

Research Briefing

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# Victims and Prisoners Bill: Progress of the Bill



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## Summary

The [Victims and Prisoners Bill](#) was introduced to the House of Commons on 28 March 2023. The Bill is split into three main parts:

- **Victims of crime:** Part 1 of the Bill includes several proposals aimed at strengthening the rights of victims of crime and improving the way they are treated and the services they receive.
- **Victims of major incidents:** Part 2 of the Bill is aimed at ensuring support for victims and bereaved in the aftermath of major incidents by introducing a framework for the Justice Secretary to appoint independent public advocates following an incident to assist them.
- **Prisoners and parole:** Part 3 of the Bill includes several proposals for reforming the parole system and Parole Board proceedings with the aim of ensuring that public protection is kept as the primary focus for decisions to release people.

The Bill was given [second reading](#) on 15 May 2023 and considered by a [Public Bill Committee](#) over 14 sittings between 20 June 2023 and 11 July 2023. The Committee took evidence from expert witnesses for the first four sittings and external stakeholders submitted written evidence. The Bill was [carried over](#) to the 2023-24 session and was discussed in the [background briefing notes](#) produced by the Government for the 2023 King's Speech. The dates for the remaining stages have not yet been announced.

This briefing has been prepared ahead of Commons report stage and summarises what happened during second reading and committee stage. The Bill, together with its Explanatory Notes and an overview of its parliamentary progress, is available on the [Parliamentary website](#). The Government's impact assessments for the proposals and factsheets are available on [GOV.UK](#).

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# 1 Background to the Bill

## 1.1 Overview of the Bill

The Bill has three key aims:

- to improve the treatment of victims of crimes and strengthen their rights;
- to improve the support available for, and representation of, victims and bereaved families in the aftermath of major incidents; and
- to ensure that public protection is kept as the primary focus in decisions to release parole-eligible prisoners and provide the Justice Secretary with greater powers in the parole system, including over certain release decisions.

The Bill is split into three parts to deliver on each of these areas.

### Part 1: Victims of crime

The proposals in Part 1 of the Bill include placing the key principles of the [Victims' Code](#)<sup>1</sup> in primary legislation and placing duties on criminal justice bodies to raise awareness of the code and to collect and review information on their compliance with it. [Police and Crime Commissioners](#) (PCCs) would also be given a corresponding duty to monitor compliance of criminal justice agencies within their police force area.

Part 1 would also strengthen the role of the Victims' Commissioner; require statutory guidance to be issued for the roles of Independent Sexual Violence Advisers (ISVAs) and Independent Domestic Violence Advisers (IDVAs); and enable victims to escalate complaints regarding the way they have been treated by criminal justice agencies directly to the [Parliamentary and Health Service Ombudsman](#) (PHSO) without having to go to their MP first.

### Part 2: Victims of major incidents

Part 2 would introduce an 'independent public advocate' scheme. The Justice Secretary would be given the power to appoint public advocates following a major incident to support bereaved families and victims.

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<sup>1</sup> The Victims' Code sets out the minimum level of service victims can expect from criminal justice agencies

An advocate would be able to provide support in the immediate aftermath of the incident as well as assist victims while any police or coroners' investigations, inquests or public inquiries take place. They would have some data sharing powers to keep victims informed about information they may receive through these investigations. Advocates may also be required to report to the Justice Secretary on victims' experiences after major incidents.

### Part 3: Prisoners and the parole system

Part 3 of the Bill would make several reforms to the parole system and Parole Board proceedings. This includes proposals to provide the Justice Secretary with powers to veto a decision by the board to release certain individuals that fall into a 'top-tier' of serious cases. The Justice Secretary would then make the decision about release themselves.

The Bill would also give the Justice Secretary powers to mandate that the Parole Board include members with law enforcement experience and that they be involved in handling 'top-tier' cases. The Justice Secretary would also have a statutory power to remove the board's Chair if deemed necessary for ensuring public confidence in the board.

Part 3 would also prohibit prisoners sentenced to whole life orders from getting married or from forming a civil partnership.

## 1.2 Progress of the Bill

The Bill was given [second reading](#) on 15 May 2023 and considered by a [Public Bill Committee](#) over 14 sittings between 20 June 2023 and 11 July 2023. The Committee took evidence from expert witnesses for the first four sittings and external stakeholders submitted written evidence.

This briefing has been prepared ahead of Commons report stage and summarises what happened during second reading and committee stage. The Bill, together with its Explanatory Notes and an overview of its parliamentary progress, is available on the [Parliamentary website](#). The Government's impact assessments for the proposals and factsheets are available on [GOV.UK](#).

Full policy background to the Bill as it was introduced, and analysis of its clauses, is set out in the Library briefing: [The Victims and Prisoners Bill](#).

The dates for the remaining stages have not yet been announced.

## 1.3 Debate during second reading

The Bill was given a second reading without division.

Introducing the Bill, the Lord Chancellor and Secretary of State for Justice, Alex Chalk, said it would:

... boost victims' entitlements; make victims' voices heard, including following a major incident like the tragedy of Grenfell or Hillsborough; and deliver further safeguards to protect the public.<sup>2</sup>

## Part 1: Victims of Crime

The Secretary of State said the Government's "mission" with this Bill is to ensure criminal justice agencies recognise that "in order to deliver justice, victims must be treated not as mere spectators of the criminal justice system, but as core participants in it".<sup>3</sup>

The intention of Part 1 of the Bill was broadly welcomed by members, but some reoccurring concerns were raised:

- that the Bill does not address non-compliance with the Victims' Code and that the principles of the Victims' Code provided in the Bill do not sufficiently strengthen the code's position in law;
- that there is no new funding committed to go alongside the Bill to support the duty of co-operation and collaboration placed on commissioners; and
- that the Bill does not include explicit provisions to recognise and ensure dedicated support for a range of particular groups, including victims of anti-social behaviour (ASB), fraud, and criminal exploitation.

## Part 2: Victims of major disasters

Alex Chalk said Part 2 of the Bill "provides better support for victims and the bereaved after major disasters such as terror attacks" by introducing "the UK's first ever independent public advocate - an advocate to give a voice to those who have too often felt voiceless."<sup>4</sup>

Sir Robert Neill, Chair of the Justice Select Committee, said he hoped the Secretary of State would look again at the proposed scheme, particularly in relation to equality of arms for bereaved families at inquests when the actions of a state body are under scrutiny.<sup>5</sup>

Maria Eagle was critical of the Government's proposals, which she said denied agency to bereaved families. Maria Eagle also said Part 2 of the Bill lacked provision in relation to powers to establish a body akin to the

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<sup>2</sup> [HC Deb 15 May 2023, c583](#)

<sup>3</sup> [HC Deb 15 May 2023, c583](#)

<sup>4</sup> [HC Deb 15 May 2023, c588](#)

<sup>5</sup> [HC Deb 15 May 2023, c601](#)



Hillsborough Independent Panel and in relation to making a public advocate a data controller.<sup>6</sup>

### Part 3: Prisoners and parole

Speaking to Part 3, the Secretary of State said “Overwhelmingly, the Parole Board does its difficult job well” as “over 99% of prisoners authorised for release by the Parole Board do not go on to commit a so-called serious further offence.” However, he said, citing the decisions to release John Worboys and Colin Pitchfork, “occasionally things go wrong, and when they do, the implications for public confidence can be very grave”. He said such cases are rare but unacceptable and that steps to further strengthen the system were needed to ensure public confidence “that murderers, rapists and terrorists will be kept behind bars for as long as necessary to keep the public safe”.<sup>7</sup>

Whilst agreeing with the policy objective of ensuring public confidence in the parole system, Sir Robert Neil, Chair of the Justice Committee, stated there were serious questions about how operationally effective nearly all of the principal aspects of Part 3 would be.<sup>8</sup> Regarding the proposed new role for the Secretary of State in top-tier cases, members expressed concerns it could unduly politicise the parole process and undermine the position of the Parole Board. There were concerns the Secretary of State would be required to make findings of fact without having heard the evidence first hand.

## 1.4

## Committee scrutiny

### The Justice Committee

The Justice Committee undertook [pre-legislative scrutiny](#) of a draft version of the Victims Bill that was published by the Government on 25 May 2022. The proposals in the draft Victims Bill largely reflect those that are now in Part 1 of the Bill laid before Parliament. The Committee’s findings are discussed in the Library’s [briefing on the draft Victims Bill](#) and in section 2 of the Library’s [briefing on the Bill produced ahead of second reading](#).

The draft Victims Bill did not include the measures now included in Parts 2 and 3 of the Bill as introduced to the Commons. The Justice Committee subsequently carried out scrutiny sessions on these additional parts of the Bill, holding [two evidence sessions on the Bill in May 2023](#).

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<sup>6</sup> [HC Deb 15 May 2023, c610](#)

<sup>7</sup> [HC Deb 15 May 2023 c590](#)

<sup>8</sup> [HC Deb 15 May 2023 c602](#)

## Part 2: Victims of major incidents – appointment of independent public advocates

The Justice Committee heard oral evidence on Part 2 of the Bill on 16 May 2023.<sup>9</sup> Witnesses who appeared before the Committee welcomed legislation for an independent public advocate but expressed numerous concerns in relation to the drafting of the provisions. These centred around the following points:

- power being given to the Secretary of State to decide whether to engage an independent public advocate in the event of a major incident, rather than that power being given to the public advocate
- the need for a standing appointment, as opposed to a discretionary appointment by the Secretary of State
- the vesting of too much power in the Secretary of State in the context of the independence of the public advocate and establishing trust with those affected by a major incident
- the precise role and functions of an independent public advocate, and the requirement for clarity around the appointment of multiple public advocates
- the need for an independent public advocate to have data controller powers in order to access and protect relevant documentation from being withheld and/or destroyed.

In a letter to the Justice Secretary following the evidence session, Committee Chair, Sir Robert Neill, said the Committee also welcomed the Government's decision to legislate to introduce an independent public advocate, but suggested it would have been preferable to do so via a separate Bill to facilitate appropriate scrutiny.<sup>10</sup>

The Committee took the view that the Government should amend the Bill to create a standing independent public advocate that would have the power to decide whether to act in the event of a major incident. Giving such power to the Secretary of State would, the Committee said, result in both delay and an absence of trust.<sup>11</sup>

While the Committee agreed that more than one advocate may need to be appointed in the aftermath of a major incident, particularly a large-scale

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<sup>9</sup> Justice Committee, [Oral evidence: Victims and Prisoners Bill, HC 1340](#) (PDF), 16 May 2023

<sup>10</sup> Justice Committee, [Letter to The Rt Hon Alex Chalk KC MP, Lord Chancellor and Secretary of State for Justice](#) (PDF), 7 June 2023, p8

<sup>11</sup> Justice Committee, [Letter to The Rt Hon Alex Chalk KC MP, Lord Chancellor and Secretary of State for Justice](#) (PDF), 7 June 2023, p9

incident, it expressed concern that the Government had failed to explain how the Bill's proposals for a panel of advocates would work in practice.<sup>12</sup>

The Chair's letter to the Justice Secretary also warned that evidence put before the Committee suggested the Government had not fully considered the nature of the core functions of the proposed independent public advocate. Sir Robert Neill said, in the Committee's view, "it is vital that the independent public advocate is empowered to act as a powerful counterweight to that of the state in the wake of a major incident".<sup>13</sup>

While the public advocate should not have formal investigatory powers, the Committee believed the advocate should have the powers of a data controller in order to access and protect relevant documentation "to ensure those affected are able to trust the process".<sup>14</sup>

### Part 3: Prisoners and the parole system

The Committee's evidence session on 9 May 2023 focused on the proposed reforms to the Parole Board and parole process and heard from practitioners, academics and representatives of the Parole Board.<sup>15</sup> Following the evidence sessions, the Chair wrote to the Justice Secretary raising concerns that the provisions would not get the attention they deserved during the Bill's passage through Parliament and that there had been limited engagement with the Parole Board in the development of the proposals.<sup>16</sup>

The Committee described the provisions that would allow the Secretary of State a role in release decisions for "top tier" prisoners<sup>17</sup> as "by far the most significant changes in the Bill". The Committee said they raised constitutional issues and had significant practical consequences for the parole process.

