PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CRIMINAL JUSTICE BILL

Fourteenth Sitting

Thursday 25 January 2024

(Afternoon)

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Monday 29 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)

Sarah Thatcher, Simon Armitage *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 25 January 2024

(Afternoon)

[Sir Robert Syms *in the Chair*]

Criminal Justice Bill

Clause 73

Ethical policing (including duty of candour)

Amendment proposed (this day): 134, in clause 73, page 65, line 5, at end insert—

"(3A) The Code must make explicit that any criminal behaviour perpetrated by persons under the chief officer's direction and control disclosed as a result of proceedings in the family courts must be considered during the vetting process."—*(Jess Phillips.)*

This amendment ensures criminal behaviour that is uncovered within family courts is disclosed within the vetting process of police officers.

2 pm

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following:

New clause 6—*Automatic dismissal on conviction for a serious criminal offence*—

"(1) Section 50 of the Police Act 1996 (Regulations for police forces) is amended in accordance with subsections (2) and (3).

(2) After subsection (3) insert "and subject to any regulations made under subsection (3ZA)".

(3) After subsection (3G) insert—

"(3ZA) Regulations made under this section may provide that upon the conviction of a member of a police force for a certain type of criminal offence, that person shall be dealt with by way of automatic dismissal without the taking of any disciplinary proceedings against that person."."

New clause 7—*Automatic suspension of officers charged with specified allegations*—

"(1) Regulations made by the Secretary of State pursuant to section 50 of the Police Act 1996 may make further provision as set out in this section.

(2) Where an officer is charged with an indictable-only or an either-way offence, the Regulation 11 of the Police (Conduct) Regulations 2020 and any other relevant legislation shall not initially apply.

(3) In a case falling within subsection (2), regulations may provide that the appropriate authority must automatically suspend the officer from the office of constable for an initial period of 30 days.

(4) Where an officer is suspended in circumstances falling under subsection (3), regulations may provide that—

(a) the officer remains a police officer for the purpose of the Police (Conduct) Regulations,

(b) the suspension must be with pay,

(c) at or prior to the expiry of the initial period of suspension, the appropriate authority must make a determination as to whether the suspension conditions in Regulation 11 of the Police (Conduct) Regulations 2020 are satisfied, and

(d) upon the making of a determination referred to in paragraph (c) that an officer should remain suspended, Regulation 11 of the Police (Conduct) Regulations shall apply thereafter to that officer."

New clause 8—*Automatic dismissal of officers who fail vetting*—

"(1) The Police Act 1996 is amended in accordance with subsection (2).

(2) In section 39A (Codes of practice for chief officers), after subsection (1) insert—

"(1A) Without prejudice to subsection (1) and subject to subsection (1B), a code of practice may provide for an officer to be dismissed without notice where—

(a) the officer fails vetting, and

(b) it is not reasonable to expect that the officer will be capable of being deployed to full duties within a reasonable timeframe.

(1B) Subsection (1A) does not apply where a chief officer concludes that—

(a) the officer, notwithstanding his vetting failure, is capable of being deployed to a substantial majority of duties appropriate for an officer of his rank; and

(b) it would be disproportionate to the operational effectiveness of the force for the officer to be dismissed without notice.""

New clause 9—*Duty of officer to hand over personal mobile phone*—

"(1) Section 50 of the Police Act 1996 is amended in accordance with subsection (2).

(2) After subsection (4) insert—

"(4A) Regulations under this section may, in connection with the procedures that are established by or under regulations made by virtue of subsection (3), provide that an officer has a duty to hand over to the appropriate authority a personal telecommunications device capable of storing information in any electronic format which can readily be produced in a visible and legible form, belonging to that police officer where there is a request by the appropriate authority in circumstances where the appropriate authority has reasonable grounds to suspect the police officer of behaving in a way that could amount to gross misconduct and in respect of which information stored on the device may be relevant to the suspected misconduct.

(4B) Without prejudice to the generality of subsection (4A), regulations may provide for—

(a) the form of the request to be made to the police officer concerned and any related information that must be provided by the police officer in releasing the device including, but not limited to, any passcode required to access information stored on the device;

(b) the time period within which the device must be provided to the appropriate authority and any sanction which may be imposed on the police officer for failing to do so;

(c) the provision to the police officer concerned of reasons for the requested possession of a device;

(d) the arrangements to be put in place for the protection of confidential, privileged or sensitive information stored on the device which is not relevant to the matter under investigation;

(e) the period of time that the device may be retained by the appropriate authority and arrangements for the return of the device when it is no longer required for the purposes of the investigation;

(f) the deletion of information obtained from the device and retained by the appropriate authority other than information which is reasonably required to be retained in connection with the matter under investigation; and

(g) the making of ancillary and consequential amendments to other regulations as may be considered necessary.

(4C) In subsections (4A) and (4B) "appropriate authority" has the meaning given in article 2 (interpretation) of the Police (Conduct) Regulations 2020.""

New clause 33—*Police perpetrated domestic abuse as a recordable complaint*—

"(1) Schedule 3 of the Police Reform Act 2002 is amended as follows.

(2) After paragraph 1(2)(b) insert—

"(c) it is alleged by any person, including any person serving with the police, that a person under his direction and control, whether in the course of their duties or otherwise, has engaged in domestic abuse within the meaning of section 1 of the Domestic Abuse Act 2021 or abuse of position for a sexual purpose,"

(3) After paragraph 2(6B)(c) insert—

"(ca) the complaint is one which alleges that a person serving with the police, whether in the course of their duties or otherwise, has engaged in domestic abuse or abuse of position for a sexual purpose; and "domestic abuse" has the meaning set out in section 1 of the Domestic Abuse Act 2021,"."

This new clause would ensure all allegations of Police Perpetrated Domestic abuse are treated either as a recordable police complaint or as a recordable conduct matter.

New clause 34—*Domestic abuse complainants: police officers and police staff*—

"(1) Section 29(4)(a) of the Police Reform Act 2002 is amended as follows.

(2) After "person whose conduct it was" insert ", save that this paragraph does not apply where the conduct alleged (assuming it to have occurred) falls within the definition of domestic abuse in section 1 of the Domestic Abuse Act 2021 or constitutes abuse of position for a sexual purpose,"."

This new clause would ensure that police officers and members of police staff have the same right to make a complaint of domestic abuse against a member of their force as do members of the public.

New clause 35—*Vetting: duty of chief officers*—

"(1) Chief officers must ensure that all persons under their direction and control have valid and current vetting clearance appropriate to their role.

(2) All persons under the direction and control of a chief officer must be re-vetted—

(a) within a period of five years from an individual coming under the direction and control of a chief officer; and

(b) within a period no longer than every five years thereafter.

(3) Vetting clearance must not be granted to persons who have received a caution or conviction for serious violent or sexual offences including, but not limited to offences involving—

(a) domestic abuse,

(b) coercive and controlling behaviour,

(c) stalking,

(d) harassment,

(e) sexual assault or abuse,

(f) rape, or

(g) female genital mutilation.

(4) A person who does not have valid and current vetting clearance appropriate to their role will be dismissed."

New clause 36—*Allegation of violence against women and girls: withdrawal of warrant card*—

Where a police officer is the subject of an allegation that the officer has perpetrated violence against a woman or a girl, the officer's warrant card must be withdrawn pending investigation."

This new clause creates a provision requiring the removal of warrant cards from police officers who are under investigation for crimes relating to violence against women and girls.

New clause 43—*Domestic abuse: automatic referral to Independent Office for Police Conduct*—

"(1) A chief officer of police must ensure that any allegation of domestic abuse made against a person under the chief officer's direction and control must be referred to the Independent Office for Police Conduct for determination of the mode of investigation.

(2) If the Independent Office for Police Conduct determines that the investigation must be referred back to the chief officer's force, then such an investigation must be conducted and concluded.

(3) The Independent Office for Police Conduct may also refer the complaint to the chief officer of police for a different police force and direct that the complaint be investigated independently by that force."

The Minister for Crime, Policing and Fire (Chris Philp): It is a pleasure once again to serve under your chairmanship, Sir Robert. I rise to reply to the thoughtful speeches given before lunch by the shadow Minister, the hon. Member for Nottingham North, and the hon. Member for Birmingham, Yardley, on various amendments and new clauses related to clause 73.

The Government are extremely clear on the need for substantial improvements to police standards, which is why last August they announced in principle a series of significant reforms to strengthen the disciplinary, vetting and performance systems in policing. Those changes, on which we have had detailed engagement with stakeholders, are being progressed at pace, and the work already under way relates to many of the amendments.

With the exception of the amendment made by clause 74, the reforms that we propose to introduce can be delivered by secondary legislation using existing regulation-making powers. I will go through the detail of some of that in a moment. The work on that is under way as we speak, and we expect to lay the relevant regulations before Parliament this side of the summer recess. We anticipate that part of those changes can be brought into force as soon as the spring, with the rest of the measures being introduced a little later, but in any event before summer recess. The announcements made in August are being implemented; work is happening on that as we speak, and will be delivered fairly imminently.

To replicate or cut across that work by legislating here would in fact delay the implementation, because we would have to wait for the Bill to pass and then for any subsequent regulations to be made. The Government agree with the substance of a lot of what the amendments and new clauses do. We have already committed to that in our August response, and the regulations to implement that legally are being worked on at the moment. That is an overarching point that applies to almost all the work in this area.

There is one item that can be done only by primary legislation, which relates to the right of a chief constable to appeal. If a chief constable is in a two-to-one minority when a misconduct panel chooses not to dismiss an officer, but the chief constable thinks they should be dismissed, at the moment the only remedy is a judicial review, so we will create a right of appeal for the chief constable to the police appeals tribunal. That is in clause 74. Everything else that we want to do, the Opposition would probably broadly agree with.

[Chris Philp]

The changes that will be set out in regulations include but are not limited to: introducing a presumption that an officer will be dismissed where there is proven gross misconduct; and providing that conviction for certain offences will automatically be considered to amount to gross misconduct, meaning that dismissal will follow.

Alex Norris (Nottingham North) (Lab/Co-op): Should I expect that the offences in my amendment are likely to form part of those offences?

Chris Philp: Broadly speaking, yes. That will be set out in regulations, but the principles that we are debating are broadly speaking matters of consensus, as he will have seen from the statement that we made in August.

I have listed two of the changes that will be set out in regulations. Another thing, which I have mentioned before, is introducing a statutory requirement to have and maintain vetting, which I think is in the College of Policing's code of practice, published in July, and has been implemented, but we intend to put it on a statutory footing by changing the regulations in the spring; it needs to be on a statutory footing as well. That is one of the changes we will make.

