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Public Bill Committee

COUNTER-TERRORISM AND SENTENCING BILL

Fifth Sitting

Thursday 2 July 2020

(Morning)

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Monday 6 July 2020

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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

(Morning)

[Steve McCabe *in the Chair*]

Counter-Terrorism and Sentencing Bill

11.30 am

The Chair: Members are free to remove their jackets, if they so wish, but must turn their electronic devices to silent. Mr Speaker does not allow tea or coffee to be consumed during sittings. Social distancing is still recommended here; we have been asked to suspend the sitting if there are any problems. Finally, will Members please give their speaking notes to the *Hansard* reporters? That would be very helpful. We will begin with clause 11.

Clause 11

Minimum term order for serious terrorism offenders: England and Wales

Alex Cunningham (Stockton North) (Lab): I beg to move amendment 39, in clause 11, page 12, line 42, at end insert—

"(7) Before this section comes into force, the Government must publish an analysis of the impact of the introduction of minimum term orders for terrorism offenders on sentencing for other offences.

(8) A copy of the analysis must be laid before both Houses of Parliament."

This amendment requires the Government to publish an analysis of the impact of the minimum terms on sentencing for related offences.

It is good to see you in the Chair again, Mr McCabe. The Labour party is not in principle against a minimum 14-year sentence for those convicted of serious terrorist offences. We are aware that it is a particularly small cohort who have been found guilty of some absolutely heinous crimes in order to find themselves in this category of offender. Indeed, the Ministry of Justice's own impact assessment sets out that as few as 50 offenders could fall into this category, although, as I have said time and again, the Ministry of Justice can provide no evidence to back up that figure. None the less, as I have said throughout our discussions, the changes to legislation that this House makes must be underpinned by supporting evidence, and the amendment would do just that.

The amendment would require the Government to publish an analysis of the impact of the introduction of minimum term orders for terrorism offenders on sentencing for other offences, and to lay a copy of the analysis before Parliament prior to this section coming into force. The impact assessment estimates that the potential impact of measures increasing minimum terms for terrorist offenders given life sentences

"may result in fewer than 50 additional prisoners…annually".

I am not entirely convinced by that assessment and ask that the Government conduct an analysis of the measures on wider sentencing practice.

In Tuesday's sitting, the Minister was at pains to stress the figure of 50 additional prisoners caught up by his new proposals, with only a handful of them being under the age of 21, and said he would provide the rationale behind the numbers. Nothing arrived in my inbox yesterday, so I assume it is still a work in progress for the Minister. I would have thought it perfectly easy for him to support his numbers with evidence before now, but perhaps he will provide that full explanation in his response.

I have outlined in previous sittings my concern about the impact of the creation of new offences with a terrorist connection. We all need to be satisfied that the Government have got the numbers right, because if they have not the ramifications will be considerable.

As I have said throughout our discussions, the changes to legislation that this House makes must be underpinned by supporting evidence. We need to know whether minimum terms are working effectively. Have they made our country safer? Are they really a valuable tool in working with offenders? As I have spoken about at length, our justice system does not treat everyone fairly, even if it is our intention to do so. Given that it does not treat everyone fairly, we must consider the impact of our decisions on all groups, particularly those with protected characteristics. We as lawmakers need to obtain and understand evidence that increasing the length of time that individuals spend in custody leads to significant gains in public protection beyond delaying the possibility of an offence being committed.

In its written evidence, the Prison Reform Trust stated that increasing the length of the custodial period could undermine public protection by eroding protective factors. A key example is family contact associated with a reduced risk of reoffending on release. Perhaps the Minister can answer that challenge from the Prison Reform Trust. It is of course only right that the Minister talks about the number of offenders who will be caught up in his proposed new laws, because it is important to understand how many will be subject to additional impediments to their attempts to live anywhere near a normal life when they are released on a licence of up to 25 years.

The Government's own impact assessment specifically sets out that the MOJ is aware that separating offenders, especially younger ones, from their families will negatively impact on their rehabilitation. We need answers from the Minister on that point. Yet we face a situation where the MOJ does not know the total number of offenders who will be caught up in this cohort. In addition, the MOJ does not know how many of those offenders will be young adults or under-18s, and it cannot provide any evidence-based reason for introducing the minimum sentence. The only thing that the MOJ seems sure of is that removing protective factors can impact on rehabilitation. It is important that the Minister gets those numbers right, because they have a major impact on how offenders are managed within the system and on whether or not the system will be properly equipped to deal with them.

I believe that the Government have said that the cost of these new measures will be around £60 million a year, but how has that figure been arrived at? The Minister holds tight to his figure of £50 million a year, but even if he is right, that is £50 million every single year and the number will build up to around 700 terrorist offenders

in the prison system, all of them needing particular management in an already stretched service, which so many people tell us is under-resourced, lacks the expertise it needs and has rehabilitation programmes for terrorist offenders that, at best, need considerable improvement.

The need for analysis is probably even more important for us to understand the effects on young people and the potential impact of the determinate sentences. When he spoke on Tuesday against our amendment to have specific pre-sentencing reports that take age into consideration, the Minister made much of the fact that only a very small number of young people will be caught by his new measures. I do not want to repeat myself too often, but we still await an explanation as to where the Minister gets his estimates from, even if it is a very small number of people who will be affected.

