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Public Bill Committee

CRIMINAL JUSTICE BILL

Sixth Sitting

Thursday 11 January 2024

(Afternoon)

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Monday 15 January 2024

The Committee consisted of the following Members:

Chairs: Sir Graham Brady, † Hannah Bardell, Dame Angela Eagle, Mrs Pauline Latham, Sir Robert Syms

† Costa, Alberto *(South Leicestershire)* (Con)
Cunningham, Alex *(Stockton North)* (Lab)
† Dowd, Peter *(Bootle)* (Lab)
Drummond, Mrs Flick *(Meon Valley)* (Con)
† Farris, Laura *(Parliamentary Under-Secretary of State for the Home Department)*
† Firth, Anna *(Southend West)* (Con)
† Fletcher, Colleen *(Coventry North East)* (Lab)
† Ford, Vicky *(Chelmsford)* (Con)
† Garnier, Mark *(Wyre Forest)* (Con)
† Harris, Carolyn *(Swansea East)* (Lab)
† Jones, Andrew *(Harrogate and Knaresborough)* (Con)
† Mann, Scott *(Lord Commissioner of His Majesty's Treasury)*
† Metcalfe, Stephen *(South Basildon and East Thurrock)* (Con)
† Norris, Alex *(Nottingham North)* (Lab/Co-op)
† Phillips, Jess *(Birmingham, Yardley)* (Lab)
† Philp, Chris *(Minister for Crime, Policing and Fire)*
† Stephens, Chris *(Glasgow South West)* (SNP)

Sarah Thatcher, Simon Armitage, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 11 January 2024

(*Afternoon*)

[Hannah Bardell *in the Chair*]

Criminal Justice Bill

2 pm

The Minister for Crime, Policing and Fire (Chris Philp): On a point of order, Ms Bardell. First, it is a pleasure to serve under your chairmanship. Secondly, for the record, I just clarify that the maximum sentence for a possession offence under section 139 of the Criminal Justice Act 1988 is four years. This morning, I inadvertently said two years.

The Chair: I thank the Minister for that point of order.

Clause 10

Maximum penalty for offences relating to offensive weapons

Alex Norris (Nottingham North) (Lab/Co-op): I beg to move amendment 54, in clause 10, page 7, line 28, at end insert—

"(2A) In the Offensive Weapons Act 2019—

(a) In section 39(7), omit paragraph (a) and insert "on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both)"

(b) In section 42(10), omit paragraph (a) and insert "on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both)."

This amendment would increase the penalty for delivering bladed products or articles to someone under 18 from just a fine.

The Chair: With this it will be convenient to debate clause stand part.

Alex Norris: It is a pleasure to serve with you in the Chair, Ms Bardell, and to resume proceedings. They were very good-natured this morning, and I am sure they will be similarly good-natured this afternoon.

Clause 10, like clause 9, relates to the Government's consultation on banning or restricting sale or possession of knives. As we did this morning, we support that important venture. Clause 10 increases the maximum penalty from six months' to two years' imprisonment for the offences of importation, manufacture, sale and supply, and possession of a weapon, flick knife or gravity knife. This is a welcome change that we support. We must send a clear message that those who commit such offences, whether to supply offensive weapons or to profit from them, are not beyond the reach of the law.

It is also welcome to see that these offences will be triable either way, and therefore to provide the police more time to investigate alleged offences without the pressure of the current time limit of six months for prosecution. It is right that we give the police the flexibility to ensure that they can gather the necessary evidence to secure convictions and ensure that the full impact of these changes can be felt. Clause 10, taken with clause 9, is very much a step in the right direction.

I want to use this opportunity to press the Minister, through amendment 54, on an area that I think is missing from the Bill: proper age checks for those who are buying bladed products. Again, similar to the debate we had on clause 9, it may be that the Government want to look at this issue in a different way. As it stands, age checks must be carried out on delivery of bladed products to ensure that those receiving such items are of the correct age, but too often we hear of incidents where that has not happened, and the consequences can be fatal. This is an area worth revisiting.

I refer back to the case that I raised this morning: the tragic murder of Ronan Kanda. During the trial of those convicted of Ronan's murder, it was revealed that the weapons used in the attack had been bought online by the perpetrators. They were just 16 years old, so they should not have had those products. They used another person's ID and collected from the local post office on the day of the attack. Those are breaches of the law in and of themselves, which led to a devastating breach of the law later that day. The age verification process clearly failed there, and just hours later there were tragic consequences. This is just one incident, but it is part of a wider problem, which, if we do not have really good controls on, could mean knives and blades falling into the hands of children who cannot have, or have not, thought of the danger to themselves and others that comes with such weapons. We know that a failing process creates that vulnerability. It is a weakness in the legal framework.

Amendment 54 therefore seeks to raise the penalty—from just a fine—for those who deliver bladed products or hand over bladed products or articles to someone under 18. It would increase that penalty, which I believe would create more rigour in the age check. That in turn should help prevent knives from falling into the wrong hands; it could address that weakness. This issue is perhaps a good reminder of the challenges that our shopworkers face, although we have tabled new clauses that I suspect might give us the chance to discuss that matter, so I will not do so today.

Being able to verify someone's age and deny someone a knife they are trying to buy seems like a friction point to me, so it is right that there should be counterpart legal support, but that that really good quality verification must happen, or there is real danger. My attempt to have age checks carried out diligently is one way of doing it, but it is not the only way. Campaigners rightly want this change. If it is not to be this change on the face of the Bill, I hope we might hear from the Minister about how it can be strengthened and how we can ensure really good confidence in that verification process.

Chris Philp: I am grateful to the shadow Minister for setting out his amendment and his views, as he did this morning in such a thoughtful and considered way.

I turn first to the substance of the clause. It increases the maximum penalty from six months' to two years' imprisonment for the offences of possessing, importing,

manufacturing, selling or supplying prohibited offensive weapons when they are sold to those under the age of 18. We take seriously the sale of knives to under-18s, so the increase in the penalty from six months to two years is important.

We do not want people under 18 to be sold knives; we have heard about all kinds of tragic examples of them using knives to commit homicide. On 27 September, a tragic case in my own borough, Croydon, involved a 15-year-old schoolgirl, Elianne Andam, who was brutally murdered with a knife at 8.30 in the morning. The alleged perpetrator was himself only 17 years old. Preventing such knives from getting into the hands of young people is critical. That is the purpose behind the clause.

The clause relates to selling knives to those under 18, but the amendment speaks to a slightly different point: delivering knives to those under 18. Delivering something is obviously different from selling it. If someone is selling it, they are a shop, a retailer, and the person responsible for the transaction. Acting as a delivery agent—whether the Post Office, FedEx, UPS or some such—means delivering a parcel on behalf of someone else, which is a slightly different responsibility. That is why the law as it stands sets out in the Offensive Weapons Act 2019 some measures to address the issue. The delivery company must have arrangements in place, together with the seller, to ensure that the items are not delivered into the hands of someone under 18. The penalty for delivery is an unlimited fine.

Some new guidelines have been set out by the Sentencing Council. They came into force on 1 April 2023. Organisations now face fines with a starting point of between £500 and £1 million. That is a starting point, so they can be very substantial fines indeed when applied to a corporate body. Individuals can, of course, be fined as well. It is important to make it clear that corporate bodies can be liable for such fines, as I said a second ago, because they are obviously capable of paying much larger amounts of money than an individual.

Amendment 54 raises an important issue. The case that the hon. Member for Nottingham North referred to is relevant—I completely accept that—but I think that the changes made in the Offensive Weapons Act and the Sentencing Council guidelines that came into effect less than a year ago strike the right balance on the delivery of such items. For the sale of items, however, we are increasing the custodial maximum up to two years.

In addition, the provisions of the Online Safety Act, which will be commenced into full force once the various codes of practice are published by Ofcom, will place duties on things such as online marketplaces, which historically have not been regulated. Online marketplaces have been facilitating, for example, the sale of knives to young people or the sale of illegal knives—the kind of knives that we are banning. Those online marketplaces will fall into the remit of the Online Safety Act, so the online space will get clamped down on a great deal.