There will be a clarified and expedited route for removing officers who fail to maintain vetting, and there will also be measures to streamline and speed up disciplinary proceedings. One of the complaints we have heard from chief constables who are trying to clean up their forces quickly, including Sir Mark Rowley, the Met commissioner, as well as from campaigning groups, is that these proceedings take a very long time, which is unfair on victims and undermines public confidence; it is also unfair on officers to have proceedings hanging over them for a long time, and quite a lot of money is wasted, because often officers are suspended on full pay while investigations take place.

The very long, legalistic and convoluted process is not good for anybody—not for the taxpayer, the victims, public confidence, or the officer who stands accused—so we are making changes to speed the process up. Those changes include the presumption that there will be fast-track hearings, in which the chief constable makes a unilateral decision without a panel or a tribunal, for officers or special constables who have resigned or retired. We intend to make the chief constable chair the panel, rather than the legally qualified chair.

There were good intentions behind the introduction of a legally qualified chair; it aimed to make the process better, but it has turned the process into a legalistic one, almost like a Crown court trial with disclosure hearings, and the hearings take a week or two. Very often they do not dismiss the officer when the chief constable wants to dismiss them. The only remedy at the moment is to judicially review that decision. The chief constable ends up having to JR a decision of a panel on which he or she was a minority but was overruled by the legally qualified chair.

We think that whole thing has become too legalistic and too convoluted. Chief constables who want to clean up their force have not been able to. Making the chief constable chair will de-legalise the process quite a lot. There will still be two independent members of the panel, so there is an independent element. There will be a legally qualified adviser to make sure that the process is fair, but the chief constable will chair it.

There is then, of course, a right of appeal. If a police officer thinks that they have been unfairly dismissed, they can, as now, appeal to the police appeals tribunal. If the chief constable ends up in a minority, with the other two independent members voting to keep an officer and the chief constable wanting to dismiss them, and the chief is not very happy about that, they can then appeal to the PAT, rather than having to judicially review. That is in clause 74.

For completeness—this is not a misconduct issue but is worth mentioning—we will also streamline the performance process. This is not about misconduct; it is about where an officer is just not performing—they are not showing up for work, not doing the job properly, or whatever. At the moment, the process to remove someone on performance grounds is very convoluted. It has three stages, each of which has an appeal, so it is effectively a six-stage process. Sometimes it can take years. I do not think it serves the public interest for an officer who is not performing to be on the payroll for years and years. We will significantly streamline that process. Obviously, there will be some safeguards, so that chief constables cannot arbitrarily fire police officers unfairly, but it needs to be streamlined. Police leaders have asked for that. If we are asking someone to lead a police force, or any organisation, they need to have more control of who serves in uniform.

Those are some of the broad principles of the changes being made. I will move on to talk in a little more detail about some of the new clauses and amendments. I have set out what we will do through regulations—things that I think the Opposition will agree with us on. We all have the same objectives; I do not think these issues are contentious, politically.

New clause 6, tabled by the Mother of the House, the right hon. and learned Member for Camberwell and Peckham (Ms Harman), and spoken to by the hon. Member for Birmingham, Yardley, would create a power to create regulations that "may provide"—not must—for automatic dismissal for certain criminal offences. As I said, we will provide for that in regulations this spring; conviction of certain offences will automatically constitute gross misconduct, and there is a presumption that when gross misconduct occurs, dismissal follows. That will be taken forward in regulations, as I set out.

New clause 7 would introduce automatic suspension for officers in certain circumstances, which is covered by regulation 11 in the Police (Conduct) Regulations 2020. I will undertake to come back to colleagues on or before Report with confirmation of whether there should be—I mention this for illustrative purposes—automatic suspension when an officer is charged with an indictable offence, or a presumption of suspension if an officer is charged with an either-way offence. Those measures would be implemented via an amendment to regulation 11 in the 2020 regulations, but members of the Committee will discern the likely direction of travel from my comments.

I spoke to new clause 8, on the requirement to vet, in my introductory remarks. The College of Policing's code of practice was issued in July under section 39A of the Police Act 1996, which already sets out this requirement, and we will nail it home with a cast-iron hammer—I am struggling to find the right metaphor here.

Alex Cunningham (Stockton North) (Lab): Would the Minister know which way to use the hammer?

Chris Philp: I can confirm to the hon. Member that I will definitely use the hammer in the right way. In the Prime Minister's defence, it was suggested that he had been told to use the hammer in that way, but I do not know. *[Interruption.]* My hon. Friend the Member for Wyre Forest has confirmed that the Prime Minister was told to use the hammer in that way. With a cast-iron hammer, we will make sure that the requirement sticks, by enshrining the change through the regulation changes we make in the spring.

New clause 9 would introduce a requirement on police officers to hand over their personal mobile phones where there is suspicion that they have behaved in a way that could amount to gross misconduct. This is a little more problematic, because it says that someone who is not accused of a criminal offence, but is simply suspected of having committed misconduct, has to hand over their personal phone. That is quite intrusive, and there are possible issues with regard to article 8 of the European convention on human rights. I noticed that the shadow Minister moved and voted for an amendment earlier despite my saying that it would infringe the ECHR. Some of my colleagues would no doubt find common cause with him on that.

Alex Norris: It is slightly challenging for the Minister to impugn my commitment to the ECHR based on legal advice that he has seen, but which he has never proffered to me.

Chris Philp: I did make that point in our exchange, and the hon. Gentleman did not press me on it. He did not contradict my legal analysis.

There are some ECHR article 8 concerns about compelling somebody to hand over their personal mobile phone simply on suspicion of a workplace issue. I think we would be a bit concerned if a constituent's employer could make them hand over their mobile phone because of an employment-related issue.

Some of the most worrying conduct that we have encountered among the police involves inappropriate messages on WhatsApp groups at Charing Cross police station and elsewhere. In some cases, such behaviour might amount to a criminal offence. I should make it clear that I am not making any allegation about that incident, but in general terms, sharing inappropriate content could amount to an offence—for example, under the Malicious Communications Act 1998 or, indeed, to the common-law offence of misconduct in public office. Where there is criminality, the usual Police and Criminal Evidence Act 1994 power to seize mobile phones would apply.

It is also worth saying that if the Independent Office for Police Conduct is investigating for misconduct, is lawfully on premises and has reasonable grounds for believing that misconduct has occurred, it has some powers to seize mobile phones in those circumstances. It is a good question to ask, but creating a general power to seize an officer's personal mobile phone strays a little too far into the rights enshrined in article 8 of the ECHR, which I know is very close to the shadow Minister's heart—or so he tells us.

2.15 pm

Moving on to new clauses 33 and 34, the Home Office has previously accepted recommendations to do essentially what clause 34 proposes. However, there are quite a few details one would have to think about. Although I do not think quite enough work has been done to add the new clauses to the Bill today, in principle what is being proposed is reasonable. There have been a number of reports on the subject; there is also, for example, the super-complaint and work by the inspectorate, which the hon. Member for Birmingham, Yardley, has referred to. Indeed, in one case we have, in principle, accepted a recommendation already.

The Government understand and broadly accept what is being proposed. I will ask officials in the Home Office to do some work to see what can be done. I suspect that that will not be in time for Report, because that is not very far away, but the Bill will pass to the Lords afterwards, and I will look into what we can do, given that, in principle, the Government have expressed support. I do not want to make an absolutely firm commitment, just to avoid making a commitment I cannot keep, but the spirit of what is proposed is understood, and we will do some more work as quickly as possible in this area.

New clause 43 on the referral of complaints to the IOPC relates particularly to the referral of domestic abuse matters. There is a set of mandatory referral criteria already, which include serious assault, serious sexual assault, serious corruption and

"a criminal offence or behaviour which is liable to lead to disciplinary proceedings and which, in either case, is aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion or other status".

Also, there are

"complaints or conduct matters arising from the same incident as one where conduct falling within the above criteria is alleged".

That is quite wide-ranging and includes serious assault and serious sexual assault, which would meet the mandatory referral criteria. Given what I have just read out, many allegations of domestic abuse are likely to fall into one of those criteria.

Jess Phillips (Birmingham, Yardley) (Lab): "Likely" is not good enough for me, I am afraid, as I said in my speech. I just do not see why we would not add domestic abuse to the list, given that the Government have themselves made domestic abuse a serious crime. The list might capture it, but in lots of cases does not.

Chris Philp: I think that the 2020 regulations refer to this, so if the change were to be made, it could and probably should be made via the regulations, rather than the Bill, so that it was treated the same way as the other items.

While I am not ready to accept the amendment today, I will take away the question of whether there is a case for amending the regulations to include domestic abuse on the list. There will be arguments on both sides, because there is a necessarily high threshold. I do not disagree with the hon. Lady, but just to give the other side of the argument, the IOPC has quite a heavy workload, there are quite long delays, and we need to make sure that we direct the IOPC's finite resources towards the most serious matters. I know domestic abuse is serious; I am not disputing that. However, we

[Chris Philp]

have to make sure that we calibrate that the right way. I will take the matter away and come back to the Committee once I have received further advice. That is a slightly softer commitment than on the other two measures, but it is an undertaking to look at the suggestion seriously in the context of the regulations.

On vetting clearance, I have already made the point that the College of Policing code of practice was updated in July to set out that there should be continuous vetting, and we will put that in regulations, as I said. I also spoke in debate on the last group of measures about the funded policing plan to carry out continuous integrity monitoring, which is basically the data wash I mentioned earlier done on a continuous basis.

It is the case that the full re-vetting is done every number of years. However, the proposed, revised authorised professional practice on vetting, which was published on 10 January—quite recently; it is out for consultation—suggests there should be an annual change-of-circumstance and integrity check, to check in on individuals without having to do the full re-vetting, in addition to the continuous integrity work I mentioned. The APP is out for consultation; it closes in a couple of months' time. The annual check-up is in the APP. I looked at it earlier, and I warn colleagues that it is about 400 pages long. It is quite a heavy read. I hope that the proposal in the APP and the continuous integrity screening, which I mentioned in the previous debate and which we funded, combined with the code of practice released last July and the regulations that we will lay before Parliament this spring and early summer, will ensure that the required standards are met not just as a one-off today, but on an ongoing basis.

Jess Phillips: Will the Minister comment specifically on the amendment on evidence that is gathered in the family court?

Chris Philp: I am extremely grateful to the hon. Lady for drawing my attention to amendment 134, which I had momentarily overlooked. It is a fair point to raise.

