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Public Bill Committee

DOMESTIC ABUSE BILL

Twelfth Sitting

Wednesday 17 June 2020

(Afternoon)

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Sunday 21 June 2020

The Committee consisted of the following Members:

Chairs: † Mr Peter Bone, Ms Karen Buck

† Aiken, Nickie *(Cities of London and Westminster)* (Con)
† Atkins, Victoria *(Parliamentary Under-Secretary of State for the Home Department)*
† Bowie, Andrew *(West Aberdeenshire and Kincardine)* (Con)
Chalk, Alex *(Parliamentary Under-Secretary of State for Justice)*
Coyle, Neil *(Bermondsey and Old Southwark)* (Lab)
† Crosbie, Virginia *(Ynys Môn)* (Con)
† Davies-Jones, Alex *(Pontypridd)* (Lab)
† Gibson, Peter *(Darlington)* (Con)
† Harris, Rebecca *(Lord Commissioner of Her Majesty's Treasury)*
† Jardine, Christine *(Edinburgh West)* (LD)
† Jones, Fay *(Brecon and Radnorshire)* (Con)
† Kyle, Peter *(Hove)* (Lab)
† Marson, Julie *(Hertford and Stortford)* (Con)
† Phillips, Jess *(Birmingham, Yardley)* (Lab)
† Saville Roberts, Liz *(Dwyfor Meirionnydd)* (PC)
† Twist, Liz *(Blaydon)* (Lab)
† Wood, Mike *(Dudley South)* (Con)

Jo Dodd, Kevin Maddison, *Committee Clerks*

† attended the Committee

Public Bill Committee

Wednesday 17 June 2020

(Afternoon)

[Mr Peter Bone *in the Chair*]

Domestic Abuse Bill

New Clause 29

Domestic Abuse: immigration and nationality legal aid

"(1) The Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows: in Part 1 of Schedule 1, delete paragraphs 28 and 29 and insert—

"Immigration and nationality: victims of domestic abuse

27A (1) Civil legal services provided to a victim of domestic abuse in relation to rights to enter, and to remain in, the United Kingdom and to British citizenship, but only in circumstances arising from that abuse.

27B (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

27B (3) The services described in sub-paragraph (1) do not include attendance at an interview conducted on behalf of the Secretary of State with a view to reaching a decision on an application.

27B (4) In this paragraph—

"domestic abuse" has the same meaning as in section 1 of the Domestic Abuse Act 2020;

"victim" includes the dependent child of a person who is a victim of domestic abuse.""—*(Jess Phillips.)*

This new clause would provide for legal aid for survivors of domestic abuse (and their dependent children) in relation to their immigration or nationality status or rights insofar as the need for legal aid arises from the abuse.

Brought up, read the First time, and Question proposed (this day), That the clause be read a Second time.

2 pm

Question again proposed.

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

New clause 35—*Victims of domestic abuse: leave to remain—*

"(1) The Secretary of State must, within 3 months of this Act being passed, lay a statement of changes in rules made under section 3(2) of the Immigration Act 1971 ("the immigration rules") to make provision for leave to remain to be granted to any person subject to immigration control who is a victim of domestic abuse in the United Kingdom.

(2) The statement laid under subsection (1) must set out rules for the granting of indefinite leave to remain to any person subject to immigration control who is a victim of domestic abuse in the United Kingdom; and the statement must provide for those rules to be commenced no later than one month of the laying of the statement.

(3) The Secretary of State must make provision for granting limited leave to remain for a period of no less than 6 months to any person eligible to make an application under the immigration rules for the purposes of subsection (2); and such leave shall include no condition under section 3(1)(c)(i), (ia), (ii) or (v) of the Immigration Act 1971.

(4) The Secretary of State must make provision for extending limited leave to remain granted in accordance with subsection (3) to ensure that leave continues throughout the period during which an application made under the immigration rules for the purposes of subsection (2) remains pending.

(5) Where subsection (6) applies, notwithstanding any statutory or other provision, no services shall be withheld from a victim of domestic abuse solely by reason of that person not having leave to remain or having leave to remain subject to a condition under section 3(1)(c) of the Immigration Act 1971.

(6) This subsection applies where a provider of services is satisfied that the victim of domestic abuse is eligible to make an application to which subsection (3) refers.

(7) The Secretary of State must, for the purposes of subsection (5), issue guidance to providers of services about the assessment of eligibility to make an application to which subsection (3) refers.

(8) In this section an application is pending during the period—

(a) beginning when it is made,

(b) ending when it is finally decided, withdrawn or abandoned, and an application is not finally decided while an application for review or appeal could be made within the period permitted for either or while any such review or appeal remains pending (meaning that review or appeal has not been finally decided, withdrawn or abandoned);

"person subject to immigration control" means a person in the United Kingdom who does not have the right of abode;

"provider of services" includes both public and private bodies;

"services" includes accommodation, education, employment, financial assistance, healthcare and any service provided exclusively or particularly to survivors of domestic abuse."

This new clause would make provision in the immigration rules for the granting of indefinite leave to remain to migrant survivors of domestic abuse and limited leave to remain to a survivor who is eligible to make an application for indefinite leave to remain.

New clause 36—*Recourse to public funds for domestic abuse survivors—*

"(1) The Immigration Acts are amended as follows.

(2) In section 115 of the Immigration and Asylum Act 1999 after subsection (10) insert—

"(11) This section does not apply to a person who is a victim of domestic abuse in the United Kingdom."

(3) In paragraph 2(1) of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 after sub-paragraph (b) insert—

"(ca) to a person who is a victim of domestic abuse in the United Kingdom, or"

(4) In section 21 of the Immigration Act 2014 at the end of subsection (3) insert "or if P is a victim of domestic abuse".

(5) In section 3 of the Immigration Act 1971 after subsection (1) insert—

"(1A) The Secretary of State may not make or maintain a condition under subsection (1)(c)(ii) on leave granted to a victim of domestic abuse in the United Kingdom; and it is not a breach of the immigration laws or rules for such a victim to have recourse to public funds."

(6) For the purposes of this section, evidence that domestic abuse has occurred may consist of one or more of the following—

(a) a relevant conviction, police caution or protection notice;

(b) a relevant court order (including without notice, ex parte, interim or final orders), including a non-molestation undertaking or order, occupation order, domestic abuse protection order, forced marriage protection order or other protective injunction;

(c) evidence of relevant criminal proceedings for an offence concerning domestic violence or a police report confirming attendance at an incident resulting from domestic abuse;

(d) evidence that a victim has been referred to a multi-agency risk assessment conference;

(e) a finding of fact in the family courts of domestic abuse;

(f) a medical report from a doctor at a UK hospital confirming injuries or a condition consistent with being a victim of domestic abuse;

(g) a letter from a General Medical Council registered general practitioner confirming that he or she is satisfied on the basis of an examination that a person had injuries or a condition consistent with those of a victim of domestic abuse;

(h) an undertaking given to a court by the alleged perpetrator of domestic abuse that he or she will not approach the applicant who is the victim of the abuse;

(i) a letter from a social services department confirming its involvement in providing services to a person in respect of allegations of domestic abuse;

(j) a letter of support or a report from a domestic abuse support organisation; or

(k) other evidence of domestic abuse, including from a counsellor, midwife, school, witness or the victim.

(7) For the purposes of this section—

"domestic abuse" has the same meaning as in section 1 of the Domestic Abuse Act 2020;

"victim" includes the dependent child of a person who is a victim of domestic abuse."

This new clause seeks to ensure that certain provisions under the Immigration Acts – including exclusion from public funds, certain types of support and assistance and the right to rent – do not apply to survivors of domestic abuse.

The Parliamentary Under-Secretary of State for the Home Department (Victoria Atkins): Before we adjourned for lunch, I was speaking about county lines gangs, to demonstrate how vulnerable people can continue to be manipulated and exploited for the aims and advantages of those who are doing the manipulation. When we talk about county lines gangs, most people think of boys and young men being recruited, but we are now getting stories about girls being recruited—not necessarily to do the drug running, although they can be used by the perpetrators to conceal weapons and drugs, but to launder the proceeds of crime.

The perpetrators, the gang leaders, are very deliberately recruiting young women because they want to use their bank accounts, and they do so on the basis that because someone is a girl or young woman, the authorities will not trace her, track her or be on the lookout for her as much as they would be—they say—for young men. They also tell the girls, as part of their manipulation, that even if they do get caught, the consequences, because they are girls, will not be so bad for them.

I say that because in the context of the argument about manipulation and how perpetrators can use and skew systems to their advantage, I am highly cynical when it comes to the ability of perpetrators to do that. That is one reason why, when we talk about how careful we have to be about how the system is constructed, so that it cannot be misused, I do so very much with those cynical perpetrators in mind.

I will return to the fundamental principle of providing support, on which we all agree. It is why, as part of our journey to discovering the scale and extent of the problem but also the most effective ways of helping migrant women or people with no recourse to public funds, we have allocated £1.5 million to a pilot project to support migrant victims to find safe accommodation and services. In addition to offering emergency support, the pilot will be designed to assess the gaps in existing provision and gather robust data that will help to inform future funding decisions. The review that we have been carrying out and are due to publish, or aim to publish, by Report stage, has highlighted that there are significant gaps in the evidence base for migrant victims who are not eligible for the destitution domestic violence concession.

Since 2017, we have provided more than £1 million from the tampon tax fund to support migrant victims with no recourse to public funds. That has helped to deliver much-needed support for a number of individuals, but regrettably the funding has not provided the necessary evidence base to enable us to take long-term decisions. The evidence is at best patchy as to the kinds of circumstance in which support is most needed, how long victims need support, what kind of support works best and how individuals can leave support to regain their independence. That demonstrates a need for further work to ensure that we have a strong evidence base from which we can make sound decisions, and that is what the pilot fund is for.

Peter Kyle (Hove) (Lab): May I ask the Minister to clarify her comments? Some people could interpret them to mean that the evidence not being there is a reason not to provide any service for some people, whereas some service might be provided for some people by the pilot. Can the Minister clarify that the Government will look at how they can give as much provision for as many people as possible until we are able to get the evidence to better target it going forward?

Victoria Atkins: I very much appreciate the way in which the hon. Gentleman raised that. We have systems in place at the moment. I hope that, particularly on the topic of legal aid, I have been able to provide examples of women who were not eligible for DDVC getting access to legal aid support. We accept that there is more to do. We are coming at the matter with an open mind and an open heart. We want to get the evidence, so that in due course we can put in place the systems that will provide the best support. That, as well as helping people in their immediate circumstances, is the intention behind the pilot project.

I turn now to the matter of immigration control. We believe that lifting immigration controls for all migrant victims of domestic abuse is the wrong response. Successive Governments have taken the view that access to publicly funded benefits and services should normally reflect the strength of a migrant's connections to the UK and, in the main, become available to migrants only when they have settled here. Those restrictions are an important plank of immigration policy, operated, as I have said, by successive Governments and applicable to all migrants until they qualify for indefinite leave to remain. The policy is designed to assure the public that controlled immigration brings real benefits to the UK and does not lead to excessive demands on the UK's finite resources, and that public funds are protected for permanent residents of the UK.

[Victoria Atkins]

Exceptions to those restrictions are already in place for some groups of migrants, such as refugees or those here on the basis of their human rights, where they would otherwise be destitute. Those on human rights routes can also apply to have their no recourse to public funds condition lifted if their financial circumstances change. Equally, migrant victims on partner visas can already apply for the destitution domestic violence concession, to be granted limited leave with recourse to public funds.

However, lifting restrictions for all migrant victims would enable any migrant, including those here illegally, to secure leave to remain if they claim to be a victim of domestic abuse. For the reasons I have set out, we believe that the provisions in new clause 35 would be open to abuse and undermine the legitimate claims of other migrant victims and the public support on which our immigration system relies.

Jess Phillips (Birmingham, Yardley) (Lab): Will the Minister outline exactly why she thinks the new clause would give everyone indefinite leave to remain? That is certainly not the case, if I may speak so boldly. We are asking for limited leave to remain for a six-month period, with a view to making an application for indefinite leave to remain. Will the Minister just highlight that the Home Office, even in the case of spousal visas, still has every right to refuse indefinite leave to remain to anyone it likes?

Victoria Atkins: I am grateful to the hon. Lady for clarifying. I am afraid that that is not the interpretation that lots and lots of officials who have pored over the new clauses have drawn. Perhaps that highlights the complexity of the area and the law. We have to be absolutely clear about our phrasing and intentions when we draft clauses that will have a huge impact on immigration policy, over and above the cases of the immediate victims whom we seek to help.

Jess Phillips: Does the current system of domestic violence destitution and the DV rule guarantee indefinite leave to remain for those on spousal visas? If it were extended to other groups, surely they would live under the same rules.

Victoria Atkins: I do not want to labour the point, but the purpose and remit of the DDVC and the domestic violence rule has been misunderstood. The DDVC and the rule were, and are, intended to provide a route to settlement for migrant victims who hold spousal visas, because they have a legitimate expectation of staying in the UK permanently. That is the nature of their status. That is why we say it is not, sadly, an easy transfer across for people on other types of visas, such as visitor visas—or, indeed, for people who have arrived here illegally. That is why it is a painstaking process to work out what we can do to help such victims with the immediate circumstances of their abuse, so that the immigration system plays its part and takes its course in the way that it would do for anyone on those different types of visas.

I appreciate the sensitivities of talking about illegal immigrants, but it is important to acknowledge that we have to balance the interests of people who apply properly for immigration routes, as well as the immigration interests of individual victims. That is why the Government keep coming back to the argument that the starting point for the process should not be people's immigration status; it should be the care that they need to help them flee an abusive relationship, giving them the support they need to recover from that and to lead happier and healthier lives.

I talked about the human rights routes. People on human rights routes can also apply to have their no recourse to public funds condition lifted if their financial circumstances change. Equally, migrant victims on partner visas can already apply for the DDVC to be granted limitedly, with recourse to public funds. We are committed to the needs of victims, which is why we have introduced the pilot to help us understand the particular pressures and needs of these vulnerable people.

I started my speech by setting out the Government's commitment to helping victims. I made the point that victims must be treated as victims and get the help they need. That is absolutely what we are focused on, which is why the next steps in our programme of work in this very difficult area are to publish the results of the review and then conduct the pilot, so that we can assess and implement the practical support that these vulnerable people need.

Jess Phillips: Let me explain to somebody who may never have filled in a domestic violence destitution fund form or have had to apply the DV rule in this or any of its forms. The reality is that even if someone has a spousal visa, it does not guarantee them indefinite leave to remain. They still have to apply through every single one of the same rules through which they would ordinarily apply—unless the Home Office is changing the policy and saying that anyone who applies will automatically be given leave to remain. That is absolutely not my experience.

There is a problem when I stand here representing my experience of years in the field, and with masses of experience of immigration cases in my constituency—more, I feel safe in saying, than any hon. Member present, except perhaps the hon. Member for Cities of London and Westminster. It is very difficult when Ministers say that what I have experienced is not the case, or that all the victims who have given evidence—some of whom are our friends or family, and certainly our constituents—are wrong to say that the system does not work. There are lists of easements, but the reality on the ground is completely different. I understand what the Minister is saying and certainly what hon. Members want to see with regard to evidence gathering. Lord knows we live in a time when policy is made very quickly, and some people will prove that we needed better evidence for some of it. We live in interesting times. I have absolutely no doubt that that is what is required.

I do not see the point of a review if the evidence is not taken up by the Home Office. Even if all the evidence pointed the other way, I cannot see that the Home Office would come up with a different argument. The desire of all of us for the evidence is a sort of moot point. We are trying in this Bill to protect victims of domestic violence—it's literally what it says on the tin.

2.15 pm

Peter Kyle: Am I right in thinking that the argument my hon. Friend is trying to make is that this is the point in the Bill where evidence rubs up against raw politics.

That is the problem. People who have submitted evidence, including verbal evidence, to this Committee and frontline practitioners have said one thing. The evidence is there. The Government say that they like to view and take into account evidence, but the politics is the barrier here.

Jess Phillips: I think it is. I do not get any uptick in sticking up for this group of people because migrant communities are not allowed to vote. People have seen a problem and they are trying to fix it. It is as simple as that. On the issue of leave to remain, I hear what—

Victoria Atkins: I rise to protect my officials more than anything else. New clause 35(2) states:

"The statement laid under subsection (1) must set out rules for the granting of indefinite leave to remain to any person subject to immigration control who is a victim of domestic abuse in the United Kingdom".

That is the hon. Lady's new clause, and that is how we have read it.

Jess Phillips: Okay. That is absolutely fine. I was about to say to the Minister that I hear what she says about the concern that we might let a few too many in the country. I will take the issue up on Third Reading and speak about it every day until we get to Report and I will ensure that people speak about it in the Lords.

