PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

COUNTER-TERRORISM AND BORDER SECURITY BILL

Third Sitting

Thursday 28 June 2018

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Monday 2 July 2018

The Committee consisted of the following Members:

Chairs: Mrs Anne Main, † Joan Ryan

† Bowie, Andrew *(West Aberdeenshire and Kincardine)* (Con)
† Chapman, Douglas *(Dunfermline and West Fife)* (SNP)
† Coyle, Neil *(Bermondsey and Old Southwark)* (Lab)
† Dakin, Nic *(Scunthorpe)* (Lab)
† Doughty, Stephen *(Cardiff South and Penarth)* (Lab/Co-op)
† Foster, Kevin *(Torbay)* (Con)
† Hall, Luke *(Thornbury and Yate)* (Con)
† Hoare, Simon *(North Dorset)* (Con)
† Huq, Dr Rupa *(Ealing Central and Acton)* (Lab)
† Khan, Afzal *(Manchester, Gorton)* (Lab)
† Lopez, Julia *(Hornchurch and Upminster)* (Con)
† Maclean, Rachel *(Redditch)* (Con)
† Maynard, Paul *(Lord Commissioner of Her Majesty's Treasury)*
† Newlands, Gavin *(Paisley and Renfrewshire North)* (SNP)
† Pursglove, Tom *(Corby)* (Con)
† Smith, Eleanor *(Wolverhampton South West)* (Lab)
† Thomas-Symonds, Nick *(Torfaen)* (Lab)
† Wallace, Mr Ben *(Minister for Security and Economic Crime)*
† Warman, Matt *(Boston and Skegness)* (Con)

Nehal Bradley-Depani, David Weir, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 28 June 2018

[Joan Ryan *in the Chair*]

Counter-Terrorism and Border Security Bill

11.30 am

The Chair: If Members wish, they may remove their jackets. Will they please ensure that any electronic devices are switched to silent?

This morning we begin the line-by-line consideration of the Bill. The selection list for today's sitting is available in the room and shows how the selected amendments have been grouped for debate. Grouped amendments are generally on the same or similar issues. Please note that decisions on amendments take place not in the order that they are debated but in the order that they appear on the amendment paper. The selection and grouping list shows the order of debates. Decisions on each amendment are taken when we come to the clause that the amendment affects.

I will use my discretion to decide whether to allow a separate stand part debate on individual clauses and schedules following debates on relevant amendments. I ask Members wishing to push to a separate Division an amendment that is not the lead amendment in a group to please let me know in advance, and I will use my discretion in deciding whether to allow such a vote.

Copies of written evidence that the Committee has received since our last meeting have been made available in the room.

Clause 1

Expressions of support for a proscribed organisation

Nick Thomas-Symonds (Torfaen) (Lab): I beg to move amendment 2, in clause 1, page 1, line 5, at end insert—

"(A1) Section 12 of the Terrorism Act 2000 (support) is amended as follows.

(B1) In subsection (1), after paragraph (b), insert—

'(c) in doing so is reckless as to whether another person will be encouraged to support a proscribed organisation.'".

This amendment would amend the existing offence of inviting support for a proscribed organisation so that a person must be reckless as to whether another person is encouraged to support a proscribed organisation to commit the offence.

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

Amendment 3, in clause 1, page 1, leave out line 6 and insert—

"(1) After subsection (1) insert–".

This amendment is consequential on Amendment (2).

Amendment 1, in clause 1, page 1, line 10, leave out paragraph (b) and insert—

"(b) in doing so, intends to encourage support for a proscribed organisation".

This amendment would mean that the offence is only committed where a person intends to encourage support for a proscribed organisation.

Clause stand part.

For the sake of clarity, this debate may range across all aspects of clause 1, in addition to those points covered by the amendments.

Nick Thomas-Symonds: It is a pleasure to serve under your chairmanship, Ms Ryan. I first want to make a few general remarks about clause 1.

I think we all accept that there is a need to update the law in this area, and that is for a number of reasons. The first is the evolving and changing nature of the terrorist threat over past decades. There have also been changes in technology, which I appreciate we will deal with in later clauses. However, there is also—this is vital for clause 1—the fact that we now have experience of the Terrorism Act 2000 in our criminal justice system and in the decisions taken by the Crown Prosecution Service.

The clause essentially updates section 12 of the Terrorism Act 2000. Just so that we are clear, section 12(1) of the Act indicates:

"A person commits an offence if—(a) he invites support for a proscribed organisation, and (b) the support is not, or is not restricted to, the provision of money or other property".

The key part of that subsection is the inviting of support for a proscribed organisation.