Witnesses to the Committee, including those from the Parole Board, struggled to think of examples of when the Parole Board would use the powers to refer a top-tier prisoner's case to the Secretary of State. The Committee concluded that the power was misconceived and said it would be concerning if the Parole Board, given its role, would ever decide that the Secretary of State was better placed to take a release decision. It recommended the provision should be removed from the Bill.

The Committee said that granting a power to enable a Secretary of State to call in a decision made by the Parole Board to release a top-tier prisoner and re-take the decision would "fundamentally change the application of the

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<sup>12</sup> Justice Committee, [Letter to The Rt Hon Alex Chalk KC MP, Lord Chancellor and Secretary of State for Justice](#) (PDF), 7 June 2023, p10

<sup>13</sup> Justice Committee, [Letter to The Rt Hon Alex Chalk KC MP, Lord Chancellor and Secretary of State for Justice](#) (PDF), 7 June 2023, p11

<sup>14</sup> Justice Committee, [Letter to The Rt Hon Alex Chalk KC MP, Lord Chancellor and Secretary of State for Justice](#) (PDF), 7 June 2023, p11

<sup>15</sup> Justice Committee, [Oral evidence: Victims and Prisoners Bill, HC 1340](#), (PDF) 9 May 2023

<sup>16</sup> Justice Committee, [Letter to The Rt Hon Alex Chalk KC MP, Lord Chancellor and Secretary of State for Justice, dated 7 June 2023, on the Victims and Prisoners Bill](#) (PDF)

<sup>17</sup> Clauses 35 and 36 (now 36 and 37)

constitutional principle of the separation of powers in respect of the parole system”. The Committee said it was not convinced that the Government had provided sufficient justification for “undermining the court-like status of the Parole Board by allowing the executive to call in the most serious release decisions”.<sup>18</sup>

The letter raised several other issues, including:

- a lack of clarity in the Bill, identified by witnesses, on the process the Secretary of State would use to make a release decision, making it impossible to assess whether the process would be adequate
- whether appeals for prisoners refused release by the Secretary of State would be better dealt with by the Court of Appeal Criminal Division rather than the Upper Tribunal
- a lack of clarity as to why a power to remove the Chair of the Parole Board was required, given there is already a protocol in place.

Overall, the Committee questioned whether the provisions in Part 3 of the Bill would result in any improvement to the way the Parole Board operates and make the public any safer, concluding that it was far from clear from the evidence received that they would.

## The Joint Committee on Human Rights

The Joint Committee on Human Rights (JCHR) carried out legislative scrutiny in respect of the Bill. The Committee wrote to the Justice Secretary with its key concerns and proposals for amendments to the Bill.<sup>19</sup>

On Part 2, the Committee welcomed the introduction of an independent public advocate but proposed the Bill be amended to require the establishment of a standing public advocate, fully independent from Government and able to take action to provide support to victims in the immediate aftermath of major incidents.

On the parole reforms in Part 3, the JCHR said that the Secretary of State cannot take a decision in respect of release that complies with Article 5(4) of the European Convention on Human Rights. Article 5(4) ECHR provides that a person deprived of their liberty is entitled to have the lawfulness of their detention decided speedily by a court. The Committee noted the Secretary of State is not a “court”, as they are neither judicial nor independent and are effectively a party to Parole Board cases.

The Committee said the right of appeal to the Upper Tribunal included in the Bill was not enough to meet its concerns in relation to Article 5. The

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<sup>18</sup> Justice Committee, [Letter to The Rt Hon Alex Chalk KC MP, Lord Chancellor and Secretary of State for Justice, dated 7 June 2023, on the Victims and Prisoners Bill](#) (PDF)

<sup>19</sup> Joint Committee on Human Rights, [Letter from Harriet Harman to Alex Chalk](#), (PDF), 14 September 2023

Committee therefore concluded that the power for the Secretary of State to quash decisions of the Parole Board to release certain prisoners and retake them is incompatible with Article 5 ECHR and should be removed from the Bill.

The JCHR also concluded that proposed powers to allow the Secretary of State to amend the Parole Board Rules to require particular cases to be dealt with by a Parole Board panel including members with particular backgrounds amounted to an interference with the independence of the Parole Board and puts at risk the Parole Board's compliance with Article 5. It said similar risks are raised by the Bill's introduction of a statutory power to enable the Secretary of State to dismiss the Chair of the Parole Board.

The JCHR said that the provisions that would disapply [section 3](#) of the Human Rights Act 1998 (which requires, so far as it is possible to do so, legislation to be read and given effect in a way which is compatible with the Convention rights) should be removed from the Bill. The Committee said in disapplying section 3 in respect of a particular cohort the Government risked undermining the fundamental principle that human rights are universal.

The JCHR said the Bill should be amended to include provisions on resentencing prisoners serving sentences of imprisonment for public protection and on mothers in prison.

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## 2 Committee stage for Part 1: Victims of Crime

### 2.1 An overview of committee stage for Part 1 of the Bill

A Public Bill Committee undertook clause-by-clause consideration of Part 1 of the Bill on victims of crime over six sittings between 27 June and 5 July 2023.<sup>20</sup>

The only substantive change made to Part 1 was a Government new clause on access to third party material during a criminal investigation: see section 2.6 of this briefing for further details. The Committee considered a range of other opposition party amendments but none of these were agreed.

#### Main debate and opposition party amendments

The Committee discussed several opposition party amendments to:

- expand the definition of victim provided for part of the Bill in order to specifically refer to particular groups, including victims of ASB, victims of child criminal exploitation, and victims of harassment and bullying;
- expand the key principles on the face of the Bill that would need to be reflected in the Victims' Code, for example by adding requirements to notify victims if a perpetrator changes their name and for criminal justice agencies to refer victims to restorative justice services;
- further strengthen the Victims' Commissioner's role, including by placing a duty on specified public authorities to co-operate with the Victims' Commissioner in any way considered necessary by the Commissioner to monitor compliance with the Victims' Code;
- expand the requirements of the duty to collaborate that would be placed on PCCs, local authorities and integrated care boards with regards to their roles in commissioning support services for victims of domestic abuse, sexual offences, and serious violence; and

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<sup>20</sup> This was in addition to the first four sittings where the Public Bill Committee took oral evidence from expert stakeholders across the whole of the Bill

- require the Government to issue statutory guidance on independent stalking advocacy caseworkers and a broader range of specialist services.

The majority of the amendments were not put to a vote and were not successful in amending the Bill. The Committee divided on:

- **amendment 10** to add ASB victims to the definition of victim, which was defeated by eight votes to seven;
- **amendment 19** to add services for victims of fraud to the duty to collaborate, which was defeated by nine votes to five; and
- **amendment 64** to add that the Victims' Code must require that victims of domestic abuse be informed of their rights to 'special measures' in family proceedings, which was defeated by six votes to nine.

The overarching theme in the Government's response to these amendments was a concern of being overly prescriptive in primary legislation and duplicating existing practice that is already working well. It was felt that this risks both inadvertently restricting flexibility to respond to local needs and making it more challenging to update measures to keep pace with changes in wider policy/practice or as otherwise needed.

The Government's preferred approach is instead to provide the detail of requirements in secondary legislation, set out expectations of relevant agencies in statutory guidance, and work with partners to ensure best practice. The Government also felt that ultimately local accountability should be maintained for decisions on how to meet local victims' needs, including commissioning and delivery decisions.

The Committee agreed without division that all clauses of Part 1 of the Bill (clauses 1-23 as introduced) should stand part of the Bill.

## Government new clause

In the final session of committee stage, the Committee agreed, without division, **new clause (NC) 4** tabled by the Government. NC4 – now **clause 22** of the Bill brought forward to Report stage - would insert a new Chapter 3A into [Part 2](#) of the Police, Crime, Sentencing and Courts Act 2022 (on the prevention, investigation and prosecution of crime).

This would set out provision requiring police officers (and other authorised persons), when requesting information about a victim or potential victim of crime from a third party, to ensure that the request is relevant, necessary and proportionate for law enforcement purposes and in line with new procedural safeguards that would be introduced. Further details are set out in section 2.6 of this briefing.

## 2.2

# Definition of a victim

## Adding to the meaning of victim

**Clause 1** provides a definition of ‘victim’ for the purposes of Part 1 of the Bill. The Committee considered several opposition amendments aimed at adding particular sub-groups to this definition, including:

- victims of sexual abuse, sexual harassment and sexual misconduct, or other forms of bullying and harassment (**amendment 2** moved by Sarah Champion, Labour) and discussed alongside **amendment 3** to require that legal advice on non-disclosure agreements be made available for this group;
- victims of ASB (**amendment 10** moved by Anna McMorrin, then Shadow Minister for Victims and Youth Justice);
- victims of child criminal exploitation (**amendment 17** moved by Anna McMorrin);
- children of persons posing a sexual risk to children (**amendment 46** moved by Sarah Champion);
- families of those who have died by suicide as a result of domestic abuse (**amendment 54** moved by Jess Phillips, Shadow Minister for Domestic Violence and Safeguarding); and
- children that witness or experience crime (**amendment 63** moved by Sarah Champion).

The response to these from Edward Argar, Minister of State at the Ministry of Justice, emphasised that many people who fall under these groups would be encompassed by the Bill’s current definition if the conduct they have been directly harmed by meets the criminal standard. This is regardless of whether it is reported to the police, charged, and prosecuted.

The Minister said that extending the Bill to cover other cases, such as victims of bullying that had fallen short of criminal conduct, would stretch the parameters of the definition beyond the intended purpose of the Bill. He said the Government’s view was that Part 1 of the Bill should remain clearly focused on victims of crime with the definition having been “deliberately crafted” for those directly harmed by the crime and who need the Bill’s and Victims’ Codes’ entitlements to “navigate the criminal justice system and receive support.”<sup>21</sup>

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<sup>21</sup> [PBC Deb 27 June 2023](#), c172



The Minister also expressed concern that listing certain groups in the definition of victim risked inadvertently narrowing the definition and excluding others, creating a hierarchy of victims.

All of the above amendments were withdrawn except for amendment 10 on ASB victims which was pressed to a division. The Minister also committed to engaging with Anna McMorrin “to see what may be possible between Committee stage and Report” on victims of child criminal exploitation. More detail on the debate on each of these is set out below.

### Victims of anti-social behaviour

Anna McMorrin argued that ASB victims are passed back and forth between agencies, with neither the police nor local authorities taking responsibility for them. She said there is a disparity between the Bill’s treatment of victims of low level criminal offences, who might not be greatly affected by their experience but are entitled to rights under the Victims’ Code, and victims of ASB who face regular aggression and “feel persecuted” in their homes, who have “no access to victims’ rights and no guarantee of support”.<sup>22</sup>

However, the Minister argued that a lack of legislation is not the issue. He reiterated a “significant number of individuals who have been harmed by [ASB] are already defined as victims under the Bill” because, regardless of whether the police pursue it as such, ASB often involves a criminal offence.<sup>23</sup> Where ASB falls short of criminal conduct, the Government considered this would be better dealt with as part of the Government’s [2023 ASB Action Plan](#) to tackle ASB.<sup>24</sup>

Edward Argar said the challenge was about ensuring ASB is treated seriously by the police and other agencies, raising awareness amongst victims about their rights, and getting service providers to acknowledge those rights.<sup>25</sup>

Anna McMorrin pressed amendment 10 to a division and it was defeated by eight votes to seven.<sup>26</sup>

### Victims of child criminal exploitation

The Committee considered **amendments 17 and 18**, which would have added victims of child criminal exploitation to the definition of victim and set out a definition of child criminal exploitation.<sup>27</sup>

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<sup>22</sup> [PBC Deb 27 June 2023](#), c140

<sup>23</sup> [PBC Deb 27 June 2023](#), c148

<sup>24</sup> [PBC Deb 27 June 2023](#), c149. **Note:** Amendment 10 used the definition of ASB set out in [section 2](#) of the Anti-Social Behaviour, Crime and Policing Act 2014, which is broader than criminal behaviour.

