143, in clause 163, page 182, line 31, at end insert—

"(8A) In section 6(5) (the rehabilitation period applicable to a conviction), for the words from 'by virtue of' to 'or other penalty' substitute 'to an order within paragraph (g) of the definition of "relevant order" in section 5(8) above'.

(8B) In section 7(1)(d) (limitations on rehabilitation under the Act), for 'or other penalty' substitute ', penalty, requirement, restriction or other regulation of the person's behaviour'.

(8C) In paragraph 5(b) of Schedule 2 (protection for spent cautions), after 'prohibition' insert ', requirement'."—*(Chris Philp.)*

This amendment makes amendments to the Rehabilitation of Offenders Act 1974 that are consequential on or otherwise related to the amendments to that Act made by Amendment 142.

Alex Cunningham: I beg to move amendment 165, in clause 163, page 182, line 45, at end insert—

"(12) The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 9, Saving Provision and Specification of Commencement Date) Order 2014 (S.I. 2014/423) is amended by the omission of article 3."

This amendment would provide that the changes to the rehabilitation periods in the Rehabilitation of Offenders Act 1974 made by sections 139 and 141 and Schedule 25 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 would apply to road traffic endorsements.

As I mentioned, the welcome changes in clause 163 widen some disparities in the disclosure system, leaving certain offences extremely out of step with others. A particularly notable area where the discrepancy would manifest itself is motoring offences. That was raised in the evidence session by Sam Doohan of Unlock and Helen Berresford of Nacro. I thank Nacro for its input on this amendment.

A person who is convicted of, or receives a fixed penalty for, an offence listed on schedule 2 of the Road Traffic Offenders Act 1988 is required to disclose that information for a period of five years if they were an adult when convicted, or of three years if they were a juvenile when convicted. Motoring convictions have some of the longest rehabilitation periods when it comes to criminal record disclosure. In fact, adult motoring convictions that receive an endorsement at court have a five-year rehabilitation period. That means that, under the Bill, a minor motoring offence would be disclosed for more time than some custodial sentences and become even more of an outlier in the disclosure regime.

As Sam Doohan said in an evidence session:

"People end up having to disclose, say, a speeding ticket for five years, which is longer than if they had gone to prison for a year."—[*Official Report, Police, Crime, Sentencing and Courts Public Bill Committee,* 20 May 2021; c. 99, Q155.]

I am sure that the Government recognise the nonsense in that. Current rules already have a disproportionate impact on people who apply for jobs because they have to disclose those convictions for five years. Now that will be even more disproportionate because they will often have to disclose for far longer than for non-motoring offence convictions that receive the same disposal. That affects a large number of people; more than half of all convictions every year relate to motoring offences.

3 pm

The amendment would remove the blanket five-year rehabilitation period for motoring convictions, aligning the rehabilitation period with other convictions as set out in the table in section 5(2) of the Rehabilitation of Offenders Act. That means that for an adult motoring conviction that leads to a fine, the person would receive a one-year rehabilitation period, as for any other fine. For an adult motoring conviction that leads to a custodial sentence, the rehabilitation period would match the current periods for those sentences.

There is a real need for change and I hope the Government agree that the Bill is a good opportunity to move forward. The progress that the Government have made in relation to other criminal records will not be felt in cases where there is a motoring offence element. As in other instances where there is more than one disposal within the same proceedings, the disposal with the longest rehabilitation period determines when a conviction is spent. Motoring offences, with such a long rehabilitation period, have a dragging effect on other unspent convictions because none of an individual's convictions becomes spent until they all do.

We are concerned that if we do not address the outlier of motoring offences, the Government's positive efforts to shorten disclosure periods for prison and community sentences will be undermined. For example, if somebody is convicted of a motoring offence when serving a community order, the offence that resulted in the community order will be dragged into the motoring offence's disclosure period, leading to its being disclosed for significantly longer.

The impact can be serious because employment discrimination against people with criminal records is universal—it does not necessarily matter what the offence is. Nacro told me that it has supported people through its criminal records support service, but sometimes a job offer is withdrawn due to previous motoring convictions, which bear no relation to the job role. I understand that the Government may think that motoring offences need longer disclosure periods for insurance purposes, but that information could be made available to insurers by other means, instead of having a blanket disclosure period.

I am sure that the Government do not want their widely celebrated efforts to be undermined by that oversight, so I hope that they will join us in supporting the amendment.

Chris Philp: As the shadow Minister said, the amendment would change the current rehabilitation period for endorsements that are imposed in respect of motoring convictions from five years to nil. Unless another disposal is given for the same motoring conviction that attracts a separate rehabilitation period, the amendment would result in some motoring convictions being spent immediately and having no rehabilitation period.

It is worth saying that the Department for Transport leads on the rehabilitation periods for motoring penalties. It is a complex area with a combination of fines, driving bans and penalty points, as well as community and prison sentences, which are an important part of the system to reduce dangerous and careless behaviour on our roads. That includes the way in which the provisions interact with the insurance system, as the shadow Minister said.

Clearly, if someone gets speeding points and that has consequences for their insurance premium for some time, it is a disincentive to drive dangerously. There is also a reasonable link between someone who drives carelessly or dangerously and the risk they pose, which leads to higher insurance premiums. There is therefore a certain justice to that link.

The range of penalties and the current penalty points system has been developed to prevent low standards of driving behaviour, which have the potential to cause serious harm to other road users and, in the worst cases, death. That approach has been successful over the past few decades, under Governments of both colours, because road deaths have, mercifully, been decreasing.

Given the complexity of the subject, we do not propose to make the change that the shadow Minister suggests just now, but I can commit to conducting further research and investigation into the matter. The shadow Minister made the point about a longer disclosure period for driving causing other matters to be disclosed for a longer period than would otherwise be the case, with the consequent impact on employability. We will conduct

further research into this area to ensure that we get the balance right and continue the positive direction of travel on safer roads, while at the same time ensuring that we facilitate rehabilitation.

Alex Cunningham: That is a helpful response from the Minister and I welcome the things that he had to say, particularly in relation to reviewing the issue in future. I do not intend to press the amendment to a vote. I understand that there is considerable cross-party support elsewhere for this approach to ironing out the anomaly, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Chris Philp: The shadow Minister has already touched on the substance of the clause, so I do not want to repeat what he so eloquently laid out for the Committee a little earlier. In substance, the clause amends the Rehabilitation of Offenders Act 1974 to enable an individual's conviction to be spent earlier than would otherwise be the case. The reason for doing that is to enable people to rehabilitate and get back into work sooner than would otherwise be the case. However, we recognise that for the most serious offences, we want the conviction never to be spent—hence the exclusion defined by offences covered by schedule 18 of the sentencing code, which we discussed a couple of minute ago. For other offences, both for adults and for people under 18, the spending periods are reduced.

The shadow Minister asked earlier how we arrived at those particular times. We have looked at the data on reoffending, engaged widely with stakeholders and various groups in the sector that have an interest in this issue, and we have arrived at the reductions that we have. We think the reductions strike a balance between providing an earlier opportunity for rehabilitation on the one hand, and providing additional public protection and protection for employers on the other.

