PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT POLICING AND CRIME ACT 2017 (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2018

Tuesday 6 February 2018

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not later than

Saturday 10 February 2018

The Committee consisted of the following Members:

Chair: Dame Cheryl Gillan

† Adams, Nigel *(Lord Commissioner of Her Majesty's Treasury)*
† Clark, Colin *(Gordon)* (Con)
† Dakin, Nic *(Scunthorpe)* (Lab)
† Flynn, Paul *(Newport West)* (Lab)
† Graham, Luke *(Ochil and South Perthshire)* (Con)
† Haigh, Louise *(Sheffield, Heeley)* (Lab)
† Hurd, Mr Nick *(Minister for Policing and the Fire Service)*
† Jones, Mr David *(Clwyd West)* (Con)
Jones, Graham P. *(Hyndburn)* (Lab)
Lammy, Mr David *(Tottenham)* (Lab)
† McCarthy, Kerry *(Bristol East)* (Lab)
† Mills, Nigel *(Amber Valley)* (Con)
† Morris, David *(Morecambe and Lunesdale)* (Con)
Smith, Eleanor *(Wolverhampton South West)* (Lab)
† Smith, Royston *(Southampton, Itchen)* (Con)
† Swire, Sir Hugo *(East Devon)* (Con)
† Williams, Dr Paul *(Stockton South)* (Lab)

Jonathan Whiffing, Jeanne Delebarre, *Committee Clerks*

† attended the Committee

Fourth Delegated Legislation Committee

Tuesday 6 February 2018

[Dame Cheryl Gillan *in the Chair*]

Draft Policing and Crime Act 2017 (Consequential Amendments) Regulations 2018

2.30 pm

The Minister for Policing and the Fire Service (Mr Nick Hurd): I beg to move,

That the Committee has considered the draft Policing and Crime Act 2017 (Consequential Amendments) Regulations 2018.

It is a great pleasure to serve under your chairmanship, Dame Cheryl, on this important anniversary of female suffrage.

The draft regulations will complete some unfinished business in relation to the Policing and Crime Act 2017, which received Royal Assent just over a year ago, on 31 January 2017. Hon. Members will recall that the Act provided the legislative underpinning for a number of important reforms, including enhancing the local accountability of fire and rescue services by enabling directly elected police and crime commissioners to take on the functions of fire and rescue authorities where a local case is made; abolishing the London Fire and Emergency Planning Authority and giving the Mayor of London direct responsibility for the fire and rescue service in the capital, with operational responsibility for the service being vested in the London fire commissioner; strengthening public confidence and trust in the police by radically reforming and simplifying police complaints and disciplinary systems; enabling chief officers to make better use of police staff and volunteers, freeing up police officers to focus on their key tasks; strengthening the protections for those under investigation by the police by ensuring that arrangements for police bail properly balance the rights of individuals with the need to protect the wider public; and closing gaps in police cross-border arrest powers to enable the police to arrest a person wanted in another UK jurisdiction without first having to obtain a warrant.

To give effect to those reforms, the 2017 Act made the necessary changes to the substantive legislation, including the Police Reform Act 2002 and the Fire and Rescue Services Act 2004, but it was also necessary to make extensive consequential amendments to other enactments. Since it was anticipated that further such consequential amendments might be identified after Royal Assent, section 180 of the 2017 Act includes a standard power to make such amendments. The draft regulations derive from that power.

The consequential amendments made by the draft regulations are wide-ranging, and several are wholly technical in nature. Accordingly, as the Committee will be pleased to hear, I do not propose to go through each and every provision. Instead, I shall focus on the key provisions.

The 2017 Act facilitated a change to the governance arrangements for fire and rescue in London. From April, the London Fire and Emergency Planning Authority will be abolished and day-to-day responsibility for the fire and rescue service will be vested in the new London fire commissioner, who will be accountable to the Mayor of London, supported by a new deputy Mayor for fire. This reform has the full support of the current Mayor. It is entirely possible that appointments to the office of London fire commissioner will be made from among senior firefighters who are members of the existing firefighters' pension scheme. It is right that in that event the appointee should be able to retain membership of the firefighters' pension scheme, so regulations 2 and 10(3) provide for that. Now and in the future, the Mayor should be able to appoint the best available candidate to the office of London fire commissioner; failure to make the necessary changes to the Fire Services Act 1947 and the Fire and Rescue Services Act 2004 would be likely to significantly reduce the pool of suitably qualified candidates for the post.