<sup>25</sup> [PBC Deb 27 June 2023](#), c149

<sup>26</sup> [PBC Deb 27 June 2023](#), c152

<sup>27</sup> See section 2.2 of the Library briefing, [Serious Youth Violence](#), for background on the criminal exploitation of children, guidance from Government, and calls from stakeholders for a statutory definition of child criminal exploitation.

Ann McMorrin argued there is lack of shared understanding across safeguarding partners about the different “guises” criminal exploitation can take”,<sup>28</sup> meaning that children are not consistently identified as having been exploited and are often “arrested for crimes that they are forced to commit”.<sup>29</sup>

Edward Argar sought to assure the Committee that children exploited to commit criminal acts would be covered by the Bill if the “conduct they have been subjected to meets the criminal standard”.<sup>30</sup> He noted that the Government had previously explored introducing a statutory definition but concluded that existing arrangements allow better flexibility to respond to different situations.<sup>31</sup>

Anna McMorrin withdrew amendment 17. The Minister promised to reflect on the points and engage with her “to see what may be possible between Committee stage and Report”.<sup>32</sup>

### Clause stand part

Following debate on each of these amendments, the Committee agreed without division that clause 1 should stand part of the Bill.

## 2.3

## The Victims’ Code

### Expectations of the Code

**Clause 2** would require the Code to reflect the four key principles that victims “should” be provided with information, be able to access support services, have the opportunity to make their views heard, and be able to challenge decisions which have a direct impact on them.

The Committee considered a group of amendments moved by Anna McMorrin that would have replaced the word “should” with “must”.

Introducing the amendments, Anna McMorrin argued that using “should” rather than “must” would make the principles in the Bill “weak and open to interpretation.”<sup>33</sup> She highlighted that the Victims Code has been in place since 2006 and, despite several reforms, compliance with it remains low.

In response, the Minister said the Government’s aim was to provide “a legislative framework ... which ensures that the code captures the core issues” victims are most concerned about whilst still allowing flexibility by not

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<sup>28</sup> [PBC Deb 27 June 2023](#), c153

<sup>29</sup> [PBC Deb 27 June 2023](#), c154

<sup>30</sup> [PBC Deb 27 June 2023](#), c166

<sup>31</sup> [PBC Deb 27 June 2023](#), c168

<sup>32</sup> [PBC Deb 27 June 2023](#), c168

<sup>33</sup> [PBC Deb 27 June 2023](#), c190

having the detail rigidly set out in primary legislation.<sup>34</sup> He argued the Bill addresses non-compliance in other ways with new proposed duties for monitoring compliance and new oversight structures. He also highlighted that in a statutory code of practice, “agencies are required to justify any departure from [the code] if challenged by victims or the courts”.<sup>35</sup>

Anna McMorrin withdrew the lead amendment without pressing it to a division.

## Expanding the principles of the Code

The Committee went on to consider several opposition amendments aimed at adding to the list of principles set out in clause 2. This included the following:

- that victims should be able to access and, where appropriate, be referred to restorative justice services (**amendment 26** moved by Elliot Colburn, Conservative and Chair of the All-Party Parliamentary Group on restorative justice);
- that victims should be able to access appropriate compensation (**amendment 38** moved by Sarah Champion);
- that criminal justice bodies should take all reasonable steps to identify and record any change of name by a perpetrator, and inform the victim (**amendment 4** moved by Sarah Champion);
- that all criminal justice agencies should inform victims of their right to pre-trial therapy, with a further requirement on the Crown Prosecution Service (CPS) to annually review its pre-trial therapy guidance and its implementation (**amendment 53** moved by Sarah Champion); and
- that victims of domestic violence going through the family courts should be informed of their right to ‘special measures’ (**amendment 64** moved by Anna McMorrin).<sup>36</sup>

In response, Edward Argar reiterated the Government’s position that the Bill should only enshrine certain core principles, with the detail of victims’ entitlements being reserved for the Code itself. This would provide the flexibility needed to allow for “appropriate operational discretion to take account of victims’ individual circumstances” and future changes that would

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<sup>34</sup> [PBC Deb 27 June 2023](#), c191

<sup>35</sup> [PBC Deb 27 June 2023](#), c192

<sup>36</sup> Special measures are provisions that can be put in place to help witnesses to participate or give evidence in court proceedings, for example permitting the witness/party to give evidence from behind a screen or via a live video link, or having an intermediary. [Section 63](#) of the Domestic Abuse Act 2021 introduced automatic eligibility for special measures in family courts for victims of domestic abuse. That does not mean they will automatically be given. It is a matter for the court to decide which (if any) of the special measures are necessary to the circumstances. See: Home Office, [Special measures in family proceedings](#), 11 July 2022.

strengthen the Code’s entitlements without “having to go through the process of amending primary legislation”.<sup>37</sup>

All amendments to clause 2 were withdrawn except for amendment 64 in relation to informing domestic abuse victims going through the courts of their rights to special measures, which was pushed to a division and defeated by nine votes to six. The Minister also committed to seeing if “a way forward” could be found ahead of Report stage regarding the monitoring of registered sex offenders changing their names. More detail on these two debates set out below.

### Registered sex offenders and name changes

Sarah Champion moved **amendment 4**, which would have required the Victims’ Code to include provision for criminal justice bodies to take all reasonable steps to identify and record any change of name by a perpetrator and inform victims if they do. Perpetrator here would refer not just to convicted persons but those whose alleged conduct resulted in another person being a victim as defined in clause 1 of the Bill.

Introducing amendment 4, Sarah Champion explained it “is about sex offenders who are changing their names to avoid detection.” She noted it had received cross-party support from 24 MPs.<sup>38</sup>

Whilst it is illegal for registered sex offenders to change their name without notifying the police,<sup>39</sup> Sarah Champion argued that the current system relies on the individual to proactively disclose this information to the police. She cited “data secured by the BBC ... [that] over 700 registered sex offenders have gone missing in the last three years.”<sup>40</sup> She said this represents a “serious safeguarding loophole” that makes schemes that exist to detect offenders and protect members of the public (such as the sex offenders register and the Disclosure and Barring Service) “redundant”.<sup>41</sup>

The Minister argued that disclosing name changes to victims should continue to be “decided on a case-by-case basis” following “careful risk assessment” of whether it is necessary for the victim’s protection and if “it could provoke threats to the family of the offender or others” and put them at risk.”<sup>42</sup>

Edward Argar said the Government was “committed to ensuring that the system is as robust as possible” and offered to work with Sarah Champion “to

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<sup>37</sup> [PBC Deb 27 June 2023](#), c192

<sup>38</sup> [PBC Deb 29 June 2023](#), c219

<sup>39</sup> For more information on the current law, guidance and processes and calls for change, see the Library debate pack produced for a debate on [changes of name by registered sex offenders](#) on 2 March 2023. The College of Policing also provides guidance to police forces on managing [notification requirements](#) for sexual and violent offenders.

<sup>40</sup> [PBC Deb 29 June 2023](#), c221. For the original BBC report, see BBC News, [Hundreds of UK sex offenders went missing, figures show](#), 1 March 2023

<sup>41</sup> [PBC Deb 29 June 2023](#), c219

<sup>42</sup> [PBC Deb 29 June 2023](#), c227

find a way to address the issue”.<sup>43</sup> Sarah Champion accepted the offer to work with the Minister but pushed that something needs to be on the face of the Bill. In response Edward Argar offered to see whether “a way forward” could be found ahead of Report stage.<sup>44</sup> With that assurance, Sarah Champion withdrew her amendment.

### Requirements in relation to family courts for domestic abuse victims

Anna McMorris moved **amendment 64** to insert into clause 2 that the Victims’ Code must include requirements for victims of domestic abuse to be informed of their rights under [section 63](#) of the Domestic Abuse Act 2021 for ‘special measures’ in family proceedings.

Anna McMorris argued that special measures in family proceedings are “not implemented consistently” or victims are not even informed of them.<sup>45</sup> She cited a study by the Children and Family Court Advisory and Support Service, which found that domestic abuse allegations were present “in 62% of cases” in 2021 but special measures in those cases “were not being upheld”.<sup>46</sup>

Sir Oliver Heald, however, questioned how amendment 64, and special measures in and of themselves, would address concerns raised by Anna McMorris about counter-allegations in family court cases, mothers losing custody of their children, and concerns with judge’s decision-making.<sup>47</sup>

The Minister stressed that the purpose of the Victims Code, and Part 1 of the Bill, was to set “minimum expectations for victims navigating criminal justice processes” rather than proceedings such as the family court.<sup>48</sup> He also highlighted other work that the Government is doing to monitor data on special measures requests made through the online application service.<sup>49</sup>

Amendment 64 was pressed to a vote but was defeated by nine votes to six.

## 2.4

## Collaboration on commissioning for victims services

**Clause 12** would place a duty on PCCs, local authorities and integrated care boards to collaborate over their respective roles in commissioning support services for victims of domestic abuse (not including accommodation-based support), sexual offences, and serious violence.

<sup>43</sup> [PBC Deb 29 June 2023](#), c227

<sup>44</sup> [PBC Deb 29 June 2023](#), c227

<sup>45</sup> [PBC Deb 29 June 2023](#), c233

<sup>46</sup> [PBC Deb 29 June 2023](#), c233

<sup>47</sup> [PBC Deb 29 June 2023](#), c238

<sup>48</sup> [PBC Deb 29 June 2023](#), c240

<sup>49</sup> [PBC Deb 29 June 2023](#), cc240-241

**Clause 13** would also require these authorities to jointly prepare and implement a strategy for delivering their role in relation to commissioning services for victims of domestic abuse, sexual offences, and serious violence. The strategy would need to set out how the relevant authorities are fulfilling their duty to collaborate under clause 12.

## The duty to collaborate

The committee considered several opposition amendments to add further provisions to the duty to collaborate under clause 12, including:

- adding a specific requirement for relevant authorities to “conduct a joint strategic needs assessment” in order to fulfil their new duty under clause 12 (**amendment 89** moved by Sarah Champion);
- requiring authorities discharging their duty under clause 12 to collaborate with specialist women’s community-based domestic abuse and sexual violence support services within the police area (**amendment 80** moved by Jess Phillips). This was discussed alongside **NC19** (also tabled by Jess Phillips) to introduce a separate duty for relevant local authorities to commission specialist women’s-only community-based domestic abuse and sexual violence support;
- expanding the groups of victims that the duty to collaborate would apply to child victims (**amendment 9**), fraud victims (**amendment 19**), and modern slavery victims (**amendment 82**);
- specifying that collaboration under clause 12 “may include the co-location of services” (**amendment 43** moved by Sarah Champion); and
- specifying that the Secretary of State for Justice must ensure the relevant authorities have sufficient funding to exercise their functions in relation to relevant victim support services (**amendment 83** moved by Sarah Champion).

In his responses to these amendments, the Minister said the Government wanted to strike the appropriate balance between what is mandated in legislation and what flexibility is left to local commissioners to determine what services to fund based on local knowledge of need.