Of course, no Government or Ministers have a monopoly on wisdom—except, of course, my hon. Friend the Member for Louth and Horncastle—but we think this is a good starting point and a step in the right direction, as the shadow Minister has said already. However, we will continue to research in this area and will keep it under scrutiny, to ensure that the balance struck is the right one. I am pleased that stakeholders generally, and the shadow Minister, welcome this move.

Question put and agreed to.

Clause 163, as amended, accordingly ordered to stand part of the Bill.

Clause 164

British Sign Language interpreters for deaf jurors

Alex Cunningham: I beg to move amendment 147, in clause 164, page 183, line 10, after "interpreter" insert

"or language and communication service professional".

This amendment would expand the provision of the clause to include other language and communication service professionals such as interpreters for Deafblind People, lipspeakers, notetakers, Sign Language interpreters, Sign Language Translators, and Speech to Text Reporters.

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

Amendment 148, in clause 164, page 183, line 13, after "interpreter" insert

"or language and communication service professional".

This amendment is consequential on Amendment 147.

Amendment 149, in clause 164, page 183, line 14, leave out "interpreters" and insert "such interpreters or professionals".

This amendment is consequential on Amendment 147.

Amendment 150, in clause 164, page 183, line 16, after "interpreter" insert

"or language and communication service professional".

This amendment is consequential on Amendment 147.

Amendment 151, in clause 164, page 183, line 18, after "interpreter" insert "or professional".

This amendment is consequential on Amendment 147.

Amendment 152, in clause 164, page 183, line 20, after "interpreter" insert

"or language and communication service professional".

This amendment is consequential on Amendment 147.

Amendment 153, in clause 164, page 183, line 25, after "interpreter" insert

"or language and communication service professional".

This amendment is consequential on Amendment 147.

Amendment 154, in clause 164, page 183, line 28, after "interpreter" insert

"or language and communication service professional".

This amendment is consequential on Amendment 147.

Amendment 155, in clause 164, page 183, line 30, after "interpreter" insert

"or language and communication service professional".

This amendment is consequential on Amendment 147.

Amendment 156, in clause 164, page 183, line 33, after "interpreter" insert

"or language and communication service professional".

This amendment is consequential on Amendment 147.

Amendment 157, in clause 164, page 183, line 34, after "interpreter" insert

"or language and communication service professional".

This amendment is consequential on Amendment 147.

Amendment 158, in clause 164, page 183, line 37, after "interpreter" insert

"or language and communication service professional".

This amendment is consequential on Amendment 147.

Amendment 159, in clause 164, page 183, line 39, after "interpreter" insert

"or language and communication service professional".

This amendment is consequential on Amendment 147.

Amendment 160, in clause 164, page 184, line 3, after "interpreter" insert

"or language and communication service professional".

This amendment is consequential on Amendment 147.

Amendment 161, in clause 164, page 184, line 8, after "interpreter" insert

"or language and communication service professional".

This amendment is consequential on Amendment 147.

Clause stand part.

Alex Cunningham: Clause 164 will amend the law to allow British Sign Language interpreters in jury deliberation rooms. This change will enable profoundly deaf people who use sign language to serve as jurors. The Opposition are supportive of the clause, and we are pleased to see the Government taking steps to include differently abled citizens in the processes of our criminal justice system. I pay tribute to my hon. Friend the Member for Nottingham South (Lilian Greenwood) for her work on behalf of deaf people, particularly on this issue.

Jury service is a centuries-old civic obligation. We all have to play our role when the time comes, and it is only right that deaf people should be able to play their part in society as equal to everyone else. As the former chief executive of the British Deaf Association, David Buxton, has said, the change was

"long, long, overdue but very welcome."

The Royal National Institute for Deaf People also welcomed the clause, but thinks it could go further—a point I will come to when I turn to the Opposition amendments.

The Juries Act 1974 makes no provision for the maximum number of jurors; that is governed by common law, under which it is a long-established principle that a jury consists of 12 persons. It is common law that prohibits a 13th person.

Mr Robert Goodwill (Scarborough and Whitby) (Con): We all wish to do whatever we can to help those with a disability, but has the hon. Gentleman costed this for the taxpayer? Obviously, some trials go on for many days, and interpreters may charge £20, £30 or £40 an hour.

Alex Cunningham: It is a Government proposal to introduce interpreters in this situation, so perhaps the Minister can answer that question later. I would like the provision extended, as the hon. Gentleman will hear when I speak to the Opposition amendments.

The clause amends the common law "13th person" rule by adding new provisions to the 1974 Act to allow British Sign Language interpreters to assist deaf jurors, including in the course of their deliberations. The Government acknowledge in their equality impact statement that other individuals who might require the assistance of a third party will not benefit from the clause. The statement says:

"Where third party assistance is currently required in the jury deliberation room, efforts will be made to arrange for other jurors to provide this, wherever possible. For example, blind and partially sighted jurors can be assisted by a fellow juror reading out documents. However, we recognise this proposal is limited to profoundly deaf jurors who require a BSL interpreter and does not extend to other individuals with disabilities who, in order to serve effectively as a juror, would require the assistance of a third party (other than a fellow juror) in the jury deliberation room. We intend to keep this issue under review."

It is welcome that the Government will keep the issue under review, but we could go further now. The Bar Council articulated the point well:

"If reasonable adjustments are to be made for jurors such as these who are otherwise disqualified, then adjustments should be made for all, otherwise a potential juror who is not able to understand British Sign Language (BSL) may feel discriminated against, as may a juror whose disability of disadvantage is not catered for by Clause 164."

Could the Minister share with the Committee how his Department plans to review the extent of the provisions? I am sure the Committee would feel more comfortable moving forward with the clause if we knew a bit more about the Government's plans in this area. It would be particularly good to hear whether there are plans to extend the use of the new provisions beyond people who are differently abled to people whose comprehension of English is insufficient for them to comprehend the proceedings fully.

I would welcome the Minister's thoughts on another issue raised in the Bar Council's submission to the Committee. It raised concerns about the position of a juror in retirement. Our jury system guards the collective nature of jury deliberations, in that deliberations are confidential, and nothing is allowed to influence them. Subsection (3) contains provisions on that matter, including measures that put an interpreter under the same restrictions as a juror as regards carrying out research and disclosing deliberations. It makes it an offence for the interpreter

"intentionally to interfere in or influence the deliberations of the jury".

If the Committee will bear with me, I will quote at length from the Bar Council's submission, as it raises an important, though hopefully rare, possibility that needs to be safeguarded against, and I would welcome the Minister's thoughts on it:

"as soon as a thirteenth person is introduced into the jury, particularly during deliberations, the equilibrium of that jury is disturbed. All the input the hearing-impaired juror receives is via the interpretation—and the emphasis is on interpretation—of the thirteenth person, the interpreter.

That interpreter will have to control the deliberations so that they can interpret everything to the one juror. Any asides, cross-speaking or remarks which are not properly heard will not be transmitted and so the interpreter will become a sort of de facto second foreperson, controlling discussions. Inevitably their conduct will influence how the deliberations proceed.

