PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

COUNTER-TERRORISM AND SENTENCING BILL

Sixth Sitting

Thursday 2 July 2020

(Afternoon)

CONTENTS

Clause 27 agreed to.
Schedule 9 agreed to.
Clause 28 agreed to.
Schedule 10 agreed to.
Clauses 29 to 36 agreed to.
Schedule 11 agreed to.
Adjourned till Tuesday 7 July at twenty-five minutes past Nine o'clock.
Written evidence reported to the House.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 6 July 2020

The Committee consisted of the following Members:

Chairs: Steve McCabe, † Mr Laurence Robertson

† Bacon, Gareth *(Orpington)* (Con)
† Butler, Rob *(Aylesbury)* (Con)
† Cadbury, Ruth *(Brentford and Isleworth)* (Lab)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
Cherry, Joanna *(Edinburgh South West)* (SNP)
† Courts, Robert *(Witney)* (Con)
† Cunningham, Alex *(Stockton North)* (Lab)
† Dines, Miss Sarah *(Derbyshire Dales)* (Con)
† Everitt, Ben *(Milton Keynes North)* (Con)
† MacAskill, Kenny *(East Lothian)* (SNP)
† McGinn, Conor *(St Helens North)* (Lab)
Mak, Alan *(Havant)* (Con)
† Marson, Julie *(Hertford and Stortford)* (Con)
† Owatemi, Taiwo *(Coventry North West)* (Lab)
† Philp, Chris *(Parliamentary Under-Secretary of State for Justice)*
† Pursglove, Tom *(Corby)* (Con)
† Trott, Laura *(Sevenoaks)* (Con)

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

† attended the Committee

Public Bill Committee

Thursday 2 July 2020

(Afternoon)

[Mr Laurence Robertson *in the Chair*]

Counter-Terrorism and Sentencing Bill

2 pm

The Chair: I will make a few preliminary points. As usual, please switch electronic devices to silent, and teas and coffees are not allowed in the room. I remind the Committee of social distancing rules. The *Hansard* reporters would be grateful if Members sent any copies of their speaking notes to hansardnotes@parliament.uk.

Clause 27

Removal of early release for dangerous terrorist prisoners: England and Wales

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

The Parliamentary Under-Secretary of State for Justice (Chris Philp): It is a great pleasure to serve once again under your chairmanship, Mr Robertson. The clause is the first clause in part 2 of the Bill, and is one of the most important sections. It removes the prospect of early release for the most dangerous terrorist offenders in England and Wales. The provision is central to the core aims of the Bill—namely, ensuring that the most dangerous offenders serve their full sentence, to reflect the serious nature of their crimes and to protect the public from them. Some of the recent terrible terrorist atrocities have powerfully demonstrated the awful consequences that can follow the early release of a terrorist offender who goes on to reoffend, sometimes with tragic and fatal effect.

The clause amends section 247A of the Criminal Justice Act 2003, under which relevant terrorist offenders are currently referred to the Parole Board at the two-thirds point of their custodial term, to be considered for discretionary early release. The clause would exclude a particular class of the most dangerous offenders from discretionary early release if they receive an extended determinate sentence; if that sentence is for a terrorist or terrorist-related offence; and if that offence carries a maximum penalty of life imprisonment. Only if those three conditions apply is the prospect of discretionary early released removed, and those offenders instead serve their full custodial terms.

This is an important measure to protect the public. The only way to be certain that someone will not reoffend is if they are in prison. Of course, after release, offenders who have served their full custodial term under the provisions of the clause will then be subject to the extended licence period that we discussed this morning, which can now be as long as 10 years. During the extended licence period, work on rehabilitation can continue and public protection can be maintained. It is not as if offenders are simply let out and we forget about them; the licence conditions and monitoring will be extremely important. On that basis, I commend the clause to the Committee.

Ruth Cadbury (Brentford and Isleworth) (Lab): As the Minister said, the Bill brings a new facet to criminal justice by creating the serious terrorism sentence in an earlier clause but removing early release for those who prove to the Parole Board that they have been rehabilitated to the extent that they could be released from a custodial sentence.

As my right hon. Friend the Member for Tottenham (Mr Lammy) and other hon. Friends said on Second Reading, we do not oppose the changes, because they apply to the most serious offenders who pose the greatest risk to the public. However, as we heard from a number witnesses, the changes carry risks of which we should be cognisant following the adoption and implementation of the Bill. We all have experience of judicial processes and policies that have changed because of various Bills, and there has been regret because the unintended consequences were not considered fully at the time. I also have concerns that the clause applies to under-18s. That raises further issues, which my hon. Friend the Member for Stockton North has already covered, about the vulnerability of young offenders and also their ability to reform.

I draw the Committee's attention to the note on the Bill that was published by Jonathan Hall, the Independent Reviewer of Terrorism Legislation. He also referred to this in his evidence to the Committee last week. His note stated:

"Firstly, to the extent that the possibility of early release acted as a spur to good behaviour and reform for offenders who are going to spend the longest time in custody, that has now gone…Secondly, the opportunity to understand current and future risk at Parole Board hearings has also been removed."

I am not clear what has replaced it, notwithstanding that early release has been removed. What is the full process to replace the Parole Board to understand current and future risk? Jonathan Hall was also concerned that

"child terrorist offenders, whose risk may be considered most susceptible to change as they mature into adults, have lost the opportunity for early release."

Of course, they will be in their 30s by the time they are released from custody.