For the Committee's benefit, evidence placed before the family court is currently not considered when vetting decisions are taken. The family court will consider things such as child custody cases, for example, and it may be that allegations are made in the family court of domestic abuse or even more serious matters such as rape. The family court may, on occasion, make a finding of fact, where it finds on the civil standard of the balance of probability—not the criminal standard, which is beyond reasonable doubt—that a particular thing has happened, which could be a criminal offence. It is not a criminal conviction. It is not beyond a reasonable doubt, but on the balance of probability.

Family court proceedings are closed, and they are not, generally speaking, published, so that information is not available to take into account during vetting. Of course, police doing vetting do not know which officer may or may not have been involved in child custody proceedings. The vast majority will not, of course, but a small number will. Because that information is generally not published, in order to get hold of the information, the police would have to either ask for their officers to self-disclose that they had been subject to proceedings—there is obviously the possibility that the officer would lie, particularly if there was an adverse fact—or make individual applications for each case to the family court to disclose first whether there had been proceedings and secondly, if there had been proceedings, whether the findings of fact could be disclosed. It may be that the family court would not disclose that information, because that is a decision for the family court judge.

Alex Norris: Will the Minister give way on that point?

Chris Philp: I will in just a moment.

There are considerable practical obstacles to getting hold of that information. Of course, if the matter that is put before the family court in the process of child custody proceedings is criminal in nature and it is then reported to the police, even if there was no conviction, for whatever reason, that would then be on the police national database. The gap would arise if a party to family court proceedings made an allegation to the family court, the family court upheld it on the balance of probability and then the victim did not even allege to the police—let alone get a conviction—that this criminal conduct had occurred. Then the police would not know about it. That is the sort of intersection of the Venn diagram we are talking about.

The main point is that there are some significant practical obstacles, and I cannot immediately think how to overcome them. If there are ideas, I would be happy to hear them.

Alex Norris *rose—*

Jess Phillips *rose—*

Chris Philp: I think the shadow Minister was up first, and then I will give way to the hon. Lady.

Alex Norris: The Minister might have gone past this point now, but I merely wanted to see whether he accepts that one way to manage practical hurdles is through primary legislation, so that later on he can consider options that in principle might help to overcome some of those hurdles—or is this, in substance, a bridge too far for him?

Chris Philp: I would be interested to hear, including via an intervention in response to this, how we would craft that—what legislative measure we could pass that would essentially open up what are currently closed proceedings within the ambit of the family courts to the police vetting process. I will happily give way if the hon. Gentleman can suggest that or come back to me later on.

Jess Phillips: Really, it is unfair on the Minister for me to ask him to do this, because he is absolutely right: it is practically impossible for him to agree to it today, because our family courts system—and, in fact, we do not have a Justice Minister in front of us—*[Interruption.]* Oh, the hon. Member for Newbury is a Justice Minister; I apologise. Okay then, I am happy to take interventions when I wind up.

We do not record anything that happens in our family courts. Now, we do not need Fujitsu; I could knock up an Excel spreadsheet that a clerk could put the findings in the case into at the end of every day and that was searchable by safeguarding agencies. It is not beyond the wit of man, but it is absolutely beyond the wit of the policing Minister—not because of a lack of skill, but because he literally cannot commit to doing something that the Ministry of Justice should have done a long time ago and that should already exist. The failing, actually, is not on the right hon. Gentleman's part in not being able to accept it; it is due to the fact that we have allowed a wild west to occur in our family courts. So it is not his fault.

Chris Philp: I am grateful to the hon. Lady for her personal exoneration on this occasion; I will take that while I can. However, it may be that an MOJ colleague will respond. Obviously, the hon. Lady is able to question MOJ Ministers in parliamentary questions, and it may be that it is possible to have a discussion here; I do not know. However, that is obviously, as the hon. Lady said, something that the justice system has to consider. As a Home Office policing and crime Minister, that is not in my ambit. Therefore, as far as I am concerned—as the hon. Lady has acknowledged—it is difficult to say anything further.

However, I will just repeat the point that it is obviously open to a party to family court proceedings—if they are making an allegation of criminality to the family court, I am sure we would all strongly encourage them to also report it to the police, because it should be—*[Interruption.]* I know that there may in some cases be reasons not to, but they should also report that to the police so that it can be criminally investigated. Were they to do so, that would then appear on the police national database, although I do understand that there are some individual circumstances in which a victim may not want to do that.

There are a lot of new clauses and amendments in this group. I apologise for speaking to them at such length, Sir Robert, but I hope that I have set out that the majority of these things are already being done via regulations. There are two or three areas—new clauses 34 and 43 particularly—where I have undertaken to come back with further thinking, but I hope that that gives the Committee sufficient assurance that the Government are taking this important area very seriously—and, more than just taking it seriously, taking action.

Jess Phillips: I really appreciate the approach that the Minister has taken on all of the areas. I do not doubt that we are cross-cutting on certain things that have been going on, which many of us in this House have been working on for at least the past two years, since this became such a public issue. I also appreciate the Minister saying that he will come back on various different things.

Some of the amendments that I have tabled are just minor and technical amendments to other bits of—*[Interruption.]* Yes, apologies; I do not mean to wade into the argument about, "What is a technical amendment?", because I do not know—or care, to be perfectly honest. That is the truth. I really appreciate those opportunities to discuss this with the Minister.

On the issue of the family courts, I will speak to another amendment on that shortly, later on in this debate. The reason I feel compelled to do that—even though I have admitted that in this instance the Minister's hands are tied—is that we are three years on since the Ministry of Justice's harms review. If the Justice Minister here today would like to tell me that I am wrong, she can, but we are three years on from the Ministry of Justice identifying the harms in the family courts—serious harms of child abuse and serious cases of rape—and nothing has changed.

We are no further in using the perfectly good piece of work that was started by myself and the now Justice Secretary, the right hon. and learned Member for Cheltenham (Alex Chalk), who was not in that role at the time. Actually, it is really woeful, and so I find myself only able to tag this on to Bills where it is wholly inappropriate to ask the Minister concerned to include it, even though I absolutely want to see this very substantive thing done.

2.30 pm

However, it cannot be beyond the Ministry of Justice to ensure that every day, at the end of proceedings in family court, the facts that have been found—albeit below a criminal threshold—are recorded somewhere for agencies, such as our security agencies or our children's safeguarding agencies. It cannot be beyond the wit of the MOJ to do that; I refuse to believe that it is. That would be helpful to all the police officers who came forward—because they all said, "Yeah, it would be great if I knew that, but I don't know."

Craig Guildford's fingerprints are across much of what the Minister was saying. He is the chief constable of my police force, and is a man I like and work with all the time. In fact, he was previously the chief of police for my hon. Friend the Member for Nottingham North, the shadow Minister; we like to share things in the east and west midlands. The blood drained from Craig Guildford's face when I asked, "Do you know how many of your police officers have been found in the family court to have raped someone?", and he said, "No."

The point has been made, and I hope heard by the Justice Minister. However, on the basis that it is almost unfair of me to table this amendment and that this issue will be taken away and considered—because it will not go away—I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 73 ordered to stand part of the Bill.

Clause 74

Appeals to police appeals tribunals

Jess Phillips: I beg to move amendment 137, in clause 74, page 66, line 1, leave out "a local policing body" and insert

"the Independent Office for Police Conduct".

The power to seek a referral to the police appeals tribunal should sit with an independent organisation, such as the IOPC.

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

Jess Phillips: Everyone will be pleased to hear that I have only a few paragraphs to read.

Clause 74 has been proposed with a view to strengthening the oversight of police chiefs. Although this is an important goal that the Bill seeks to achieve, the clause in its current form is misguided. If clause 74 seeks to address inadequacies in internal processes, the Government must instead implement measures to improve the efficacy and independence of the system, rather than delegating these powers to police and crime commissioners.

Disciplinary procedures must be independent and not subject to political influence, which would be a huge risk if the power to refer a police chief to a police tribunal sits with PCCs. In order to maintain the integrity of the system, these powers must sit with an independent body. The Independent Office for Police Conduct has been established specifically to hold police behaviour to account, so we should give the powers to refer a police chief to a tribunal to an organisation that exists to uphold police integrity.

I do not wish to besmirch any particular PCC, but having spent nine years in this building trying to overcome, and make processes to overcome, political interference and political patronage in cases of misconduct, I am always anxious when politicians and friends mark the homework of their friends.

Alex Norris: To some degree, the Minister has made the case for the clause already, but we support that element. It relates, of course, to the dismissals review commissioned in the light of the Casey review.

I did not hear this from the Minister, but—I think this speaks to the point that my hon. Friend the Member for Birmingham, Yardley has just made—we should not throw the baby out with the bathwater when it comes to the input of individuals who are independent. I know that that was not the point that the Minister was making about legally qualified chairs. I understand the point he was making about some of the delays and how unintentionally cumbersome the system has become. Nevertheless, as my hon. Friend said, the principle of independence is important for public confidence in the system. It would doubtlessly be an odd quirk if we got stuck with a system that had been designed to stop chief constables protecting staff who perhaps should have been dismissed, but which actually had the opposite effect in some cases of officer misconduct at more junior ranks. Having spoken to chiefs, I know there are frustrations there.

Again, the most important thing is that the process is fair, transparent and as simple and speedy as possible, so of course a judicial review cannot be a part of that process. That is of course wrong, so changing to a different appeal mechanism is probably a good thing to do. That leaves me with only one question for the Minister. This clause does not make the regime that he has mentioned and that I have spoken about, but gives the powers to make such a regime. I wonder why regulations are preferred for that and whether he has a sense of the timing for that and for the consultation, because clearly there will be a lot of interest in that—I am talking particularly about proposed new subsection (1A) of the Police Act 1996. I would be interested to hear the Minister's rationale.

Chris Philp: I explained in the last debate the rationale for clause 74, which, as the shadow Minister said, is to allow the chief constable to initiate an appeal where he or she disagrees with the finding of the misconduct panel on which the chief constable is in a minority—there are two independent members. To the point about independence, which the hon. Member for Birmingham, Yardley raised, given that there are still two independent members, and the chief chairs it but is in the minority, that gives quite a good assurance. Of course, the individual police officer has a right of appeal to the Police Appeals Tribunal, which is an essentially digital function, and in this clause we are also giving the chief constable a right to appeal if they do not like the decision.