When Assistant Commissioner Basu gave evidence to the Committee on Tuesday, I was careful to ask him whether there were examples of situations that are not covered under the 2000 Act but would be captured—or are intended to be captured—by this new offence, and he gave a couple examples. One was the case of Mohammed Shamsuddin and the Channel 4 documentary, "The Jihadis Next Door". He referred to a speech that Shamsuddin gave on 27 June 2015, in which

"it was very clear that he supported Daesh and what they were doing…He criticised Gay Pride and said that gay people should be thrown from tall buildings. Having spoken on recent shootings in Tunisia, he said, "The spark was lit," and that the listeners knew the rest."—[*Official Report, Counter-Terrorism and Border Security Public Bill Committee,* 26 June 2018; c. 6, Q3.]

Of course, the problem with those remarks, which I will come back to, is that they are not captured by the 2000 Act as it stands, because there was no specific invitation to others to join the cause.

The other example given was of Omar Brooks, in relation to an incident on 4 July 2015. Again, there was clearly talk about religion being spread by the sword and about it not being a soft religion about peace, and there was the mocking of a Shi'ite who had spoken out against killing of Lee Rigby. The tone of the speech shows clear support for the concept and principles of Daesh, but, again, it does not take the additional step of inviting support from others.

Prior to this clause being proposed, the law as it stands was interpreted in the case of Choudary and Rahman, which the Minister referred to in his questions to the witnesses on Tuesday. About the offence as it stands, the Court of Appeal said:

"When considering the proportionality of the interference, it is important to emphasise that the section only prohibits inviting support for a proscribed organisation with the requisite intent. It does not prohibit the expression of views or opinions, no matter how offensive, but only the knowing invitation of support from others for the proscribed organisation."

In essence, along with the two examples I have given on the basis of Assistant Commissioner Basu's evidence,

that captures where the law is and where it stops. There are others acting in a clearly unattractive way whom we wish to extend the law to.

The issue then becomes how, precisely, we want to draft the law to achieve that. Nobody says that freedom of expression is a wholly unqualified right—it is not, actually—but I am sure we all wish to strike a balance between people expressing views that we find distasteful and may not agree with, but that none the less come into our public debate and are defeated by others, and the clear nature of the offence, which is about recruiting people to the terrorist cause. How we draw that distinction is very important.

The amendments in my name seek to consider how we get that balance right. Nobody in the Committee would want to put something unworkable on the statute book, or something that was likely to attract a declaration of incompatibility with the Human Rights Act 1998. I tabled these amendments for the Minister's consideration in that spirit and to assist in striking that balance appropriately. This is not a partisan issue, and I hope that we would all wish to strike that balance appropriately and to make the clause effective.

The two amendments—there are really two amendments, although there are three on the amendment paper—seek to look at the original offence under the Terrorism Act 2000 and at how the extension of that offence appears in clause 1. I have put forward two options: first, that the offence is committed only when the person intends to encourage support for a proscribed organisation—in other words, when the opinion is expressed, as set out in clause 1, together with intention; and, secondly, that recklessness is attached to the offence. Both options extend the existing offence, but not quite as widely as clause 1 as it stands.

Recklessness is not an unknown legal concept in our criminal law; on Tuesday, the Crown Prosecution Service gave evidence about it. There has been a change in the concept of recklessness in law. It is what we call subjective recklessness, so it is about what the individual person thinks about the risk. Recklessness would be far more difficult as a concept in this area if it was defined as it was prior to 2003, when it was about an objective view and about others assuming what that person might mean. With the restriction that is in our law on recklessness anyway, recklessness should perhaps be less of a concern for the Committee.

I offer the two amendments for consideration in a constructive spirit. Their purpose is to ensure that, when the Committee looks at extending the law, as we all agree we should be doing, to examples of what the Minister has referred to as the "charismatic preacher" and to the impact of a person who is recruiting people to the cause, but who is not quite using a form of words that is captured in the intention in the Terrorism Act 2000, we do that in a way that is workable and proportionate and does not draw a declaration of incompatibility under the Human Rights Act. I therefore hope the Minister will indicate that the amendments will be considered.

Gavin Newlands (Paisley and Renfrewshire North) (SNP): I rise to support the amendments tabled by the hon. Member for Torfaen.

The Chair: Order. Sorry, we cannot debate the amendment until I have put it to the Committee—it is my error, not yours. The question is that amendment 2, to clause 1, is made.

Gavin Newlands: Practice makes perfect, Ms Ryan.

I rise in support of the amendments. Clause 1 will create a new offence for expressing an opinion or belief that is supportive of a proscribed organisation, in circumstances where the perpetrator

"is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation."

That extends the existing offence of inviting support for a proscribed organisation to cover acts such as making supportive statements, approving of certain attitudes or behaviours, and providing intellectual support.

It has been argued by others that the term "invitation of support" is already a rather broad concept. The Court of Appeal's decision in Choudary and Rahman, which has already been mentioned, held that a person need not be personally providing support for a banned organisation; rather, the criminality lies in inviting support from a third party. The support need not, therefore, be tangible or practical, but could include approval, endorsement or other intellectual support.