Peter Dawson of the Prison Reform Trust told us that the Parole Board could release early, and he pointed out that more often than not the Parole Board does not release people early. He confirmed that it is an important part of identifying terrorist risk.

Jonathan Hall also said:

"The role of the Parole Board is quite an important part of identifying terrorist risk, and if you don't have that role then you lose that insight."—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 25 June 2020; c. 12, Q20.]

We have also had evidence from witnesses saying that the opportunity for someone to prove that they have reformed—this is particularly true for young offenders—is removed by the changes made by the Bill.

I do not know how many Members have had a chance to look at their emails in the past couple of hours, but two and a half hours ago we received evidence from the Bar Council, which says that this clause needs to be scrutinised with particular care. It does not address many clauses, but it says that clause 27 "stands out". It says:

"We would question how Clause 27 fits with the obligation placed on the court to have regard to the reform and rehabilitation of offenders when sentencing (s.57(2) of the Sentencing Code).

This provision would not appear to be the subject of an exception to the s.57(2) obligation, in contrast with the express carve out from s.57(2) relating to the imposition of life sentences for specific terrorist offences (Clause 11)."

I return to Peter Dawson of the Prison Reform Trust, who said:

"The problem with denying all hope of release on a conditional basis by a judgment about whether the person can be released safely or not is that it denies hope and affects the whole of the prison sentence…The possibility of parole is essential to the process that reduces risk."—*[Official Report, Counter-Terrorism and Sentencing Public Bill Committee, 25 June 2020; c. 32, Q72.]*

In its evidence, the Prison Officers Association described graphically what the loss of hope means for prison management and for the risk of violence against prison officers.

Rob Butler (Aylesbury) (Con): Does the hon. Lady accept what Mr Fairhurst from the Prison Officers Association said in response to a question from me about the rehabilitation and deradicalisation programmes for terrorist offenders? He said that there needs to be a full review of those programmes, and they are exactly what one would hope would turn people around if they were to be released early. The clear sign at the moment is that they are not good enough to enable early release, so prisoners need to serve the full term in custody.

Ruth Cadbury: What the hon. Gentleman says would be fine if we had that review of the Prevent programme and the programmes in prison. As several of my colleagues have said, the Bill does not provide for a review of those processes, so we have one side without the other, and that is a cause of concern for me and some of the witnesses.

Alex Cunningham (Stockton North) (Lab): Further to the matter that the hon. Member for Aylesbury just raised, do we have a commitment from the Government to undertake a full review of the methods that he described?

Ruth Cadbury: That is what I was going to say. I think there needs to be a review of this, as and when it is implemented.

Robert Courts (Witney) (Con): The hon. Lady is quoting from the Bar Council. I want to make the Committee aware, in reference to my entry in the Register of Members' Financial Interests, that I am a member of the Bar and have practised at the Bar of England and Wales.

Ruth Cadbury: The Bar Council is a very authoritative body that needs to be listened to when we are introducing legislation that affects issues such as sentencing.

On the POA point, Peter Dawson pointed out clearly, in relation to violence against prison officers, that when hope is lost and the atmosphere and the management of prisoners gets much more difficult, we have nowhere to move terrorist prisoners who are already in specialist separation centres. He said that removing hope of early release increases that risk. I would like the Government to commit to a review if the proposal is implemented in this way. Obviously, we support the motivation behind it.

I have one more question for the Minister. Might the option for this sentence, with the loss of early release, lead to unintended consequences in charging and sentencing? Would sentencers avoid it and impose a lesser sentence? I am sure that the Government do not intend that.

Chris Philp: Let me briefly respond to one or two of the points that the hon. Member for Brentford and Isleworth made. She referred to the fact that if the sentence is served in full, there obviously will not be a Parole Board assessment prior to release. She asked about the risk assessment that would take place. I asked Mr Fairhurst from the Prison Officers Association about that in our evidence session on Tuesday morning. Even where there is no Parole Board involvement because release is automatic, there are a whole load of other review and evaluation mechanisms that can be used—for example, multi-agency public protection arrangements, careful monitoring by the prison staff and prison governor, and involvement by the National Probation Service in preparation for the release point. With the example of the Streatham offender, those kinds of risk-assessment measures led to a security services team monitoring him, which obviously had the result that it did. That is an example, as Mr Fairhurst said in evidence, of the risk assessment process working very effectively. That is what we would expect to happen in cases in which release is automatic.

The hon. Lady also asked: what happens when hope is lost? What if a prisoner is in prison and there is no prospect of early release? Does that not mean that it will be hard to get them to behave well? I want to make some points in response. First, the vast majority of prisoners, who have committed a range of offences, way beyond terrorist ones, are serving standard determinate sentences and are released automatically—typically at the halfway point—without any Parole Board intervention. The vast majority are subject to automatic release at a particular point. The second risk, particularly in relation to terrorist offenders, is that of false compliance, if they think that by pretending to comply with the deradicalisation programme, they might get released early. That is not necessarily an entirely healthy incentive and we should be mindful of that possibility.

2.15 pm

The third point, however, is the most important one. The hon. Lady remarked on prisoners potentially losing hope, although there is a point, of course, at which they will be released. Against that point about hope, however, we need to balance public protection. This is a cohort of very serious offenders, as I defined earlier, and it includes people who have received the serious terrorist sentence that we discussed in earlier sittings.