He expressed concern about being too prescriptive about what local commissioners must fund and how they must go about this, noting that there are other mechanisms, “be they through statutory guidance or through commissioning guidance”,<sup>50</sup> to encourage good commissioning practice, stakeholder consultation, and commissioning of specialist services. He also argued that requiring in the Bill that certain specialist services be consulted

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<sup>50</sup> [PBC Deb 4 July 2023](#), c300

or funded could risk creating “a hierarchy of services or unintentionally omitting organisations providing valuable and important services”.<sup>51</sup>

The Government’s chosen approach is to set out in guidance expectations of how relevant authorities should deliver their duty under clauses 12 and 13. The Minister said that ultimately it is for directly elected and accountable PCCs to make commissioning decisions and “be accountable to their electorate and their public for what they are doing and whether they are making the right decisions”.<sup>52</sup>

Most amendments were withdrawn. However following debate on expanding the groups of victims that the duty to collaborate would apply to, amendment 19 to incorporate services for victims of fraud into the duty was pushed to a division but defeated. More detail is provided below.

### Expanding types of victim support services subject to the collaboration duty

Anna McMorris moved **amendment 9** to extend the duty in clause 12 to collaborate on commissioning victim support services to services for child victims. This was discussed in a group with **amendment 19** and **amendment 82** to do the same for victims of fraud and modern slavery respectively.

Anna McMorris said that although the duty to collaborate was welcome, it had “a restrictive remit” that “excludes vulnerable victims who would benefit from joined-up services”,<sup>53</sup> including:

- **children:** Anna McMorris said that “according to Victim Support, children and young people are disproportionately more likely to be victims of crime, particularly the most serious crime”.<sup>54</sup> She argued that “including them in the duty to collaborate is imperative to ensuring that the relevant agencies are prioritising children’s unique needs” and enabling “every child to have the same experience and the best support”.<sup>55</sup>
- **fraud victims:** Anna McMorris highlighted that “fraud is the UK’s most prevalent crime type”<sup>56</sup> and argued that it should be included in the Bill’s duty to collaborate because it has significant costs to victims’ mental health and wellbeing but (in her view) is currently treated as “victimless” or second-tier crime that does not affect people’s lives.<sup>57</sup>
- **modern slavery:** Sarah Champion said there is a “gap for victims before and after their contact with the NRM [national referral mechanism]”, with “confusion among local authorities about their responsibilities for

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<sup>51</sup> [PBC Deb 4 July 2023](#), c301

<sup>52</sup> [PBC Deb 4 July 2023](#), c300

<sup>53</sup> [PBC Deb 4 July 2023](#), c305

<sup>54</sup> [PBC Deb 4 July 2023](#), c306

<sup>55</sup> [PBC Deb 4 July 2023](#), c306

<sup>56</sup> [PBC Deb 4 July 2023](#), c306

<sup>57</sup> [PBC Deb 4 July 2023](#), c307

supporting modern slavery victims” and “a lack of co-ordination with specialist support providers under the Home Office modern slavery victim care contract”.<sup>58</sup> She argued that as drafted “clause 12 lacks clarity in respect of modern slavery victims” and if clarified it could help to address victims being “passed from pillar to post, unable to access the support they need.”<sup>59</sup>

In response Edward Argar explained the Government had designed the duty to collaborate to be focused on services for victims of domestic abuse, sexual offences, and serious violence “because they are particularly traumatic crimes with a high number of victims each year” and because these were crimes “where there will be a particular benefit from collaboration, as victims of them typically access a range of services across health, local authorities and policing”.<sup>60</sup>

The Minister noted that outside of the Bill, the Government were committed to supporting victims of all crime types. For example, he said multi-agency ‘hubs’ to improve support for fraud victims would be rolled out across England and Wales and that the Government has invested in the National Economic Crime Victim Care Unit.<sup>61</sup> With regards to children and modern slavery, he said the duty would apply to them where they are “victims of domestic abuse, sexual abuse and other serious violent offences.”

Amendment 9 on child victims was withdrawn but amendment 19 on services for victims of fraud was pushed to a division by Anna McMorrin. It was defeated by nine votes to five.

## 2.5

### Independent domestic violence and sexual violence advisors

**Clause 15** would require the Secretary of State to issue statutory guidance about IDVAs and ISVAs that covers their role, the types of services they provide to victims, how other criminal justice professionals should work with them, and the training and qualifications they should have.

#### Creating a ‘hierarchy’ of services

There was discussion about the implications of clause 15 for the diversity of the wider support sector for victims and the needs of different victims. Opposition members raised concerns about whether including just IDVAs and ISVAs in the Bill would create a ‘hierarchy’ of support services both for the

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<sup>58</sup> [PBC Deb 4 July 2023](#), c307

<sup>59</sup> [PBC Deb 4 July 2023](#), c308

<sup>60</sup> [PBC Deb 4 July 2023](#), c309

<sup>61</sup> [PBC Deb 4 July 2023](#), c310



types of specialist services available for victims of domestic abuse and sexual violence and for victims of other crime types.

### Victims of stalking

Sarah Champion moved **amendment 57** for the statutory guidance to include independent stalking advocacy caseworkers. She highlighted that “while IDVAs and ISVAs do vitally important work for their specific victim groups, they are not necessarily stalking specialists”.<sup>62</sup> She also argued that professionals within criminal justice agencies lack training and expertise on the complexities of this crime.

Sarah Champion felt that extending the statutory guidance to stalking advocacy caseworkers would raise understanding about stalking and ensure that victims get access to the right support.<sup>63</sup> Jess Phillips echoed that “stalking is distinct from the crimes of sexual violence and domestic abuse” and “largely misunderstood”.<sup>64</sup>

In response, the Minister said the Government has chosen to focus specifically on ISVAs and IDVAs in the Bill because its consultation “highlighted that greater consistency and awareness of ISVAs and IDVAs was particularly needed, especially given the number now working across the sector”.<sup>65</sup>

He said the Government had not yet seen evidence of the same need for this for independent stalking advocacy caseworkers and the issuing of guidance for ISVAs and IDVAs “should not be taken to indicate any sort of funding or other hierarchy of them over independent stalking advocacy caseworkers”.<sup>66</sup>

Edward Argar also suggested that once the Bill has passed, it would provide an important opportunity “to assess the impact and effectiveness of the guidance ... before considering whether to extend it to other groups”.<sup>67</sup>

The Minister offered to work with Sarah Champion to consider “how and whether Government support to independent stalking advocacy caseworkers can be improved” and on this basis she withdrew amendment 57.<sup>68</sup>

### Specialist services more widely

Sarah Champion then moved **amendment 62** to expand clause 15 to “any other specialist community-based services relevant to the criminal conduct”. This was discussed alongside **amendment 61**, which would have defined “specialist community-based service” as “a person who provides a relevant service to individuals based on a protected characteristics under the Equality Act 2010 or the specific nature of the crime faced by the victim”, and **NC18**

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<sup>62</sup> [PBC Deb 4 July 2023](#), c344

<sup>63</sup> [PBC Deb 4 July 2023](#), c344

<sup>64</sup> [PBC Deb 4 July 2023](#), c346

<sup>65</sup> [PBC Deb 4 July 2023](#), c347

<sup>66</sup> [PBC Deb 4 July 2023](#), c348

<sup>67</sup> [PBC Deb 4 July 2023](#), c348

<sup>68</sup> [PBC Deb 4 July 2023](#), c348

(tabled by Jess Phillips) to specifically require the Government to issue statutory guidance about ‘community-based specialist domestic abuse services’.

Sarah Champion said only defining IDVA and ISVA roles could encourage victims to be directed to “support based in the criminal justice system rather than whichever form suits them best”.<sup>69</sup> She explained the intention behind amendment 62 (which “complements and reflects” that of NC19) was to ensure “that all forms of specialist support are seen as just as crucial as that provided by ISVAs and IDVAs”.<sup>70</sup>

Jess Phillips echoed concerns about creating a hierarchy of services by “only formalising the IDVA models”, which could de-prioritise and “adversely affect other models of community-based specialist provision”, particularly ‘by-and-for’ services for victims with protected characteristics.<sup>71</sup> She said:

The consultation may have said that it was important to identify and define IDVAs and ISVAs and to ensure that criminal justice agencies ... take them seriously. Who could disagree with that? However, if we were to consult any agency that runs IDVA or ISVA services, or domestic abuse and sexual violence services, not one of them would think that it should be exclusively about IDVAs and ISVAs.

... Women and children seek support and help in different ways, including outreach support, floating support, formal counselling and support groups—the list goes on.<sup>72</sup>

The Minister said it was not the Government’s intention to create a hierarchy of specialist services where IDVAs and ISVAs were favoured or more likely to be commissioned. He disagreed, however, with “the suggestion that the Government should issue statutory guidance on all forms of advocate roles or a wider range of specialist community-based services”.<sup>73</sup> He highlighted that “the amendments would encompass a vast range of support services, both nationally and locally” and did not feel it would have the intended effect of protecting the commissioning of those services or ensure greater consistency and awareness of them.<sup>74</sup>

Sarah Champion withdrew amendment 62. Amendment 61 and NC18 were not moved.

### Clause stand part

The inclusion of IDVAs and ISVAs in the Bill was broadly welcomed by Sarah Champion.<sup>75</sup> However, Jess Phillips continued to “have some real concerns

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<sup>69</sup> [PBC Deb 4 July 2023](#), c350

<sup>70</sup> [PBC Deb 4 July 2023](#), c350

<sup>71</sup> [PBC Deb 4 July 2023](#), c352

<sup>72</sup> [PBC Deb 4 July 2023](#), c352

<sup>73</sup> [PBC Deb 4 July 2023](#), c354

<sup>74</sup> [PBC Deb 4 July 2023](#), c354

<sup>75</sup> [PBC Deb 4 July 2023](#), c350

about the clause standing part of the Bill, in particular about the hierarchy”.<sup>76</sup> However she did not push the clause to a vote as it was an area of the Bill that she felt would evolve.

The question was put to the Committee whether the clause 15 should stand part of the Bill and it was agreed to without division.

## 2.6

### Government new clause: Requests for victims’ data

The Committee agreed **NC4**, a Government new clause relating to requests for victims’ data from third parties (such as medical or social services bodies, employers, or counselling services). NC4 would require the police and other specified law enforcement organisations to ensure that any requests made for such data are:

- relevant, necessary and proportionate for law enforcement purposes; and
- in line with a new code of practice that would provide procedural safeguards for requests.

NC4 appears as clause 22 in the [latest version of the Bill](#) (PDF).

### Background

#### Disclosure

Disclosure is the legal process which requires police and prosecutors to provide the defence with copies of (or access to) all material from the investigation that is capable of undermining the prosecution case and/or assisting the defence. An overview of how the process works is available on the [Crown Prosecution Service \(CPS\) website](#).<sup>77</sup>

To ensure a fair trial and avoid miscarriages of justice, the police have a duty to pursue “all reasonable lines of inquiry, whether these point towards or away from the suspect”.<sup>78</sup> The CPS notes that this duty “may extend to material in the hands of a third party”, with “frequently encountered” third parties including owners of CCTV material, social services departments, forensic experts, police surgeons and GPs/hospital authorities.<sup>79</sup>

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<sup>76</sup> [PBC Deb 4 July 2023](#), c358

<sup>77</sup> CPS, [Disclosure](#) [accessed 13 November 2023]

<sup>78</sup> Ministry of Justice, [Criminal Procedure and Investigations Act 1996 \(section 23\(1\)\) Code of Practice](#), 2020, para 3.5

<sup>79</sup> Crown Prosecution Service, [Disclosure Manual: Chapter 5 - Reasonable Lines of Enquiry and Third Parties](#), July 2022

Some of the material gathered will support the prosecution case and form part of the evidence against the defendant. Some material will be irrelevant and will not form part of the case at all. Other material will be relevant to the case but ‘unused’ by the prosecution. Police and prosecutors must consider whether any of this unused material meets the ‘disclosure test’ set out in section 3 of the [Criminal Procedure and Investigations Act 1996](#). This test requires the prosecution to disclose to the accused any prosecution material “which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused”.<sup>80</sup>

Such material could potentially include sensitive personal information obtained from third parties such as counselling records if, for example, it may undermine the victim’s credibility as a witness or support defence arguments that the allegations may be untrue.

