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GENERAL COMMITTEES

Public Bill Committee

POLICE, CRIME, SENTENCING AND COURTS BILL

Thirteenth Sitting

Tuesday 15 June 2021

(Morning)

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Saturday 19 June 2021

The Committee consisted of the following Members:

Chair: Sir Charles Walker

† Anderson, Lee *(Ashfield)* (Con)
† Atkins, Victoria *(Parliamentary Under-Secretary of State for the Home Department)*
† Baillie, Siobhan *(Stroud)* (Con)
† Champion, Sarah *(Rotherham)* (Lab)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
† Cunningham, Alex *(Stockton North)* (Lab)
Dorans, Allan *(Ayr, Carrick and Cumnock)* (SNP)
† Eagle, Maria *(Garston and Halewood)* (Lab)
Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Higginbotham, Antony *(Burnley)* (Con)
† Jones, Sarah *(Croydon Central)* (Lab)
Levy, Ian *(Blyth Valley)* (Con)
† Philp, Chris *(Parliamentary Under-Secretary of State for the Home Department)*
† Pursglove, Tom *(Corby)* (Con)
† Wheeler, Mrs Heather *(South Derbyshire)* (Con)
† Williams, Hywel *(Arfon)* (PC)

Huw Yardley, Sarah Thatcher, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 15 June 2021

(Morning)

[Sir Charles Walker *in the Chair*]

Police, Crime, Sentencing and Courts Bill

9.25 am

The Chair: Before we begin, I have a few preliminary reminders for the Committee. Please switch electronic devices to silent mode. No food or drink except the water provided is permitted during sittings of the Committee. I remind hon. Members to observe physical distancing. They should sit only in places that are clearly marked. It is important that Members find their seats and leave the room promptly in order to avoid delays for other Members and staff—that is not actually an issue for us because we have the room for the day. Members should wear face coverings in Committee unless they are speaking or medically exempt. *Hansard* colleagues would be grateful if Members emailed their speaking notes to hansardnotes@parliament.uk.

We now resume line-by-line consideration of the Bill. The selection list for today's sittings is available in the room. I remind Members wishing to press to a Division grouped amendments or new clauses that they should indicate their intention when speaking to their amendment. I think that, before we start, there is a point of order from the shadow Minister.

Alex Cunningham (Stockton North) (Lab): On a point of order, Sir Charles. Good morning to you. I made a small but significant and totally unintentional mistake in one of my speeches last week. In the debate relating to clause 100, I referenced the Sentencing Council and said that it had expressed concern about the reasoning behind the proposed provision. The council had not; the comments made should have been attributed to the Sentencing Academy. I apologise to both organisations for the error, and I am pleased to set the record straight.

The Chair: That was a very generous and lovely apology.

Clause 106

Increase in requisite custodial period for certain violent or sexual offenders

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

The Parliamentary Under-Secretary of State for the Home Department (Chris Philp): Good morning, Sir Charles. It is, as always, a pleasure to serve under your chairmanship. Clause 106 is an extremely important clause of the Bill, because it forms a critical part of the Government's commitment to ensuring that the most serious offenders spend more time in prison, properly reflecting the gravity of their offences, protecting the public and building confidence in our sentencing regime. It does that by abolishing the automatic halfway release point for certain serious violent or sexual offenders and instead requiring them to serve two thirds of their sentence in prison.

This builds on changes made throughout 2020. First, in February of last year, we changed the release provisions for terrorists and terrorist-connected offenders receiving a standard determinate sentence in order to ensure that they serve at least two thirds of their sentence in custody and thereafter are released only when the Parole Board is satisfied that it is safe to release them. Colleagues will recall the Bill that became the Terrorist Offenders (Restriction of Early Release) Act 2020, which we passed in a day in February of last year to prevent repeats of the Fishmongers' Hall and Streatham attacks. In fact, the first terrorist who might otherwise have been released early was kept in prison just a few weeks after we passed that Bill. The measure was tested in the High Court last summer and found to be lawful when measured against the European convention on human rights. I thought that the Committee might appreciate an update on that.

Then, in April of last year, we laid before the House a statutory instrument—the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020. I will explain what that did. For the most serious sexual or violent offenders with a standard determinate sentence of more than seven years, the automatic release point was moved from half to two thirds, ensuring that those serious offenders spend longer in prison. This clause puts the provisions of that order—a statutory instrument—into primary legislation. Critically, however, it goes further and says that serious sexual offenders and certain violent offenders receiving a standard determinate sentence not just of more than seven years but of between four and seven years will also automatically spend two thirds of their sentence in custody, rather than being automatically released at the halfway point; the release at the two-thirds point will still be automatic. It applies to any sexual offence carrying a maximum life sentence, including rape. I know that rape and related sexual offences are rightly of concern to the Committee, so it is worth stressing that this clause will ensure that rapists spend longer in prison.

Hywel Williams (Arfon) (PC): What assessment has the Minister made of the effect on the prison population, particularly in Wales, which already has the highest rate of imprisonment in western Europe with 154 prisoners per 100,000 of the population of Wales, compared with 141 per 100,000 in England? Given the possible effects of inflation on the length of sentences, what provision will he make specifically for Welsh prisons to cope with that?

Chris Philp: We have indeed made such an assessment. We have done it for the whole jurisdiction, and the steady-state impact on the prison population is 255 prisoners. I do not have a breakdown for Wales, but I estimate—this is simply my off-the-cuff estimate—that the portion of that 255 that applies to Wales might be in the range of 10 to 20 prisoners in Wales. That is just my off-the-cuff estimate, not an official figure, so it carries quite an important health warning.

On the prison population impact and prison capacity more generally, the hon. Gentleman will be aware that the Government are committed to building an extra 10,000 prison places to make sure we can cater to increased demands in the Prison Service as we make sure dangerous criminals spend longer incarcerated.

Sarah Champion (Rotherham) (Lab): Building an extra 10,000 prison cells is very costly. Does the Minister agree that investing more in rehabilitation and preventive programmes might be a better use of the money?

Chris Philp: Of course, we do believe in rehabilitation and prevention, and a lot of work is going on in that area, but we are talking about people who have been convicted of offences such as rape and murder. On Second Reading, Members made the point about making sure that particularly sexual offenders, including rapists, spend longer in prison. There were different views on how that could be achieved, but there seemed to be broad unanimity across the House that such offenders should spend longer in prison, and the clause does exactly that. However, it in no way detracts from the importance of prevention and rehabilitation that the hon. Lady mentioned a second ago.

I should say that caught in this clause are not just sexual offenders who commit offences, including rape, with a life sentence, but also the most serious violent offenders, which includes those who commit manslaughter, attempted murder, soliciting murder, and wounding with intent to cause grievous bodily harm, so I think our constituents up and down the country will welcome the fact that these serious offenders will spend two thirds of their sentence in prison and not just a half.

Provision is also made in this clause for the two-thirds release requirement to apply to those under the age of 18 who were given a youth standard determinate sentence of seven years or more for a sexual offence with a maximum penalty of life, and for the other very serious violent offences just referred to. The changes are made by inserting new section 244ZA into the Criminal Justice Act 2003 to make the necessary provisions. The measures will ensure that the proportion of the sentence reflects the gravity of the offence committed, and are intended to address long-held concerns, both in Parliament and among the public, about the automatic halfway release for serious offenders.

The two-thirds point also aligns with the release point for offenders found to be dangerous and therefore serving an extended determinate sentence, whose eligibility for release by the Parole Board commences from the two-thirds point, so it introduces consistency and coherence into the sentencing regime as well. On that basis, I commend this very important clause to the Committee.

Alex Cunningham: Clause 106, as we have heard, follows the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020, which altered the automatic release point for offenders who have committed a specific sexual or violent offence. As the Minister said, the effect of the release of prisoners order was to move the automatic release point from halfway to two thirds of an eligible prisoner's sentence, and would apply to those found guilty of specific sexual or violent offences for which the penalty is life, and who were sentenced to seven years or more in prison.

Clause 106 implements the proposal in the "A Smarter Approach to Sentencing" White Paper to extend these changes to include sentences of between four and seven years for any of the sexual offences already specified, but only to some of the specified violent offences. That raises a point of concern for the Opposition. Why does the clause apply to all the sexual offences covered by the release of prisoners order, but only some of the violent offences?

Clause 106 will apply only to manslaughter, soliciting murder, attempted murder, and wounding causing grievous bodily harm with intent. This is precisely the point that the Opposition are trying to make. First, the release of prisoners order fundamentally changed the sentencing and release regime. Now the Government propose to extend the regime, but only to some of the original offences, with the other offences remaining the same. How on earth can that do anything but confuse an already notoriously confused system? I have asked before, what is the point of the remarkable work of the Law Commission on producing a much simplified sentencing code if the Government continue to tinker with sentencing and release provisions?

It is not only the Opposition who are concerned by the direction of travel the Government are taking on sentencing complexity. After considering clause 106, the Sentencing Academy agreed that its inclusion,

"unquestionably makes sentencing more complex and less intelligible to the public. Anecdotal evidence suggests that the judiciary are already struggling in discharging their statutory duty to explain the effect of the sentence as a result of the SI 2020/158 change. This proposal will make this task more difficult and result in a greater number of errors."

The academy goes on to express its concerns in full:

"We expressed concerns about the reforms last year and this provision exacerbates our concern. Proportionate sentencing is not well-served by a system in which identical sentence lengths have a significantly diverging impact in practice: two nine year sentences should carry the same penal weight; it should not mean six years in custody for one offence and four-and-a-half years in custody for another. The decision to exclude some violent offences from this proposal makes the system yet more perplexing: how can a seven year sentence for kidnapping justify four years and eight months in prison when a six year sentence for the same offence merits three years?"

I wonder if the Minister could explain that point to the Committee.

Let me be clear: Labour supports moves to ensure that the most serious and violent criminals receive longer sentences when there is evidence that their sentences do not match the severity of their crimes. That is why the Opposition supported the Government's moves to introduce clause 101 to extend whole-life orders for the premeditated murder of a child; clause 102 to extend whole-life orders to those who are 18 to 20 and have committed particularly heinous crimes; and clause 103 to increase the starting points for murder committed as a child. However, we cannot support a series of yet more changes to sentencing and release, which will only further confuse the system and make the task of members of the judiciary even more difficult, resulting in a greater number of sentencing errors.