Outside London, the 2017 Act provided for locally driven reform of the governance of fire and rescue services. Hon. Members will be aware that in October, the police and crime commissioner for Essex, Roger Hirst, became the police, fire and crime commissioner for Essex. My right hon. friend the Home Secretary is considering similar proposals for the PCCs of Cambridgeshire, Hertfordshire, Northamptonshire, North Yorkshire, Staffordshire and West Mercia to take on the functions of the fire and rescue authorities in their areas.

The operation of fire and rescue authorities is governed by a wide array of local government and other legislation. Part 2 of schedule 1 to the 2017 Act made numerous consequential amendments to modify such legislation to ensure that it could continue to operate for the new class of PCC fire and rescue authority. We have identified a small number of further enactments, including the Local Government Finance Act 1988, which makes provision for the financial administration of fire and rescue authorities, that also need to be amended. Some transitional provisions were included in the Police, Fire and Crime Commissioner for Essex (Fire and Rescue Authority) Order 2017, but the draft regulations put those provisions on a permanent footing.

The final particularly noteworthy provision in the draft regulations relates to the reforms to pre-charge bail that came into force last April. Those reforms addressed the legitimate concern that the then arrangements resulted in a significant number of individuals spending months—in some cases years—on pre-charge bail, only for them not to be charged, or, if charged, to be found not guilty. Such a prolonged state of limbo was undoubtedly extremely stressful for the individuals concerned, particularly if they were subject to onerous bail conditions.

Our reforms address such concerns by, among other things, creating a presumption in favour of release without bail, and setting clear time limits so that pre-charge bail will only last for longer than 28 days where necessary and proportionate. The evidence suggests that one of the main objectives of the reforms—namely, to reduce the number of individuals subject to pre-charge bail—is being delivered.

Regulation 4 of the draft regulations makes a consequential amendment to the Contempt of Court Act 1981, arising from the changes to pre-charge bail.

The relevant provisions of the 1981 Act, known as the strict liability rule, are designed to ensure a defendant's right to a fair trial is not prejudiced by adverse publicity during the period of the police investigation and pre-trial. The restrictions on the publication of potentially prejudicial material apply while an investigation is, in the jargon of the 1981 Act, "active". The draft regulations extend the definition of "active" so that the protection afforded by the 1981 Act applies in a case in which a person is released without bail while the police investigation continues.

I reassure the Committee that we are not aware of any case in which the lack of protection from the strict liability rule under the reformed pre-charge bail system has been prejudicial to the case. Even where the strict liability rule does not apply, publications can still be convicted of contempt where an intent to prejudice a case can be shown. The draft regulations merely return the position on contempt to where it was before those reforms were made.

The Policing and Crime Act 2017 was and is a landmark piece of legislation to support the transformation of policing and the fire service. Many of its provisions are already in force, and I expect the other substantive provisions to be commenced later this year. The draft regulations support the implementation of the measures already approved by Parliament in the last Session. On that basis, I commend them to the Committee.

2.38 pm

Louise Haigh (Sheffield, Heeley) (Lab): The Committee will be pleased to hear that I do not intend to speak for the full remaining hour and a half. Like the Minister, I do not even intend to address all of the draft regulations, even on this day of the centenary of women's suffrage. I was pleased to see my hon. Friend the Member for Bristol East arrive; I was worried I would be the token woman serving on the Committee.

I want particularly to address the issues around the regulatory amendment to the Contempt of Court Act 1981 and the reform of the pre-charge bail system. The Opposition are very happy to support the draft regulations, but there are some concerns about the implementation of these reforms. As the Minister said, as a consequence of the Policing and Crime Act 2017, rather than being bailed, a large proportion of defendants are now released under investigation, which has already begun to raise a number of issues in practice.

First, unlike what the regulations intend, there is no clarity or timescale whatsoever for the suspects as regards their investigation, leaving them in limbo and with that investigation stretching ahead of them. Suspects are now unaware of when it is safe to assume that they are no longer under investigation, or indeed whether they are likely to face further police involvement if they contact someone connected with the allegation, despite there being no bail conditions preventing them from doing so.

Furthermore, many elements of police investigations can take substantially longer than 28 days, such as the examination of electronic devices, as we have seen recently with the issues around police disclosure. That means that the police will still investigate the matter as normal, but a suspect is no longer required to return to a police station to formally answer their bail. However, without that impending bail appointment, it is possible that investigations will take even longer to conclude, as the police no longer have fixed deadlines by which to provide updates. I know personally of several cases where suspects have waited for months for investigations into the most minor offences with no clarity about their investigation. The legislation is therefore having the opposite effect of its intended laudable consequences.