For the sake of argument, let us say that the Minister is right, and for the sake of illustration, let us assume that it is eight young people a year who will be affected. Before a young person sentenced under the Minister's new law is released, there are likely to be more than 100 people in the prison system who have been convicted of an offence with a terrorist connection. We really need to understand what that means for the offenders, for the Prison Service and for society.

Julie Marson (Hertford and Stortford) (Con): Does the hon. Gentleman agree that we can be assured that the Bill will have a disproportionate impact on a certain sector of people—namely, those convicted of plotting or executing mass maiming and murder?

Alex Cunningham: The hon. Lady is right up to a point, but some of the people under discussion will not have been responsible for killing people. A lot of them are covered by the charge of plotting, and there is the new range of terrorist offences. The crimes to which she refers are already covered by legislation. People who commit such terrible crimes are already subject to a life sentence, so in this particular situation we are talking about a different category of people.

I was saying that we need to understand what these changes mean for offenders, the Prison Service and society. For example, does the necessary amount of specialist prison provision required to incarcerate these offenders actually exist? That is not just about the number of prison places; it is about having the expertise available to manage and engage these offenders. We heard a lot of evidence from Mark Fairhurst about the need for proper provision and the fact that, at the moment, we have only one centre to deal with these particular terrorists. We are supposed to have three such centres, but we do not yet know when the Government will come forward and tell us when the new centres will be up and running.

What are the Minister's proposals for housing younger offenders? Again, we need the prison places, but we also need the support services. Do they already exist, or is he proposing to develop more of them? If he is going to develop more of them, when will they be available? Even in the next two or three years, based on the Minister's numbers, perhaps 20 or 30 young people will need specialist accommodation. They need specialist support services. Where are those services coming from? They do not exist at the moment, as I hope that the Minister will acknowledge, so will he ensure that they will in future so that we can for and deal with these people appropriately? We must not have a situation in which younger offenders—albeit among the most serious ones, as described by the hon. Lady—end up in the adult prison system because there is nowhere else for them to go.

I would welcome a specific comment on the issue when the Minister responds. I know that he has some tidying-up amendments for later in the development of the Bill, but I want to understand specifically what will happen with younger offenders and whether it is possible that some of them will end up in the adult estate.

It should be clear to the Minister why he should not be shy about commissioning analysis better to understand the issues that we face. Everyone talks about the importance of data and making decisions based on evidence. The amendment provides the Minister with an opportunity to do just that, and the Opposition are pleased to offer the Minister our assistance.

Also, if the Minister had the analysis, it would be easy for him to demonstrate to the House that he had got his decisions right. When he faced challenges from the Opposition on the success or failure of his new measures, he would have the analysis at his fingertips. I know that, financially, the Justice Department is skint. It has suffered heavy cuts disproportionate to those for other Departments during the past 10 years or so, and we have seen the results of that. The latest figures show that the number of criminal cases yet to reach the courts has now exceeded half a million, with hundreds of thousands more tribunal cases also outstanding. Perhaps it is the lack of resources that has meant that the Lord Chancellor cannot crack on and plan Nightingale courts to go alongside the Nightingale hospitals—the money to do so simply is not available. He did write to me yesterday, telling me that some additional money will be available. But it is a very small amount of money compared with the challenge that the system faces. This Minister's accepting the amendment might result in the use of some resources, but the right action in this respect could save considerable sums in the longer term, and as I have made clear, the Justice Department really needs the resources.

Our ask is simple. We believe that there are real benefits for the Government in carrying out the analysis described in the amendment. Let us have in Parliament the evidence suggesting that these measures are a necessity and actually keep the public safe. I hope that the Minister will take these points and accept that longer sentences do not necessarily reduce the risk of reoffending. Several of our witnesses made that clear and even suggested that minimum sentences may in fact be counterproductive. The Minister might be reluctant to adopt the amendment—I will be surprised if he is not—but I look to him to come up with answers to the real issues that it covers.

The Parliamentary Under-Secretary of State for Justice (Chris Philp): Good morning. It is good to see you in the Chair again, Mr McCabe. Let me start by responding specifically to the amendment, and then I will try to pick up one or two of the more general points that the shadow Minister, the hon. Member for Stockton North, raised in his speech.

Amendment 39 does not propose any very wide form of analysis, aspects of which the hon. Gentleman referred to. It in fact proposes a very specific form of analysis,

[Chris Philp]

which is an impact assessment on the effect of these minimum term orders on other offences. It asks us to do an analysis that says, "If we introduce a minimum 14-year term to be served by those with life sentences, what effect will it have on unrelated offences? What effect will the minimum terms have on unrelated offences in relation to non-terrorist crimes?" If I may respectfully say so, given that the Bill is about terrorist offences and nothing in the Bill has any impact at all on non-terrorist offences, I do not think that the analysis proposed by amendment 39 is particularly germane. The Bill will not make any difference at all to any other, non-terrorist offences, so I do not think that analysis would have any results or effect.

11.45 am

Alex Cunningham: I appreciate the Minister giving way so early in his speech. The Bill creates a host of new offences, which will capture more people. It is important that he addresses the effect on other offences, which could all of a sudden become terrorism-related offences and therefore be subject to a very different sentencing decision by a judge in a court.

Chris Philp: My reading of the term "other offences" in line 3 the hon. Gentleman's amendment is offences not caught by the scope of the Bill.