Carolyn Harris (Swansea East) (Lab): For the sake of clarity, will the Minister confirm that if a shop owner sells offensive weapons, the shop owner will be liable and not the person who works on the premises—obviously, they should not be held accountable for a shop owner's decision to sell the weapon.

Chris Philp: On the sale, it could be either an individual who makes a sale and/or the business. A defence of coercion is available generally, however—I am not sure whether it is in common or statute law. If a shop worker were coerced into selling something, or compelled to do so in some way, that might be a defence if they were accused. Coercion certainly would be a defence in that case.

The increase in the maximum sentence up to two years makes a lot of sense. I have referred to the provisions in the Online Safety Act. On delivery—when someone is simply delivering as opposed to selling—the Offensive Weapons Act 2019 broadly strikes the right balance, but I certainly agree with the shadow Minister that anyone involved in the supply or delivery of knives has a very strong moral obligation, in addition to the legal ones I have set out, not to supply under-18s, because we have seen very tragic consequences, such as the cases in Wolverhampton and Croydon, and tragically many others as well.

Alex Norris: I am grateful for the Minister's answer, which has given me a significant degree of comfort. The point we will hold under review is the nature of delivery companies and the nature of their employment. Some of that is third party and some involves self-employment, which has been a matter of debate in this place on many occasions. I fear that that weakens to some degree the chain of accountability. Nevertheless, very significant fines are in place, as the Minister said. I wonder whether a custodial sentence backstop would strengthen the provisions a little further, but given that the current guidelines are relatively new, as the Minister said, we ought to give them time to work.

The point about online marketplaces was important and has been of interest to the shadow Home Secretary. We are very keen that that should happen as soon as possible. We are grateful for that assurance from the Minister. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 10 ordered to stand part of the Bill.

Clause 11

Encouraging or assisting serious self-harm

The Parliamentary Under-Secretary of State for Justice (Laura Farris): I beg to move amendment 23, in clause 11, page 8, line 23, after "conviction" insert "in England and Wales".

This amendment and amendments 24 and 43 extend the offence under this clause to Northern Ireland.

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

Government amendments 24 and 43.

Clause stand part.

Clause 12 stand part.

Laura Farris: It is a pleasure to serve under your chairmanship, Ms Bardell. Government amendments 23, 24 and 43 amend the penalty provisions in clause 11 and

[Laura Farris]

the extant provisions in clause 77 extend the broader offence of encouraging or assisting serious self-harm to Northern Ireland.

Clause 11, together with clause 12, fulfils a commitment made by the Government during the passage of the Online Safety Act to broaden the offence of encouraging or assisting serious self-harm to cover all the means by which that may occur, including direct assistance such as giving somebody a substance or even a weapon with which to perform the act.

Unlike the offence in section 184 of the Online Safety Act, which it replaces in so far as that offence applies to England and Wales, the broader offence is not confined to verbal or electronic communications, publications or correspondence. In that respect, it implements the recommendation that the Law Commission made in 2021, in its important "Modernising Communications Offences" report.

There are two key points that I want to draw the Committee's attention to today: capacity and intent. Clause 11(1) says that a person commits the offence if they do an act that is

"capable of encouraging or assisting the serious self-harm"

and if their act was intended to elicit that response. In so far as those two threshold tests are met, it is then a strict liability offence.

Subsection (2) provides that the person committing the offence does not need to know or be able to identify the person to whom their conduct is directed; it is enough that the conduct takes place at all. Secondarily, the offence is committed irrespective of whether serious self-harm eventually materialises.

Subsection (5) sets out the maximum penalties for the offence. The offence is triable either way; in a magistrates court it is subject to a fine or, on conviction on indictment, to a custodial term, or both, and in the Crown Court it is subject to a fine or a custodial term not exceeding five years, or both.

Broadening the offence has allowed us to simplify the drafting in a way that is more consistent with the offence of encouraging or assisting suicide. Members of the Committee will recall that that was discussed extensively during the passage of the Online Safety Act 2023—that we should be bringing self-harm, in terms of the elements of the offence, to read more consistently with the law on suicide.

2.15 pm

Some provisions that were necessary in the context of an offence under the Online Safety Act could be done only by means of communications, such as forwarding messages, but that is not necessary in the context of this broader offence. I want to reassure the House that although the drafting of the broader offence differs in some respects, it covers the same behaviour as the Online Safety Act offence, in addition to other forms of encouragement or assistance. Clause 12 should be read in a way that complements clause 11. It is essentially a facilitation offence.

Jess Phillips (Birmingham, Yardley) (Lab): I missed Clare Wade's evidence because I was unwell when she gave evidence to this Committee. Are we to assume that the clause will be used in the prosecution of cases where self-harm is caused by incidents within domestic abuse relationships or as a result of grooming, sexual violence and broader violence against women? I think that it was clarified during the evidence session that that was the case.

Laura Farris: I thank the hon. Lady for her question. It is quite clear that Parliament's intention, in the way that we are framing the clause, and how the clause might actually play out when it comes before the courts, are probably quite different. I have been thinking about that myself. This is very much an extension of what I may call—I hope you will forgive me if I use this as a shorthand—the "Molly Russell" principle, which was established by that tragic case and led to all the new principles of the Online Safety Act—bringing them into line with the offline environment.

However, I think that you are quite correct; when we read clause 11, we see that it belongs in a range of different circumstances, all of which I have thought through. Yes, I think that you are right to say that it could very easily exist within a domestic—

The Chair: Order. I remind the Minister to speak through the Chair and observe the usual conventions.

Laura Farris: My apologies. I am sorry for being too informal; I am not familiar with this. I think that it is the case that the issue is readily identifiable within certain forms of domestic abuse scenario, and that the clause would apply in those circumstances. It is obvious in the statutory language.

Jess Phillips: I will speak more broadly about the issue in a moment, and I am pleased to hear what the Minister has said; that is what we would all want to see. However, I am concerned about the each-way offences that the Minister outlined. Let us say that in a case of suicide a coroner found that domestic abuse had been involved—I mean, chance would be a fine thing in most cases—and a manslaughter charge was laid and then the perpetrator pled guilty. There has only been one case of this. I just wonder how these summary limits and these each-way offences would work in that situation.

Laura Farris: I thank the hon. Lady again for her question. Actually, I think that we would have to concede immediately that it would be on the charge sheet. However, the hon. Lady has raised the topical, important and very difficult issue of whether or not a domestic abuse perpetrator has elicited suicide in circumstances where, as she will know, there are evidential difficulties. There is a discussion happening within Parliament, and more widely within the legal profession, about the offence of manslaughter and its ambit when it takes place in the context of suicide.

Perhaps I can reassure the hon. Lady, though, by saying this: if we stop short of suicide—very much mindful of the fact that that engages quite difficult legal issues—and we think about the offences created under clause 11, I think that it is almost inconceivable that there would be a circumstance in which a clause 11 offence existed and was not accompanied by an offence of coercive control under the Domestic Abuse Act 2021. I just do not think that, in a domestic abuse context, those two things would not exist in parallel. Therefore I think that we would already be looking at a more serious form of sentencing if we were into an "eliciting

self-harm" clause 11 offence. It would also be automatically brought under the ambit of the Domestic Abuse Act, and it is already a more serious offence in that context.

Clause 12 is the facilitation element of the offence, and subsection (1) provides that anyone who arranges for somebody else to do an act capable of amounting to inducing self-harm is also committing an equivalent offence. Subsection (2) provides that an act can be capable of encouraging or assisting self-harm even when done in circumstances where it was impossible for the final act to be performed. For example, if pills were provided to a person and they ended up not to be the pills that were intended, it is exactly the same offence. Equally, if something harmful was sent by post but never arrived, the offence and sentence are the same irrespective.

Subsection (3) provides that an internet service provider does not commit the offence merely by providing a means through which others can send, transmit or publish content capable of encouraging or assisting serious self-harm. Subsection (5) provides that section 184 of the Online Safety Act 2023 is repealed in consequence of these provisions, which create a much broader basis, bringing the online and offline environments into parity.

