PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CRIMINAL JUSTICE BILL

Ninth Sitting

Thursday 18 January 2024

(Morning)

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Monday 22 January 2024

The Committee consisted of the following Members:

Chairs: † Hannah Bardell, Sir Graham Brady, 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)

Simon Armitage, *Committee Clerk*

† attended the Committee

Public Bill Committee

Thursday 18 January 2024

(Morning)

[Hannah Bardell *in the Chair*]

Criminal Justice Bill

11.30 am

The Chair: Before we begin, I have a few preliminary announcements. As ever, Members should send their speaking notes by email to *Hansard*. Please switch electronic devices to silent. Tea and coffee are not allowed—only water.

Clause 25

Transfers of prisoners to foreign prisons: introduction

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

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

Amendment 64, in clause 26, page 23, line 7, at end insert—

"(2A) The Secretary of State may not issue a warrant under subsection (2) where—

(a) the prisoner has less than 180 days to serve of the requisite custodial period;

(b) the prisoner is serving an indeterminate sentence of imprisonment or detention for public protection; or

(c) the Secretary of State is satisfied that the prisoner should continue to be detained in a domestic prison for the purposes of—

(i) receiving instruction or training which cannot reasonably be provided in a prison in the foreign country, or

(ii) participating in any proceeding before any court, tribunal or inquiry where it is not reasonably practicable for the participation or to take place in a prison in the foreign country."

This probing amendment would introduce exclusions on the type of prisoner that could be issued with a warrant to serve their sentence in a foreign country. It excludes people with less than 6 months to serve, those serving indeterminate sentences for public protection and those who need to be detained in the UK for education/training purposes or for legal proceedings (e.g. parole).

Clauses 26 and 27 stand part.

The Parliamentary Under-Secretary of State for Justice (Laura Farris): It is again a pleasure to serve under your chairmanship, Ms Bardell.

Clauses 25 to 27 concern the transfer of prisoners to foreign prisons. Clause 25 introduces the measures that are relevant to the transfer of prisoners to rented prison spaces overseas. It defines key terms relevant to the following sections, and establishes the nature of the agreements and to whom those provisions may be applicable. The measures have been drafted to apply to a broad cohort of adult prisoners. This will ensure that the measures are applicable to the final cohort that will be decided on under the terms of any final agreement with a partner state. Prisoners will be subject to a transfer only after an assessment of the individual circumstances of their case. Although the details will be subject to future negotiation and agreement, additional exclusion criteria may apply.

Clause 26 deals with the transfer of prisoners between the territory of the United Kingdom and rented prison spaces overseas. It will allow the Secretary of State to issue warrants for the transfer of individuals from the United Kingdom to rented prison spaces overseas or for the return of prisoners held in rented spaces overseas to the territory of the United Kingdom. It allows for transfers both ways, as needed. Like many of the provisions relating to the transfer of prisoners to rented prison spaces overseas, these provisions may be used only once prison rental arrangements with foreign countries are in place, and may be used only for the specific purpose of transferring prisoners as part of that arrangement. The clause also provides that time spent in a rented prison space overseas will count towards the prisoner's sentence as determined in England and Wales.

Jess Phillips (Birmingham, Yardley) (Lab): Will the Minister tell the Committee whether the Government intend to transfer women prisoners? Literally decades of data shows that women prisoners are predominantly victims of domestic and sexual violence, which is often a pathway to their offending.

Laura Farris: The hon. Lady's question is a good one. She will know that women form a very small part of the overall cohort of prisoners, that women prisoners have unique vulnerabilities and that they experience prison in a very different way from the male cohort. It is true that women are not expressly excluded from the provision, but obviously the United Kingdom Government are bound by the considerations under the European convention on human rights, and one can readily imagine how those will extend to female prisoners. It is obviously more likely that men will be transferred, because of the size of the cohort.

Jess Phillips: Would it not be better to put on the face of the Bill that women are carved out? I do not see any reason why we could not do that, if it is so vanishingly unlikely that a Government would transfer women prisoners. I am afraid to say that Governments are not always great on the issue of women in prison—not just this Government, but any Government, including any that might come in—so would it not be better to include that safeguard?

Laura Farris: I am sympathetic to the hon. Lady's point, which I will take away. The purpose of the provisions is to set the framework for future agreements, so of necessity they are deliberately quite widely drafted and do not seek to tie our hands. The hon. Lady's points are irrefutable; I looked at the issue when I was a member of the Justice Committee.

Domestic powers to transfer individuals to rented spaces such as these do not currently exist in UK law, and the provisions, widely drafted though they are, are essential for the operation of a future agreement. Clause 27 contains provisions regarding the operation of warrants, which are proposed in clause 26. The provisions allow

the Secretary of State to appoint individuals to escort prisoners in transit to and from rented prison spaces overseas and to provide those individuals with the powers necessary to exercise those duties.

The provisions are similar to existing transport and escort provisions contained in the Repatriation of Prisoners Act 1984 and are built on long-standing operational practices. They are an essential complement to the powers set out in clause 26 and are necessary for the effective operation of a warrant for transfer. The clause also contains provisions to enable designated individuals to detain prisoners who may attempt to escape or who find themselves unlawfully at large in the process of transit to or from a rented prison space overseas. I commend clauses 25, 26 and 27 to the Committee.

Alex Cunningham (Stockton North) (Lab): I am grateful to the Minister for the introduction to this cohort of clauses, which I will address along with my amendment 64.

As the Minister has outlined, the clauses facilitate the transfer of prisoners in England and Wales to an overseas jurisdiction and make provision to ensure the oversight of any agreement with a foreign country under which the UK prisoners will be held. Sadly, the Bill and accompanying notes do not provide the detail of exactly how the scheme will work, who the partner countries will be, nor where responsibilities will actually lie.

The charity Justice has provided some useful context. It says:

"In advancing his policy the Home Secretary made reference to arrangements which existed between Belgium and Norway on the one hand, and the Netherlands on the other, within the last two decades, as a successful means of increasing prison capacity. In fact, neither was an overwhelming success in terms of either rehabilitation or reduction in prison overcrowding. That is despite the fact that, particularly in the case of Belgium and the Netherlands, there were linguistic and cultural similarities, and geographical proximity. There is no guarantee that this will be true of any future arrangements that the United Kingdom may enter into.

Indeed, it is understood that the Ministry of Justice has been in talks with Estonia about using space in its prisons. While one of these is located in the capital, Tallinn—itself a three-hour flight from London, with no direct flights from elsewhere in the UK—the other two are 150-200km away by road. This is one illustration of the difficulties which will arise in facilitating family visits to those imprisoned abroad wherever they are, and of course access must also be provided to HM Chief Inspector of Prisons, Independent Monitoring Board members and legal representatives."

I will return to some of those issues later, but perhaps the Minister can share with the Committee which countries the Government are actually negotiating with. More importantly, perhaps she can give us some insight into how the very real barriers to this policy will be addressed.

Amendment 64 in my name and that of the shadow Justice Secretary, my hon. Friend the Member for Birmingham, Ladywood (Shabana Mahmood), proposes limitations on the types of prisoners who can be transferred. My hon. Friend the Member for Birmingham, Yardley has addressed very specifically the issue of women, and I welcome the fact that the Minister has agreed to take that away. I am sure we could support any amendment that she cares to bring forward on Report in order to exclude women from being accommodated abroad.