The Prison Reform Trust makes a good point on the Government's proposed changes to sentencing and release when it says,

"that only serves to demonstrate the complexity of sentencing law in this area, and the extent to which the government adds to that complexity every time it responds to an individual crime by promising a change in sentencing law."

If the Government want to ensure that serious violent and sex offenders spend longer in prison, they can easily do so simply by increasing the maximum sentence length for the relevant offences. Taking that route rather than what the Sentencing Academy describes as,

"sentence inflation via the back door"

[Alex Cunningham]

would not lead to judges being confused and making sentencing errors. Moreover, it would not lead to the public being confused and losing faith in our sentencing system. Taking that route would also mean that prisoners spend longer in jail without having to lose out on the rehabilitative properties of spending half their sentence in the community.

That brings me to another fundamental concern that the Opposition have with clause 106. By requiring an offender to spend additional time in prison, the amount of time that they would spend in the community under supervision would decrease significantly. As the Howard League notes, we know that reducing

"the amount of time which people who have committed serious offences spend under the supervision of probation services in the community…is likely to undermine public safety rather than helping to keep victims and the public safe. Though there is no single model of probation supervision, a rapid evidence review across jurisdictions and models suggests that community supervision in itself reduces reoffending—unlike time in prison, which increases reoffending rates."

To sum up, the Opposition agree with the Government that where evidence exists that sentences do not properly reflect the severity of the crimes committed, sentencing reform should absolutely be an option. None the less, sentencing reform should be properly considered and guided by the principles set out by the Lord Chancellor in his foreword to the White Paper. Sentences should make sense to victims, members of the judiciary and legal practitioners. More importantly, sentences should make sense to the general public. Only when the general public and victims of crime understand our sentencing regime will they have full faith in it. We believe clause 106 goes against those principles, and for that reason we cannot support it.

The Chair: Are there any colleagues who would like to participate before I call the Minister? If not, I call the Minister.

Chris Philp: I feel bound to reply to some of the points that the shadow Minister has just made. First, he said that the provisions make sentencing more complicated and that it will be harder for the judiciary to understand. I will pass over the implied slight on the judiciary's ability to absorb complicated sentencing, but the measures relate exclusively to release provisions; they make no changes to the way that sentencing works. As such, this does not change anything a judge will do in passing sentence. The release decisions, and the administration of that, are obviously done by the Prison Service and the National Probation Service down the track. The release provisions have nothing at all to do with sentencing, so let me assure the shadow Minister on that point.

Secondly, the shadow Minister said that if we want people to spend longer in prison, we should increase the maximum sentence. By definition, the way that the provisions are constructed mean that they relate only to offences where the maximum sentence is life. It is not possible to increase a sentence beyond life—life already is the maximum. The only way to increase the sentencing is for the Sentencing Council to change its guidelines, and as the shadow Minister knows, the Sentencing Council is independent of Government and is chaired by Lord Justice Holroyde. However, I note in passing that average sentence lengths passed down by judges for serious offences have been increasing. Since 2010—a date that I choose arbitrarily—the average sentence for rape has gone up by about two and a half years, so judges have chosen to increase sentence lengths in the past 10 years.

The shadow Minister asked why the selection of violent offences with sentences between four and seven years is narrower than those above seven years. To be completely clear, the list of sexual offences is the same: between four and seven years, and seven-plus. I think the shadow Minister did say that, but I repeat it for clarity. The reason is that we are trying to calibrate the provisions in order to target the most serious offences, which include all serious violent and sexual offences where the sentence is more than seven years, and all serious sexual offences where the sentence is between four and seven years, but just that smaller selection of violent offences, such as manslaughter and so on, which we talked about earlier. We are attempting to calibrate this to the most serious offences.

Finally, the shadow Minister asked about public perception. Over the past 10 or 20 years, the public have been both confused and angered that a court hands down a sentence to a very serious offender—we are talking about sentences that carry a maximum of life, such as manslaughter and rape—and the offender then walks out halfway through a sentence, or less than halfway when time on remand in taken into account. The public are angered by that. In fact, as a Minister in the Ministry of Justice, I get quite a lot of correspondence from members of the public who are angry about serious offenders getting released inappropriately early, as they see it. I agree, which is why we will ensure that the most serious offenders spend longer in prison. If the Opposition vote against this measure, as it would appear they are about to do, they are voting to say that they do not think those serious offenders should spend longer in prison. They are voting for people who have committed manslaughter or rape to be released from prison earlier than would be the case if the clause were passed. I think the public expect us to do something different, and I ask the Opposition to think again—particularly given that, on Second Reading, both sides of the House seemed to be arguing that people who commit very serious offences, including rape, should spend longer in prison. The clause does exactly that. On that basis, I commend it to the Committee.

9.45 am

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

The Committee divided: Ayes 8, Noes 6.

Division No. 19]

AYES

Anderson, Lee	Higginbotham, Antony
Atkins, Victoria	Philp, Chris
Baillie, Siobhan	Pursglove, Tom
Clarkson, Chris	Wheeler, Mrs Heather

NOES

Champion, Sarah	Eagle, Maria
Charalambous, Bambos	Jones, Sarah
Cunningham, Alex	Williams, Hywel

Question accordingly agreed to.

Clause 106 ordered to stand part of the Bill.

Clause 107

INCREASE IN REQUISITE CUSTODIAL PERIOD

FOR CERTAIN OTHER OFFENDERS OF PARTICULAR CONCERN

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

Chris Philp: Clause 107 makes some changes to SOPC—sentences for offenders of particular concern—essentially to tidy up an anomaly that arose from the changes made last year. As Members will recall, under the changes we made last year to terrorism sentencing, when a terrorist offender had a SOPC sentence the release point was moved to two thirds, at which point they became eligible for consideration for release by the Parole Board. However, two child sexual offences also carry a mandatory SOPC sentence where there are different release provisions.

In this clause, we are simply making a change to make the release provisions for those two child sex offences in relation to the SOPC sentence the same as those for the terrorist sentence—that is to say, they will serve two thirds, following which they will be eligible for consideration for release by the Parole Board. That makes the sentence the same as for the other terrorism SOPC offences and the same as the extended determinate sentences. In his last speech, the shadow Minister spoke in a spirit of simplification and consistency, and this change is consistent with that principle. I commend the clause to the Committee.

Alex Cunningham: The Minister likes to have his little digs; I think he quite enjoys them. I assure the Committee and everybody else that I have full confidence in the judiciary. If the Minister had as much confidence as I do, perhaps he would not be mucking about so much with the system and would leave the judiciary to sentence within the regime that exists.

As we have heard, as with clause 106 the purpose of clause 107 is to increase the proportion of the time certain offenders spend their sentence in jail. In this case, we are talking about offenders of particular concern, meaning those who have been convicted of one or two child sexual offences or certain terrorist offences. As set out by the Minister, as things currently stand different release arrangements apply to offenders of particular concern convicted of terror offences and those convicted of child sexual offences.

Clause 107 would change that by ensuring that all offenders of particular concern would serve two thirds rather than one half of their sentence in prison, before applying to the Parole Board to be released. Given that I have spoken extensively on the same matter, or very similar matters, in clauses 105 and 106, this speech will be very short. For the reasons I set out in relation to those clauses, we cannot support clause 107. Although the Opposition agree that those who have committed the most serious violent and sexual offences should spend longer in prison, we do not believe that the method set out in clauses 105 to 107 is the best vehicle to meet this policy objective.

The Opposition cannot support more changes to the sentencing and release regimes. Contrary to what the Minister says, that will further complicate our sentencing system and risk victims of crime and members of the public losing faith in it. If the Government want to ensure that offenders spend longer in prison, where the evidence base suggests they should, we believe there are better ways of achieving that goal.

Chris Philp: I have nothing to add, except one point that I should have made in my earlier speech. If someone with a SOPC serves their entire sentence in custody, they get a year on licence after release. That is an important point to add to my previous remarks, but I have nothing further to add to my speech on clause 106: the same points apply.

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

The Committee divided: Ayes 8, Noes 5.

Division No. 20]

AYES

Anderson, Lee	Higginbotham, Antony
Atkins, Victoria	Philp, Chris
Baillie, Siobhan	Pursglove, Tom
Clarkson, Chris	Wheeler, Mrs Heather

NOES

Charalambous, Bambos	Jones, Sarah
Cunningham, Alex	
Eagle, Maria	Williams, Hywel

Question accordingly agreed to.

Clause 107 ordered to stand part of the Bill.

Clause 108

POWER TO REFER HIGH-RISK OFFENDERS TO PAROLE BOARD IN PLACE OF AUTOMATIC RELEASE

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

The Chair: Will the Minister rise?

Chris Philp: Sorry, Sir Charles; I was momentarily moved to speechlessness by the fact that the Opposition have just voted to let child rapists out of jail earlier than the clause proposes.

Alex Cunningham: No, we did not.

Chris Philp: Let us move on to clause 108, which relates to a new power for the Secretary of State to prevent the automatic release of offenders serving a standard determinate sentence, where release is ordinarily automatic, and instead refer them to the Parole Board in certain, very limited circumstances.

With a standard determinate sentence at the moment, there is automatic release at either the halfway point or, for more serious offences, at the two-thirds point, as per clauses 105 and 106. Clause 108 creates a new power to allow the Secretary of State to refer a prisoner who is in custody and assessed as dangerous to the Parole Board, to decide whether or not they are safe to release. Prisoners who are serving a standard determinate sentence, for any offence, who have become dangerous or who are identified as being dangerous while they are in prison get this referral.

[Chris Philp]

To be clear, we are not creating a new kind of indeterminate sentence like the old imprisonment for public protection sentences, created in 2003, in which the sentence could carry on forever if someone were considered to be dangerous. The maximum sentence originally passed by the court on conviction and sentencing still applies.

We are not overriding the sentence of the court, but we are saying that if an offender is identified as dangerous they may continue to serve their determinate sentence until its end, unless and until the Parole Board, after the release point, decides that they are safe to release. It means that if someone becomes dangerous, they do not automatically get released early.

Sarah Champion: The Minister will see from an upcoming amendment that I am interested in this clause. Can he give some clarification? Will he define "dangerous"? I assume that is within the prison context, as opposed to the crime being served for.