The Minister has probably never taken a call in a refuge and had to tell someone that they could not come because they had no recourse. She can say that I speak with my heart and not my head, but I have had to use my head to turn women away. I have had to have women's children removed from them.

I do not act as an emotional being; I am emotional about the right thing to do. We are here to protect victims of domestic violence. We do not expect to ask them which countries they have travelled from when they present. I will take away what the Minister says about possible confusion. The amendments that will be laid before the House will be clear that, just as for those on spousal visas, there is no guarantee whatever of indefinite leave to remain, as the Minister well knows, in the scheme.

In fact, not everybody gets indefinite leave to remain. The data collected centrally is widely available. All we ask is that for a period everybody will be able to access support and be given a fair chance to make an immigration application. It is as simple as that. I do not want to stand here and let it pass. The point still stands whether we want to call them illegal or whether we want to talk about which particular visa they might have. If anyone does not have asylum accommodation in their constituency, they are free to come to mine to see whether they would like to put victims of domestic violence in it. It's really cracking.

There will be people exactly as I have outlined. It does not matter what sort of visa they are on. As I have said, there will be people who we come across every day to whom we are currently saying, "This Bill isn't for you. This Bill doesn't help you; I am sorry you got beaten up, but you are on your own." That is the reality of this law, until it is changed. I will do everything I can to change it and I have a better chance of doing that in front of the whole House—either this one or the other place. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 30

USE OF BAIL IN DOMESTIC ABUSE CASES

"(1) Section 34 of the Police and Criminal Evidence Act 1984 (limitations on police detention) is amended as follows.

(2) In subsection (5)(a) for the word "applies" substitute "or subsection (5AB) applies".

(3) In subsection (5)(b) for the word "applies" substitute "or subsection (5AB) applies".

(4) In subsection (5A) insert after the words "applies if"", "subsection (5AB) does not apply and".

(5) After subsection (5A) insert—

"(a) This subsection applies if—

(i) it appears to the custody officer that there is need for further investigation of any matter in connection with which the person was detained at any time during the period of the person's detention; and

(ii) the offence under investigation is an offence that amounts to domestic abuse as defined in section 1 of the Domestic Abuse Act 2020;

(b) save that the person shall be released without bail if the custody officer is satisfied that releasing the person on bail is not necessary and proportionate in all the circumstances (having regard, in particular, to any conditions of bail which would be imposed and to the importance of protecting the complainant);

(c) before making a determination to release without bail or a determination as to any conditions of bail to impose, the custody officer shall conduct an assessment of the risks posed by not releasing the person on bail (including, in particular, to the complainant);

(d) before making a determination of a kind referred to in paragraph (c) the custody officer must inform—

(i) the person or the person's legal representative and consider any representations made by the person or the person's legal representative; and

(ii) the complainant or the complainant's representative and consider any representations made by the complainant or the complainant's representative; and

(e) an officer of the rank of inspector or above must authorise the release on bail (having considered any representations made by the person or the person's legal representative and by the complainant or the complainant's representative).""*.—(Peter Kyle.)*

This new clause reverses the presumption against use of bail in the 2017 Act for these categories of offences, and introduces a risk assessment with prior consultation with the parties.

Brought up, and read the First time.

Peter Kyle: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss new clause 31—*Initial bail period for domestic abuse cases*—

"(1) Section 47ZB of the Police and Criminal Evidence Act 1984 is amended as follows.

(2) After subsection (1)(a) insert—

"(ab) in a DA case, the period of 3 months beginning with the person's bail start date, or"

(3) After subsection (4)(c) insert—

"(2) A "DA case" is a case in which—

(a) the relevant offence in relation to the person falls within the definition of "domestic abuse" in section 1 of the Domestic Abuse Act 2020, and

(b) a senior officer confirms that sub-paragraph (i) applies.""

This new clause provides for an extension that would maintain bail for the duration of the pre-charge period, and remove the need for extensions, in most cases. This will also reduce the demand on police forces caused by processing bail extensions.

Peter Kyle: Good afternoon, Mr Bone. These two new clauses concern how bail is used in domestic abuse cases as a result of the changes to the bail regime as enacted in the Policing and Crime Act 2017.

As reported in the Joint Committee on the Draft Domestic Abuse Bill, the Policing and Crime Act 2017 restricted the length of pre-charge bail to 28 days in most circumstances and mandated that extensions could be authorised by police officers, but only if the officer authorising the extension had reasonable grounds for believing the investigation was being made "diligently and expeditiously." That was a legislative response to cases such as that of broadcaster Paul Gambaccini who was repeatedly released on bail for more than a year while being investigated, but then subsequently cleared of all charges and not charged with anything at all.

We can contrast the scrutiny that that Bill received with that on this Bill, as it was reported to the Joint Committee that

"the consultation prior to the 2017 bail reforms did not hear from any women's organisations, or victims' groups, and that only policing bodies, organisations representing suspects and defence lawyers participated."

Though well-meaning and made in response to a legitimate cause where pre-charge bail had been misused, the changes have had a devastating impact on victims of domestic abuse, as the police have drastically reduced the use of bail for perpetrators accused of rape and domestic violence, which has put survivors at an increased risk, as the alleged offender is being released without any conditions. That point was reinforced in the Joint Committee by Deputy Chief Constable Louisa Rolfe of the National Police Chiefs' Council, who agreed that,

"the reduction in pre-charge bail in domestic abuse cases had been significant"

and, more worryingly, told the Committee,

"that it could be difficult to convince a judge of the need for bail when a case progressed to court or if he or she had not been on police bail."

A 28-day initial grant of bail is simply not enough time for an already stretched police force to gather the plethora of evidence needed in most domestic abuse cases. In evidence to the Joint Committee, Deb Smith of the Police Superintendents Association said:

"To get a charge on a domestic abuse case, there clearly has to be a significant amount of evidence gathered. That is almost always going to be nigh-on impossible in the first 28 days, even if somebody is released on bail. Then obviously we go to the superintendent's extension for the three months, and even that is a challenging timeframe in which to get all the evidence required to satisfy a charge—third-party material, mobile phone records and so on."

Once again, I find myself quoting the safeguarding Minister, because she herself admitted that, in the case of pre-charge bail:

"It is almost as though the pendulum has swung the other way, and we need to get it back in the middle by ensuring that for cases where it is appropriate to go beyond 28 days, people are being released on pre-charge bail with conditions as necessary and proportionate."

It is encouraging that the Government have admitted faults with the current regime and I acknowledge that change has been promised, with a preliminary consultation on proposals for reviewing pre-charge bail legislation having just closed on 29 May. However, considering the opportunity offered by the Domestic Abuse Bill—it is right here before us and we know what the problem is—I do not think survivors and people at risk should have to wait for a possible police protection and powers Bill for the changes to appear.

I hear the Government's argument that there are risks associated with making piecemeal changes to the Police and Criminal Evidence Act 1984 through the Domestic Abuse Bill. However, the way in which the changes in the 2017 Act have affected domestic abuse victims must be restated. The Government's own figures show that in the first three months of the new law, use of bail conditions in domestic abuse cases dropped by a staggering 65%.

New clause 30 would reverse the general presumption against bail and require a risk assessment by officers in cases where there are allegations of domestic abuse on the impact of imposing or not imposing bail. It strongly mirrors the Home Office's proposals on pre-charge bail and would therefore not conflict with the eventual legislative outcome of the wider Home Office review.

New clause 31 is a simple amendment that would extend the initial bail period in domestic abuse cases from 28 days to three months. We know from the police's testimony to the Joint Committee that the 28-day limit is particularly problematic in domestic abuse cases. Increasing it to three months would reduce the burden of bureaucracy created by bail extensions in domestic abuse cases and make bail a more workable tool for the police. It would avoid the situation that currently arises, where bail is lifted after 28 days and victims find it difficult to obtain a non-molestation order without a recent incident, leaving them without any protection at all. Three months on bail is very different from the indefinite bail that existed before the 2017 Act, so the new clause would address the legitimate concerns that led to that legislation being enacted.

I urge Ministers to consider both new clauses in the context of the immediate relief they could offer domestic abuse survivors. It is reassuring that the Minister committed to the inclusion of victims of domestic abuse in the statutory guidance, but I urge Members to take advantage of the opportunity we have before us. We know that we are heading into a period when both Houses of Parliament will be gridlocked with legislation. Despite the potential extension of the parliamentary terms and revocation of recesses, we are heading into a period when the House will be jam-packed with legislation. As we head towards 31 December and our leaving the European single market and customs union, it is certain that next year will be an even heavier legislative period than this one. We have a Bill in front of us, we know what the problem is and there is a simple solution—please, Minister, do not make us wait.

Victoria Atkins: I say at the outset that I have sympathy with the hon. Gentleman's position. We are conscious of the unintended consequence of the well-intentioned reforms to pre-charge bail in 2017. We are committed to ensuring that the police have the powers they need to protect the public, and that our criminal justice system has at its heart the welfare and best interests of victims.

Over the past few years, crime has become more complex, and the police are dealing with more digital evidence and new challenges. The Policing and Crime

Act 2017 introduced a number of reforms to pre-charge bail to address legitimate concerns that suspects were spending too long under restrictive conditions, with no oversight. Indeed, the hon. Gentleman gave an example of that. The 2017 reforms allowed individuals to be released under investigation and introduced a presumption in favour of release without bail, unless its use was considered necessary and proportionate. They limited the initial imposition of pre-charge bail to 28 days. I must emphasise that the police can still use pre-charge bail when it is necessary and proportionate to do so, and they have our full support in that.

The National Police Chiefs' Council has issued guidance highlighting that police should use pre-charge bail when there are risks to victims and witnesses, and the need to regularly review cases where such suspects are released under investigation.

2.30 pm

Jess Phillips: On risk, the new clause seeks to amend the Bill to ensure that a proper risk assessment is done. Somebody in a case involving me was recently released under investigation, and no risk assessment of my safety was done.

Victoria Atkins: Obviously, I am concerned to hear that. I take the point about risk assessment and will raise it with the NPCC lead. The hon. Member for Hove referred to the forthcoming police powers and protections Bill, but in the interim I very much want that to be considered.

We have worked closely with policing partners and other partners across the criminal justice system to track its implementation and monitor its impact, and we know that the use of pre-charge bail has fallen significantly. We have listened carefully to these concerns, and in November, as the hon. Gentleman said, we announced a review of pre-charge bail to address concerns raised about the impact of current rules on the police, victims, those under investigation and the broader criminal justice system. We launched a public consultation in February, which closed on 29 May. We received more than 1,000 responses, which we are analysing before deciding how best to proceed.

However, I very much take the point about the needs before the police powers and protections Bill is introduced, but our concern is that we cannot deal with this in a piecemeal, offence-specific manner; we have to take a holistic approach to changing the pre-charge bail system. This Bill is not the correct vehicle for that but, as the hon. Gentleman said, the police powers and protections Bill announced in the Queen's Speech may well be.

Peter Kyle: I need to put something on the record. It is always ideal to look at these matters in the round, in the holistic way that the Minister mentions. However, when we see an attack in public, outside, suddenly the Government find the ability to review things, such as early release programmes, and to introduce very specific pieces of piecemeal legislation, if I may describe them in those terms. The Bill is before us. We cannot wait any longer. We believe that every life matters, and we think the fact that victims out there feel threatened by this should be power enough to force a specific change here until we get that holistic report and legislation that she seeks.

Victoria Atkins: I think the hon. Gentleman is referring to the new powers in relation to terrorism offences, if I have understood correctly. That is a discrete part of the criminal justice system. Pre-charge bail has the potential to apply to pretty much every criminal offence, with the exception of the murder; it would clearly be very unusual for anyone facing a murder charge to be released on bail. Again, we have to look at the system in a holistic way, which is what we are planning. However, I will raise the point about risk with the NPCC so that in the intervening months, while the Bill is still going through Parliament—let us not forget that that does not finish when we finish here tonight; the Bill has some scrutiny ahead of it—we get the message through to the police chiefs, in addition to what we have already said, that this matter is of particular concern to the Committee.

Julie Marson (Hertford and Stortford) (Con): At the risk of sounding like a one-trick pony, I want to talk about some of my experience in court, touching on some things that we have just been speaking about, or that will be referred to later when the hon. Member for Hove speaks again about court.

My experience is that magistrates consistently deal with difficult cases. It is difficult to balance the rights of a victim and the rights of a defendant. I have not talked much about defendants, but it is true that we see a lot of defendants who have terrible stories to tell. In my maiden speech, I said that being a magistrate had changed my perspective on the world, because I had never seen the kinds of lives that were coming up in front of me, and not just of the victims but of the defendants.

I told the story of a boy who walked in on my first day, when I was still being mentored. He was 18 and it was his first appearance in an adult court. He looked about 10—he was tiny—and he was grey. I said to my mentor, "God, he can't be in this court, surely," and they said, "No, I know him from the family courts." He was malnourished because his parents were drug addicts and he was never fed properly. He was grey because he was malnourished and he had been injected with heroin to keep him quiet as a child. But he had burgled an elderly couple's house. There are lots of victims in a courtroom and it almost does not matter where they are sitting. It is a constant battle as a magistrate to weigh up the rights of the defendant and the rights of the victim.

That touches on bail, which is an unpopular thing to talk about in court, because in some ways everyone is a threat and everyone can go on to do nasty things to nice people, but magistrates have to weigh up the right of habeas corpus—the right of a defendant to have liberty until he has been convicted of a crime. That is really difficult to weigh up, because it involves thinking about the risks to the victim, the defendant's right to liberty and the presumption of innocence.

That is why the holistic approach that the Minister is talking about is important, because it will touch on not just domestic abuse cases, but the precedents and the impact that has on the court system and the rights of defendants in the court system. The hon. Member for Hove mentioned the pendulum, which it is important to get right. I think the more holistic approach is genuinely the right way to go on that.

Peter Kyle: I am grateful to the hon. Lady for that contribution. She should never apologise for sharing the experience that she has gained outside this place and brings in here; it is an asset to our deliberations, not a hindrance.

I agree completely. In fact, I was quoting the Minister when I mentioned the now infamous pendulum. I think we all agree that the pendulum has swung the other way. We must always have consideration for the basic right of liberty, including for alleged perpetrators and defendants, which is why getting bail and bail conditions right is essential. What we are talking about here are conditions, not liberty—the conditions on which people are granted liberty.

The Minister's main concern, if I interpret it correctly, is that new clause 31 could have unintended consequences on other parts of the bail system. Subsection (2) states:

"After subsection (1)(a) insert—

'(ab) in a DA case, the period of 3 months beginning with the person's bail start date, or'".

Subsection (3) continues:

"After subsection (4)(c) insert—

'(2) A "DA case" is a case in which—

(a) the relevant offence in relation to the person falls within the definition of "domestic abuse" in section 1 of the Domestic Abuse Act 2020'".

I fail to see how that could have an impact on other crimes. It is very specific. As I say, I understand why Government Ministers want to deal with the challenge that was caused by the Policing and Crime Act 2017 holistically, but we have a specific fix for a specific challenge in front of us now. I believe this would lead to a better piece of holistic legislation, because it would provide a workable template for it to be enacted down the line.

I will not push the new clause to a Division now but will keep this question open. The Minister intimated several times that she would welcome further scrutiny of the clause. I hope that this gives her the opportunity to reflect on this challenge and come up with her own fix for it, perhaps on Report or Third Reading. I do not believe that victims of domestic abuse should continue to suffer any longer from the uncertainty that would be created by this pernicious eventuality. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 32

SERVING A COURT ORDER ON A PERSON WHO HAS BEEN SUBJECT TO DOMESTIC ABUSE AND IS RESIDING AT A REFUGE

"(1) If a court order is to be served on a person [P] who has been subject to domestic abuse as defined in section 1 of this Act and who is residing at a refuge, the court order—

(a) must not be served on P at the residential address of the refuge, except if a court has ordered that it can be in the circumstances set out in subsection (3); but

(b) can be served on P at the refuge's office address or by an alternative method or at an alternative place, in accordance with part 6 of the Family Procedure Rules 2010.

(2) The address of the refuge in subsection (1) shall not be given to any individual or third party without the express permission of the court.

(3) Where attempts to serve the court order by the alternative means referred to in subsection (1)(b) have been unsuccessful, an application may be made to the court to serve the court order on P at the refuge's residential address.

(4) An application under subsection (3) must state—

(a) the reason why an order can only be served at the refuge's residential address;

(b) what alternative methods have been proposed and the consequences; and

(c) why the applicant believes that the order is likely to reach P if the order is served at the refuge's residential address."—*(Jess Phillips.)*

This amendment seeks to ensure that, where a victim of domestic abuse is residing in a refuge, the address of that refuge cannot be revealed as part of a service order or location order without express permission of the court.