We are talking about this very small cohort of the most serious offenders, and as a Committee and as Members of Parliament we must weigh very carefully the consideration of public protection. In these circumstances, we feel—rightly—that public protection is overwhelmingly served by the full sentence being served in custody.

On the hon. Lady's final point about a review, as I have said to the shadow Minister in the past, there will be a review three years hence. It is general practice for legislation to be reviewed at that point. There is also the Prevent review, which we will talk about when we discuss

a later clause. Reviewing is important; she is quite right about that. We need to be thoughtful about laws after we pass them, to make sure that they are operating in the manner that was intended, and that there are not any nasty surprises of the kind that the shadow Minister mentioned earlier—a very nasty surprise, in the case of the former hon. Member for East Surrey.

We need to be mindful and to review legislation after it is passed. We have regular mechanisms for doing that, and I have mentioned the review of the Bill three years after it has happened and the Prevent review, which will happen. I hope that that adequately addresses the hon. Lady's concerns.

Question put and agreed to.

Clause 27 accordingly ordered to stand part of the Bill.

Schedule 9 agreed to.

Clause 28

REMOVAL OF EARLY RELEASE FOR DANGEROUS TERRORIST PRISONERS: SCOTLAND

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

Chris Philp: The operative provisions of clause 28 are very similar—in fact, they are identical—to those in clause 27, except that they apply to Scotland. Practically, that is given effect by amending section 1AB of the Prisoners and Criminal Proceedings (Scotland) Act 1993. The substantive effect of this provision is exactly the same as that for clause 27, which we have just debated.

Question put and agreed to.

Clause 28 accordingly ordered to stand part of the Bill.

Schedule 10 agreed to.

Clause 29

FURTHER PROVISION ABOUT RELEASE OF TERRORIST PRISONERS: SCOTLAND

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

Chris Philp: This is another consequential provision, which makes sure that the measure in clause 28 that we have just approved operates consistently in relation to the administration of licence periods for serious terrorism sentences and terrorism sentences for fixed licence periods in Scotland.

Question put and agreed to.

Clause 29 accordingly ordered to stand part of the Bill.

Clause 30

RESTRICTED ELIGIBILITY FOR EARLY RELEASE OF TERRORIST PRISONERS: NORTHERN IRELAND

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

The Chair: With this, it will be convenient to discuss Government amendments 33 and 34.

Chris Philp: Clause 30 and the amendments to it essentially apply to Northern Ireland. Some months ago in Parliament, we debated the provisions to end the automatic early release of terrorist prisoners. Committee members will recall that at the time we did not apply those provisions to Northern Ireland. But having carefully considered, in particular, the European convention on human rights and common law retrospectivity provisions, we are now comfortable that those principles are not infringed by applying the Terrorist Offenders (Restriction of Early Release) Act 2020 provisions to Northern Ireland, and this clause does so.

Amendments 33 and 34 are consequential on those changes. Amendment 33 ensures that terrorist prisoners who will serve longer in custody as a result of the Bill are not released early for the purposes of deportation under the early removal scheme in Northern Ireland. That is a consequential point. Amendment 34 ensures, for offenders who will be newly eligible for parole commissioner-considered release through the provisions of this Bill in Northern Ireland, that that is done in accordance with the parole commissioners' existing rules. That brings Northern Ireland fully into conformity with the rest of the United Kingdom.

Conor McGinn (St Helens North) (Lab): It is a pleasure to serve under your chairmanship, Mr Robertson. The main focus of my contribution to the Committee as the shadow Security Minister will be on part 3 of the Bill, but for reasons obvious even to the untrained ear, I have been asked to speak on some of the Northern Ireland aspects of the Bill.

May I crave your indulgence for a moment, Mr Robertson? While the Committee has been sitting, it has been announced that the largest ever law enforcement operation in the UK took place today. Operation Venetic has seen 746 arrests, with £54 million of criminal cash seized, along with 77 firearms and 2 tonnes of drugs. The whole Committee will want to pay tribute to Lynne Owens and the National Crime Agency and all the police forces involved in that fantastic operation. [HON. MEMBERS: "Hear, hear."]

I am always concerned when I hear Ministers talk about Northern Ireland being brought into "conformity" with the rest of the United Kingdom, because although it is an integral part of the Union, and that is indisputable under the terms of the various agreements that have been reached, it is not the same as other parts of the United Kingdom, particularly when it comes to measures relating to tackling terrorism, because there is a long history there that has evolved over how to address that, particularly when it comes to sentencing, rehabilitation and the particular licensing arrangements that there are.

I have had, as I know the Minister has had, extensive discussions with the Justice Minister in the Northern Ireland Executive on this clause in particular. We have tabled a new clause to ask for all the provisions to be reviewed, so I do not intend to speak on all the Northern Ireland measures contained herein until that is debated, but I did think it important to draw attention to this matter, particularly after discussions with Naomi Long on behalf of the Northern Ireland Executive.

There is real concern about the retrospective removal of the automatic right to release. The Justice Minister in the Department is very clear that that will require amendments to sentence-calculation processes and, critically, the power of the Department to refer cases to the parole commissioners and the powers of the commissioner to direct early release for offenders subject to determinate custodial sentences. The concerns can be condensed down to some key points.

The first is about—I was interested to hear what the Minister said about this—attracting legal challenge on ECHR-compatibility grounds. There is a belief in the Department of Justice in Northern Ireland that these measures will attract that. In addition, there is concern that the Department of Justice in Northern Ireland will be a respondent to any challenge that is made in the Northern Ireland High Court or subsequent proceedings in the Northern Ireland Court of Appeal, which could be a significant drain on its resources.

