PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT REHABILITATION OF OFFENDERS ACT 1974 (EXCEPTIONS) ORDER 1975 (AMENDMENT) (ENGLAND AND WALES) ORDER 2020

DRAFT POLICE ACT 1997 (CRIMINAL RECORD CERTIFICATES: RELEVANT MATTERS) (AMENDMENT) (ENGLAND AND WALES) ORDER 2020

Monday 14 September 2020

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Friday 18 September 2020

The Committee consisted of the following Members:

Chair: Ms Nusrat Ghani

† Anderson, Stuart *(Wolverhampton South West)* (Con)
† Atkins, Victoria *(Parliamentary Under-Secretary of State for the Home Department)*
† Bradley, Ben *(Mansfield)* (Con)
Butler, Dawn *(Brent Central)* (Lab)
Cadbury, Ruth *(Brentford and Isleworth)* (Lab)
† Cates, Miriam *(Penistone and Stocksbridge)* (Con)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Davies, Dr James *(Vale of Clwyd)* (Con)
Hughes, Eddie *(Walsall North)* (Con)
† Lammy, Mr David *(Tottenham)* (Lab)
Lewell-Buck, Mrs Emma *(South Shields)* (Lab)
† Pursglove, Tom *(Corby)* (Con)
† Russell, Dean *(Watford)* (Con)
† Spellar, John *(Warley)* (Lab)
† Timpson, Edward *(Eddisbury)* (Con)
Trickett, Jon *(Hemsworth)* (Lab)
† Wood, Mike *(Dudley South)* (Con)

Yohanna Sallberg, Seb Newman, *Committee Clerks*

† attended the Committee

Second Delegated Legislation Committee

Monday 14 September 2020

[Ms Nusrat Ghani *in the Chair*]

Draft Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2020

4.30 pm

The Parliamentary Under-Secretary of State for the Home Department (Victoria Atkins): I beg to move,

That the Committee has considered the draft Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2020.

The Chair: With this it will be convenient to consider the draft Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2020.

Victoria Atkins: What a pleasure it is to serve under your chairmanship, Ms Ghani. I suspect that you are the first of the 2015 intake to serve on the Panel of Chairs—that is a real and well-deserved privilege.

The orders, which were laid before Parliament on 9 July, are two very technical but important because they relate to the requirements for a person to self-disclose criminal records when applying for roles that are eligible for standard and enhanced criminal records checks, and to the rules for disclosure of criminal convictions and cautions on a standard or enhanced criminal record certificate issued by the Disclosure and Barring Service. As criminal record disclosure is a devolved matter, the orders apply only to England and Wales.

As hon. Members may be aware, in January 2019, the Supreme Court handed down its judgment in the case of P, G and W. Overall, the Court found that a rules-based disclosure regime for criminal record certificates is justifiable and in accordance with the law. However, that judgment also determined that certain aspects of the current disclosure rules are incompatible with article 8 of the European convention on human rights—namely, the right to a private life.

There were two areas of concern. First, the multiple conviction rule, under which all convictions, regardless of their nature, are disclosed when an individual has more than one, was found to be unnecessary and disproportionate in terms of indicating a propensity to offend. Secondly, the disclosure of out-of-court disposals administered to young offenders was found to be "an error of principle", given the instructive purpose of the disposals, so the Court found against the automatic disclosure of youth reprimands and warnings.

John Spellar (Warley) (Lab): Surely both propositions are absolutely self-evident. Why did we drag it all the way through the Court of Appeal and up to the Supreme Court—wasting years carrying on with it—when the Court actually applied a common-sense approach on both counts and said, "This is wrong"? Why could Ministers and civil servants not have done that years ago, rather than taking it all the way through that elongated process?

Victoria Atkins: I am so pleased that the right hon. Gentleman has raised that point. He has a particular interest in this matter, and I answer many of his parliamentary questions on it, so I know that it is an area in which he is an expert and to which he is very committed.