Because a jury is kept private, any misconduct by any juror can only be reported by the other jurors. Although this does not happen frequently, it is not a rare occurrence; human nature being what it is. At present, anything amiss that occurs during deliberations is inevitably 16 witnessed by the rest of the jury, and if any single juror misconducts themselves the rest of the jury are obliged to report it. This is impossible in the case of the private communications between an interpreter and a deaf juror. Should either or both misconduct themselves, the whole premise upon which the integrity of the jury is based—that all witness the behaviour of each other—would break down and no one would know. For example, should an interpreter fail to interpret properly, no one would ever know. This is not to say that one should assume this will happen and that it is a reason not to permit interpreters. The fundamental objection is that the jury system can only work because it is the jury collectively which polices itself. That safeguard is removed if two people in retirement—the interpreter and the deaf juror—are participating in the deliberations in a way which the rest of the jury are excluded from and so cannot monitor."

3.15 pm

I stress that that possibility, which may be rare but is not fantastical, does not impinge upon the Opposition's support for the clause. However, it is a serious and important point, which I am sure that the Minister gave some thought to in constructing the proposal. I would be grateful if he could share his thoughts on how such a situation could be handled were it to arise.

I thank the RNID for its help and support on amendments 147 to 161, and I specifically thank my hon. Friend the Member for Nottingham South for her

work on them too. They touch on a point that I raised in my previous speech: the concern that clause 164 does not go far enough, so lots of people are excluded from jury service. The Government are at least trying to expand provision for deaf jurors, but the clause as drafted meets the communication needs within deliberation rooms for a relatively small proportion of potential deaf jurors.

Of the 12 million people across the UK living with some form of hearing loss, around a million have severe or profound hearing loss, and just over 100,000 are likely to use British Sign Language as their main or primary language. Many other deaf people utilise other forms of communication support, the most common being a speech-to-text reporter, but the clause makes no provision for those people to have their communications needs met.

We would like to see the scope of the clause expanded so that there is discretion within the system, if it is approved in individual cases, for other forms of communication support to be provided as an alternative to a BSL interpreter. The clause as drafted imposes a single form of support for deaf people without considering their individual needs or the diversity of communication support that people prefer to use. While it is right that support is provided to BSL users, it is disappointing that a system that allows judges discretion to provide communication support limits the support that can be provided in deliberation rooms to BSL interpreters.

There are many different kinds of language and communication professionals, including: sign language interpreters, who enable communication between deaf sign language users and hearing people; speech-to-text reporters, who type every word that is spoken, and the text appears on the screen; note takers, who type a real-time summary of what is being said, and the text appears on the screen; lipspeakers, who repeat every word that is said without using their voice, so that people can lip read them easily; and interpreters and communicator guides for people who are deafblind.

The amendment is widely drafted, so it is not prescriptive; it would simply extend the discretion for judges, to allow them to make adjustments on a case-by-case basis, which puts the deaf person at the centre of deciding their communication needs. Although it may be the case that not all of those could and should be used in a justice setting, it does not make sense to limit the allowed provision in primary legislation to BSL interpretation, as the clause does.

The RNID tells me that the clearest case for extension is with speech-to-text reporters—a commonly used form of communication support for those who cannot always follow speech but do not use BSL. Given that the clause allows the judge to make an individual assessment on the need for communication support, it is not clear to me why we need to limit it to that single form. Both the clause and the explanatory note are clear that the onus within the system will be on judges to make an individual assessment and then, where the judge considers that the assistance of a BSL interpreter would enable the person to be capable of acting effectively as a juror, the judge may appoint one or more interpreters to provide that assistance, and affirm the summons.

As the RNID has said:

"It is contradictory to require judges to make an individual assessment, but only empower them to offer a single solution."

The decision lies with the judge; the amendment will just give them a wider choice. I hope that the Government will support the amendment to provide judges with wider discretion to allow deaf people to engage with jury proceedings, which is surely just realising the full intention of the original clause.

Chris Philp: I thank the shadow Minister for his speech. Interestingly, it pulled in two different directions. On the one hand, he quoted the Bar Council's concerns about whether the jury principle might be undermined, but then he moved a series of amendments that would considerably increase the scope of the clause. Those two points clearly pull in opposite directions, perhaps suggesting that the clause as drafted is about in the right place.

As the shadow Minister eloquently laid out, once again, clause 164 permits a stranger—a so-called 13th member—to enter the jury room where that person is a British sign language interpreter, to assist a deaf juror in participating in the proceedings. Both sides of the House have agreed that that is a good idea. The shadow Minister read out a quote from the Bar Council that raised some concerns about the sanctity of the jury room being infringed. That is of course an important principle in law. I sat as a juror at Croydon Crown court during the summer recess a couple of years ago, so I know that that is something that the system protects fiercely, and rightly so.

I assure the shadow Minister and the Bar Council that several safeguards are in place to ensure the BSL interpreter cannot unduly influence proceedings. They have to sign an agreement that includes confidentiality and other provisions, and undertake not to engage in any behaviour that might be of concern. They swear an oath to the same effect, and breaking it would be a criminal offence. Only BSL interpreters on the proper register can be used, so someone cannot be picked off the street and wander in; it has to be somebody who is on the approved register to start with.

The shadow Minister asked about the possibility of error. I believe that the intention is to have two BSL interpreters present just in case one makes a mistake or loses attention for a moment, so there is a safeguard there. Of course, if any member of the jury witnesses behaviour that concerns them, it is always open to them to report the matter to the trial judge. I hope that the safeguards that I have just outlined address the points that the shadow Minister and the Bar Council raised.

Maria Eagle (Garston and Halewood) (Lab): If jurors break their oaths and say things outside or reveal things that they should not, there can be contempt proceedings and punishments. Will the same punishments apply to the interpreters? The Minister has set out a number of contractual arrangements, which are all well and good, but will the same obligations lie upon the interpreters as lie upon jurors?

Chris Philp: Yes, I believe—in fact, I know, because it is written down in front of me; that is not quite the same thing, but let us assume it is for these purposes—that the provisions create a new offence where a BSL interpreter intentionally interferes in or influences the deliberations of the jury in the proceedings before a court. Yes, there are now criminal provisions being introduced by the clause.

[Chris Philp]

I understand the spirit in which amendments 147 to 161were moved by the shadow Minister, and he mentioned that the hon. Member for Nottingham South assisted in their development. I understand that widening the type of people who might be able to assist could help a wider range of jurors, but there are some concerns about going too far, too quickly.

As the shadow Minister pointed out, this is a significant step. It is a significant departure from centuries of established practice. Allowing a 13th person into the jury room has never been done before. There is a feeling among the stakeholders we consulted—the judiciary, the Bar and so on—that we should take this one step at a time. Let us start with British sign language interpreters and see how that goes. If it is made to work successfully, as we hope it will be, we can look in due course at widening the range of people who might be accommodated.