We are generally supportive of the Bill, and we offer amendments only to try to improve it. However, clause 1 removes the requirement of proving intent. In doing so, it could be claimed that it pushes the law further away from actual terrorism and well into the realm of free speech and opinion—values and freedoms that all four countries of the UK rightly cherish. The clause actively and intentionally reverses the Court of Appeal's conclusion that the criminal law

"does not prohibit the holding of opinions or beliefs supportive of a proscribed organisation; or the expression of those opinions or beliefs".

Although recklessness is a commonly used legal term in terms of acts against the person, I have misgivings about using it to criminalise speech. The Joint Committee on Human Rights made that point, as was mentioned during the evidence session on Tuesday, when it said:

"recklessness is normally applied to actions that are themselves within the realm of criminality…if you hit someone or deceive them then it is absolutely appropriate for a jury to be able to convict you of an offence even if you did not intend the consequences of your actions. The same nexus between action and consequence should not exist for speech offences. Speech does not naturally reside in the realm of criminality."

Others far better versed than me in this area share those opinions. The former Director of Public Prosecutions, Ken Macdonald, wrote:

"The mere fact that someone holds an opinion can never be a reason to prosecute. You can think what you like."

Without the right to express a thought or belief, freedom of expression would be meaningless. The right to express an opinion is fundamental. Clause 1 would prove that assertion wrong by creating a reason to prosecute someone simply for expressing an opinion.

In addition, the right hon. and learned Member for Beaconsfield (Mr Grieve) wrote:

"If the Irish Taoiseach made a speech about the Easter Rising as a glorious moment in Irish history, and if you have someone who happened to be a member of the Real IRA and it motivated them to go on with some unfinished business, could the Taoiseach be arrested?"

[Gavin Newlands]

That would be absurd, but given how wide the clause is, that could be its effect. As such, we support amendment 1 and the other amendments tabled by those on the Opposition Front Bench. We are happy to do so, because changing the legal test for the offence of expressing an opinion or belief from recklessness to having to prove intent is something we should all support.

11.45 am

The Minister for Security and Economic Crime (Mr Ben Wallace): I am delighted to serve under your chairmanship, Ms Ryan, on this hot Thursday morning. At the beginning, I want to refer to the importance of the Bill. As we sat listening to Liberty give evidence on Tuesday, the jury returned a verdict of guilty on Mr Khalid Ali. He was convicted for being about to mount an attack on Whitehall last year. What is interesting is that his conviction was based on biometrics collected in Afghanistan four years ago and a schedule 7 stop at a point of entry to the UK that allowed us to collect those biometrics. If there was ever an ironic or coincidental time to show the importance of biometrics and schedule 7 in combating such deliberate, planned crime, this is it. That individual has since admitted to making 300 improvised explosive devices in Afghanistan. He was en route, we think, to pose a threat to either this House or the Downing Street-Whitehall area. That is a pertinent example, and we should reflect on it as we progress through the Bill.

I am grateful to the hon. Member for Torfaen for raising his points. I fully recognise the spirit in which all Members have contributed to the Bill, which is to try to improve it. We want to deliver a Bill that will work and that does not impinge on freedom of speech or tackle the values we hold. It is about striking the balance between that necessity and keeping us safe and secure. The Bill is also about adapting to the moving threat, which is exactly what terrorists do. Good terrorists spot the flaws in our legislation and move to exploit them. Here I evoke Mr Choudary, who is currently at Her Majesty's pleasure. For well over 10 years, he managed to skilfully exploit that bit about encouragement versus inspiration to send hundreds of people to their deaths—no doubt a number of them at their own hands. There were the young girls from north London—sometimes deluded, sometimes seduced or groomed—who I suspect did not really know what they were getting themselves into. That is why the Government think it important to try to address the gap.

Dealing effectively with the power of inspiration or incitement is not new. We have it in both the Public Order Act 1986 and the Racial and Religious Hatred Act 2006, which the last Labour Government brought in to try to deal with inspiration. Effectively, that meant that if someone incites the hatred of a race, they are guilty of an offence. They do not necessarily have to directly direct people to go out and attack Jewish or Muslim people; they can be found guilty of incitement. It is not a new concept in our law, and we are trying to reflect it in terms of those being inspired to join a proscribed terrorist organisation or take action. That at its heart is what clause 1 is trying to do.

A valid point was made about the issue of recklessness and that people must have regard to whether their comments are reckless. My hon. Friend the Member for Cheltenham (Alex Chalk), who is a practising criminal barrister, pointed out that recklessness is a well-established concept. He used an example, although in the physical assault space, of someone walking down a high street with a baseball bat and whanging it round someone's head. It would not need to be proved that they went out to break someone's jaw with a baseball bat. A direct motive or intent would not need to be proved; recklessness would be recognised and that person would probably be found guilty of assault, grievous bodily harm or actual bodily harm, depending on the severity of the hit with the baseball bat.