Brought up, and read the First time.

Jess Phillips: I beg to move, That the clause be read a Second time.

This new clause arose out of cases that occurred a number of weeks ago, which highlighted something frightening. Specialist domestic violence refuges have supported hundreds of thousands of people over many years. They are life-saving, provide sanctuary, and are established specifically to meet the needs of women and children who need refuge. In most cases, the confidentiality of a refuge is crucial for the safety and wellbeing of those who stay there, and I cannot express to Members how seriously refuges take their confidentiality. Every single person who lives in a refuge signs a licence agreement that says that if they tell somebody, they have to leave, and enforcing that rule when it is broken is heartbreaking.

The Bill offers a golden opportunity to ensure that there is legal clarity about the nature of refuge provision, including the key elements that are necessary to preserve their integrity. At present, it is not explicitly clear that refuge residential addresses and the identity of those who work for a refuge must remain confidential, so that must change. Service of family court orders on families in refuges, particularly location orders, is often applied for by fathers when mothers and children have fled the family home to refuges following allegations of domestic abuse. The family courts use tipstaffs and the police to locate the mother and children in refuges, even though the address of those refuges is not publicly available.

Once they are located, the refuge is usually ordered to provide its address directly to the court to facilitate the service of court orders on mothers. Often the court order explicitly names the refuge and its manager, which is intimidating and could result in them becoming identified. Family courts usually order the police to attend the refuge's residential address to serve the order on the mother. This causes upset, anxiety and distress to the mother who is served with a court order, and to the other women and children living in the refuge, who have reported feeling retraumatised by the process. Women who experience a number of intersectional inequalities, such as race, language barriers and insecure immigration status, have reported receiving a heavy-handed response from the police, being unable to understand what the police are saying, and feeling that they are being treated as criminals.

In at least one case that I have heard of in the past few weeks, a mother and child were located and stalked as a result of their refuge's residential address being

disclosed to the court. They had to move to two different refuge addresses, and then the father abducted the child and took them abroad. In another case, the police served a family court order on a vulnerable mother who does not speak English and sought safety with her two children. The mother found the experience degrading and humiliating. Concerns arose in that case that the father had discovered the family's location, and as such the mother and children had to be moved on to another location.

It is acceptable that family court orders must be served on mothers, but the current family judicial practice is not acceptable, as it breaches women and children's rights to a safe family life and a private life under article 8 of the European convention on human rights. The approach adopted by family courts is haphazard and inconsistent, with much depending on the judge's approach to the case before them. Many judges have had no training on domestic abuse.

The situation I have outlined could easily be avoided by ensuring that refuge addresses are always confidential and that family court orders are served by alternative means, as per the family procedure rules 2010. A simple amendment to those rules would ensure that a consistent approach is adopted by all family judges. If such an amendment is not made, the same poor practice will continue.

It is imperative that this situation is addressed urgently, before irreparable harm is caused. I have therefore tabled this new clause, to prevent the service of family court orders at refuge residential addresses, and to ensure that refuge residential addresses and the identity of refuge workers remain confidential.

2.45 pm

Victoria Atkins: I apologise to the Committee; I am stepping into the shoes of the Under-Secretary of State for Justice, my hon. Friend the Member for Cheltenham, as he is about to appear on the Floor of the House, so please spare me particularly detailed questions and I will do my best.

We absolutely recognise the life-saving sanctuary that refuges provide for victims and their children, and we believe that existing legislation and court procedure rules state clearly that parties actively engaged in family proceedings are not required to disclose their address or that of their children, unless directed to do so by the court. Furthermore, parties may apply in any event to withhold such information from other parties.

When adequate information about the location of a child is not known to the court, the court can order any person who may have relevant information to disclose it to the court. In the first instance, details of the child's address and who they are living with are disclosed only to the court and not to other parties. The court determines how this information should be used, based on the case details. Where there are allegations of domestic abuse, the court can and does treat this information as confidential, and holds it. We therefore believe that subsection (2) of the new clause is not required.

Subsection (1) would prevent the service of a court order at a refuge's residential address, other than with the permission of the court following an application made under subsections (3) and (4). I fully appreciate that victims living in a refuge are fearful for their safety, and that their experiencing or witnessing the service of an order at a refuge would be very distressing. However, where courts are concerned about the welfare of a child, they must be able to take rapid and direct action to locate them. Direct service of an order at a refuge's residential address may sometimes be necessary, for example when urgent concern about a child's welfare demands it. Therefore, provisions to limit how documents may be served in specific places could have the unintended consequence of endangering a child.

I would like to reassure hon. Members that the courts may already direct completely bespoke service arrangements, based on the facts of a case. The family procedure rules 2010 provide clear powers for the courts to order service at alternative places, such as at an address other than a refuge's residential address, and set out the procedure for making such applications.

In summary, we believe that the important outcomes sought by the hon. Member for Birmingham, Yardley are already provided for in existing legislation and court rules. However, I want to reassure the Committee that we are committed to protecting vulnerable victims of domestic abuse who live in refuges. Indeed, my hon. Friend the Member for Cheltenham met the deputy president of the family court on Monday and raised these concerns, among others, and we will work with the deputy president to explore whether amendments to the family procedure rules 2010 could strengthen safeguards for victims and their children who live in refuges. On that basis, I ask the hon. Lady to withdraw the new clause.

Jess Phillips: I will withdraw the new clause, and I am heartened by the fact that the hon. Member for Cheltenham, who is no longer in his place, has spoken to the divisional lead in the family court. This is one of those situations where there may very well be regulations in place to allow the outcomes we want, but something is still going wrong, and an assessment and a change in this area is needed.

I understand the deep concerns that the Under-Secretary of State for the Home Department, the hon. Member for Louth and Horncastle, has needing to think through the potential for harm to come to a child, although I would argue that, in refuge services, there would be somebody there in the vast majority of cases. There are quite strict and stringent safeguarding measures in place in refuges to ensure that children come to no harm. However, I am pleased to hear what she said and will speak to the other Minister about it another time, when he is not debating the Divorce, Dissolution and Separation Bill. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 33

REASONABLE FORCE IN DOMESTIC ABUSE CASES

'(1) Section 76 of the Criminal Justice and Immigration Act 2008 is amended as follows.

(2) In subsection 76(5A) after "In a householder case" insert "or a domestic abuse case".

(3) In subsection 76(6) after "In a case other than a householder case" insert "or a domestic abuse case".

(4) After subsection 76(8F) insert—

"(8G) For the purposes of this section "a domestic abuse case" is a case where—

(a) the defence concerned is the common law defence of self-defence;

(b) D is, or has been, a victim of domestic abuse;

(c) the force concerned is force used by D against the person who has perpetrated the abusive behaviour referred to at subsection (8G)(b);

(d) subsection (8G)(b) will only be established if the behaviour concerned is, or is part of, conduct which constitutes domestic abuse as defined in sections 1 and 2 of the Domestic Abuse Act 2020, including but not limited to conduct which constitutes the offence of controlling or coercive behaviour in an intimate or family relationship as defined in section 76 of the Serious Crime Act 2015."

(5) In subsection 76(9) after "This section, except so far as making different provision for householder cases" insert "and domestic abuse cases".' *—(Peter Kyle.)*

This new clause seeks to clarify the degree of force which is reasonable under the common law of self-defence where the defendant is a survivor of domestic abuse.

Brought up, and read the First time.

Peter Kyle: I beg to move, That the clause be read a Second time.

The new clause seeks to provide domestic abuse survivors the same legal protection that householders have in cases of self-defence. Householders have a legal protection when they act in self-defence against an intruder, but no such protection is available to survivors acting in self-defence against their abuser. At its base, just think what that means: we are able in law to defend ourselves, to a defined threshold, against people who enter our homes and cause us harm, but we are unable to have the same defence against people who already live in the home and seek to cause the same harm. The new clause seeks to rectify that imbalance.

Common-law defences are outdated and ill fitting in the context of domestic abuse, leaving survivors with no effective defence. The Bill presents an opportunity to modernise the law by ensuring that the available legal defences reflect the improved public understanding of domestic abuse. This issue gained prominence with the case of Sally Challen last year, who had her murder charge for the hammer attack she inflicted on her husband downgraded to manslaughter in recognition of the effect of decades of coercive control that she had endured. That judgment reflects our new understanding of how domestic abuse can effect survivors and lead to offending behaviour, so it is only right that the Domestic Abuse Bill recognises this.

Evidence from the Prison Reform Trust shows that the common-law defence of self-defence is difficult to establish in cases of violent resistance by a survivor of domestic abuse against their abusive partner or former partner, as a jury may well conclude that the response was disproportionate without taking into account the long history of abuse. The self-defence proposal would make it easier for victims and survivors to establish that they were acting in self-defence, providing them with an equivalent protection to those using force against an intruder into their home. This is a really important distinction: all we are asking for is the same threshold to be allowed against people perpetrating violence from within the home as that allowed against people perpetrating violence who enter the home.

The definition is also now successfully established in statute. Section 76 of the Criminal Justice and Immigration Act 2008 is the basis for the new clause. Subsection (5A) allows householders to use disproportionate force when defending themselves against intruders into the home. It provides that, where the case involves a householder,

"the degree of force used by"

the householder

"is not to be regarded as having been reasonable in the circumstances as"

the householder

"believed them to be if it was grossly disproportionate".

[Interruption.] I believe I am being heckled by Siri—I think I might have either turned someone's lights on or off or ordered their shopping. A householder will therefore be able to use force that is disproportionate, but not grossly disproportionate. A CPS guideline states:

"The provision does not give householders free rein to use disproportionate force in every case they are confronted by an intruder. The new provision must be read in conjunction with the other elements of section 76 of the 2008 Act. The level of force used must still be reasonable in the circumstances as the householder believed them to be (section 76(3))."

In deciding whether the force might be regarded as disproportionate or grossly disproportionate, the guideline states that the court

"will need to consider the individual facts of each case, including the personal circumstances of the householder and the threat (real or perceived) posed by the offender."

The new clause would add the same provision and that same test of proportionality of force to cases of domestic abuse.

The Government have gone to great lengths to consider the different forms that domestic abuse can take, but there is not the same recognition of the criminal acts that can result from that abuse. We will go on to discuss the need for statutory defence further, but the new clause would go some way to addressing a difficulty survivors can have in court currently in self-defence cases.

The current Secretary of State was instrumental in providing the increased protection for householders when she was a Back Bencher. The coalition Government put forward their self-defence amendment for householders with the following comments by Lord McNally:

"All we are saying is that if householders act in fear for their safety or the safety of others and in the heat of the moment use force which is reasonable in the circumstances but seems disproportionate when viewed in the cold light of day, they should not be treated as criminals. Force which was completely over the top—grossly disproportionate, in other words— will still not be permitted."—[*Official Report, House of Lords,* 10 December 2012; Vol. 741, c. 881.]

The new clause would see the Government apply the same sympathy and understanding to domestic abuse survivors that that Act provides in those situations.

Victoria Atkins: I am very pleased to reply in this debate. I understand that the new clause has been put forward by the Prison Reform Trust, and the Under-Secretary of State for Justice, my hon. Friend the Member for Cheltenham, had the opportunity to speak in detail about this clause and other matters with representatives from the Prison Reform Trust, the designate domestic abuse commissioner, the Victims Commissioner and others a couple of weeks ago, so this has had his personal attention, as well as mine now.

The new clause aims to give a victim of domestic abuse the same level of protection as those acting in response to an intruder in their home. It has been suggested that that would address a current gap in the law and improve recognition of the links between victimisation and offending. It would, in effect, extend the provisions of section three of the Criminal Law Act 1967 so that a victim could be judged on the facts as he or she believed them to be.

We do, of course, recognise the harm suffered by victims of domestic abuse, and indeed there are several defences potentially available in law to those who commit offences in circumstances connected with their involvement in an abusive relationship. That includes the full defence of self-defence. In addition, the definition of domestic abuse in the Bill should assist with clarifying the wide-ranging and pernicious nature of domestic abuse and alerting all those involved in the criminal justice system to it. It does not seem to us that there is a gap in the law, nor does it seem to us that the situation of a householder reacting, perhaps instinctively, to an intruder in their home is directly comparable to the situation of a person who has been the victim of a pattern of violent and abusive behaviour, including behaviour that would constitute an offence under section 76 of the Serious Crime Act 2015.

The section 76 provisions in the 2008 Act largely cover a very specific circumstance where an intruder, who will in most cases be unknown to the defendant, puts the householder in a position where they are reacting on instinct or in circumstances that subject them to intense stress. By comparison, in domestic abuse cases the response may well not be sudden and instinctive, but one that follows years of physical and/or emotional and mental abuse, where the current law on self-defence and loss of control will allow that to be taken into account. Accordingly, it remains appropriate that the law on self-defence or loss of control be applied, rather than extend this provision to a wider set of circumstances.

3 pm

The reality is that any defence counsel worth their salt will set out the journey of the domestic abuse, to the moment where the victim hit back or reacted in a way that has caught the attention of the police. Indeed, this will be flushed out in pre-charge interviews and in defence statements. There are various stages in the criminal justice path where the victim will have the ability to put their defence forward.

Peter Kyle: This may well be probing the bounds of my knowledge of legal expertise, but am I right in saying that, should the protection be defined in law, the Crown Prosecution Service, prosecutors and law enforcement agencies would take that into account before getting to court? Putting this on the face of the Bill could well save survivors of abuse from the process of going to court in the first place.

Victoria Atkins: It is in law. It is good, settled law. The law of self-defence is very much in law. We, in this place, understandably concentrate on statute law, but case law and common law have power in influencing the criminal courts, alongside statutes.

As for the CPS taking account of it, it is obliged to apply the code for Crown prosecutors when considering whether to charge. It is a two-stage process. First, there is an evidential test of whether there is a reasonable likelihood of conviction and, secondly, there is a public interest test. Any prosecutor looking at that test properly who has been alerted to the defence of self-defence, either by way of interview, from conversations with defence solicitors or from police officers at the scene of the crime, should be aware of that. They are obliged to take those factors into consideration when making the decision about whether the evidential and the public interest tests are met. I hope that answers the hon. Gentleman's concern.

We understand that it is said that there are difficulties with establishing the common law defence of self-defence in cases of reactive violence by a survivor of domestic abuse against their abusive partner or former partner. We understand the rationale of the new clause as being that a jury may well conclude that the response was disproportionate, without taking account of the long history of abuse. The joy of the jury system, as we have already discussed, is that each case is tried on the facts by 12 members of the public, who sit on a jury. I would be loth to try to replace their decision-making process and their responsibilities in statute.

We understand the concerns, but we believe that the existing defence is well settled in law and can help victims in the situations that the hon. Gentleman has described, so I invite him to withdraw this clause.

Peter Kyle: I will withdraw the motion because I believe that other people will want to interrogate this matter in greater detail at other stages of the Bill. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New clause 34

PROCEEDINGS UNDER THE CHILDREN ACT 1989

"Proceedings under the Children Act 1989

'(1) Part I of the Children Act 1989 is amended as follows.

(2) In section 1 (the welfare of the child) after subsection (2B) insert—

"(2C) Subsection (2A) shall not apply in relation to a parent where there has been domestic abuse which has affected the child or other parent.

(2D) Evidence of domestic abuse may be provided in one or more of the forms set out in regulation 33(2) of the Civil Legal Aid (Procedure) Regulations 2012."

(3) Part II of the Children Act 1989 is amended as follows.

(4) In section 9 (restrictions on making section 8 orders) after subsection (7) insert—

"(8) No court shall make a section 8 order for a child to spend unsupervised time with or have unsupervised contact with a parent who is—

(a) awaiting trial, or on bail for, a domestic abuse offence, or

(b) involved in ongoing criminal proceedings for a domestic abuse offence.

(9) In subsection (8)—

"unsupervised" means where a court approved third party is not present at all times during contact with the parent to ensure the physical safety and emotional wellbeing of a child;

"domestic abuse offence" means an offence which the Crown Prosecution Service alleges to have involved domestic abuse.'"—*(Peter Kyle.)*

This new clause seeks to change the presumption that parental involvement furthers the child's welfare when there has been domestic abuse. It also prohibits unsupervised contact for a parent awaiting trial or on bail for domestic abuse offences, or where there are ongoing criminal proceedings for domestic abuse.

Brought up, and read the First time.

Peter Kyle: I beg to move, That the clause be read a Second time.

One of the people we have not mentioned in Committee so far is Sir James Munby. In his time as president of the family division of the High Court, he was a robust defender of it and a vocal proponent of reform. In engagement with and in the processes of Parliament, Sir James was fulsome in his advice and in answering questions. When I was campaigning for reform of cross-examination in the family courts, I had a meeting with Sir James in the High Court. I have said already in Committee that I have no legal training, and that is something I have never apologised for—in fact, at times like this and at that meeting, I found it a benefit. It gave me the opportunity to ask some pretty basic questions of one of the most pre-eminent lawyers in the land.