Others we would have excluded are prisoners with less than 180 days or six months of their custodial period left to serve, those serving an indeterminate sentence of imprisonment or detention for public protection, and those participating in any proceedings before a court, tribunal or inquiry where it is not reasonably practicable for the participation to take place in a prison in a foreign country. Releasing prisoners from foreign prisons back into the community in the UK would also pose severe challenges for probation and other services in ensuring that the necessary resettlement support is in place on their return.

The services and support that prisoners typically need on release include accommodation, welfare and employment support, ongoing treatment of drug and alcohol addictions, and health and social care. Arrangements to effectively monitor and supervise the individual unlicensed in the community also need to be put in place ahead of release. Making arrangements for the provision of these services requires effective co-ordination between the prison offender manager and community offender manager. In England and Wales, both of these roles are provided by His Majesty's Prisons and Probation Service.

Releasing an individual directly from a foreign prison into the UK would require co-ordination between services based in two separate jurisdictions. That would present considerable logistical challenges and may lead to mistakes being made and the necessary support not being put in place. That could put the individual and others at risk and increase the likelihood of reoffending.

Excluding prisoners with a period of less than 180 days to serve from being issued with a warrant would help ensure that prisoners continue to be released from UK prisons into the community. The sentences of imprisonment for public protection and detention for public protection were abolished in 2012. However, the abolition was not retrospective, which means that thousands of people remain in prison, yet to be released after having been recalled to custody.

The plight of those prisoners, serving a sentence that Parliament has not deemed fit to remain on the statute book, has been well documented in the authoritative report of the cross-party Select Committee on Justice. In 2022, there were nine self-inflicted deaths of IPP prisoners, the highest number of self-inflicted deaths among the IPP prison population since the introduction of the sentence. As of December 2022, there have been 78 self-inflicted deaths of IPP prisoners since the sentence was introduced in April 2005. That is 6% of all self-inflicted deaths during the period. Forcing IPP and DPP prisoners to serve their sentences could further increase the risk of suicide and self-harm if they are accommodated abroad. Furthermore, it would make it extremely difficult for them to access the courses and interventions they need to demonstrate reduced risk and access timely legal advice and support through the parole process.

The amendment would also enable the Secretary of State to exclude a prisoner from being issued with a warrant if they are satisfied that the prisoner should continue to be detained in a domestic prison for the purposes of receiving instruction or training, which cannot reasonably be provided in a prison in a foreign country. That may include prisoners who are engaged in higher education that could only be provided in the UK, or prisoners involved in an employment scheme with the prospect of further training or a job opportunity on release in the UK.

Transferring prisoners abroad would have an impact on a prisoner's access to legal advice, legal remedies for prison-related issues or their ability to participate in any

[Alex Cunningham]

ongoing legal processes related to their conviction or sentence at home, including the parole process. That is contrary to European prison rule 23 and Mandela rules 41 and 61, which give the right to accessible, timely and confidential legal advice. Being sent abroad would have a significant impact on someone being able to meaningfully participate in any legal process.

There is history in the immigration context of the Government legislating to say that people can pursue appeals against being removed and deported and then having to do so after actually being removed to their home countries. In those cases, the courts have ruled that, in practice, that is not possible and is therefore a breach of the Human Rights Act 1998 and the European convention on human rights. The Law Society has expressed concern that certain groups of vulnerable prisoners could be issued with a warrant to serve their sentence in a foreign country. That includes those with health issues, such as individuals who are pregnant or disabled, and those who have mental health or learning difficulties. There are currently no explicit safeguards or guarantees to protect against that. How will the Minister ensure effective resettlement arrangements under the provisions?

Prisoners with primary caring responsibilities could be issued with a warrant to serve their sentence in a foreign country. Transferring UK prisoners abroad will have a significant impact on their ability to maintain family ties. The Farmer review found family relationships to be the "golden thread" to help reduce reoffending.

There is recognition in the Government's impact assessment that the policy will need to

"ensure prisoners' rights to family life are protected in accordance with Article 8 of the European Convention on Human Rights, including access to visitation on par with what would be provided in HMPPS."

However, the impact assessment goes on to say:

"It has not been determined who would bear the cost of these visits."

Can the Minister offer any clarification on who is expected to foot the bill? Does she expect the children or the families of those imprisoned abroad to have to finance a trip abroad to visit their loved ones? Families and loved ones already struggle to meet the cost of visits to prison in the UK and they are unlikely to be able to meet the additional costs or logistical challenges involved in visits abroad. Imagine somebody having to spend five hours travelling to a foreign prison for a one-hour visit and then having to spend another five hours travelling back. That is total nonsense.

11.45 am

Similarly, article 6 of the European convention on human rights provides a right to a fair trial. How will the Minister ensure prisoners have access to legal advice and be able to participate in any legal processes? The law reform and human rights charity Justice has expressed concern about

"insufficient safeguards over the human rights of prisoners and their families, particularly absent any restrictions on the territories to which prisoners may be sent. The Government must not abdicate its responsibilities and the rights to due process for those within UK prisons."

The Law Society has also expressed deep concern about the human rights implications of the transfer of prisoners to foreign prisons. As acknowledged by the Government's human rights memorandum, it is likely to engage a number of fundamental rights. I hope the Minister can be clear in addressing whether the Bill presents issues arising under the European convention on human rights.

On the introduction of the Bill, the former Home Secretary made a statement under section 19(1)(a) of the Human Rights Act 1998 that in her view the provisions of the Bill are compatible with the convention rights. With no indication of which countries are being considered to receive UK prisoners under the proposal, it is uncertain whether the Government would seek an agreement with a country that is not party to the ECHR.

Furthermore, the Law Society has expressed concern over the assurance given that any agreement reached will be subject to parliamentary procedure under the Constitutional Reform and Governance Act 2010 may similarly be inadequate to enable full scrutiny of risks to human rights. The Law Society states:

"It is unclear how prisoners held abroad would be able to have access to legal advice or how tribunals or appeals would be managed abroad. This amounts to a serious threat to their right to a fair trial under Article 6 of the ECHR. It is also unclear how prison visits from a lawyer would be managed or facilitated if a prisoner is held abroad."

Would that be at a cost to the lawyer or to the state? It continues:

"No indication is given of which countries are being considered to receive UK prisoners under this proposal. We would be deeply concerned if this were a country which is not a party to the ECHR. In this instance, the individual would be removed outside the jurisdiction of the ECHR and similar levels of human rights protections and treatment within prisons could not be guaranteed."

I mentioned uncertain costs related to visitation. The Government's impact assessment also notes that this policy will cost around £200 million, with an annual cost of around £24 million, based on an estimate of 600 prisoners being held abroad. However, the true cost is unknown as the Ministry of Justice does not have any agreements in place and it will depend on the agreements being reached to carry out the policy. The policy will not come into effect until at least 2026, suggesting that it will have no real benefit any time soon.

It is also unclear why the Government would prefer to invest in prisons abroad rather than direct the money towards prison places and rehabilitation in the UK. It is a crisis of their own doing that forms the context of the policy and the Bill will fail in its endeavours if the changes are not accompanied by the funding and resourcing that our justice needs to be effective.