Recklessness is therefore well established, and I recognise what the hon. Member for Torfaen is trying to achieve. Amendment 1 would remove the recklessness element of the new subsection (1A) offence, which clause 1 inserts into section 12 of the Terrorism Act 2000, and replace that with a mens rea requirement to prove that a person expressing an opinion or belief in support of a proscribed activity intended to influence another person to support the organisation rather than that they had been reckless as to whether that would be the result.

Amendment 2 would add a recklessness limb to the existing offence of inviting support for a proscribed organisation at section 12(1) of the 2000 Act. I am alive to the concerns raised about the case and agree that it is a sensitive area in which we must tread carefully to ensure that the laws we pass are proportionate and go no further than necessary.

As the Security Minister, I am acutely aware of the need to ensure that those tasked with keeping us safe from a very real and serious terrorist threat have the powers they need. Those two imperatives are not mutually exclusive, and it is not an either/or question. However, measures such as this, which come closer than most laws to delicate issues such as the right to freedom of expression, can none the less bring the intersection between the two into sharp focus.

The Committee's role is to consider whether the Bill strikes the right balance. I respect the contributions of the hon. Members for Torfaen and for Paisley and Renfrewshire North, which were made in the spirit of improving the Bill. However, I must respectfully disagree with the hon. Member for Torfaen. His amendments would not merely moderate the clause or tip its balance in one direction or another; rather, they would entirely negate its intended effect such that it would have little—if any—impact on the current operation of section 12. As a result, a gap that has been clearly highlighted by the police, MI5 and the CPS in their ability to act against individuals who mean us harm would not be closed.

While the hon. Gentleman's amendments are well intentioned, they would continue to leave a gap in the law and therefore put the public at unnecessary risk. I hope that the Committee will be persuaded of that if I explain in more detail the background to this measure, why it is necessary and how it will operate. Since 2000, it has been illegal to invite another person to support a proscribed terrorist organisation such as Daesh or the neo-Nazi group National Action, whether an invitation is explicit or implicit. What matters is that there is an invitation, which is to say a deliberate encouragement to someone to support the group.

I will not refer to the cases that the hon. Gentleman mentioned in pointing out the necessity of trying to close that gap. It is not always possible to prosecute individuals who make public speeches or otherwise

express views in support of proscribed organisations if it cannot be proved that those statements amounted to deliberate invitations to others to support an organisation. That is the case even if a speech or statement is clearly inflammatory, clear about the individual's support for the terrorist organisation and, on any reasonable assessment, likely to cause the audience to be influenced to support the organisation such that it would be reckless for the person to make such a statement.

As I have said, the police, MI5 and the CPS have been very clear that that represents a gap in our ability to prosecute people who may be engaged in radicalisation. That was clear in Tuesday's evidence from Assistant Commissioner Neil Basu and Greg McGill from the Crown Prosecution Service. The clause will close that gap by amending section 12 of the 2000 Act so that it will be an offence for an individual to express support for a proscribed organisation if, in doing so, they are reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation.

In recent years, the police and intelligence services have seen individuals progress—very quickly in some cases—from the initial stages of radicalisation to actual planning or carrying out of attacks. Such activities covered by this provision can have a powerful and a very harmful effect in initiating or moving along that process. It is therefore imperative that the police have the powers they need to intervene to stop such radicalisation from taking place. In that, they will not only protect potentially vulnerable individuals who are the target of the radicalisation from further harm, but possibly stop terrorist activity that stems from an individual who has been radicalised and indoctrinated, which could cause immense harm to the public.

We have discussed the case of Anjem Choudary. Numerous people who have appeared before the courts on trial for the most serious terrorism offences have been his associates or contacts and have been members of al-Muhajiroun. They have also attended meetings and lectures at which he has spoken or have otherwise been influenced by him. I could equally mention other preachers, such as Abu Qatada and Abu Hamza. I cannot give the Committee an absolute assurance that these individuals would have been prosecuted sooner had clause 1 been in force—that would be a matter for the independent CPS upon careful consideration of all the available evidence—but clause 1 would have given the police and the CPS a very important and potentially much more fruitful option to pursue.

I will mention the two more recent examples provided by Neil Basu in his evidence where this provision might have made a difference. First, Mohammed Shamsuddin, who appeared in Channel 4's "The Jihadis Next Door", had an extensive history of involvement in radicalisation and the spreading of extremist propaganda. In one instance, he gave an inflammatory public speech that was clearly supportive of Daesh. He mocked a sheikh who had spoken against the killing of Lee Rigby.