One thing that I wanted to ask back then was simple. Coming fresh, as I was at the time, to the challenges and the need for reform in the family courts, one thing that struck me, and that I could never ever understand, was the fact that someone who had committed the most horrendous crimes against their partner—battery, rape, serial abuse or coercion, stretching back sometimes years—had parental rights, to the point where they can be exercised time after time, sometimes even from prison, where they have been jailed for inflicting the abuse on the very family over whom they are exerting their rights. I simply could not understand that, and I had the privilege of putting it to Sir James.

We now come to the point in the Bill where we can talk about one particular aspect of that, because this new clause relates directly to the presumption that parental involvement furthers a child's welfare when there has been domestic abuse. It would also prohibit the unsupervised contact for a parent awaiting trial, on bail for abuses offences, or involved in ongoing criminal proceedings for domestic abuse.

The use of force that is disproportionate but not—forgive me, my notes seem to be out of order.

Jess Phillips: Will my hon. Friend give way?

Peter Kyle: Of course. I am very grateful.

Jess Phillips: Perhaps the Chair could help me with this inquiry. My hon. Friend is moving the new clause, but I have a specific case that I might want to share with the Committee. Is that permitted, for both of us on the Front Bench to speak? I will not do it now, while he is in the middle of his speech, but I thought I could give him a minute.

The Chair: That sounds more like a point of order—you could try that again.

Jess Phillips: On a point of order, Mr Bone. Will it be all right that I share something after the shadow Minister has spoken on the new clause?

The Chair: Interestingly—this is for new Members—in Committee, one advantage is that you can come back again. You are not restricted to one speech. It would be possible for the shadow Minister, Mr Kyle, to speak and to speak again. We can go on all night like this. That is fine.

Peter Kyle: Perhaps the way forward, Mr Bone, is for me to resume my speech. I have now learned the lesson of putting page numbers on my speeches in future.

I draw the Committee's attention to section 1(2A) of the Children Act 1989, which provides that the presumption that involvement from both parents is in the best interests of the child. That is the nub of the challenge we face.

We have come a long way in our understanding of the relationships within families and in abusive situations since that time. Section 1 of the Children Act states that the court must consider the welfare of the child, and practice direction 12J of the family procedure rules state that the court must consider domestic violence. However, an inconsistent understanding of practice direction 12J and the pro-contract approach taken by the family justice system have seemingly overtaken the need for any contact orders to put the child's best interests first.

The Victims Commissioner has been persistent and outspoken on this issue. In her written submission to the Committee, she said that one of her major concerns was that the Bill does not

> "Create a presumption of no contact or parental responsibility where there has been a conviction, restraining order, findings by the Family Court. This could be rebutted & overturned in exceptional circumstances, but a risk assessment must be conducted first".

She felt so strongly about this that she wrote to the Home Secretary in October, saying in the strongest possible terms that she saw the need to prohibit unsupervised contact between a parent who is on bail for domestic abuse-related offences for which criminal proceedings are ongoing. In our evidence session just a few weeks ago, she told us that she was

> "very troubled by the presumption of shared parenting that seems to trump practically everything else in the family court."—[*Official Report, Domestic Abuse Public Bill Committee,* 4 June 2020; c. 63, Q154.]

We created the position of Victims Commissioner and we are in the process of creating the position of a domestic abuse commissioner. We must listen to them when they speak with such clarity and expertise, and when they are so singular in their advice. It would go profoundly against the position that we have given the commissioner to disregard such singular advice.

In one study conducted by Children and Family Court Advisory and Support Service, two-thirds of the 216 children contact cases in the sample involved allegations of domestic abuse, yet in 23% of the cases, unsupervised contact was ordered at the first hearing. I simply cannot see how we can find a way of contextualising that statistic in a way that makes it acceptable—I simply do not understand. The results of that can be tragic: analysis by the "Victoria Derbyshire" show and Women's Aid showed that between 2006 and 2019, at least 21 children were killed during contact with fathers who were perpetrators of domestic abuse.

The introduction of the presumption of parental involvement has confused the position in cases involving domestic abuse. The new clause would introduce an

explicit statutory framework to make it clear that, when there has been an allegation, admission or finding of domestic abuse towards the child or the other parents, the presumption that the involvement of a parent will further a child's welfare does not apply.

A mandatory restriction for those on bail for domestic abuse offences is necessary, as research conducted by Women's Aid and Queen Mary University of London found examples in which perpetrators of domestic abuse who were on bail for violent offences against non-abusive parents were allowed into the family courts to argue for contact with their children. In at least one case, unsupervised contact was awarded by the court to the perpetrator, who was on bail at that time.

We have discussed at length the impact that domestic abuse has on children, and the new clause can further that discussion. Child contact is an incredibly sensitive issue. I know that the Government have sought to address it in Committee by extending the flexibility of domestic abuse protection orders and the way in which they can be used by the courts. I ask the Government to reconsider the presumption that parental involvement is beneficial to the child's welfare, especially in the light of the discussions that we have had on the effects of domestic abuse on children. With this new clause, we are explicitly not saying that no parent, in any circumstance, can have access to their children; all we are doing is removing the presumption that access is good. All we are saying—what we will achieve with the new clause—is that it has to be debated and assessed by the court in neutral terms. Is it good or detrimental to their welfare? That is a debate that should be had in neutral terms in every single circumstance.

As it stands, the presumption is pernicious. It leads to too many children being made vulnerable and too many survivors of domestic abuse being made to feel insecure and threatened. I deeply hope that the Minister can reassure us that change is on the way. I know that we debate and have this to and fro—some arguments have fuller merit than others at times like this—but I deeply hope that he has considered this issue and that he will show flexibility, either now or in the next stages of our consideration of the Bill.

3.15 pm

Jess Phillips: The case that I am about to read out has been sent to the Under-Secretary of State for Justice, the hon. Member for Cheltenham. I feel for him, because we can all get him to agree to things while he is not here. It is a bit like when you do not turn up to a Labour party branch meeting, and you end up being given every single position—you end up being chair and secretary.

The case is one of the most stark examples I have ever heard of where the presumption is going wrong. People like me are often accused—or things are spray-painted across the front of my office—of trying to stop parents being able to see their children. In fact, this is very much rooted in the welfare of the child. That is all we are seeking: that the assessment of the welfare of the child should be the most fundamental thing.

In this case study a service user made a call to Solace, a women's aid organisation advice line, during the week commencing 8 June 2020—only last week. She is going through a child contact hearing but there is also a separate criminal investigation of child sexual abuse by the child's father. In December 2019, in a hearing at which both parties were unrepresented, allegations were made that the father had sexually abused his seven-year-old daughter.

The Chair: Order. We are not straying into matters that are sub judice, are we?

Jess Phillips: Definitely not, Mr Bone; I checked with all those involved in the case, and it is done—worry not. I have just been sending wild WhatsApp messages to that very effect. Also, I shall not mention anybody's names or those of the courts.

The allegations were that the father had exposure his genitals to his daughter and that he had been sucking her toes and fingers while she was asleep. The judge said that if the father stopped doing this he could continue to have unsupervised contact with his daughter. The judge commented that when he was a barrister he had successfully ensured that a convicted paedophile could have unsupervised access to his children. The mother tried to tell the judge that the father has a history of domestic abuse, but the judge replied that she did not look like a victim of domestic abuse. He said that the father's behaviour sounded more like a man losing his temper, rather than domestic violence. The judge dismissed the request for supervised contact between father and daughter.

In January 2020, allegations were made about the father's sexual assault on his daughter. A criminal investigation into child sexual exploitation is ongoing but unsupervised contact is still ordered. This woman has no legal representation. She is not eligible for legal aid due to the means test. She has joint property ownership but no financial means to instruct a solicitor. Solace has described the severe impact this has had on the survivor: a complete distrust of the justice system—she felt like she was the one on trial even though she was there as the survivor and a mother trying to protect her daughter from her predatory father. She was met with disdain and not believed, whereas the father was met with sympathy.

I am almost certain that the Minister will refer to—the hon. Member for Cheltenham would have referred to it—practice direction 12J, which is meant to deal with this so that it does not happen in courts. It is routinely ignored in many cases. In this example, where presumption overrules even the child's best interests, it is clear that there is a serious problem in our current system.

Victoria Atkins: The hon. Members for Hove and for Birmingham, Yardley have set out fully the legal frameworks that exist, and I will not repeat them. I will bring to the Committee's attention the fact that the current legislation places absolute primacy on the welfare of the child and does not seek to fetter judicial discretion regarding the factors they can take into account when making an order under the legislation.

I appreciate that this is a sensitive and complex issue. That is why the Ministry of Justice last year established an expert panel on how the family courts deal with allegations of risk of harm in private law children proceedings. The panel has considered the issue of parental contact, informed by the over 1,200 submissions of evidence it received. Its recommendations will be published in the coming weeks.

[Victoria Atkins]

I have no doubt that the hon. Members for Hove and for Birmingham, Yardley, and other members of the Committee, will want to return to this matter once they have had the opportunity to consider the expert panel's report. On that basis, I invite the hon. Member for Hove to withdraw the new clause.

Peter Kyle: As the Minister expects, I will withdraw the new clause, because we do want to assess that. We want to ensure that this issue gets as much debate between us as possible before the next stage, as well as at the next stage and beyond. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 37

VICTIMS OF DOMESTIC ABUSE: DATA-SHARING FOR IMMIGRATION PURPOSES

"(1) The Secretary of State must make arrangements to ensure that personal data of a victim of a domestic abuse in the United Kingdom that is processed for the purpose of that person requesting or receiving support or assistance related to domestic abuse is not used for any immigration control purpose without the consent of that person.

(2) The Secretary of State must make arrangements to ensure that the personal data of a witness to domestic abuse in the United Kingdom that is processed for the purpose of that person giving information or evidence to assist the investigation or prosecution of that abuse, or to assist the victim of that abuse in any legal proceedings, is not used for any immigration control purpose without the consent of that person.

(3) Paragraph 4 of Schedule 2 to the Data Protection Act 2018 shall not apply to the personal data to which subsection (1) or (2) applies.

(4) For the purposes of this section, the Secretary of State must issue guidance to—

(a) persons from whom support or assistance may be requested or received by a victim of domestic abuse in the United Kingdom;

(b) persons exercising any function of the Secretary of State in relation to immigration, asylum or nationality; and

(c) persons exercising any function conferred by or by virtue of the Immigration Acts on an immigration officer.

(5) For the purposes of this section—

"consent" means a freely given, specific, informed and unambiguous indication of the victim or witness, by an express statement of that person signifying agreement to the processing of the personal data for the relevant purpose;

"immigration control purpose" means any purpose of the functions to which subsection (4)(ii) and (iii) refers; "support or assistance" includes the provision of accommodation, banking services, education, employment, financial or social assistance, healthcare and policing services; and any function of a court or prosecuting authority;

"victim" includes any dependent of a person, at whom the domestic abuse is directed, where that dependent is affected by that abuse."—*(Jess Phillips.)*

This new clause would require the Secretary of State to make arrangements to ensure that the personal data of migrant survivors of domestic abuse that is given or used for the purpose of their seeking or receiving support and assistance is not used for immigration control purposes.

Brought up, and read the First time.

Jess Phillips: I beg to move, That the clause be read a Second time.

I want to begin by telling the story of my constituent Marian, who is a lovely woman. She was able to access the domestic violence destitution fund that we have been talking about today. She was in the middle of the process—thus proving that one does not get automatic, indefinite leave to remain from that scheme—of accessing potential indefinite leave to remain. She is now on a two-and-a-half-year roll of immigration cases.

Funnily enough, I received the death threat to Marian, because it was sent to my office. It was a death threat to her and some members of her family, both here and in Pakistan. I handed it over to her and then spoke to the police. She then called the police, because she was concerned about the threat to her life. She has been a victim of domestic abuse for a while.

The police turned up at her house. Marian's English is not particularly good. The next time I heard of her, her neighbour was calling me to tell me that she had been taken away. I said, "What do you mean she's been taken away?" They said, "She's been taken to Bradford." Bradford is another site where there is quite a lot of refugee accommodation. It is not uncommon for people in the immigration system to be moved from Birmingham to Bradford, so I thought, "Something must have gone wrong here."

Then Marian called my office and said that she was in Yardley, which was again confusing. Eventually, I got to the bottom of it: she was in Yarl's Wood in Bedford. She had been taken to detention, because the police, while they were at her property, had seen her Home Office immigration papers on the side. Instead of taking her, with the death threats against her, to a place of safety, they detained her in a detention centre, when she had every right to be in this country. She followed to the letter all the exact rules laid out by the Minister today. Funnily enough, she is still here.

That case of my constituent is not an isolated one, as I found out when I started to look into it. It is not uncommon for such action to be taken when people come forward, whether they are victims of rape or of crimes that are not related to violence against women and girls. A number of cases were raised during the Windrush scandal about victims coming forward and being told that they were going to be taken to detention. Some were wrongly deported. This is not a new issue.

The absence of a safe reporting mechanism enables perpetrators to continue their abuse against victims, as they are afraid to report them to the police for fear that their immigration status will be used against them. The Home Office has now recognised in its statutory guidance framework on controlling and coercive behaviour in an intimate and family relationship that perpetrators routinely use immigration status as a tactic of coercive control towards migrant women.

Andrew Bowie (West Aberdeenshire and Kincardine) (Con): Is not that the point about data being shared between the police and immigration services? The very fact that immigration status is sometimes used by the abuser to exercise coercive control over the victim means it is good that sometimes information is shared between the two authorities.

Jess Phillips: I absolutely agree. I would say it is very uncommon, when someone whose immigration status is either in process or unstable has come to see me for help

about domestic abuse, for me not to get in touch, eventually, with the Home Office. That is absolutely the case. It is totally bread and butter that I would say, "I am going to take your case, and here are the things that you might need for this part of your life—and also we need to settle your immigration status. We need to sort this out so that it cannot be held over you." The hon. Gentleman is right.

In those circumstances I seek the consent of the person to that, and that is all I am asking for in the new clause. I do not know when the rule was brought in that we now have to get people to sign something to say we are going to get in touch with the Department for Work and Pensions, for example. We all do it quite routinely in casework. We seek consent. If I am getting in touch with the Home Office, the likelihood of the constituent being carted off to detention will be almost zero. They do not make that mistake too many times the wrong way. However, the hon. Member for West Aberdeenshire and Kincardine is absolutely right. I recognise the argument that we need a system through which the police can help with immigration. All I would seek in that circumstance is consent.

The issue goes back to what would happen if I walked into a police station and said that someone had hurt me or was threatening to kill me—in fact, I have to do that quite regularly. No one has ever asked me my immigration status—not once. They dealt with me primarily as a victim in front of them. Fair enough, because I am a quite well known Member of Parliament, and I presume that they assume. However, I know very few white British people who would ever be asked their immigration status. All I seek through any of my new clauses or amendments is equitable treatment from the beginning. The fact that that is not given, and the fact that such cases happen, has unfortunately given perpetrators another tool and enabled them to say, "They'll throw you in detention."

The Minister focused earlier on the need for legislators always to be aware of how systems can facilitate abuse, and how unintentional and collateral damage can be used, giving perpetrators tools to inflict suffering. She set it out clearly, with lots of cases. Perpetrators can use the current situation against victims. That is how the way we process victims when they come forward is currently being used. The Minister made a compelling case about the issues with county lines, and this bit of law is currently being used by perpetrators.

3.30 pm

Data sharing is a breach of both the Human Rights Act 1998 and the Government's international human rights obligations to treat victims with respect in a non-discriminatory way. Articles 4 and 59 of the Istanbul convention—it has never had so much airtime—which the Government have signed and are committed to ratifying, require victims to be protected regardless of their immigration status. However, freedom of information requests have shown that 27 out of the 45 police forces in England and Wales share victims' details with the Home Office. We cannot necessarily assume from those FOIs that they are sharing such information without good intention, but we do not know. I would argue that it is prioritising immigration over victims' safety.

Establishing safe reporting mechanisms within the Bill will give survivors the confidence to report their perpetrators and to access justice and safety. It will also provide direction to statutory services that their priority is to safeguard victims. I think of my constituent—what do hon. Members present think is the likelihood of her ever calling the police again? I think it is pretty unlikely.

There have been suggestions that data needs to be shared to safeguard victims, but the Government have not provided any examples or evidence to demonstrate where a victim has benefited from data sharing between the police and immigration enforcement that could not have been achieved by signposting the victim to a relevant support service. Nobody is suggesting that we do not try to help those people.