Although I do not want to go into the details of all the cases that were joined together, the reason that the Government took those cases to the Supreme Court was that there were many important principles of law to be tested. All along, we have reviewed those rules and done as we thought right. We cannot hide from the fact that the reason that the Disclosure and Barring Service regime and its predecessor were set up in the first place was to protect the most vulnerable in our society. It is right that the Supreme Court was asked to look at the regime as a whole. It found that the regime was satisfactory and within the bounds of article 8 and other measures within the convention, but it drew two points to our attention. We have gone into great detail to ensure that we can bring about a system to enact the observations in the ruling by the Supreme Court, but to do so in a way that keeps the purpose of the regime in place.

The orders before the Committee will not change the purpose of the disclosure regime. The disclosure rules will continue to ensure that children and vulnerable people are protected from dangerous offenders. However, the Supreme Court judgment made it clear that these two areas of concern are disproportionate as currently framed, so the orders will ensure that there is a balance between the safeguarding aims and supporting people who have offended in the past to move into employment and move on with their lives.

Edward Timpson (Eddisbury) (Con): I very much welcome these orders—not least for people who had a difficult childhood, potentially in care, and who carried with them through to adulthood a criminal history that has followed them ever since, potentially disproportionately, for the reasons that we have heard. Can the Minister enlighten me about the impact on businesses? Have the Government considered whether the orders will give businesses more reasons to look harder at the potential of employing people who in the past would have had their criminal history disclosed?

Victoria Atkins: I thank my hon. Friend. He was the Minister of State with responsibility for children and families over many years—I think some six or seven years.

Edward Timpson: Five.

Victoria Atkins: Forgive me, five years. My Hon. Friend had an incredibly positive effect on the lives of many thousands of children across our country, including the most vulnerable. He is absolutely right to raise the issue of businesses, because the disclosure regime—both

the order that we are dealing with, in terms of people having to disclose their convictions, and the Disclosure and Barring Service regime itself—is about putting the responsibility for making considered employment decisions on employers. With the exception of the barred list, it is not for the DBS to say, "This person shouldn't be employed in this particular role." It is for the employer to make that assessment.

Frankly, I hope that having this debate and the debates we have in the House and in the media really helps to highlight the vital role that employers play in giving young people a second chance, which we all know is so key to their rehabilitating and moving on with their lives. As I say, I am very pleased that the orders will have the effect that, unless affected by other disclosure rules, youth cautions and multiple convictions no longer have to be disclosed when a person is asked about them, and they will no longer be subject to automatic disclosure on standard and enhanced criminal record certificates.

I turn now to the technical parts of the orders. The draft Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2020 amends articles 2(2) and (4) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 to change the definition of a "protected caution" to include all those given where a person was under 18 at the time. The order also amends articles 2(5) and (6) to change the definition of a "protected conviction" by removing the multiple conviction rule exemption from the scope of the definition. The effect of the order is that an individual with a youth reprimand, warning or caution, or those with more than one conviction, will no longer have to self-disclose their criminal record when applying for a role that is eligible for a standard or enhanced DBS check, unless one of the other disclosure rules in engaged.

The draft Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2020 amends the definition of "relevant matter" by excluding the multiple conviction rule and youth cautions, including reprimands and warnings, from the scope of that definition. A "relevant matter" is a matter that must be disclosed by the Disclosure and Barring Service in response to an application for a standard or enhanced criminal record certificate. The effect of the order is that, where not affected by any other rule, youth reprimands, warnings and cautions and multiple convictions will no longer be subject to automatic disclosure in criminal record certificates issued by the DBS.

I emphasise, however, that the Government are clear on their responsibilities to safeguard the public, particularly children and vulnerable adults. Where an offence has been committed, we will want to ensure that the public are adequately safeguarded by enabling employers to make informed recruitment decisions through the disclosure of appropriate and relevant information, particularly for roles that involve close contact with children and vulnerable adults or a high level of public trust.

Convictions and adult cautions will still be disclosed on DBS certificates if they are recent; if they were received for a specified violent or sexual offence; or if a custodial sentence was imposed. Furthermore, the statutory disclosure regime enables chief police officers to disclose any information they consider to be relevant to the purpose of the certificate and in the chief officer's opinion ought to be included in the certificate. To that end, we intend to publish the associated Home Office statutory guidance for the police alongside this legislative change, to reflect that information about convictions and cautions not automatically disclosed under the rules can, in principle, be included in a certificate in the same way as other police information reasonably believed to be relevant for the purpose for which the certificate is sought.