There is concern about the risk of destabilising the separated regime. The Committee might not be aware that paramilitary prisoners or those convicted of terrorist offences in Northern Ireland are separated. They are held in specific circumstances and subjected to specific programmes, on the basis of their perceived paramilitary affiliation.

Another worrying element is the potential increased risk to the safety of prison staff as a result of the reaction to these measures. In recent years we have seen David Black and Adrian Ismay, two prison officers in Northern Ireland, murdered by dissident republicans. That is something that we need to be very cognisant of: in making laws here, we have a direct impact on the people who we are asking to carry them out. They have to live in the community in Northern Ireland and face the threat that they, along with our brave police officers and the Police Service of Northern Ireland, do every day.

There is also a concern—shared by colleagues from the Democratic Unionist party as well as by the Justice Minister—that this has the potential to lead to currently serving terrorist offenders being released without licence supervision. It undermines the public protection arrangements currently in place and goes against the ethos and principles of the Northern Ireland sentencing framework. In taking these measures to avoid a cliff edge in England and Wales, we may inadvertently introduce a cliff edge to Northern Ireland that is mitigated by arrangements that are already in place there.

There was a more general concern about the erosion of the principle of judicial discretion to set appropriate custodial and licence periods. I thought it important that the Committee heard those concerns, because we, as the official Opposition, share some of them and want to work, as we always have done, in a bipartisan manner—not just on issues of national security, but on matters pertaining to Northern Ireland. It was important from that perspective and because we do not have Northern Ireland Members here to make those arguments. We do have, after years of painstaking effort by Governments of all hues, the restoration of the Executive, so it was important that the Minister of Justice for Northern Ireland—in addition to the influence she is bringing to bear in discussions with the Minister—had those concerns publicly recorded with the Committee.

Chris Philp: Let me briefly reply. I echo the hon. Member's comments about the operations today. Our police and security services do fantastic work, and the huge operation today is an example of that work at its very best, so I join him in thanking them and congratulating them on the tremendous work they have done.

On Northern Ireland, the hon. Member is quite right: we are currently having detailed conversations with Naomi Long, the Justice Minister in Northern Ireland. As he says, it is very good news that the functioning Executive has been restored—it is good for Northern Ireland and good for us in Westminster to have a body that we can have dialogue with. Let me assure him that the dialogue is ongoing; it touches on many of the issues that he raised.

On the risk of legal challenge, the hon. Member will know that there has already been a legal challenge to the TORER Act that we passed back in February, and that is subject to a judgment that we await; I will therefore not comment on that any further. What I will say—in fact, I have said this to Naomi Long—is that we will certainly support the Northern Ireland Department of Justice in any litigation that it gets involved in. We have obviously done a great deal of work in preparing for that case; we would be happy to make that available and to support the Department in every way. We would not want it to be, as the hon. Member has suggested, burdened by having to defend cases. We will certainly stand with it and help practically with preparing for those cases, so that they do not unduly drain what I know are quite limited resources. I can give him a direct assurance on that. More generally, we are involved in detailed discussions, which are continuing.

Question put and agreed to.

Clause 30 accordingly ordered to stand part of the Bill.

Clause 31

REMOVAL OF EARLY RELEASE FOR DANGEROUS TERRORIST PRISONERS: NORTHERN IRELAND

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

Chris Philp: Clause 31 simply makes the same provisions that we discussed in clause 27 for England and in clause 28 for Scotland, applicable also to Northern Ireland. I do not propose to go over those provisions again; they are in substance the same.

Question put and agreed to.

Clause 31 accordingly ordered to stand part of the Bill.

Clause 32

POLYGRAPH LICENCE CONDITIONS FOR TERRORIST OFFENDERS:

ENGLAND AND WALES

2.30 pm

Kenny MacAskill (East Lothian) (SNP): I beg to move amendment 48, in clause 32, page 28, line 22, at the end insert—

"(b) In subsection (1) at the end insert—

( ) The regulations under section 35(1) of the Counter-Terrorism and Sentencing Act 2020 must include provision that the following must not be used in evidence against the released person in any proceedings for an offence—

(a) any statement made by the released person while participating in a polygraph session, or

(b) any physiological reaction of the released person while being questioned in the course of a polygraph examination."

This amendment ensures that the results of any polygraph test must not be disclosed for use in a criminal prosecution.

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

[The Chair]

Amendment 49, in clause 33, page 29, line 41, leave out "may" and insert "must"

This amendment ensures that the results of any polygraph test must not be disclosed for use in a criminal prosecution.

Amendment 50, in clause 34, page 31, line 13, leave out "may" and insert "must"

This amendment ensures that the results of any polygraph test must not be disclosed for use in a criminal prosecution.

Kenny MacAskill: It is a pleasure to serve under your chairmanship, Mr Robertson. Amendments 48, 49 and 50 were tabled in the name of Scottish National party Members but were put forward by the Law Society of Scotland, trying to achieve the best interests. That is obviously the position of the Government, but there is a distinctive legal jurisdiction. I know that yesterday the Prime Minister referred to the fact that there was no border between Scotland and England, but administratively and legally there most certainly is—the Minister has commented on that both today and yesterday.