Jess Phillips: The Minister and I have had some back and forth on this. I rise really to hammer home the point regarding the good intentions of the clause, but the need to think about it in the context of a domestic abuse, grooming or sexual violence situation. It is undoubted in any professional's mind that one of the consequences of violence, abuse and coercion against an individual, specifically in young women, is self-harm and suicide.

As the Minister rightly says, it is important that we recognise that in the vast majority of cases self-harm falls short of suicide. There is a huge amount of self-harm going on across the country, genuinely encouraged as a pattern of domestic abuse, and we need to ensure that this piece of perfectly reasonable legislation, which was designed for those on the internet trying to get people to be anorexic and all of that heinous stuff, which we are all very glad to have not had to put up with in our childhood—I look around to make sure that we are all of a relatively similar age—also covers that.

There is one particular risk: how does the clause interact with institutions? Perhaps the Minister could assist me with that. The Minister for Crime, Policing and Fire, a Home Office Minister, is sat in front of me. I was a few minutes late for the sitting this morning because I was in court with one of my constituents in a case—I am afraid to say—where we were on the other side from the Home Office. My constituent literally had to take medication during the court proceedings, such is the mental health trauma that has been caused to her by the Home Office. I wonder how this piece of legislation might be used. I suppose I worry that there is too much opportunity for it to become useful, in that there are so many ways in which institutions and individuals cause people to end up in a self-harm and suicidal situation. I seek clarity on that, unless Ministers wish to be found wanting by the Bill.

Alex Norris: I commend my hon. Friend the Member for Birmingham, Yardley for offering a powerful dose of reality about what is happening and the risks. We know that abusers will find every possible gap and try to use them to perpetrate their abuse and these heinous crimes. We must follow them and close those gaps the best we can—or, even better, get ahead.

Clauses 11 and 12 make good the recommendations of the Law Commission in its 2021 "Modernising Communications Offences" report. The Minister described that as important and I echo her comments. The clauses also finish what was started during consideration of the Online Safety Bill. We supported it at that point, and the Bill was well scrutinised, so I will not rehash that debate.

The Government amendments extend the provisions to Northern Ireland. I wonder whether there is a different story about Scotland, because most of the Government amendments expand provisions to Scotland as well as to Northern Ireland. I would be interested in the Minister's comments on that.

I will finish on the point that my hon. Friend the Member for Birmingham, Yardley made about institutions. Throughout my time in Parliament, the issue of conversion therapies has been at the forefront. We wish that we were getting on with banning them today—goodness knows how much longer we will have to wait—but we know that very harmful self-harm practices can be part of those therapies. Will the Minister say, in responding to my hon. Friend the Member for Birmingham, Yardley, how accountability will fall in cases like that? That is important; if there is a gap for a certain organisation, perhaps we need to return to this. It might be that we will be assisted by the provision in clause 14 that, where a significant senior person in an organisation commits a crime, the organisation can be held accountable. Perhaps that is the way to close the gap—I do not know. I will be interested in the Minister's view.

Peter Dowd (Bootle) (Lab): My hon. Friends the Member for Birmingham, Yardley and the shadow Minister have made excellent points. Once we go into this, we start to find that there are areas we need to think out a bit more clearly. We may have to come back to this in due course, potentially in future legislation.

My hon. Friend the Member for Birmingham, Yardley prompted me to think about the headteacher who committed suicide following an Ofsted inspection. The coroner's court directly attributed that—partly, at the very least—to the institutional impact that that organisation had on her. Does my hon. Friend the shadow Minister agree that these are very important matters that we have to think through? Once we have let this issue out of the bag, so to speak, we have to very carefully consider the implications further down the line in terms of institutional abuse, because that is what it amounts to.

Alex Norris: I am really grateful for my hon. Friend's contribution. I think that is exactly right. We will hear from the Minister in her reply to my hon. Friend the Member for Birmingham, Yardley where the Government settle on that point. Certainly on the face of the Bill, institutions are left out. I do wonder whether clause 14 would give us the opportunity to reconnect institutions. I suspect that is not the motivation behind that clause, but it may work in that way. Those are pertinent questions that I am sure the Minister is about to address.

Laura Farris: A number of very good points have been made and I will try to respond to all of them. On Scotland, the offence relates to devolved matters, but

[Laura Farris]

Scottish Ministers have decided that the broader offence should not extend to their jurisdiction. They are sticking with section 184 of the Online Safety Act for now. That is why the amendment does not extend the offence to Scotland.

Let me turn to the point that the shadow Minister and the hon. Members for Birmingham, Yardley and for Bootle all made about the ambit of clause 11(1). If I may recap what I said to the hon. Member for Birmingham, Yardley, I think it is absolutely possible that some forms of domestic abuse will fall under the provisions of clause 11. She gave a good illustration of where that might occur. As I have said already—I hope I satisfied her with my answer—I think there is almost no circumstance where the clause would not be read or even pleaded in tandem with the Domestic Abuse Act. It will be a compound offence, and the charge sheet will have more than a section 11 offence if it occurs in the context of an intimate relationship or a former relationship. Conversion therapy was raised, and I think it is possible that that could fall within the ambit of clause 11 too. It is quite obvious how that could be the case.

2.30 pm

Let me make another couple of points. It is quite important to step back from this legislation. It is right that the offence was first conceived with some of the anorexia influencing sites on social media, and some of the other self-harm stuff—I have already mentioned a relevant previous case—in mind. That was the starting point, but it is possible to imagine a far broader range of contexts in which it will end up in court. I think that is fair, and all the observations are right. There is little doubt that it is going to be tempered by the common law as it goes through the court process.

I would like to come back on two points, though. The point was made about a person having a difficult experience of litigation against the Home Office, and we heard the example of the high-profile case related to the effect of an Ofsted inspection; there could be a number of other scenarios. I think we have to look at clause 11(1)(b) when we are thinking about those. We are not considering simply whether the perpetrator is said to have done an act that is capable of encouraging self-harm. By the way, I think that when that is considered by the court, it is not going to include something unpleasant that makes a person feel terrible and leads them to a bad place. That is not the purpose of the clause. In the context of this legislation, "encouraging" has to mean a direct incitement.[1] So the relevant provision is subsection (1)(b), which refers to an act that "is intended" to have such an effect. I may be wrong, but—

Jess Phillips: In this case you are.

Laura Farris: Well, okay, but I struggle to conceive of circumstances, other than very unusual and extreme ones, where it would be said that a statutory body was doing an act with the intention of eliciting the consequence of self-harm. Anyway, the point has been made and I have responded to it. I know the hon. Lady's case is an emotive one.

Jess Phillips: I am not going to talk about my case, but with regard to the charge sheet, coercive control legislation does not currently cover adults who are sexually exploited in grooming situations. In the case of a woman who is sexually exploited by an adult, like the woman I was with this morning, coercive control legislation does not apply. However, self-harm—I mean, I am going to say that literally being forced to be raped by 20 men a day is self-harm—is absolutely part of the pattern of coercion and abuse that those people suffer, so we would assume that adult-groomers would be covered by the Bill.

Laura Farris: I thank the hon. Lady for her intervention. I think a very helpful fabric of possible scenarios has been identified this afternoon. I simply say that in the different circumstances that she has just outlined, there are different criminal offences that would also apply. My simple point is that a case of the nature that she has described would not be confined to a section 11 offence under the Criminal Justice Act 2024, as I hope it will become in due course; there would be a range of serious criminality connected to that.

Jess Phillips: There isn't. I hope, as the Minister hopes, that there will be by the time we have got to the end of our scrutiny of the Bill, but there is no crime of grooming adults in sexual exploitation; that exists only for children as an aggravating factor in offences. I suppose pimping legislation would not count in the case I mentioned if self-harm was caused. I do not think there are other bits of legislation for adult victims of sexual exploitation.

The Chair: Order. We are having a very important and thoughtful debate, but can we please try to observe the normal procedures so that *Hansard* colleagues, and those who are watching, can catch all of the proceedings?