Turning to the amendment and who should initiate the appeal where it is the chief constable themselves who is the subject of the misconduct proceedings, let me make a couple of points. First, the police and crime commissioner, or the deputy mayor where there is a mayoral model, ultimately exercises oversight of the chief constable. They can fire them for poor performance, for example, and they are responsible for hiring them as well, so it is consistent with that hiring and firing power that they make the decision on whether to appeal where a finding misconduct is made against the chief constable themselves.

It is worth repeating the point I made just now that the panel that makes a finding has two independent members, so that is pretty independent. We are not giving the police and crime commissioner the right to, as it were, ratify or reject the finding of the panel; we are merely giving a power to refer it to the Police Appeals Tribunal, an essentially judicial body that will then hear the appeal. It is simply a right of referral to the Police Appeals Tribunal, not a right to make a decision. For that reason, I think it is the right way to approach things. On that basis, I urge the Committee to not adopt amendment 137, but to incorporate clause 74 as part of the Bill.

Jess Phillips: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 74 ordered to stand part of the Bill.

Clause 75 ordered to stand part of the Bill.

Clause 76

REGULATIONS

Amendment made: 146, in clause 76, page 68, line 15, after "purposes" insert "or areas".—*(Chris Philp.)*

This amendment provides that regulations under the Bill (other than regulations under clause 78) may make different provision for different areas.

Clause 76, as amended, ordered to stand part of the Bill.

Clause 77

EXTENT

Amendments made: 41, in clause 77, page 68, line 36, leave out "5" and insert "1".

This amendment provides that clauses 1 to 4 extend to (ie form part of the law of) Scotland and Northern Ireland, as well as England and Wales.

Amendment 42, in clause 77, page 69, line 2, at end insert—

"(ea) section (Terrorist offenders) (and Schedule (Notification orders));".

This amendment provides that the new clause and Schedule moved by NC14 and NS1 extend to England and Wales, Scotland and Northern Ireland.

Amendment 43, in clause 77, page 69, line 10, at end insert—

"(3A) Sections 11 and 12 extend to England and Wales and Northern Ireland.".

See the statement to amendment 23.

Amendment 44, in clause 77, page 69, line 11, after "by" insert "section 32(2) or".—*(Chris Philp.)*

This amendment to the extent provision is consequential on Amendment 40.

The Parliamentary Under-Secretary of State for Justice (Laura Farris): I beg to move amendment 147, in clause 77, page 69, line 11, after "by" insert

"section (Administering etc harmful substances (including by spiking))(2) or".

This amendment provides that consequential amendments made by subsection (2) of the new clause moved by NC45 have the same extent as the provision amended.

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

Government new clause 45—*Administering etc harmful substances (including by spiking).*

New clause 15—*Intentionally administering a substance with intent to cause harm*—

"(1) A person ('P') commits an offence if P intentionally administers a substance to, or causes a substance to be taken by, another person—

(a) without the consent of that other person, and

(b) with the intention of causing harm to that other person.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years."

As it stands, spiking is covered by several different offences. This amendment is intended to create a standalone offence of spiking.

Laura Farris: It is an honour to serve under your chairmanship, Sir Robert. New clause 45 concerns the issue of spiking. The offence of spiking is captured under various criminal provisions, including, but not limited to, section 61 of the Sexual Offences Act 2003—although that is primarily directed towards date rape—and what I might loosely term the poisoning provisions in sections 23 and 24 of the Offences against the Person Act 1861. It is the latter that the new clause will amend.

I hope that members of the Committee have had a chance to consider new clause 45, which amounts to a wholesale replacement of sections 23 and 24 of the 1861 Act. It modernises the language, captures the complete range of offending and puts the term "spiking" in legislation for the first time. *[Interruption.]* I am sorry; I pulled out a page and now cannot find it.

Alex Norris: I am grateful to the Minister for giving way. I would not want to pre-empt anything I might say in the debate, but I wonder whether she might join me in praising my hon. Friend the Member for Bootle for tabling new clause 15—he has had more success with his new clause than I have had with any of my amendments or new clauses—and my hon. Friend the Member for Bradford South (Judith Cummins), who has shown real leadership on this issue.

Laura Farris: I am grateful to the hon. Member for his intervention. I have no hesitation in congratulating and thanking all the members of the Committee, and Members across the House, for what they have done to help us on this issue.

The drafting of new clause 45 seeks to strike a balance between reflecting that the offences cover spiking, while ensuring that the other behaviour caught by the offences remains covered. For example, section 24 of the 1861 Act is also used to prosecute incidents of potting, where prisoners use urine or faeces to assault a prison or police custody officer. I hope that we can all agree that it is important that that behaviour is still captured by the criminal law. The new clause also alters the mode of trial for these offences, from indictable-only to triable either way. That means that a case can be progressed in either the magistrates court or the Crown court, rather than only in the Crown court.

Members will probably have already seen that, to some extent, the new clause replaces antiquated language. It uses language that we are much more familiar with in modern criminal law: terms such as "intentionally" and "recklessly". Importantly in relation to spiking, it refers to a "harmful substance", which is defined with reference to "poison" and "destructive or noxious thing", but we have lost the language of poisoning, which was previously the headline in such offences. That language imported something that some police officers felt was quite unhelpful in understanding the precise nature of the offending that was taking place. Our amendments do not intend to change the existing approach to the mental element that is required as part of these offences.

2.45 pm

The purpose of clarifying the law is not just to modernise the language, but to empower more people to be clear about their rights and to come forward. Furthermore, by having a clear offence in which spiking is defined, the police will be able to better use the data of people who come forward to report spiking incidents. That will allow us to build a much more accurate picture through the criminal justice system of the extent to which the offence is occurring.

For completeness, Government amendment 147 is a technical one, to provide for the extent of the consequential amendments to other legislation made by new clause 45.

Peter Dowd (Bootle) (Lab): It is a delight to see you in the Chair, Sir Robert.

I thank the Minister for her approach. I am pleased to speak to Government new clause 45 and new clause 15, which offer important updates to the language and content of the Offences against the Person Act 1861. After so many years of deliberation, I am glad that the Government have constructively concluded that legislative

[Peter Dowd]

action is needed to protect victims of spiking and to better ensure that the perpetrators of such heinous crimes face justice. I take the opportunity to note that since the Government's statement in July, in which they said that they had begun to consider legislative action to introduce a specific offence of spiking in the light of concerns that continued to be expressed by parliamentarians, we have moved on significantly.

Getting to this point has been the result of determined action by Members across the House, and I am glad to have played a very small part in achieving this vital change. In particular, I highlight the sustained and sterling efforts of my hon. Friend the Member for Bradford South. Her constituents will be proud of her, and victims and their families grateful for her hard work and determination. Over the years, she has campaigned for these changes, leading a debate just last month on this very topic. I also praise my right hon. Friend the Member for Kingston upon Hull North (Dame Diana Johnson) and the hon. Member for Gloucester (Richard Graham). I know that my hon. Friend the Member for Bradford South welcomes the changes that the Bill will make. I also pay tribute to the right hon. Members for Chelmsford and for Witham (Priti Patel), who have been involved too. I will not press my own new clause 15, given that it would, in effect, introduce what the Government have now introduced. I give further thanks to my hon. Friend the Member for Bradford South.

Spiking is an evil crime. As things stand, it is shockingly widespread in this country. A YouGov poll of 2,000 people commissioned for *The Independent* found that 11% of female respondents and 6% of male respondents said that they had been spiked. The problem has only been growing. Freedom of information requests submitted by Channel 4 recently revealed that the number of drug spiking incidents reported to the police has increased fivefold in the past few years.

Given that the Minister has tabled new clause 45 and that the Opposition no doubt will agree to it, I will not press my new clause 15. I thank the Minister for her efforts and I thank everyone who has been involved in this important work.

Vicky Ford (Chelmsford) (Con): I just want to say how incredibly grateful and pleased I am to see this language before us in the Bill. As the hon. Member for Bootle just said, I am one of the Members who has campaigned on the issue of spiking for a number of years, alongside the great leadership of my hon. Friend the Member for Gloucester.

Chelmsford has some fantastic nightclubs, with a great reputation for being safe. I do not want to put people off going out and having a great time, but when spiking occurs it can have a horrific impact on the victim. We have said for a long time that the language needs to be modernised to make it crystal clear that spiking is a criminal offence, and new clause 45 does that. That helps not only to protect victims but, almost more importantly, to deter perpetrators. We want to stop the crime, so that people do not have to become victims. There are too many victims—mostly women, but it can impact men—of this crime.

Will the Minister clarify that, when it comes to how the substance is administered, the provision will cover not only a drink or a jab, but spiking through vapes, which we are hearing more about? I thank the Government for the number of measures that they have announced to go alongside the provision, such as trialling new ways to test drinks so that people can see whether something has been put in them. That would also help to eradicate this crime. We also need more public awareness so that victims know, if they have been spiked—often they are not in a condition to do anything about it immediately, as it can have such an awful impact—that something as simple as collecting a urine sample can make so much difference to getting the evidence to hold people to account.

Alex Norris: I rise to add our support to new clause 45, which is important. Spiking is a coward's crime, as is potting, but we know that it is a stock in trade for a very small number of people who can have a devastating impact on people's lives. It is an exceptionally harmful and dangerous practice. I congratulate colleagues on both the Opposition Benches and the Government Benches, as well as the Government themselves, on bringing the measure forward.

Legislation is clearly only part of the process. We need cultural change and strong messages. People need to hold each other to account and tell each other how important it is not to do things like this, because they are so dangerous. The right hon. Member for Chelmsford made the important point—we will hear the Minister's response—that, to the extent that it can be, the law should be agnostic on the method of transmission. As technology changes, those who choose to do such things for their own ends will use whatever methods they can. That spiking could be done by vaping was new to me, but it seems obvious that that would be possible. I am keen to know how the legislation can keep pace with that.

Laura Farris: I pay tribute to my right hon. Friend the Member for Chelmsford, who has been an important voice on the issue. When I made a statement to the House just before Christmas, I thanked everybody: my hon. Friend the Member for Gloucester, the right hon. Member for Kingston upon Hull North and the hon. Member for Bradford South. Theirs have been important voices, and they have been helpful to us as we have worked our way through this issue.

I did not set out our thinking in my initial remarks, so it might be helpful for me to do so. First, it was said that spiking was covered by other offences, but when we look at the language of the Offences against the Person Act, it is accurate to say that parliamentarians at the time had something different in mind. We can tell that just by reading the legislation.