Indeed, there is also the issue of polygraphs, which these amendments relate to. They are something that is currently unknown within the Scottish legal jurisdiction. They are something that, to be fair, the Scottish Government are sceptical about, but so are the legal profession and the judiciary. However, it is accepted that this is a reserved issue. It is a Government policy, and they are entitled to bring in that policy and it will have effect. Therefore, I think we are required to ensure that Scotland is able to deal with it adequately and appropriately.

These amendments are put forward on the basis of seeking to improve the legislation or seeking assurances from the Minister that the issues causing concern are being or will be dealt with. To be fair, the amendments are not simply tautological in any way; they are, in fact, a point of principle. We know that legislation is significant, and that the interpretation of words matters. It will produce a significant difference in the outcome, and it is not a matter that we can simply leave to a future court. In bringing the amendments forward, we seek clarification on the matters of concern. "Must", as I say, is not tautological, in our view, but gives a clear indication that it is mandatory. "May", while it may very well end up being the likely situation, certainly leaves it much more discretionary, even if it is not entirely absent.

As I say, the amendments were tabled on the basis of seeking clarification that Scotland will be able to act within the separate structures that we have, accepting the requirement and will of the Government, but that we take into account various issues and, in particular, the ability to protect the rights of the accused or, indeed, the released person in future issues that may come before them, to ensure that it is not counterproductive for them, and indeed that the system that we are operating is able to operate as efficiently as possible.

Alex Cunningham: We welcome this amendment in the name of the hon. Members of the Scottish National party, and we agree that the results of any polygraph must not be disclosed for use in a criminal matter. Put simply, they are far too unreliable to be used as evidence or an indicator of a person having committed a crime. We do not determine a verdict by the toss of a coin and Members will recollect the oral evidence given by Professor Acheson, who, in answer to a question about our operating regime for polygraph tests from the hon. Member for East Lothian, said:

"I must say I am not a great fan of the polygraph solution. Polygraphs are a very good way to demonstrate a physiological response to nervousness. Most people who take polygraphs are going to be nervous, so it is a very inexact science. I think it is probably slightly better than tossing a coin."—[*Official Report, Counter-terrorism and Sentencing Public Bill Committee,* 30 June 2020; c. 80.]

We should not be using a method as unreliable as a polygraph to determine whether a person has committed a crime. So I join the hon. Member for East Lothian in asking the Minister to give assurances here and now that the use of polygraph testing for offenders released on licence will not become a stepping-stone towards the introduction of polygraph testing across the justice system.

As colleagues may have noticed, I have submitted a new clause on the issue of polygraphs so I shall reserve most of my comments for the stand part debate later today, but we do need some clarification and assurance that we are not moving in the direction of an unreliable method of fact-finding like polygraphs.

What knowledge and evidence do the Government have on the reliability of polygraph tests, and why are they intent on their use in this context? As Professor Acheson said in his oral evidence,

"Polygraphs are a very good way to demonstrate a physiological response to nervousness"—

I am aware that I am repeating myself—and I, for one, would certainly be nervous undertaking a polygraph even if I knew I had not committed a crime, which makes me question whether polygraphs provide anywhere near the necessary level of assurance. We need a much more robust system if we are to start making decisions around a person's future. We are not entirely dismissive of the place of polygraphs or the potential role that they can play, but we would not want to see the burden of proof rely heavily, or even moderately, on a polygraph result.

I plan to go into further detail in later examination of the Bill, once we reach the new clauses, on the impact of polygraph licence conditions on those with protected characteristics. In the meantime, it would help if the Minister were able to clarify the Government's position on polygraph tests, including plans for future use.

Miss Sarah Dines (Derbyshire Dales) (Con): On a point of order, Mr Robertson. There was an unintentional mistake earlier, about Professor Acheson saying that the polygraph was only "slightly better" than the toss of a coin. Those who were here last week listening to the professor will remember—it is in the *Hansard* record at column 83—that I called him out on that. He said that I was "quite right" to do so and that it was a "useful" test. It is tricky, I know, when looking back on evidence on a hot afternoon. It was a mistake, I think.

The Chair: I think we are getting into matters of debate. The point was well made.

Chris Philp: As we discussed in evidence last week, the Government—and the Committee—fully recognise that polygraph testing does not provide definitive information that meets a burden of proof that a court of law would expect to be met.

We did hear, however, compelling evidence from Professor Grubin that polygraphs provide a great deal of utility in two areas—first, in causing offenders being questioned while a polygraph is being applied to disclose more information than they otherwise would. He gave some compelling statistics, showing that a high proportion—from memory, something like two thirds—of offenders questioned with a polygraph being applied made a disclosure of information, which is a far higher figure than would ordinarily be the case. It is helpful to get people on licence to disclose information that is useful in working out whether their licence conditions are being adhered to.

Secondly, if a negative polygraph result follows in answer to particular questions, the principal consequence is further investigation by the probation service or, if appropriate, the police. Only if those further investigations yielded new evidence or new facts would further action follow. Polygraph evidence would never be admissible in a court of law, and there is no intention of that, because we heard clearly that although it is helpful, it is not definitive in a way that we would wish evidence submitted to a court of law to be definitive.

That approach is already enshrined in section 30 of the Offender Management Act 2007, expressly disallowing the admissibility of polygraph evidence in court, but it is also covered in the equivalent provisions made for the devolved Administrations in this Bill, particularly clause 33 in relation to Scotland and clause 34 in relation to Northern Ireland. The Bill and the law in general are clear about how polygraph evidence should be used.