Will the Minister give some details on when and why the Secretary of State might intervene? At the moment, depending on the Parole Board's decision, the Secretary of State already has 21 days to intervene. Will he explain what the clause will bring to the table?

Chris Philp: I am happy to answer all those questions, which are good questions. The 21-days provision that allows the Parole Board to think again has nothing to do with this; it is completely separate. It is a live issue in the terrible Pitchfork case, which Members will be aware of.

The provision in which the Parole Board takes a decision to release and the Secretary of State may ask it to think again, within 21 days, applies to any Parole Board release and is a matter currently being considered. That is wholly separate from this provision. It relates to any Parole Board release decision and was prompted by the awful Worboys case two or three years ago.

Here we are talking about where a prisoner is serving a standard determinate sentence and would ordinarily be released automatically without any Parole Board involvement at all, and the Secretary of State says, "Well, I think actually they are now dangerous"—I will come on to what that means in a minute—"and instead of automatic release, can the Parole Board look at the case and decide whether they are suitable for release, once their release point is passed?" That is different from the 21-days reconsideration.

The hon. Member for Rotherham asked for the definition of becoming dangerous and whether it means dangerous in a prison context. The answer is no. It does not mean dangerous in a prison context; it means dangerous to the public. One might ask what "dangerous to the public" means. The definition of "dangerous" in this context has a high threshold—we anticipate this provision will be used extremely rarely; it is not going to be a commonly used provision. It is that an offender is at "significant risk" of causing "serious harm" to the public by committing murder or one of the serious offences listed in schedule 18 of the Sentencing Act 2020, such as manslaughter, rape or terrorist offences, and that the risk cannot be sufficiently managed through the use of licence conditions.

If a referral is made, the Parole Board will consider it. It may say, "We will release them anyway" or, "We think there is a danger; we are going to keep them inside." It can only keep them inside prison until the end of the original sentence that the court handed down.

I will give an example not caught by our new provisions. To take the example the shadow Minister used, let us say there is a six-year sentence for kidnapping. Currently, there would ordinarily be automatic release after three years. If for some reason there is evidence that the person who has been committed for kidnap might commit a terrorist offence or might kill someone, the Secretary of State can refer and the Parole Board will then consider, "Are they dangerous? Can we release them?" If it decides to keep them in prison, they can be kept in prison up to the six years of the original sentence, but no later. During the final three-year period in my example, the Parole Board will look at the case periodically.

If, after reference to the Parole Board, the prisoner thinks there has been an unreasonable delay—"I should have been released after three years, but it is now three years and six months and no one has looked at it; this is unreasonable"—they can refer the matter to the High Court to get it sorted out. There is a safety mechanism so that there cannot be an unreasonable delay.

Alex Cunningham: Will the Minister confirm something? In the event of a dangerous person—a radicalised person—being required to serve their full sentence, will they be released into the community without any supervision or licence conditions when they get to the end of the sentence?

Chris Philp: The shadow Minister is correct.

Alex Cunningham: Why?

Chris Philp: That already happens, of course, with extended determinate sentences, where it is possible that the person will spend all their sentence in prison. If the Parole Board does that, there is no subsequent period on licence—unlike the SOPC that we just talked about, where there is a minimum of one year on licence afterwards.

Of course, when the Parole Board makes decisions about whether to release in the final half or third of a sentence, it will be aware of the point that the shadow Minister made. If it thinks that public safety is best served by releasing a little bit before the end of the sentence to allow that one year, or whatever it may be, on licence at the end, it is within its power to consider and do that—so instead of the individual serving all the sentence inside, there would be a bit of release on licence at the end. The Parole Board can think about that at the end if it chooses to.

Alex Cunningham: But surely the point remains that this person, who is said to be a danger to the public although there may not be sufficient evidence to convict him of another charge, will be released into the community at the end of their sentence—after six years, 10 years or whatever—and will still be the same dangerous person he was thought to be by the Lord Chancellor, through the Parole Board, when he was in prison.

10 am

Chris Philp: Under ECHR and common-law provisions, we cannot extend a sentence beyond what was handed down by the court. Of course, that was the big problem

with the old IPP sentences, where people could stay in prison forever; indeed, there are still people in prison under IPP sentences.

We have to work within the envelope—within the maximum sentence handed down by the court originally for the offence originally committed. The judgment is essentially to be exercised by the Parole Board on how best to protect the public, by striking a balance. Do we leave people in prison for the whole time or do we release them a bit early with a period on licence? That is a judgment that the Parole Board has to make to best protect the public. In some cases, if it thinks that the risk is very high, it may consider that the whole term in prison is the best way.

Take the example of the six years. The Parole Board may say, "Well, six years in prison is better than five years in prison followed by one year on licence". It is a judgment that the Parole Board must make. We cannot reasonably go beyond that six years, because that would be potentially unjust: we would be punishing someone and imposing a sentence that was longer than that originally handed down by the court for the offence of which they were convicted. That would be contrary to natural justice, common law and ECHR provisions.

That is why the measure is designed as it is, and I hope that makes sense.

Maria Eagle (Garston and Halewood) (Lab): The old IPP sentences had their problems; they were much too widely used and were not originally intended to be that widely used. There was an issue about them, certainly. However, would not that kind of sentence—one that was indeterminate but able to be cut short when the individual concerned could demonstrate that they were no longer dangerous—be the answer in some of the kinds of tangents that the Minister is talking about?

The Minister seems to be tying himself in knots, to say, "Well, it's going to be either three years or six years, but we all know that the person is coming out at the end". Originally, IPP sentences were legislated for to deal with this very issue, but of course they ended up being too widely used. Is there not a better way of reintroducing some kind of IPP sentences that would enable greater safety but be much more narrowly used?

Chris Philp: Can I clarify whether the hon. Member is talking about potentially indeterminate sentences?

Maria Eagle: Yes.

Chris Philp: She is. Okay.

We debated this issue internally, when we were designing the clause. Clearly, one of the options considered was reintroducing some form of IPP sentence, which is, as the hon. Lady said, indeterminate, meaning that it could go on forever. That was not done because there is potentially an inherent injustice. We have been using the example of kidnap, so let us keep using it. If someone commits that offence and the judge decides that six years is the right sentence, to then say that that person, having been given a fixed sentence, could spend the rest of their life in prison because of a risk that they might offend later—they had not committed a more serious offence; it is just that they might—struck us as being inherently unjust.

Do hon. Members remember the film "Minority Report", where people were incarcerated because it was judged that they might commit an offence in the future? If we get into the territory of imposing a penalty, which could be imprisonment forever, because someone might commit an offence rather than because they actually have committed an offence, we are straying into potentially slightly dangerous territory.

Maria Eagle: I was not suggesting that; I was not suggesting that people who have been given determinate sentences should then arbitrarily suddenly find themselves with an indeterminate sentence. What I was suggesting was that perhaps there are a small number of cases for which it would be appropriate to reintroduce the possibility for judges to give indeterminate sentences again. The problem with the IPP was that it was much too widely used; I think the wording was too broad and it was much too widely used by sentencers. But the purpose of it was to deal with just these cases that the Minister is talking about.

I am not suggesting that somebody who has been given a determinate sentence should then arbitrarily be given an indeterminate sentence. However, if an indeterminate sentence for public protection was available in very narrow circumstances to judges, would that not fill this gap in a more coherent way than the way in which the Minister is trying to do it?

Chris Philp: Clearly, if the original offence for which the offender is sentenced is one of the more serious ones that we have been talking about—for example, even offences that we consider to be moderately serious, such as committing grievous bodily harm with intent, have life sentences—the judge can, if he or she chooses, impose a life sentence and set a tariff for consideration for release, so there is flexibility. We are talking about cases where the original offence is not one of those very serious ones that has a life sentence, but one that has a fixed determinate sentence. I think the hon. Member is asking if we can give the judge the power to say that, even though the original offence has a fixed maximum sentence of, for example, only five years, they will override that and say, "Actually, for some reason that is not to do with the original offence, but is just to do with some other assessment of public risk, I will give you an indeterminate sentence." I think that is the question.

Maria Eagle *indicated dissent.*

Chris Philp: No, it is not.

Maria Eagle: Not quite. I was suggesting that perhaps the Minister should legislate for indeterminate sentences in particular circumstances and give the judge that discretion, but in a much narrower band of offences than those that ended up getting indeterminate sentences in the past. Indeterminate sentences have all been abolished now—they cannot be used. If I might say so, it seems that the Minister is trying to deal with the very issue that they were introduced to deal with in a very convoluted manner.

Chris Philp: No, we are trying to do deal with the issue of prisoners who become dangerous, or who clearly pose a danger to the public, while they are in prison, but without doing what IPPs did. IPPs were abolished for a reason in 2012: people who committed a particular

[Chris Philp]

offence with a fixed sentence of, say, five years could end up in prison forever. As I have said, for more serious offenders the judge has the option of a life sentence, but we do not think it is right that someone could commit an offence with a fixed sentence, such as five years, and end up in prison for life, not for an offence they have committed, but for one that they might commit in the future.

This is the best way of balancing that public protection consideration against natural justice—that the punishment should fit the crime—and avoid a "Minority report"-type situation where someone is incarcerated for a crime that they may commit in the future, but have not yet committed. This strikes the right balance. We stay within the envelope of the sentence handed down by the judge. The judge has the option in serious cases to hand down a life sentence already, but we have just changed the release provisions.

We have debated the clause relatively extensively, Sir Charles. It strikes the right balance between natural justice and protecting the public. On that basis, I commend it to the Committee.

Alex Cunningham: As we have heard, clause 108 would create a new power to allow the Lord Chancellor to refer a prisoner to the Parole Board who would otherwise be eligible for automatic release, if he believes that they have become a significant danger to the public while in prison. Rather than being freed at the halfway or two-thirds point of a sentence, they would be released only if the Parole Board thought it was safe. If the Parole Board did not believe it was safe, they would continue to serve the rest of their sentence in prison, unless the Parole Board consequently changed its mind. As the Minister has confirmed, if they served the whole of their sentence in prison, they would then be released into the community without any licence conditions or supervision.

It is safe to say that the Opposition have several serious concerns with clause 108, and largely agree with the Prison Reform Trust in believing that

"this clause creates a constitutional and legal mess".