Secondly, Omar Brooks was convicted in 2008 of terrorist fundraising and inciting terrorism overseas, and again in 2016 of breaching travel restrictions imposed under notification requirements that clauses 11 and 12 of the Bill deal with. A prolific preacher of hate, in a public speech following the 2015 Kuwait mosque bombing and the Sousse attack in Tunisia, Brooks shouted anti-kufr rhetoric in relation to the attacks and said, "The spark was lit". It was clear from the tone and content of the speech that he supported Daesh and what it was doing.

Of course, in a free society, we should not seek to criminalise individuals just because what they say is offensive or shocking, but there comes a point where such speeches cross a line, because in this instance they incite support for terrorist groups. I do not raise those examples simply to drag the names of the individuals through the mud. Rather, I want to illustrate to the Committee the type of case we are dealing with, which this clause is intended to capture.

Nic Dakin (Scunthorpe) (Lab): It is a delight to serve under your chairship, Ms Ryan. For my sake—I may be being a bit slow—could the Minister be precise about why the amendments would prevent action being taken against the sort of individuals that he describes, who, rightly, we want action to be taken against? That would be very helpful.

Mr Wallace: I will get to it technically, but in summary, if recklessness is added to someone already inviting support, support is already being invited. The recklessness bit is secondary, because the person has invited the support. The problem with one of those amendments is that it tacks on recklessness to something that is already an offence, but it will not change that offence, because the person has already done the inviting.

Nic Dakin: Is the argument that it is unnecessary rather than restrictive?

Mr Wallace: I will get to that. These amendments would prevent clause 1 from having effect. If the reckless element were removed from the proposed new offence and replaced with a mens rea requirement, it would have to be proven that the person invited it. If that can be proven, it would be the existing offence. It is unnecessary and it would narrow back to the original, existing statute, rather than broaden to deal with recklessness where the person is using themselves to incite or inspire.

Nick Thomas-Symonds: I am not sure that is quite it, but let us use that second example. There is the original offence of invitation of support and the new offence, which talks about expression of opinion. At the moment, recklessness is attached to that, but intention could be attached to it. It would not be as broad, but it would be broader than the existing offence.

Mr Wallace: That is my point: it will narrow it from what we are proposing. It would pretty much mirror the existing offence. One of the alternatives in the amendments would add recklessness to the existing offence, if I am not mistaken, but the existing offence is that the person has invited support, so whether or not they are reckless does not really matter, because they are guilty of an offence.

Nick Thomas-Symonds: The overall point is correct: the two amendments taken as alternatives certainly would not broaden the first offence to the extent that the new clause does, but they would both broaden it. At the moment, the first offence is intentional, so you can add recklessness to it, or you can put intention on the first part of the new offence. In both cases you would

[Nick Thomas-Symonds]

broaden it, but you certainly would not have the impact of going back to the original one; you just would not broaden it to the extent that the full clause 1 does.

12 noon

Mr Wallace: The point is that both your amendments would require us to prove intent. You are saying, "If you add it to the old offence, you have to prove intent, because the old offence as it stands includes intent." If you add intent to the new offence, you are effectively mirroring the existing one. Clause 1 is about trying to deal with a gap where you find yourself unable to prove direct intent but—I go back to the idea of the baseball bat—know that someone is recklessly inspiring people to join or follow a proscribed organisation.

Nick Thomas-Symonds: I am grateful to the Minister for being so generous in giving way. If you add recklessness to the offence as it is, you broaden it. Similarly, if you broaden it out to expressions of opinion and you add intention, that also broadens it. What it does not do is broaden it to the extent that the new clause as a totality does. That is the point.

The Chair: Can I just remind hon. Members that if you refer to "you", you are referring to me? The same rules apply as in the Chamber.

Mr Wallace: I think we are referring to the subject of the law.

The Chair: On some occasions you are, and on other occasions you are referring to each other.

Mr Wallace: Madam Chair, I think the point is that both amendments require more proof of intent than we have currently decided we are trying to sort. The hon. Member for Torfaen is seeking with his amendments for us to have to prove intent. If it is to prove intent in the old existing statute—intent plus recklessness—we still have to prove intent. If we add intent to the new thing, it will still bring it in. My view and the Government's view is that that is effectively starting to mirror the existing offence, and therefore this is about recognising that intent is already in existence in the statute book. This is where you use yourself—not yourself, Ms Ryan, but a person—

The Chair: Correct.

Nick Thomas-Symonds: Not that we are saying the Chair is not inspirational. *[Interruption.]*

Mr Wallace: I am backed up from nowhere by Lord Diplock. The hon. Member for Torfaen makes valid points, but the issue here is what Lord Diplock said in the case of Sweet *v.* Parsley—you could not make that name up, could you? He did not say it to me, but nevertheless it came to me. He said that it is

"difficult to see how an invitation could be inadvertent."