There are also, I should add, potential capacity constraints. For example, I am told that there are 150 registered BSL interpreters, but only 32 speech-to-text reporters, so one might have issues with the number of available people. This is an important step. Let us take this one step first and then review it on an ongoing basis to see whether we need to go further.

Alex Cunningham: I accept the Minister's explanation as far as the sanctity of the jury room is concerned, so I can leave that to one side. However, in his last few sentences he illustrated why there should be wider provision in this area: so few people are available to provide the services for the particular way he wants to take this clause forward and serve deaf people. I think there is a real opportunity to involve far more deaf people in the system. For that reason, I will press the amendment.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 7.

Division No. 27]

AYES

Charalambous, Bambos	Eagle, Maria
Cunningham, Alex	Williams, Hywel

NOES

Anderson, Lee	Levy, Ian
Atkins, Victoria	Philp, Chris
Clarkson, Chris	
Goodwill, rh Mr Robert	Pursglove, Tom

Question accordingly negatived.

Clause 164 ordered to stand part of the Bill.

Clause 165

CONTINUATION OF CRIMINAL TRIAL ON DEATH OR DISCHARGE OF A JUROR

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

Chris Philp: This is a quick and simple clause. The Office of the Parliamentary Counsel, which has been drafting this Bill, spotted a stray reference in an old piece of legislation to offences punishable by death in the context of jury sizes. It goes back to the concept of small war-time juries being unable to try certain offences where the penalty was death. We no longer have the death penalty, so the OPC thought it was a good idea to tidy up the statute book by removing the reference.

Question put and agreed to.

Clause 165 accordingly ordered to stand part of the Bill.

Clause 166

REMOTE OBSERVATION AND RECORDING OF COURT AND TRIBUNAL PROCEEDINGS

Alex Cunningham (Stockton North) (Lab): I beg to move amendment 72, in clause 166, page 185, line 41, at end insert—

"(8A) The Lord Chancellor may not make regulations under subsection (8) unless the advice of the Senior Data Governance Panel (or similar committee established for this purpose) has first been sought on the provision which they would make."

This amendment would require the Lord Chancellor to seek the advice of the Senior Data Governance Panel before making regulations governing the broadcast of court hearings.

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

Clause stand part.

Clause 167 stand part.

Alex Cunningham: I will be brief. Clause 166 replaces temporary emergency provisions included in the Coronavirus Act 2020, which allows for certain proceedings to be observed remotely and recorded. At the same time as replacing these temporary measures, clause 166 would also extend them.

While the current emergency provisions cover only criminal provisions, clause 166 extends coverage to civil proceedings as well as proceedings across tribunals. The Opposition believe firmly in the principles of open justice. We believe the public should have a right to witness proceedings taking place, unless it is in the interests of justice not to do so. This is why we will support clause 166 today. Nonetheless, we have a reservation that we hope the Minister will be able to address.

Proposed new subsection 8 of clause 166 makes provision for the Lord Chancellor to make regulations to decide which types of proceedings can be broadcast and what factors must be taken into account before this can take place. These regulations can only be made if the Lord Chancellor agrees, but no other external stakeholders would be consulted in this process. This is why we have tabled amendment 72.

As I am sure the Minister will understand, legal proceedings often cover sensitive and painful topics and, for many, just attending court or tribunal will be a difficult time. For that reason, decisions regarding which types of proceedings should be broadcast should not be taken lightly.

3.30 pm

One aspect of the decision-making process that is particularly sensitive is how any regulations made under proposed new subsection (8) will impact the privacy of court users. As the Legal Education Foundation explains, if regulations are made under the proposed new subsection without input from external experts, they may have serious unintended consequences, including a chilling effect on the types of claims and cases brought before the courts.

Amendment 72 seeks to provide a safeguard against the unintended consequences that the Legal Education Foundation touches on, by requiring the Lord Chancellor to seek the advice of the Senior Data Governance Panel before making regulations governing the broadcast of court hearings.

The Minister will be familiar with the Senior Data Governance Panel, but for the benefit of Committee members who might not be, it was specifically established to enable the Lord Chancellor and Lord Chief Justice to access advice from external experts on changes to the way in which information about court proceedings is made public. Given that the panel already exists and currently plays a central role in setting the approach for how decisions are made on matters relating to privacy, it seems sensible to us that the Lord Chancellor consults with the panel in making any regulations under the proposed new subsection. I look forward to the Minister's response.

Chris Philp: Clauses 166 and 167 put on to a permanent and sounder footing many of the measures that have been used during the coronavirus pandemic to, first, enable remote hearings to take place and, secondly, where proper, to allow transmission of those hearings. It is important to stress that at all times the judge retains control of the proceedings and it is ultimately for the judge in any particular hearing or trial to decide what is appropriate. Nothing in the provisions fetters that important judicial discretion and safeguard over the management of any individual hearing or proceeding.

On clause 166, over the past year, our courts and tribunals have successfully and rapidly moved the bulk of their proceedings online during the pandemic. Such hearings have been vital in our court recovery.

It should be noted that in the civil and family jurisdictions, and in tribunals, the ability to hold proceedings using audio and video technology is not governed by legislation, but is permissible under the court or tribunal's inherent jurisdiction. Accordingly, no legislation is needed to enable remote hearings for those jurisdictions, in contrast to the criminal jurisdiction, for which clause 168, which we will consider shortly, makes provision.

Legislation is required to make sure that suitable safeguards are in place to protect those taking part in a hearing and ensure the proper administration of justice. Clause 166 replicates some of the temporary powers introduced during the coronavirus pandemic for that purpose, future-proofs them and brings several new jurisdictions into the regulatory framework. The clause also allows courts and tribunals to provide transmissions of proceedings either to individuals who have identified themselves and requested access, or to specifically designated locations.

As I have already pointed out, judges, magistrates and anyone presiding over a tribunal panel retain the ultimate discretion. Regulations made by the Lord Chancellor, with the agreement of the Lord Chief Justice, will govern much of this area and will enable the regulations to be refined for particular circumstances or applications.

Clause 167 makes several further safeguards in relation to this matter permanent, with a few minor refinements. For example, the clause prohibits the recording or transmission of anyone remotely attending proceedings in a list of major courts and tribunals, unless authorised by the court or tribunal or the Lord Chancellor. It also provides clarity by defining this offence as summary-only as well as contempt, while making new provisions to preclude double jeopardy. It enshrines some of those important safeguards.

On amendment 72, which was moved by the shadow Minister and would compel the Lord Chancellor to seek the advice of the Senior Data Governance Panel, we say that that is not necessary in legislation as set out here. Of course the Government do not make the relevant regulations in isolation. That is why secondary legislation can be brought forward only with the concurrence of the Lord Chancellor—a member of the Government—and of the Lord Chief Justice. The Lord Chief Justice's concurrence is a very important safeguard.

Of course, in the formulation of regulations of this nature, informal consultation will take place with a number of bodies, including the SDGP, the judiciary, court practitioners, Her Majesty's Courts and Tribunals Service and other interested parties. The SDGP does of course advise, but it is worth pointing out that the SDGP itself is not on a statutory footing and therefore perhaps it is not appropriate to give it the sort of status that the amendment proposes. That might also risk interfering with the notion of judicial independence. Therefore, although informal consultation with various stakeholders and experts is of course important, we think that the statutory obligation contemplated by amendment 72 goes a little too far.