Let me turn to the questions that the hon. Gentleman asked and the numbers he raised. We have published an impact assessment and equalities assessment, as we discussed at some length in the previous sitting. He asked where I got the numbers of younger offenders from. I now have some information about the under-18 cohort, which he and other Members are concerned about. Currently, there are only three terrorist offenders in prison under the age of 18. I hope that illustrates the very small numbers involved.

On the question of whether we are unreasonably widening the scope of what constitutes a terrorist offence, my judgment is that most terrorist offences would be caught under the existing list of terrorist offences. It would be relatively unusual for a terrorist act to be committed outside the current list of offences, and for it to be necessary to make the terrorist connection. It could happen, and we are rightly legislating for that, but the existing list of terrorist offences is relatively comprehensive, so I do not think that the scope increase that the hon. Gentleman is referring to will have a dramatic impact on what are already small numbers. It is of course important that we give the judge the opportunity—the power—to make that connection where somebody commits an offence not on the current list; it is logically conceivable that that could happen.

Let me turn to the number—the 50. We can extrapolate how many of those 50 are aged between 18 and 21, as we discussed in the previous sitting. I do not think that number is the annual flow or the number of convictions per year. As I understand it, it is the impact on the total prison population. Given that these sentences are quite long, one would expect that the annual flow into the system affected by these serious terrorism sentence provisions would be somewhat lower than that.

Those numbers illustrate powerfully that we are talking about an extremely small number of people. As my hon. Friend the Member for Hertford and Stortford said in her well-pitched intervention, we are talking about people who have committed a serious terrorist offence and have been found to be dangerous—in other words, the judge thinks that they pose an ongoing, serious risk to the public. Their actions either caused or were likely to cause multiple deaths, and, in the context of clause 11, the judge views the offence as so serious that a life sentence is appropriate. I hope that gives the Committee a clear sense that these numbers are extremely small and, thankfully, particularly small in relation to young people. We should take this opportunity to pay tribute to the tremendous work that our counter-terror police and the security services do to keep those numbers so very small.

Other remarks were made about funding. That is probably outside the scope of the clause, but I will address it very briefly, if I may have your indulgence for one minute, Mr McCabe. I am sure that if I stretch the bounds of your indulgence, you will call me to order. Counter-terrorism funding rightly increased substantially earlier this year in response to the enhanced level of threat. Spending on Her Majesty's Prison and Probation Service of course includes work on rehabilitation, and that also received a significant funding increase in the spending review in September 2019. I am sure that everyone here would welcome that increase in expenditure.

The shadow Minister mentioned a number of outstanding cases in the legal system. I think the number he quoted relates to magistrates courts. Of course we are in the middle of—hopefully coming towards the end of—a serious pandemic, which inhibited the operation of the courts system. Prior to the coronavirus epidemic, waiting times in the magistrates court were about eight weeks. The outstanding case load in the Crown court was certainly a great deal lower than it was in 2010. Obviously, coronavirus has caused an increase in the outstanding case load. We are working hard to address that with the new Nightingale courts. There are, I believe, 10 sites working on extending sitting hours. By the end of July every court in the country will be back up and running, and we are rolling out the cloud video platform, so that hearings can take place by video. I commend to the Committee the court recovery plan that was published two or three days ago. I hope that that demonstrates the herculean national effort currently under way to reduce the outstanding case load that has built up during the coronavirus epidemic.

Alex Cunningham: I most certainly welcome the increased expenditure in the area in question. It is essential that the Government look to increasing it further, because there is no doubt, from the evidence the Committee received, that the system is not adequate to receive the people who will be caught up in the range of new laws. It was good to hear the Minister try to clarify some of the numbers. The figure of only three people aged under 18 is significant. However, according to the analysis, there would be up to 50 people a year, over a long period. Does the Minister want to correct me?

Chris Philp: I will double check that number, but my understanding, which I will check, is that as a consequence of the measures the total prison population will increase by 50, which is different from an extra 50 people extra flowing in each year. However, I will come back to the hon. Gentleman on that.

Alex Cunningham: I appreciate that, but I thought I read it was 50 per year. I may of course be mistaken, but I look forward to the Minister clarifying that.

If the vast majority of criminal offences are committed under existing legislation, I wonder why we are here, other than to increase the determinate sentence to 14 years. Perhaps in a later speech the Minister will return to the matter. We may well return to it in future, but for the moment, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Chris Philp: Clause 11, as we have been discussing, amends section 323 of the sentencing code, which makes provision for the setting of a minimum term—a tariff—for discretionary life sentences. It will make sure that, where a life sentence is handed down to an adult offender who is convicted of a serious terrorist offence—which can be considered as a serious terrorism case—for the purpose of setting a minimum term, the provisions of this clause will apply.

The minimum term in a discretionary life sentence is the period that must be served in custody before an offender can be considered for release by the Parole Board. Offenders who are subject to a discretionary life sentence are subject to a life licence following the release. Clause 11 adjusts section 323 of the code so that, where the court considers an offender who requires a life sentence for their offending and has committed a serious terrorism offence, as found in schedule 17A to the sentencing code, an equivalent consideration is made to that for the serious terrorism sentence by requiring the court to consider it as a serious terrorism case.

A serious terrorism case is one where an adult offender has committed a serious terrorism offence and meets the criteria that we discussed previously for a serious terrorism sentence—that is, the court considers them dangerous; they present a serious future risk of harm, which in this context means the prospect of death or serious personal injury resulting; and in the opinion of the court they meet the risk of multiple death condition, which we discussed earlier in connection with serious terrorism sentences. The clause therefore requires the courts to set a minimum term of 14 years, unless exceptional circumstances apply.