As somebody who does a huge amount of immigration casework, I have never known a police officer to take forward a client's immigration case. I have a huge amount of time for the police force in my area, but I do not think that they are sitting down and helping people fill in forms for the Home Office. Nor do I think they should be; it is not their job. If, through speaking to immigration services, they refer people to services such as their local MP, Southall Black Sisters and Women's Aid in their area, I could totally understand that. However, we have absolutely no evidence that that is what is happening. Unfortunately, we do have evidence—as I have mentioned—of numerous examples of victims reporting that they have been turned away, interrogated and even detained. The system instils fear in potential victims who are exploited by perpetrators, so they do not come forward and will never report their abuse.

By definition, women who report abuse to the police and other services are coming forward; they are not trying to go underground or evade authorities. They need legal advice and specialist support in order to resolve their situation. The first step will be resolving their insecure immigration status. Specialist agencies have estimated that this might take between four months and 2 years. To catapult victims into the immigration enforcement system without legal advice or support at the point at which they are simultaneously most vulnerable but have also bravely taken the first step to escaping abuse, is not only unnecessary and counterproductive; it is also cruel.

There are some nuances about illegal immigrants and not-illegal immigrants. In the case that I am talking about, the victim was entirely within the process set out by the Home Office and living completely within the correct system, but she still ended up being detained. Victims of domestic abuse need to be treated as victims of domestic abuse—end of. When a victim of crime comes to a public body in a crisis, we must respond to that cry for help, and to that cry for help only. We need crystal-clear guidance for our often overworked police and public services. The police must offer protection, investigate the crime and signpost the individual to the specialist domestic abuse service provider, where appropriate legal advice and support can be accessed. As the hon. Member for West Aberdeenshire and Kincardine said, where it is in a person's best interests to have immigration advice, nobody would want to see anything else.

Victoria Atkins: As the hon. Member for Birmingham, Yardley has explained, new clause 37 seeks to prevent personal information about victims of domestic abuse from being shared for the purpose of immigration control in cases where the individual has not given their consent. The new clause seeks to ensure that migrant

[Victoria Atkins]

victims are not deterred from reporting domestic abuse or seeking support for fear that immigration enforcement action will be taken against them.

The Government share that objective, and it was shared by the Joint Committee on the Draft Domestic Abuse Bill, which made a related recommendation in its report. Before I turn to the issue of consent, the hon. Lady may recall our response to the Joint Committee last year. The Government were clear that all victims of domestic abuse should be treated first and foremost as victims. That is set out in relevant guidance from the National Police Chiefs' Council.

Although we were unable to hear from Deputy Chief Constable Louisa Rolfe, the national policing lead on domestic abuse, during the Committee's oral evidence session, she did give evidence on the previous iteration of the Bill. She was clear that there would be circumstances in which information sharing between the police and immigration authorities is in the interests of safeguarding victims of abuse. It can help resolve a victim's uncertainty about their immigration status.

My hon. Friend the Member for West Aberdeenshire and Kincardine made a point about removing the perpetrator's ability to coerce, control and manipulate. It can also help prevent victims from facing enforcement action if they are identified by immigration enforcement in an unrelated system. On the particular constituency point that the hon. Lady raised, I ask her to speak to me afterwards as I would like to investigate further.

To ensure the victim's needs are put first, the National Police Chiefs' Council strengthened its guidance in 2018, setting out a clear position on exchanging information about victims of crime with immigration enforcement to encourage a consistent approach across the country. That gives us confidence that data sharing will operate in the interests of the victim.

Turning to the points on consent, alongside our duties to protect victims of crime, the Government are equally duty bound to maintain an effective immigration system, not only to protect public services but to safeguard the most vulnerable from exploitation because of their insecure immigration status. The public expects that individuals in this country should be subject to our laws, and it is right that when individuals with an irregular immigration status are identified they should be supported to come under our immigration system and, where possible, to regularise their stay.

Christine Jardine (Edinburgh West) (LD): I take on board what the Minister is saying, but I keep coming back to the fact that a crime has taken place: it is domestic abuse; it is violence against women. We are making it difficult for the authorities to act in a lot of cases by making the victim afraid of coming forward and we are not identifying people who are a danger, and not just to those women but to others.

Victoria Atkins: I understand the hon. Lady's point. It is the balancing act that the Government must employ, and not just on this subject matter. Where there are competing interests, we have to try to find that balance and we take that very seriously. We listen very carefully to concerns that are raised—I am very happy to discuss individual cases outside the glare of the Committee—but we have to abide by our duty to ensure that there is an effective immigration system. We have to balance that against our duties towards the victims.

The data exchanged between the police and law enforcement are processed on the basis of it being in the public interest, as laid out in articles 6 and 9 of the General Data Protection Regulation and the Data Protection Act 2018.

The problem with consent is that it can be withdrawn at any time—that is the point of consent. As such, it cannot be the basis on which public bodies, such as the Home Office, discharge their duties in the interests of all of the public. To require consent would, we fear, undermine the maintenance of effective immigration control.

I emphasise that we must, of course, keep the NPCC guidance under review, and we work with it to do just that. There are other ways of scrutinising the conduct of the police and, indeed, the Government. We know that there are two forms of legal action on this subject at the moment. Clearly, we will reflect on the findings of those cases when they are delivered.

I very much understand the motivations of the hon. Member for Birmingham, Yardley in tabling the new clause, but I must balance the interests of victims with the need to ensure that our immigration system works as effectively as possible.

Jess Phillips: I do not doubt the Minister's sincerity in wanting to ensure that this matter is sorted out. She invoked the public, and she is right that the public would expect people to live within the rules. However, I think if we asked the general public, "Would you rather a rapist was not reported or that somebody got to stay in the country a bit longer?", they would be on the side of ensuring that crimes are properly investigated and that people come forward to help deal with those crimes.

All I am trying to do is send a clarion call to victims: "You will be safe and you will be supported if you come forward." All we are ever trying to do in the field of domestic abuse is to increase the number of people who come forward. That is why we would never ever criticise when domestic abuse figures go up, although it would be easy to use it as a blunt tool and do that; in fact, we all celebrate the idea that more people are coming forward. That is all I seek to do with the new clause. I do not doubt that the Minister agrees and wishes to ensure that that is always the case.

What I would ask, as the situation is reviewed and as we work with the NPCC, is for some sort of evidence—once again, we are calling for an evidence base—that when these matters are passed on to immigration control, it is less about enforcement and more about safeguarding. I am sure that, over a period of time, that data could be collected.

I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 42

JOINT TENANCIES: REMOVAL OF A TENANT

"(1) This section applies where there are two or more joint tenants under a secure or assured tenancy and the landlord is a local housing authority or a private registered provider of social housing.

(2) If one joint tenant ("A") has experienced domestic abuse from another joint tenant ("B") then A may apply to the county court for an order B is removed as a joint tenant.

(3) For the purposes of subsection (2) it sufficient that the domestic abuse was directed at A or to anyone who might reasonably be expected to reside with A.

(4) On such an application, the court must take the following approach—

(a) the court must be satisfied that the tenancy is affordable for A, or will be so within a reasonable period of time;

(b) if the court is so satisfied, then—

(i) if B has been convicted of an offence related to domestic abuse as against A or anyone who might reasonably be expected to reside with A, the court must make an order under this section;

(ii) if B has been given a domestic abuse protection notice under section 19, or a domestic abuse protection order has been made against B under section 25, or B is currently subject to an injunction or restraining order in relation to A, or a person who might be reasonably expected to reside with A, the court may make an order under this section.

(c) for the purposes of subsection 4(b)(ii), the court must adopt the following approach—

(i) if B does not oppose the making of such an order, then the court must make it.

(ii) if B does oppose the making of such an order then it is for B to satisfy the court that – as at the date of the hearing - there are exceptional circumstances which mean that the only way to do justice between A and B is for the order to be refused.

(d) if the application does not fall within subsection (b), then the court may make such an order if it thinks it fit to do so.

(5) Where A has made such an application to the court, any notice to quit served by B shall be of no effect until determination of A's application or any subsequent appeal.

(6) Notwithstanding any rule of common law to the contrary, the effect of an order under this section is that the tenancy continues for all purposes as if B had never been a joint tenant.

(7) For the purposes of this section, an "offence related to domestic abuse" means an offence that amounts to domestic abuse within the meaning of section 1 of this Act.

(8) In section 88(2) Housing Act 1985, after "section 17(1) of the Matrimonial and Family Proceedings Act 1984 (property adjustment orders after overseas divorce, &c.)" insert ", or section [Joint tenancies: removal of a tenant]Domestic Abuse Act 2020,".

(9) In section 91(3)(b) Housing Act 1985, after subsection (iv), add "(v) section [Joint tenancies: removal of a tenant] Domestic Abuse Act 2020.

(10) In section 99B(2) of the Housing Act 1985 (persons qualifying for compensation for improvements) paragraph (e), after subsection (iii) add "(iv) section [Joint tenancies: removal of a tenant] Domestic Abuse Act 2020.""—*(Jess Phillips.)*

This new clause would facilitate occupiers of social housing removing one joint tenant from the tenancy agreement where there has been domestic violence. The tenancy would then continue (so preserving existing rights). The court must be satisfied that the applicant can or will be able to afford the tenancy.

Brought up, and read the First time.

Jess Phillips: I beg to move, That the clause be read a Second time.

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

New clause 43—*Housing Act 1996: Removal of local connection—*

"(1) The Housing Act 1996 is amended as follows.

(2) At the end of section 199 (local connection), insert—

"(12) A person who is or is likely to become a victim of domestic abuse, is not required to have any local connection to any authority within the meaning of section 199(1) of this Act for the purposes of his or her application.

(13) For the purposes of subsection 12, a person must provide evidence of domestic abuse or the risk of domestic abuse in one of more of the forms set out in regulation 33(2) of the Civil Legal Aid (Procedure) Regulations 2012.""

This new clause would remove the need for a local connection for victims of domestic abuse when applying for social housing to a particular local authority.

New clause 44—*Allocation of Housing to domestic abuse victims—*

"(1) Section 160ZA of the Housing Act 1996 is amended as follows.

(2) After subsection (8) insert—

"(8A) The Secretary of State must within two months of the Domestic Abuse Act 2020 being passed make regulations under subsection (8) to prescribe the criterion set out in subsection (8B) as a criterion that may not be used by a local housing authority in England in deciding what classes of persons are not qualifying persons.

(8B) The criterion is that a relevant person must have a local connection to the district of a local housing authority.

(8C) For the purposes of subsection (8B), a "relevant person" is a person who—

(a) is or has been a victim of domestic abuse within two years of the date of their application for an allocation of housing under Part 6 of the 1996 Act, and

(b) has recently ceased, or will cease, to reside in accommodation provided by a local authority in an area in which they have been subjected to domestic abuse and where—

(i) the person has fled or will flee their local area; and

(ii) the purpose of fleeing was or is to escape domestic abuse.

(8D) The regulations made under subsection (8A) must specify that a local housing authority may not consider the location or whereabouts of the perpetrator of the domestic abuse.""

This new clause would remove the need for a local connection for victims of domestic abuse when applying for social housing to a particular local authority.

Jess Phillips: It is weird at the end stages, because we are now jumping around. We are now going to talk about joint tenancies, which is nothing like any of the stuff we have been talking about for the past few hours. I will speak to new clause 42 on joint tenancies and new clauses 43 and 44, which relate to local connection restrictions on survivors escaping domestic abuse.

The impact of joint tenancies on survivors of domestic abuse is not an issue that has been widely discussed in Parliament in recent years, but it should be. There has been a lot of stuff about tenancies, to be fair, but it has not necessarily been about joint tenancies. The current tenancy law leaves survivors particularly vulnerable to homelessness and further abuse. Where there is a joint tenancy between the abuser and the victim, either can give notice to end the tenancy and it then takes effect for all joint tenants.

I am sure I do not need to spell out what impact that has in abusive, coercive and controlling relationships. The current law means that abusers can unilaterally terminate the joint tenancy, ending the victim's right to remain in the property, and putting her at significant

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risk of homelessness and harm. Currently, the only option in the short term is for the victim to seek an injunction preventing the abuser from serving notice on the tenancy. That is usually a time-limited and temporary remedy.

3.45 pm

It is completely ineffective if the abuser decides to breach the order, as the remedy for the breach would not bind the landlord or resurrect the tenancy, although once the Bill is passed maybe they would become a criminal, depending on which order it was. We are now talking about complicated housing law. In the case of a sole tenancy in the abuser's name, it does nothing to afford tenancy rights to the victim, and of course an injunction will probably only be obtained if she has access to legal advice in the first place. It may be possible for the victim to end a joint tenancy and immediately be granted a new sole tenancy by the landlord, if the landlord is sympathetic and prepared to do so. But that is wholly at the landlord's whim, and the landlord is under no obligation. There are some positive examples of landlords improving their responses to tenants experiencing domestic abuse, as Committee members will know all too well from their own casework. It is not that universal to have really great landlords.

A court order is required to transfer tenancy rights from either the abuser's sole tenancy or a joint tenancy to the victim's sole tenancy. There are currently three mechanisms by which that can be done, but they relate only to particular circumstances, and the process is uncertain and complex. All of that requires survivors to have access to legal advice and representation. An application to transfer the tenancy must be made to the family court. The law is complicated in the sense that different routes and remedies are available, depending on marital status and the existence of children. If the parties are married, they can apply under the Matrimonial Causes Act 1973 only if they are in divorce proceedings. Maybe that is literally about to change as we speak; the law normally moves slowly and I feel like it is racing away with me. It can take over a year to obtain the transfer, which will not take effect until a decree absolute has been granted, although that may now be quicker. That route forces parties whose only matrimonial asset might be the tenancy to waste court time and public funds to obtain a transfer. The victim will be insecure while the proceedings are ongoing and the parties will become further polarised. That is an inevitable consequence of family litigation, and has an impact on arrangements they may need to make over children.

Peter Gibson (Darlington) (Con): Will the hon. Lady give way?

Jess Phillips: If you are going to ask me a detailed question about tenancy law, I have prepared myself for that.

Peter Gibson: It is not a tenancy-related question. While well-intentioned, the proposed new clause serves effectively to sever a joint tenancy agreement and put the tenancy agreement into the abuse survivor's sole name. The clause fails to make any provision in respect of the tenancy's joint and several liability and therefore may create unintended consequences, such as leaving the victim—whom the Bill seeks to protect—liable for damage to the property that may have been caused by the perpetrator. That could additionally lead to residual liability for any outstanding rent arrears that may have accrued. Does she agree with me that leaving the victim with further liabilities can actually make things worse?

Jess Phillips: It absolutely cannot do that, and we must consider the politics of priorities in these circumstances. I do not pick these amendments out of the air, much as I love to pore over tenancy law. They are usually brought to me by people who have been in these specific circumstances. It is an incredibly pernicious thing, and it can be seen when people are left with problems, less so with damage to the property. I do not believe anybody ever gets their deposit back; that is a mythical thing that never actually occurs in real life. I have certainly never got any deposit back. The rent arrears issue is terrible and pernicious; there is no doubt about that. Victims are telling us that they face the problem of the risk of homelessness. Somebody can end their tenancy just like that. Our constant objective in these clauses is to remove the perpetrator from the situation and leave the victim safer at home.

There are all sorts of things that I would offer if somebody came to me and said, "Well, I've got rent arrears based on that." Birmingham City Council has not had a good write-up in this Committee, but one brilliant thing it does is have discretionary housing payments specifically for local allowances for issues such as rent arrears built up in domestic abuse cases. I would seek to access that sort of support in those circumstances. In fact, with regard to tenancies, lots of local councils have different rules about the kind of things that they can do as landlords—obviously, they are the largest landlords in the country—in cases of domestic violence. Currently, however, the law does not allow for the thing that victims are telling me would help them.

To go back to complicated tenancy law, for those who are unmarried but have children—the law is very detailed in the gradients that are covered—the Children Act 1989 provides an opportunity for the tenancy to be transferred for the benefit of children, but again that necessitates bringing expensive and contentious court proceedings that polarise parties who might have been able to reach agreement over many aspects of their children's care without the emotional impact of a litigation process. When we talk about the family courts, especially some of the harrowing cases, it is important to remember that 90% of people breaking up from each other, including a high proportion of people even in domestic abuse situations, sever their lives and those of their children amicably without the need for the courts. I want to try to avoid needless litigation, especially for victims.

The transfer in such cases is further complicated by the fact that it is only for the benefit of the children, so if the children are about to turn 18, the remedy may not help. It may be possible to sever the tenancy, but if the child is crashing towards a certain age, people may be cut off.