The point is that, if the hon. Gentleman is saying that by adding "reckless" we inadvertently go to intent, we must get that challenge right. We are trying to plug the fact that at the moment, unless we can prove intent, we find it very hard to deal with that aspiration.

Nick Thomas-Symonds: With the greatest respect to Lord Diplock, subjective recklessness is not necessarily inadvertent. That is the whole point. However, it is not my intention to press the matter today and I would be very happy to enter into further discussions with the Minister on that point.

Mr Wallace: Lord Diplock has thrown me off my stride, or more likely it was Sweet *v.* Parsley that threw me off my stride, as it is lunchtime. Our contention is that, if we accept the amendment, there would be no point to clause 1, and that the new section 12(1A) offence would simply mirror the effect of the existing section.

Similarly, the addition of a recklessness test to the existing offence of inviting support at section 12(1) would not address the difficulty. The requirement to prove that an invitation—that is, a deliberate encouragement—had been made would not be removed, and would still need to be met in a case in order to make out the offence. Again, therefore, the current gap would remain. Recognising what the hon. Gentleman has said, I invite him to withdraw the amendment and support clause 1. However, in light of his comments I would be happy to meet him to discuss it.

Nick Thomas-Symonds: I am grateful for that final point, and on the basis that the Minister is happy to meet me to discuss the matter, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: We discussed clause 1 stand part as part of the group, so I shall put the question forthwith.

Clause 1 ordered to stand part of the Bill.

Clause 2

Publication of images

Nick Thomas-Symonds: I beg to move amendment 4, in clause 2, page 2, line 6, at end insert—

"(1C) It is a defence for a person charged with an offence under subsection (1A) to prove that he had a reasonable excuse for the publication of the image."

This amendment explicitly sets out that a person charged with the new offence under subsection (3) has a defence if they can prove a reasonable excuse for the publication of the image.

Clause 2 fits into the category of offences I have mentioned that are being updated to take account of technology. Amendment 4 is not unreasonable and would simply set out the defence of reasonable excuse. Whether that is necessary may be subject to argument, and I am happy to listen to the Minister's position, but I tabled the amendment to give a degree of comfort in relation to the scope of the offence.

We would all agree that the situation needs to be updated. It is set out in section 13 of the Terrorism Act 2000, on uniform. Under that provision, which was of course passed some 18 years ago, a

"person in a public place commits an offence if he—(a) wears an item of clothing, or (b) wears, carries or displays an article, in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation."

A term of imprisonment not exceeding six months can be imposed.

The problem that arises is that people can now perfectly well wear such an item of clothing, or display an article, in a private place and take a photograph to be quickly disseminated on social media such as Facebook or Twitter, or by other means. It is right for the Government to look at that. Wearing something in a private place and putting a picture of it on social media could result in far more people seeing it than would have happened in the situation envisaged in the old offence, where the item was displayed in a public place.

My first reason for tabling the amendment is simply to add a note of caution. We are moving from criminalising behaviour in a public place to criminalising something that happens in a private place in the first instance, but which technology allows to be disseminated in the public sphere.

The second reason is that we should take care not to extend the criminal law to behaviour that we might all think unattractive—I hesitate to use the word "reckless" after the previous discussion—but that none the less would not give rise to terrorist intent. In a question during the evidence sitting on Tuesday, I gave the example of a 16 or 17-year-old going to a fancy dress party who wears something that we might all regard as offensive, in bad taste and showing poor judgment, but whom no one would seriously want to criminalise as the clause would do. The answer I received from Mr McGill on behalf of the Crown Prosecution Service and Assistant Commissioner Basu was simply that, in such cases, they would not be interested in pushing the matter into court. Assistant Commissioner Basu said, with respect to the CPS and Mr McGill:

"I would never get such a case past him anyway, even if I was prepared to put that case. We are far too busy on genuine acts of terrorism to be concerned with such a case. What it might point to is somebody who is in trouble and needs a bit of guidance".—[*Official Report, Counter-Terrorism and Border Security Public Bill Committee,* 26 June 2018; c.7-8, Q4.]

He referred to Prevent.

Assistant Commissioner Basu is right. Such behaviour might suggest that someone had problems. It might just suggest in the situation I described that they were being offensive for the sake of it. I obviously appreciate, too, that the Crown Prosecution Service has to apply a public interest test, but at the same time, while that prosecutorial discretion is important, the legal framework we set out in the first place is also important.

I completely support the intention of the clause. It is right that we update the law in the social-media age. We want to deal with the dissemination of unpleasant images. However, it is not an unreasonable amendment to. We ask simply to put that reasonable excuse on the face of the Bill to cover the situations I have suggested may arise.

Gavin Newlands: I neglected to say earlier that it is a pleasure to serve under your chairmanship, Ms Ryan. As has been outlined by the Labour Front-Bench spokesman, clause 2 extends the offence that would result in criminalisation for the publication of an image, the wearing of an item of clothing or the display of an article such as a flag in such a way that would arouse reasonable suspicion that a person is a member or supporter of a proscribed organisation.