### Concerns about disclosure of third party material

In recent years there have been concerns about how the police and CPS deal with disclosure of third party material, particularly in rape and serious sex offence cases.

For example, in a two-part joint thematic review of the criminal justice response to rape, HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) and HM Crown Prosecution Service Inspectorate (HMCPSI) found that victims “experienced necessary but intrusive questioning and searches” that left many “feeling under investigation themselves”.<sup>81</sup> The Inspectorates noted that victims had often had their “medical records, therapy records and sexual histories ... reviewed in minute detail”.<sup>82</sup> The Inspectorates said “by contrast, suspects are often not subjected to the same scrutiny during the investigation.”<sup>83</sup>

In May 2022, the Information Commissioner’s Office (ICO) also found that police in the UK were asking victims of rape and sexual assault “to consent to them accessing significant amounts of personal data”.<sup>84</sup> The ICO called for criminal justice agencies to “immediately stop” this “excessive collection of personal information”.<sup>85</sup>

In its [End-to-End Rape Review](#), published in June 2021, the Government described disclosure as an “invasive” and “intrusive” process for victims and noted that “the possibility that they may be required to hand over personal

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<sup>80</sup> Section 3 of the 1996 Act

<sup>81</sup> HMICFRS and HMCPSI, [A joint thematic inspection of the police and Crown Prosecution Service’s response to rape: Phase one: From report to police or CPS decision to take no further action](#) (PDF), 16 July 2021, p2

<sup>82</sup> As above

<sup>83</sup> As above

<sup>84</sup> ICO, [Information Commissioner calls for an end to the excessive collection of personal information from victims of rape and serious sexual assault](#), 31 May 2022

<sup>85</sup> As above

and sensitive data causes deep concern for many victims and is one of the principal reasons why they withdraw from the process”.<sup>86</sup>

There has been particular controversy about police requests to access third party material in the form of pre-trial therapy notes, where a victim of crime has been receiving therapy or counselling while the police are investigating and before a trial has started.

The CPS has published detailed legal guidance for prosecutors on [pre-trial therapy](#) and the law on disclosure.<sup>87</sup> The legal guidance explains how police and prosecutors should decide whether accessing therapy notes might be a ‘reasonable line of enquiry’, how they should engage with victims and therapists, and how therapy notes should be processed and (if appropriate) disclosed to the defence. It states:

Access to therapy notes can only be requested in an individual case when it is a reasonable line of inquiry that may reveal material relevant to the investigation or the likely issues at trial. There must be a properly identifiable foundation for the inquiry, not mere conjecture or speculation.<sup>88</sup>

The word “relevant” has been criticised by some stakeholders. For example, in a coordinated response the End Violence Against Women Coalition, Rape Crisis and the Centre for Women’s Justice said “relevant” is too broad a term and sets the bar too low for the disclosure of therapy notes. They argue this fails to protect a victim’s right to privacy and that the possibility of their notes being shared with the defendant will deter victims of rape and sexual assault from accessing therapy that could potentially be “life-changing and life-saving”.<sup>89</sup>

### The Government consultation

From 16 June 2022 to 11 August 2022, the Government ran a consultation on police requests for third party material to look at this issue.<sup>90</sup> In its response to the consultation, published in January 2023, the Government committed to introducing “legislation to address the issues of unnecessary and disproportionate requests for third party material” from the police and CPS in rape and sexual assault cases.<sup>91</sup> The Minister for Safeguarding, Sarah Dines, said:

Respondents told us that victims of rape and other sexual offences are frequently subject to unnecessary and disproportionate requests for personal records, that police and CPS practice with regards to these kinds of requests are inconsistent and that victim confidence is severely impacted by having

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<sup>86</sup> HM Government, [The end-to-end rape review report on findings and actions](#) (PDF), June 2021, paras 81-82

<sup>87</sup> CPS, [Legal Guidance: Pre-Trial Therapy](#), 26 May 2022. The guidance is accompanied by a [Fundamental Principles](#) statement and an [Accompanying Note for Therapists](#).

<sup>88</sup> As above, p

<sup>89</sup> End Violence Against Women, [New CPS guidance will block rape victims from therapy](#), 26 May 2022

<sup>90</sup> Home Office, [Police requests for third party material](#), last updated 2 February 2023, [accessed 14 September 2023]

<sup>91</sup> Sarah Dines, WS HCWS505 [on [Third Party Material Consultation Response](#)], 20 January 2023

their privacy unnecessarily invaded, and by the lengthy investigations that can result from delays in requests for personal records.<sup>92</sup>

## About Government NC4

NC4 would insert a new chapter 3A, “Requests for information relating to victims”, into [Part 2](#) of the Police, Crime, Sentencing and Courts (PCSC) Act 2022 on the prevention, investigation and prosecution of crime.

The new provision would set out requirements for police constables, police staff, National Crime Agency staff, and staff of the Independent Office for Police Conduct (IOPC) – referred to collectively as “authorised persons” – to lawfully request information from another person or organisation about someone they reasonably believe may be a victim or at risk of being a victim.

**Note:** The Secretary of State would be provided with regulation-making powers to enable them to add or remove roles from the list of authorised persons that the new provision would apply to.

### Conditions for making a third-party information request

Under the framework provided by NC4, to make a lawful third-party request for information about a victim, the authorised person would have to:

1. reasonably believe that the party to whom the request would be directed holds the information being sought;
2. reasonably believe that the information being sought would be “relevant to a reasonable line of enquiry” that they are pursuing or intend to pursue; and
3. be satisfied that the information request “is necessary and proportionate to achieve the purpose of preventing, detecting, investigating or prosecuting crime”. If there is a risk that the information provided would go beyond this purpose, the authorised person would have to also be satisfied that there are no other reasonably practicable means of obtaining the information needed.

### Notifying the victim

The authorised person would be required to notify the victim in writing of the information request that is being made. The notice would have to explain what information is being sought, why, and how it will be dealt with once received.

If the victim is a child or “an adult without capacity”, notice would be given to the parent, guardian, or relevant organisation responsible for their care. In an adult’s case, if none of these apply, notice can be given to whoever the adult considers to be an appropriate person.

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<sup>92</sup> Sarah Dines, WS HCWS505 [on [Third Party Material Consultation Response](#)], 20 January 2023

However, there would be exceptions to the requirement to give victims notice if the authorised person considered that it would not be reasonably practicable to do so, it could interfere with an investigation or enquiry, or it might risk causing serious harm to the victim or another person.

### A new Code of Practice

NC4 would require the Secretary of State to issue a code of practice on victim information requests and complying with the new statutory framework. When preparing (or substantially revising) the code, the Secretary of State would need to consult with the Information Commissioner, Victims' Commissioner and Domestic Abuse Commissioner.

The code would have to be laid before Parliament, published and brought into force by regulations made by the Secretary of State.

### Committee debate

Introducing NC4, Edward Argar said this provision would deliver on the Government's commitment to limit requests for victim information "to what is necessary and proportionate in pursuing a reasonable line of inquiry in support of a fair trial."<sup>93</sup>

He said the requirement for police to notify victims would increase the transparency of the process and "ensure that the police provide clear and consistent information to victims", giving victims more confidence in how their sensitive information will be handled.<sup>94</sup>

He said the additional requirement for the police to "provide clear and detailed information" to third parties when making victim information requests would make it easier for them to respond to such requests. The intention is for this to "have a positive effect on timeliness" of processing requests which in turn "may help to combat lengthy investigations that can be traumatic to victims."<sup>95</sup> The Code of Practice would "add further clarity and consistency" to the process and "give best practice guidance to law enforcement".<sup>96</sup>

The Opposition welcomed the Government's intention behind NC4 but said it "does not go far enough".<sup>97</sup> Anna McMorrin argued that it "just reinforces what is already in law" but "does not offer new protections for therapy notes" in particular. In her view, "additional safeguards specific to therapeutic records are essential because such records are uniquely private."<sup>98</sup>

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<sup>93</sup> [PBC Deb 11 July 2023](#), c491

<sup>94</sup> [PBC Deb 11 July 2023](#), c491

<sup>95</sup> [PBC Deb 11 July 2023](#), c491

<sup>96</sup> [PBC Deb 11 July 2023](#), c492

<sup>97</sup> [PBC Deb 11 July 2023](#), c492

<sup>98</sup> [PBC Deb 11 July 2023](#), c492

She argued the threshold in NC4 for accessing this sensitive information in such cases – that it be “necessary and proportionate” - is lower than current provision in the Data Protection Act 2018, which limits access to sensitive data without the person’s consent to cases where it is “strictly necessary”.<sup>99</sup>

She acknowledged that NC4 is designed to apply to victims of all offences but called for a higher threshold for sensitive data relating to victims of sexual offences and VAWG. She argued that without this NC4 risked having an “incredibly damaging” impact on those victims.<sup>100</sup>

Sarah Champion agreed that should be specific recognition of “the particular problems faced by victims of sexual offences” on this issue.<sup>101</sup> She reiterated concerns that under NC4 there would be no requirement to ask victims of sexual offences to consent to their therapy records being accessed, and that the “failure to include the higher threshold” for accessing this sensitive data would “adversely affect sexual offences investigations”.<sup>102</sup>

In response, the Minister said the Government must “strike an appropriate balance” on victims’ right to privacy and putting victims “at the heart of the criminal justice system”, while “not compromising the right to a fair trial”.<sup>103</sup> Police would have to have regard to the new code of practice which would provide more detailed guidance and best practice on meeting their duties in the legislation.

He also sought to reassure members of the Committee that NC4 would not replace requirements of the Data Protection Act 2018, “which will continue to apply for lawful processing once the police receive the material from a third party”.<sup>104</sup> Legal obligations under the data protection legislation – in addition to those created by NC4 - would be reiterated in the code of practice.

The Minister committed to publishing a draft of the code of practice before the end of the Bill’s remaining stages in the Commons.<sup>105</sup>

NC4 was agreed to without division.

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<sup>99</sup> [PBC Deb 11 July 2023](#), c493

<sup>100</sup> [PBC Deb 11 July 2023](#), c493

<sup>101</sup> [PBC Deb 11 July 2023](#), c494

<sup>102</sup> [PBC Deb 11 July 2023](#), c494

<sup>103</sup> [PBC Deb 11 July 2023](#), c496

<sup>104</sup> [PBC Deb 11 July 2023](#), c497

<sup>105</sup> [PBC Deb 11 July 2023](#), c496



## 3 Committee stage for Part 2: Victims of major incidents – appointment of independent public advocates

During Second Reading, the Justice Secretary, Alex Chalk KC, explained the Bill’s provisions for an independent public advocate. He said the advocate would be a UK first and “give a voice to those who have too often felt voiceless”.<sup>106</sup>

Sir Robert Neill, Chair of the Justice Select Committee, which examined the provisions in May 2023,<sup>107</sup> said he hoped the Secretary of State would look again at the proposed scheme, particularly in relation to equality of arms for bereaved families at inquests when the actions of a state body are under scrutiny.<sup>108</sup>

Maria Eagle, who has attempted to legislate for a public advocate numerous times since 2016,<sup>109</sup> was critical of the Government’s proposals, which she said denied agency to bereaved families in calling any potential advocate to action.<sup>110</sup> She also stated there were no provisions to enable a public advocate to establish something akin to the Hillsborough Independent Panel to ensure transparency; nor were there any provisions to make a public advocate a data controller that would be able to secure the necessary documentation as part of their role.<sup>111</sup>

### 3.1 Main debate and opposition party amendments

#### Clause 24: power to appoint an advocate

**Clause 24** of the Bill (now 25) would give the Secretary of State a discretionary power to appoint an individual to act as an independent public advocate for “victims” of “a major incident”, with a “major incident” being

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<sup>106</sup> [HL Deb 15 May 2023, c588](#)

<sup>107</sup> Justice Select Committee, [Oral evidence: Victims and Prisoners Bill HC 1350](#) (PDF), 16 May 2023

<sup>108</sup> [HL Deb 15 May 2023, c601](#)

<sup>109</sup> See Commons Library research briefing CBP-9792, [The Victims and Prisoners Bill](#)

<sup>110</sup> [HL Deb 15 May 2023, c609](#)

<sup>111</sup> [HL Deb 15 May 2023, c610](#)

one that would appear to the Secretary of State to have caused the death of, or “serious harm” to, a “significant number of individuals”.