If the Government are serious about tackling crime and keeping communities safe, will the Minister address how they expect to do that given their piecemeal approach so far? Just as the Rwanda experiment appears to be no more than a sticking plaster to deal with the immigration crisis, this proposal does very little, too late, to impact the crisis in our prisons.

Mrs Flick Drummond (Meon Valley) (Con): I rise to speak to the three clauses, which I also have deep concerns about. I once asked a prison officer at Winchester prison how many prisoners were truly evil and how many just got it wrong. He said, "About 5% are truly

evil." They are the ones that I am sure we would like to export to a gulag in Siberia and never see again, but I assume we will not use Russian prisons.

Any criminal who is a danger to society should be locked up for life and never released. However, the other 95% are capable of being rehabilitated, and in many cases part of that rehabilitation is to stay in contact with their families. A constituent wrote to me recently about this. She told me that her son had got into trouble and gone to prison. She believed that one reason why he has now become a responsible citizen was that his family were frequent visitors and able to be there for him.

What will we do about access for families if we send prisoners abroad? I have deep concerns about sending our prisoners overseas. There are many legal reasons why that is problematic. The impact assessment recognises the need to ensure that a prisoner's right to a family life is protected, in accordance with article 8 of the European convention on human rights, and that access for families should be the same as the access that our Prison Service offers. Other issues include access to legal advice, and the ability to participate in ongoing legal processes; there are also potential problems with day release. The hon. Member for Stockton North laid those issues out clearly, and I will not repeat everything that he said.

We need clarification on what type of prisoners will be subject to transfer. We need to know what the criteria will be, and what support there will be for vulnerable prisoners. What will happen if things go wrong for the prisoner? Will that be dealt with under the host country's legal processes, which may be different from ours?

Lastly, there is the cost of the system. The impact assessment says that it will cost £200 million up front, with an annual cost of £24 million, based on 600 prisoners being held abroad, but as we have not got any agreements in place how can we know what the true cost is? The policy will not come into effect until 2026, so it will not alleviate the issues that the prison estate currently faces.

I look forward to hearing the Minister's response to the issues that I have raised, as this is a major change in policy, and I will not be comfortable supporting it until I get further clarification. She mentioned that the provisions are a framework, but I would like details before I support the clauses.

Laura Farris: I thank the shadow Minister and my hon. Friend the Member for Meon Valley for their contributions, and I will respond to them as best I can. First, I want to talk a little about the context of the pressure on prison places. As of September 2023, 16,200 people were on remand in prisons in England and Wales. The reason why we have such a big remand population is that during the white heat of the pandemic, the Government took the decision to continue with full jury trials.

I remember listening very carefully to what the right hon. Member for Tottenham (Mr Lammy)—now shadow Foreign Secretary, then shadow Justice Secretary—said on the issue. Colleagues may recall that at one point he called for a reduction in the size of juries. He said that it was imperative to keep the criminal justice system moving, and he advocated for a shift to juries of five, only during covid. He was robustly attacked by Baroness Kennedy in the Lords, a Labour peer, who said that that was an absolute dereliction of article 6 rights. She gave a very passionate speech about it, brilliantly written, and I noticed that the shadow justice team never mentioned reducing the size of juries again.

Respectfully, I say it is reasonable to infer that the Opposition supported our decision to continue with full jury trials. If I am wrong about that, they can direct me to where they called for something different, but as I say there was a tension between the then shadow Justice Secretary and Baroness Kennedy. *[Interruption.]* It was incredibly difficult, and I think that is why the shadow Justice Secretary got himself into a bit of a muddle.

The decision to continue with full juries of 12 people determining the result of criminal trials during covid contributed heavily to the backlog, and to why we have so many people on remand awaiting trial.

Jess Phillips: Will the hon. Lady give way?

Laura Farris: I will continue a little more. We are undertaking the biggest prison building exercise since the Victorian era. We have committed to creating 20,000 new prison places, and have already got 5,700 of those places on stream, but we are not there yet.

The amendment tabled by the hon. Member for Stockton North gives rise to a number of sensible points. Let me distil them: he thinks that prisoners should not be transferred if they are getting near to the end of their sentence, have a sentence of imprisonment for public protection, are going through constructive rehabilitation treatment, or are implicated in some form of criminal proceeding. All those are very sensible ideas, but we respectfully believe that they are best addressed through policy, based on the appropriate expertise from within the prison system, not set out in primary legislation.

In fact, I think the hon. Gentleman made the point tacitly himself. He gave a number of other very good examples, including prisoners who have serious mental health conditions, are pregnant or are someone's primary carer. All those factors are highly material. Let me reassure him slightly, if I can. To the extent that the exploratory conversations have begun, we are only having them with other European countries. That means that they are bound by the same obligations under the European convention on human rights, which would be material in the types of cases the hon. Member for Stockton North has suggested.

Alex Cunningham: Is that a confirmation, then, that no prisoners will be moved to countries not covered by the ECHR?

Laura Farris: That is my understanding.

Alex Cunningham: With respect to the Minister, this is a fundamental point going forward. As I said in my speech, if prisoners are removed to a country—Rwanda, let us say—they will not have the same protections as they would have if they were moved to Holland. It is important that the Government clarify exactly whether people will be removed to jurisdictions outside the ECHR.

Laura Farris: I thank the hon. Gentleman, who makes a fair challenge. I am only aware of exploratory conversations with European countries bound by the European convention on human rights. I understand

[Laura Farris]

that there will be no partner country that is not also complying with the European convention rights, but I think he deserves clarity on that point.

Alex Cunningham: I appreciate what the Minister is saying; she has been very clear about the point being well made. But if prisoners cannot be removed to a country that is not covered by the ECHR, perhaps that needs to be stated in the Bill.

Laura Farris: It is in the Bill that the Bill itself is compliant with the European convention on human rights.

Alberto Costa (South Leicestershire) (Con): This may well be helpful to the Minister: the ECHR may in fact apply extraterritorially to British subjects or British prisoners who are placed in prisons outwith the member states that are part of the Council of Europe. She might want to check whether it applies in extraterritorial circumstances. *[Interruption.]*

The Chair: Order. I know that Members feel passionately about this issue, and they are, of course, welcome to make further contributions. If they want to, can they please indicate that once the Minister has finished?

Laura Farris: I want to address the points made by the hon. Member for Stockton North and explain why we think these matters are best placed in the policy itself rather than in the Bill. He will respect the fact that the whole status of IPP prisoners is currently a matter of review; as a member of the Justice Committee, I contributed to the report that has now been taken up by the Ministry of Justice, so I have looked at the issue of IPP prisoners carefully during my time in Parliament.

The points that the hon. Gentleman made about rehabilitation are, of course, important. He raised a number of other points and I will try to answer all of them. He asked how on earth the Parole Board could be expected to successfully manage a prisoner if they were released directly from a foreign prison to the United Kingdom. I want to reassure him that prisoners will be repatriated for the final section of their prison sentence before that, so that they are assessed by the Parole Board in the normal way. He also asked about the availability of legal advice, which was a very good point. First of all, the whole landscape of court procedure has changed in the last few years. Receiving legal advice can be done remotely, and court proceedings often take place remotely via a live link.