Secondly, all parliamentarians are familiar with being told that something is already covered by another law, but it is worth asking, "Would this particular offence be better captured in a defined way?" We have done the same with offences such as stalking in the life of this Parliament. For lots of offences, it is possible to think, "Can we crystallise the offence in a more accurate way?" That was material to our thinking, and that is why we have made these changes. I hope that that is helpful to the Committee.

I reassure my right hon. Friend the Member for Chelmsford that all forms of spiking are included, whether by needle, vape, drink or a food substance. New clause 45 is deliberately widely constructed so as to capture the whole range. She made a point about urine testing. We have been told by police that the biggest barrier to conviction is that even if the victim reports the incident the following morning and immediately gives a sample for a toxicology test, they can be left with the disappointing news that the substance has left their body, even though the police often accept that everything that they and perhaps their friends are describing is consistent with a spiking incident. That is why investment in rapid drinks testing kits, which are at a nascent stage, has been a big part of the non-legislative measures. If we can get those up and running, we can roll them out across night-time venues to facilitate on-site testing without having to go through the standard toxicology route. We think that would be really helpful in getting convictions.

We have been working with the Security Industry Authority on the training of nightclub doormen and bouncers. From April this year, there will be a condition for any new nightclub bouncer entering the industry to have specific training on spiking. From September, we will begin a refresher element, including a spiking course, for those already employed in the sector. It is anticipated that, within three years, all nightclub bouncers will have had had specific night-time training, and we are doing something similar with bar staff.

There is also a national reporting tool, which is currently operated by 20 police forces in England and Wales. It is being rolled out, but about half of the forces are using it. It allows people to report spiking anonymously. That does not have to be the victim; anyone who has seen something that they think is consistent with a spiking incident can make a report. That will help forces to develop a clearer picture of where spiking is happening and whether there are hotspots or problem areas, which will allow them to intensify the police response. Finally, we are doing some police intensification work.

I have probably gone on too long. Suffice it to say that dealing with spiking properly requires more than a change in the law, but we do think a change in the law is necessary and desirable, and we therefore hope that Members will support new clause 45.

Amendment 147 agreed to.

Amendment made: 50, in clause 77, page 69, line 12, at end insert—

"(5) Nothing in subsections (1) to (4) limits the extent within the United Kingdom of the armed forces provisions.

(6) Section 384(1) and (2) of the Armed Forces Act 2006 (extent outside the United Kingdom) applies to the armed forces provisions as it applies to the provisions of that Act.

(7) In subsections (5) and (6) the "armed forces provisions" means—

(a) a provision made, or inserted, by or under this Act so far as it is applied (by whatever words) by or under the Armed Forces Act 2006;

(b) an amendment, modification or repeal made by or under this Act of—

(i) a provision of or made under the Armed Forces Act 2006,

(ii) a provision that amends, modifies or repeals a provision of, or made under, that Act, or

(iii) any other provision, so far as the provision is applied (by whatever words) by or under that Act.".—*(Chris Philp.)*

This amendment makes provision about the extent of provisions of or made under the Bill which relate to the Armed Forces Act 2006.

Clause 77, as amended, ordered to stand part of the Bill.

Clause 78

COMMENCEMENT

Amendments made: 45, in clause 78, page 69, line 18, after "sections" insert

"(*Testing of persons outside of police detention for presence of controlled drugs*),".

This amendment makes provision to bring NC13 into force on Royal Assent for the purpose of making regulations and issuing codes of practice.

Amendment 131, in clause 78, page 69, line 18, leave out ", 21 and 34" and insert "and 21".

This amendment and amendment 132 provide for the clauses about serious crime prevention orders to be brought into force by regulations.

Amendment 46, in clause 78, page 69, line 18, after "regulations" insert

"or issuing codes of practice".—*(Chris Philp.)*

See the statement for amendment 45.

Jess Phillips: I beg to move amendment 1, in clause 78, page 69, line 21, at end insert—

"( ) section ([Removal of women from the criminal law related to abortion])."

This is an amendment conditional on the introduction of NC1. It would bring the new law into force on the day the Act is passed.

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

New clause 1—*Removal of women from the criminal law related to abortion—*

"For the purposes of the law related to abortion, including sections 58 and 59 of the Offences Against the Person Act 1861 and the Infant Life (Preservation) Act 1929, no offence is committed by a woman acting in relation to her own pregnancy."

This new clause would disapply existing criminal law related to the accessing or provision of abortion care from women acting in relation to their own pregnancy at any gestation, ensuring no woman would be liable for a prison sentence as a result of seeking to end her own pregnancy. It would not change any law regarding the provision of abortion services within a healthcare setting, including but not limited to the time limit, the grounds for abortion, or the requirement for two doctors' approval.

New clause 2—*Abortion: Decriminalisation—*

"(1) The Secretary of State must by regulations make whatever changes appear to the Secretary of State to be necessary or appropriate for the decriminalisation of abortion, in line with the recommendation in Paragraph 31 of the CEDAW General Recommendation No. 24: Article 12 of the Convention that "When possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion".

(2) Regulations under subsection (1) must—

(a) provide for the repeal of sections 58, 59 and 60 of the Offences Against the Person Act 1861,

(b) provide that no offence under these regulations or any other legislation is committed by a person complying with the requirements of subsection 1 of the Abortion Act 1967,

(c) provide that no offence under these regulations or any other legislation is committed by a person acting in relation to their own pregnancy where they have been coerced into taking that action,

(d) provide that no person acting in relation to their own pregnancy may be sentenced to a custodial sentence, and

(e) provide for alternative offences in relation to acts of abortion where the woman has not, or is suspected to have not, consented to the abortion.

(3) The Secretary of State may by regulations make any provision that appears to the Secretary of State to be appropriate in view of subsection (1), or (2).

(4) If regulations under subsection (1) are not approved by both Houses of Parliament within three months of this Act receiving Royal Assent, then sections 58, 59 and 60 of the Offences Against the Person Act 1861 are repealed.

(5) A statutory instrument made under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

Jess Phillips: I want to speak specifically to new clause 1, which was tabled by my right hon. Friend the Member for Kingston upon Hull North and concerns a matter close to my own heart: the removal of women from the criminal law relating to abortion. The Minister just made a compelling argument for ending the use of language from the Offences against the Person Act. Abortion remains a criminal act in England and Wales because of a piece of legislation from before any of us in this building were even born.

If a woman undergoes an abortion at any gestation without the permission of two doctors, whether she takes abortion medication bought online or a uses sharp object to end her pregnancy in desperation, she commits a crime that carries a maximum life sentence. Although the Abortion Act 1967 legalised abortion in certain fixed circumstances, the Offences against the Person Act 1861 and Infant Life (Preservation) Act 1929 maintain the criminal framework. In the 50 years following the passing of the Abortion Act, only three women in the UK have been convicted of an illegal abortion, but in the last 18 months, six women have appeared in court charged with allegedly ending their own pregnancy outside the law. Meanwhile, abortion providers have reported receiving escalating numbers of requests for women's medical records from the police in relation to suspected abortion offences. The catalyst for this uptick in police investigations is unclear, but we need only look at what is happening in countries such as the USA, where citizens have lost their constitutional right to an abortion in recent years, and Poland, where a near-total ban on the procedure has taken effect.

3 pm

Our laws in England and Wales are punishing women who are in the most desperate situations, and some are investigated when there is no evidence at all that they have had an abortion, and when they instead suffered premature labour, a late miscarriage or a stillbirth. Newspapers have reported harrowing stories of the impact on women in the most desperate circumstances. In one example, seven police officers arrived at the home of a woman who had called an ambulance when her baby was born prematurely. They searched her bins and provided no assistance while she performed mouth-to-mouth on her unconscious child, who was still attached to her placenta by the umbilical cord. The mother and baby survived.

In another example, a vulnerable 17-year-old girl presented to abortion services in the early days of the pandemic. She was unable to travel to a clinic on two occasions owing to covid restrictions, so passed the legal abortion limit and was referred to children's services and antenatal care. Soon after, she delivered a stillborn baby at home, and was then investigated by the police on suspicion of abortion law offences. Another woman was taken from her hospital bed after undergoing surgery and was forced to spend 36 hours in a police cell while still suffering from the after-effects of birth. Women whose names are reported by the police to journalists have had threats posted through their doors, have had to leave their house, and have had social services remove children from their care.

The example that perhaps sticks in all our minds is from last summer, when a mother of three from Staffordshire was sentenced to 28 months in prison for using abortion pills to end her pregnancy. Although her appeal was successful, and she was released from prison the following month on a suspended sentence, the impact has been long-lasting and catastrophic. Overnight, she went from a mother living a quiet life to having her photograph and the ins and outs of her private life splashed across the nation's papers. Even now, journalists try to doorstep her whenever another case is reported in the media. This supposed crime will, for her, as for those who have "only" raped their wife, forever remain on her record and show up on any Disclosure and Barring Service check for the rest of her life. That is despite Dame Victoria Sharp, the Court of Appeal judge who overturned the conviction, saying that the case

"calls for compassion, not punishment".

Mr Justice Pepperall, in the initial sentencing, stated that this is

"a matter for Parliament and not for the courts".

Those statements are why I propose an amendment to remove women from the criminal law, when it comes to abortion.

This amendment would ensure that vulnerable women in England and Wales were no longer subject to years-long investigations, criminal charges, or custodial sentences for ending their own pregnancies. That is all it would do. It would have no impact on the provision of abortion care. There would be no change to the time limit or the requirement for two doctors' signatures. Women would still have to meet one of the grounds for abortion laid out in the Abortion Act 1967. Indeed, non-consensual abortion would remain a crime for any gestation and anybody, including a medical professional, who assisted a woman in obtaining an abortion outside the law would still be liable for prosecution.

The change is supported by more than 30 leading women's rights groups and medical bodies including the Royal College of Obstetricians and Gynaecologists, the Royal College of Midwives, Refuge, and the End Violence Against Women coalition. It is a tightly-drafted amendment that will ensure that now, in the 21st century, no more women in England and Wales will face jail for decisions made at the most difficult time of their life.

Vicky Ford: I thank the hon. Member for Birmingham, Yardley, for her passion on this subject, and for her very moving speech. She and I sat together on the Women and Equalities Committee, which took incredibly harrowing evidence from women in Northern Ireland about their circumstances. I have a very long track record—15 years

—of voting on the issue of abortion, because it comes up for a vote nearly every month in the European Parliament. I always vote for the woman's right to choose. However, I completely understand that not every parliamentarian holds the same view. It is a very sensitive and incredibly important issue.