### Secretary of State’s discretion

Anna McMorris moved **amendments 20 and 21** which would limit the discretion of the Secretary of State to appoint an independent public advocate and also remove the Secretary of State’s power to decide what constitutes a “major incident”.<sup>112</sup>

Anna McMorris echoed concern previously expressed by Lord Wills (Labour) in evidence to the Public Bill Committee that the Secretary of State would, in circumstances of a major incident, have “too much unfettered discretion”.<sup>113</sup>

Addressing **amendment 20**, the Minister said giving the Secretary of State a discretionary power to appoint an independent public advocate would avoid duplication or hindrance of existing mechanisms. He added that in some cases an advocate may not be needed.<sup>114</sup>

On the matter of **amendment 21**, the Minister said some incidents may be “less clear cut” in terms of whether they constituted a “major” incident and so a “broad definition” would “allow the necessary flexibility to future-proof” the independent public advocate.<sup>115</sup>

The Minister stated it was not the Government’s intention to limit support to victims by arbitrary decisions not to appoint an advocate, and that any decision not to do so would be subject to public law principles and so challengeable by way of judicial review.<sup>116</sup> He also said the Government would publish a detailed policy statement on the relevant considerations for an appointment and the meeting of the “major incident” test.<sup>117</sup> The Minister said he would be happy to work on these matters with Anna McMorris.<sup>118</sup>

Anna McMorris withdrew the amendment.<sup>119</sup>

### Considering the views of families

Maria Eagle moved **amendments 65 and 66**. These amendments would have ensured that the Secretary of State had regard to the views of families when appointing an independent public advocate, and when deciding who the advocate might be.<sup>120</sup>

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<sup>112</sup> [PBC Deb 6 July 2023, c363](#)

<sup>113</sup> [PBC Deb 6 July 2023, c366](#) and [PBC Deb 22 June 2023, c94](#)

<sup>114</sup> [PBC Deb 6 July 2023, c369](#)

<sup>115</sup> [PBC Deb 6 July 2023, c369](#)

<sup>116</sup> [PBC Deb 6 July 2023, c370](#)

<sup>117</sup> [PBC Deb 6 July 2023, c370](#)

<sup>118</sup> [PBC Deb 6 July 2023, c370](#)

<sup>119</sup> [PBC Deb 6 July 2023, c370](#)

<sup>120</sup> [PBC Deb 6 July 2023, cc370-371](#)

Maria Eagle argued that without these amendments, “nothing in clause 24 gives any kind of say or agency to the victims of the disaster”, which was a “missed opportunity”.<sup>121</sup>

The Minister expressed concern that attempting to identify and consult families would result in delays to the appointment of an independent public advocate, and so to the provision of support to those affected by a major incident.<sup>122</sup> He said he was, however, happy to speak with Maria Eagle in relation to matters of timeliness and agency.<sup>123</sup>

Maria Eagle withdrew the amendment on the basis of the Minister’s assurances.<sup>124</sup>

### Designation of a “major incident”

Anna McMorrin moved **amendment 22**, which would permit the Secretary of State to appoint an independent public advocate on the grounds of significant public interest in relation to any incident that did not otherwise meet the statutory test for a “major incident”.<sup>125</sup>

Anna McMorrin suggested such incidents might include those in which the number of fatalities was small, but the harm suffered was serious in consequence of systemic failings by a public body.<sup>126</sup>

The Minister said he feared the amendment could increase the scope, and therefore dilute the focus, of an independent public advocate – which was not the policy intention of Part 2 of the Bill.<sup>127</sup> He stated that **Clause 24** of the Bill already provided the Secretary of State with sufficient discretion when considering whether to declare a “major incident”.<sup>128</sup>

Anna McMorrin withdrew the amendment.<sup>129</sup>

### Definition of ‘victim’

Maria Eagle moved **amendments 67 and 68**, which would confine the definition of “victim” to “close family members” of those who have died or suffered serious harm (removing “close friends”) and define “close family members”.<sup>130</sup>

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<sup>121</sup> [PBC Deb 6 July 2023, c372](#)

<sup>122</sup> [PBC Deb 6 July 2023, cc375-6](#)

<sup>123</sup> [PBC Deb 6 July 2023, c376](#)

<sup>124</sup> [PBC Deb 6 July 2023, c376](#)

<sup>125</sup> [PBC Deb 6 July 2023, c377](#)

<sup>126</sup> [PBC Deb 6 July 2023, c377](#)

<sup>127</sup> [PBC Deb 6 July 2023, c377-378](#)

<sup>128</sup> [PBC Deb 6 July 2023, c378](#)

<sup>129</sup> [PBC Deb 6 July 2023, c378](#)

<sup>130</sup> [PBC Deb 6 July 2023, c378](#)

Maria Eagle said the proposed amendments were “probing amendments”, designed to investigate who the Government planned to help via an independent public advocate.<sup>131</sup>

The Minister said the Bill was drafted to be flexible and that the Government’s approach would be to use guidance to define how the provisions would work.<sup>132</sup>

The Minister stated he would not support removing the ability of an independent public advocate to assist a close friend, given that a victim might not have close family ties, but might have a close friend or other such companion.<sup>133</sup> Nevertheless, the Minister said he would be willing to work with Maria Eagle on guidance in this area.<sup>134</sup>

Maria Eagle withdrew the amendment.<sup>135</sup>

### Clause stand part and new Clause 15

The Chair then proposed the question that **Clause 24** stand part of the Bill and, with this, that it would be convenient to discuss the proposed **New Clause 15**.<sup>136</sup>

In his concluding comments, the Minister said the Government believes the Secretary of State is the appropriate person to decide about the appointment of an independent public advocate, given the Secretary of State’s accountability to Parliament for decision-making and public expenditure.<sup>137</sup>

Maria Eagle said that, while she welcomed the Government’s commitment to create an independent public advocate, she would urge the Minister and the Government to “have more ambition for what can be achieved through the process”.<sup>138</sup>

The Committee agreed **Clause 24** (now 25) should stand part of the Bill.<sup>139</sup>

A **New Clause 15** (“Appointment of a standing independent public advocate”) was proposed by Maria Eagle. The clause would have required the Secretary of State to appoint an independent public advocate, provide for remuneration and costs, and mandate a standing appointment of an advocate, rather than an ad-hoc arrangement on a case-by-case basis.<sup>140</sup>

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<sup>131</sup> [PBC Deb 6 July 2023, c379](#)

<sup>132</sup> [PBC Deb 6 July 2023, c380](#)

<sup>133</sup> [PBC Deb 6 July 2023, c380](#)

<sup>134</sup> [PBC Deb 6 July 2023, c380](#)

<sup>135</sup> [PBC Deb 6 July 2023, c381](#)

<sup>136</sup> [PBC Deb 6 July 2023, c381](#)

<sup>137</sup> [PBC Deb 6 July 2023, c382](#)

<sup>138</sup> [PBC Deb 6 July, c388](#)

<sup>139</sup> [PBC Deb 6 July c390](#)

<sup>140</sup> [PBC Deb 6 July 2023, c381](#)

By **New Clause 15**, the independent public advocate would have undertaken the necessary functions if invited to do so by the Secretary of State. In the alternative, functions would have been undertaken where the advocate was of the opinion a major incident had occurred and the advocate had been asked to act by the majority of representatives of those deceased due to - and any injured survivors of - the event.<sup>141</sup>

Sir Oliver Heald suggested that a standing appointment may not be suitable for all circumstances or victims.<sup>142</sup>

Maria Eagle noted that her proposal for a standing appointment found support amongst those who had given evidence to the Committee, including Bishop James Jones KBE and Lord Wills, on the basis that someone needs to be available immediately to help families.<sup>143</sup> She also noted that her proposed clause would give agency to victims and families by giving them an opportunity to engage the functions of an independent public advocate where the Secretary of State had not already done so.<sup>144</sup> It would also enable the advocate to act independently of Government where families had requested involvement.<sup>145</sup>

The Minister reiterated that a permanent appointment was unnecessary.<sup>146</sup> In case of disagreement, the Minister said he would expect Members to hold the Government to account.<sup>147</sup>

## Clause 25: terms of appointment

**Clause 25** (now 26) would provide for the appointment of advocates.

Maria Eagle moved **amendment 69** as a probing amendment, which would have required the Secretary of State to consult victims before terminating any appointment on grounds considered appropriate by the Secretary of State.<sup>148</sup>

The Minister said any decisions made by the Secretary of State in this regard would be judicially reviewable and he outlined a number of scenarios in which it would be necessary to give the Secretary of State flexibility to terminate appointments.<sup>149</sup> The Minister emphasised that victims would be considered at the time of such decisions.<sup>150</sup>

Maria Eagle withdrew the amendment.<sup>151</sup>

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<sup>141</sup> [PBC Deb 6 July 2023, c381](#)

<sup>142</sup> [PBC Deb 6 July 2023, c383](#)

<sup>143</sup> [PBC Deb 6 July 2023, c384](#)

<sup>144</sup> [PBC Deb 6 July 2023, c385](#)

<sup>145</sup> [PBC Deb 6 July 2023, c385](#)

<sup>146</sup> [PBC Deb 6 July 2023, c389](#)

<sup>147</sup> [PBC Deb 6 July 2023, c389](#)

<sup>148</sup> [PBC Deb 6 July 2023, c391](#)

<sup>149</sup> [PBC Deb 6 July 2023, c391](#)

<sup>150</sup> [PBC Deb 6 July 2023, c394](#)

<sup>151</sup> [PBC Deb 6 July, c394](#)

Anna McMorrin moved **amendment 24**, which would have inserted a new subsection into **Clause 25** to require the independent public advocate to sit within the Ministry of Justice, but be independent of it with respect to function, decision-making and the discharge of statutory duties.<sup>152</sup>

The Minister said he could not support the drafting of the amendment, but that he was happy to work with Anna McMorrin to ensure clarity about the Government's commitment to the independence of the public advocate.<sup>153</sup> He stated that work is underway to ensure separation between the Ministry of Justice and the planned permanent secretariat for the public advocate.<sup>154</sup>

Anna McMorrin withdrew the amendment.<sup>155</sup>

Maria Eagle moved **amendment 70**, which would ensure that an independent public advocate would be a data controller for the purposes of the [General Data Protection Regulation](#).<sup>156</sup> Consequential **amendments 72 and 73** (to **Clause 27**) would have enabled the public advocate to handle documents lawfully,<sup>157</sup> in the same manner as the Hillsborough Independent Panel.<sup>158</sup>

The Minister said the Government believed the independent public advocate's key focus should be on support, not investigation,<sup>159</sup> and that data controlling powers could conflict with work undertaken by – for example – inquiries, which already have powers to compel the production of evidence and the attendance of witnesses under the [Inquiries Act 2005](#).<sup>160</sup>

The Minister said he would commit to considering with Maria Eagle what more could be done in terms of transparency,<sup>161</sup> on which basis Maria Eagle withdrew the amendment.<sup>162</sup>

## Clause 26: appointment of multiple independent public advocates

**Clause 26** (now 27) would permit the Secretary of State to appoint a lead advocate where multiple advocates have been appointed for the same major incident.