Alex Cunningham: I am content with the Minister's explanation. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clauses 166 and 167 ordered to stand part of the Bill.

Clause 168

Expansion of use of video and audio links in criminal proceedings

Alex Cunningham: I beg to move amendment 73, in clause 168, page 189, line 30, at end insert—

"(d) the court has been provided with a physical and mental health assessment of the person to whom the direction relates confirming that proceeding via a live audio link or live video link will not impede their ability to understand or effectively participate in proceedings."

This amendment would require the court to be provided with a physical and mental health assessment of an individual before it could make a direction requiring or permitting them to take part in criminal proceedings through a live audio or video link.

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

Amendment 124, in clause 168, page 189, line 30, at end insert—

"(d) in the case of a direction relating to a person under the age of 18, the court considers that no other method of dealing with the person is appropriate."

This amendment would introduce a presumption against a direction for a live video or audio link in criminal proceedings involving children.

Amendment 118, in clause 168, page 189, line 30, at end insert—

"(4A) The court may not give a direction under this section relating to the defendant in the proceedings unless that defendant has previously been given the opportunity to state whether they would prefer to appear in person and they have consented to appearing via live audio link or live video link."

This amendment would provide defendants the opportunity and ability to choose to appear in person rather than via audio or video link.

Amendment 119, in clause 168, page 189, line 45, at end insert

"with particular reference to the following—

(i) where the person is a defendant, the existence of impairments or other factors that may negatively affect the defendant's ability to participate effectively in court proceedings;

(ii) the nature of the hearing, including the complexity of the case and the matter being dealt with; and

(iii) the likely impact of the hearing on the rights of the defendant, particularly if it puts the defendant at risk of deprivation of liberty,".

This amendment would require the court to consider a range of additional factors which may affect the ability of the person to participate effectively in proceedings when deciding whether a person should be able to participate via audio or video link.

Amendment 125, in clause 168, page 190, line 6, at end insert—

"(h) in the case of a direction relating to a person under the age of 18—

(i) any need for additional support for that person to enable them to take part in the proceedings effectively,

(ii) the requirement to ensure that that person understands the legal proceedings in which they are participating, and

(iii) whether there are other more appropriate means of requiring or permitting the person to take part in the proceedings."

This amendment sets out a range of considerations which the court must take into account when considering a direction for a live video or audio link in criminal proceedings involving children.

Amendment 74, in clause 168, page 190, line 10, at end insert—

"(4) The Secretary of State may exercise the power in section 175(1) so as to bring this section (and part 3 of Schedule 19) into force only if the condition in subsection (5) is met.

(5) The condition in this subsection is that a review of the impact of the expansion of audio and video links in criminal proceedings has been conducted in accordance with subsection (6).

(6) The review mentioned in subsection (5) must—

(a) collect evidence of the impact of live audio and video links on—

(i) sentencing and remand decisions,

(ii) the effective participation of defendants,

(iii) the experience of victims and witnesses, and

(iv) the cost to the wider justice system, including costs borne by the police and prison systems; and

(b) be undertaken by a person who is independent of the Secretary of State.

(7) The review mentioned in subsection (5) may also consider any other matter which the person conducting the review considers relevant."

This amendment would ensure that the expansion in the use of audio and video links will not be undertaken until an independent review of its impact has been undertaken.

Clause stand part.

Amendment 75, in clause 175, page 193, leave out line 37.

This amendment is consequent on Amendment 74.

Alex Cunningham: You will be pleased to know, Mr McCabe, that this will be my last substantial speech this afternoon. There are a couple of small ones to go, but this will be the last substantial one.

Clause 168 expands the use of video and audio or live links to a wide range of criminal proceedings. The Government hope that expanding the use of live links will allow courts to conduct criminal hearings remotely, with defendants, witnesses, lawyers, and possibly jury members attending remotely by audio or video link. The proceedings include preliminary hearings, trials before the magistrates and Crown courts, appeals and sentencing hearings, to name just a few.

The rationale behind the clause seems somewhat confused. As we know, the clause develops and expands the framework for remote justice that was developed during the pandemic. During the pandemic, video and audio live links were required as an exceptional measure to ensure that the wheels of the justice system could continue turning. That makes it all the more confusing that the Government are seeking to introduce clause 168 now, when thankfully we are in a different phase of the pandemic altogether.

I wonder whether the Minister will explain the Government's thinking behind the clause—I am sure he will. Is it, as some have suggested, a safeguarding measure against, as unthinkable as it is, another pandemic-type scenario hitting the country? If that is indeed the purpose behind clause 168, it is something that the Opposition could cautiously support, provided that certain safeguards were built into the clause. The Opposition accept that there are countless hearings—many of them administrative in nature—where live links would allow them to be completed more efficiently than proceedings in person. None the less, I hope that the Minister will accept that there are other circumstances and situations in which the use of live links could have a profound impact on fair trial rights. I will discuss that in detail when I come to our amendment shortly.

It is also important to point out that clause 168 goes quite some way beyond the measures implemented under the Coronavirus Act 2020. As the Minister will know, clause 168 would allow, for the first time, live links to be permitted by a court in respect of juries—in other words, remote juries. Although it is very welcome that the Government have introduced a number of safeguards in relation to remote juries—for example, jurors would not be able to take part from home, and parties would be able to appeal a direction for juries to sit remotely—the Opposition are still concerned by this new power. The Minister must accept that clause 168 as a whole, but particularly in relation to juries, represents a momentous change in our legal system, and it is concerning that it seems to be based on little evidence and has been put together largely without consultation. As Transform Justice points out:

"The government has claimed that video and audio links in the pandemic have been a huge success. But beyond the occasional announcement on the number of links used, we have no evidence on video and audio criminal hearings in the pandemic. No data has been systematically collected and no research published."

That is why the Opposition have tabled amendment 74, which would compel the Government to seek a full independent impact assessment of the effects of clause 168 before the expansion of audio and video links could take place. The aim of the impact assessment is to show what impact the roll-out of live links would have on sentencing and remand decisions, the effective participation of defendants, the experience of victims and witnesses, and the cost to the wider justice system, including costs

borne by the police and prison systems. I am sure the Minister will agree that these are fundamental questions that the Government must know the answers to before clause 168 can fully come into effect.

The Opposition understand that some benefits may come from the Government's direction of travel in relation to remote juries, although as I said in my previous speech, those benefits are relatively limited. It is vital that they are not obtained by impinging on the central tenets of our justice system, which are access to justice and the right to a fair trial. If the Government are set on moving in this direction, I hope they can at least see the value in a series of safeguards that can help to ensure the safety and fairness of trials. Serious concerns about these reforms have been raised across the legal and justice sectors, and the input of those sectors has been invaluable. In particular, I thank Transform Justice, Fair Trials and the Legal Education Foundation for their constructive and considered engagement with these proposals. This series of amendments—73, 118, 119, 124 and 125—would introduce a range of sensible safeguards, and I hope the Government recognise their value.