Concerns have also been raised about the consequent costs for policing and the court system as a whole. The evidence appears to suggest that releases under investigation have simply replaced bail with a fall of 26% of suspects bailed last March down to 4% in the three months that followed, while releases under investigation rose to 25% in the same period. Will the Minister review the figures and consider whether the new system has achieved its intended outcome, as it has been in place for almost a year? As I say, the Opposition are happy to support the regulations.

2.40 pm

Paul Flynn (Newport West) (Lab): The explanatory notes say that the 2017 Act allows for the extension of the police disciplinary regime to former police officers in certain circumstances. We know that that has been a device used by police officers who are suspected of breaking the law or the regulations in some way to conveniently retire and escape retribution.

I have a constituency case that has been going on since 1987. Mr Daniel Morgan was attacked and killed with an axe during an investigation he was carrying out into alleged police corruption involving a Maltese drug gang. The investigation has been going on since 1987, and the publication of a report is promised this year, as it was last year and many other years before.

I think I am one of the few Members of the House who has read the Operation Tiberius report, which I believe should be read by all Members. It is a remarkable account of corruption in the Metropolitan police and lists names of errant police with their ranks, addresses and numbers, and the villains with whom they co-operated in plotting and covering up crime. They operated in masonic lodges because they would have been exposed had they operated in more public circumstances. The document has never been published, although it was leaked in substantial form to *The Independent* newspaper. However, two of us who were members of the Select Committee on Home Affairs were allowed to see it under very strict circumstances.

There is a great deal of concern about police activity and we have every reason to be worried when we read of a case of a retired police constable who is holding information on an hon. Member that he discovered in a legitimate police search some 10 years ago. The activity was not illegal, but the information was then published 10 years later after the officer retired.

The Chair: Order. Mr Flynn, for the assistance of the Committee and the Chair, will you relate your remarks to the regulations before the Committee? I think that would be most helpful.

Paul Flynn: I am particularly referring to the part of the regulations that relates to the extension of the police disciplinary regime to former police officers in certain circumstances. That retired officer used allegations and alleged evidence against a Member of this House regarding an act that was not illegal in order to damn the reputation

[Paul Flynn]

of that Member. Will this change mean that that person can be pursued for an action which was very detrimental to the reputation of one of our hon. Members?

2.44 pm

Mr Hurd: I shall address my first remarks to the hon. Member for Newport West, who, through the experience of his constituency case, his experience on the Home Affairs Committee, and the privileged access he appears to have had to that document, clearly feels strongly about the police disciplinary regime and how it relates to former officers. There will be a lot of sympathy in the Committee and the broader House for the central point, which is that the police police by consent and that is built on a foundation of public trust in their practices and their ethics.

That is why the substantive changes made by the 2017 Act, extending the police discipline system to officers who have left policing and are no longer serving—in the most serious cases, where a serving officer would be facing dismissal—are important. The changes removed restrictions preventing police officers from leaving while under investigation but allowed proceedings to continue to a full conclusion post-service. That is an important change. I will not get drawn into specific comments on the case that the hon. Gentleman has mentioned, but I would certainly refer him to statements made by Her Majesty's chief inspector of constabulary, Sir Tom Winsor, and the Metropolitan Police Commissioner, both of whom were extremely forthright in condemning that behaviour as inconsistent with the police code of conduct and their duty of confidentiality.

The hon. Member for Sheffield, Heeley, who serves on the Front Bench, is entirely right to probe the consequences of reform, particularly in relation to pre-charge bail. We have to be mindful of the consequences of change and how they affect the whole criminal justice system. I can reassure her that, as she asked and would expect, this is under review by the Criminal Justice Board—on which I often represent the Home Office—which is looking at exactly the data on what is happening as a consequence of the reform.

The short answer—it sounds a bit evasive but is not meant to be—is that the data are inconclusive at this stage, but colleagues across the criminal justice system are keen to press for further information about what is happening across the system as a result of these changes. We can see that there has been a significant fall in the use of pre-charge bail. While the reforms limit the length of time an individual can be on bail, they do not—and were never intended to—impose limits on the length of time an individual can spend under investigation, which is the hon. Lady's point. We are encouraging chief police officers to examine the way their forces handle cases released under investigation—that is without bail—in order to ensure that the reforms to pre-charge bail do not inadvertently lead to longer investigation. As I said, it is too early to have data to give the hon. Lady a conclusive answer, but I assure her that the system is keeping it under review. I know she will continue to hold me and the system to account on that point.

Question put and agreed to.

2.48 pm

Committee rose.