Maria Eagle suggested that drafting which stated a subordinate advocate must “have regard to” any directions given by the lead might result in

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<sup>152</sup> [PBC Deb 6 July 2023, c394](#)

<sup>153</sup> [PBC Deb 6 July 2023, c395](#)

<sup>154</sup> [PBC Deb 6 July 2023, c395](#)

<sup>155</sup> [PBC Deb 6 July 2023, c396](#)

<sup>156</sup> [PBC Deb 6 July 2023, c396](#). See [Regulation \(EU\) 2016/679 of the European Parliament and of the Council](#) (SI 2016/679)

<sup>157</sup> [PBC Deb 6 July 2023, c396](#)

<sup>158</sup> [PBC Deb 6 July 2023, c397](#)

<sup>159</sup> [PBC Deb 6 July 2023, c399](#)

<sup>160</sup> [PBC Deb 6 July 2023, c399](#). See [Inquiries Act 2005](#), s21

<sup>161</sup> [PBC Deb 6 July 2023, c399](#)

<sup>162</sup> [PBC Deb 6 July 2023, c399](#)

disagreement.<sup>163</sup> The Minister said having a lead advocate would make decisions clearer and give an independent public advocate a defined structure.<sup>164</sup> In response to a question from Anna McMorris about whether such a “panel” of advocates would operate in the same way as the Hillsborough Independent Panel, the Minister stated it would not, but that it would still be “independent”.<sup>165</sup>

## Clause 27: functions of an independent public advocate

**Clause 27** (now 28) would provide for the functions of an independent public advocate.

Maria Eagle moved **amendment 74**, which would have enabled a public advocate to establish at an early stage an independent panel (akin to the Hillsborough Independent Panel) to establish the truth of what happened in relation to an incident.<sup>166</sup> **Amendment 75** would have made similar provision.

Maria Eagle said it would be an omission to legislate for an independent public advocate without allowing the advocate to establish an independent panel in consultation with affected families as a means of assistance, particularly in regard to inquests or inquiries.<sup>167</sup>

The Minister said the Government was concerned that a victim’s “right to formal legal justice” might be jeopardised by cross-cutting work by another investigatory-type body.<sup>168</sup> He stated he would be willing to reflect further on the matter and Maria Eagle acknowledged the establishment of an independent panel may present a public policy issue in relation to ongoing or future legal proceedings.<sup>169</sup>

Maria Eagle withdrew the amendment.<sup>170</sup>

## Clause 28: Role of advocates under Part 1 of the Coroners and Justice Act 2009

**Clause 28** (now 29) of the Bill would amend [section 47\(2\)](#) of the [Coroners and Justice Act 2009](#), to permit an independent public advocate to be an “interested person” in relation to investigations or inquests into a person’s death, which may have been caused or contributed to by a major incident.

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<sup>163</sup> [PBC Deb 6 July 2023, c401](#)

<sup>164</sup> [PBC Deb 6 July 2023, c402](#)

<sup>165</sup> [PBC Deb 6 July 2023, c402](#)

<sup>166</sup> [PBC Deb 6 July 2023, c403](#)

<sup>167</sup> [PBC Deb 6 July 2023, c404](#)

<sup>168</sup> [PBC Deb 6 July 2023, c405](#)

<sup>169</sup> [PBC Deb 6 July 2023, c406](#)

<sup>170</sup> [PBC Deb 6 July 2023, c406](#)

The Minister said interested person status would be important to ensure victims have access to information to which they are entitled.<sup>171</sup>

## New Clauses 1, 16 and 17

The Chair also proposed discussion of **New Clauses 1, 16 and 17**.

Emma Lewell-Buck tabled **New Clause 1** (“Victims of major incidents: registration of death”). This would have permitted a qualified informant to register the death of a person who was a victim of a major incident, notwithstanding an investigation by a coroner under [Part 1 of the Coroners and Justice Act 2009](#).<sup>172</sup>

Maria Eagle, who tabled **New Clauses 16 and 17**, said **Clause 16** (“Functions and powers of the independent public advocate”), and **Clause 17** (“Disclosure of information to the independent public advocate’s panel”), would have ensured the public advocate could help families if an independent panel had been established, provide support during investigations, inquests and inquiries, and itself establish a panel in consultation with victims.<sup>173</sup> **Clause 17** would have provided for the disclosure of information by a public authority to an independent panel.<sup>174</sup>

### New Clause 1

The Minister expressed a number of concerns about the drafting of **New Clause 1**. These related to the current requirement for registration of death after the conclusion of a coronial investigation,<sup>175</sup> the clause including only victims of major incidents while excluding other deaths, and the permitting of a qualified informant to register a death (not, as now, a registrar).<sup>176</sup> The Minister stated the Government could not support the clause but made a commitment to look at the matter further prior to Report stage.<sup>177</sup>

### New Clause 16

The Minister said it was the Government’s view that many of the measures in the **New Clause 16** have already been provided for in the Bill. The proposed subsections referring to data controller powers for an independent panel remained, he said, a matter for debate between both sides of the Committee.<sup>178</sup>

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<sup>171</sup> [PBC Deb 6 July 2023, c409](#). Rule 13 of the [Coroners \(Inquests\) Rules 2013](#) governs disclosure of certain documents to an interested person by a coroner

<sup>172</sup> [PBC Deb 6 July 2023, c406](#)

<sup>173</sup> [PBC Deb 6 July 2023, c413](#)

<sup>174</sup> [PBC Deb 6 July 2023, c407](#)

<sup>175</sup> See [Births and Deaths Registration Act 1953, s23\(2\)](#)

<sup>176</sup> [PBC Deb 6 July 2023, c414](#)

<sup>177</sup> [PBC Deb 6 July 2023, c415](#)

<sup>178</sup> [PBC Deb 6 July 2023, c416](#)



## New Clause 17

In relation to disclosure of information to an independent public advocate's panel, the Minister said there would be a risk that multiple entities might simultaneously request information from a public authority – so creating complexity.<sup>179</sup> He nevertheless committed to considering the role of an independent public advocate in calling for an inquiry, both statutory and non-statutory.<sup>180</sup>

## Clause 29: reports to the Secretary of State

**Clause 29** (now 30) would make mandatory provision for an advocate to report to the Secretary of State their opinions as to the treatment of victims during an investigation, inquest or inquiry. This would be the case where the Secretary of State would send a notice specifying that such information, and any other information requested, be disclosed in a report – to be published as the Secretary of State thinks fit.

Maria Eagle moved **amendment 76**, which would have omitted the requirement for the Secretary of State to instruct the independent public advocate to issue a report. The Chair directed discussion on three further amendments, namely:

- **Amendment 77**, which would have ensured the independent public advocate reported to Parliament
- **Amendment 78**, which would have required the independent public advocate to report to Parliament, rather than the Secretary of State, at least annually in relation to each major incident, and
- **Amendment 79**, which would have made similar provision to amendment 78.
- Maria Eagle said more regular reports to Parliament – without redactions – would have made it clear there had been no interference in the process.<sup>181</sup>

The Minister, however, expressed concern about reports being published during the course of ongoing proceedings, such as a police investigation or inquiry.<sup>182</sup> He said the Government was committed to the public and open sharing of reports by an independent public advocate and emphasised that the Secretary of State would use any discretionary powers in relation to publishing reports only when needed.<sup>183</sup> The Minister stated he would continue

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<sup>179</sup> [PBC Deb 6 July 2023, c416](#)

<sup>180</sup> [PBC Deb 6 July 2023, c416](#)

<sup>181</sup> [PBC Deb 6 July 2023, c418](#)

<sup>182</sup> [PBC Deb 6 July 2023, c421](#)

<sup>183</sup> As above

working with Maria Eagle on the relevant provisions and, if necessary, revisit them at Report stage.<sup>184</sup>

Maria Eagle withdrew the amendments.<sup>185</sup>

Anna McMorrin moved **amendment 25**, which would have required an independent public advocate to report to the Secretary of State about relevant events. It would also have required an advocate to provide a report if, in their opinion, public authorities or public servants had not complied with a duty of candour under **New Clause 3**.<sup>186</sup>

### New Clause 3

**New Clause 3** (“Major incidents: duty of candour”) would have required public authorities and public servants to act in the public interest and with transparency, candour and frankness in relation to a major incident. Other provisions would have included a duty on public servants to assist in court proceedings, an official inquiry or investigation in connection with their own activities, or where their acts or omissions may have been relevant.<sup>187</sup>

Anna McMorrin said establishing a statutory duty of candour would go some way to addressing the issue of “institutional defensiveness”,<sup>188</sup> amongst other things.

The Minister stated the Government’s response to the report by Bishop James Jones KBE on the experience of the Hillsborough families would set out the Government’s position in relation to candour,<sup>189</sup> a ‘Hillsborough Law’,<sup>190</sup> and associated next steps.<sup>191</sup> The Minister declined to give a date for publication of the response but said ministerial colleagues had assured him it would take place “shortly”.<sup>192</sup> He stated further that he would be happy to “return to this topic on Report, once that report and response can be read in the round”.<sup>193</sup>

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<sup>184</sup> As above

<sup>185</sup> As above

<sup>186</sup> [PBC Deb 6 July 2023, c421](#)

<sup>187</sup> [PBC Deb 6 July 2023, c422](#)

<sup>188</sup> [PBC Deb 6 July 2023, cc422-423](#)

<sup>189</sup> The Right Reverend Bishop James Jones KBE, [‘The patronising disposition of unaccountable power’: A report to ensure the pain and suffering of the Hillsborough families is not repeated](#), 1 November 2017

<sup>190</sup> Proposed by Andy Burnham, then MP for Leigh, via the [Public \(Authority\) Accountability Bill](#), which fell when a General Election was called in 2017. A ‘Hillsborough Law’ would impose a duty of candour on public bodies and officials, establish an independent public advocate to support victims and families participating in investigations, and ensure those parties would receive the same funding for legal representation as public bodies. For further information, see [oral evidence given by Andy Burnham and Bishop James Jones KBE on a ‘Hillsborough Law’ to the Human Rights \(Joint Committee\)](#) on 19 July 2023

<sup>191</sup> [PBC Deb 6 July 2023, c425](#)

<sup>192</sup> [PBC Deb 6 July 2023, c425](#)

<sup>193</sup> [PBC Deb 6 July 2023, c425](#)

Anna McMorrin withdrew the amendment.<sup>194</sup>

Anna McMorrin moved **amendment 23**, which would have rescinded the Secretary of State’s power to omit material from a report by an independent public advocate in cases where the Secretary of State believed it would be contrary to the public interest to publish such material.

Anna McMorrin said the amendment was designed to ensure the independence of a public advocate.<sup>195</sup>

In response, the Minister said the ability of the Secretary of State to make omissions from reports would be “vital for national security and is not novel” (giving the example of parallel provisions enacted by the Labour Government in the [Inquiries Act 2005](#)).<sup>196</sup> Removing such an ability would, the Minister stated, be contrary to the public interest and might also contravene data protection legislation.<sup>197</sup> However, the Minister said he would speak further with both Anna McMorrin and Maria Eagle about the independent public advocate’s reporting functions – on which basis Anna McMorrin withdrew the amendment.<sup>198</sup>

## Clause 30: information sharing and data protection

The Minister moved **amendment 35 to 37**, which were technical in nature and aimed at aligning the wording of the Bill with data protection law.<sup>199</sup>

Anna McMorrin sought assurances that an independent public advocate would be granted the necessary authority to ensure it would have the information it required – and the necessary powers to ensure none of that information is destroyed.<sup>200</sup>

The Minister said there were provisions in place for the retention and preservation of material and that he had already set out the Government’s position on the advocate’s role as a data controller.<sup>201</sup>

The Committee agreed that **Clause 30** (now 31), as amended, should stand part of the Bill.