On amendments 49 and 50, and the use of "may not" as opposed to "must not", I think that the phrases have the same meaning. "We may not do something" means the same as "we must not do something"—it is an express prohibition. I am sure it is helpful to put my view of that on the record, and I hope that the Committee concurs. It is categoric that something that may not be used cannot be used, and must not be used in any circumstances.

In support of clause 32 standing part, this is a useful additional tool in the hands of the probation service. It is used already with sex offenders in England and Wales. Professor Grubin provided very informative evidence—certainly the most entertaining evidence that we heard during our earlier proceedings. He made a powerful case for the way in which polygraphs, used properly, carefully, with the right training and with acknowledgment of their limitations, add something to the monitoring process. Therefore I think it is appropriate to include the measures.

Kenny MacAskill: I am grateful for the Minister's response. I am not going to debate "may" or "must", which seems to be becoming a tautological argument. I am happy to accept the Minister's assurance, and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

The Chair: With this it will be convenient to discuss new clause 6—*Reports on polygraph licence conditions for terrorist offenders*—

"(1) Before section 32 comes into force the Secretary of State must lay before Parliament a report in accordance with subsection (4).

(2) Before section 33 comes into force the Scottish Ministers must lay before the Scottish Parliament a report in accordance with subsection (4).

(3) Before section 34 comes into force the Department of Justice must lay before the Northern Ireland Assembly a report in accordance with subsection (4).

(4) The form of the reports is an analysis of the expected impact of the appropriate section of this Act on people with protected characteristics, including but not limited to—

(a) the impact on people from minority faith groups, including the numbers received into prison and the length of the sentence served;

(b) the impact on people from BAME communities, including the numbers received into prison and the length of the sentence served;

(c) the consequences of any disproportionate impact on people with protected characteristics on efforts by the prison authorities to rehabilitate prisoners convicted of terrorism offences; and

(d) the impact on people with physical and mental disabilities.

(5) No later than the anniversary of the appropriate section coming into force in each subsequent year, the Secretary of State, Scottish Ministers and Department of Justice must each lay a further report updating the analysis under subsection (4)."

Alex Cunningham: I want to address new clause 6, and will be brief as I have covered much of what I wanted to say with reference to the SNP amendments. I will do the same on clause 35.

The new clause is simple enough. It would build in safeguards for people with protected characteristics, which includes people from minority faith groups and the BAME community, including on the numbers received into prison and the length of the sentence served, by ensuring that the Government commission reports on the impact of the relevant provisions on the distinct groups. The report would also cover the consequences of any disproportionate impact on people with protected characteristics on prison authorities' efforts to rehabilitate prisoners convicted of terrorism offences, as well as the impact on people with physical and mental disabilities.

We can all accept—and the evidence given to the Committee bears it out—that polygraph tests are far from being the holy grail in general, never mind when they are applied to the people covered by the amendment. It is worth noting that some of the evidence contained more detail. Professor Silke—I hope I will quote him correctly this time—was clear in his evidence. He said that there could be a role for polygraph tests, but discouraged Ministers from going headlong into a full roll-out:

"There are potential benefits to using polygraphs within an enhanced framework, recognising that they do have their limits. I support the calls that are being made, if polygraphs are being introduced, for running a pilot programme first before implementing them across the estate."—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 30 June 2020; c. 86, Q182.]

Rather than going full steam ahead and introducing a regime of polygraph testing for everyone in the category in question, will the Minister launch the pilot that Professor Silke and other witnesses favour? That would help to address some of the issues that I have been concerned about, and that I raise in the new clause.

The Minister will be pleased to hear that I shall not rehearse again the injustices against certain groups that sadly remain very much part of the justice system, but I ask him to be mindful of the reality and to recognise that data is critical if we are to overcome those injustices.

Chris Philp: I would say two things about a pilot. First, as I said before, polygraph use has been running for a number of years now for sex offenders in England and Wales, and it has been found to be useful. It is used quite widely around the world, as Professor Grubin mentioned in his evidence.

In particular, the use of polygraphs for monitoring licence conditions is designed first to prompt the disclosure of information and secondly to provide information that might be followed up. Bearing that in mind, I do not think that the biting effect of the polygraph findings is of sufficient severity to require further pilot work, particularly as the technique is used already.

As to BAME communities, that is something we debated at some length a short time ago, as the hon. Gentleman said, but I would observe that the application of the technique applies to everyone equally, regardless of colour and creed.

In relation to the review, there is a standing convention that legislation is reviewed three years after coming into effect. I am sure that the effectiveness of the provision will form part of such a future review.

Alex Cunningham: That is very helpful. I will not press the new clause.

Question put and agreed to.

Clause 32 accordingly ordered to stand part of the Bill.

Clause 33

Polygraph licence conditions for terrorist offenders: Scotland

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

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

Amendment 56, in clause 52, page 43, line 4, after "32" leave out "to" and insert ", 34 and".

Amendment 57, in clause 52, page 43, line 4, at end insert—

"(3A) Section 33 comes into force on such day as Scottish Ministers may by regulations appoint."

This would have the effect that provision in the Bill that relate to polygraph testing would only become operational if the Scottish Government asked for those provisions to be implemented.