Question put and agreed to.

Clause 11 accordingly ordered to stand part of the Bill.

Clause 12

Minimum punishment part for serious terrorism offenders: Scotland

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

Chris Philp: This clause has the same effect as the previous clause, which applied to England and Wales. This applies to Scotland, and will have effect by inserting a new section 205ZB into the Criminal Procedure (Scotland) Act 1995.

Question put and agreed to.

Clause 12 accordingly ordered to stand part of the Bill.

Clause 13

Minimum tariff for serious terrorism offenders given life sentences: Northern Ireland

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

Chris Philp: Clause 13 has the same effect as the previous two clauses, except in relation to Northern Ireland. It will amend the Life Sentences (Northern Ireland) Order 2001.

Question put and agreed to.

Clause 13 accordingly ordered to stand part of the Bill.

Clause 14

Minimum custodial period for serious terrorism offenders given indeterminate custodial sentences: Northern Ireland

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

Chris Philp: Clause 14 also relates to Northern Ireland. In this case, it applies to Northern Irish offenders who receive an indeterminate custodial sentence, ensuring that the 14-year minimum custodial period applies to them as well. The clause will have effect by amending article 13 of the Criminal Justice (Northern Ireland) Order 2008.

Question put and agreed to.

Clause 14 accordingly ordered to stand part of the Bill.

Clause 15

Additional offences attracting extended sentence: England and Wales

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

Chris Philp: This clause sets out a number of offences that, from the commencement date of this provision, will be included in the list of offences eligible for receiving an extended determinate sentence in England and Wales. Adding these offences will ensure that the sentencing regime in England and Wales is consistent in the type of offences it considers serious enough to be eligible for an extended determinate sentence. To make this change, the clause adds the offences specified within the provisions to part 1 of schedule 18 of the sentencing code. These offences all carry a maximum penalty of life, and include the making of explosives, developing biological weapons, endangering the safety of aircraft, using nuclear materials and hijacking or destroying ships. As such, they are of comparable seriousness to other offences already in scope for the extended sentence. Adding these offences to the list will correct the anomaly created by their omission and will ensure that these serious offences and others are eligible for an extended sentence as well.

Question put and agreed to.

Clause 15 accordingly ordered to stand part of the Bill.

Clause 16

INCREASE IN EXTENSION PERIOD FOR SERIOUS TERRORISM OFFENDERS AGED UNDER 18: ENGLAND AND WALES

Alex Cunningham: I beg to move amendment 40, in clause 16, page 16, line 29, at end insert—

"(4) Section 255 of the Sentencing Code is amended as follows.

(5) After subsection (2) insert—

"(3) The pre-sentence report must in the case of a serious terrorism offence under section 256(4)(b)(iii)—

(a) take account of the offender's age;

(b) consider whether options other than an extension period of eight to ten years might be more effective at—

(i) reducing the risk of serious harm to members of the public, or

(ii) rehabilitating the offender.

(4) The court must take account of any points made by the pre-sentence report in relation to the matters in subsection (3)."

(6) The Secretary of State must at least once a year conduct and lay before Parliament a review of the effectiveness of the provisions of this section and their impact upon offenders.

(7) The report of the first review must be laid before Parliament within one year of this Act being passed.".

The Chair: With this it will be convenient to discuss amendment 41, in clause 17, page 17, line 4, at end insert—

"(4) Section 267 of the Sentencing Code is amended as follows.

(5) After subsection (2) insert—

"(2A) The pre-sentence report must in the case of a serious terrorism offence under section 268(4)(b)(iii)—

(a) take account of the offender's age;

(b) consider whether options other than an extension period of eight to ten years might be more effective at—

(i) reducing the risk of serious harm to members of the public, or

(ii) rehabilitating the offender.

(2B) The court must take account of any points made by the pre-sentence report in relation to the matters in subsection (2A)."

(6) The Secretary of State must at least once a year conduct and lay before Parliament a review of the effectiveness of the provisions of this section and their impact upon offenders.

(7) The report of the first review must be laid before Parliament within one year of this Act being passed.".

Alex Cunningham: Amendments 40 and 41 serve a similar purpose to amendments 37, 45 and 46, which we debated earlier. Hon. Members will recollect that, such was our strength of feeling on the need for the age of young people to be taken into consideration in the pre-sentencing report, and then by the judge in deciding what type of sentence to impose, we put clause 37 to a vote. The decision to do so was strengthened by the Minister's failure to justify his estimates of the numbers that would be caught by the new offences and, therefore, sentences. We talked about that earlier. He dismissed our earlier amendments by claiming that there would be only a handful of young people caught by the measures. However, as hon. Members will have heard, I addressed our concerns about the lack of evidence of the numbers when I spoke to amendment 39—though I think there is more evidence to come from the Minister on that topic.

12 noon

It is worth reminding the Minister that his measures create more scope for more offences to be considered to have a terrorist link—and, contrary to what he said in the previous session, over time we will end up with many more young people in the system. I would like to quote the evidence given by Professor Acheson to the Committee the other day. He, too, had concerns about this matter and said:

"I do not want to repeat myself—I think the system is far too fractured at the moment. We are only talking about 220-odd offenders at the moment, with the Government making what I think is the fairly optimistic estimate of an extra 50 as a result of the new legislation. It will increase because of the police and security services' ability to spot people further and further upstream from actual terrorist incidents."—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 30 June 2020; c. 77, Q162.]