Laura Farris: I am sorry if I misunderstood the hon. Member for Birmingham, Yardley. I thought she was identifying a rape scenario, which would be caught by the Sexual Offences Act 2003. It is probably not particularly fruitful for us to talk about every instance of criminality, but I think there is a point of agreement between Members on both sides of the Committee. Opposition Members have quite rightly and properly identified that clause 11 is likely to go much wider—the way it will be interpreted or pleaded, or how it will end up in court, is probably a bit different from the way in which it was presented to the House during the progress of the Online Safety Bill, when we were confined to two or three particular instances of self-harm. The Opposition correctly identified that issue, as we did on the Government Benches. I am not trying to get out of responding, but I think the provision will be tempered by common law as it goes through the courts.

Amendment 23 agreed to.

Amendment made: 24, in clause 11, page 8, line 24, at end insert—

> "(aa) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);".—*(Laura Farris.)*

See the statement to amendment 23.

Clause 11, as amended, ordered to stand part of the Bill.

Clause 12 ordered to stand part of the Bill.

1. *[Official Report, 1 March 2024, Vol. 746, c. 5MC.] (Correction)*

Clause 13

OFFENCES RELATING TO INTIMATE PHOTOGRAPHS OR FILMS AND VOYEURISM

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

The Chair: With this it will be convenient to discuss new clause 20—*Sharing or threatening to share intimate photograph or film: modesty clothing—*

"(1) Section 188 of the Online Safety Act 2023 is amended as follows.

(2) After inserted section 66D(5)(e) insert—

'(f) the person not wearing modesty clothing such as a hijab or niqab when they would normally do so.'"

This new clause would see definition of "intimate image" extended to include specific categories of image that may be considered intimate by particular religious or cultural groups.

Laura Farris: The clause is the latest in a sequence of legislation dealing with intimate image abuse. People may correct me if I am wrong, but I think I am right to say that we have not dealt with intimate image abuse until this Parliament. The first time it hit the statute book properly was the Domestic Abuse Act 2021. I think it is also right to say that, as a Parliament, we have framed it correctly as something that is more often than not just another ugly incarnation of coercive control. It is highly intrusive, humiliating and distressing conduct.

In November 2022, following the passage of the Domestic Abuse Act, the Government announced their intention to create a suite of new offences to deal with intimate image abuse, closely based on the Law Commission's recommendations in its July 2022 report. Under the Online Safety Act 2023—I hope the Committee will not mind if I spend a moment on the chronology and the legislative journey on intimate image abuse—the Government repealed the offences of disclosing or threatening to disclose private sexual images, replacing them with four new offences of sharing or threatening to share intimate images.

The Bill goes further to tackle the taking of intimate images without consent, and the process of installing equipment for that purpose. First, it repeals two voyeurism offences related to voyeurism of a private act and taking images under a person's clothing, for which we use the shorthand "upskirting"—although that precedes the life of this Parliament, so I am wrong about that. Anyway, both those offences are reasonably new and have resulted in amendments to the Sexual Offences Act 2003. The Bill will replace them with new criminal offences to tackle the taking or recording of intimate images without consent and the installing of equipment for such purposes.

Those taking offences build on the sharing offences identified in the Online Safety Act to provide a unified package of offences using the same definitions and core elements. That addresses the criticism that there was previously a patchwork of protection, which the police told us led to gaps in provision when it came to this type of behaviour. I pay tribute to my right hon. Friend the Member for Basingstoke (Dame Maria Miller), who is not a member of the Committee. She has done a lot of work on the issue, and identified this problem in particular. As we know, one of the issues was proving intent.

I am grateful to the Law Commission for its work. It consulted widely with the police, prosecutors and legal practitioners, so we could not only read its report, but hear from a range of experts, including those supporting and campaigning on behalf of victims, and others who are far more knowledgeable than any of us.

The clause will insert a suite of new provisions after section 66 of the 2003 Act. The clause will create three new offences: the taking or recording of an intimate photograph or film without consent; and two new offences about installing equipment to enable a taking offence. I will go through them briefly.

The first provision of the clause is the creation of what we call a base offence of taking any intentional image of a person in an intimate state without their consent. That amounts to what we will call a section 66AA offence. It removes the requirement for a reason or motive. It does not matter if the person was doing it for a joke or for financial payment, or even if their reason was not particularly sinister. The base offence would be met if those elements were established. The offence is triable summarily only and will attract a maximum prison term of six months.

The wording of the two more serious offences mirrors some of the language that we are familiar with; the offences refer not just to "intentionally" taking an image, including of a person in an intimate state without their consent, but to having the intent of causing them "alarm, distress or humiliation", or taking the image for the purpose of "obtaining sexual gratification" for themselves or another person. The offences are serious and carry a maximum sentence of two years. The three offences are designed to achieve the right balance between the protection of the victim and the avoidance of any over-criminalisation. I will return to that when I speak to new clause 20, tabled by the hon. Member for Birmingham, Yardley.

The base taking offence is subject to a defence of reasonable excuse, such as a police officer taking an image without consent for purposes connected with criminal proceedings. Similarly, a base sharing offence is subject to the defence of reasonable excuse; for example, images taken for the purpose of a child's medical treatment would meet that threshold, even if the victim was distressed by that. There is another exemption—I do not know who came up with this example, but it is a good one—if the image is taken in a public place and the person shown in the image is in the intimate state voluntarily. A distinction is therefore drawn between, for example, a photo of a streaker at a football match, and that of someone who had a reasonable expectation of privacy; that would relate to upskirting, for example.

We are also creating two offences to do with the installation of spycams, which I am afraid we see more and more of in cases going through the courts: an offence of installing, adapting, preparing or maintaining equipment with the intention of taking or recording intimate photograph or film; and an offence of supplying for that purpose. To be clear, it will not be necessary for the image to have been taken; if equipment was installed for that purpose, that is enough to meet the requirements of the offence.[1]

Overall, the clause amends the Sexual Offences Act 2003 to ensure that notification requirements can be applied, where the relevant criteria are met, to those convicted of the new offence of taking for sexual gratification and

1. *[Official Report, 1 March 2024, Vol. 746, c. 5MC.] (Correction)*

[Laura Farris]

installing with the intent to enable the commission of that offence. I commend the clause to the Committee. I will respond to the new clause later.

Jess Phillips: I will be brief. New clause 20 would extend the definition of "intimate image" to include specific categories of image that may be considered intimate by particular religious or cultural groups—for example, instances of a person not wearing modesty clothing such as a hijab or niqab when they would normally do so.

2.45 pm

As the Minister set out, legislative action on the intimate image issue has largely been taken in this Parliament. In an era in which everyone has a camera on their phone, one might have expected this to have become much more of an issue, but for some women the legislation has not gone far enough to protect them. I came across the case of a woman who was supported by the charity Ashiana in Sheffield. She is a practising Muslim who wears a hijab. She was pregnant and in an abusive relationship, and her partner was the perpetrator of her sexual exploitation. He took photos of her not wearing her hijab and used them to blackmail her. He threatened to send the images to the woman's ex-husband and to the community. That could have put the woman, her family and her new daughter at significant risk. To deal with the immediate danger, the woman was re-housed away from the perpetrator. However, when she reported the threat to the police, nothing came of it; the threat was not taken seriously, and there was a lack of understanding of her fear. The threat that she experienced is not covered by the Bill. That is all the new clause seeks to cover.

Threats to share intimate images that, for instance, portray a Muslim woman without her hijab can and are being used as a method of blackmail and coercion. That exposes women to further domestic abuse and so-called honour-based violence. We need to find a new term for that. I hate saying "so-called honour-based violence"; it's just violence, isn't it? Perpetrators have been known to threaten to send photos to the men in a woman's family, for example, and to the community. There are lots of different groups of women we often forget in broader legislation, and I seek not to have these women forgotten in this legislation.

Alex Norris: Clause 13 is right and is a welcome addition, so I do not have much to say about the two lines that form it. I will keep my powder dry for my amendments to the schedule that the clause introduces, which is where the action is.