It should be noted that it is already an offence to wear certain clothing, or to carry, wear or display certain articles in public places. The behaviour of those who disseminate terrorist publications intending to encourage terrorism, or being reckless as to whether the behaviour encourages it, is already criminalised by section 2 of the Terrorism Act 2006 and will attract a 15-year maximum sentence under the provisions of the Bill.

The clause would criminalise those who might be highlighting their support for a proscribed organisation, which is akin to using a sledgehammer to crack a nut. It overcomplicates the response and risks targeting innocent individuals in the attempt to target people who would look to do us harm. In a briefing, which I am sure the hon. Member for North Dorset fully endorses, Liberty—his favourite campaigning group—*[Interruption.]* I was talking about Liberty.

Simon Hoare (North Dorset) (Con): I know you were.

Gavin Newlands: Indeed.

Nic Dakin: You have woken him up.

Gavin Newlands: Yes, I know. I said it for that very reason.

Simon Hoare: It was a Pavlovian response.

Gavin Newlands: In that briefing, Liberty makes a fair point, when it says that

"further criminalisation of photographs of a costume only exacerbates the risk that law enforcement officials attempting to interpret the meaning of a photograph will mistake reference for endorsement, irony for sincerity, and childish misdirection for genuine threat."

Simon Hoare: I suggest to the hon. Gentleman that I do not think my response to the oral evidence—if one can grace it with that word—provided by Liberty was unique to me.

Gavin Newlands: That may well be the case, but having served on previous Bill Committees with the hon. Gentleman, I am well aware of his high opinion of that organisation.

It must be noted that the clause risks putting additional strain on resources. It may lead to the investigation of innocent individuals when it would be more effective to target those about whom we should be worried. The new offence does not require an individual to be a member of a proscribed organisation or to have ever offered support to it. The only requirement is that the circumstances around publication arouse reasonable suspicion that a person is a member of or supports a proscribed organisation.

During the evidence session on Tuesday, we heard a number of everyday examples where someone could be in breach of clause 2. As we have heard, that could include someone dressing up in fancy dress for Halloween, a tourist having a picture with a Hezbollah flag, the display of a historical flag, or a journalist or academic researching a particular field of study. Greater clarity and safeguards are required to protect innocent parties from being in breach of this new offence.

12.15 pm

I will offer one further hypothetical. I own—I am sure the hon. Member for West Aberdeenshire and Kincardine does, too—a T-shirt that has "Alba gu bràth" on the front, which simply means "Scotland forever" in Gaelic. The Scottish National Liberation Army is not a proscribed organisation at this point in time, but let us say it becomes one and uses that phrase commonly. I would have no evidence—no pictures, for example—to prove I had bought and worn the T-shirt prior to the proscription. I could be caught by the clause if it is not tightened.

I digress. On Tuesday, Max Hill, the independent assessor, spoke about the vulnerability in the clause, saying that

"some tighter definition might be of use."—[Official Report, Counter-Terrorism and Border Security Public Bill Committee, 26 June 2018; c. 41, Q88.]

By introducing such wide-ranging offences, we will be asking the police, the Crown Prosecution Service and the Procurator Fiscal Service in Scotland to make judgment calls in the area of counter-terrorism when their time would frankly be better spent detecting and prosecuting actual suspects and potential terrorists.

The amendment tabled by the hon. Member for Torfaen is sensible and would add an extra layer of protection for innocent individuals who may be caught up in a police investigation. It would allow for a defence that would cover groups that may have a legitimate reason to publish such material, and if applied appropriately it would reduce any chilling effect in the clause. The Scottish National party supports the amendment.

Stephen Doughty (Cardiff South and Penarth) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Ms Ryan. I will raise a separate imagery issue, particularly on flags, that I hope the Minister will address.

I am well aware that several organisations use slight variants of logos, wording and other insignia on flags and other material. I also know that that has been an issue on what most of us would look at and consider to be an ISIS flag in support of that organisation, but on which clever alterations have been made by individuals trying to evade prosecution for displaying that item. For imagery displayed on the internet or elsewhere, it may be that individuals will seek to avoid prosecution under the clause or other ways by making slight alterations to that imagery. Will the Minister explain his definition of "reasonable suspicion" that those individuals support such an organisation?

Mr Wallace: Clause 2 makes it an offence to publish an image of an item of clothing or other article associated with a proscribed organisation in such circumstances as to arouse reasonable suspicion that that person is a member or supporter of that organisation. As the hon. Member for Torfaen explained, the amendment would add a reasonable excuse defence to the new subsection (3)(1A) offence. The hon. Gentleman indicated that his intention is to ensure that the offence does not bite on those who may have a legitimate reason to publish such images, such as journalists or academics.