It is imperative under article 6 of the European convention on human rights that somebody should be able to access legal advice where appropriate, but I gently remind the hon. Gentleman that the first time the possibility of obtaining legal advice from the United Kingdom in a foreign country was embedded in primary legislation was under the last Labour Government. That was in a slightly different context, under the Nationality, Immigration and Asylum Act 2002—David Blunkett's legislation—but it provided for the removal of people whose immigration appeal had failed and for them to then submit out-of-country rights of appeal. The last Labour Government ran that quite successfully, and that was before we were really in the technological era that we are in now; in every single area of the law, we now make more and more use of video proceedings and online courts. I hope I have provided some reassurance on this point.

The hon. Member for Stockton North made a lot of sensible points about how prisoners' families would travel to visit them. We have not set the criteria for who the prisoners are, but I gently make the point that more than 10% of the people in prisons in England and Wales are not British nationals anyway—somewhere in the region of 10,000 out of a total prison population of over 80,000. Some family and primary care considerations are already rather different with that cohort because they are not British nationals.

12 noon

Vicky Ford (Chelmsford) (Con): The Minister is making an important point. An excellent point was also made by my hon. Friend the Member for Meon Valley on the importance of prisoners being close to their family.

There is a very busy local prison in my constituency of Chelmsford. From time to time, I get the prison governor and other experts explaining to me that sometimes it is important to split people up. For example, if people have come from the same criminal gang or opposing criminal gangs, it can be important to move them so that they are not all in the same prison. There are parts of the country where getting "overseas" can sometimes be easier than visiting a family member who may, for example, be a long distance away in our own country. Sometimes, cases are different and are not about making sure that the prisoner stays in the local prison. That might not provide the best circumstances for that prisoner's rehabilitation.

Laura Farris: I thank my right hon. Friend for her intervention. She is quite right. I will try to distil her point. I expected the challenge from the Opposition this morning about the circumstances of each prisoner being vital—whether they have family or connections—but it is true, as she said, that some prisoners will not have family or connections; there may be different imperatives. Obviously, we would be looking precisely at considerations of that nature before making a decision about prison transfer.

It is not possible to say that every prisoner needs to be imprisoned locally or is going to be the primary carer for all their children. Look at how decisions on the deportation of foreign national offenders are made by the immigration appeal tribunal: if an offender who has committed a serious offence tries to rely on the fact they have children in the UK, the tribunal will very often say, "You have already abandoned them because you were in prison for 10 years." Some of that claim is lost anyway.

Mrs Drummond: The Minister made the very good point that 10,000 people in our prisons are foreign nationals. Why are we not sending them back to their countries and relieving the pressure for our own domestic prisoners?

Laura Farris: I reassure my hon. Friend that we are making significant progress on that. It is a good point. There has been an acceleration in that process. I have

some data here. Between January 2019 and September 2023, over 16,000 foreign national offenders were removed from the United Kingdom. In the last 12 months alone, that returns rate increased by 20% when compared with the previous 12 months. There has been an acceleration in the returns agreements.

We have also expanded the early removal scheme, so that we can remove FNOs up to 18 months before the end of their sentences. The Home Office has deployed more caseworkers to focus on prison removals; we also have prisoner transfer deals with some countries, including Albania, that are already operational. I want to provide reassurance that that work is continuing at pace.

Alex Cunningham: I accept the points about foreign prisoners, but many are European nationals who have families in the UK. We cannot have a one-size-fits-all solution to this situation. I hope the Minister will acknowledge that.

Laura Farris: The provisions on the removals of foreign nationals are set out in the 2012 immigration rules; it is section 339 that governs removal. If the sentence has been two years or more, only truly exceptional circumstances would allow them to stay. The simple fact of somebody who has committed a category A or B—

Carolyn Harris (Swansea East) (Lab): Will the Minister give way?

Laura Farris: Let me finish the point. It has to be truly exceptional. I have done cases in court for the Home Office. The Home Office is nearly always successful when it relies on that clause because, as the court always says, when the offence is serious, there is an overwhelming public interest in the removal of a dangerous offender from the United Kingdom. Article 8 is qualified under paragraph 339 of the immigration rules.

Carolyn Harris: Would those exceptional circumstances include prisoners whose crime was committed after they had been trafficked to the United Kingdom, if they committed it because of the trafficking?

Laura Farris: I have never been involved in a case of that nature; cases where the offending is really serious tend to be much more straightforward. There is flexibility, because we can take such cases to court to appeal the removal. Obviously, when someone is already a victim of crime, that is a different context, so I do not know how the courts would deal with it. The law itself, however, is set out under the established immigration rules, in primary legislation and has been operational for 12 years now. That is not part of the dispute today.

To continue, it is right that we take innovative measures to ensure that we always have sufficient prison capacity to fulfil the orders of the court and to punish the most dangerous offenders. I reiterate at this stage that the powers simply lay down the foundation for future arrangements. I repeat: all the points raised by the shadow Minister, the hon. Member for Stockton North, about the considerations that might apply were relevant, but this is about future arrangements so that we will have the power to transfer prisoners to rented foreign prisons. No foreign prison rental agreements are yet in place, however. As he is aware, there is precedent in Europe: both Norway and Belgium have similar arrangements with the Netherlands at present.

Jess Phillips: I want to respond to some of what the Minister said. She told us not to worry about people's families visiting, because 10% of them are foreign nationals. She went on to say that foreign nationals have children abroad. I represent loads and loads of people who are not British nationals but who definitely have family in the UK, so the idea that 10% of the prison population do not have any families who want to visit them, or that the families of all non-British nationals in UK prisons live back home, is wrong. Welcome to the world—people move about and they have babies with people here in this country. That is a bit of a reality check on some of what was said.

I also did not understand the Minister saying that we now have a massive backlog because the justice system carried on during the pandemic. Was the justice system due a three-year break to stop the backlog? Do we normally have a three-year break to make sure that we have enough prison places? That is a weird justification, which I did not really understand.

On human trafficking, there are more victims of human trafficking in prison than there are human traffickers; the woeful rates of conviction of people who people-smuggle or commit modern slavery are well charted. Last week, I was in a meeting with the bishops, the Lords Spiritual—I always think "Lords Spiritual" sounds like a rock band—about this exact issue. Prison wardens and governors from a variety of prisons were there to give evidence, as was the Bishop of Gloucester—I believe her role is as the overarching Lord Spiritual for prisons—the office of the United Nations High Commissioner for Refugees and lots of organisations who work with trafficking victims, including the Salvation Army and others. I was there, and the prison governors made it very clear that lots of people in prison have a pattern to their behaviour.

If we look at the Rochdale case from last week, we see that a young girl was criminalised as a pattern of her sexual abuse. That is not uncommon or unknown; it is in fact the opposite—it is well known, well charted and well evidenced. There is a huge amount of evidence for that, so I absolutely want to see a carve-out in that particular space for anyone identified as a victim of modern slavery.

The Minister asks us to wait for policy to feel comfortable about this, rather than writing things into the Bill. I totally understand that legislation does not necessarily need to be very detailed, but I would have liked, for example, to have had the word "women" once in the Domestic Abuse Bill—but, you know, we can't be picky.

The trouble is that I have seen what happens when we leave things to policy that is skew-whiff and ambiguous in the Home Office, especially when it comes to cases of human trafficking. As the Minister said in response to my hon. Friend the Member for Swansea East, she has not been involved in any particular cases.