It would not be right for the small handful of us here —there are not even the full 17 Committee members here—to have a vote that would change the law when the other 633 have not had the chance to give their view. They would consider that a constitutional outrage. I would not want those who have a view different from mine to say that we had done this incorrectly, under the cover of Committee, and not out in the open. This issue needs to be debated and discussed. A decision is needed on whether the change should be in this Bill, or whether we need a whole new Bill on abortion—we need to think about whether any of our abortion laws are fit for purpose in today's age. However, we should not vote on this today and try to bind the other 633 Members of Parliament to what we decide in this room. I respect the manner in which this amendment was tabled, but gently request that we do not vote on it today, and ensure that it is debated properly by all our colleagues from across the House.

Alex Cunningham: It is a pleasure to serve under your chairmanship, Sir Robert. My hon. Friend the Member for Birmingham, Yardley, made a detailed speech on new clauses 1, in particular, and 2, which were tabled by my right hon. Friend the Member for Kingston upon Hull North and my hon. Friend the Member for Walthamstow (Stella Creasy) respectively. We all recognise how sensitive and controversial the issue of abortion is. It is important that we get the law exactly right and ensure that any changes do not have unintended consequences. I am grateful to my colleagues for ensuring that the debate on the law around abortion remains very much a focus for us in this place as we strive to make the right changes. I commend the work of all colleagues across the House on this issue.

New clause 1 would disapply criminal law on accessing or providing abortion care from women acting in relation to their own pregnancy at any gestation, ensuring that no woman would be liable for a prison sentence as a result of seeking to end her own pregnancy. New clause 2 seeks to repeal sections 58 to 60 of the Offences against the Person Act 1861 and

"provide that no offence under these regulations or any other legislation is committed by a person complying with the requirements of subsection 1 of the Abortion Act 1967".

The Abortion Act 1967 renders lawful activities that would otherwise constitute a crime under the Offences against the Person Act 1861. It provides criteria under which abortions or terminations can legally take place. Labour believes that abortion is an essential part of healthcare that is highly regulated. Let me make it perfectly clear today that we do not believe that women should be jailed for getting an abortion when they are doubtless at their most vulnerable. For that reason, a Labour Government will provide parliamentary time for free votes on modernising abortion law to ensure that Members of Parliament can deal with this issue once and for all.

Many cases and reasons over the years have led us to this point, but I will highlight again the custodial sentence in the case mentioned by my hon. Friend the Member for Birmingham, Yardley. It was deeply sad, and something that we do not want repeated. This mother was jailed for illegally taking abortion tablets to end her pregnancy during lockdown. The Court of Appeal reduced her sentence, and she has since been released. The original judge decided that she should serve half her 28-month term in custody and the remainder on licence, but the Court of Appeal reduced the term to 14 months suspended. Dame Victoria Sharp KC, who heard the appeal, rightly noted that—we have heard this already this afternoon, but I make no apologies for repeating it—this was a case that called for "compassion, not punishment". Carla Foster pleaded guilty to a charge under section 58 of the Offences against the Person Act 1861—administering drugs or using instruments to procure abortion—a plea accepted by the prosecution. As we have heard, she will carry that record throughout her life. Dame Victoria told the court that "no useful purpose" was served by detaining Ms Foster in custody and added that her case had "exceptionally strong mitigation."

The Government have put forward an amendment to the 1861 Act in relation to the administering of harmful substances. We have just debated that and can all welcome that amendment, but it gives rise to the question: why have the Government not proposed any modernisation of the abortion offences, including the sentencing range? We are talking about a very similar provision of the same Act. Can the Minister say why the Government are not taking this opportunity, while the matter is under the spotlight and the subject of important debate, to remove custodial sentences?

We know that there are strongly held views on abortion—I have said that already—but it is rightly a matter of conscience for Members. The threat of prosecution is a real fear for women, and very sadly it is a fear that deters doctors from wanting to enter this fundamental area of women's healthcare. It may help the Committee to know that health professionals, in the shape of the British Medical Association, support action, too. The BMA's brief said that abortion should be regulated in the same way as other clinical procedures that are subject to an extensive range of professional standards, regulations and criminal and civil laws, but it stresses that it does not support criminal sanctions for women who procure and administer their own abortion, or for health professionals administering abortions in the context of their clinical practice.

I await with interest the Minister's response to Committee members' comments and those of the BMA. Specifically, I would like to know what action the Government plan to take to stop women being jailed for this offence. I am well aware that Members from across the House have been working together in an attempt to get this right and may well table a different amendment on Report. What discussions has the Minister had with Members? Is she open to further discussions? Is there any prospect of the Government bringing forward their own clause to right this wrong? She knows, as I do, that we must take action. There is a clear consensus on this.

Laura Farris: I am grateful to everybody who has spoken on this matter. Both new clause 1 and new clause 2 seek to decriminalise abortion. The Government maintain a neutral stance on these issues, but there are strongly held views across the House on this highly sensitive matter. They engage considerations of women's

[Laura Farris]

rights and health, the rights of the unborn child, the viability of a foetus and the involvement of the criminal justice system. None of this is straightforward. It is an issue that, quite properly, Members will decide on according to their consciences, and I agree that it should be determined on the Floor of the House.

Let me begin by emphasising that the Government are committed to ensuring that all women in England and Wales have access to safe, regulated abortion services on the NHS under our laws. That includes telemedical abortions—sorry, I should probably refer to taking abortion pills at home when eligible, because "telemedical" is a confusing word.

As hon. Members know, in England and Wales the criminal offences relating to abortion must be read in conjunction with the provisions of the Abortion Act 1967, which provides exemptions to the criminal offences. The new clauses tabled by the right hon. Member for Kingston upon Hull North and the hon. Member for Walthamstow seek, in different ways, to decriminalise abortion for women acting in relation to their own pregnancies. If the will of the House is that the criminal law on abortion should change, whether by exempting pregnant women from the offences or otherwise, the Government would not stand in the way of such change, but we must of course be concerned with the fitness for purpose of any legislation proposed. With that in mind, I turn to the detail of the amendments, but it may be helpful if I first set out the relevant offences.

Under section 58 of the Offences against the Person Act, it is an offence for a pregnant woman, with the intent to procure her own miscarriage unlawfully, to take drugs or use instruments, and for another person, with the intent to procure the miscarriage of a woman unlawfully, to administer drugs or use instruments. Section 59 makes it an offence to supply or procure drugs, poison or an instrument intended to be used to procure a miscarriage.

3.15 pm

The Infant Life (Preservation) Act 1929 deals with late-term abortions in England and Wales. Under section 1 of the Act, it is an offence for any person, with intent to kill a child that is capable of being born alive, to cause the death of that child before it is born, unless it is proved that the act was done in good faith and only to preserve the life of the woman. To illustrate how many criminal convictions there have been in last six years for which the MOJ holds data, it is one.

Jess Phillips: One too many.

Laura Farris: Okay, but it is one, to give the Committee a sense of the scale of this issue in the criminal courts.

I turn first to amendment 1 and new clause 1, tabled by the right hon. Member for Kingston upon Hull North. The purpose of new clause 1 is to disapply existing criminal law relating to abortion from a woman acting in relation to her own pregnancy at any stage of gestation. Under section 6 of the Abortion Act 1967, "the law relating to abortion" means

"sections 58 and 59 of the Offences against the Person Act 1861, and any rule of law relating to the procurement of abortion".

Section 5(1) of the 1967 Act provides:

"No offence under the Infant Life (Preservation) Act 1929 shall be committed by a registered medical practitioner who terminates a pregnancy in accordance with the provisions of this Act."

New clause 1 refers to "the law related to abortion". Unlike the Abortion Act, it is not limited to specific provisions, and it could therefore be interpreted as applying more widely. It could, for example, include other offences against the person that may apply in this context, such as maliciously administering a poison so as to endanger life or inflict grievous bodily harm. In that regard, it differs from the law as it applies in Northern Ireland.

The hon. Member for Walthamstow takes a different approach. Her new clause 2 would require the Secretary of State to decriminalise abortion through regulations. Among other things, the regulations would repeal sections 58 to 60 of the Offences against the Person Act and make provision for alternative offences in relation to non-consensual abortion.

I reiterate that, should Parliament wish to change the law, the Government will not stand in the way, but hon. Members may consider that there would be alternative ways to amend primary legislation. Leaving aside the way in which decriminalisation might be achieved, there is the question whether the repeal of section 60 of the Offences against the Person Act is appropriate. Section 60 makes it an offence for a person to conceal the birth of a child by disposing of the child's body after its birth. There is a high-profile case in the papers today concerning exactly that issue. It is not generally considered to be an abortion offence and it is not limited to the abortion context. Repealing the offence could have unintended consequences.

Jess Phillips: On the point made by the right hon. Member for Chelmsford, I have to say that I have noted from prior conversations people's level of fear that they might have to vote on this issue today. If I were on the other side of this debate, I would not stop and think for a second that the will of the House needed to be tested, or that there was not a sneaky way to change the legislation—but I am not. We have tested the will of this House a number of times in the nine years that I have been here, and on every single occasion Parliament has acted in a pro-choice manner and has had a pro-choice majority. I have no doubt that I would hold the majority should I press new clause 1 to a Division in this Committee.

I agree with the right hon. Member for Chelmsford that it is the will of the House that these issues need to be tested. As I have said, I have no doubt that we will win in that context. What I would say is that it is always women's bodies that we say this about. There is a load of people who will never have the experiences that I have had personally, or that some of the other women in this room have had, but get to have an opinion about the way that I live my life and make my choices about my own body, and we are taught to sort of genuflect and respect that. It should be a women's health issue. If this was the women's health Bill, we would be more than happy to amend all sorts of things in this room, but we allow this issue to retain some sort of grandiosity, as if it is any more than having a prostate exam, which even the King is doing and talking about. It should not be a thing any more. We are doing line-by-line scrutiny; we should be amending small bits.

On the Minister's point about the things that the Government have put in place, let me say on behalf of my right hon. Friend the Member for Kingston upon Hull North that she is welcome, because every single one of them came from an amendment that my right hon. Friend tabled. This is not her first rodeo; it is a long passion.

The thing I heard today that gave me solace was from my hon. Friend the Member for Stockton North, who said from the Opposition Front Bench that the Labour party will move to ensure that, under any Labour Government, Parliament has time to actually consider this issue, so that people do not have to tack things on to Bills that they might not quite fit in.