I am happy to assure the hon. Gentleman that the Government share that intention, and that that outcome is in fact already secured by the current drafting of clause 2. The words "in such a way" will hopefully answer both the fears of the hon. Member for Paisley and Renfrewshire North about his T-shirt and the general issue of having not only to display such an image but to do so

"in such a way or in such circumstances as to arouse reasonable suspicion that the person is a member or supporter of a proscribed organisation."

It is important to recognise that the mere publication of an image associated with a proscribed organisation is not enough on its own to constitute an offence. The offence will only be made out if the image is published in such circumstances as to arouse reasonable suspicion that the individual is a member or supporter of the proscribed organisation. In cases of a journalist featuring an image of a flag in a news report or an academic publishing such an image in a book or research paper, it would be clear from the circumstances that they are not themselves a member or supporter of the organisation. This approach provides certainty to such individuals that they will not be caught by the offence. It also offers the advantage that the same formulation has been in force since 2000 with the existing section 13 offence in the 2000 Act of wearing or displaying such an article in a public place, and is therefore well understood by the courts.

For that reason, although I totally agree with the objectives behind the amendment, it is not necessary to add "reasonable excuse". I therefore ask the hon. Member for Torfaen to withdraw the amendment.

On the point raised by the hon. Member for Cardiff South and Penarth, the existing offence of displaying a flag talks about doing so "in such a way" that inspires people. If there is evidence that someone is doing it in such a way as to commit that offence, they will be prosecuted.

As to the T-shirt, I will give the hon. Member for Paisley and Renfrewshire North an alternative. If I bought one with a statement on it such as "Scotland Forever"—the sentiment is shared by the vast majority of decent Scottish people and not just a few lunatics in the Scottish National Liberation Army or whatever they are called—I doubt that that would be as clearly synonymous with any terrorist organisation as a National Action one. Clearly, if someone had bought a National Action T-shirt—and they could fit into it, which would probably be a challenge for some of its supporters—and it then became proscribed, of course they should remove it, because I do not want people walking around with terrorist T-shirts once an organisation has been proscribed. However, I do not think that "Scotland Forever" would fall into the category of a symbol of a terrorist organisation. I hope that gives him some comfort that we will not arrest people who think that Scotland is forever.

Nic Dakin: The hon. Member for Paisley and Renfrewshire North pointed to Mr Hill's evidence. He talked about the vulnerability in clause 2 and said:

"I understand where the Government are trying to get to, but some tighter definition might be of use."—[*Official Report, Counter-Terrorism and Border Security Public Bill Committee,* 26 June 2018; c. 41, Q88.]

Has the Minister reflected on that? Can he deal with the point that Mr Hill, with all his experience, raised?

Mr Wallace: Yes, I can. The way I reflected on that was to seek to find out what happened with the existing offence, which has the same wording of "in such a

way", and how many failed prosecutions of people who are journalists or academics there had been under it. My understanding is that there have been no cases of prosecuting people who use the fair reason that they are a journalist or are researching something. The fact that it has been on the statute book for a long time already, and that it has not produced the failures that some people feared, suggests that the law has already accepted that wording in such offences. I do not fear that there will be a surge in wrong or failed prosecutions.

Stephen Doughty: I am sorry to press the Minister, but I would like clarification on variants. Material that glorifies the activities of the IRA, for example, has been published by organisations and is available on the internet. Individuals are removing the "I" from IRA and putting an asterisk or something like that into the imagery, but the rest clearly glorifies the activities of a proscribed organisation. In his view, would that be caught be the legislation? Would someone photo-editing an ISIS flag and leaving everything else such as guns in the picture—they are glorifying terrorist activities but making a slight alteration—be caught in the legislation?

Mr Wallace: Yes, because the key is "in such a way". Someone does not have to fly a swastika. The hon. Gentleman may have seen that some of the far right used to fly a red flag with a white circle but no swastika in it. Someone on an al-Quds parade might think that they can alter the Hezbollah flag and somehow pretend it is not to do with the military side, but that will not save them if they are using it in such a way as to commit that offence. Someone does not have to use the full wording, but we, the prosecuting authorities, have to prove that they are doing it in such a way as to incite or commit that offence. I warn those clever terrorists out there who think they can get away with it by swapping a few letters around that that will not make a difference.

Nick Thomas-Symonds: I am grateful for the Minister's response and the additional reassurance he has given about "in such a way" or "in such circumstances". On this occasion, he is right to say that the Bill uses the same wording as the Terrorism Act 2000, which has a solid body of interpretation from the courts behind it. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 2 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Paul Maynard.)*

12.25 pm

Adjourned till Tuesday 3 July at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

CTB 02 News Media Association

CTB 03 ARTICLE 19

CTB 04 Miss Hoda Hashem