Currently, Government policy is a bit skew-whiff on how we remove or deal with victims of human trafficking. It is not exactly clear, and even the lawyers are not clear, both those from the Home Office and those seeking to represent victims of human trafficking who are threatened

[Jess Phillips]

with deportation. Last week, I was with a barrister in a case, and she clearly said that the policy is to remove all victims of human trafficking from Albania, which the Government have said is a completely safe country—perhaps, unless you are a young woman who has been trafficked repeatedly, in which case all of the evidence suggests that Albania is incredibly dangerous.

I was in court because the Government were trying to deport a victim of human trafficking who had stayed within the national referral mechanism—in fact, had had her therapy paid for by that very same Home Office—for three and a half years. The Home Office had agreed yes, she is a victim of human trafficking. Literally, she has a piece of paper from the Home Office—it might as well have been signed by the Home Secretary—to say, "You are a victim of human trafficking." She had two children, and both had lived in Britain for seven years, both born here of the rapes that she had suffered. But the Home Office was trying to deport her to Albania, a place they had already deported her to once; she had been re-trafficked from there immediately after reporting to the police. So excuse me if I do not trust something not being written into a Bill about how to handle these difficult cases.

I want to see on the face of this Bill provision so that no woman, no victim of human trafficking and no one with autism—the number of people with autism in our prison estate is phenomenal. Where are the safeguards so that barristers such as the one I was with last week have something to lean on when the Home Office decides that its policy is a little bit grey and so it can actually do what it wants?

Laura Farris: I thank the hon. Lady for her submission. I will confine myself simply to arguments as they relate to the prison transfer issue. Furthermore, this part of the Bill is Ministry of Justice, not Home Office.

Let me address two points. I am sorry if I was insufficiently clear when I talked about foreign-born offenders. Of course I do not make the crude assumption that none of them will have connections with the United Kingdom, including family, but some will not. We know we have problems with foreign gangs coming over. My simple point in response to the hon. Member for Birmingham, Yardley, is that not every single prisoner will have strong local ties in the United Kingdom, because that is not true and will be a relevant consideration in assessing the cohort for transfer.

On my other point, I am again sorry—perhaps it was my mistake—if I was confusing about the decision to maintain full jury trials during covid. That decision was a controversial one because of the number of jurors required. Those were physical trials at the time, and having the number of jurors required to sit together in a courtroom during a period when social distancing was set out in law was incredibly difficult. Without doubt, that delayed the process of the criminal justice system, so much so that some Supreme Court justices urged the Government to dispense with juries altogether. As I said in an earlier observation, the then shadow Justice Secretary, the right hon. Member for Tottenham (Mr Lammy), suggested we shrink juries rather than abandon them altogether. Other eminent lawyers—I cited one—thought that that was the wrong idea.

This was a very difficult decision on how to operate criminal trials, but in the end we decided that it was imperative, in the interests of justice and of article 6, the right to a fair trial, that everyone who was charged with a criminal offence in the Crown Court had the right to have justice administered as fairly as possible, so we stuck with the juries. That has led to delay, and that is why the remand population—in other words, people still awaiting trial—is higher than it otherwise would be, which has caused pressure on prison places. I apologise if that was insufficiently clear. That concludes my remarks.

12.15 pm

Alex Cunningham: I had hoped to stand here having been reassured that this policy was well thought out and would work. I know that the Government are negotiating with some countries about where we will go, but we do not have the fine detail that we need in order to understand whether this will be an effective policy. I invite the Minister to intervene, because I want her to address a question specifically on the visitation rights of family members and who will foot the bill for families to travel to the Netherlands, Estonia or wherever under their visiting rights. I put that question in my original speech, so I invite her to intervene to answer it.

The Chair: My powers may be great, but they are not sufficient for me to compel a Minister to intervene against her will. You are welcome to intervene, Minister, if you would like to do so.

Laura Farris: I will have to get back to the hon. Gentleman on that point.

Alex Cunningham: I am grateful.

The right hon. Member for Chelmsford made an interesting contribution about gangs. I agree that it is often necessary to move people to different areas to break gangs up—that is absolutely essential. I do not know whether the Government intends that such people would be a popular cohort to be moved abroad to foreign prisons, but perhaps the Minister will address that when she winds up the debate.

The Minister referred at some length to my amendment. I am not convinced that we should not press it to a vote. I will press it, because we cannot rely on policy unless it is written down. My hon. Friend the Member for Birmingham, Yardley said the same and illustrated exactly why we cannot depend on policy. Policy changes all the time, so we need to nail down the provisions in the Bill and who will be included and excluded. Someone may table an amendment on Report in relation to whether women should be sent abroad to serve their prison sentence, but it is important to address the issue of foreign nationals—I spoke briefly about this earlier—who have families here, are in married relationships here and may be European citizens who are entitled to be here. I accept what the Minister says about the two-year threshold and everything else, but we cannot just say that it is okay to send men off to foreign prisons because they are foreigners—that does not wash at all. I will leave it at that, but I would like to press the amendment to a Division.

Laura Farris: I thought my last speech was supposed to be my final response, but I will come back on the two points made by the hon. Gentleman. First, I will come back to him on the point about bearing the cost. Secondly, I hope I was not speaking so crudely as to suggest that anybody foreign-born would be shipped off immediately; that is not what I was trying to say. I was simply saying that not every prisoner in a British jail has local ties, family or some of the compelling circumstances that he outlined. We do not disagree that some prisoners have very compelling circumstances; in the course of this debate, we have heard about people who would be at the top of that list for consideration. It is clear that there will have to be a difficult exercise.

I acknowledge that there is not much detail in the Bill. I remind the hon. Gentleman that we are putting it into primary legislation to create the framework for the agreements. There will then be individual agreements with European states. I have provided that clarity: each one will be a bespoke agreement. These are the legislative provisions to allow that, which is why the Bill does not go into more detail.

The Chair: To clarify, Minister, you can go back and forth a number of times.

Question put and agreed to.

Clause 25 accordingly ordered to stand part of the Bill.

Clause 26

WARRANT FOR TRANSFER OF PRISONER TO OR FROM FOREIGN PRISON

Amendment proposed: 64, Clause 26, page 23, line 7, at end insert—

"(2A) The Secretary of State may not issue a warrant under subsection (2) where—

(a) the prisoner has less than 180 days to serve of the requisite custodial period;

(b) the prisoner is serving an indeterminate sentence of imprisonment or detention for public protection; or

(c) the Secretary of State is satisfied that the prisoner should continue to be detained in a domestic prison for the purposes of—

(i) receiving instruction or training which cannot reasonably be provided in a prison in the foreign country, or

(ii) participating in any proceeding before any court, tribunal or inquiry where it is not reasonably practicable for the participation or to take place in a prison in the foreign country."—*(Alex Cunningham.)*

This probing amendment would introduce exclusions on the type of prisoner that could be issued with a warrant to serve their sentence in a foreign country. It excludes people with less than 6 months to serve, those serving indeterminate sentences for public protection and those who need to be detained in the UK for education/training purposes or for legal proceedings (e.g. parole).

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 8.

Division No. 1]

AYES

Cunningham, Alex	Harris, Carolyn
Dowd, Peter	Norris, Alex
Fletcher, Colleen	Phillips, Jess

NOES

Costa, Alberto	Jones, Andrew
Farris, Laura	Mann, Scott
Firth, Anna	Metcalfe, Stephen
Ford, rh Vicky	Philp, rh Chris

Question accordingly negatived.