New clause 20 is a welcome addition to the debate and would be a welcome addition to the Bill. As my hon. Friend the Member for Birmingham, Yardley says, some people get forgotten in our discussions. The point of having a diverse Parliament that represents the country that we serve is that we try to work that out, but we all have a responsibility to step up and meet the moment. I will be interested to hear what the Minister says about the new clause. When we talk about intimate photos or films, the question is: to whom is it intimate? The new clause—and we—say that it is intimate to the person who has suffered that photo or filming, and who is being threatened with the sharing of those images. It is intimate to them, rather than to the perpetrator. Nothing could be clearer than that in the horrible case that my hon. Friend raises. We support the new clause, and I hope that the Minister does, too.

Laura Farris: I am very sensitive to the issues that have been raised and will respond to them, but I will also explain why we do not accept the new clause.

We have steered very close to the course recommended by the Law Commission in what we have defined in law as an intimate image. It includes anything that shows a person who is nude or partially nude, or who is doing anything sexual or very intimate, such as using the toilet. It is a wider definition of "intimate" than was used in the revenge porn provisions under the Domestic Abuse Act 2021. We have expanded it, but we have confined it to what we think anyone in this country would understand as "intimate".

One of the challenges in adopting a definition of "intimate" that includes, for example, the removal of a hijab is that we are creating a criminal offence of that image being shared. It would not be obvious to anyone in this country who received a picture of a woman they did not know with her hair exposed that they were viewing an intimate image and committing a criminal offence.[1] The Law Commission has made very similar points in relation to showing the legs of a woman who is a Hasidic Jew, or showing her without her wig on. This would be grotesquely humiliating for that victim, but that would not be completely obvious to any member of the public who might receive such an image of them.

Jess Phillips: Will the Minister give way?

Laura Farris: I will, but I would like to develop this point a little bit more.

Jess Phillips: I strongly suggest that the hon. Lady does not come from the same community as me. I described images being sent to the community; the nature of the image would absolutely be clear to lots of people where I live.

Laura Farris: I was going to complete the point. If the hon. Lady will forgive me, I will do so before I give way again. We have to create laws that apply equally to everybody in the United Kingdom. If we are to create an offence of sharing intimate images, we have to have a translation of intimacy that is absolutely irrefutable to anybody sending that image around. Even if they do not know the person in the image, it has to be absolutely clear to the sender that they are sending an intimate image. I have already made the point that it would not be immediately obvious to everyone in the United Kingdom that an image of a woman showing her hair was a humiliating image of her. It would not automatically be an intimate image even if the person sharing it knew that the woman in the image was Muslim, because some Muslim women do not wear headscarves.

The hon. Member for Birmingham, Yardley described a very dark case. She mentioned the language of blackmail and honour-based violence. She intimated coercive control. My simple point is that in the circumstances she has identified, there are a host of serious criminal offences being committed in conjunction with the use of the intimate image. We would say, very respectfully, that we think that kind of crime belongs much more comprehensively within other offences.

1. *[Official Report, 1 March 2024, Vol. 746, c. 6MC.] (Correction)*

Jess Phillips *rose—*

Laura Farris: I am not going to engage in a case-by-case discussion. It is so difficult for me to do that; I do not have the papers in front of me. I understand the issue about community-based events, but if the purpose of sending the image is to blackmail a person, they have already engaged another element of the criminal law, and there is already aggravation, in that the perpetrator is being domestically abusive or is committing an honour-based offence, as the hon. Lady described.

I want to make it clear that by introducing the base offence, this legislation is removing the need to show an intention to cause distress. That is the issue that Georgia Harrison had, but managed to circumvent when she got that very successful and high-profile conviction against Stephen Bear, who went to prison for two years. She had an evidential difficulty in proving intent in her case. Although she did, she then became a really powerful advocate for removing intent from the offence, and we have done so.

I am not for a moment suggesting that there will not be cases of maximum sensitivity in which somebody is humiliated, but as I say, in the case that the hon. Member for Birmingham, Yardley described, in the background, other offences were materialising. Our view is that it is more appropriate that they are dealt with under other elements of the law, rather than our muddling the police response, or even creating offenders where we do not mean to, because under the hon. Lady's offence, the offender does not know they are committing an offence. They might think that they are sharing an image of a glamorous woman, not knowing that it is grossly offensive that they have shown a picture of a woman who does not have her hair covered as she normally would, because they do not know her.

I hope that answers the hon. Lady. With great respect, I urge her not to press her new clause. However, I would like to hear from her, because I did not give way to her a moment ago.

The Chair: The rules allow the hon. Member for Birmingham, Yardley, to come back again—and the Minister can, in fact, respond again, if she would like to.

Jess Phillips: I understand exactly where the Minister is coming from. I understand not wishing to over-criminalise anybody for something accidental. I will just say that chance would be an absolutely fine thing. In the case that I was talking about, the police laughed at the woman when she went to them about it. Sometimes we on these Committees say, "Well, there's already an offence for that," and I think, "Is there?" In real life, there is not, when the rubber hits the road. I am not sure how many times people in this room have tried to get these criminal cases across the line. I do it every single week. In my life, I have done thousands and thousands.

The argument is the same for this legislation: what is the point of having it? Take Georgia Harrison's case—let me give her a shout out. Good luck to her on "Love Island: All Stars". I will definitely be supporting her; she is a friend of mine. There are probably all sorts of bits of legislation around posting an image of an ex partner. We say about spiking, "Well, there is already legislation for that," but it does not work. Our job is to try to make laws that work in real life. I am afraid to say that there will be lots of cases of the kind that I am talking about. There just will, and the women involved will not be able to rely on this legislation.

The Minister said, "We try to make laws for all people in our country." It does not always feel like that. We leave loads of people out. I will not press the new clause to a Division, because my point has been made. I am drawing a line in the sand when it comes to people in this Committee telling me, "There is another law for that," when I know fine well that those other laws do not work.

The Chair: Would the Minister like to respond?

Laura Farris: I have probably gone as far as I can. There are no circumstances in which Georgia Harrison's case would not be covered by the provision that we are discussing. The other person can be a current partner or an ex, or there can be no relationship. *[Interruption.]* I know that the hon. Lady is talking about a different category of case. I wonder whether one of the problems in the case that she raises is the adequacy of the police response, rather than whether an offence exists for it. It is difficult, in drafting legislation, to create a category of offender when an image would not be recognised as being intimate by everybody in the United Kingdom. On that basis, with great respect, I am afraid that we would have to reject her new clause.

Question put and agreed to.

Clause 13 accordingly ordered to stand part of the Bill.

Schedule 2

Offences relating to intimate photographs or films and voyeurism

Alex Norris: I beg to move amendment 56, in schedule 2, page 82, line 4, at end insert—

"**66AD Publishing or hosting unlawfully obtained intimate photograph or film**

(1) A person (A) commits an offence if A publishes, hosts or makes viewable a photograph or film of another person (B) which has been obtained (1) unlawfully under sections 66A, 66AA, 66AC or 66B, subject to the provisions of sections 66AB and 66C.

(2) For the purposes of this part, "publishing, hosting or making viewable" includes—

(a) physical or online publication, and

(b) uploading to a user-to-user service,

(c) in relation to owners or administrators of a user-to-user service, allowing public access to a photograph or film uploaded by another person, and

(d) maintaining or providing for the presence or availability of a photograph or film by any other means or in any other place, whether or not such service or access is conditional on the payment of a fee.

(3) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);

(b) on conviction on indictment, to imprisonment for a term not exceeding two years."

This amendment would make it an offence to make publicly available, either through publishing or online hosting, intimate photographs or videos which have been obtained unlawfully.

The Chair: With this it will be convenient to discuss amendment 57, in schedule 2, page 82, line 4, at end insert—

"**66AD Faking intimate photographs or films using digital technology**

(1) A person (A) commits an offence if A intentionally creates or designs using computer graphics or any other digital technology an image or film which appears to be a photograph or film of another person (B) in an intimate state for the purposes of—

(a) sexual gratification, whether of themselves or of another person;

(b) causing alarm, distress or humiliation to B or any other person; or

(c) committing an offence under sections 66A or 66B of the Sexual Offence Act 2003.

(2) It is a defence to a charge under subsection (1) to prove that—

(a) A had a reasonable excuse for creating or designing the image or film, or

(b) that B consented to its creation.