Amendment 118 would give defendants the opportunity and ability to choose to appear in person, rather than via audio or video link. Research has shown that effective participation in court proceedings can be impeded if the defendant appears on video or audio link. This is because remote hearings can interfere with defendants' rights to participate effectively at their own hearings, and to review and challenge information and evidence relevant to those proceedings. In their report of April last year, called "Preventing the health crisis from becoming a justice crisis", the Equality and Human Rights Commission pointed out that

"poor connections cause important information to be missed"

and

"can cause disconnection and separation from people and legal process".

The EHRC also looked at this issue in its report "Inclusive justice: a system designed for all", in which it noted that defence solicitors and advocates highlighted:

"The separation between the defendant and their solicitor and/or court".

It outlined that

"defendants may not have a full view of the court, or know who is present in the room at the other site…It was also noted that being alone for a video hearing, without support, can be difficult for some people."

One defendant shared their experience with the court, saying that

"It wasn't what I would call a real court because I was sat in a room all on my own with a screen but I couldn't hear what was being said…I found it very difficult and I was unable to take part in it".

Remote court proceedings can also affect the effectiveness of lawyer-defendant communications, undermining defendants' ability to access legal advice and effective legal representation. Research by Fair Trials has found that lawyer-defendant communications have been badly affected during the covid-19 pandemic, meaning that defendants are finding it more difficult to consult their lawyers and to seek advice before, during and after court hearings. On top of that, a March 2020 report on video-enabled justice, funded by the Home Office and carried out by the Sussex police and crime commissioner in conjunction with the University of Sussex, found that

"The loss of face-to-face contact in video court can create challenges in terms of advocates developing trust and rapport with their clients"

and that

"appearing over the video link could make defence advocates less effective, particularly in relation to bail applications".

There is also evidence suggesting that remote hearings disproportionately result in custodial sentences. That Home Office-funded report concluded that individuals whose cases were handled remotely were more likely to be jailed and less likely to receive a community sentence. Furthermore, the proportion of unrepresented defendants receiving custodial sentences was higher than the rate for represented defendants, and those sentenced in a more traditional court setting were more likely to receive fines or other community sentences.

I would be interested to hear the Minister's thoughts on these findings, as they have very serious ramifications for our justice system as more hearings take place remotely. If the Government want to make changes, they need to take responsibility for the outcomes and not simply farm out that accountability to the judiciary, so I would like to hear what steps the Minister's Department thinks we should take to safeguard against the outcomes I have just outlined.

3.45 pm

Another point that we need to consider is that the public are not really in favour of this move, as a recent survey commissioned by Transform Justice found. When asked for their preference should they be accused of a crime, two third of respondents said they would prefer to appear in court in person, rather than on video or on the phone. The judiciary does not seem to be in favour of the move either. A survey of judicial attitudes commissioned by the judiciary suggests most judges are unhappy about virtual hearings. Some 75% were concerned by the reduction in face-to-face hearings, 75% by the digital reform programme, and 81% by court closures. Given all we know about the possible impact of remote hearings on trial outcomes and access to legal support, we believe that all defendants, including those remanded by the police who wish to appear in person rather than on video or by audio link, should be provided with the opportunity to do so. Amendment 118 would provide a safeguard for all defendants who wish to use it.

I turn now to our other amendments, which would provide further protection to particularly vulnerable defendants. Amendment 73 would require the court to be provided with a physical and mental health assessment of an individual before it could make a direction requiring or committing them to take part in criminal proceedings through a live audio or video link. Vulnerable defendants are especially vulnerable to unfair trials where trial proceedings are conducted remotely. Multiple studies have shown that remote justice proceedings are an inadequate substitute for in-person hearings in such cases.

Both the Government and the Equality and Human Rights Commission have acknowledged that people with mental health issues or cognitive impairment and/or neurodiverse conditions can struggle to participate in their court hearing on video, and they may find it

harder to understand what is happening in the hearing and to communicate their views during it. The EHRC's report on video hearings, which I referred to earlier, says that

"video hearings are unsuitable for disabled people, such as those with learning difficulties, cognitive impairment or a mental health condition…The EHRC were also concerned that the emergency use of remote justice may 'place protected groups at further disadvantage and deepen entrenched inequality.'"

That could result in unsafe convictions, which generate appeals and increase pressure on the criminal justice system. Delays in the criminal justice system and unsafe convictions harm victims and undermine public trust.

The EHRC recommended that the Government should address the barriers to effective participation for disabled defendants before any further measures are introduced or extended. There is currently no reliable system to identify those who have mental health or neurodiverse needs and cognitive impairment disabilities, particularly considering that these are often hidden disabilities and the defendant may be reluctant to disclose them. Amendment 73 would ensure that there is a system in place to identify all those who have a physical or mental condition that makes remote hearings inappropriate for them, and it would thus address the EHRC's recommendations.

Amendment 119 would require the court to consider a range of additional factors that may affect a person's ability to participate effectively in proceedings when deciding whether they should be able to participate via video or audio link. The Bill's equality impact assessment says:

"On balance, we do not consider that expanding the availability of live links or that making use of technology in this way would result in people being particularly disadvantaged because of any protected characteristic. Ultimately, judicial discretion remains in place as to whether it is appropriate for a video hearing to take place."

The judicial discretion is provided for in proposed new section 51(5)(b) whereby the court must consider

"all the circumstances of the case"

when making a direction under clause 168, with further guidance provided by subsections (4) and (6), and future guidance by the Lord Chief Justice, as provided for in subsection (5)(a).

We do not think that the clause as drafted is robust enough to safeguard the interests of vulnerable defendants. The general requirement to take into account all the circumstances of the case, including whether a person would be able to take part in the proceedings effectively, does not provide sufficient protection. As I have already said, remote hearings can interfere with defendants' right to access effective legal assistance in order to participate effectively in their own hearings and to review and challenge information and evidence that is relevant to the proceedings. There is also evidence to suggest that remote hearings disproportionately result in custodial sentences.

To protect against those adverse outcomes, we would like the factors in amendment 119 to be taken explicitly into consideration when making directions under clause 168. Those factors are any impairments that the defendant may have that will limit their ability to participate in the hearing; the nature of the hearing, including the complexity of the case; and the likely impact of the hearing on the rights of the defendant, particularly if it puts the defendant at risk of deprivation of liberty. The stakes are too high to get this stuff wrong. For that reason, I hope that the Government will support these simple additional safeguards.

Finally, our remaining amendments on this topic provide specific safeguards for hearings involving children. Many of the points that I have made in regard to defendants who are vulnerable because of physical or mental conditions stand true for children, too. Amendment 124 would introduce a presumption against a direction for a live video or audio link in criminal proceedings involving children. Children who are accused of crimes struggle to understand what is happening in court when they are there in person, not least because so many have pre-existing communication difficulties. Remote hearings will only exacerbate that problem. As the Alliance for Youth Justice notes,

"Research also indicates that children who appear via video are much less likely to appreciate the seriousness of the situation or present themselves well, prejudicing their outcomes at court."