We are confident that these changes, if agreed, will still enable employers to make informed recruitment decisions, but in a way that enables those who committed minor offences and who offended long ago to move away from their past and on with their lives. This will particularly benefit those with childhood cautions.

I hope the Committee will support the two orders to ensure compatibility with article 8 while continuing to support effective protection for children and vulnerable adults. I commend these orders to the Committee.

4.42 pm

Mr David Lammy (Tottenham) (Lab): It is great to see you in the Chair for the first time, Ms Ghani. I thank the Minister for a call last week about these provisions, for which I was very grateful. I also thank my right hon. Friend the Member for Warley for his persistent pursuit of this subject over many years in Parliament and for being distinguished in pressing the Prime Minister on this at three consecutive Prime Minister's questions. The result of the Supreme Court decision is why we are here this afternoon.

There are currently more than 11 million people in the UK with a criminal record. Nearly three quarters of ex-offenders are unemployed on release from prison, and 50% of employers say they would not consider hiring an ex-offender. At its worst, the criminal records regime is a second sentence for those who have already served their time, trapping offenders in a cycle of reoffending. In my review into the criminal justice system, which I was asked to do by the then Prime Minister, David Cameron, I singled out the criminal records regime as an area that most desperately needed reform.

If we are to break the endless loop of reoffending, ex-offenders must have an opportunity to move on with their lives. That means, in effect, having support and services, but there is also the need to get a job. A job removes dependence on criminality for income; a job gives an opportunity for education and training; a job gives ex-offenders a belief in their own future; and a job gives them a stake in society. Prisoners who find work on release are less likely to reoffend than those who do not.

That is shown in the disparities between different ethnic groups. Ethnic groups with higher unemployment rates also have higher reoffending rates. In my review, I found that, two years after a caution, conviction or release from custody, 28% of those with an Asian background were unemployed, compared with 40% unemployment among black ex-offenders. That is why I took the issue so seriously. I am happy that we are today discussing modest but progressive reform of the criminal records regime, which will have a positive effect on people's lives and wider society.

The changes proposed are to the filtering rules applied by the DBS to determine which convictions and cautions should no longer be disclosed on standard and enhanced criminal record checks in England and Wales. The

[Mr David Lammy]

Supreme Court judgment that forced the Government to act required two specific changes—that multiple offences become eligible for filtering, so long as they are not disclosable under other rules, and that youth cautions, reprimands and final warnings be immediately filtered. Currently, if a person has multiple convictions, these cannot be filtered out, even if the individual offences would be. The Supreme Court judgment was right to condemn this approach as "capricious", "disproportionate" and counterproductive.

The new regime will allow each offence to be treated separately and filtered out as appropriate for the individual offence. Right now, reprimands, warnings and youth cautions are filtered only after two years, causing huge damage to young people's ability to enter education and training, with some barred from training in certain professions entirely until their record is filtered. The whole purpose of warnings and reprimands is to avoid prosecution, and in doing so to improve a young offender's future prospects. However, the Court found that disclosing warnings and reprimands to potential employers had the opposite effect. The Opposition are pleased that the new filtering rules mean that all three things will be immediately filtered. These changes will have a real and positive impact on thousands of young lives, which in turn will reap huge benefits for society as a whole.

However, these changes should make us pause and consider the case for broader and deeper reform of the criminal records regime. The changes do not make a judgment on the filtering system as a whole or assess whether it is providing the right balance between harm and protection. It is still the case that very minor criminal records acquired in teenage years can continue to haunt someone's career prospects well into their 30s and 40s. As the Taylor review of youth justice acknowledged, the evidence is that most young people grow out of crime. Maturity comes at different ages for young people, but on average an individual is significantly less likely to reoffend in their mid-20s than they were just a few years earlier.