(3) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);

(b) on conviction on indictment, to imprisonment for a term not exceeding two years."

This amendment would make the creation of 'deepfake' intimate images an offence.

Alex Norris: Clause 13 and schedule 2 are important steps forward in tackling the abhorrent practice of taking intimate photographs without consent. As we have heard, the Bill introduces new offences to criminalise taking or recording intimate photographs or film without consent, and as the Minister said, an offence of installing equipment to enable the taking or recording of intimate photographs or films with the intention of committing an offence. As we have heard, these measures build on the progress made by the Law Commission's review of legislation on the non-consensual taking and sharing of intimate images; we should thank it for its important work.

As the Government have said today and previously, their intention is that the provisions will put in place a clearer and more comprehensive legal framework that will broaden the scope of intimate image offences, so that all instances of intentionally taking or sharing intimate images without consent are criminalised, regardless of motivation. We very much support that. My amendments are an attempt to improve that and to ensure that the police and courts have the right tools at their disposal to bring the perpetrators of such terrible acts to justice.

3 pm

It is interesting that the Minister and my hon. Friend the Member for Birmingham, Yardley mentioned Georgia Harrison. Amendment 56 is inspired by an event that my hon. Friend held at the Labour party conference at which she interviewed Georgia Harrison. She said something that day that stuck with me, which is that an individual could have the fullest form of justice that is allowed in law, notwithstanding the difficulties that my hon. Friend has mentioned, but the photos would still be out there and circulating. Yes, that individual has been vindicated and, yes, the person may even be in prison, but they will doubtlessly be bombarded with those videos and photos on social media, or they will simply know that they are there. We really ought to address that to the best of our abilities, and that is what amendment 56 seeks to do. It seeks to introduce a new offence for those who

"make publicly available, either through publishing or online hosting, intimate photographs or videos which have been obtained unlawfully."

We supported previous measures to make it an offence to share images, but we think that there are gaps in the legal framework, particularly on hosting. Amendment 56 attempts to address the lack of legislation relating to publishing and hosting, setting a maximum penalty of two years for those who commit such offences. That is in line with the current legislation for similar offences. Taken with what is already in the Bill, that sends a strong and unambiguous message to those who perpetrate the acts, but also to those who may profit from it or facilitate it. I would be very interested to hear the Minister's views on the amendment.

Turning to my amendment 57, the Bill also does not cover intimate deepfake images. Deepfake images, particularly those of an intimate nature, have the potential to cause just as much harm, frankly, as intimate images: harm to relationships, to reputation and to mental wellbeing. I think it is safe to say that there is a real range of deepfake images. Some of the images are very rudimentary in what they seek to do, and some are much more technically sophisticated. That higher end is a significant problem.

I promise that I will stay within the scope of my amendment. There is a real challenge for us around deepfake images of people who do not exist, if that does not sound contradictory. It is welcome to see what the Government announced today in relation to Gabby Bertin's—the noble Baroness Bertin's—pornography review, which is that it will include the impact that created intimate images of women who do not exist has on men and boys. That is a gendered thing—it is always women, frankly. The announcement will give virtually the complete scale of what that will do and what powers and restrictions there ought to be. That is welcome and complements what I have suggested in the amendment, because it will surprise absolutely no one that this harassment is also gendered when it comes to deepfake images of people who do exist.

Mark Garnier (Wyre Forest) (Con): I am very sympathetic to the hon. Member's point about deepfake intimate images, but I wonder why he does not extend the provision further to what might be embarrassing images. We are in a room full of politicians who are about to go into a general election. Deepfake images of prominent politicians at rallies, for example—such as a leading left-wing politician being seen at a far-right rally in a deepfake—would be just as damaging to people in public positions, without necessarily being intimate. Does the hon. Member feel that the amendment could extend to that?

Alex Norris: The hon. Member for Wyre Forest makes a very good point. The reason that I stopped short of doing that is that I was trying to stay within the "intimate" framing, but he is absolutely right. As we go into an election year, we will see, both in the States and over here, that being a real challenge to our democracy and to how we conduct campaigning. This provision would certainly not be right for it, but a new clause might be. That is good inspiration from the hon. Member, and I am very grateful for it.

The Committee heard about this during the evidence sessions for the Bill. Dame Vera Baird, the former Victims' Commissioner, made the point very powerfully. She said that this use of deepfakes

"needs making unlawful, and it needs dealing with."—[*Official Report, Criminal Justice Public Bill Committee,* 12 December 2023; c. 62.]

Indeed, she said she could not understand why they had not been banned already, and I agreed with her on that point. Amendment 57 is designed to address that. It will make it an offence for someone to intentionally create or design

"using computer graphics or any other digital technology an image or film which appears to be a photograph or film of another person...in an intimate state",

whether that be for "sexual gratification",

"causing alarm, distress or humiliation"

or offences under the Sexual Offences Act 2003.

The amendment is an important addition to what we have. Some important progress was made with the Online Safety Act 2023, but I think this finishes the job. I am interested in the Government's view on whether where they went with the Online Safety Act is where they intend to finish, as opposed to going that little bit further. I will close on that point, but I will be very interested in the response.

Jess Phillips: I rise to support both amendments, and, in fact, what the hon. Member for Wyre Forest said as well. No one should have the ability to host an image of a person that they did not want out there in the first place. Unfortunately, what people tend to get back is that it is very difficult to place these things, but all sorts of things around copyright are traced on all sorts of sites quite successfully. We put a man on the moon 20 years before I was born, and brought him back. I reckon we could manage this and I would really support it.

Turning to the point made by the hon. Member for Wyre Forest and the issue of faking intimate images, I am lucky enough to know—I am almost certain that most of the women in this room do not know this about themselves—that deepfake intimate images of me exist. As I say, I am lucky enough to know. I did not ever once consider that I should bother to try to do anything about it, because what is the point? In the plethora of things that I have to deal with, especially as a woman—and certainly as a woman Member of Parliament in the public eye—I just chalk it up to another one of those things and crack on, because there is too much to be getting on with. But on two separate incidents, people have alerted me to images on pornographic websites of both me and my right hon. Friend the Member for Ashton-under-Lyne (Angela Rayner); they have a thing for common women, clearly. There is nothing that even somebody in my position can do about it.

The first time I ever saw intimate images of me made on "rudimentary" Photoshop, as my hon. Friend the Member for Nottingham North called it, if I am honest, like with most abuses against women, I just laughed at it. That is the way we as women are trained to deal with the abuses that we suffer. They could only be fake images of me, because, unlike my children, I do not come from an era where everybody sends photos of everybody else naked. As a nation, we have to come to terms with the fact that that is completely and utterly normal sexual behaviour in the younger generation, but in that comes the danger.

The reality is that this is going to get worse. Rudimentary Photoshop images of me were sent to me about five years ago, or even longer—we have been here for ages. Covid has made it seem even longer. The first time I saw fake images of me, in a sexualised and violent form, was probably about eight years ago. Over the years, two, three or four times, people have sent me stuff that they have seen. I cannot stress enough how worrying it is that we could go into a new era of those images being really realistic. On the point made by the hon. Member for Wyre Forest, I have heard, for example, two completely deepfake recordings of my right hon. and learned Friend the Member for Holborn and St Pancras (Keir Starmer) that were put out and about. To be fair to Members on the Government Benches, they clearly said, "This is fake. Do not believe it; do not spread it." We must have that attitude.

However, it is one thing to stop something in its tracks if it is the voice of my right hon. and learned Friend the Member for Holborn and St Pancras saying, in that instance, that he did not like Liverpool, but that is nothing compared with the idea of me being completely naked and beaten by somebody. It is like wildfire, so I strongly encourage the Government to think about the amendments and how we make them law.

Laura Farris: Opposition Members have made two very good points, which I will respond to. The issue of publishing or hosting unlawfully obtained internet photographs is salient. It was probably thrown into its sharpest relief by Nicholas Kristof at *The New York Times* when he did a big exposé of Pornhub. I have never read off my phone in any parliamentary sitting before, but I will briefly do so, because the opening to his article is one of the best that I have read about Pornhub:

"Pornhub prides itself on being the cheery, winking face of naughty, the website that buys a billboard in Times Square and provides snow plows to clear Boston streets. It donates to organizations fighting for racial equality…Yet there's another side of the company: Its site is infested with rape videos. It monetizes child rapes, revenge pornography, spy cam videos of women showering".