2.45 pm

Kenny MacAskill: Amendment 56 is procedural, and may well have been superseded. Amendment 57 is to do with the situation in Scotland, where we do not have any current regime for polygraphs. It has been put forward to introduce a trigger, because the numbers in the cohort referred to by the Minister are clearly going to be limited. Even during my tenure in Scotland, we had only a handful, because most of our terrorists—all but a few—have been paramilitary and Northern Ireland-related. On that basis, it may be appropriate to have a trigger and that the provision should be implemented as and when necessary, as opposed to setting up a regime that is not going to be used perhaps ever, but certainly not for a short period of time. That would give Scottish Ministers, and indeed the Scottish legal system, an opportunity to prepare.

Chris Philp: We recognise that, as the hon. Gentleman has said, there is no operation of polygraph currently in Scotland. In considering the commencement provisions, it is the clear intention of the UK Government to work extremely closely with the Scottish Government to determine when they are operationally ready to introduce polygraph testing into the toolkit that probation services have. We would not want to trigger implementation too early.

Over the past week or so, we have heard evidence showing the benefits that polygraph testing can bring. However, we are aware that time is needed to prepare operationally for those benefits to come into effect. Although we recognise that some elements of the implementation of this are devolved—as I say, we are going to work extremely closely with the Scottish Government on those—ultimately, provision for dealing with terrorism matters remains a reserved power of the UK Government, so it is appropriate that the commencement provision remains one that is exercised by the UK Government. However, I repeat my assurance to the hon. Member for East Lothian that we will work extremely closely with his colleagues in the Scottish Government—in particular those in the Justice Directorate, his old Department—to make sure nothing is done prematurely, or without being ready for it.

Question put and agreed to.

Clause 33 accordingly ordered to stand part of the Bill.

Clause 34

Polygraph licence conditions for terrorist offenders: Northern Ireland

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

Chris Philp: Clause 34 essentially has the same operative effect as the clauses we have already discussed in relation to polygraphs, except in relation to Northern Ireland. For the benefit of anyone listening in Northern Ireland and that of the hon. Member for St Helens North, we will work very closely with Naomi Long and the Northern Ireland Government on this, in the same way that we will work very closely with the Scottish Government. We recognise that they are not doing this already, and before we commence the provisions, we will need to make sure that the Northern Ireland Government are operationally able and ready to use them.

Question put and agreed to.

Clause 34 accordingly ordered to stand part of the Bill.

Clause 35

Polygraph licence conditions in terrorism cases: supplementary provision

Kenny MacAskill: I beg to move amendment 51, in clause 35, page 33, line 8, after "State" insert

"after consulting with Scottish Ministers and the Department of Justice".

This amendment requires the Secretary of State to consult with the Scottish Ministers and Northern Ireland Department of Justice when making regulations under clause 35(1).

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

Amendment 52, in clause 35, page 33, line 12, after "State" insert

"after consulting with Scottish Ministers and the Department of Justice".

This amendment requires the Secretary of State to consult with the Scottish Ministers and Northern Ireland Department of Justice when making regulations under clause 35(2).

Amendment 53, in clause 35, page 33, line 17, after "qualifications" insert "training".

This amendment adds "training" to the list of contents in regulations made under clause 35(2).

Amendment 54, in clause 35, page 33, line 19, after "keeping" insert "and confidentiality".

This amendment ensures that regulations under clause 35(2) include provision for confidentiality of polygraph records.

Amendment 55, in clause 35, page 33, line 43, after "State" insert

"after consulting with Scottish Ministers and the Department of Justice".

This amendment ensures that approval by the Secretary of State of polygraph equipment under clause 35(7) should take place after consultation with the Scottish Ministers and the Northern Ireland Department of Justice.

Kenny MacAskill: The Minister commented on amendments 51 and 52 in his previous remarks, and we accept the grace with which his assurances have been given. The remaining amendments—53, 54 and 55—again seek some assurances. I will speak from my own experiences in Scotland, not regarding polygraphs because we have never had them, but about something that is akin in some ways: fingerprint testing and the fingerprint service.

Unlike some elements of forensic science such as DNA, it seems to me that polygraphs—as with fingerprints—are not a science, but an art. They are subject to interpretation, and mistakes can be made. During my tenure as Cabinet Secretary for Justice and my service in the Scottish Parliament before that, Scottish justice was turned on its head by a manifest injustice that came about because of an error in fingerprint identification. That error shamed Scottish justice and harmed a former serving police officer. It required us to review our fingerprint service from top to bottom, bringing in an eminent judge from Northern Ireland to address it.

Polygraph is not like a DNA test, which comes back with odds of 3 million to one. People are required to look at it and consider it. It is something relatively new, although it is operating in other jurisdictions. Who trains them? Who regulates them? Who ensures that they are kept up to speed? How do we ensure that those carrying it out are properly qualified, rather than someone seeking a fast buck? Some of this is in the drill-down detail. It may be something that has to be addressed. It is coming in.

I ask the Minister to take on board what I say, in an attempt to be helpful: some things are an art, not a science. Forensic science caused us huge difficulties in Scotland. To ensure that injustices do not arise and the service is as good as possible, we require some check against delivery, a method of regulation, an understanding of who can do it and a way of holding them to account.

Chris Philp: I thank the hon. Member for East Lothian for his comments. I wholly concur with what he said about the importance of training and carefully managing who conducts these tests and how they conduct them. In evidence, we heard from Professor Grubin in some detail of the critical importance of training. Without the proper training, method and the right questions, the entire process is essentially worthless and could potentially lead to false results. I accept the spirit of the hon. Gentleman's comments.