The present filtering regime suggests a clear and morally relevant dividing line between those who receive a custodial sentence and those who receive a community order. A custodial sentence is never eligible for filtering, but a community order always is. However, the sentence that each offender receives is often driven more by demographic, geography and other arbitrary factors, not the seriousness of the crime itself. It is a great shame that, in 2020, I have to point out the elephant in the room: whether someone receives a community order, which is eligible for filtering, or a custodial sentence, which is not, can often depend, sadly, on their having a minority background.

That is precisely why the then Prime Minister and current Minister for the Cabinet Office asked me to lead a review into this area and why, in looking at these issues, I recommended the sealing of criminal records. I emphasise that that is not sealing from the criminal justice system—it would always be the case that the courts, prosecutors, police, the probation service and others have access to criminal records—but, where appropriate, from employers, aside from particular cases where it is necessary for the employer to have access to that record.

At the end of the hearing, the court is able to weigh up different factors, including the problems for the applicant arising from their criminal record, evidence of rehabilitation years later indicating that the applicant would take proper advantage of their record being sealed, relevant circumstances at the time of the offence that suggest that the applicant will not reoffend and the passage of time since the offence. All these issues are relevant, and we ought to come up with an administrative process—it may well be that applicants have to pay for the process—whereby we are able to seal criminal records and ensure much higher employment rates for former offenders.

The Opposition believe in second chances. I should hope that Conservatives believe in second chances, so I hope that the Government will come forward with wider plans. In that regard, I look to the sentencing reforms that the Lord Chancellor indicated at the weekend and hope that we might see further progress there.

4.49 pm

John Spellar: It is a pleasure to serve under your chairmanship, Ms Ghani. I thank the Minister not only for writing to me, but for an informal briefing on the subject under discussion today. The changes are welcome, but long overdue. I have just delved into my files and I have a letter from the Ministry of Justice, from the then Minister, dated 20 April 2013:

"I am writing further to Andrew Lansley's"—

remember him?—

"response to your Business Question on 18 April, asking for an early debate to discuss the impact of including cautions and minor convictions in disclosures issued by the Disclosure and Barring Service."

That was in response to a

"recent Court of Appeal judgment in the case of R."

This has been going on and on.

The changes today are welcome, as my right hon. Friend the Member for Tottenham said, but they still do not go far enough. It is still the case that, if people commit slightly more serious offences in their teen years, that dogs them all through their life. Indeed, some of the Supreme Court cases demonstrate that. These anomalies and problems will emerge, and I would hope, without too much expectation, that the Department might respond much more quickly than it has. The situation has gone on far too long.

It has become clear in the exchanges we have had that the issue is not even one that divides the parties, uniting those on the right of the Conservative party and the left of the Labour party. That is not, by the way, unique to the United Kingdom. In the United States, right-wing Republicans and left-wing Democrats have united in working together to introduce schemes for the rehabilitation of offenders, recognising a major social problem and an economic issue.

It is only the Department, and the stubbornness of officials, that have held things back. I have had agreement in the past between the Secretary of State for Justice and the Home Secretary. The trouble was they got moved, and we had to start all over again. At the same time, the matter was dragged back by the officials, who would not move.

That is not unprecedented, by the way, in dealing with such issues. It took something like 10 or 15 years to get changes to wheel clamping, which had been abolished in Scotland by one legal decision. Yet again, after going all the way through the Home Office, the issue finally got transferred to the Department for Transport and we managed to get the changes and prevent wheel clamping on private land.

We cannot afford to behave like that, because the issue is extremely important. Everyone accepts that an essential condition for rehabilitation, which I think we all accept is desirable, just and necessary, enabling offenders to play their part in a law-abiding society, is to have a job and a stable relationship—the second of which is often dependent on the first—as well as being able to move into that job fairly rapidly.

I was interested in the intervention by the hon. Member for Eddisbury, and I pay tribute to the incredible work done by the company that he is associated with, precisely in recognising that. I only wish that more employers would follow through in the same way. He made an important point and asked that employers should look at the person.