Married or unmarried victims with or without children can apply under the Family Law Act 1996, but for married couples, the court will insist on divorce proceedings

having been commenced and will often divert them down the route of the Matrimonial Causes Act 1973. Where the parties are unmarried, the route of the 1996 Act will still necessitate lengthy court proceedings, often with two or three hearings at a cost in court time in excess of £10,000 and in legal aid of a similar amount for either party represented.

In contrast to those complex and uncertain processes, the new clause provides a straightforward mechanism for the victim of abuse, where they have a joint tenancy from a social landlord, to seek the transfer of the tenancy from joint names to their sole name and to prevent the abuser from ending the tenancy in the meantime. It sets out that where there has been a conviction for a domestic abuse-related offence, the court must make an order to transfer the joint tenancy to the victim's sole name.

Understandably, there have been quite a few conversations about unintended consequences, which happen with pretty much all laws. No matter which rosette hon. Members wear, no law that has ever been passed has helped everybody universally and has been perfect for everybody. That is the reality, which is perhaps not expressed very well by the Punch and Judy politics of this place.

In the new clauses that we have tabled, we have sought to be clear that the level of the evidence base, such as conviction, needed to take something away from somebody must be high. In the issue of presumption that my hon. Friend the Member for Hove was talking about earlier, that was based on orders and convictions. When we are talking about taking something away, such as a tenancy, I recognise that that is a big liberty, even if someone is a perpetrator, because they might have had a terrible life—lots of them will have had a terrible life.

A domestic abuse protection notice or a conviction seems like a reasonable threshold, rather than just an allegation, for doing something such as taking someone's tenancy away. Where a domestic abuse protection notice or a protection order has been served, there is a presumption that the court will make an order transferring the tenancy to the victim's sole name, which the other joint tenant can seek to oppose by showing exceptional circumstances. In both cases, this is subject to the court being satisfied that the tenancy is affordable for the applicant. To answer the point made by the hon. Member for Darlington, in this instance the court would assess the affordability of the tenancy rather than the burden of that tenancy, because we do not want to burden people needlessly.

Peter Gibson: The clause deals with affordability going forward, but does it specifically address any latent problems?

Jess Phillips: That is a reasonable point. This definitely happens, so I am more than happy for those issues to be dealt with as we go through this process. One thing about this Bill going through to the Lords is that it has some really keen experts who know an awful lot about housing law; I have been a licensed landlord through running refuges and other things, so I know a little bit about the law in this area, but it definitely bamboozles me. Some Lords know an awful lot about the criminal justice system and housing tenancies, so I feel keenly that we ought to make some assessment of the point the hon. Gentleman has made. I suppose the victim could give their consent by self-declaring—by saying, "I am willing to pay £3 a month until my arrears are paid back", or "He has kicked out the fireplace; I am happy to get it replaced." Any Member who has large numbers of council tenancies in their constituency will know that tenants would often much rather pay to have things replaced than wait for the council to replace them. It is not uncommon to hear, "I've had my whole kitchen done, because I've been waiting four years."

In the new clause, any notice to quit served by the abuser is of no effect if an application has been made, therefore removing the need for an injunction or to protect the tenancy until the application is decided. The amendment also protects succession rights and right-to-buy rights on the transfer of the tenancy to a sole tenant—another classic casework thing I have to deal with all the time. This is a simplification of the current complex, potentially expensive and risky processes by which a victim of abuse can seek the transfer of a joint tenancy to their sole name. It gives greater certainty about the circumstances in which the court will transfer the tenancy to the victim, and it helps the victim of abuse obtain security in their home, free from the fear of the abuser ending their tenancy.

I will briefly touch on new clauses 43 and 44. Domestic abuse does not end when a relationship ends, and leaving an abuser is statistically a highly dangerous time. A survivor faces ongoing and severe threats to their safety. Anyone who has read domestic homicide reviews will know that very few things consistently crop up—the people involved can be of all races, backgrounds and classes—but the common thread running through them is that people often get murdered when they first escape. It is a very risky time, and therefore many survivors escaping abuse need to leave their local authority area in order to be safe. Women and children escaping to a refuge, in particular, will often need to cross local authority boundaries.

The very existence of refuges depends on those services' availability, as this Committee has largely covered. The Government homelessness guidance for local authorities makes it clear that the local connection rules should not apply in cases of domestic abuse. It states that all local authorities must exempt from their residency requirements those who are living in a refuge or other form of safe temporary accommodation in their district, having escaped domestic abuse in another local authority area. However, this is not a requirement and does not apply to women who have not escaped into a refuge—or into another form of temporary accommodation, which I am afraid to say is the most likely place for them to end up nowadays.

In addition, local authorities often use blanket residency tests in allocation schemes without accounting for exceptional circumstances, such as a woman fleeing domestic abuse. This has already been found unlawful. In the case of R (on the application of HA) *v.* Ealing London Borough Council, the full homelessness duty under part 7 of the Housing Act 1996 was owed to a mother and her five children fleeing domestic violence, but she was disqualified from the housing register because she failed to meet the residency requirements. There was an exceptional circumstance clause in the local authority's allocation scheme, but this was not used.

[Jess Phillips]

The High Court found that Ealing had acted unlawfully in failing to apply the exceptionality provision, or to even consider applying it.

Despite that case and the Government guidance, there remain clear inconsistencies between local authorities across England. I am sorry; I do not mean to exclude Wales, but I have no idea—I presume there are inconsistencies there.

4 pm

Nickie Aiken (Cities of London and Westminster) (Con): I am slightly confused about what the hon. Member seeks to improve with new clause 43. I am happy to be corrected, but I understand that local authorities, as the hon. Member said, already have the ability to prioritise domestic abuse cases for rehousing. I believe that, on Second Reading a couple of weeks ago, the Minister quoted the Secretary of State for Housing, Communities and Local Government, who said that he was making this a priority. The statutory guidance also states that local authorities should find a local connection, and that it is okay if it is in another district or local authority, so long as there is no threat to the family or the woman. I am just trying to understand what the new clause would do that is not already in the statutory guidance or the Bill.

Jess Phillips: I am more than happy to answer that. I am quite fond of the particular bit of statutory guidance she refers to, because it did not actually exist until a woman who lived in the refuge where I worked took a case against Sandwell Borough Council regarding her local connections. Currently, the statutory guidance is explicit about refuge accommodation. This woman was living in a refuge, many years ago now, and Sandwell Borough Council said she did not have the local need that meant it had to pay her—what we call—housing benefit-plus, so it contested her application on the basis of local need. With the help of the Child Poverty Action Group, that was challenged in the courts in two cases specifically around refuge accommodation. All the new clause really seeks to do is extend that beyond being only about refuge to being about other forms of temporary accommodation.

Councils imposing local connection restrictions on their refuge funding contracts—exactly what I was just talking about—such as capping the number of non-local women able to access the refuge or requiring a specific proportion of the women in a refuge to be from the local authority area, has been one fall-out of that particular incident, because a refuge just cannot be run like that. We cannot know who will turn up. By and large, refuges will have people in who are from the local area, but it is not like a school, where someone has to live within a certain radius and has their needs assessed based on other things. People deal with the situation as it arises.

Homelessness teams are refusing to support women escaping abuse because they are not from the local area. Nearly a fifth of women supported by Women's Aid's No Woman Turned Away project in 2016 and 2017 were prevented from making a valid homelessness application on the grounds of domestic abuse—outside of refuge; just rocking up to the homelessness services—for reasons including that they had no local connection and that local housing teams were deprioritising survivors who did not have a local connection within their housing allocation policy.

As Members may know, the Government already require local authorities to make exemptions for certain groups from these local connection requirements or residency tests, including members of the armed forces and for those seeking to move for work. Nobody would argue with that. We just wish to add domestic abuse victims to that roster. Therefore, to tackle continuing inconsistent and unacceptable practices, a statutory bar on local authorities imposing local connection restrictions on refuges or any temporary or permanent accommodation should be included in the Bill, and needs to sit alongside the proposed statutory duty on local authorities to fund support in refuges and other forms of safe accommodation. The Government are essentially going to be paying for some of this from central funds. We look forward with bated breath to that big cheque, Minister; we should have a big-cheque moment.

Nickie Aiken: I want to get to the bottom of this. Is the hon. Lady saying that there is a lack or a vacuum in the Bill or in statutory guidance full stop, or are local authorities not complying or doing what they should under existing legislation or statutory guidance? If they are not doing what they should be doing—if Sandwell, which is a Labour council, or Ealing, which is a Labour-led council are not doing what they should be doing—surely it is possible to go to the ombudsman? Surely there is a way to hold local authorities to account if they are not carrying out their statutory duty?

Jess Phillips: No, they absolutely are carrying out their statutory duty, but the statutory duty is only about refuge—unlike the statutory guidance regarding servicemen and women, which is that they are allowed to move without local connection, recognising that base life does not necessarily mean that they are based in a place, so they might not have a local connection, as well as tipping the hat to people who deserve a break when they are presenting to homelessness services. It is essentially the same thing—recognition that people living in certain circumstances might need extra help. I am sure the hon. Lady does not wish to be political about this, but I could list lots of Tory councils that turn away victims of domestic abuse, and many that have no current provision for refuge, but send their victims to a neighbouring local authority; that is not uncommon. The way some councils choose to fund this is to fund it elsewhere, which I think is problematic and will certainly be furthered by the new statutory duty.

The Government will pay for this statutory duty, which may lead to people having to present to homelessness teams in different areas when they do not have a connection to the local area. That is the problem I am trying to overcome. Together, the new clauses will help to ensure that all women and children fleeing domestic abuse can access safe housing where and when they need to. I urge colleagues to support new clauses 43 and 44 to bar local authorities from imposing dangerous local connections restrictions on survivors of domestic abuse.

Victoria Atkins: I apologise at the start because, just as the hon. Member for Birmingham, Yardley went into the fine detail of housing law, so, sadly, will I. I will try to cut it down.

We understand the motivation behind new clause 42. Abusers seek to control their victims in many different ways, and threatening to make their victims homeless or actually making them homeless by ending a tenancy is a particularly pernicious form of control. However, we have concerns about the drafting of the new clause, as it would apply only to local authority and housing association periodic tenancies, whereas most social tenants have periodic tenancies that are often known as lifetime tenancies, which generally mean that they can stay in their home for the rest of their life, provided they comply with the terms of the tenancy. A social tenancy with lifetime security of tenure is a valuable asset, which is why the Bill includes provisions designed to protect the security of tenure of victims of domestic abuse when granted a new tenancy by a local authority.

Notwithstanding the general position on security of tenure, current law provides that if any joint tenant of a period tenancy serves a notice to quit, it brings the whole tenancy to an end and the landlord can seek possession. The rule is of long standing; it has been established in many cases over the years and was recently upheld by the Supreme Court. It aims to balance the interests of each joint tenant and the landlord. For example, it would allow a victim of domestic abuse who has had to flee her home to ensure that she is no longer bound by the full obligations of the tenancy, which she is no longer able to enjoy. We recognise that the rule may be problematic in some cases of domestic abuse where the perpetrator can use it to exert control. I appreciate that the aim of the new clause is to find a way around that, to enable victims of abuse to remain in their current home, without fear that the abuser may seek to terminate the tenancy.

We are concerned about a number of areas of the new clause. It would allow the victim to apply to the court to remove the perpetrator from the tenancy, which is intended to effectively transfer the tenancy into the victim's name. Where there are other joint tenants, it would have the effect of transferring the tenancy into the names of the victim and of those other joint tenants. As my hon. Friend the Member for Darlington pointed out so eloquently—perhaps he should have declared an interest as a long-standing solicitor, as he was bringing his expertise into this—it means that victims may face the prospect of unresolved or remaining debts and costs because of any damage that the perpetrator may have caused to the property. The perpetrator will not be liable, as they will have been removed from the tenancy.

The new clause also fails to provide for how the interests of third parties may be taken into account by the court, including those of the landlord, any other joint tenant or any children in the relationship. A decision to grant a tenancy lies with a landlord. Where a landlord has decided to grant a tenancy to two or more individuals jointly, this new clause means that the number of tenants may be changed without reference to the landlord as the property owner.

It is important to bear in mind that landlords may have other reasons, outside of affordability, for deciding to grant a joint tenancy. In addition, this could amount to an interference with a housing association landlord's own rights under the human rights legislation. Since this engages other parties' human rights, we need to consider carefully what is the right approach in order to balance those rights, and ensure that any interference is proportionate and justified.

I understand that officials from the Ministry of Housing, Communities and Local Government are engaging with the domestic abuse sector and other relevant stakeholders on these issues, regarding the termination of joint tenancies. I am happy to give a commitment that we will continue to consider the issues with the sector, with a view to arriving at a workable solution.

Turning to new clause 43, this seeks to amend section 199 of the Housing Act 1996, which defines local connection. Local connection relates to how local housing authorities establish and carry out their statutory homelessness duties under part VII of the Act. If an applicant does not have a local connection, as defined by section 199, a housing authority can refer that applicant to another housing authority where they do have a local connection and can access this support. However, under that legislation, the authority must ensure that the conditions for referral are met. This means that a housing authority cannot refer an applicant to another authority if they, or anyone who might reasonably be expected to reside with them, would be at risk of violence.

The homelessness code of guidance makes clear that a housing authority is under a positive duty to enquire whether the applicant would be at such a risk, and stipulates that authorities should not impose a high standard of proof of actual violence in the past when making its decision. The changes the Government propose to make in this Bill, in order to ensure that domestic abuse victims are considered to be in priority need for homelessness assistance, will be strengthened further by amending section 198 of the Housing Act 1996, so that a local authority cannot refer an applicant if there is a risk of not only violence but domestic abuse, as defined in the Bill.

Local connection is also a factor in how many local authorities determine priority for social housing. The allocation of social housing is governed by part VI of the Housing Act 1996. Local authorities must give reasonable preference for social housing to certain groups of people, including those who are homeless or who need to move for medical or welfare reasons. To help them determine the relative priority of applicants who fall into these groups, they may, but are not obliged to, use local connection as defined in section 199. Existing statutory guidance, to which authorities must have regard, makes it clear that they should consider giving additional preference within their allocation schemes to people who are homeless and require urgent rehousing as a result of domestic abuse. Existing legislation and guidance should therefore ensure that the intended purpose of new clause 43 is already in effect. It is not correct to say that a victim of domestic abuse needs to have a local connection for the purposes of a homelessness application, and lack of local connection should not prevent victims of domestic abuse from getting priority for social housing.

4.15 pm

In new clause 44, the hon. Member for Birmingham, Yardley proposes that the Government make new regulations to prevent local authorities from setting qualification criteria for social housing that may disadvantage victims of domestic abuse due to lack of a local connection. Many local authorities restrict their waiting lists to those who can demonstrate a close association with their local area. This helps to ensure that, as far as possible, affordable housing is available

for those among the local population who are on low incomes or otherwise disadvantaged, and who would find it particularly difficult to find a home on the open market.

Statutory guidance published in 2013 is clear that local authorities should consider the need to provide for appropriate exceptions from their residency requirements to take account of special circumstances, including providing protection to people who need to move away from another area to escape violence. Statutory guidance published in 2018 goes even further. It encourages all local authorities to exempt from their residency requirements those who are living in a refuge or other form of safe temporary accommodation in their district, having escaped domestic abuse in another local authority area. This is because many people escaping domestic abuse may seek a place of safety in a refuge before they apply for social housing.

The allocation of social housing is devolved to local housing authorities for good reason. The legislation allows for flexibility, to ensure that authorities can tailor their allocation schemes to meet local priorities. The Government are committed to ensuring that the system is fair and functioning effectively. The social housing Green Paper included a proposal to carry out an evidence-collection exercise to improve our understanding of how the system is playing out across the country. The findings from the exercise will be published in due course and we will consider any changes that may be needed. For those reasons and on the understanding that we will continue to examine the issues around joint tenancies, I invite the hon. Lady to withdraw the clauses.

Jess Phillips: It is pleasing to hear that the issue of joint tenancies is being looked into. As I said to the hon. Member for Darlington, these issues will undoubtedly come up in the Lords, where some very eminent people will wish to look over them, so I will withdraw the motion and look forward to progress being made.

On local connection, if we do not do something in regulations, the issue will continue to be tested in the courts because it is currently not working. I very much hope that the Bill in its wider sense and the new duties will provide further strength, but I guess we will have to wait and see. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 46

DEFENCES FOR VICTIMS OF DOMESTIC ABUSE WHO COMMIT AN OFFENCE

"(1) A person is not guilty of an offence if—

(a) the person is aged 18 or over when the person does the act which constitutes the offence;

(b) the person does that act because the person is compelled to do it;.

(c) the compulsion is attributable to their being a victim of domestic abuse; and

(d) a reasonable person in the same situation as the person and having the person's relevant characteristics might do that act.