The point is very well made.

Under the Online Safety Act 2023, we have ensured that all user-to-user services in scope of the illegal content duties are required to remove that type of illegal content online when it is flagged to them or they become aware of it. That would cover something such as the Pornhub apps I have described. We believe that the robust regulatory regime for internet companies put in place by the Act, with the introduction of the offence of sharing intimate images, which extends to publication, are the most effective way to deal with the problems of the spread of that material.

Our essential answer is that under the Online Safety Act a host site—I have given a big name, because I am critical of that particular site—would be under a legal obligation to remove content flagged to it as featuring prohibited content, so it would have an obligation under the law to remove an intimate image of an individual created without their knowledge or consent or to be subject to criminal sanctions. Under the Online Safety Act, those are substantial; Parliament worked collectively to ensure that meaningful sanctions would be applied in that regard.

[Laura Farris]

There is a concern that creating a new offence would partially overlap with existing criminal offences—for example, that we would basically be duplicating some of the provisions under section 188 of the Online Safety Act. We worry that that would dilute the effectiveness with which such activity will be policed and charged by the Crown Prosecution Service. I understand that the provisions under the Act have not yet been commenced, so we would be legislating on top of legislation that has not been commenced. Respectfully, I invite hon. Members to allow the Act to come into force comprehensively before we make an assessment of whether we need to legislate again on the issue of hosting unlawful content. However, I am sympathetic to it, and I think the whole House agrees with the principle.

Equally, the Law Commission was asked to look at the issue of deepfakes, which it considered and responded to. I will remind the Committee of how it undertook its inquiry into the issue. It undertook a full public consultation on the point and engaged with the CPS and police, and it concluded that making a deepfake offence was not necessary. It identified certain associated risks, including difficulties for law enforcement and, again, the risk of overcriminalisation, which potentially would outweigh the benefits. The Government share the view of the Law Commission and have decided not to create a separate making offence.

I will provide hon. Members with some reassurance: nobody is in any doubt about the risk. The hon. Member for Birmingham, Yardley described harmful, culpable conduct relating to her personally and to other senior politicians in this House. My hon. Friend the Member for Wyre Forest gave hypotheticals that could easily materialise, and we all know that there is an increased risk of that as we move into an election year on a global scale, because elections are happening all over the world this year. Nobody doubts the risk. I want again to provide the reassurance that such conduct generally involves sharing of these images, or threats to share, both of which are criminalised by offences under the Online Safety Act, or by other offences—communication offences and harassment offences—so it is already captured.

The secondary issue identified by the Law Commission concern the prosecution difficulties, because it would be difficult to prove some elements of the offence, such as an intention to cause distress, in circumstances in which the image had not been shared—by the way, I take out of that a circumstance in which the defendant has told the victim that they hold the image, because that has already crossed the threshold. The question that I asked officials—I have now lost the answer, but they did give it to me. Hang on a minute; someone will know where it is. Will the Committee give me one moment?

3.15 pm

Alex Norris: Will the Minister give way?

Laura Farris: I will give way—I thank the hon. Gentleman very much.

Alex Norris: Now I have to work out something to say. There was certainly a degree of bravery in saying to my hon. Friend the Member for Birmingham, Yardley that there is a belief that there is a robust regime in place—I thought I could hear steam coming out of her ears. It is a given that we all share a view, but that does not mean that that is necessarily reflected in output at the moment. [Hon. Members: "Keep going!"] It is very important that what is in the Bill reflects what we are trying to solve, and I am concerned that at the moment it does not, but the Minister clearly takes a different view.

Laura Farris: I thank the hon. Gentleman for his forbearance. Just to pick up on that point, I think he is right to hold the Government's feet to the fire on the commencement of the Online Safety Act, because it is all very well having these provisions in law, but if they are not actually operational, they are not doing any good to anyone. I accept that tacit criticism as it may be advanced. I recognise that implementation now is critical; commencement is critical.

I will disclose the question that I put to officials. I was interested in the question of what happens if, for example, a schoolboy creates a deepfake of another pupil and does not share it, so that it is not covered by the Online Safety Act but is none the less an offence. I am told that that is covered by two separate bits of legislation. One is section 1 of the Protection of Children Act 1978, which includes making indecent images of a child, including if that is a deepfake, which would be covered by the statutory language. The second provision is section 160 of the Criminal Justice Act 1988, which is possession of any indecent image of a child and would include where it had been superimposed.

I am satisfied that the current law, including the Online Safety Act—I have already accepted that there are commencement issues—deals with deepfakes. I am sensitive to the prosecutorial difficulties that I have identified and I think that these are covered, particularly by the Online Safety Act. We accept the Law Commission's very careful work on the issue, which was a detailed piece of research, not just a short paragraph at the end. On that basis, I very respectfully urge the hon. Member for Nottingham North to withdraw or not press the amendments.

Jess Phillips: On the answer that the Minister got from her officials, there are so many bits of legislation about abuses of children, sexual violence towards children, sexual grooming of children and sexual exploitation of children, and there are none about adults, as though such behaviour is not harmful when someone turns 18. If the same kid in the same class is 17 and makes images of a person who is turning 18, the view is that one day it would be a problem and the next day it would not, as though the abuse of adult women is just fine. The Online Safety Act does not say the word "woman" once, so I will gently push back on the idea that it deals with this. I am going to scour Pornhub now—I will not do it while I am in Parliament in case somebody sees me—to look for these images, and I will rise to the Minister's challenge. I am going to go to the police once the Online Safety Act is in force and we will see how far I get.

Laura Farris: I thank the hon. Lady for her point. She is making very, very good ones, as she always does. That is a legitimate challenge. I just would also ask her to

bear this in mind. She has heard our answer. First, we are accepting the Law Commission's recommendation for now. Secondly, we think the Online Safety Act covers what she has described in terms of sharing. The third point that I draw her attention to is the pornography review launched today. That is a critical piece of work, and she made the good point that we focus extensively on children. There is a really important element of that.

First, we know that there is a dark web element where a lot of online pornography is focused directly on child pornography. We also know that adult pornography not only contributes to the pubescent nature of abuse that we see in the violence against women, but also violence against women much more widely. I have spoken about this; the hon. Lady has spoken about this—we have been in the Chamber together numerous times talking about it. I hope that that review will get on top of some the issues that she is raising today. I hope she will accept our gentle refusal of her amendment and maybe consider withdrawing it.

Alex Norris: My hon. Friend the Member for Birmingham, Yardley made the point about copyrights, which was absolutely bang on the nose. We should not give any succour to any platform telling us that this is too hard to do. All we need to do is, on Saturday, sit with our phones at about 3.15 pm and wait for someone to score in the premier league. We will be able to see that goal for about 90 seconds—someone will share it because it is watchable in other countries. Within 90 seconds, however, we will no longer be able to watch it and it will say, "This is no longer available due to a breach of copyright". That is how quick it is—no more than 90 seconds. This absolutely can be done when the stakes are considered high enough.

I am grateful that my hon. Friend was willing to share her personal experience—I did not know whether she would choose to or not. Again, what she has to put up with is extraordinary and would test any human being. I am often amazed by her strength to carry on, but those people do not know the person they are taking on. But that is no excuse and gives no cover. This penalty is being exacted on her for a supposed crime: yes, it is for being a prominent person in politics and yes, it is for holding strong views on the left of politics. But the real crime, at root, is that she is a woman. I do not have a public platform like my hon. Friend's, I am absolutely delighted to say. If I did, my treatment would be entirely different because I am white and I am a man. This again has to be seen through a gendered lens, and we have a responsibility to protect women in this regard.

I will refer to a couple of points that the Minister made. First, on hosting, we will see about this robust regime. I would be keen to know either today or at another point how soon these provisions are going to be turned on. They need to be turned on and used, otherwise they are of absolutely no use to anyone. We will see. It is reasonable for her to want that regime to have its chance to operate. I accept that and withdraw amendment 56 on that basis. But we will see and we will certainly come back.