Unfortunately, that is where I think the Minister was slightly naive. All that many employers look at is whether the boxes are ticked. Is the age box ticked? If someone is over a certain age, employers do not even look at them. There is a new way of doing that: employers ask for qualifications. For jobs where there is no reason to want A-levels, they want them. Alternatively, they require a degree-level person for a job. What does that say? It says that older people need not apply, because we look at the increase in the number of people taking A-levels and degrees, and we will see that there is a very definite age bias, so again they are excluded.

As for people with a disability, regardless of whether or not that disability prevents them from doing the job, too many employers—including some in the public sector, for all their pretensions—will not look at the person and think, "They can't take this particular exam; they can't do the job." I once had a case of a constituent who had been doing a civil service job on a temporary basis for about four years. Their union reps tried everything to get them the job, but no, because the civil service rules said that they first had to take an exam, but because of their disability, which was a mental disability, they could not do that, but they had worked out a coping mechanism.

This behaviour is immoral, unjust and incredibly economically inefficient. However, there is another factor coming in. For quite a while now, we have had the issue that for too many employers the easy option has been not to look at the person but just to say, "Well, they have got some conviction." They will then pick up the phone to the agency, which will pick up the phone to Warsaw, and all they will do is just import labour to do the work. Now, with the rapid increase in unemployment—we are already seeing that feeding through into reducing wage rates, indicating a surplus of supply over demand—we will be seeing the same thing, with employers taking the easy route. If somebody cannot tick the box, the employer does not even look at them. I think we will have to return to this issue, although this measure actually enables us to make decent progress.

I take issue with the Minister's point about timeliness. The Lammy report, which my right hon. Friend the Member for Tottenham himself referred to very modestly, was a seminal report produced at the request of the then Conservative Prime Minister in 2017. The Minister referred to the Supreme Court's judgment of January 2019. We are now in September 2020. Why has it taken the Department so long, given that they knew all the issues that were involved, because they had been dealt with by the Court of Appeal? All that was being asked for was some final validation by the Supreme Court.

I return to the issue I raised. Given the details of the cases involved, why did the Home Office not move? I have to say that I find it truly extraordinary, when we have a lot of complaints about judges trying to make law rather than interpreting the law and adjudicating on it. Actually, we seem to have abdicated that responsibility, leaving it to judges to make the law. I had thought that it was the job of Parliament, Ministers and the civil service to identify problems and see whether they can be resolved within existing law, and then—if the law needs changing—to bring that change to Parliament. Why abdicate that to judges?

Let us look at one or two of the cases that were part of the Supreme Court's judgment. P received a caution on 26 July 1999 for the theft of a sandwich from a shop. Three months later, on 1 November 1999, she was convicted at Oxford magistrates court of the theft of a book worth 99p and failing to surrender to the bail granted to her after arrest for that offence. She received a conditional discharge for both offences. At the time of the offences, she was 28, homeless and suffering from undiagnosed schizophrenia, which is now under control. She has now qualified as a teaching assistant and has committed no further offences, but she has been unable to find employment. That is a scandal. Why would the Home Office not respond to that and say, "This cannot be and this should not be"?

W was convicted by Dewsbury magistrates court on 26 November 1982 of assault occasioning actual bodily harm. At the time of the offence, he was 16 and the assault occurred in the course of a fight between a number of boys on their way home from school. He received a conditional discharge and has not offended since. He is now 47 and has difficulty obtaining a teaching job.

In 1996, Lorraine Gallagher was convicted at Londonderry magistrates court of one count of driving without wearing a seatbelt and three counts of carrying a child under 14 years old without a seatbelt, and there was a subsequent case in 1998. She has no other convictions. She qualified as a social carer and was admitted to the Northern Ireland Social Care Council register, and then she was rejected for employment as a result of failing the test. There are many other cases—I am sure many Members of Parliament have had them.

Frankly, it is scandalous that this issue has not been dealt with up to now. I doubt that, had I not had the luck of getting a question to the Prime Minister three weeks in a row—no, I did not tip the winner of the St Leger—it would even have got here by now. Why was the Prime Minister, certainly on the second occasion, not able to trump me and say, "This has all been sorted out"? This has been a saga of dither and delay.