The Minister mentioned one person having been criminalised. I imagine that, if she goes away and gets the data on the number of incidents of domestic abuse where a miscarriage has been forced and the man has been charged with the same offence that she identified under the Infant Life (Preservation) Act, she will find that it is zero, yet that will have happened hundreds of times in the last few years.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment made: 148, in clause 78, page 69, line 24, at end insert—

"(aa) section (Maximum term of imprisonment for certain offences on summary conviction);"—*(Laura Farris.)*

This amendment provides that the new clause moved by NC47 comes into force two months after Royal Assent.

Amendment made: 132, in clause 78, page 69, leave out line 28.—*(Chris Philp.)*

See the explanatory statement to amendment 131.

Clause 78, as amended, ordered to stand part of the Bill.

Clause 79 ordered to stand part of the Bill.

New Clause 10

POWER TO SEIZE BLADED ARTICLES ETC: ARMED FORCES

"In the Armed Forces Act 2006, after section 93ZC (inserted by section (Stolen goods on premises (entry, search and seizure without warrant): armed forces) insert—

"*93ZD Power to seize bladed articles etc*

(1) This section applies where—

(a) a service policeman is lawfully on any premises which are searchable by virtue of this Part, or

(b) a person subject to service law who is not a service policeman is lawfully on any premises in the exercise of a power of search conferred by virtue of this Part.

(2) If the service policeman or person subject to service law—

(a) finds, on the premises, an article which has a blade or is sharply pointed (a "relevant article"), and

(b) has reasonable grounds for suspecting that the relevant article would be likely to be used in connection with unlawful violence (if it were not seized),they may seize the relevant article.

(3) The following provisions apply where a relevant article is seized under this section.

(4) The service policeman or person subject to service law who seized the relevant article—

(a) must give a record of what was seized to a person who is on the premises, or

(b) if there is no person on the premises, must leave a record of what was seized in a prominent place on the premises.

(5) The record must—

(a) describe the relevant article,

(b) state that it has been seized under this section,

(c) specify the date of seizure,

(d) give the reason why the relevant article was seized, and

(e) specify the name, rank or rate, and the unit, of the service policeman or person subject to service law who seized the relevant article.

(6) Following seizure of the relevant article, the service policeman or person subject to service law may—

(a) retain it, or

(b) destroy it or otherwise dispose of it. This is subject to subsections (7) and (12).

(7) A person ("P") claiming to be the owner of the relevant article may apply to the commanding officer of the relevant person for a determination that the relevant article should be delivered to P.

(8) The "relevant person" is the person by virtue of whose occupation of or other connection with the premises, the premises are within subsection (1).

(9) The commanding officer may make a determination under subsection (7) if it appears to them that—

(a) P is the owner of the relevant article, and

(b) it would be just to make the determination.

(10) If the commanding officer does not make a determination under subsection (7), P may appeal to a judge advocate.

(11) The Secretary of State may by regulations make provision—

(a) with respect to the practice and procedure which is to apply in connection with applications for a determination under subsection (7) and appeals under subsection (10);

(b) conferring functions on judge advocates in relation to appeals under subsection (10).

(12) The relevant article may not be destroyed or disposed of—

(a) in the period of 6 months beginning with the day on which it is seized, or

(b) if an application under subsection (7) is made in that period, until the application (including any appeal) has been finally determined or otherwise disposed of (and then, only if no determination is made that the relevant article should be delivered to P).

(13) In this section "unlawful violence" includes—

(a) unlawful damage to property, and

(b) a threat of unlawful violence (including of unlawful damage to property).""—*(Chris Philp.)*

This new clause amends the Armed Forces Act 2006 to make provision equivalent to that made by clause 18 of the Bill.

Brought up, read the First and Second time, and added to the Bill.

New Clause 11

STOLEN GOODS ON PREMISES (ENTRY, SEARCH AND SEIZURE WITHOUT WARRANT): ARMED FORCES

"In the Armed Forces Act 2006, after section 93 insert—

"*93ZA Search for particular stolen goods*

(1) A service policeman of at least the rank of naval lieutenant, military or marine captain or flight lieutenant may authorise a service policeman to—

(a) enter specified premises which are relevant residential premises, and

(b) search the specified premises for specified items.

(2) An officer may give an authorisation under subsection (1) only if satisfied that there are reasonable grounds to believe that—

(a) the specified items are stolen goods,

(b) the specified items are on the specified premises, and

(c) it is likely that the purpose of the search would be frustrated or seriously prejudiced if no search could be carried out before the time mentioned in subsection (3).

(3) That time is the earliest time by which it would be practicable—

(a) for a service policeman to obtain and execute a warrant under section 83 authorising the entry and search of the premises, or

(b) in a case where a member of a UK police force could obtain a warrant under section 8 of PACE or any other enactment authorising the entry and search of the premises, for a member of such a force to obtain and execute such a warrant.

(4) An officer may give an authorisation under subsection (1) orally or in writing.

(5) As soon as reasonably practicable after giving the authorisation the officer must record in writing—

(a) if the authorisation is given orally, the authorisation, and

(b) in any case, the officer's reasons for being satisfied as mentioned in subsection (2).

(6) The powers conferred by an authorisation under subsection (1) may be exercised only—

(a) by a service policeman in uniform,

(b) before the end of the 24 hour period beginning with the time the authorisation is given, and

(c) at a reasonable hour (unless it appears to the service policeman that exercising them at a reasonable hour may frustrate or seriously prejudice the purpose of exercising them).

(7) The power of search conferred by an authorisation under subsection (1) is exercisable only to the extent that is reasonably required for the purpose of searching the specified premises for the specified items.

(8) Where the occupier of the specified premises is present at the time the service policeman seeks to enter and search them, the service policeman must—

(a) identify themselves to the occupier, and

(b) state the purpose for which they are entering and searching the premises.

93ZB Seizure on search under section 93ZA

(1) This section applies where a service policeman is lawfully on relevant residential premises in exercise of the powers conferred by an authorisation under section 93ZA(1).

(2) The service policeman may seize anything which is on the specified premises (whether or not it is a specified item) if the service policeman has reasonable grounds to believe—

(a) that it is stolen goods, and

(b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged altered or destroyed.

(3) The service policeman may seize anything which is on the specified premises (whether or not it is a specified item) if the service policeman has reasonable grounds to believe—

(a) that it is evidence in relation to—

(i) an offence under section 42 which the service policeman is investigating, or

(ii) any other offence under section 42,

as respects which the corresponding offence under the law of England and Wales is theft, and

(b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, damaged, altered or destroyed.

(4) The powers of seizure in subsections (2) and (3) include power to require information which is stored in an electronic form and is accessible from the premises to be produced in a form—

(a) in which it can be taken away and which it is visible and legible, or

(b) from which it can readily be produced in a visible and legible form.

(5) As soon as reasonably practicable after exercising a power of seizure conferred by this section, the service policeman must record in writing—

(a) the grounds on which the power was exercised, and

(b) the items seized.

93ZC Sections 93ZA and 93ZB: supplementary

(1) The powers conferred by sections 93ZA and 93ZB do not include powers to search for or seize—

(a) items subject to legal privilege,

(b) excluded material, or

(c) special procedure material.

(2) In sections 93ZA and 93ZB "specified" means specified in an authorisation under section 93ZA(1).

(3) Sections 93ZA and 93ZB are to be construed in accordance with section 24 of the Theft Act 1968, reading references in that section to blackmail and fraud as including an offence under section 42 as respects which the corresponding offence under the law of England and Wales is blackmail or fraud.

(4) In sections 93ZA and 93ZB the following expressions have the meanings given by section 84—

"excluded material"

"items subject to legal privilege"

"relevant residential premises"

"special procedure material" .""—*(Chris Philp.)*

This new clause amends the Armed Forces Act 2006 to make provision equivalent to the provision inserted into the Theft Act 1968 by clause 19 of the Bill.

Brought up, read the First and Second time, and added to the Bill.

New Clause 12

POWERS TO COMPEL ATTENDANCE AT SENTENCING HEARING: ARMED FORCES

"(1) The Armed Forces Act 2006 is amended as follows.

(2) After section 259 insert—

"Attendance at sentencing hearings

259A Power to order attendance

(1) This section applies where—

(a) an offender has been convicted of a service offence in respect of which a life sentence may, or must, be passed,

(b) the offender is kept in service custody awaiting sentencing by the Court Martial, and

(c) the offender has refused, or there are reasonable grounds to suspect the offender will refuse, to attend court for the sentencing hearing.

(2) The Court Martial may order the offender to attend court for the sentencing hearing.

(3) An order under subsection (2) may be made by the Court Martial of its own motion or on the application of the Director of Service Prosecutions.

(4) Before making an order under subsection (2) in relation to an offender aged under 18, the Court Martial must have regard to the welfare of the offender.

(5) In this section—

"life sentence" means any of the following sentences imposed by virtue of this Act—

(a) a sentence of imprisonment for life,

(b) a sentence of detention for life during His Majesty's pleasure, or

(c) a sentence of custody for life;

"sentencing hearing" means a hearing following conviction that is held for the purposes of sentencing an offender.

(6) Nothing in this section limits any other power of the Court Martial to order an offender to attend court for a sentencing hearing.

259B Power to order production of offender

(1) This section applies where—

(a) an offender aged 18 or over is kept in service custody awaiting sentencing by the Court Martial or the Service Civilian Court in respect of a service offence, and

(b) the offender has refused, or there are reasonable grounds to suspect the offender will refuse, to attend court for the sentencing hearing.

(2) The court may order that the offender is produced before the court for the sentencing hearing.

(3) An order under subsection (2) may be made by the court of its own motion or on the application of the Director of Service Prosecutions.

(4) A person subject to service law who is authorised for the purposes of this section by the Provost Marshal of the Royal Military Police may use reasonable force, if necessary and proportionate, to give effect to an order under subsection (2).

(5) In this section "sentencing hearing" has the meaning given by section 259A.

(6) A person is to be treated as having complied with an order under subsection (2) if they have done all that they reasonably can to secure that the offender is produced before the court for sentencing.

(7) Nothing in this section affects—

(a) any other power of the court to order that an offender is produced before the court for a sentencing hearing;

(b) any other power to use force."

(3) In section 309 (offences of misbehaviour in court etc)—

(a) after subsection (1) insert—

"(1A) The Court Martial also has jurisdiction under this section to deal with an offender who fails without reasonable excuse to comply with an order under section 259A(2) (order to attend sentencing hearing)."

(b) in subsection (2)(a) after "days" insert "or, in a case within subsection (1A), 2 years"."—*(Chris Philp.)*

This new clause amends the Armed Forces Act 2006 to make provision equivalent to the provision inserted into the Sentencing Code by clause 22 of the Bill.