Similarly, on deepfaking, I know the Law Commission chose not to go into this space, but its report was not carved on tablets of stone. We are allowed to go further if we think that the case is there. *[Interruption.]* I do not share—my hon. Friend the Member for Birmingham, Yardley is going to have steam coming out of her ears soon—much of a concern around overcriminalisation in this space. That just does not connect to reality. *[Interruption.]*

The Chair: Order. Chunterings from the hon. Member for Birmingham, Yardley are always—

Jess Phillips: Delightful?

The Chair—informative and important. I would be very grateful if she could save them up and use them in her interventions so that we get them on the record, rather than overhearing them from a sedentary position, if she would be so kind.

Alex Norris: My hon. Friend is not operating "Weekend at Bernie's"-style—I promise. That is a dated reference. She talked about people being the same age, so maybe that will be the test of that.

We will welcome the point around children, but it must be seen in the context of what my hon. Friend said. The Minister has said she is satisfied on both points. We say, "We will see whether that holds". We need those provisions to be enacted and to see the laws on the statute book used properly on deepfakes, otherwise we will have to return to this point. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Chris Philp: I beg to move amendment 48 in schedule 2, page 85, line 32, at end insert—

"Armed Forces Act 2006 (c. 52)

1 In the Armed Forces Act 2006, after section 177D insert—

'177DA Photographs and films to be treated as used for purpose of certain offences

(1) This section applies where a person commits an offence under section 42 as respects which the corresponding offence under the law of England and Wales is an offence under section 66AA(1), (2) or (3) of the Sexual Offences Act 2003 (taking or recording of intimate photograph or film).

(2) The photograph or film to which the offence relates, and anything containing it, is to be regarded for the purposes of section 177C(3) (and section 94A(3)(b)(ii)) as used for the purpose of committing the offence (including where it is committed by aiding, abetting, counselling or procuring).'"

This amendment amends the Armed Forces Act 2006 to make provision equivalent to the amendment to the Sentencing Code made by paragraph 19(2) of Schedule 2 to the Bill.

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

Government amendments 36 and 50

Government new clause 10—*Power to seize bladed articles etc: armed forces.*

Government new clause 11—*Stolen goods on premises (entry, search and seizure without warrant): armed forces.*

Government new clause 12—*Powers to compel attendance at sentencing hearing: armed forces.*

Chris Philp: I hesitate to say that these are technical amendments; given the shadow Minister's comments this morning, I do not want to unduly provoke him. However, this series of amendments simply extends some of the measures within the Bill to the service police —the military police—of all branches of the armed forces and to the service justice system. The relevant measures are: the power to seize bladed articles, contained in clause 18; the power to enter property to seize stolen goods without a warrant, contained in clause 19; the power to compel an offender to attend their sentencing hearing, contained in clause 22; and making grooming a statutory aggravating factor for sexual offences against a child, contained in clause 23.

Amendment 48 to schedule 2 also ensures that the offences relating to intimate images provided for in the schedule also fully read across to the service justice system. Our armed forces do incredible work, of course, but we must ensure that the law applies to those serving in uniform as much as to members of the public. That is why we are proposing these important—although also technical—amendments.

Alex Norris: We are getting to the witching hour on a Thursday, but the Minister tempts me around technical amendments. The point that I was making earlier was merely about whether we were using the same definition. I would also perhaps dispute that a technical amendment could be "important", because I think that, at that point, it would cease to be technical. However, as I say, I think that that is a distinction of classification rather than substance, and that these are sensible amendments—although I would not say that they were technical. There are other issues that will come up in those later clauses that the Minister mentioned, but we will debate them, I am sure, in due course.

Amendment 48 agreed to.

Schedule 2, as amended, agreed to.

Clause 14

CRIMINAL LIABILITY OF BODIES CORPORATE AND PARTNERSHIPS WHERE SENIOR MANAGER COMMITS OFFENCE

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

Chris Philp: The identification doctrine is a legal test used to determine whether the actions and mind of a corporate body can be regarded as those of a natural person. The concept has existed in common law since 1971, but, since then, companies and corporations have grown in size and complexity, which has made it more difficult to determine who a controlling mind might be. That means that employees of large corporations with significant control over business areas are none the less not considered sufficiently controlling under that common-law legal test originally dating from 1971. Therefore, the corporations for which they work might not be held criminally liable where we think they should be.

Substantial progress was made to address the issue in the Economic Crime and Corporate Transparency Act 2023, which put the identification doctrine on a new statutory footing, making provisions to ensure that corporate liability can exist where a senior manager commits an offence while acting in the scope of their actual or apparent authority. However, because of the scope of that Act, it only applied to economic offences.

During the passage of that Act through Parliament in the last calendar year, the Government committed to expanding the statutory identification doctrine that I have just described—the expanded version that applies to large companies and the many senior managers in them—to all kinds of crime. Clause 14 makes good on that Government commitment by repealing the relevant sections of the Economic Crime and Corporate Transparency Act 2023 and replacing them with the identification doctrine applying to all crime and not just economic crime.

I am sure that all of us here want to make sure that when large corporates commit offences, they are held to account and prosecuted. The common law provisions, dating back to 1971, are too restrictive. They do not go wide enough or reflect the fact that modern-day corporations have quite a few senior managers taking decisions. The clause takes what has been done already for economic crime and applies it to all criminal law. On that basis, I hope it commands the immediate and enthusiastic assent of the Committee this afternoon.

3.30 pm

Alex Norris: I am not sure what "immediate" means in that context—must I instantly print off clause 14 and staple it to my back? Nevertheless, we support the clause. We supported similar provisions in the passage of the Economic Crime and Corporate Transparency Act, and this finishes off the job. It is actually very pertinent to the week we have had in Parliament, because it is safe to say that this week has been dominated by the outrage about the Post Office/Horizon scandal. There is a legitimate expectation among the public and in this place that when such things happen, individuals and entities will be held accountable, so I do not think we will find much to disagree with. Obviously, the provisions will not apply in the case of the Post Office/Horizon scandal, but they will do so in the future.

The Post Office/Horizon scandal is exceptionally important. There will be others that come through and find their moment, for whatever reason—whether they relate to Hillsborough, Primodos, sodium valproate, surgical meshes or anything covered by the Cumberlege review. We need much quicker action. The Post Office/Horizon scandal is ongoing, presumably because the major elements of perpetration have already taken place. They would not be in scope of the Bill, so I would be interested in the Minister's views. Other than that, I am happy to give the clause our support.

Chris Philp: In common with most legislative provisions, these provisions are prospective, rather than retrospective; we legislate retrospectively only rarely. I understand that some Post Office-specific measures may be brought before Parliament. There will be ample opportunity to debate them and to seek to right the very grave injustice that has clearly been committed.

Question put and agreed to.

Clause 14 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —*(Scott Mann.)*

3.32 pm

Adjourned till Tuesday 16 January at twenty-five past Nine o'clock.

Written evidence reported to the House

CJB21 Anti-Counterfeiting Group

CJB22 R E Flook

CJB23 Dr. Jamie Grace

CJB24 L Grieve Policy & Engagement Manager British Pregnancy Advisory Service

CJB25 Letter from Ministers Philp and Farris, re: Criminal Justice Bill: Government Amendments for Committee, dated 19 December 2023

CJB26 Supplementary European Convention on Human Rights Memorandum by the Home Office

CJB27 Supplementary Delegated Powers Memorandum by the Home Office

CJB28 Jane Lamprill

CJB29 Prisoners Abroad

CJB30 Homeless Link

CJB31 Joint Modern Slavery Policy Unit of Justice and Care and the Centre for Social Justice

CJB32 Chartered Institute of Housing

CJB33 Generation Rent

CJB34 John Pidgeon CART

CJB35 Gary Lilburn CDA

CJB36 Letter from Ministers Philp and Farris, re: Criminal Justice Bill: Government Amendments for Committee, dated 9 January 2024

CJB37 Annex: Supplementary European Convention on Human Rights Memorandum by the Home Office