Let us start with the basics. As is set out in the explanatory notes to the Bill, this is a brand new power, the beneficiary of whom is the Lord Chancellor.

Chris Philp: I say with great respect to the shadow Minister that the beneficiary of this clause is not the Lord Chancellor, but the general public, who might be protected from dangerous offenders who would otherwise be released.

Alex Cunningham: The Lord Chancellor is the beneficiary, because he is given a new power to change things and refer.

The effect of the clause is that, for the first time for these types of prisoners, the Lord Chancellor will have the power effectively to refer a prisoner to have their sentence conditions varied, should the Parole Board agree. We all understand that. For example, if a prisoner is sentenced to five years for shoplifting, under current legislation they would become eligible to be automatically released on licence at the halfway point of their sentence. Under the new provision, if the Lord Chancellor believes that the shoplifter had become radicalised in prison, he could refer the prisoner to the Parole Board, which could prevent his automatic release. That would, of course, be without the prisoner ever having been charged or found guilty of any further offence while in prison.

That raises two fundamental questions. First, is it right or proper for the Lord Chancellor to be involved in the management of individual prisoners? How will he make the decision to refer somebody to the Parole Board? What criteria will be used for the Lord Chancellor to make such a referral decision? Secondly, is this not a case of punishment without due process, and therefore unlawful?

On the first point, I note the remarks of the Sentencing Academy on clause 108:

"giving the Secretary of State for Justice the power to intervene in the management of an individual offender's sentence gives rise to concern about undue political interference in the sentences of individual offenders."

I accept that the final decision rests with the Parole Board. That raises the all-important question of whether the Secretary of State for Justice, who is after all a member of the Government, is really the right person to decide who should be referred to the Parole Board in a prison that could be hundreds of miles away.

That is by no means the only question provoked by clause 108, as currently drafted. The questions go on and on. Perhaps the Minister will be good enough to provide clarity on at least the following points today. What evidential tests will have to be satisfied for the Secretary of State to make a referral to the Parole Board, and who will be responsible for collecting that evidence? What standard of proof will the Secretary of State use when deciding to make a referral or not? Will he have to be satisfied that someone has become a significant danger on the balance of probabilities, or beyond reasonable doubt? If the Secretary of State is so concerned that someone has become radicalised or poses a serious threat, why not simply take that person to court and allow a judge to consider the evidence? Are the Government simply trying to avoid the inconvenience of having to provide evidence and have it tested in open court? Is it not a dangerous precedent for the Secretary of State to become involved in determinations made about individual cases?

That brings me to my next concern. What happens to a prisoner who, after being referred by the Secretary of State to the Parole Board, is refused their automatic release? As I understand it, if the offender is denied automatic release, he or she could spend the rest of their custodial sentence in prison, rather than some of it on licence in the community. Those prisoners will be released before the end of their sentence only if and when the Parole Board authorises it.

That raises two further concerns. First, it would create what Jonathan Hall, the independent reviewer of terrorism legislation, has described as a "cliff-edge effect", which is where an offender who has specifically been identified as being a significant danger to the public while in prison spends their entire sentence in custody and is released into the community without any licence or monitoring conditions. Let us think about a possible scenario. A prisoner has been convicted for non-terrorist or non-violent crime and is sentenced in court to, say, five years. They are specifically told by the court that

they can expect to be automatically released from prison at the halfway point of their sentence—in that case, two and a half years. Instead, they receive the news that the Secretary of State has reason to believe that they have become a danger to society while in prison. The Parole Board agrees, and their sentence is retrospectively changed so that they can spend the whole sentence in prison.

I am sure the Minister will agree that that offender would have some right to be angry with the criminal justice system and society at large. They would then be released, harbouring that anger, without any licence conditions or supervision. Does the Minister not see what the consequences of that could be? Would it not be better simply to collect any evidence and allow a court to come to a determination? Surely, if the evidence of what is effectively an offence exists, the person should be charged and sentenced for that offence.

During the evidence session on 18 May, the Minister tried to convince the Committee that clause 108 would not create that cliff-edge effect by indicating that if the authorities were particularly concerned about an individual offender, the Home Secretary could impose a terrorism prevention and investigation measure on them. However, that excuse simply does not stack up. As Jonathan Hall, QC, pointed out, TPIMs are extremely resource-intensive and very rarely used, especially in these circumstances. As the Minister will be aware, for each of the three-month periods between 1 December 2018 and 30 November 2019, only three to five TPIMs were in place nationally.

10.15 am

The Bill's impact assessment sets out that the Government expect clause 108 to result in additional prison places being required by 2023 because of prisoners not being released automatically. Can the Minister confirm how many of the extra prisoners he expects will leave prison subject to a TPIM, and the cost of that to the public purse? What extra resources will authorities be given to deal with the increased number of TPIMs that we can presumably expect to be in effect?

The other consequence of requiring an offender to spend additional time in prison is that the amount of time they would spend in the community under supervision from the probation service would decrease or disappear altogether. The result would be offenders getting none of the rehabilitation efforts given to other prisoners in the community, thereby risking increased rates of reoffending. That has negative consequences not only for the prisoner but for the general public at large. What steps will the Minister take to ensure that anyone affected by clause 108 will still receive the rehabilitation they need to reintegrate into society without putting the public at increased risk?

The Opposition's last concern about clause 108 is how it could affect racial disproportionality in the criminal justice system. As I said in my speech on clause 100, while we accept that the Government have either given up on trying to reduce racial disparity in the criminal justice system or could not care less, the Opposition do care. Given that the Government did not even bother to conduct a full equalities impact assessment on the Bill, I imagine it will come as a shock to the Minister to learn that clause 108, like clause 100 before it, has a real risk of making racial inequalities in the justice system worse.

In response to the sentencing White Paper, the national independent advisory group EQUAL set out that clause 108 would likely have a disproportionate impact, particularly on Muslim offenders:

> "We are hugely concerned about the new power to prevent automatic release for offenders who become of significant public protection concern. We must be extremely careful to ensure that any public protection concerns are founded on firm facts/evidence vs uncorroborated 'intelligence'… Given that the paper provides no detail on how these offenders will be assessed there is a risk that offenders who appear Muslim or are practicing Islam will be unfairly assessed as presenting a significant danger to the public."

Given that no further detail was included in the Bill on how offenders will be assessed and how evidence will be collected, I wonder if the Minister will provide that information today.

EQUAL is not the only one to voice concern about how clause 108 could have a greater impact on certain ethnic groups. Indeed, the Bill's impact assessment sets out that the Government

> "recognise that there may be the potential for unconscious bias through discretion in decision-making in relation to the assessment of risk and dangerousness, leading to the decision on whether to refer the offender to the Parole Board."

The Government accept that this could go wrong. The impact assessment goes on to say that, to mitigate that risk, the use of this power by the Secretary of State will be monitored and reviewed. However, it does not explain what will happen if the power is found to have been used in an unfair and disproportionate way.

To sum up, I go back to where we started and reiterate the words of the Prison Reform Trust, which described clause 108 as a "constitutional and legal mess". There are simply too many questions left unanswered. I will name a few. Is it right for the Secretary of State to be involved in the management of individual prisoners? What test will be applied? What standard of proof will be needed? Why can this process not be handled openly in a court? What will be the impact of releasing a prisoner without access to rehabilitation in the community? Perhaps more importantly, what will be the effect of releasing a prisoner who has been identified as a risk without licence or supervision?

The Opposition, as will be clear to the Minister now, have real concerns that clause 108 would put the public at increased risk, which is simply unacceptable. For that reason, we cannot support it.

Sarah Champion: It was not my intention to make a speech on this clause, but more questions are being raised than answered, and I hope that the Minister will be able to answer a few of them.

I share the concerns raised by my hon. Friend the Member for Stockton North, and there are many questions, but I have always had a problem with the idea of someone being given a sentence and serving only a third or two thirds of it. I would much rather that it were clear that a sentence was for this amount of time in prison and that amount of time under licence in the community, because I think that would give clarity. My concern about the clause is that it almost creates a hierarchy of sentencing, which I find confusing.

I know well only the behaviour of sexual offenders, and I am yet to find any form of rehabilitation or punishment that effectively changes their behaviour, so I could argue persuasively here that they will always be a danger and that there is always a potential risk. I also

[Sarah Champion]

believe, however, that we need a justice system that is fair and transparent so that we can follow it, and I am not sure that the clause would allow us to do that. I am concerned that if someone is released at the end of their sentence after serving a full term, the probation, rehabilitation and limits that a licence would put around them might not be there, meaning that their transition into the community is abrupt and does not have the level of support that is needed to curb some people's behaviour.

I am concerned that the Minister did not once mention whether victims would be consulted. My amendment 145 deals with that. Who could be better than victims and survivors to say whether a person is a danger and to influence the decision of the Lord Chancellor? I am also concerned that there may be subjectivity in decisions made by this Lord Chancellor and future Lord Chancellors—that cannot be allowed to happen. I really hope that the Minister will give some reassurances on the points that I have raised, because at the moment the clause would not be a successful one.

Hywel Williams: I want to raise one particular point. Is the Minister aware of the Welsh Government's recently published race equality action plan, which states its commitment to developing a race equality delivery plan that will address the over-representation of black, Asian and minority ethnic people in the criminal justice system? Indeed, in Wales, more black and minority ethnic people are in prison than elsewhere in the United Kingdom. Does he share my concern that this and other clauses might militate against the policy of the Senedd in Cardiff, a legislative public body that has been democratically elected?

Chris Philp: I will try briefly to respond to some of the points raised by Opposition Members in relation to clause 108.

First, on whether the clause somehow infringes natural justice or the ECHR, or imposes a penalty without due process, as the shadow Minister put it, I can categorically say that it does not, because under no circumstances can anyone spend a longer period in prison than the original sentence handed down by the judge. The clause relates to the administration of the release provisions. It is a long-established legal principle that the administration of a sentence—whether it is spent inside or outside prison, for example—is a matter that can be varied in the course of the sentence being served.