Clause 26 ordered to stand part of the Bill.

Clause 27 ordered to stand part of the Bill.

Clause 28

OVERSIGHT OF FOREIGN PRISONS

Alex Cunningham: I beg to move amendment 65, in clause 28, page 24, line 36, at end insert—

"(c) report to the Secretary of State on any breaches of the arrangement made between the United Kingdom and a foreign country."

This amendment would require the Controller to make a report to the Secretary of State on any breaches of the arrangement between the foreign country and the UK.

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

Amendment 66, in clause 28, page 24, line 39, leave out "may" and insert "must".

This amendment would ensure that the prisons inspectorate must conduct the duties specified in new section 5A(5D) of the Prisons Act 1952 and ensures its consistency with the legislative basis for its role in England and Wales.

Amendment 67, in clause 28, page 24, line 40, after "prisons" insert "and escort arrangements".

This amendment would ensure that HM Inspectorate of Prisons can inspect escort arrangements under which prisoners are transferred to foreign prisons. This would bring the legislation into line with inspectorate's powers in relation to UK prisons and escort arrangements under amendments to the Prisons Act made by the Immigration, Asylum and Nationality Act 2006 (s.46) and ensures scrutiny of an area of evidenced risk.

Amendment 68, in clause 28, page 25, line 3, at end insert—

"(4) In section 1 of the Coroners and Justice Act 2009, after subsection 2(c) insert—

'(d) the deceased died while in custody or otherwise in state detention in a foreign country pursuant to a warrant issued by the Secretary of State under section 26 of the Criminal Justice Act 2024 (warrant for transfer of prisoner to or from foreign prison).'"

This probing amendment would clarify how the government intends to apply its obligations under Article 2 (right to life) of the Human Rights Act, through ensuring the duties of the coroner also apply to any death involving a prisoner subject to a transfer agreement with a foreign country.

Clause stand part.

Alex Cunningham: I have already addressed many of the principles pertaining to the Government's proposals in this part of the Bill, so I will largely confine my remarks to amendments 65 to 68, with some relating to clause stand part.

Amendment 65 would require the controller to make a report to the Secretary of State on any breaches of the arrangement between the foreign country and the UK. Clause 28 provides for the Secretary of State to appoint a "controller" role to keep under review, and report on,

[Alex Cunningham]

the running of any rented prison spaces abroad. It also extends the power of His Majesty's chief inspector of prisons to inspect and report on the conditions of any such spaces.

As it stands, the Bill places a great deal of unaccountable authority in the hands of the Executive to make provision for any arrangement by means of secondary legislation. It is silent on how those subject to this arrangement will be treated. Similarly, it provides no guarantee that the prison rules in secondary legislation, which govern crucial issues including segregation, complaints and the use of force, would apply. I would hope that the Government would agree that, given the potential human rights implications, any agreement made between the UK and a foreign state should be subject to full parliamentary scrutiny and oversight, and to guarantees of compliance with existing human rights standards and obligations.

Furthermore, the implementation of any agreement by a foreign state will need careful monitoring and oversight to ensure compliance. It will also be vital to ensure that any breach of the agreement by the foreign state is promptly reported and acted on. Amendment 65 would help to enable that by requiring the controller to report any breaches of the arrangement to the Secretary of State.

The Bill should also be amended to ensure that it is the UK's responsibility to investigate and bring to justice any ill-treatment or torture, should it occur under this arrangement, in line with the UK's obligations under the Human Rights Act 1998 and the UN convention against torture. It should also require that any prisoner transferred to serve their sentence in a foreign country would have to be held in and have access to equivalent conditions and the same quality and range of services afforded to prisoners held in England and Wales, as mandated under Prison Rules 1999. As it stands, nothing in the Bill and related documents gives any indication that the same legal standards and rights in relation to treatment of prisoners, as set out in the prison rules, would apply.

I would be obliged if the Minister would address a number of related questions. Will she confirm the need for the operation of the scheme to be under constant review and that Parliament is entitled to reports on how successful or otherwise it is? Will British prison rules apply to UK prisoners sent abroad? Does she accept that it should be the UK authorities that investigate any allegations of ill treatment or torture of prisoners accommodated abroad under her policy?

I know that services, particularly work and access to rehabilitation services, are very limited in UK prisons because of the crisis in the service, but does the Minister agree that any prisoners sent abroad should have access to at least the same level of services as those held at home?

Amendment 66 would ensure that the prisons inspectorate "must" conduct the duties specified in proposed new subsection 5D in section 5A of the Prisons Act 1952, and would ensure its consistency with the legislative basis for its role in England and Wales.

We are concerned that the oversight of both the controller and His Majesty's inspectorate of prisons will ultimately be subject to negotiation with a relevant partner country. The wording in the Bill relating to the powers of HM inspectorate of prisons differs from the Prisons Act in that it states the chief inspector "may" inspect rather than "shall" inspect. The implication is that inspections could take place only by invitation of the foreign state rather than as a statutory requirement. That leaves open to future negotiation crucial aspects of HMIP's role and methodology, such as its ability to conduct unannounced inspections, to speak to prisoners in private and to access records such as those relating to the use of force. That would mean a lower standard of independent scrutiny would be applied to the treatment and conditions for UK prisoners held under such arrangements. It would fall short of the UK's obligations under the optional protocol to the convention against torture and other cruel, inhuman or degrading treatment or punishment—OPCAT—which establishes requirements for independent detention monitoring to be conducted by a national preventive mechanism.

In the UK, the national preventive mechanism was established in 2009 and HMIP is one of the bodies designated to it. Amending the Bill to ensure that HMIP's role can be performed in accordance with its duties under OPCAT would provide an important safeguard to ensure rigorous independent scrutiny of the treatment and conditions for prisoners held under these arrangements. Will the Minister guarantee that HMIP will be able to conduct its crucial role to the same standards that we would expect for any inspection on home soil, with unfettered access to prisoners, their records and staff?

Amendment 67 would ensure that HM inspectorate of prisons can inspect escort arrangements under which prisoners are transferred to foreign prisons. Clause 28 specifies that the chief inspector may inspect or arrange for the inspection of any prisons where prisoners are detained under an arrangement between the UK and a foreign state. Our amendment would bring the legislation into line with the inspectorate's powers in relation to prisons in England and Wales by also enabling it to inspect or arrange for the inspection of escort arrangements.

The inspectorate's powers to inspect escort arrangements were made by amendments to the Prisons Act in section 46 of the Immigration, Asylum and Nationality Act 2006. It is particularly important that the inspectorate should be able to inspect the escort arrangements for the transfer of UK prisoners to foreign prisons. We had a debate the other day about escort arrangements and the security of staff, which comes into play here. How do we ensure the safety of the staff of whichever organisation is moving people from this country to another?

A foreign state with which the UK makes an agreement could potentially be many thousands of miles from the UK. The transfer of prisoners could involve a lengthy journey involving a variety of modes of transport, including potentially prison vans, planes, trains and ferries.