Brought up, read the First and Second time, and added to the Bill.

New Clause 13

TESTING OF PERSONS OUTSIDE OF POLICE DETENTION FOR PRESENCE OF CONTROLLED DRUGS

"(1) The Police and Criminal Evidence Act 1984 is amended as set out in subsections (2) to (5).

(2) In section 30 (arrest elsewhere than at police station), after subsection (11) insert—

"(11A) Nothing in subsection (1A) or in section 30A prevents a constable delaying taking a person to a police station, or releasing the person under section 30A, for such time as is reasonable for the purpose of taking a sample under section 32A.

(11B) Where there is any such delay the reasons for the delay must be recorded when the person first arrives at the police station or (as the case may be) is released under section 30A."

(3) After section 32 (search upon arrest) insert—

"32A Testing for presence of controlled drugs upon arrest at a place other than a police station

(1) An approved constable may take a single non-intimate sample from a person for the purpose of ascertaining whether any specified controlled drug is in the person's body, if the following conditions are met—

(a) the arrest condition,

(b) the age condition, and

(c) the request condition.

(2) The arrest condition is that section 30(1A) applies in respect of the person and either—

(a) the offence for which the person was arrested is a trigger offence, or

(b) a constable of at least the rank of inspector—

(i) has reasonable grounds for suspecting that the misuse by the person of a specified controlled drug caused or contributed to the offence for which the person was arrested, and

(ii) has authorised the sample to be taken.

(3) The age condition is that the person is aged 18 or over.

(4) The request condition is that an approved constable has requested the person to give the sample.

(5) Before requesting the person to give a sample, an approved constable must—

(a) warn the person that if, when so requested, the person fails without good cause to do so the person may be liable to prosecution, and

(b) in a case within subsection (2)(b), inform the person of the giving of the authorisation and of the grounds in question.

(6) A sample may only be taken under this section—

(a) at or near the place where an approved constable requested the person to give the sample, and

(b) before the person has been taken to a police station or released under section 30(7) or 30A.

(7) If a sample is taken from a person under this section, an approved constable must give the person a notice in writing which sets out—

(a) the offence in respect of which the arrest condition is met;

(b) in a case within subsection (2)(b), details of the authorisation and the grounds in question;

(c) the date and time when the sample was taken;

(d) the location where the sample was taken;

(e) whether an analysis of the sample reveals that a specified controlled drug may be present in the person's body.

(8) A notice under subsection (7) must be given as soon as reasonably practicable and in any event before the earlier of the person being released or charged with the offence in respect of which the arrest condition is met.

(9) A person who fails without good cause to give any sample which may be taken from the person under this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale (or both).

32B Section 32A: supplementary

(1) A constable of at least the rank of inspector may give an authorisation under section 32A(2)(b) orally or in writing but, if it is given orally, the constable must confirm it in writing as soon as is practicable.

(2) If a person from whom a sample is taken under section 32A is taken to a police station, the constable giving the notice under section 32A(7) must secure that a record is made, as part of the person's custody record, of the matters set out in the notice.

(3) If a person from whom a sample is taken under section 32A is released under section 30(7) or 30A, the constable giving the notice under section 32A(7) must, as soon as is practicable after the notice is given, make a record in writing of the matters set out in the notice.

(4) Section 32A does not prejudice the generality of section 63.

(5) In section 32A—

"approved constable" means a constable who has been approved for the purposes of section 32A by the chief officer of police of the police force to which the constable belongs (or, where the constable belongs to the British Transport Police Force, by the chief constable of the British Transport Police Force);

"non-intimate sample" has the same meaning as in Part 5 (see section 65(1));

"specified controlled drug" means a controlled drug (within the meaning of the Misuse of Drugs Act 1971) specified in regulations under section 32C;

"trigger offence" means an offence specified in regulations under section 32C.

32C Section 32A: regulations

(1) The Secretary of State may by regulations for the purposes of section 32A—

(a) specify a controlled drug as a "specified controlled drug";

(b) specify an offence as a "trigger offence".

(2) Regulations under subsection (1)—

(a) may make different provision for different purposes or different areas; and

(b) may make transitional, transitory or saving provision.

(3) Regulations under this section are to be made by statutory instrument.

(4) A statutory instrument containing (whether alone or with other provision) regulations under subsection (1)(b) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(5) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(6) In this section "controlled drug" has the same meaning as in the Misuse of Drugs Act 1971.

32D Section 32A: disclosure of obtained information

Information obtained from a sample taken from a person under section 32A may be disclosed—

(a) for the purpose of informing any decision about granting bail in criminal proceedings (within the meaning of the Bail Act 1976) to the person;

(b) for the purpose of informing any decision about the giving of a diversionary caution under Part 6 of the Police, Crime, Sentencing and Courts Act 2022 to the person;

(c) where the person is in police detention or is remanded in or committed to custody by an order of a court or has been granted such bail, for the purpose of informing any decision about the person's supervision;

(d) where the person is convicted of an offence, for the purpose of informing any decision about the appropriate sentence to be passed by a court and any decision about the person's supervision or release;

(e) for the purpose of an assessment which the person is required to attend by virtue of section 9(2) or 10(2) of the Drugs Act 2005;

(f) for the purpose of proceedings against the person for an offence under section 12(3) or 14(3) of that Act;

(g) for the purpose of ensuring that appropriate advice and treatment is made available to the person."

(4) In section 63B, after subsection (5D) insert—

"(5E) A sample may not be taken from a person under this section if—

(a) the person is in police detention by virtue of being taken to a police station after being arrested at a place other than a police station, and

(b) a sample was taken from the person under section 32A."

(5) In section 66(2) (codes of practice), after "section" insert "32A or".

(6) In Schedule 1 to the Bail Act 1976 (persons entitled to bail: supplementary provisions), in Part 1 (defendants accused or convicted of imprisonable offences), in paragraph 6B(1)(b)(i), after "under section" insert "32A or"."—*(Chris Philp.)*

The new clause provides for testing of controlled drugs upon arrest at a place other than a police station and makes related changes.

Brought up, read the First and Second time, and added to the Bill.

New Clause 14

TERRORIST OFFENDERS

"(1) Schedule (Notification orders) amends Part 4 of the Counter-Terrorism Act 2008 (notification requirements) so as to enable courts to make notification orders in respect of persons who have committed certain domestic offences or service offences.

(2) In section 43B of the Terrorism Act 2000 (terrorist offenders released on licence: arrest without warrant pending recall decision) in subsection (4) after paragraph (d) insert—

"(e) a person in respect of whom—

(i) a domestic offence notification order (within the meaning of Schedule 4A to the Counter-Terrorism Act 2008), or

(ii) a service offence notification order (within the meaning of Schedule 6A to that Act),

has been made and who is serving a sentence for the offence by virtue of which the order was made.""—*(Chris Philp.)*

This new clause introduces the Schedule moved by NS1 (which provides for orders applying the notification requirements in Part 4 of the Counter-Terrorism Act 2008 to persons who have committed certain domestic offences or service offences) and also extends powers of arrest and search to persons in respect of whom such orders are made.

Brought up, read the First and Second time, and added to the Bill.

New Clause 21

DISPERSAL POWERS: REMOVAL OF SENIOR POLICE OFFICER AUTHORISATION

"(1) Omit section 34 of the Anti-social Behaviour, Crime and Policing Act 2014 (authorisation of constables to use dispersal powers by police officer of at least the rank of inspector).

(2) In consequence of subsection (1), in section 35 of that Act (directions excluding a person from an area)—

(a) in subsection (1)—

(i) omit "and an authorisation is in force under section 34";

(ii) for "in the locality specified in the direction" substitute "in a locality";

(b) in subsection (4), omit the second sentence."—*(Chris Philp.)*

This new clause removes the requirement that a police officer of at least the rank inspector must authorise the use of dispersal powers under section 35 of the Anti-social Behaviour, Crime and Policing Act 2014.

Brought up, read the First and Second time, and added to the Bill.

New Clause 22

DISPERSAL POWERS: EXTENSION TO LOCAL AUTHORITIES

"(1) The Anti-social Behaviour, Crime and Policing Act 2014 is amended as follows.

(2) In section 35—

(a) in subsections (1), for "a constable in uniform" substitute "an authorised person";

(b) in subsection (2), (3) and (6), for "constable" substitute "authorised person";

(c) after subsection (4), insert—

"(4A) Each of the following is an "authorised person"—

(a) a constable in uniform;

(b) a person authorised for the purposes of this Part by the local authority in whose area the public place mentioned in subsection (1) is situated ("authorised LA officer")."

(d) after subsection (6), insert—

"(6A) A direction given by an authorised LA officer under this section is not valid if the officer—

(a) is asked by the person to whom the direction is given to show evidence of their authorisation, and

(b) fails to do so."

(e) in subsection (7), for "the constable" substitute "a constable in uniform in the public place";

(f) for subsection (8) substitute—

"(8) Any constable may withdraw or vary a direction given by a constable under this section.

(8A) Any authorised LA officer may withdraw or vary a direction given by an authorised LA officer under this section.

(8B) A variation under subsection (8) or (8A) must not extend the duration of a direction beyond 48 hours from when it was first given."

(g) in subsection (11), for ""exclusion period"" to the end substitute "—

"authorised person" has the meaning given by subsection (4A);

"exclusion period" has the meaning given by subsection (1)(b);

"local authority" has the same meaning as in Part 1 (see section 20)."

(3) In section 36 (restrictions)—

(a) in subsections (1), (2), (3) and (4), for "A constable" substitute "An authorised person";

(b) in subsection (1), for "constable", in the second place it appears, substitute "authorised person";

(c) in subsection (5), for "a constable" substitute "an authorised person".

(4) In section 38 (record-keeping), in subsections (1) and (2), for "A constable" substitute "An authorised person".

(5) In section 41 (guidance), in subsection (1), for "chief officers of police" to the end substitute "—

(a) chief officers of police about the exercise, by officers under their direction or control, of those officers' functions under this Part;

(b) local authorities about the exercise, by persons authorised under section 35(4A)(b), of those persons' functions under this Part.""—*(Chris Philp.)*

This new clause confers dispersal powers under Part 3 of the Anti-social Behaviour, Crime and Policing Act 2014 on persons authorised by local authorities for the purposes of the Part.

Brought up, read the First and Second time, and added to the Bill.

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

3.27 pm

Adjourned till Tuesday 30 January at twenty-five minutes past Nine o'clock.