Remote hearings are much less likely to be appropriate in the case of children, and so we would like the Government to introduce a presumption against their use.

Amendment 125 sets out a range of considerations which the court must take into account when considering a direction for a live video or audio link in criminal proceedings involving children. The need for that is illustrated by a 2018 case, about which the Alliance for Youth Justice wrote an open letter to the Government. It said:

"A 17-year-old boy was sentenced to prison for ten years. He pleaded guilty but his case overran. The judge decided to sentence the boy by video link early on a Monday morning. His Youth Offending Team officer was not consulted about the use of the video link. The boy will have been alone (save for a prison officer) in a small room at the prison when he heard his sentence, isolated from his lawyer and his family. The evidence shows that children (under 18-year-olds) in court, many of whom have communication problems, struggle to understand what is going on and to participate effectively in proceedings. How much more difficult to do so if you are sat hundreds of miles from the court and separated from everybody there by a video screen?... We are concerned that video link risks making it much harder for children to comprehend the seriousness of their crimes and the harm they have caused."

In the light of that quote, the considerations provided for in the amendment include additional support for the child to enable them to take part in the proceedings effectively, a requirement to ensure that the child understands the legal proceedings in which they are participating, and an explicit consideration of whether there are other more appropriate means of requiring or permitting the child to take part in the proceedings. Again, these are simple safeguards that require no extra work from the Government. It is simply about ensuring that those factors are explicitly in the mind of the judge when deciding whether it is appropriate to make a direction under clause 168.

The safety of trials for vulnerable and child defendants is a matter of grave importance, so I hope that the Minister can understand our anxiety to get this right and will support the amendments so we can put these safeguards in primary legislation.

Chris Philp: We have heard extensively from the shadow Minister on the clause, so I do not think I need to repeat too much of what he said about its purpose, save to say in summary that it enshrines the expansion of the use of, or enables the use of, video and audio links in

criminal proceedings beyond that introduced last year in the Coronavirus Act 2020, which, as we have already discussed, has enabled a great deal of court recovery.

Clause 168 builds on that progress by moving the barriers, restrictions and inconsistencies in the current legislation, which limits the potential use of live links in criminal proceedings. It is vital to stress that nothing in the clause makes remote technology in any way compulsory or inevitable. It is always a matter for choice by the court, which may choose it for reasons of health, as we have during the pandemic, or have some other reason for thinking it is a good idea. The point is, we are creating a discretion and a power for the court to use. Indeed, some participants, including defendants, may want to exercise their own choice and say to the court—for a particular reason, perhaps the inconvenience of travelling—that they want to participate remotely. It might be easier for a witness to participate remotely, for example, rather than travel all the way to a court that might be a great distance away.

The flexibility that the clause enshrines could be useful in a wide range of circumstances. Those principles have been widely debated in previous clauses and are, broadly speaking, agreed.

The proposed amendments to the clause in essence seek to introduce a range of very specific safeguards to circumscribe or control the way in which the measures may be used by a judge. The Government view, however, is that the safeguards already built into clause 168 and its associated provisions do that already. Let me enumerate what those safeguards are, which I hope will assure the shadow Minister and anyone else listening.

First, the court—the judge—must decide whether it is in the interests of justice for a live link to be used. That is a critical test. In doing that, the court is required to consider

"any guidance given by the Lord Chief Justice, and…all the circumstances of the case"—

I stress, "all the circumstances".

The amendments have tried to pick out various different, specific circumstances. Inevitably, that list will not be exhaustive—they might forget something—so by saying "all the circumstances", we give the judge a wide range of discretion. Those circumstances expressly include "the views" of the person who might be invited to attend by live link, so if someone has a particular problem or objection, they may table it and say to the judge why they think it is not right for them to appear remotely, if they are invited to do so. Equally, of course, they might say to a judge, "I would rather participate remotely", for some reason of logistics or something else.

Alex Cunningham: Will the Minister give way?

Chris Philp: I am conscious of time and the shadow Minister made a long speech, but on this one occasion, I will give way.

Alex Cunningham: I am keen for the Minister to understand that not all defendants who are offered the facility would be legally represented. They might not have appropriate advice about the benefits of appearing in person.

Chris Philp: Where someone appears without representation, obviously a whole number of issues are raised, of which this is just one small one. In those circumstances, the judge himself or herself will—and does—carefully talk the defendant through the implications. When someone is unrepresented, the issues are to do not only with live hearings, but all kinds of elements of the proceedings where ordinarily a barrister or solicitor would assist the defendant. In the absence of that, the judge has to lead them, ask them questions and ensure that their interests are properly accounted for by the court in a manner that is impartial and fair.

Another question under clause 168 and its associated provisions that the judge must consider is whether the person concerned could participate effectively in the proceedings. A number of the amendments talk about disability and so on. It is therefore worth enumerating again in more detail the circumstances that must be considered: the nature of the proceedings; whether the person can participate effectively by live link; the suitability of the live-link facilities; and the arrangements that could be put in place for the public to observe the proceedings. There are a lot of things there that the judge is already obliged to take into account to ensure that the interests of justice are served—that the defendant gets a fair trial, or that the witness or victim may participate properly.

On children, the courts already have a statutory duty to have regard to the welfare of children. It is important to acknowledge that there may be situations in which it is beneficial for a child, whether as a witness or a defendant, to appear by live link. It is important that the court can take a balanced judgment, rather than a presumption one way or the other. Critically, however, there is already a statutory duty to have regard to the welfare of the child.

I hope that I have demonstrated, or illustrated, with that long list of considerations that the matters of concern that the shadow Minister has properly raised already have to be taken into account. Ultimately, however, I do not think that it is appropriate for us to seek to legislate for everything in detail, as some of the amendments seek to do. Instead, I have set out the principles to rely on—the good offices and the sober judgment of the judge presiding over the case—to make sure that justice has been done. I have a great deal of confidence in our judiciary to ensure that the right balance is struck, as has been done throughout the pandemic. No one has suggested that, during the pandemic, any particular defendant or witness has been especially badly served. I have confidence in the judiciary to get these balances right, and I believe that the statutory basis of clause 168 is the right one.

4 pm

Alex Cunningham: I have listened carefully to the Minister, but across the sector there are widespread concerns about these proposals and the lack of safeguards. It is important that certain safeguards are built into the Bill. Not even the judiciary are satisfied and even some of the reports that are required are insufficient in these particular circumstances.

However, my huge concern is always about children and what the Bill means for them in the system. The Minister talked about having confidence in the judiciary and their discretion. Well, the judge who decided to sentence that 17-year-old to 10 years' imprisonment when he was stuck in a room somewhere in a local prison did not show much understanding of young people—all the more reason why we should legislate to put greater protections in the Bill, particularly for children.

[Alex Cunningham]

I shall push amendment 73 to a vote.

The Committee divided: Ayes 5, Noes 7.