I accept that we need to clarify whether the figure is 50 a year or 50 in total impact on the system. We need to understand that, but we also need to understand the impact of people being released to serve a term on licence, which we know can be up to 25 years. Through amendments 40 and 41 we again seek to have a pre-sentence report that must take account of the offender's age—and for that element of the report to be an essential consideration by the judge in coming to his or her sentencing decision. There are other wider considerations, too. We should consider whether options other than a serious terrorism sentence might be more effective at reducing the risk of serious harm to members of the public, or rehabilitating the offender.

When Mr Fairhurst gave his evidence, we talked very specifically about young people. I asked him whether he had any thoughts on that with regards to rehabilitation and the future of these young people. He said:

"This is another issue. If you look at people under the age of 18 and at female offenders, do we have the capability to house them in a secure environment, or are we going to throw them into the adult estate?"—[*Official Report, Counter-Terrorism and Sentencing Public Bill Committee,* 30 June 2020; c. 71, Q149.]

I mentioned that in my contributions earlier today. Throwing a young person into an adult estate due to the nature of their offence could have an adverse effect. We need to come up with programmes for young offenders who commit terrorist crimes. I do not think that we have that capability at the moment. Rehabilitation of a young person has more chance of success than rehabilitation of someone who is seasoned and radicalised. We have a big opportunity to make a difference in that field.

In my previous remarks I made a challenge to the Minister to make a statement about specific provision for young people. He has not addressed that concern, so I hope that he will do so in his response to this point. I do not wish to repeat any more of the points I made earlier on the differences in maturity and development between young adults and those over 21. However, the points remain valid, and we should take into account such evidence and testimonies when creating legislation that might adversely affect one group over another.

The amendment also calls for the Secretary of State to commission and lay before Parliament—at least once a year—a report on the effectiveness of the provisions of this section and their impact upon offenders. Again, we are trying to be helpful to the Minister. He should not be averse to having reports commissioned to prove that his legislation is fit for purpose. Or perhaps he fears that that will not be so—and, in any case, when the chickens come home to roost, he will have moved on, maybe even to the shadow Cabinet after the 2024 General Election. There is a long history of Governments avoiding this kind of scrutiny and refusing to commit to keeping Parliament properly informed about the success or otherwise of their policies and decisions.

By way of further helping the Minister, I will give him an illustration of one set of decisions which demonstrated huge failure on the part of a Minister who believed his own numbers, refused to explain how he settled on them, fought off amendments seeking reports and found himself with egg on his face. I sat on the Bill Committee alongside my good friend, the former Member for North West Durham, Pat Glass, for the Childcare Act 2016. In fact, Mr McCabe, you may have sat on that Committee yourself. That was developed to pave the way to secure an additional entitlement of childcare support for working parents. The Act extends the entitlement to 30 hours of free childcare over 38 weeks of the year for three- and four-year-olds in families where all parents are working. Like the Counter-Terrorism and Sentencing Bill, we supported the Childcare Act 2016, but we knew that, like this Bill, it needed to be improved.

The then Minister, then Member for East Surrey, who abandoned the Tory party to take the Liberal Democrat whip and failed to be re-elected, claimed to be certain of his number, as the Minister does now. Existing providers of childcare places would invest in even more, and new providers would ensure we have sufficient places to meet the demand. That is what the former Minister believed, just as the Minister here perhaps believes we will get the investment we need in the estate to cope with this new range of prisoners.

Sadly, the former Minister got his sums wrong; no matter, he had moved on and, in time, out of the door of this place. I do not want the current Minister to fall into the same trap of believing his figures are so solid that he need not have a care in the world. If he has no care, he should subject himself to the outcome of proper analysis of the measures in today's Bill. I suspect the Minister here is well at the back of the queue of Tory MPs contemplating a move to the Liberal Democrats, but he must stand by the decisions he is now making and subject himself to scrutiny, or his fate could be even worse.

To conclude, where we can end the cycle of crime committed by an individual through early intervention, we should do so. We should not write off young people, even those who commit the most terrible of crimes, but provide them with a small window of hope for a better life, if they recognise the gravity of their offences and change.

All we are asking is that a pre-sentencing report is conducted and made available for consideration by a judge. The report adds colour to an otherwise black-and-white situation, which can then be interpreted by our world-leading independent judiciary, which has vast experience. Is it not better for members of that judiciary to be able to come to a conclusion as to whether an extension is the right choice for an individual offender than to have the Bill dictate that that must be so, irrespective of individual circumstances?

Not all offenders are the same and extension is necessary for some; for others it could have a negative impact. I hope the Minister will accept my point that we need to respond appropriately to the individual circumstances of a young offender and seek the just way through, not just the easy way.

Chris Philp: I must say, the shadow Minister has painted for me a truly horrifying picture, namely membership of the Liberal Democrats followed by crushing defeat at a general election. Let that be a lesson to anyone who, like my former hon. Friend the Member for East Surrey, considers anything so foolish as a move to the Liberal Democrats. Looking around this Committee, that is something we can all agree on.