This matter was tested in the courts relatively recently when we passed the Terrorist Offenders (Restriction of Early Release) Act 2020. The very first person who was effectively kept in prison longer than they ordinarily would have been, because their release point was basically moved by that Act, went to the High Court and tried to make the case that that was an infringement of their rights because they thought they were going to get released automatically at two thirds, but were instead referred to the Parole Board, which did not let them out. Because of TORA, that has been tested in the High Court and found to be lawful—that is to say, the administration of the sentence can be varied.

The reason we have gone no further than that and have said that someone cannot be kept in prison for longer than the original sentence—the hon. Member for Garston and Halewood was probing on this in her interventions—was that we think that would infringe the principle of natural justice. The shadow Minister questions whether we have gone too far and the hon. Member for Garston and Halewood thinks we have not gone far enough, which might suggest that we have landed in around the right place.

There was then the question from the shadow Minister on the cliff edge issue: if someone serves all of their sentence in prison, they then spend no time on licence, by definition. That does, of course, apply to any of the existing extended determinate sentences if the Parole Board decide to keep the prisoner inside prison for the whole of their sentence. The potential for the cliff edge does exist, but when deciding whether to release early the Parole Board can, of course, take into account whether the public are better served by the whole sentence being spent in prison, or most of it in prison and a bit of licence at the end. In no sense are the public any less safe if the prisoner spends all of the sentence in prison, given that the sentence is a maximum. The prisoner is in prison, clearly, and cannot commit an offence during that period.

On rehabilitation, it can of course take place, it does take place, and it should take place in prison as much as in the community. Significant resources are being invested in that rehabilitation process in prison, led by the Under-Secretary of State for Justice, my hon. Friend the Member for Cheltenham (Alex Chalk).

On the matter of the propriety of the Lord Chancellor making the referral, as raised by the shadow Minister and by the hon. Member for Rotherham, the power is the power of referral. The Secretary of State for Justice, the Lord Chancellor, is not making any final decision himself or herself about release, and is simply referring a prisoner to the Parole Board to make that determination and that decision. That does not constitute undue political interference in the process.

Alex Cunningham: Will the hon. Member give way?

Chris Philp: I am anxious to make progress, but I will take an intervention.

Alex Cunningham: I am grateful to the Minister for giving way. For me, the issue is the basis on which the Lord Chancellor makes the decision to refer. What evidence test is used and who gathers that particular evidence?

Chris Philp: Most likely, as a matter of practice, that would be the prison governor or prison authorities who see behaviour of concern, and might draw the matter to the attention of the Ministry of Justice and the Secretary of State.

The shadow minister asked what test was applied. The test is whether there is a significant risk of serious harm to the public by the offender potentially committing a serious offence, such as murder, in the future, as listed in section 18 of the Sentencing Act 2020, and that the risk cannot be sufficiently managed through the use of licence conditions. That is the test that will be applied by those making decisions, but ultimately the decision is for the Parole Board.

The concept of the Parole Board making a discretionary decision about whether to release already exists, and has done for years. Currently it exists in the contest of

extended determinate sentences, and in the past it existed—in theory at least—for every single sentence passed. It already happens for thousands and thousands of extended determinate sentences, so what is proposed here is not a radical departure from current practice for extended determinate sentences, nor indeed for people on a life sentence with a tariff. The referral process can add to the criteria taken into account for those offenders. We would expect that to involve small numbers.

In answer to the issue relating to Wales raised by the hon. Member for Arfon, we are expecting the numbers to be extremely low. It will not have a significant impact on overall numbers. It is, mercifully, pretty rare for that sort of evidence to come to light. If the evidence is at the level that it merits prosecution—planning, preparing or inciting an offence, which was asked about—obviously prosecution is the first option. Prosecution for the offence will always be the first option, but if we cannot establish that an offence has been committed to the required criminal standard, a Parole Board referral is the next best thing up to the maximum sentence, but no further. I hope that address the questions—

Alex Cunningham: I asked the Minister to address the issue of the number of TPIMs likely to be applied in the event of somebody considered to be dangerous when leaving prison.

10.30 am

Chris Philp: I cannot speculate on what may happen in the future. The shadow Minister pointed out that the number of TPIMs in use is pretty small and that is most certainly true. Equally, the number of people likely to be referred in that way will be small, albeit likely to be larger than the number of TPIMs. As I said, there is the option for the Parole Board not to have the person serve the full sentence but to have a little bit at the end served on licence. There is that option, as well as the TPIM, plus the option for the police and security services to keep people under observation more generally, if they are concerned. I hope that answers the point.

Alex Cunningham: The Minister has given a full response to some of the issues I raised but not a sufficient one. I am worried about the evidential test in relation to this matter. The Minister said if there is sufficient evidence for a prosecution while the person remains in prison, there will be a prosecution, but if that evidence does not meet a criminal test, there can be no prosecution and this legislation will be relied on to retain the person in prison following a referral to the Parole Board. We remain very concerned about that and about the standard of proof, which we also talked about.

Ultimately, this issue is about how prisoners are managed in the longer term and their rehabilitation. The fact remains that someone who is considered dangerous, though not dangerous enough to be prosecuted, can be released into the community at the end of their sentence without any supervision or conditions. I accept that the Minister says the security services or police might keep an eye on them. That is insufficient if somebody is considered to be so dangerous. On that basis, we still oppose the clause.

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

The Committee divided: Ayes 8, Noes 6.

Division No. 21]

AYES

Anderson, Lee	Higginbotham, Antony
Atkins, Victoria	Philp, Chris
Baillie, Siobhan	Pursglove, Tom
Clarkson, Chris	Wheeler, Mrs Heather

NOES

Champion, Sarah	Eagle, Maria
Charalambous, Bambos	Jones, Sarah
Cunningham, Alex	Williams, Hywel

Question accordingly agreed to.

Clause 108 ordered to stand part of the Bill.

The Chair: Before we move on, I remind the Committee that it was notified to the Chair that the Whips wish to get to clause 138 by close of play today. We are moving at glacial pace. I know these are important matters but, if we continue to move at that pace, the Whips may want to recalibrate their lofty ambitions over lunch.

Clause 109

Power to make provision for reconsideration and setting aside of Parole Board decisions

Sarah Champion: I beg to move amendment 145, in clause 109, page 98, line 41, at beginning insert—

'(1) In subsection (3) of section 239 of the Criminal Justice Act 2003 (the Parole Board), after 3(b) insert—

"(c) the views of the victim or victims of the crime to which the case relates""

This amendment would amend the Criminal Justice Act 2003 to ensure victims/survivors are consulted in parole decisions which will affect them.

I have tabled the amendment because two survivors have raised this as an issue with me this year. I have briefly spoken to the Minister because I am not sure that the amendment will achieve the job I hope it will. By raising it, I hope the Minister will work with me to come up with a solution, because we have a real problem here.

The amendment aims to amend the Criminal Justice Act 2003, to ensure that victims and survivors are consulted on parole decisions that affect them. Currently, victims of crime, such as child abuse, can submit a victim impact statement before it is decided whether the abuser will receive parole. Victims should be informed when their abuser is released from prison or is on parole. However, too often that process is not carried out and victims are unaware that their abuser has been released from prison, or has been moved to a different category of prison.

The all-party parliamentary group for adult survivors of childhood sexual abuse found in its survey that as many as 75% of victims are not informed about their perpetrator being released on parole. One survivor who contributed to the report said:

"I found out my abuser was living nearby. In a town I visited regularly with my children for their sports club. And nobody bothered to inform me. I found this completely unacceptable."

[Sarah Champion]

The shock and fear of finding out unexpectedly can be incredibly distressing for victims. Another survivor said:

"I was petrified because they gave him my name and all he's got to do is look on the electoral roll and he could find me."

Including victims and survivors in the parole decision-making process would let them understand how and why decisions are made. In discussion of the previous clause, the Minister presented an argument around the word "dangerous" and what makes an offender dangerous. Who better to feed in that information to the Parole Board's decisions or the Lord Chancellor's decisions than the victims and survivors themselves? Furthermore, allowing survivors to contribute to the process would ensure their voice is heard and the terror they have experienced in the past will not be relived—if they are listened to.

My amendment would ensure the Parole Board must consult with the victim during any decisions that would give recommendations resulting in parole for the offender. It would amend the Criminal Justice Act 2003, so the Parole Board must take account of the views of the person to whom the case is related. If it becomes a legal necessity for the Parole Board to consult with the victim, the potential for them to not be informed would not be an issue.

In 2019, the Government pledged to allow victims into parole hearings and, in 2020, they also consulted on making some parole hearings open to victims. Both of those followed the Worboys case, which exposed the failures of the parole process. At the time, the Government said they wanted to increase survivors' ability to challenge release decisions if they felt the decision was flawed. That would save time and resources by consulting with the victim before the decision is made. The current system is not working for victims. We need a justice system that puts victims at the heart of its decisions.

This is not me just making a speech. As I said earlier, this is because I have two cases at the moment where the parole process has completely failed. Both relate to Rotherham survivors of past historic child sexual exploitation, and the first case is a survivor who I will call Elizabeth. The perpetrator was sentenced to nine years for two counts of rape of a girl under 16 in 2018. They were transferred after two and a half years to a category D prison, which we would view as an open prison. They were also told they could have day release but for covid-19.

The victim had signed up to the victim contact scheme, which should have ensured she was notified and provided with information about key stages in the offender's sentence, including for those cases where release falls to the Parole Board. She should have been consulted on the timing of the Parole Board's review and whether the offender was released or moved to open conditions. All of that should have been relayed to her. The victim should have been notified that the transfer to open conditions was being considered, and then she should have been told of the outcome. At the moment, victims have only a right of notification, and notification took place, in this case, after the decision was made.

I raised the issue with the Minister, who responded, explaining the legal position that, in accordance with legislation at the time, the offender is required to serve half of the sentence in custody, with the remaining period served in the community on licence and subject to supervision by the National Probation Service. During the custodial period, offenders must be held in the lowest security conditions necessary to manage the safety of their identified risk of escape or absconding, the risk of harm to the public and the risk of any serious disorder. Those are the considerations, not the impact on the victims.

The errors in the case, as identified by the Minister, were that the prison is responsible for managing a case. The prison offender manager should have contacted the victim liaison officer directly to let them know that the move to open conditions was under consideration, but they failed to do so. The senior manager has spoken to the staff at the prison, and a reminder has been sent to all of the staff reminding them to follow the correct procedure. The requirement has been raised with the National Probation Service regional implementation managers to take forward and ensure other prisons follow the correct process.