Division No. 28]

AYES

Champion, Sarah	Eagle, Maria
Charalambous, Bambos	
Cunningham, Alex	Williams, Hywel

NOES

Anderson, Lee	Levy, Ian
Atkins, Victoria	Philp, Chris
Clarkson, Chris	
Goodwill, rh Mr Robert	Pursglove, Tom

Question accordingly negatived.

Clause 168 ordered to stand part of the Bill.

Schedule 19

FURTHER PROVISION ABOUT THE TRANSMISSION AND RECORDING OF COURT AND TRIBUNAL PROCEEDINGS

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

Chris Philp: Briefly, this schedule is consequential to the previous clauses. Part 1 of the schedule enables non-parties to observe proceedings remotely; part 2 prohibits unauthorised recordings; and part 3 sets out various supplementary procedural matters around the giving, variation and rescinding of live-link directions in criminal proceedings, as provided for in clause 168.

Question put and agreed to.

Schedule 19 accordingly agreed to.

Clause 169

REPEAL OF TEMPORARY PROVISION

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

Chris Philp: Very simply, clause 169 essentially repeals some of the temporary measures in the Coronavirus Act 2020, which are superseded by the clauses and schedule that we have just debated.

Question put and agreed to.

Clause 169 accordingly ordered to stand part of the Bill.

Clause 170

FINANCIAL PROVISION

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

The Chair: With this, it will be convenient to discuss the following: clause 171 stand part.

That schedule 20 be the Twentieth schedule to the Bill.

Clauses 172 to 174 stand part.

Chris Philp: We are entering the final straight of the main section of the Bill and cantering towards the finish line.

In brief, clause 170 contains standard provisions around financial authority. Clause 171 introduces schedule 20, making a number of technical amendments to the Sentencing Act 2020. Clause 172 is a standard clause conferring powers on the Secretary of State to make any consequential amendments. Clause 173 gives the Secretary of State power to amend the sentencing code to incorporate changes to its provisions that are made by this Bill—nothing untoward there—and clause 174 is a standard clause setting out the territorial extent of the provisions in this Bill that we have debated for the last few weeks.

Alex Cunningham: Over the days of our debate, Opposition Members have pointed out areas where the Government's resource assessments seem to be well out of step with the Government's expectations of the Bill's impact.

One particular area of concern is the impact on prison places. The Government's impact assessment has come up with a total increase in the adult prison population of around 700 offenders in steady state by 2028-29. After the hours of debate that we have had on changes to provisions that will extend the custodial period for many sentences and increase sentences for some road traffic offences, I find that number completely implausible. To put my mind at ease, perhaps the Minister could share with the Committee the arithmetic that conjured that number up.

Incarceration is extremely expensive, so if the Government have underestimated the impact, I worry that prison budgets will be stretched even further when they are already at breaking point. If rehabilitation and support for the cycle of offending are to work, they must be properly resourced.

There are areas of the Bill where the Government have not even been able to make an assessment of the cost impact. For instance, in the impact assessment for the changes to detention and training orders, the Government say:

> "There will be some individuals that spend longer on supervision in the community under this option, which would incur additional youth offending team costs. It has not proved possible to quantify these additional costs."

Youth offending teams are so stretched that we have even had to table an amendment to ensure that the current provision of intensive surveillance and supervision is adequately funded across the country; otherwise, the range of appropriate sentencing options for children will be limited. I hope that the Minister can commit to ensuring that additional costs will be robustly monitored so that these services, which save the justice system in the long run by turning people away from offending, are provided with sufficient resource to do their jobs properly.

Chris Philp: I simply draw attention to the calculation set out in the extremely extensive impact assessment, which I am holding in my hand, and to the additional 10,000 prison places that are being constructed and the extra probation service personnel who are being recruited.

The Chair: I think you had me cantering with you, Mr Philp, because I almost missed out Mr Cunningham altogether.

Question put and agreed to.

Clause 170 accordingly ordered to stand part of the Bill.

Clause 171 ordered to stand part of the Bill.

Schedule 20 agreed to.

Clauses 172 to 174 ordered to stand part of the Bill.

Clause 175

COMMENCEMENT

Victoria Atkins: I beg to move amendment 144, in clause 175, page 193, line 21, at end insert—

"(ea) section [Proceeds of crime: account freezing orders]."

This amendment provides for NC74 to commence two months after Royal Assent.

The Chair: With this it will be convenient to discuss Government new clause 74—*Proceeds of crime: account freezing orders.*

Victoria Atkins: Amendment 144 and new clause 74 are an administrative amendment and new clause to ensure that the provisions available under the Financial Services Act 2021 in relation to account freezing and forfeiture powers are available in Northern Ireland. It was not possible to get a legislative consent motion when that Act was passed. That clearly needs to be corrected to protect the good people of Northern Ireland, and we propose to do so through this clause.

Amendment 144 agreed to.

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

Alex Cunningham: I am sure you will rule me out of order if I am, Mr McCabe, but I just want to make a quick remark here. In some areas, the Government have been very receptive to the Opposition's concerns—they have committed to carrying out a cost-benefit analysis and other assessments—but the Bill was rushed through to Second Reading after the White Paper, and it was only because of an unexpected delay that we were given sufficient time to prepare for Committee stage, especially considering the size of the Bill and the complexity of some of its provisions.

I hear Ministers are keen to get this Bill through Report and Third Reading before the summer recess, which starts in four weeks' time. I would like reassurance from the Ministers that the work they have committed to undertake will be done in a timely fashion as the Bill progresses. Perhaps they will need a little more than four weeks to get the job done. It is no good having a cost-benefit analysis that shows that a provision is too expensive to be worth it if it is already in law and has come into force.

Victoria Atkins: I am surprised that the hon. Gentleman thinks that we have rushed into this. There was a period of some nine months, I think, between the White Paper and the introduction of the Bill and Second Reading. The Under-Secretary of State for the Home Department, my hon. Friend the Member for Croydon South, and I have been very careful throughout the scrutiny of this Bill to make it clear where there is extra work to be done. The timeframes, as far as we are able to do so, have been provided.

We very much look forward to continuing to scrutinise the Bill, as the processes of this place and the other place continue in the time-honoured fashion. I am told that we have published impact assessments. Indeed, a great deal of work has gone into the Bill, and into the preparation of documents associated with it. I hope we will be able to continue the positive trends that have emerged during parts of the scrutiny of this Bill into next week. These are important measures and the Government want to pass them as quickly as possible to continue protecting the people we have been so keen to discuss in this Committee.

Question put and agreed to.

Clause 175, as amended, accordingly ordered to stand part of the Bill.

Clause 176

SHORT TITLE

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

Chris Philp *rose—*

Victoria Atkins: I was going to talk for hours on this, but I see that my hon. Friend wants to beat me to it. This is the short title of the Bill, and we ask that it be cited as the Police, Crime, Sentencing and Courts Act 2021.

Question put and agreed to.

Clause 176 accordingly ordered to stand part of the Bill.

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

4.14 pm

Adjourned till Tuesday 22 June at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

PCSCB39 Victims' Commissioner

PCSCB40 An individual who wishes to remain anonymous