The first question raised by these amendments is whether there is an option for an extension period other than eight to 10 years. I am looking at amendment 40 to clause 16(3)(b). The way the legislation is currently drafted allows the judge the discretion to choose the extension period—the licence period—of anything between one and 10 years. All that these clauses do is increase the maximum from eight years—as it is now—to 10 years, but that is not mandatory; the judge can choose to have an extension period as low as one year. The choice for judicial discretion that the shadow Minister is calling for already exists without the amendment. Instead of the choice being between one and eight years, as it is now, the choice will become between one and 10 years, as we propose, but judicial discretion will still exist.

The pre-sentence report that the amendment calls for will exist already. There is always a pre-sentence report for offences of this nature. In deciding what length of extension period is appropriate, the judge will already have due regard to that pre-sentence report. They will also have due regard to that pre-sentence report in making their finding, or otherwise, of dangerousness.

On the question of a review of how things are going, I certainly do not fear any sort of review after the event. We have a standing procedure that legislation should be reviewed after—I think, typically—three years, to see how it is functioning. I would expect this legislation, as other legislation, to be subject to that same scrutiny process. I am sure that no one in the House would be shy to propose changes if, in due course, anything appeared to be amiss.

On that basis, in particular the first two points—

Alex Cunningham: I realised that the Minister was getting to the point at which he would sit down, but I asked specifically for him to address the issue of how young people who have committed this type of offence will be accommodated on the estate. Can the fears expressed by many individuals be properly addressed?

Chris Philp: Such young people will not move on to the adult prison estate until they turn 21, so that immediately provides some reassurance, I hope. The more general point that the shadow Minister makes, and has made before—and our witnesses made—is on the importance of rehabilitation. They are points well made. We should not simply lock people up and throw away the key; even with such serious offenders, who will rightly spend a great deal of time in prison, we should work on rehabilitation.

[Chris Philp]

Part of the additional resources announced in the September 2019 spending review and this year's March Budget will go to Her Majesty's Prison and Probation Service. I have spoken to the Prisons and Probation Minister about young people, an issue that my hon. Friend the Member for Aylesbury has also raised with me, and it is an area where effort, focus and attention are being paid, and will be further in future. That point about rehabilitation is well made, but it is being addressed. I am sure it is a topic that Members will return to. I have forgotten whether this is an intervention or a speech, but on that basis, I politely and respectfully ask the shadow Minister to withdraw the amendments.

Alex Cunningham: It is lovely to have a guarantee from the Minister that no young person will end up in the adult estate—

Chris Philp: While under the age of 21.

Alex Cunningham: The Minister qualifies that by saying "under the age of 21". I appreciate that, and I assume that the word "guarantee" can be applied in this particular circumstance, despite the fact that some of our witnesses were concerned that we do not have sufficient facilities within the system to house 18 to 21-year-olds and some even younger than that.

In an earlier debate, I believe on Tuesday, the Minister appeared to accept that the pre-sentence report regime could be improved. In fact, he made a commitment to speak to his colleagues in the Home Office, to see whether they might find ways to ensure that the pre-sentence report covers some of the issues that I raised in Committee. We have not heard from the Minister about that, but perhaps in a later speech we will.

Rob Butler (Aylesbury) (Con): On that point, does the hon. Gentleman accept that standard practice in all pre-sentence reports is for the judge to consider not only the physical, chronological age, but maturity, so some of those concerns should, as a matter of course, be addressed?

Alex Cunningham: The hon. Gentleman has greater experience of this area than I do, and I bow to his superior knowledge, but the important thing is that we look carefully at the reports, in particular in relation to that cohort of young people, to ensure that every single opportunity is presented to the judge so that the judge gets the right answer. With that, although we will return to the issue of young people at a later stage, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Chris Philp: As we have discussed, the clause extends the maximum possible licence period for serious terrorist offenders aged under 18 when given an extended sentence of detention. It gives the courts the option to increase the maximum—I say maximum—extended licence period from eight to 10 years.

Question put and agreed to.

Clause 16 accordingly ordered to stand part of the Bill.

Clause 17

INCREASE IN EXTENSION PERIOD FOR ADULT SERIOUS TERRORISM OFFENDERS AGED UNDER 21: ENGLAND AND WALES

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

12.15 pm

Chris Philp: Clause 17 has the same effect as the previous clause, but applies to offenders up to the age of 21. It does that by amending section 268(4) of the sentencing code.

Question put and agreed to.

Clause 17 accordingly ordered to stand part of the Bill.

Clause 18

INCREASE IN EXTENSION PERIOD FOR SERIOUS TERRORISM OFFENDERS AGED 21 OR OVER: ENGLAND AND WALES

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

Chris Philp: Clause 18 has the same effect—raising the maximum licence period to 10 years. This time it applies to offenders aged over 21 in England and Wales, and it makes that change by amending section 281(4) of the sentencing code.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

Clause 19

ADDITIONAL TERRORISM OFFENCES ATTRACTING EXTENDED SENTENCE: SCOTLAND

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

Chris Philp: The clause sets out a number of offences that will be included in the list of offences that are eligible for receiving an extended determinate sentence in Scotland, from the date of commencement. The offences to be included are terrorist offences with a maximum penalty of more than two years, which is specified in part 1 of schedule 5ZC, and non-terrorist offences carrying a maximum penalty of life, as specified in part 2 of that schedule, in cases where a terrorist connection has been found by the court under section 31 of the Counter-Terrorism Act 2008. It also applies to under-18s convicted of terrorist and terrorism-related offences in Scotland. The clause makes that change by amending section 210A(10) of the Criminal Procedure (Scotland) Act 1995 and inserts a schedule into that Act.