To reassure the hon. Gentleman, in clause 35(3)(a) there is a reference to "other matters". I explicitly assure him that that includes things such as training. The Secretary of State will address those matters in detail in the regulations, as they are addressed in the current regulations made under the existing legislation that applies to sex offenders. Identical or similar measures relating to training will be included in those regulations.

In relation to the question of confidentiality, which I have previously touched on, disclosure of any information obtained by polygraph testing will be shared only with governmental partners, particularly law enforcement agencies. It will not be disseminated or disclosed any more widely. I hope that assures the hon. Gentleman about the detail that the regulations made under clause 35 will go into. They will most certainly address the issues that he is properly raising.

Kenny MacAskill: I am happy to accept the Minister's reassurances. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Alex Cunningham: Again, I will be brief. I am aware that an amendment that I have tabled cannot be selected for debate, so I am content to address clause 35 stand part instead.

We accept that polygraphs have their uses, albeit very limited. Most notably, we recognise that polygraph examinations have been used with some success in the management of sexual offenders since 2013 by the National Probation Service. The Minister spoke about that and convinced us that, for that reason, we do not need a pilot for the Bill.

However, as has been said over and again in the evidence sessions and in debate, they are far from 100% accurate. While they give an indication, when used in the right conditions, that can detect traits associated with lying, they are far from infallible. The Bill allows the Secretary of State to impose mandatory polygraph examinations on high-risk offenders who have been convicted of terrorist offences or offences related to terrorism. Specifically, it allows for mandatory polygraphs to be taken three months post release and every six months thereafter unless the test is failed, after which the offender would have to take them more regularly.

However, the Government seem shy of spelling out the detail of how their proposed regime will work, leaving it to secondary legislation in the shape of regulations, which are mentioned in subsection (9). I, for one, am always a little wary of the Government when they opt for that route.

The Minister needs to provide a robust explanation of why he does not want that detail in the Bill. Is it a case of having insufficient detail at this stage to work

[Alex Cunningham]

out exactly what he wants to achieve with polygraph testing, or does he share everyone else's reservations about the application of the test? I hope that he will explain why there has to be a delay. I am sure that if the Minister looked at the legislation relating to the application of polygraph tests to sex offenders, he could cut and paste the wording, and tidy it up to suit this legislation, so there is no excuse for it not being in the Bill.

The Ministry of Justice has committed to a review of the value of polygraphing terrorist offenders and those convicted of offences related to terrorism after two years, which we very much welcome. However, as I said earlier, we would welcome that kind of commitment in the Bill, and a clear statement that people with protected characteristics will be covered specifically. It would help the Committee were the Minister to spell out how he expects such a review to be conducted, what he expects out of it, and whether he would adopt the need to achieve the specific things that I have spelled out.

I reiterate that Labour does not object to the use of polygraphs as set out in the Bill, but we should see the detail from the Government on exactly what they want to do. They ought to spell it out in the Bill. I hope that the Minister will reflect on that, and perhaps accept that it would be an easy job to cut and paste from the other legislation and to table an amendment on Report that provides the clarification we seek.

Chris Philp: The shadow Minister asks why we do not specify in the Bill the full detail about how the polygraphs will be used, and why that will be done in secondary legislation. Of course, that is extremely common. It is usual for matters of great detail to be done via secondary rather than primary legislation, in order to avoid, in the first instance, filling the Bill with a great deal of operational matters.

There is also the possibility that operational best practice may change in due course. If scientific evidence develops, or as practice evolves, there may be things that we could do differently or better. Clearly, if it was set out in primary legislation, it would take a great deal of time to change the detail. We would have to wait for a Bill to come before Parliament with the matter in scope, which could take some years. There are quite a few things that the Government have been wanting to do for a while, and we have been waiting three or four years for the right Bill to come along, including some in the Ministry of Justice. Of course, such changes can be made more deftly and more quickly by secondary legislation.

If the shadow Minister wants to see the sort of detail that he can expect, the existing regulations made under the 2007 Act to implement polygraph testing for sex offenders will give him a great deal of information. Obviously, we will study those very carefully when making regulations under clause 35. If he wants further detail, he can certainly find it in the existing regulations.

Question put and agreed to.

Clause 35 accordingly ordered to stand part of the Bill.

Clause 36

Release on licence of terrorist prisoners repatriated to the United Kingdom

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

Chris Philp: Clause 36 covers the release on licence of terrorist prisoners repatriated to the United Kingdom. The clause refers to schedule 11, which, as we shall discuss in a moment, sets out arrangements for the release on licence of terrorist prisoners repatriated to the United Kingdom, so that their release provisions are consistent with those sentenced in the United Kingdom. In essence, it extends the provisions that we have debated already to ensure that people who are repatriated to the UK are affected by those provisions just as much as people who were here when convicted and when serving their sentence. I am sure that everybody would agree that that kind of consistency is extremely welcome and extremely important.

Question put and agreed to.

Clause 36 accordingly ordered to stand part of the Bill.

Schedule 11

Release on licence of repatriated terrorist prisoners

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

Chris Philp: Schedule 11 gives effect to the clause 36 in a number of technical ways, which I do not propose to go through in detail. It ensures that the clause has practical effect in law.

Question put and agreed to.

Schedule 11 accordingly agreed to.

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

3 pm

Adjourned till Tuesday 7 July at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

CTSB10 Dr Kyriakos N. Kotsoglou, Senior Lecturer in Law (Criminal Evidence), Northumbria University and Marion Oswald, Vice Chancellor's Senior Fellow in Law, Northumbria University (further written evidence)