I will quote from the letter from the Solicitor General dated 21 October 2020.

"The reason for informing victims before the decision is taken, is to ensure that victims are kept updated with developments, so that a move to open conditions does not come as a total shock, and also to ensure the prison is aware of any exclusion zones which the victim has requested. This can help to inform which open prison an offender is moved to. I should like to underline that the Government shares the concerns about offenders who commit very serious crimes, and yet are released automatically at the halfway point in their sentence. We have taken action to address this through legislation we introduced earlier this year. We are committed to ensure that serious offenders spend the time in prison that reflects the gravity of their crimes and intend to bring forward proposals to further strengthen the law in this area"—

the Bill that we are all serving on.

So we got an apology, commitments and managers and staff spoken to. It was never going to happen again, and then, lo and behold, two months later, I got a near identical case—case B. The perpetrator was sentenced to nine years on three counts of sexual activity with a child in 2018. The offender was transferred to a category D prison in February 2021—again, two and a half years after the sentence—but the victim was not notified until April, three months after the offender was moved to a category D prison. Again, the victim was signed up to the victim contact scheme, but was not notified until after the transfer had taken place.

Again, I contacted the Minister, and in January 2021 the prison offender manager told the victim liaison officer that the offender had been assessed as suitable for open conditions in October and that an open prison had confirmed they would accept the offender, but the date of transfer had not been finalised. The POM should then have informed the victim liaison officer when the open conditions were considered, not just about the decision. Once the victim liaison officer was notified, the victim should have been notified, but that did not happen. The victim liaison officer asked to be notified when the transfer had taken place, but the prison, whose responsibility this was, failed to inform her. The victim liaison officer became aware themselves only in April when the community offender manager made inquiries about the conditions that the victim

would wish to request for temporary release of the prisoner who raped her three times when she was a child.

Something is going horribly wrong. We have a system in which, twice in six months, victims of the most serious crime have been let down by the state. The system that the Minister currently has in place is not working, so how can we make sure that this does not keep on happening again and again? I am one MP and I have had two cases in the past six months, so it concerns me that this is happening all over the country, but survivors would not think to go to their MP to get it raised. The transfer of offenders guilty of serious offences to open conditions after just a quarter of their sentence is deeply wrong. The thought of an offender being back in the community is deeply traumatising for victims who have already been through both the crime and also the ordeal of a trial only comparatively recently. Notification is vital, as should be consultation. However, consultation is not offered and the system for notification is clearly dysfunctional.

As I said to the Minister, I am not sure that my amendment is the correct amendment, but I really need some reassurances to make sure that victims are both notified and consulted. To refer back to the previous clause, how are we meant to know whether an offender is dangerous and a risk unless we actually hear from the people who have been subjected to the horror that that person can wreak?

Alex Cunningham: I congratulate my hon. Friend the Member for Rotherham on tabling amendment 145, which has been crafted with her characteristic care and has won support from colleagues across the House. Contrary to what she might think, I think it is the right amendment. The Opposition fully support the principle behind amendment 145 that victims and survivors deserve to be at the heart of criminal justice and, in this case, to be consulted on decisions made by the Parole Board that affect them. The amendment is a simple one, and I will not detain the Committee by repeating the words of my hon. Friend the Member for Rotherham on the technical aspects of how it would work

10.45 am

We believe that victims of crime should be given a voice throughout their journey through the criminal justice system—from the moment they report a crime to when a sentence is handed down, and beyond. We believe that only when the voices of victims are properly heard can their rights be properly protected. The amendment would go some way to doing that by ensuring that the voices of victims were heard by the Parole Board when it made decisions that affected them. I am sure that my hon. Friend agrees with me that, as a country, we could be doing so much more to protect the public and keep victims of crime safe.

As my right hon. Friend the Member for Tottenham (Mr Lammy) put it so eloquently during the relevant Opposition day debate last week, the statistics speak for themselves. More than one quarter of all crimes are not being prosecuted, because victims are dropping out of the process. In a recent survey of rape complainants, only 14% expressed confidence that justice would be done if they reported an attack. Victims of serious crime can be forced to wait up to an astonishing four years from the time of the alleged offence to a trial taking place.

On top of denying justice through delays, the Government have failed at the simple task of enshrining victims' legal rights. We will not stop saying this, because it needs to be repeated time and again: since 2016, the Conservatives have promised a victims Bill in almost every single Queen's Speech and in their last three manifestos, but five years later we have nothing.

In contrast, Labour has a full victims Bill published and ready to go. It would, among other things, put on a statutory footing key victim rights, including the right of victims to be read their rights at the point of reporting or as soon as possible; the right of victims to access regular information about their case; the right to make a personal statement to be read out in court; and the right to access to special measures at court, for example video links, where appropriate. Again, I am sure that my hon. Friend the Member for Rotherham will agree with me that adopting Labour's victims Bill would add to the good work that she has done and show that the Government were serious about putting victims first, but as we wait for the Government to act comprehensively in this space, they could take a step forward and demonstrate their good intent by accepting my hon. Friend's amendment.

Chris Philp: I thank the hon. Member for Rotherham for moving her amendment and for her remarks, the spirit of which I certainly completely agree with. Amendment 145 covers only moves to open prisons rather than Parole Board release decisions more generally. I think it is worth making it clear to the Committee that the victim's rights to participate in the parole process are clearly enshrined already in the victims' code, published again recently. Under the Parole Board's existing rules, there is a requirement for the Secretary of State to provide the board with a current victim personal statement if one has been prepared, and that must be taken into account by the panel considering the case. The statement sets out the impact that the offence has had on the victim and their family and any concerns that the victim and their family may have about the potential release. Victims are, as part of that, entitled to request that specific licence conditions, including exclusion zones and non-contact requirements, be imposed on the offender. The victims' code enshrines a number of entitlements relating to parole, including the right to present a victim personal statement in the way that has just been described. A root-and-branch review of the parole system is going on to try to improve these different things further.

As I said, this amendment relates only and specifically to open prison transfers. But I think that the general point that the hon. Member for Rotherham has raised is important. It is important that we do more to ensure that the victim's voice is heard in these Parole Board decisions, for all the reasons that the hon. Member eloquently laid out. I will suggest that the Under-Secretary of State for Justice, my hon. Friend the Member for Cheltenham, who has the responsibility for this area, meet with the hon. Member for Rotherham to discuss these important issues. The matter is obviously in the rules already: it is in the victims' code; it is in the Parole Board rules. But clearly, what is written down needs then to translate into action, and the hon. Member has raised a couple of cases in which that did not seem to happen in the way it ought to have done. She has clearly had correspondence with the previous Minister with responsibility for prisons and probation. My hon. Friend the Member for Cheltenham took over that portfolio

[Chris Philp]

only three or four months ago. I know he will want to meet her to discuss these important issues and make sure that it is happening in practice as it should do, so I make that commitment on his behalf.

Government amendment 132 to clause 109 makes some simple provisions and creates a mechanism for the Parole Board to change a decision where there has manifestly been an error. This follows a recent court case.

The Chair: Minister, can we deal with that when we get to it?

Chris Philp: I am sorry; I thought that was part of the same group.

The Chair: You have been very generous, so do not regard that as an admonishment. Just temper your keenness to canter on.

Chris Philp: I will take that as a check on the reins. I have nothing further to say on amendment 145, Sir Charles.

Sarah Champion: I am grateful for the Minister's comments. I have worked extensively with the Government's victims team and it is fantastic. The victims code is great, but only if it is implemented. The problem we find is that people are not notified when the offender is coming up for parole consideration, so their rights are not activated because they do not know that that situation is occurring.

I accept his generous offer of meeting the hon. Member for Cheltenham, which I will take up. With that reassurance, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Chris Philp: I beg to move amendment 132, in clause 109, page 99, line 11, leave out

"resulted from a clear mistake"

and insert

"it would not have given or made but for an error".

This amendment ensures that the language used in the new provision about when the Parole Board can set aside decisions aligns with a recent High Court judgment which ruled on the circumstances when a Parole Board decision can be revisited and makes a drafting clarification.

I am sorry to have spoiled the anticipation by jumping early. May I speak to clause 109 as well?

The Chair: Yes, that is perfectly fine.

Chris Philp: Very briefly, clause 109 makes provision for manifest errors in Parole Board release decisions to be corrected. Government amendment 132 implements a recent court judgment where the language was changed and says that reconsideration will happen where there has been

"a clear mistake of law or fact".

It makes that change following the High Court judgment in the case of Dickins, with which I am sure the Committee is familiar.

The Chair: I call the shadow Minister.

Alex Cunningham: I have nothing to add.

Amendment 132 agreed to.

Clause 109, as amended, ordered to stand part of the Bill.

Clause 110

RESPONSIBILITY FOR SETTING LICENCE CONDITIONS FOR FIXED-TERM PRISONERS

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

The Chair: With this it will be convenient to discuss clauses 111 to 114 stand part.

Chris Philp: I have relatively little to say on these clauses, which are technical in nature. Clause 110 covers responsibility for setting licence conditions for fixed-term prisoners. Clause 111 repeals some uncommenced provisions dating back many years that have never been used, and simply removes them from the statute book because they have never been commenced. Clause 112 covers the release at the direction of the Parole Board after recall for fixed-term prisoners. Clause 113 is about changing the release test for the release of fixed-term prisoners following recall. Clause 114 covers release at the direction of the Parole Board in relation to timing.

They are technical changes, and I do not propose to add anything beyond these brief remarks, Sir Charles.

Question put and agreed to.

Clause 110 accordingly ordered to stand part of the Bill.

Clauses 111 to 114 ordered to stand part of the Bill.

Clause 115

EXTENSION OF DRIVING DISQUALIFICATION WHERE CUSTODIAL SENTENCE IMPOSED: ENGLAND AND WALES

Chris Philp: I beg to move amendment 68, in clause 115, page 104, line 21, at end insert—

"(2A) The amendments made by subsection (2)(a)(i) do not have effect in relation to an offender who—

(a) is sentenced before the coming into force of section 107 (increase in requisite custodial period for certain offenders of particular concern), and

(b) on being sentenced, will be a prisoner to whom section 244A of the Criminal Justice Act 2003 (release on licence of prisoners serving sentence under 278 of the Sentencing Code etc) applies.".