Alex Cunningham: We have talked a lot about numbers in this Committee. Will the Minister enlighten us on how many people will be caught up in these provisions?

Chris Philp: These provisions relate to Scotland. In order to avoid providing the Committee with erroneous information, it would be safest if I write to the hon. Gentleman with that information.

Question put and agreed to.

Clause 19 accordingly ordered to stand part of the Bill.

Schedule 5

TERRORISM OFFENCES ATTRACTING EXTENDED SENTENCE: SCOTLAND

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

Chris Philp: The schedule is consequential to the previous clause.

Question put and agreed to.

Schedule 5 accordingly agreed to.

Clause 20

EXTENDED CUSTODIAL SENTENCES FOR SERIOUS TERRORISM OFFENDERS: NORTHERN IRELAND

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

Chris Philp: The clause does two things. First, it adds all serious terrorism offences to the scope of the extended sentencing regime. Secondly, it increases the maximum extended licence period for those who receive an extended sentence for serious terrorism offences. I should say that the clause applies to Northern Ireland, and the clause essentially does the same thing as the previous few clauses on extended sentence length and adding some additional offences. That will ensure that there is a consistent approach across the United Kingdom in terms of both offences that are tracked and extended sentences—in the case of Northern Ireland, extended custodial sentences—and that the courts may impose up to a 10-year licence period, should they find that appropriate.

Question put and agreed to.

Clause 20 accordingly ordered to stand part of the Bill.

Clause 21

OFFENCES ATTRACTING SPECIAL CUSTODIAL SENTENCE FOR OFFENDERS OF PARTICULAR CONCERN: ENGLAND AND WALES

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

Chris Philp: Clause 21 substitutes schedule 6 to the Bill for schedule 13 of the sentencing code. It is designed to ensure that, in all circumstances, specified terrorist offenders will spend at least 12 months on licence following their release, even when they are released at the very end of their custodial sentence. It does that by updating the offences that attract a custodial sentence for offenders of particular concern in England and Wales—the so-called SOPC sentence. The updated schedule includes all terrorist offences that carry a maximum penalty of over two years, and it replaces the specified non-terrorist offences that can attract a SOPC when committed in a terrorist capacity with a clause that includes any offence that is determined to have a terrorist connection under section 69 of the sentencing code in the SOPC regime. The changes made to the clause are applicable to those who are convicted of an offence on or after the day on which that provision comes into force, which is the day after the Bill gains Royal Assent.

Adding those offences to the SOPC regime will mean that the court will now be required to impose such a sentence where extended determinate sentences have been considered but not imposed. All such offenders will no longer be eligible for a standard determinate sentence. That is because the time spent on licence—the Bill introduces a minimum of one year—is very important for rehabilitating offenders, as the shadow Minister has said, as well as for protecting the public.

Question put and agreed to.

Clause 21 accordingly ordered to stand part of the Bill.

Schedule 6

OFFENCES ATTRACTING SPECIAL CUSTODIAL SENTENCE FOR OFFENDERS OF PARTICULAR CONCERN: ENGLAND AND WALES

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

Chris Philp: It is consequential to the previous clause.

Question put and agreed to.

Schedule 6 accordingly agreed to.

Clause 22

SPECIAL CUSTODIAL SENTENCE FOR CERTAIN TERRORIST OFFENDERS AGED UNDER 18 AT TIME OF OFFENCE: ENGLAND AND WALES

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

The Chair: With this it will be convenient to discuss Government amendments 16 to 29.

Chris Philp: These are relatively technical amendments. The purpose of Government amendment 16 is to apply the same period of rehabilitation to the new sentence for terrorist offenders of particular concern as that currently applied to sentences in respect of grave crimes under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000. The rehabilitation period is specified in section 5 of that Act and varies depending on the length of sentence given. It begins on the day the sentence is completed, including any time spent on licence.

Government amendment 29 amends the statutory instruments referred to above in order to align the new special sentence of detention for terrorist offenders of particular concern for under-18s with sentences imposed under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000. Those are the central amendments.

Ruth Cadbury (Brentford and Isleworth) (Lab): Can I just be clear? For certain offences, under-18s will be treated in exactly the same way as adults when being sentenced. If I have got that wrong, can the Minister please explain?

Chris Philp: No. The rehabilitation periods are different and lower for children—quite rightly, for the reasons we debated earlier. All we are doing is creating consistency between the rehabilitation period for adults who commit the various offences and the rehabilitation period for children who commit various offences. We are not making the rehabilitation period the same for children as it is for adults.

The purpose of clause 22 is to address a gap in sentencing options for those under 18 who commit a terrorism offence where custodial sentencing options are limited to a maximum two-year detention and training order, due to the offender not meeting the criteria required to impose long-term detention for offences punishable by less than 14 years in custody.

[Chris Philp]

The new sentence ensures that those convicted of a terrorist offence—we are talking about the serious terrorist offences—spend a substantial period of time on licence to enable that very important rehabilitative work to be undertaken in the community, and to limit the risk that they may pose to the public. That will also ensure greater consistency between the approaches towards sentence and release for under-18s and adults, although under-18s will of course be typically serving shorter prison sentences.

Under the current framework, some terrorist offences can attract only a detention and training order of up to two years, with only half that being served in detention, or an extended determinate sentence where the child is considered dangerous and the sentence is at least four years. That is a consequence of the fixed-term sentences under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, and they are available only for specified offences. Terrorist offences are not a specified category.