As countless HMIP inspection reports show, escort, particularly when a person is being transferred against their will, can pose a number of risks to prisoners, including the mixing of men, women and children in the same transport—although I acknowledge that children will not be sent abroad; poor information sharing with escort services of the needs and risks presented by prisoners; poor conditions; poor escort safety and lack of seat belts; risk of suicide and self-harm, which may be exacerbated by long journeys under stress; lack of

food, drink and comfort stops; poor treatment by escort staff; failure to address health and welfare needs; overuse of restraints with potentially fatal consequences; poor complaints processes and accountability; and damage to prisoners' property.

The potential for trouble appears limitless. I hope that the Minister will recognise that she needs to act now to ensure all the necessary processes are in place to make sure that it is contained. Failure to do so could result in all manner of actions against the Government, including civil actions by prisoners who could well have grounds for going to court because they have not been treated properly in line with the UK law under this new policy.

12.30 pm

I turn to amendment 68. This probing amendment would clarify how the Government intend to apply their obligations under article 2 on the right to life of the Human Rights Act, through ensuring that the duties of the coroner also apply to any death involving a prisoner subject to a transfer agreement with a foreign country.

It is our view that the nature of the arrangement to send individuals to overseas prisons will establish the UK's jurisdiction over any deaths that occur. Given the unprecedented nature of these arrangements, it is crucial that the responsibility of coroners to investigate overseas deaths be established clearly in advance, otherwise it would invite significant uncertainty and likely legal challenge if any individual were to die while imprisoned overseas. Furthermore, such a move will ensure that the coronial system is prepared to address the practical challenges of holding such an inquest, which are likely to include challenges in obtaining evidence and witness statements.

I move on to my comments on clause stand part. I am well aware that there is a school of thought that says that prisoners give up their rights to everything when they commit a crime and are deprived of their liberty, but I hope the Minister will agree with me that they do have rights and we have a responsibility to ensure they are not deprived of them, whether in a prison on home or foreign soil. It is critical that we nail down exactly how UK systems will be implemented abroad. I see that as all but impossible if we do not specify in the Bill the necessary requirements for that to happen.

The Minister is likely to say that we have to have a level of trust in the agreement with any foreign Government to stick to the standards required, but I am not so sure it is as simple as that. There will be huge costs associated with what may well just be a Government experiment—costs relating to travel and escort services, the fees to the receiving prison, potential costs for families of prisoners to travel abroad to visit, plus all the costs related to managing, inspecting and reporting on the services provided.

Put simply, the choice to send British prisoners abroad is a serious endeavour that requires meaningful protections to prevent abuses. It is also likely to come at substantial cost to the taxpayer, with the Government's own best estimate of cost being £24.4 million per year to house a tiny number—600 prisoners. That amounts to £40,700 per prisoner, approximately £8,000 less per prisoner than to house them in a domestic prison: figures which are difficult to reconcile given that incidental costs like transportation will be additional to ordinary prison expenditure.

In any event, the proposal is going to create only a small number of spaces, meaning that it is not just an easy answer to the overcrowding crisis. Rather, if prisoners end up being mistreated or are simply unable to engage in rehabilitation and other processes that can help get their lives back on the straight and narrow, it could lead to more problems than it solves.

If the Minister is not prepared to accept our amendments, I ask her to take them away and consider exactly how she will fulfil her duties under the law in relation to UK prisoners accommodated abroad, and perhaps bring forward her own amendments on Report, which we would happily consider.

Laura Farris: I thank the hon. Member for his amendments, which I will address before turning to clause 28. I hope that nothing we have said and nothing that appears in the Bill would suggest for a moment that any of the 600 prisoners who end up being transferred to a foreign prison would not have their human rights respected. We remind the hon. Member that prisoners remain the responsibility of the Secretary of State. Although the matter of the exact arrangements will need to be negotiated, we are committed to ensuring parity for prisoners—that they have access to the same regime and the same rehabilitation opportunities—as part of any agreement.

I thank the hon. Member for his views on performance management mechanisms. We agree that they need to be in place. The controller role stands alongside our wider plans for robust and effective scrutiny mechanisms, including making arrangements for independent inspection and monitoring in rented prison places. The UK-appointed controller will be responsible for reporting to the Secretary of State on the running of a rented prison via HMPPS performance-monitoring mechanisms, and will be expected to report to the Secretary of State on the running of a rented prison overseas. I want to provide some reassurance that we have begun the process of engaging a number of existing inspection monitoring bodies in England and Wales to discuss how best that service might be provided.

My second point is that we are committed to ensuring that Parliament has appropriate opportunities to scrutinise any treaty that we negotiate with a partner state. Our current intention is that any future treaty establishing rental arrangements, including monitoring and control, would be subject to ratification, which would of course be subject to further scrutiny by Parliament, according to the procedure set out in the Constitutional Reform and Governance Act 2010.

On amendment 66, clause 28 currently only extends the inspectorate's remit and does not place an obligation on it to inspect rented prisons overseas, as the shadow Minister pointed out, but we fully agree that rented prison places must be subject to effective inspection and we are ensuring that an appropriate inspectorate will be able to conduct such inspections. That commitment is made with due regard to the inspectorate's need for operational independence and freedom of access to prisoners, including in private as the shadow Minister described, and to prison facilities. We are considering the logistical realities that that kind of access implies.

We are already working with HM inspectorate of prisons to discuss how best to ensure that the inspections will take place. The exact arrangements will be subject

[Laura Farris]

to negotiation and agreement with a partner country, at which point, if necessary, we can confirm what the law ought to say on this matter and make amendments as necessary using the delegated power that we are seeking in clause 29.

Alex Cunningham: The Minister just said that these rights and arrangements would be "subject to negotiation". Could she explain what she means by that? Does that mean that some rights and arrangements may well not be available to prisoners or to inspectors in carrying out their duties?

Laura Farris: We are committed to ensuring that any foreign prison will be subject to an inspection arrangement; it is simply the terms of that inspection arrangement that we are not putting into primary legislation.

Amendment 67, tabled by the shadow Minister, is important. Arrangements for the independent inspection of escort arrangements in England and Wales already engage HM inspectorate of prisons to some extent, and the Prison Act 1952 allows the Secretary of State to investigate any matter connected to prisoners and prisons in England and Wales. We are committed to ensuring that effective scrutiny of escort arrangements is in place but, again, the exact terms of the arrangements are yet to be concluded and it is inappropriate to attempt to distribute specific responsibilities without prior agreement.

Amendment 68 addresses deaths in custody. This is an important point and must be subject to high-level scrutiny. That is especially true where there may be a death in custody that occurs overseas. This matter will be of primary importance to us during negotiations with any partner country. We are committed to ensuring that we are able to comprehensively investigate any deaths that may occur in rented prisons overseas.

This subject is a prime example of how we intend to use the delegated power we are seeking in clause 29. Once we have agreed arrangements with a partner country, we intend to use our delegated power—by potentially extending the remit of relevant bodies in England and Wales, for example. Until those arrangements are finalised it would be inappropriate to bind any potential body or person, including coroners, in law.

We are also committed, of course, to upholding the human rights of prisoners, including their rights under articles 2 and 3 of the European convention on human rights. That is legally binding on us, and those are absolute rights. We are currently considering only entering into arrangements to rent prisons from countries that can demonstrate that their prison conditions and capabilities—including for death investigations—comply with that same human rights law and our expectations on the fair treatment of prisoners.