(2) A person may be compelled to do something by another person or by the person's circumstances.

(3) Compulsion is attributable to domestic abuse only if—

(a) it is, or is part of, conduct which constitutes domestic abuse as defined in sections 1 and 2 of this Act, including but not limited to conduct which constitutes the offence of controlling or coercive behaviour in an intimate or family relationship as defined in section 76 of the Serious Crime Act 2015; or

(b) it is a direct consequence of a person being, or having been, a victim of such abuse.

(4) A person is not guilty of an offence if—

(a) the person is under the age of 18 when the person does the act which constitutes the offence;

(b) the person does that act as a direct consequence of the person being, or having been, a victim of domestic abuse as defined at subsection (3)(a) above; and

(c) a reasonable person in the same situation as the person and having the person's relevant characteristics might do that act.

(5) For the purposes of this section 'relevant characteristics' means age, sex, any physical or mental illness or disability and any experience of domestic abuse.

(6) In this section references to an act include an omission.

(7) Subsections (1) and (4) do not apply to an offence listed in Schedule *[Offences to which the defence for victims of domestic abuse who commit an offence does not apply]*.

(8) The Secretary of State may by regulations amend Schedule *[Offences to which the defence for victims of domestic abuse who commit an offence does not apply]*.

(9) The Secretary of State must make arrangements for monitoring of the types of offence for which victims of domestic abuse are prosecuted and use this evidence to inform an annual review of the offences listed in Schedule *[Offences to which the defence for victims of domestic abuse who commit an offence does not apply]* and any amendment to that Schedule."—*(Jess Phillips.)*

This new clause would provide a statutory defence for survivors of domestic abuse, in some circumstances, who commit an offence.

Brought up, and read the First time.

Jess Phillips: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss new schedule 1—*Offences to which the defence for victims of domestic abuse who commit an offence does not apply*—

"*Common Law Offences*

1 False imprisonment.

2 Kidnapping.

3 Manslaughter.

4 Murder.

5 Perverting the course of justice.

6 Piracy.

Offences against the Person Act 1861 (c. 100)

7 An offence under any of the following provisions of the Offences Against the Person Act 1861—

(a) section 4 (soliciting murder)

(b) section 16 (threats to kill)

(c) section 18 (wounding with intent to cause grievous bodily harm)

(d) section 20 (malicious wounding)

(e) section 21 (attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence)

(f) section 22 (using drugs etc to commit or assist in the committing of an indictable offence)

(g) section 23 (maliciously administering poison etc so as to endanger life or inflict grievous bodily harm)

(h) section 27 (abandoning children)

(i) section 28 (causing bodily injury by explosives)

(j) section 29 (using explosives with intent to do grievous bodily harm)

(k) section 30 (placing explosives with intent to do bodily injury)

(l) section 31 (setting spring guns etc with intent to do grievous bodily harm)

(m) section 32 (endangering safety of railway passengers)

(n) section 35 (injuring persons by furious driving)

(o) section 37 (assaulting officer preserving wreck)

(p) section 38 (assault with intent to resist arrest).

Explosive Substances Act 1883 (c. 3)

8 An offence under any of the following provisions of the Explosive Substances Act 1883—

(a) section 2 (causing explosion likely to endanger life or property)

(b) section 3 (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property)

(c) section 4 (making or possession of explosives under suspicious circumstances).

Infant Life (Preservation) Act 1929 (c. 34)

9 An offence under section 1 of the Infant Life (Preservation) Act 1929 (child destruction).

Children and Young Persons Act 1933 (c. 12)

10 An offence under section 1 of the Children and Young Persons Act 1933 (cruelty to children).

Public Order Act 1936 (1 Edw. 8 & 1 Geo. 6 c. 6)

11 An offence under section 2 of the Public Order Act 1936 (control etc of quasi-military organisation).

Infanticide Act 1938 (c. 36)

12 An offence under section 1 of the Infanticide Act 1938 (infanticide).

Firearms Act 1968 (c. 27)

13 An offence under any of the following provisions of the Firearms Act 1968—

(a) section 5 (possession of prohibited firearms)

(b) section 16 (possession of firearm with intent to endanger life)

(c) section 16A (possession of firearm with intent to cause fear of violence)

(d) section 17(1) (use of firearm to resist arrest)

(e) section 17(2) (possession of firearm at time of committing or being arrested for specified offence)

(f) section 18 (carrying firearm with criminal intent).

Theft Act 1968 (c. 60)

14 An offence under any of the following provisions of the Theft Act 1968—

(a) section 8 (robbery or assault with intent to rob)

(b) section 9 (burglary), where the offence is committed with intent to inflict grievous bodily harm on a person, or to do unlawful damage to a building or anything in it

(c) section 10 (aggravated burglary)

(d) section 12A (aggravated vehicle-taking), where the offence involves an accident which causes the death of any person

(e) section 21 (blackmail).

Criminal Damage Act 1971 (c. 48)

15 The following offences under the Criminal Damage Act 1971—

(a) an offence of arson under section 1

(b) an offence under section 1(2) (destroying or damaging property) other than an offence of arson.

Immigration Act 1971 (c. 77)

16 An offence under section 25 of the Immigration Act 1971 (assisting unlawful immigration to member state).

Customs and Excise Management Act 1979 (c. 2)

17 An offence under section 170 of the Customs and Excise Management Act 1979 (penalty for fraudulent evasion of duty etc) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (indecent or obscene articles).

Taking of Hostages Act 1982 (c. 28)

18 An offence under section 1 of the Taking of Hostages Act 1982 (hostage-taking).

Aviation Security Act 1982 (c. 36)

19 An offence under any of the following provisions of the Aviation Security Act 1982—

(a) section 1 (hijacking)

(b) section 2 (destroying, damaging or endangering safety of aircraft)

(c) section 3 (other acts endangering or likely to endanger safety of aircraft)

(d) section 4 (offences in relation to certain dangerous articles).

Mental Health Act 1983 (c. 20)

20 An offence under section 127 of the Mental Health Act 1983 (ill-treatment of patients).

Child Abduction Act 1984 (c. 37)

21 An offence under any of the following provisions of the Child Abduction Act 1984—

(a) section 1 (abduction of child by parent etc)

(b) section 2 (abduction of child by other persons).

Public Order Act 1986 (c. 64)

22 An offence under any of the following provisions of the Public Order Act 1986—

(a) section 1 (riot)

(b) section 2 (violent disorder).

Criminal Justice Act 1988 (c. 33)

23 An offence under section 134 of the Criminal Justice Act 1988 (torture).

Road Traffic Act 1988 (c. 52)

24 An offence under any of the following provisions of the Road Traffic Act 1988—

(a) section 1 (causing death by dangerous driving)

(b) section 3A (causing death by careless driving when under the influence of drink or drugs).

Aviation and Maritime Security Act 1990 (c. 31)

25 An offence under any of the following provisions of the Aviation and Maritime Security Act 1990—

(a) section 1 (endangering safety at aerodromes)

(b) section 9 (hijacking of ships)

(c) section 10 (seizing or exercising control of fixed platforms)

(d) section 11 (destroying fixed platforms or endangering their safety)

(e) section 12 (other acts endangering or likely to endanger safe navigation)

(f) section 13 (offences involving threats).

Channel Tunnel (Security) Order 1994 (S.I. 1994/570)

26 An offence under Part 2 of the Channel Tunnel (Security) Order 1994 (SI 1994/570) (offences relating to Channel Tunnel trains and the tunnel system).

Protection from Harassment Act 1997 (c. 40)

27 An offence under any of the following provisions of the Protection from Harassment Act 1997—

(a) section 4 (putting people in fear of violence)

(b) section 4A (stalking involving fear of violence or serious alarm or distress).

Crime and Disorder Act 1998 (c. 37)

28 An offence under any of the following provisions of the Crime and Disorder Act 1998—

(a) section 29 (racially or religiously aggravated assaults)

(b) section 31(1)(a) or (b) (racially or religiously aggravated offences under section 4 or 4A of the Public Order Act 1986).

Terrorism Act 2000 (c. 11)

29 An offence under any of the following provisions of the Terrorism Act 2000—

(a) section 54 (weapons training)

(b) section 56 (directing terrorist organisation)

(c) section 57 (possession of article for terrorist purposes)

(d) section 59 (inciting terrorism overseas).

International Criminal Court Act 2001 (c. 17)

30 An offence under any of the following provisions of the International Criminal Court Act 2001—

(a) section 51 (genocide, crimes against humanity and war crimes)

(b) section 52 (ancillary conduct).

Anti-terrorism, Crime and Security Act 2001 (c. 24)

31 An offence under any of the following provisions of the Anti-terrorism, Crime and Security Act 2001—

(a) section 47 (use of nuclear weapons)

(b) section 50 (assisting or inducing certain weapons-related acts overseas)

(c) section 113 (use of noxious substance or thing to cause harm or intimidate).

Female Genital Mutilation Act 2003 (c. 31)

32 An offence under any of the following provisions of the Female Genital Mutilation Act 2003—

(a) section 1 (female genital mutilation)

(b) section 2 (assisting a girl to mutilate her own genitalia)

(c) section 3 (assisting a non-UK person to mutilate overseas a girl's genitalia).

Sexual Offences Act 2003 (c. 42)

33 An offence under any of the following provisions of the Sexual Offences Act 2003—

(a) section 1 (rape)

(b) section 2 (assault by penetration)

(c) section 3 (sexual assault)

(d) section 4 (causing person to engage in sexual activity without consent)

(e) section 5 (rape of child under 13)

(f) section 6 (assault of child under 13 by penetration)

(g) section 7 (sexual assault of child under 13)

(h) section 8 (causing or inciting child under 13 to engage in sexual activity)

(i) section 9 (sexual activity with a child)

(j) section 10 (causing or inciting a child to engage in sexual activity)

(k) section 13 (child sex offences committed by children or young persons)

(l) section 14 (arranging or facilitating commission of child sex offence)

(m) section 15 (meeting a child following sexual grooming)

(n) section 16 (abuse of position of trust: sexual activity with a child)

(o) section 17 (abuse of position of trust: causing or inciting a child to engage in sexual activity)

(p) section 18 (abuse of position of trust: sexual activity in presence of child)

(q) section 19 (abuse of position of trust: causing a child to watch a sexual act)

(r) section 25 (sexual activity with a child family member)

(s) section 26 (inciting a child family member to engage in sexual activity)

(t) section 30 (sexual activity with a person with a mental disorder impeding choice)

(u) section 31 (causing or inciting a person with a mental disorder impeding choice to engage in sexual activity)

(v) section 32 (engaging in sexual activity in the presence of a person with a mental disorder impeding choice)

(w) section 33 (causing a person with a mental disorder impeding choice to watch a sexual act)

(x) section 34 (inducement, threat or deception to procure sexual activity with a person with a mental disorder)

(y) section 35 (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception)

(z) section 36 (engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder)

(aa) section 37 (causing a person with a mental disorder to watch a sexual act by inducement, threat or deception)

(ab) section 38 (care workers: sexual activity with a person with a mental disorder)

(ac) section 39 (care workers: causing or inciting sexual activity)

(ad) section 40 (care workers: sexual activity in the presence of a person with a mental disorder)

(ae) section 41 (care workers: causing a person with a mental disorder to watch a sexual act)

(af) section 47 (paying for sexual services of a child)

(ag) section 48 (causing or inciting child prostitution or pornography)

(ah) section 49 (controlling a child prostitute or a child involved in pornography)

(ai) section 50 (arranging or facilitating child prostitution or pornography)

(aj) section 61 (administering a substance with intent)

(ak) section 62 (committing offence with intent to commit sexual offence)

(al) section 63 (trespass with intent to commit sexual offence)

(am) section 64 (sex with an adult relative: penetration)

(an) section 65 (sex with an adult relative: consenting to penetration)

(ao) section 66 (exposure)

(ap) section 67 (voyeurism)

(aq) section 70 (sexual penetration of a corpse).

Domestic Violence, Crime and Victims Act 2004 (c. 28)

34 An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing a child or vulnerable adult to die or suffer serious physical harm).

Terrorism Act 2006 (c. 11)

35 An offence under any of the following provisions of the Terrorism Act 2006—

(a) section 5 (preparation of terrorist acts)

(b) section 6 (training for terrorism)

(c) section 9 (making or possession of radioactive device or material)

(d) section 10 (use of radioactive device or material for terrorist purposes)

(e) section 11 (terrorist threats relating to radioactive devices etc).

Modern Slavery Act 2015

36 An offence under any of the following provisions of the Modern Slavery Act 2015—

(a) section 1 (slavery, servitude and forced or compulsory labour)

(b) section 2 (human trafficking).

Ancillary offences

37 (1) An offence of attempting or conspiring to commit an offence listed in this Schedule.

(2) An offence committed by aiding, abetting, counselling or procuring an offence listed in this Schedule.

(3) An offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) where the offence (or one of the offences) which the person in question intends or believes would be committed is an offence listed in this Schedule."

This Schedule is consequential on NC46.

Jess Phillips *rose—*

Andrew Bowie: On a point of order, Mr Bone. I apologise to the hon. Member for Birmingham, Yardley. Perhaps you can instruct me, Mr Bone, on how best to place on the record my thanks to my right hon. Friend the Member for Maidenhead (Mrs May), who has been in touch to express her gratitude to all Members and officials on the Committee for taking this Bill through. It is three years since she introduced it and she very much looks forward to seeing it on Report. Will you advise me as to how best to place her gratitude on the record?

The Chair: I thank the hon. Gentleman, but that is clearly not a point of order. However, he has put it on the record.

Jess Phillips: I thought the hon. Gentleman was intervening on me before I had even spoken, which would have been a bold move. I did not know where we were going with that, but I echo the hon. Gentleman's words. I do not think anyone would ever question the dedication of the right hon. Member for Maidenhead to domestic abuse services. I knew her in my former life. When she was the Home Secretary, she would regularly visit services that I ran, whether they were for victims of human trafficking, female offenders, victims of domestic abuse or victims of sexual violence. On more than one occasion towards the end of my career there, when I was a parliamentary candidate, I was sent home on the days that she would come. I am certain that we would not have fallen out, but I was glad to work from home on those days. I think it got to the point where I was the more difficult of the two of us, so I was sent home.

When the right hon. Lady returned to the Back Benches, I thought, "What a brilliant ally she might be to me on certain things," and I was delighted that, at every opportunity during the Bill's progression, she has spoken up, including on some of the more difficult things to say. She has talked about issues of domestic abuse within the police force itself. It is bold and courageous to do so, and we will continue to rely on her input.

When speaking to new clause 33, my hon. Friend the Member for Hove discussed some of the arguments related to new clause 46, so I will not reinvent the wheel. Everyone will also be pleased to hear that this is the last new clause for the Committee to debate. New clause 46 and new schedule 1 would introduce a statutory defence for survivors of domestic abuse that is closely modelled on section 45 of the Modern Slavery Act 2015, giving them the same legal protection as that given to victims of trafficking who are compelled to offend, with the same excluded offences.

Fay Jones (Brecon and Radnorshire) (Con): I want to ask for clarification. Hon. Members know that some of us are very new to this, so it is possibly my mistake. The new clause really does not make sense to me, because subsection (1) states:

"A person is not guilty of an offence if the person is aged 18 or over when the person does the act which constitutes the offence".

That strikes me as a typo, because it should say "under", not "over".

Jess Phillips: I cannot speak for the typo, but the new clause is almost exactly, word for word, based on what the Modern Slavery Act says about modern slavery. It may well be a typo, although, having said that, I cannot absolutely vouch for it not being one. However, as somebody who has had some success with my ability to write, I do find that the law is sometimes difficult to read. It could be a mistake or it could be completely right, but I am sure that we can come back to the hon. Lady and let her know.

New clause 46 is directly modelled on section 45 of the Modern Slavery Act, giving the same legal protections as those granted to victims of trafficking who are compelled to offend. Victims of trafficking rightly have a statutory defence where they have been compelled to offend as part of, or as a direct result of, their exploitation, yet there is no equivalent defence for people whose offending results from their experiences of domestic abuse. New clause 46 would address this significant gap in the law and reflect improved public understanding of domestic abuse. It should be accompanied by a policy framework, including special measures for vulnerable defendants, drawing on policies that are in place to support section 45 of the Modern Slavery Act. That would encourage earlier disclosure of abuse and access to support, to help break the cycle of victimisation and offending.

Research by the Prison Reform Trust has shown that types of offending driven by domestic abuse vary widely. They include shoplifting to supplement an inadequate allowance from an abusive partner; being coerced into benefit fraud; holding a weapon or drugs for the abuser, as the Minister quite rightly pointed out earlier; and defending themselves against their abuser. The law needs modernising to take account of the context of domestic abuse that is so often behind women's offending in particular. Although usually minor, such offences can still leave victims behind bars and often separated from their children. Nearly half of prison sentences imposed on women are for theft offences, predominantly shoplifting.