This amendment ensures that the amendments made by clause 115(2)(a)(i) do not apply to a person who is sentenced between the passing of the Bill (when clause 115 comes into force) and the coming into force of clause 107 two months later and who will be a person to whom section 244A of the Criminal Justice Act 2003 applies.

The Chair: With this it will be convenient to discuss clauses 115 to 118 stand part.

Chris Philp: Amendment 68 is a technical amendment that introduces a transitional provision that has been identified as necessary to address a short two-month gap before different, but inter-connected, provisions in the Bill come into force. Sir Charles, will I briefly speak to clauses 115 to 118?

The Chair: It is absolutely up to you.

Chris Philp: Okay. I will not refer to them again, so I will do so.

Clause 115 relates to England and Wales and makes some changes to the driving disqualification provisions where we have changed the automatic release points. Colleagues will recall that we have moved the release point from a half to two thirds for certain offences, including in changes made last year. We want to make sure that, where a driving disqualification is imposed, it takes account of the change in release point. The clause makes simple consequential amendments to those release points.

Clauses 116 and 117 do similar things to make sure that driving disqualifications properly intermesh with the changes to release provisions. Clause 118 does similar things in relation to Scotland.

Alex Cunningham: The House briefing paper on the Bill explains that when a driver receives a driving disqualification alongside a custodial sentence, the court must also impose an extension period to ensure that the disqualification period is not entirely spent during the time the offender is in prison. The explanatory notes explain that clause 115 would change the law so that the length of the extension period reflects a succession of other changes made by the Government to the release points for certain offenders.

The notes refer to changes made by the Terrorist Offenders (Restriction of Early Release) Act 2020, the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020, changes in the Counter-Terrorism and Sentencing Act 2021 and further changes proposed by this Bill. These pieces of legislation all change the point at which an offender is automatically released or becomes eligible to be released if the Parole Board agrees they are no longer a danger to the public. Rather than being at the halfway point of the sentence, that release point will now move to the two-thirds point.

As I explained at some length in the debate on clause 106, the Opposition cannot wholeheartedly support changes to the release point of certain offenders. Not only do the changes make a notoriously complicated sentencing regime even more complicated but they also substantially limit the amount of time an offender spends on licence in the community, significantly increasing their chances of reoffending.

The Opposition do not support the Government's logic in adapting other pieces of legislation, in this case driving offences, to reflect those changes. For that reason, we are opposed to clauses 115 to 118 and urge the Government to use caution before committing to any further changes that would further complicate an already overcomplicated sentencing system. That said, I do not intend to press the clauses to a vote, but let the record show that we are opposed to the provisions.

The Chair: Minister, would you like to respond?

Chris Philp: No.

Amendment agreed to.

Clause 115, as amended, agreed to.

Clauses 116 to 118 ordered to stand part of the Bill.

Clause 119

CALCULATION OF PERIOD BEFORE RELEASE OR PAROLE BOARD REFERRAL WHERE MULTIPLE SENTENCES BEING SERVED

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

The Chair: With this it will be convenient to debate clauses 120 to 123 stand part.

Chris Philp: I will speak extremely briefly to clauses 119 to 123. They simply set out minor amendments to existing legislation that part 7, chapter 1 of the Bill makes. In brief, clause 119 provides clarification on when a prisoner must be automatically released and when referral to the Parole Board is required in cases where concurrent or consecutive sentences are being served, so it provides clarification around how those sentences interact with one another.

Clause 120 addresses the application of release provisions to repatriated prisoners, reflecting some recent alterations that have been made domestically, which we have talked about already—making sure that works with repatriated prisoners.

11 am

Clause 121 builds on existing polygraph testing powers, by ensuring there is an expressed provision to enable the Secretary of State to impose mandatory polygraph testing in the fullest range of sexual and domestic abuse offenders. That principle is already well established and, I hope, not contentious or controversial.

Clause 122 makes a minor change to the list of offences in schedule 15 to the Criminal Justice Act 2003 specifying certain serious offences for the purposes of release. Clause 123 inserts new subsection (5) into section 261A of the Armed Forces Act 2006, to ensure that schedule 21 to the Sentencing Code, which is being amended by this Bill, applies to service courts, as well as to civilian courts. So these are all relatively technical amendments, which I hope the Committee will not find contentious.

Question put and agreed to.

Clause 119 accordingly ordered to stand part of the Bill.

Clause 120 to 123 ordered to stand part of the Bill.

Clause 124

SUPERVISION BY RESPONSIBLE OFFICER.

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

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

Clauses 125 to 127 stand part.

That schedule 12 be the Twelfth schedule to the Bill.

Clause 128 stand part.

That schedule 13 be the Thirteenth schedule to the Bill.

Clause 129 stand part.

That schedule 14 be the Fourteenth schedule to the Bill.

Chris Philp: Let me start with clause 124, which would give responsible officers the power to compel offenders to attend an appointment at any point in a community order or during the supervision period of a suspended sentence, in exceptional circumstances.

The responsible officer is the statutory term for the probation practitioner who is overseeing the order. Section 198 of the Criminal Justice Act 2003 requires the responsible officer to make any arrangements that are necessary in connection with the requirements imposed by the order, and to promote the offender's compliance with those requirements.

In some cases, the responsible officer might be delivering those requirements directly. In other cases, they might be working with the offender to develop a sentence plan and monitor their progress against it, but referring them to colleagues or to other organisations to deliver particular requirements, for example, educational or treatment requirements.

The current legislation lacks clarity on the extent of a responsible officer's power to compel an offender, who is subject to a community or suspended sentence order, to attend supervision appointments—meetings, essentially. Offenders serving community sentences have a duty to keep in touch with their responsible officer, and responsible officers also have the power to make any arrangements that are necessary in connection with the requirements imposed by the Order. But it is not currently clear what powers probation officers have if they are concerned about a new or escalated risk that an offender presents, which is not necessarily related to the delivery of what the court has ordered. Hence this measure, which enables the responsible officer to require the offender to participate in a meeting. It simply clarifies that that can happen. I think we all agree that contact between the responsible officer, for example, the probation officer, and the offender is a good thing to make sure that that relationship is being properly managed.

Clause 125 is one of a number of measures in the Bill that seek to strengthen community sentences. In the Sentencing White Paper last September, we set out a new vision for community supervision combining robust punishment and management of risk with a new focus on addressing rehabilitation needs to break the cycle of reoffending. Clause 125 therefore increases the maximum length of time a curfew can be imposed to make it potentially more effective and increases the maximum number of hours that a curfew could be imposed in any given 24-hour period. At the moment, a curfew can be imposed for a maximum of 12 months and we will increase this to up to two years, to give the court a little more flexibility and, we hope, encourage the use of community sentences more often.

The clause will also increase the potential of a curfew to support rehabilitation by providing a longer period during which some of the positive effects of the curfew can be established. It can, for example, reduce interaction with criminal associates. Again, that will hopefully enable the courts to use those sentences more as an alternative to short custodial sentences, which we are all keen to avoid where possible.

At the moment, a community order or suspended sentence order may specify a maximum of 16 hours of curfew per day, which provides in practice a weekly maximum of 112 hours. The clause will increase the daily maximum to 20 hours, but we will not move the seven-day maximum of 112. The number of curfew hours per day can be moved around if, for example, somebody gets a job, or something like that, and that needs to be taken into account, but the weekly maximum does not change. It is important to make the point that we are not altering that.

Clause 126 will give greater powers to the responsible officer to vary electronically monitored curfews on community sentences. Again, we think that will be helpful. To be clear, the responsible officer will not be able to change the number of curfew hours. That is an important point to emphasise.

Clause 127 removes senior attendance centres from the menu of options available. They are not very widely used, and in fact in some parts of the country they are not used at all. These days, there are various other means that are used to provide rehabilitation and so on, rather than senior attendance centres. Schedule 12 contains further amendments relating to the removal of the attendance centre requirements, as I have just described.

Clause 128 simply introduces schedule 13, which makes provision for courts to have powers to review community and suspended sentence orders and commit an offender to custody for breach. Without this clause, schedule 13 would not form part of the Bill. Part 1 of schedule 13 contains provisions relating to the review, which is a crucial element of the problem-solving court approach. As Members know, we are keen to run pilots of problem-solving courts. We think they have an important role to play where offenders have a drug, alcohol or mental health problem, and where the judge can have repeated interaction with the person concerned. We think that could hopefully contribute to the addiction or mental health problem being dealt with. They were piloted in the past—I think they were piloted in Liverpool a few years ago—and they were perhaps not as effective as we had hoped. This pilot is therefore important to try to get the model right. If we can get the model right, we will obviously look to roll it out.

Clause 129 introduces schedule 14. Schedule 14 itself provides the legislative changes required for the problem-solving court pilot that I have just described. We think that problem-solving courts are really important, so the pilots will be important as we have to get the model right. There are lots of different ways of running problem-solving courts. The Americans and the Australians do them differently. We want to get this right. As I say, if we can find a way of tackling the root cause of offending behaviour, whether it is drug addiction, alcohol addiction or mental health, that will help everybody—the community, society and the offender—so I am really pleased that these schedules are in this Bill, laying the groundwork for the things that I have described. I commend these clauses and schedules to the Committee.

Alex Cunningham: As the Minister set out, clause 124 provides legal clarity about what a probation officer or responsible officer can instruct an offender who has been released from custody to do. Specifically, it will give probation officers the legal power to compel offenders serving a community or suspended sentence order to attend supervision appointments. Those appointments can be either for the purpose of ensuring the offender complies with rehabilitative requirements or where there are public protection concerns. If an offender refuses to comply with directions made under clause 124, they can be found to be in breach of their licence conditions and punished accordingly.

On the whole, this is a clause that the Opposition can support. If there is legislative uncertainty about what a probation officer can and cannot do, it is important, for the benefit of probation officers and offenders themselves, that it is ironed out. We accept that. The Opposition also accept the importance of offenders attending the appointments they need to rehabilitate and reform in the community. I have spoken at length about how Labour fully appreciates the importance of time spent in the community when it comes to reforming an offender and reducing the risk of reoffending. We are also keen to support amendments that will make the life of probation officers easier by providing legislative clarity.