A further problem is that the system finds it very difficult to cope with so many cases. Anybody who has moved from one conurbation to another—I get people who have moved from London to the midlands—have

[John Spellar]

to get DBS checks from two police forces, and the record of the Metropolitan police has not been glowing in that regard. Month after month goes by, and those people are not able to get into employment. They are denied the ability to provide for themselves. That is partly to do with the efficiency of those forces, and partly about why these things cannot be done in parallel, rather than in series. It is also because we are overloading the system with so many unnecessary cases.

The Security Industry Authority is another one that has considerable problems. Those who remember the first police and crime commissioner elections know that those who had very minor convictions or cautions in their teenage years—they were often in their 50s or 60s—were denied the right to run as police and crime commissioners even if they were major figures in their local societies. This mindset at the Home Office must change.

I think, therefore, that colleagues on both sides of the House need to consider, as we approach Brexit and this country needs to be firing on four, not two, cylinders, whether we can afford this dithering, delay and obstruction that goes on regularly in so many Departments. Is it not holding back our country, as well as individuals? There is a real economic price to pay, quite apart from the social justice case. If we keep people in enforced unemployment or working in jobs that are below their capability and potential, that is not just bad for them but significantly bad for the country. Therefore, there needs to be a reflection particularly about the Home Office but also about the civil service generally.

We have had too many cases of this in the Home Office. We had the Windrush scandal, in which year after year, decent, hard-working citizens were deprived of their rights, treated with contempt, pushed around and treated scandalously. Even after it was exposed, very few of them received compensation—although, I do not know what the appropriate compensation would be for having their lives ruined. Some have already died, including one who used to work in the House of Commons, yet they rejected her claim. We have more and more delay and obstruction. I do not know how many people are still stuck, but my right hon. Friend the Member for Tottenham might.

Mr Lammy: Five thousand.

John Spellar: Five thousand people are still stuck in the system, which will not give way. Frankly, it is that indifference—that contempt for ordinary people—that, bluntly, in previous eras of the civil service, led to the Irish and Bengal famines. This is a welcome change. It needs to go further, but there also needs to be a root-and-branch change in Government.

5.5 pm

Victoria Atkins: We were getting on so well! Hon. Members in other parts of the Palace may be heatedly debating certain issues, but I was hoping, from the constructive speech of the right hon. Member for Tottenham, that we could find agreement. Indeed, I acknowledge that he kindly indicated that the orders will not be subject to a vote, for which I thank him.

I also thank the right hon. Gentleman for his work on the Lammy review, on which he continues to keep a laser-like focus. Only recently, in answer to an urgent question, the Under-Secretary of State for Justice, my hon. Friend the Member for Cheltenham (Alex Chalk), updated the Chamber that, of the right hon. Gentleman's recommendations, 16 have been completed, two have been rejected and 17 are in progress. I very much hope that he considers this measure to be one of the recommendations in progress that we hope to be finalised by the end of the year.

The hon. Member for Warley—

John Spellar: Right hon. Gentleman.

Victoria Atkins: Forgive me. The right hon. Gentleman took a slightly different approach in his advocacy, but we acknowledge the passion that he brings to the subject. I merely confirm and reassure him that his PMQs will have been considered carefully by the Prime Minister, and that the Government will of course continue to consider carefully the Supreme Court ruling. It is precisely because we have been careful to ensure that we are following the guidance in that ruling that we have arrived at these orders.

I will clarify a couple of points in relation to the case that was argued, because the right hon. Member for Warley put a great deal of emphasis on the fact that common sense would have dictated that the Government change the policy before the Supreme Court ruling on the four cases that were joined. In fact, in the case of P, her convictions stood to be disclosed under the multiple conviction rule. W wanted to teach English, but as actual bodily harm is on the specified offences list, it will always be disclosed, and indeed, that decision was upheld by the Supreme Court. The case of Gallagher was again a case of the multiple conviction rule, and will be corrected by virtue of these orders.

The fourth case, which I do not think the right hon. Gentleman mentioned, was that of G, who received two reprimands aged 13 for sexually assaulting two younger boys, both aged nine. G claimed that the acts were consensual. He would have had the reprimand disclosed under the serious offences rule. The Supreme Court was content with that course of action. I hope that shows that, although one may have an instinct as to how certain rules should be applied, the Government must none the less take each case and be clear as to the consequences, intended and unintended, of changing the safeguarding regime.