On the basis that this is an important issue for future negotiations, or is non-negotiable given our international obligations, it is too early to begin considering how issues such as death investigation will be accounted for without first making precise arrangements with a partner country. I therefore urge the hon. Member for Stockton North to withdraw this amendment and to not press the other amendments in his name in this group.

I will speak now to clause 28, which concerns oversight arrangements for rented prison spaces. I have said already that the clause establishes a duty on the Secretary of State to appoint a controller. I have also set out their responsibilities for ensuring that any prisoner transferred to a foreign prison will be returned before the end of their sentence to allow for sufficient time for resettlement and reintegration back into the United Kingdom before release.

Clause 28 also extends the remit of His Majesty's inspectorate of prisons to allow for inspections of any rented prison spaces overseas and subsequent reports to the Secretary of State on their findings—respecting their operational independence. Consideration of prison conditions and the treatment of prisoners has been, and will remain, central to our decision making.

Jess Phillips: On the point of saying here, and the law even saying, although the law does not say it, that prisoners will be returned to the UK before the end of their sentence, is there—well, I imagine that there is—a chance that their sentence might be extended because there is no place for them to be brought back to?

For example, our modern slavery laws say that we would have to wait for 45 days of reflection in cases of modern slavery. In reality, it is 700 days at the moment. So, laying out a term: is there any worry that, if we say that prisoners have to come back here before they are released to do a period of parole, we will in fact be extending people's sentences because there are not any places for them to come back into?

Laura Farris: Can I just clarify that I have understood the hon. Lady's intervention?

Jess Phillips: Basically, what if there is no space?

Laura Farris: I think it would have to be part of the planning for any prisoner who was going to be transferred for there to be space for them to be returned, because that is part of the policy—that they will be brought back into a domestic prison before release so that there can be proper engagement with the parole and probation services. That is, as hon. Members would expect, to facilitate a smooth release back into the community, as with any prisoner.

We are mindful of the need to ensure that effective inspection and monitoring provisions are in place. While the exact arrangements will be subject to future negotiation, we will ensure that those are sufficient, and they will also be subject to further parliamentary scrutiny. I commend clause 28 to the Committee.

Alex Cunningham: I have listened carefully to what the Minister said, and an awful lot of it seems to be about something that might happen in the future or be subject to negotiation. Many of the measures that we are pushing for are in our amendments; as I said, I invite the Minister to take the amendments away and consider them in some detail. Being "subject to negotiation" is not good enough. We actually need to know that the necessary access or protections will actually be in place.

I will not press any of the amendments to a vote—with the exception of amendment 66, because I think that the inspector must carry out the necessary inspection. I

accept that the Minister said that that is the intention, but "intention" is not good enough; that provision needs to be in the Bill. I beg to ask leave to withdraw amendment 65.

Amendment, by leave, withdrawn.

12.45 pm

Amendment proposed: 66, in clause 28, page 24, line 39, leave out "may" and insert "must".—*(Alex Cunningham.)*

This amendment would ensure that the prisons inspectorate must conduct the duties specified in new section 5A(5D) of the Prisons Act 1952 and ensures its consistency with the legislative basis for its role in England and Wales.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 2]

AYES

Cunningham, Alex	Harris, Carolyn
Dowd, Peter	Norris, Alex
Fletcher, Colleen	Phillips, Jess

NOES

Costa, Alberto	Jones, Andrew
Drummond, Mrs Flick	Mann, Scott
Farris, Laura	Metcalfe, Stephen
Firth, Anna	Philp, rh Chris
Ford, rh Vicky	

Question accordingly negatived.

Clause 28 ordered to stand part of the Bill

Clause 29

POWER TO MAKE FURTHER PROVISION ABOUT TRANSFERS OF PRISONERS

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

Laura Farris: Before I come on to clause 29, I want to address one point made by the shadow Minister, as this is part of the same family of clauses. The reference to negotiation does not mean that things like inspection and equivalent conditions themselves are a matter for negotiation—in other words, that we might not have any of those things. We are going to insist on all those things, but the terms are the matter for negotiation—what the inspection regime would look like, for example. It is not that we would not be monitoring what happens in a rented prison space overseas. The mandatory language in clause 28(1) about the use of a controller goes to that on the issue of oversight.

Alex Cunningham: I am really quite interested because the issue is about negotiations. Is the Minister actually saying that there will be no agreement with any country that cannot provide the same standards of service, accommodation and access that a person would have in the UK?

Laura Farris: I cannot say that the programme would be exactly the same, but we are looking for equivalence. We even set out in the Bill that there will be a supervisory arrangement already, and I talked in the previous debate about what inspection would look like and who we are engaging on that.

Clause 29 creates a delegated power that would allow the Government to make future legislative amendments strictly for the purposes of implementing a future prison rental agreement. We are currently in exploratory talks with potential partner countries, but, as previously noted, formal negotiations have not commenced. While we have sought to draft broad enabling provisions that will facilitate any future arrangements, it is impossible to be certain on what legislative changes will be necessary to give effect to the agreements prior to the conclusion of negotiations and the subsequent agreement with a partner country on those terms.

For that reason, we are seeking a delegated power that will allow us to amend legislation for the sole purpose of complying with the terms of any future prison rental agreement that we sign. That is to ensure that the UK is able to swiftly comply with our obligations under such agreements. Parliament will have the opportunity to scrutinise our proposed use of any delegated power by means of the proposed affirmative procedure when amending primary legislation. That will ensure that Parliament may be content that such amendments are made pursuant to future prison rental agreements.

It is not possible, at this stage, to anticipate the outcomes of any negotiations, and any anticipation could significantly bind negotiating power. It is also not clear which matters will remain the responsibility of the Government and which will fall to other jurisdictions. Without this delegated power, further primary legislation would need to be taken through Parliament at the conclusion of individual negotiations to implement the international agreements. That would impact the Government's ability to act swiftly.

The delegated power forms an essential part of the future-proofing framework that we have designed to accommodate future negotiations and arrangements with partner countries. It ensures that Parliament will still have sufficient opportunity to scrutinise the use of the powers and to feel content that the powers are strictly limited to use further to prison rental arrangements agreed with the partner country.

Alex Cunningham: My concerns are the same as those I expressed about previous clauses. I remain concerned that items not in the Bill are being delegated to secondary legislation. We are not going to oppose the clause, but the Minister needs to bear in mind all the things that have come before and to reassure us that there will not be any abuse here, as what should be important primary legislation is being pushed upstairs to a Delegated Legislation Committee.

Question put and agreed to.

Clause 29 accordingly ordered to stand part of the Bill.

Laura Farris: On a point of order, Ms Bardell. What are the timings for this morning's sitting?

The Chair: We are running until 1.30 pm.

Laura Farris: Sorry, I misunderstood.

The Lord Commissioner of His Majesty's Treasury (Scott Mann): It is until 1 o'clock.

The Chair: The timings I was given were that the Committee would run until 1.30 pm, but it is a matter for the Whip.

Alex Cunningham: On a point of order, Ms Bardell. We have just completed a very distinct section of the Bill and we are within seven or eight minutes of the 1 o'clock deadline. I wonder whether it would be in order for me to invite the Government Whip to move the adjournment.

The Chair: The hon. Gentleman is timely and generous.

Scott Mann: The Government Whip has noted that the hon. Gentleman is very much in order.

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

12.53 pm

Adjourned till this day at Two o'clock.