As some terrorist offences carry a maximum sentence of less than 14 years, the only custodial sentencing option is therefore the detention and training order. Essentially, the clause fills the gap between those two sentences by creating the SOPC-type offence for under-18s. Of course, the length of sentence will be entirely a matter for the discretion of the judge, and the judge will have the pre-sentence report available in making that determination. As my hon. Friend the Member for Aylesbury said in his intervention, that pre-sentence report will include considerations regarding not just the offender's chronological age but their mental maturity. Judges will of course continue to have discretion to ensure that they are balancing the offender's maturity with the appropriate kind of sentence.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

Clause 23

TERRORISM SENTENCE WITH FIXED LICENCE PERIOD: SCOTLAND

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

Chris Philp: Clause 23 operates in Scotland, and essentially ensures that there is always a fixed licence period of at least one year when someone is released, so that people are not released without any licence supervision afterwards. We have talked about the reasons: both to facilitate rehabilitation and to protect the public. The clause is given effect by the insertion of new section 205ZC into the Criminal Procedure (Scotland) Act 1995.

The Chair: The question is that clause 23 stand part of the Bill. As many as are of that opinion, say aye.

Hon. Members: Aye.

The Chair: To the contrary, no. I think the ayes have it, the ayes have it.

Question put and agreed to.

Clause 23 accordingly ordered to stand part of the Bill.

Schedule 7

OFFENCES ATTRACTING TERRORISM SENTENCE WITH FIXED LICENCE PERIOD: SCOTLAND

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

Chris Philp: That was not a very enthusiastic "aye", was it?

The Chair: Far be it from me to comment.

Chris Philp: Very diplomatic, Mr McCabe. Schedule 7 is consequential to the previous clause. It sets out the terrorist offences within the scope of the new terrorism sentence in Scotland, and will be inserted as schedule 5ZB to the Criminal Procedure (Scotland) Act 1995.

The Chair: The question is that schedule 7 be the Seventh schedule to the Bill. As many as are of that opinion, say aye.

Hon. Members: Aye!

The Chair: That's certainly better. To the contrary, no. I think the ayes have it, the ayes have it.

Question put and agreed to.

Schedule 7 accordingly agreed to.

Clause 24

TERRORISM SENTENCE WITH FIXED LICENCE PERIOD: NORTHERN IRELAND

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

The Chair: With this it will be convenient to discuss Government amendment 32.

12.30 pm

Chris Philp: I thank the Committee for its rousing endorsement of the previous schedule.

The purpose of clause 24 is to make amendments to provide for a new terrorism sentence with a fixed licence period. This is necessary to ensure an approach consistent with Northern Irish law. The Treatment of Offenders Act (Northern Ireland) 1968 is amended to ensure that any offender may have the length of their terrorism sentence reduced by any relevant period spent in police detention or custody. There are further amendments, with broadly similar objectives, made to the Rehabilitation of Offenders (Northern Ireland) Order 1978, the Criminal Justice (Northern Ireland) Order 1996, the Sexual Offences Act 2003 and the Counter-Terrorism Act 2008.

More generally, clause 24 seeks to make amendments to terrorism sentences in Northern Ireland in a way that is consistent with the measures we have discussed already. The structure of sentences is a little different in Northern Ireland, hence the slight differences in this clause, but the offer is in effect that the minimal one-year licence period is the same as those discussed already for England, Wales and Scotland.

Question put and agreed to.

Clause 24 accordingly ordered to stand part of the Bill.

Clause 25

Corresponding provision under service law

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

Chris Philp: Clause 25 introduces schedule 8, which makes the equivalent provisions under service law to certain sentencing provisions made by this part. It covers an equivalent of the serious terrorism sentence, including relevant term reductions for a guilty plea and for assistance to the prosecution, as we have discussed, as well as minimum term orders and provisions equivalent to those in clauses 8 and 9, and changes to the special custodial sentence for offenders of particular concern, including the creation of an equivalent sentence for youth offenders.

The clause is necessary to ensure that the provisions in this Bill, which strengthen counter-terrorism sentencing, are applied to all jurisdictions in the UK, including the armed forces.

Question put and agreed to.

Clause 25 accordingly ordered to stand part of the Bill.

Schedule 8

Corresponding provision about sentencing under service law

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

The Chair: With this it will be convenient to discuss Government amendments 47 and 9.

Chris Philp: Schedule 8 and the two Government amendments are technical changes that relate to the application of this law to the services, which I mentioned in the previous clause.

Question put and agreed to.

Schedule 8 accordingly agreed to.

Clause 26

Increase in maximum sentences for certain terrorist offences

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

Chris Philp: Clause 26 increases the maximum penalty for three terrorism offences, to ensure that the punishment properly reflects the seriousness of the crime involved. The three offences are: membership of a proscribed organisation, under section 11 of the Terrorism Act 2000; supporting a proscribed organisation, under section 12 of that Act; and attending a place used for terrorist training, under section 8 of that Act. In all three cases the maximum penalty applicable will be increased from 10 to 14 years.

It will, of course, remain a matter for the sentencing judge to decide on the appropriate sentence, but given how serious the offences are we feel it appropriate to give the court the ability to issue a sentence of up to 14 years if, on the basis of the evidence and the pre-sentence report, the judge sees fit.

Question put and agreed to.

Clause 26 accordingly ordered to stand part of the Bill.

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

12.34 pm

Adjourned till this day at Two o'clock.