However, although we are supportive of clause 124, we have some concerns, which I hope the Minister can respond to today. First, given that failing to attend appointments under the clause could result in an offender being found to be in breach of their licence and possibly recalled to prison, can the Minister set out the procedure that offenders can use to challenge orders made under clause 124?

Secondly, we must also consider the impact that the powers in clause 124 could have on offenders who have learning disabilities or are neurodivergent. As the Prison Reform Trust explains:

"People with learning disabilities can find it particularly difficult to comply with measures such as additional appointments or reporting requirements, and so special attention will need to be given to ensuring they are not unfairly disadvantaged by these provisions."

In addition to addressing the system for offenders to challenge orders under the clause, will Minister set out what safeguards will exist to ensure that no offender is unfairly disadvantaged by clause 124 due to circumstances beyond their control?

I now turn to clause 125, the effect of which is similar to 124. Clause 124 gives probation officers greater powers to compel offenders to attend appointments in the community, and clause 125 gives probation officers greater powers with regard to curfews. Under current legislation, offenders subject to a community order or suspended sentence order can be subject to a curfew for up to 16 hours a day for a maximum of 12 months. Clause 125 would increase the daily curfew to 20 hours and increase the total period over which curfews can be imposed from one year to two years.

The Government set out in the explanatory notes that this change will increase the punitive weight of a curfew requirement, but also has the potential to support rehabilitation by providing a longer period during which some of the positive effects of curfew could be established. As with clause 124, the Opposition are keen to give our hard-working probation officers the tools, powers and legal clarity they need to do their job properly. We are satisfied that clause 125 is a proportionate means of achieving that goal, particularly as the Government have chosen to retain the maximum number of curfew hours that can be imposed per week.

None the less, as with clause 124, we seek some assurances from the Minister about how these extended powers will be used in practice. As with clause 124, our main concern is about the potential of clause 125 to increase the number of offenders found to be in breach of their licence due to circumstances they cannot control, or because of technical breaches. I will discuss one aspect of this in more detail when we come to amendment 122, but we know that offenders are wrongly accused of breaching their licence conditions, including those relating to curfews, due to electronic tags malfunctioning. What assurances can the Minister give that extending the powers of probation officers in this area will not lead to more offenders accused of being in breach due to malfunctioning tags?

I also repeat my concern in relation to clause 124 about how this power could impact offenders who suffer from learning difficulties or are neurodivergent. What steps will the Minister take to ensure that these offenders are not unfairly disadvantaged by clause 125? Will probation officers be given additional discretionary powers to ensure that these offenders are not punished for a breach that they did not intend to make?

Finally, how does the Minister respond to concerns expressed by the Howard League that allowing probation officers to place strict restrictions on leisure days could prevent people on licence from building the positive social relationships that would help them to desist from crime?

Let us move to clause 126, which, like clause 125, extends the power of probation officers in relation to curfews. As the Government explanatory notes point out, currently, changes to a curfew cannot take place unless they have been authorised by a court. Clause 126 would amend the sentencing code by enabling probation officers to vary a curfew requirement made on a community order or suspended sentence order. Specifically, the clause would allow the probation officer or responsible person to change the curfew requirement in one of two ways: changing the time a curfew starts or ends over the course of 24 hours, or changing the residence of the offender as set out in the order.

The explanatory notes suggest that these additional changes will be beneficial not only for probation officers but for Her Majesty's Courts and Tribunals Service and offenders:

"This legislative change seeks to reduce the burden on the courts, freeing up time for other matters and saving probation resource by reducing the volumes of papers prepared for court and court visits. There will also be advantages for offenders, allowing for variations where typically there are alterations to work hours or location that make compliance impossible, or where an offender's curfew residence address needs to be changed in a timely way."

While the Opposition stand firmly behind any proposal to reduce the horrendous burden currently on our courts, I am somewhat perplexed that the Government's first thought in this area is to give probation officers the power to vary curfew requirements.

As the Minister will no doubt be aware, the backlog in the Crown court is at record levels, sitting at almost 40,000 cases before the pandemic even began. As we said before, victims of rape and other serious offences face a wait of up to four years for their day in court. While it is true that the backlog has been exacerbated by the pandemic, it was created by the Conservatives closing half of all courts in England and Wales between 2010 and 2019, and allowing 27,000 fewer sitting days than in 2016. If the Government were serious about reducing the burden on our courts, they would have adopted Labour's package of emergency measures during the pandemic, including mass testing in courts, the extension of Nightingale courts and reduced juries until restrictions are lifted, but they did not, and the result is the catastrophe we see today.

11.15 am

Returning to the Bill, Labour is supportive of any—albeit small—measure to reduce the enormous burden on our courts. None the less, the Minister must acknowledge that clause 126 substantially increases the power given to probation officers while at the same time reducing the safeguards that the court process offers. While Labour will support the clause, I would be grateful if the Minister set out how the Government will ensure that this new power is used proportionately and any steps that will be taken to reduce any unintended consequences of its use.

Even more briefly, clause 127 will remove the attendance centre requirement from the list of requirements that can be imposed as part of a community order or suspended sentence order. In the explanatory notes, the Government set out that this step is being taken as the attendance centre requirement is very rarely used. The Library briefing accompanying the Bill confirms that, indicating that only 0.3% of suspended sentence orders and 0.6% of community orders contain an attendance centre requirement. I will therefore not detain the Committee any further on this point.

As the Minister set out, clause 128, when taken together with schedule 13, outlines measures that form the legislative basis of the problem-solving courts pilot. In the sentencing White Paper, the Government announced:

"For those offenders whose offending is linked to substance misuse and other complex needs, we propose to pilot a new 'problem-solving' court approach, providing an intense but alternative sentence to custody through treatment interventions and links to wider support services, with judicial oversight through regular court reviews, more intense probation supervision, and a system of incentives and sanctions to encourage compliance."

Yet for Labour, the concept of problem-solving courts is of course anything but new. The first substance abuse courts were launched in Wakefield and Pontefract in 1998. In 2005, seven pilot specialist domestic violence courts were launched, which was swiftly expanded to 23 sites the following year; and in 2009 the first two mental health problem-solving courts were launched. Each of these achievements was made possible under a Labour Government, so for the Opposition, problem-solving courts are not a new endeavour at all. The White Paper states that the three areas of focus for the pilot of problem-solving courts will be substance misuse—as with those established in Wakefield and Pontefract—female offenders, and perpetrators of domestic abuse.

Maria Eagle: Of course, there was also the North Liverpool community justice centre, which I think the Minister may have referred to, which extended the problem-solving court technique to all kinds of offences, not only specifically drug or alcohol offences, domestic violence or mental health issues, and it was very successful.

Alex Cunningham: Indeed, that was the case. We have so much to learn from the best practice around the country, but also from what happened before this Government varied those types of courts when they came to power in 2010.

In total, the Government have committed to piloting five problem-solving courts, targeted at repeat offenders who would otherwise have been sent to custody. The Bill builds on those proposals by laying the legislative framework for the pilots to take place—specifically, clause 128 introduces schedule 13, which will give problem-solving courts the power to periodically review community and suspended sentence orders, and to commit an offender to custody for a breach. The pilot of problem-solving courts is welcome.

The evidence is clear that problem-solving courts have proven hugely effective—for example, in restoring confidence in the criminal justice system among marginal communities. As the Government's own response to the Lammy review set out:

"Trusted figures in the CJS were described as those who had taken the time to get to know an individual, their background and specific needs and vulnerabilities."

Moreover, if rolled out nationally, the pilot of problem-solving courts would also play an important role in reducing the huge burden on our courts system, while ensuring short custodial sentences are used only if completely necessary.

Although the Opposition support the powers in clause 128, we have some concerns, and I would be grateful if the Minister responded to them this afternoon—sorry, this morning. It is still morning!

First, as Women in Prison points out in its helpful briefing:

"In order to be considered for a problem-solving court approach, a person must first enter an admission of guilt for the alleged offence."

The briefing goes on to note that the review conducted by my right hon. Friend the Member for Tottenham (Mr Lammy) found:

"Black, Asian and minority ethnic people are more likely to plead not guilty to alleged offences. We know that experience of racism and lack of trust in the criminal justice system prevents people from feeling that they will be treated fairly if they plead guilty."

I know that we have already raised this issue in debate, but therein lies a difficulty that the Government will have to contend with as they pursue their pilot of problem-solving courts. As the Prison Reform Trust explains, while, on one hand, problem-solving courts have been useful at restoring confidence in the criminal justice system for those in marginalised communities, for them to be wholly successful,

"pilots must work with people who enter not guilty pleas, and on added measures that are likely to increase confidence in the process."

I know the Minister said that the Government would do what they could to overcome that problem, but what that is, or could be, is still far from clear. Can he be more specific by explaining what steps the Government are taking on the issue of not guilty pleas and to avoid exacerbating the disproportionality that already exists for black, Asian and minority ethnic people in the criminal justice system?

Secondly, if problem-solving courts have already shown themselves to be effective in providing rehabilitative alternatives to custody, why have the Government chosen to pursue such a limited pilot rather than a larger national roll-out? Thirdly, what will the Government do to resource properly the probation and other services that work with offenders who are dealt with through problem-solving courts? The Minister knows, as I do, that resources are thin. If they are not there, the system will fail. Finally, will he report back to Parliament on

the success rate of the pilots, and if so, what would the Government look for before they could commit to a national roll-out?

I will be very brief on clause 129. While clause 128 and schedule 13 provide the legislative foundation for the pilot of problem-solving courts, clause 129 and schedule 14 would enable the courts involved in the pilot to impose drug-testing requirements as part of a community sentence or a suspended sentence order. As the House briefing sets out, a court would be able to impose drug-testing requirements only where the two following conditions are met: substance misuse has contributed to the offence to which the relevant order related, or is likely to contribute towards further offending behaviour; and the Secretary of State has notified the court that arrangements to implement drug-testing requirements are available in the offender's local area. Taken hand in hand with clause 128, the Opposition are happy to support clause 129.

The Chair: It being 11.24 am, it is not fair to get the Minister to respond, so I will ask the Government Whip to move the motion to adjourn.

Ordered, That the debate be now adjourned.—*(Tom Pursglove.)*

11.24 am

Adjourned till this day at Two o'clock.