We now understand how coercive and controlling behaviour can erode a victim's sense of self and undermine their agency. As we heard this morning, however, there remains an inconsistent approach by the police and prosecutors where an individual's offending may be attributable to domestic abuse and a lack of effective defences. As my hon. Friend the Member for Hove argued earlier, having effective defences on the statute book would direct everyone concerned in the criminal justice process to consider the domestic abuse context at an early stage. It would deter inappropriate prosecutions and, crucially, encourage earlier disclosure of abuse. A specific statutory defence is already provided for victims of trafficking in section 45 of the Modern Slavery Act 2015 and the policy framework that goes with it. This requires proactive early case management and means that all involved become more adept at recognising

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circumstances that indicate there is no public interest in prosecuting an individual or where the statutory defence should apply. It does not work in all cases—there are victims of human trafficking who end up behind bars—but I would like to think that it has heightened the awareness of people having to deal with them. Magistrates, judges and lawyers increasingly understand how exploitation in this context can lead to offending and are taking this into account to ensure that victims are not further punished.

The question asked earlier of Minister Chalk—or it might have been the new Minister Chalk—was whether this stops that process getting to the court room. In cases of modern slavery, the answer is yes. For example, if you were to find somebody in a cannabis farm or running drugs, the process stops before that point; is not like it gets to court. If somebody was sent shoplifting because of human trafficking, no one says, "This is going all the way to court". The charges are simply not made. That is my experience. The same legislation and policy frameworks should be in place to protect defendants whose offending is attributable to their experience of domestic abuse.

I will now explain why the existing common law defence of duress does not work for individuals who are compelled to offend due to their experience of domestic abuse and how new clause 46 and schedule 1—sorry, new schedule 1; we are not going back to schedule 1, having come this far—would help fix the problem. Duress is a common law defence that can be applied to offences other than murder where the defendant was acting under the threat of imminent death or serious injury, and where there was no alternative course of action for a reasonable person with relevant characteristics. However, the legal test for duress is rarely used in the context of domestic abuse for three main reasons: the complexities of domestic abuse are ignored; as the emphasis is on death or threat of serious injury, the defence does not recognise psychological, sexual or financial abuse; and for the defence of duress to suceed, the threat of physical harm must be imminent. That fails to recognise the nature of domestic abuse behaviour, including coercive control, as it is typically entrenched, unpredictable and random. To a woman whose self-esteem has been demolished by past violence, the fear of violence may be ever-present and overpowering.

In a modern slavery case, someone would say, "You've got to go and do this." Unfortunately, in the cases I handled, it was, "You've got to sleep with 30 men today." Nobody is suggesting that those women should be criminalised, thank goodness. However, in the cases of domestic abuse that I have seen where a pattern of offending behaviour occurs—for almost all the women I saw in my female offenders service, there had been a pattern of domestic abuse—there is the suggestion that things had to be got: "Why haven't I got this?" or "You've spent all your money and you haven't bought this." A woman would be faced with a situation where she had not got the things from the shop that he wanted, or did not have the money to buy something for the kids. That would often, I am afraid to say, lead to acquisitive crime offending.

It is also terrible when—I hope this has improved; I need to check—women are charged and sent to prison because their kids have not gone to school as part of their domestic abuse, as the children have attachment issues because of domestic abuse. I suppose they are free and easy at the moment because nobody is at school. On a number of occasions, I saw women criminalised because their children would not go to school, and domestic abuse was not taken into account.

The duress defence applies where a reasonable person with relevant characteristics has no alternative but to do what he or she did. For that to succeed, those experiencing abuse must show they were suffering from battered woman syndrome—it has been a long time since we called it that—or learned helplessness. Those are outdated concepts that pathologise women rather than offering an effective defence suitable for the circumstances. They require the production of medical evidence, which is not practicable in many cases involving low-level offending that are tried in a magistrates court. It would be complicated to try to get that. My favourite ever case of going to the GP about domestic violence—this shows why we may need to improve our health response to it—was when a woman I was working with tried to tell her GP that her husband was strangling her and she could not breathe. She left his office with inhalers.

4.30 pm

I can illustrate the deficiencies that I am concerned about by recounting the case of YS. YS was charged with driving while disqualified, driving with excess alcohol, driving without insurance and dangerous driving. An officer noticed a vehicle with its brake lights permanently illuminated, swerving from side to side. He activated the siren, indicating for the vehicle to stop. It did not stop, and the chase continued for five minutes. In the driving seat was a woman, YS. She explained that she had been dragged from her home, partially dressed, by her abusive partner, and forced to drive. He had threatened to kill her if she did not drive on. The partner was screaming at her throughout, punching her in the ribs and trying to grab the steering wheel. There was a recorded history of domestic abuse in the relationship. The police having stopped the vehicle, YS was prosecuted. Despite the duress, and despite the fact that YS was viewed as credible, she was convicted, and the conviction was upheld on appeal in the High Court.

New clause 46 is intended to overcome the deficiencies in the common law defence of duress for survivors such as YS, and to provide a straightforward defence suitable for the actual circumstances. That does not mean that if that defence had been available to YS, she would not have been found guilty. It would not limit normal due process. New clause 46 and new schedule 1 would enable the courts to consider whether victim-survivors were compelled to offend as part of, or as a direct consequence of, their abuse.

The provisions would fill a significant gap in the law and strengthen the legal framework for those whose lives have been blighted by abusive relationships. They have a precedent in section 45 of the Modern Slavery Act 2015 and would do no more than provide protection equivalent to what is rightly afforded to victims of trafficking, with the same excluded offences. There should be no delay in introducing such important legal protection, and helping to end the cycle of victimisation and offending.

Victoria Atkins: May I take a moment to thank my hon. Friend the Member for West Aberdeenshire and Kincardine for his non-point of order? It is right that my right hon. Friend the Member for Maidenhead

(Mrs May) be mentioned in Committee. Ministers are always encouraged by the Whips to engage with Back Benchers. It is an important part of the job to listen, consider views and try, where possible, to accommodate them. At the best of times that can be, depending on the Back Bencher, an interesting exercise, but Members can imagine what it is like to try to do Back-Bench engagement with a former Prime Minister who introduced the Bill that is the subject of that engagement: it is on a whole new level. I am delighted that she was mentioned again in the scrutiny of the Bill.

I am grateful to the hon. Member for Birmingham, Yardley for raising the point covered by the new clause. As she said, it stems from a campaign by the Prison Reform Trust. I note that my hon. Friend the Under-Secretary of State for Justice met trust representatives, the designate domestic abuse commissioner and the Victims Commissioner recently, to discuss the issue, among others. It has very much had his attention, as it now has mine.

We of course recognise the harm that is suffered by victims of domestic abuse. That is why the aim of the Bill is specifically to target it and raise awareness and understanding of its impact. It seeks to raise the profile of domestic abuse in all its forms, particularly given its pernicious nature, and to improve the effectiveness of the justice system in providing protection for victims and bringing perpetrators to justice. It also seeks to strengthen the support for victims and survivors provided by statutory agencies. The definition should help further in clarifying the wide-ranging nature of domestic abuse for all those involved in the criminal justice system, at every level.

There are several defences that are potentially available under the law. The hon. Member for Birmingham, Yardley raised some cases in her speech. I have to deal with the fact that we have these defences. The hon. Lady herself acknowledged that there will be occasions where those involved in the system do not apply the law in the manner that Parliament intended. None the less, we still have to respect the independence of the judiciary, the Crown Prosecution Service and the police in ensuring that our criminal justice system works. She mentioned the defences of duress and self-defence, which are full defences. In homicide cases we have the partial defences of loss of control and diminished responsibility.

I recognise that legal representatives and the CPS should be made aware, as soon as possible, of domestic abuse histories and their impact, in the course of making charging decisions and when considering guilty pleas. That needs to be balanced alongside the recognition of the harm done by the perpetrator of a crime and the impact on the victim, in order to ensure, wherever possible, that people do not revert to criminal behaviour. That is reflected in the law, which continues to evolve and aims to strike the right balance between these factors.

The hon. Member for Birmingham, Yardley relies on the model set out in section 45 of the Modern Slavery Act 2015. We have concerns that that model would create anomalies with other offences. For example, there is a range of offences, mainly serious sexual or violent offences, to which the section 45 defence does not apply, in order to avoid creating a legal loophole for serious criminals to escape justice. The offences that are excluded are set out in schedule 4 to the 2015 Act, which schedule 1 seeks to replicate. Identifying the trigger point resulting in the behaviour that caused the offence remains problematic. If that defence is to be raised, the issue would become at what point in time and in relation to which type of level of domestic abuse the defence became available. Establishing such a threshold would be incredibly difficult. To clarify the circumstances in which the defence would be permissible would likely reduce the applicability or effect of the new defence to the parameters already set out in existing defences. Additionally, a full defence for a defendant subject to domestic abuse would create anomalies with defendants subject to other forms of harm, such as sexual harassment from strangers. Those are anomalies I am sure that none of us would want to see.

Let me deal with the point about the Modern Slavery Act. In earlier debates I talked about the evolving methodology of gang leaders and their efforts to ensnare young people into their gangs. We have in mind that we hear from law enforcement partners that the statutory defence for victims of modern slavery is being misused, primarily by the gang leaders, to persuade the young people they are manipulating and exploiting that it does not matter if they are caught, because they will get off anyway. That will not be the case, particularly for the sorts of serious offences that are not set out in the schedule. This comes back to the point about the ability of perpetrators and those who would exploit and manipulate other human beings, and their never-ending capacity to find new ways to do so—we are concerned about that aspect as well. The hon. Member for Birmingham, Yardley mentioned a female victim of a gang being instructed to have sex with members of that gang—sadly, that is a factor that we know happens in gangs. Gang leaders find many ways to exploit vulnerable people in all walks of life, but particularly in those very hard-edged crimes. We are working with criminal justice partners to assess how the modern slavery defence is used in practice and the repercussions of that.

Existing full and partial defences cover circumstances in which a defendant is also the victim of domestic abuse. Indeed, full defences, including duress and self-defence, are defences to any crime, which, if pleaded successfully, result in acquittal. I refer to the debate that I had with the hon. Member for Hove about the decision-making process that the CPS must go through before the decision to charge is taken. At every stage of the criminal justice process, there are checks and balances. For example, at half-time, when the prosecution has closed its case, if the prosecution has failed to establish a case such that a judge feels confident to leave it to the jury, the judge will stop that case there and then. The jury will not be asked to deliver a verdict because the judge has ruled that, at the half-time submission, the evidence is insufficient and the prosecution has not done their job.

We have those checks and balances all the way through to the closing speeches. When I used to prosecute cases, I would always say to the jury, "If you find yourself using the words, 'Possibly,' 'Likely,' or 'Probably,' I have not done my job proving the case against the defendant beyond reasonable doubt." Those are the sorts of checks and balances that have been worked out over time to ensure that the guilty are convicted and the innocent are acquitted.

Partial defences, such as diminished responsibility and loss of control, reduce a charge for murder to manslaughter. Very recently, the incredibly moving case

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of Sally Challen not only demonstrated that partial defences can be employed, but showed the improvement in our understanding over a matter of years. Ms Challen was convicted in 2010 and a matter of years later, we have a better understanding of domestic abuse, and her appeal was successful.

Those checks and balances are important to ensure that, wherever possible, victims make their background and circumstances known. I very much hope that the Bill's success in raising awareness about the sorts of things that the Committee has debated in such depth and degree will ensure that the justice system is as effective as it can be in providing victims and survivors with as much protection as possible—I am sure that I will work on that with colleagues from across the House. On that note, I will conclude.

Jess Phillips: It seems almost unfair on the Minister that I get the last word on a Bill that she introduced, but that is the system. I welcome what she said, and I will take up that issue with the Under-Secretary of State for Justice, the hon. Member for Cheltenham, and with the Prison Reform Trust.

I am very interested in—but unsurprised about—the idea that, in the Modern Slavery Bill, there is potential to say, "You are going to get away with it," without recognising that what we are talking about here is mostly minor crimes—nothing that causes harm to others, no sexual abuse and no domestic abuse. However, it is very much the case that in patterns of abuse, people end up abusing other people. That is a complex area and we want fairness both for those who are accused and for those who are suffering. I will withdraw the new clause, and everybody can finally be done with the millions of amendments. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

4.45 pm

Question proposed, That the Chair do report the Bill, as amended, to the House.

Victoria Atkins: On a point of order, this is the moment at which it is customary to say a few words to mark the end of our deliberations in Committee and to reflect on the intensive scrutiny that the Bill has received, but also to thank certain people for their help in assisting the Committee with our scrutiny. These thanks come very much from my hon. Friend the Member for Cheltenham as well as from me. He is busy elsewhere in the Palace, but he is very keen to thank people as well.

First, I thank you, Mr Bone, and Ms Buck. You have both managed to keep us in order at an appropriate distance, which is a skill. I thank my hon. Friend the Member for Cheltenham; it has been a genuine pleasure to work on this stage of the Bill with him. He has shown just what an expert he is as a Justice Minister, having been in the job for only a very short period. He is a real joy to work with and has really made his mark already.

They are not often thanked, but I also thank my Government Whip, my hon. Friend the Member for Castle Point, who has been excellent in ensuring that, on most days—every day, in fact—we finish on time. She has also been very generous with the hand sanitiser. I genuinely thank the Opposition Front Benchers. The hon. Member for Birmingham, Yardley has brought all her experience outside this place into the Committee room, and I sincerely thank her for that. I thank the hon. Member for Hove for his very pertinent but charmingly articulated points, which can often be deadlier than shouting and creating a fuss. I also thank the hon. Member for Blaydon, the Opposition Whip—our Whips play an incredibly important part in ensuring that the Committee works properly and works to a timetable.

Of course, I thank the Clerks, who have had to, with other colleagues in the House, really test what the Palace—and this room—can accommodate in these very difficult circumstances. Thanks, of course, go to *Hansard*. It seems like a lifetime ago that we were in Portcullis House and being instructed that Members sat at the back of the Public Gallery would have to shout for *Hansard*—what extraordinary times, but we managed it. I would normally thank the Doorkeepers; we have not had any Doorkeepers, but I thank them anyway.

I thank the officials and lawyers from the Home Office, the Ministry of Justice, the Ministry of Housing, Communities and Local Government, the Department of Work and Pensions, the Department for Education, the Department for Business, Energy and Industrial Strategy and the Department for Health and Social Care—seven Government Departments have been involved in the Bill thus far. Special mention must go to a certain Charles Goldie, the Bill manager. This is, I believe, the 20th Bill—*[Interruption]*—the 21st Bill that Charles has manoeuvred through Parliament in expert fashion. To put that in context, last night, when we were dealing with one of today's new clauses—the reasonable force clause—I discovered that the 2008 Act on which the hon. Member for Hove was relying was managed by a certain Charles Goldie.

I do not want anyone to feel left out, so I must thank Kate in my private office, who has been doing amazing work alongside Robert, who is the MOJ private secretary. They have really tried to get around the awful fact that we cannot have box notes, so Kate has been tapping away furiously. I thank her very much for everything that she does.

I thank the other members of the Committee for what has been really interesting, thoughtful and thought-provoking scrutiny. I hope that they feel that they have both contributed to and gained from that. I look forward to their contributions at the next stage.

Finally, I thank all the witnesses who contributed, both in person and in written form. Particular thank go to the organisations that work on the frontline with domestic abuse victims and survivors, and to the victims, who were very brave and came to give live evidence before the Committee to tell us their lived experiences. Thanks to them all—that is why we are trying to pass this piece of legislation.

The Chair: Thank you, Minister, for that totally bogus point of order. It was one of the longest points of order that I have ever had, but perhaps one of the best.

Question put and agreed to.

Bill, as amended, accordingly to be reported.

4.50 pm

Committee rose.

Written evidence reported to the House

DAB83 The AIRE Centre (Advice on Individual Rights in Europe)

DAB84 Victim Support

DAB85 London Victims' Commissioner

DAB86 Fulfilling Lives South East Partnership

DAB87 Latin American Women's Aid and Dr Charlotte Proudman

DAB88 RISE

DAB89 Welsh Women's Aid

DAB90 Southall Black Sisters—Further submission

DAB91 Dr Craig A. Harper and Dr Dean Fido, lecturers in forensic psychology at UK Universities (University of Derby; Nottingham Trent University)

DAB92 Brian Maloney

DAB94 Society for the Protection of Unborn Children

DAB95 Step Up Migrant Women Coalition—Further submission

DAB96 The Disabilities Trust