John Spellar: If we take the case of W, the Supreme Court would have said, "As we understand the law, as the law is, this is what you should do." The Minister said that the Supreme Court gave approval for the way the Government acted in the case of W. It then falls back to the Minister to justify how a conditional discharge that a 16-year-old received after a fight between a number of boys on their way home from school in 1982, since when he has not offended, should blight his life in his 40s. That is not a job for the judge, who has to work on the basis of the law at that moment. Why did Ministers not take from that example that they should change the law?

Victoria Atkins: I am so grateful to the right hon. Gentleman because, although I am not sure that he realises it, he is supporting my argument, which is that the national framework that applies across England and Wales has to be drafted in such a way that is compatible with the law, and indeed the Supreme Court upheld that element of the regime. Of course, the case-by-case application of the regime is a matter for employers—that is the point made by my hon. Friend the Member for Eddisbury. Under this regime, in very vulnerable cases, and with the exception of the barred list, it is a matter for employers.

I emphasise that this does not apply to every single job out there; it applies to those that fall under the criteria of the regime—namely, jobs that deal with the most vulnerable in our society and that require high levels of trust and responsibility, including the security industry, for example. The Supreme Court has done exactly as it should have by reviewing the regime and saying that the specified offences list is within the rule of the law and the ECHR, so it is for employers to apply it to the individual cases. As the right hon. Gentleman for Warley knows full well, we in this place—with the best will in the world—cannot possibly imagine every which way that people conduct their lives or what misfortunes and troubles they may have, so we have to provide a framework that employers can apply and apply well.

The right hon. Gentleman for Warley mentioned the delay. To reassure the Committee, part of the work that we have been doing since the Supreme Court judgment has been to understand the likely effects of those changes. Analysts in the Home Office undertook detailed analysis of how the rule changes, if applied retrospectively, would have affected applicants for DBS certificates. The year 2015-16 was chosen because that was the last year for which we had full records at the time that the report was researched.

A peer-reviewed analytical report, which was published on 9 September, summarises the main results of the work. It shows that the changes affected a higher proportion of applicants for DBS certificates who received convictions or cautions while under the age of 18 than of applicants who received convictions fully during their adult lives. Some 85% of applicants with youth convictions or cautions would see at least one offence removed from their list of disclosed offences, while 32% see all their convictions and cautions removed. I give those figures as an indication of the thought and care that has gone into bringing the orders forward.

The right hon. Member for Tottenham urged the Government to go further. He will know that we are publishing the sentencing White Paper, which will contain further proposals for reform of the Rehabilitation of Offenders Act 1974 where the rules apply to non-sensitive roles. We are supportive of reducing the number of people who have previously offended who are required to disclose their convictions as part of basic employment checks. Of course, we need to consider safeguarding concerns, but I very much look forward to contributions from him and others as the sentencing White Paper is analysed and discussed.

The right hon. Gentleman for Tottenham also raised childhood rehabilitation periods, which will be considered along with potential changes to adult rehabilitation periods under the 1974 Act, where the rules apply to non-sensitive roles. Ministry of Justice officials have met charities with an interest in supporting children and adults who have offended in the past, as well as employer representatives, to discuss our approach. Again, the sentencing White Paper is very much part of that landscape. We have of course taken into consideration recommendations on this issue from the Justice Committee and from other reports.

I hope that I have responded to the questions that have been posed this afternoon. We are confident that the regime will still help employers to make informed recruitment decisions, particularly for roles involving children and vulnerable adults, but in a way that now enables those with old and minor offences to move away from their pasts. I commend the draft instruments to the Committee.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2020.

DRAFT POLICE ACT 1997 (CRIMINAL RECORD CERTIFICATES: RELEVANT MATTERS) (AMENDMENT) (ENGLAND AND WALES) ORDER 2020

Resolved,

That the Committee has considered the draft Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2020.—*(Victoria Atkins.)*

5.16 pm

Committee rose.