## Clause 31: guidance for independent public advocates

**Clause 31** (now 32) would enable the Secretary of State to issue guidance regarding matters to which public advocates must have regard when exercising their functions (to the extent the guidance is relevant). Such

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<sup>194</sup> [PBC Deb 6 July 2023, c426](#)

<sup>195</sup> [PBC Deb 6 July 2023, c426](#)

<sup>196</sup> [PBC Deb 6 July 2023, c427](#)

<sup>197</sup> [As above](#)

<sup>198</sup> [As above](#)

<sup>199</sup> [PBC Deb 6 July 2023, c429](#)

<sup>200</sup> [PBC Deb 6 July 2023, c429](#)

<sup>201</sup> [PBC Deb 6 July 2023, c429](#)

guidance would not be directed at particular advocates or relate to a specific major incident.

Anna McMorrin expressed concern that the Secretary of State could use guidance to restrict both the powers and remit of an independent public advocate.<sup>202</sup>

The Minister said the clause is not in any way designed to restrict the powers of individual advocates, but to provide guidance that will ensure consistency.<sup>203</sup>

## The King's Speech

The [background briefing notes to the King's Speech](#), made on 7 November 2023, said the Government – having noted points made at Committee stage in the House of Commons – is “exploring ways to strengthen the model for the Advocate, including for a permanent, lead Independent Public Advocate that can be rapidly deployed in the event of a major incident.”<sup>204</sup>

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<sup>202</sup> [PBC Deb 6 July 2023, c430](#)

<sup>203</sup> [PBC Deb 6 July 2023, c431](#)

<sup>204</sup> Prime Minister's Office, [Background briefing notes to the King's Speech 2023](#) (PDF), 7 November 2023, p75

## 4 Committee stage for Part 3: Prisoners and the parole system

No amendments were made to Part 3 of the Bill at committee stage and there were no divisions.

Shadow Minister, Ellie Reeves, said that Part 3 of the Bill was a distraction to the real and serious issues of victims and should not have been included in the Bill.<sup>205</sup> The Minister, Edward Argar, responded that victims had said release or parole was a key point of anxiety and concern for them.<sup>206</sup>

Ellie Reeves also noted that Part 3 had received no pre-legislative scrutiny and that there had been a lack of consultation with the Parole Board.

The Public Bill Committee heard evidence from Martin Jones, the Chief Executive of the Parole Board on 20 June 2023. He told the Committee that there had been very limited consultation with the Parole Board ahead of the provisions concerning the Board being introduced to Parliament.<sup>207</sup>

### 4.1 The Parole Board test

**Clauses 32 to 34** (now 33 to 35), setting out the test to be applied by the Parole Board when considering release, were broadly welcomed by the opposition.<sup>208</sup>

#### Unproven allegations

Ellie Reeves raised concerns that setting out in legislation a list of factors that the Parole Board would be required to take into account when considering release, even though the list would be non-exhaustive, could lead to factors not on the list not getting the consideration they deserve. She therefore tabled an amendment<sup>209</sup> that would have added “alleged but unproven offence” to the list of factors in clauses 32 to 33.<sup>210</sup> She referred to the case of *Pearce*<sup>211</sup> in which the Supreme Court found that alleged but unproven

<sup>205</sup> [PBC Deb 6 July 2023 c431](#)

<sup>206</sup> [PBC Deb 6 July 2023 c433](#)

<sup>207</sup> [PBC Deb 20 June 2023 c50](#)

<sup>208</sup> [PBC Deb 6 July 2023 c437](#)

<sup>209</sup> Amendment 96

<sup>210</sup> [PBC Deb 6 July 2023 c432](#)

<sup>211</sup> [R \(on the application of Pearce and another\) \(Respondents\) v Parole Board for England and Wales \(Appellant\) \[2023\] UKSC 13](#)

offences may be taken into account where the Parole Board decides they are relevant to the question of a prisoner's risk to the public.

The Minister responded that, given the potential importance of unproven allegations, the Government had considered including them in the list of mandatory criteria. However, he said the Government considered that there was a risk that such an amendment would go beyond what was set out in the *Pearce* judgment.<sup>212</sup> The Government had therefore concluded that the case law provided sufficient clarity for the Parole Board. The Minister argued that unproven allegations already fall within the scope of the mandatory considerations concerning the conduct of the prisoner while serving their sentence and the risk that the prisoner would commit a further offence if no longer confined. The amendment was withdrawn.

**Clauses 32 to 34** (now 33 to 35) were ordered to stand part of the Bill.

## 4.2 The role of the Secretary of State in release decisions

The Opposition argued against the provisions in **clauses 35 and 36** (now 36 and 37) that would, they said, give the Secretary of State a veto over a release decision for a top-tier prisoner.<sup>213</sup> Ellie Reeves stated that the measures would undermine the status of the Parole Board as a quasi-judicial, independent and impartial body. She said the provisions would fundamentally change the application of the constitutional principle of the separation of powers. She said that allowing a politician power over a release decision “could lead to decisions being made because they are politically or publicly expedient, not because they are based on a fair assessment of risk”.<sup>214</sup> She said nearly every stakeholder had questioned why the Secretary of State would be better placed to make a release decision than the Parole Board.

The Minister addressed the issue raised regarding the separation of powers, stating that the current approach was relatively new. He said the Home Secretary in the 1980s and 1990s had had similar powers to those being proposed.<sup>215</sup>

Ellie Reeves also commented that the measures were likely to be “incredibly costly”, noting the estimates of additional prison places required and questioning the resources required by the Secretary of State to re-take Parole Board decisions.<sup>216</sup>

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<sup>212</sup> [PBC Deb 6 July 2023 c434](#)

<sup>213</sup> [PBC Deb 11 July 2023 c450](#)

<sup>214</sup> [PBC Deb 11 July 2023 c451](#)

<sup>215</sup> [PBC Deb 11 July 2023 c458](#)

<sup>216</sup> [PBC Deb 11 July 2023 c451](#)

Ellie Reeves noted the view of Claire Waxman, the Independent Victim's Commissioner for London, who in evidence to the Committee said she believed the provisions proposed by the Government would compound victims' trauma and suffering and give them false hope.<sup>217</sup> Ellie Reeves added that the measures would also create delay, and this would be detrimental to victims.<sup>218</sup> She raised a point made by stakeholders including the Prison Reform Trust, that clauses 35 and 36 (now 36 and 37) could lead to poorer, less transparent decision making.

## Opposition new clauses: Secretary of State power to appeal to the Court of Appeal Criminal Division

Labour tabled new clauses (NC22 and NC23) that would have given the Secretary of State a power to appeal a Parole Board decision to the Court of Appeal Criminal Division. Victims would have been able to refer their case to the Secretary of State requesting that they make such an application to the Court of Appeal. Ellie Reeves said the new clauses sought to give power to the Court of Appeal, rather than the Justice Secretary, thereby maintaining the separation of powers and removing the risk of political pressure. She said the measures in NC22 and NC23 would create a more truncated route to a final release decision and so cause less delay than the Government's intended approach.<sup>219</sup>

The Opposition also tabled amendments to expand the top-tier of offences covered by the power proposed by the new clauses to include sexual offences against children other than rape (which would already be included) and manslaughter.

Responding to NC22 and NC23, the Minister said that the public rightly expect a role for ministers in the release of the most serious offenders, that keeping the public safe is the Government's first duty and that it was not unreasonable for ministers to act as an additional safeguard, with an onward route of appeal.<sup>220</sup> He said that the Government believed it was right that Secretary of State is accountable to the public in the most serious cases.

## Top tier offences

On the issue of the offences included in the top-tier, the Minister said that the offences had been carefully chosen to capture offences where the offenders present a heightened risk to the public due to the nature of their crimes. He said the Government did not think it proportionate to widen the cohort of offences beyond those currently included (offenders serving sentences for murder, rape, certain terrorism offences, or causing or allowing the death of a child). He said the offences already included are those deemed to carry the

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<sup>217</sup> [PBC Deb 20 June 2023 c30](#)

<sup>218</sup> [PBC Deb 11 July 2023 c452](#)

<sup>219</sup> [PBC Deb 11 July 2023 c450](#)

<sup>220</sup> [PBC Deb 11 July 2023 c455](#)

greatest risk to the public and that most greatly affect public confidence in the justice system.<sup>221</sup>

## Power of Parole Board to send cases to the Secretary of State

The Minister noted that Labour's new clause would remove the power in the Bill for the Parole Board to send a case directly to the Secretary of State (or in the case of the new clause to the Court of Appeal). The Minister acknowledged that the Justice Committee had raised issues about this power and said that the Government was carefully considering them.<sup>222</sup>

## Route of appeal against a Secretary of State's decision

Ellie Reeves spoke to an amendment<sup>223</sup> that would make the Court of Appeal Criminal Division rather than the Upper Tribunal the route for appeals from a Secretary of State's decision on release. She noted that Peter Rook KC (a former Old Bailey judge and current vice chair of the Parole Board), the Justice Committee and many others shared the view that the Court of Appeal would be more suitable given its experience of such matters.<sup>224</sup>

The Minister said that the Government believed the Upper Tribunal was the most appropriate appellate route. If the Court of Appeal were to hear the appeals, he said, substantive legislative changes to its powers would be required. The Minister said that the additional work for the Court of Appeal could have a detrimental effect on the timescales in which the court could hear appeals against convictions. He stated that the Upper Tribunal already has wide ranging powers under existing legislation making it the more suitable venue.<sup>225</sup> Ellie Reeves questioned how the Upper Tribunal would deal with the increase in cases and whether there would be sufficient judicial members to hear them.

## Powers to set licence conditions

Ellie Reeves said that it was not appropriate for the Secretary of State or Upper Tribunal to be given powers to set licence conditions in cases where they have made the decision to release a prisoner (as proposed in **clauses 40 and 41** (now 41 and 42)) given the lack of experience that either one has in doing so. This could, she said, lead to important licence conditions being missed.<sup>226</sup> The Minister said the Government would continue to review how the provisions would work in practice.

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<sup>221</sup> [PBC Deb 11 July 2023 c454](#)

<sup>222</sup> [PBC Deb 11 July 2023 c456](#)

<sup>223</sup> Amendment 99

<sup>224</sup> [PBC Deb 11 July 2023 c462](#)

<sup>225</sup> [PBC Deb 11 July 2023 c464](#)

<sup>226</sup> [PBC Deb 11 July 2023 c467](#)



**Clauses 35-41** (36-42) were ordered to stand part of the Bill.

## 4.3

### Human rights: clauses 42-45 (43-46)

Ellie Reeves expressed concerns that **clauses 42 to 44** (now 43-45), which would disapply section 3 of the Human Rights Act 1998, were another way for the former Justice Secretary Dominic Raab to “dilute our human rights framework through the backdoor”.<sup>227</sup>

She endorsed concerns raised by stakeholders that these clauses would undermine the fundamental principle of universality which underpins the concept of human rights (shared by the JCHR, see section 1.4 above).<sup>228</sup>

She also noted the lack of evidence of a problem that would justify the approach, and the possibility that **clause 45** (now 46), which seeks to direct the approach of the courts when considering ECHR rights in the context of a release decision, would create legal uncertainty.<sup>229</sup>

However, she welcomed the Minister’s introductory remarks, acknowledging the controversial nature of the provisions, and committing to reflect carefully on any concerns raised.<sup>230</sup>

Clauses 42-45 were ordered to stand part of the Bill.

## 4.4

### The Parole Board

#### Make up of panels

The Minister said that the Government wants to be able to use secondary legislation to make rules about which type of Parole Board member must sit on cases (**clauses 46 and 47** (now 47 and 48)). This, he explained, was part of the Government’s commitment to increasing the number of Parole Board members from a law enforcement background and ensuring that every parole panel considering an offender convicted of a top tier offence has a law enforcement member.<sup>231</sup>

Ellie Reeves questioned what evidence the Minister had of a need for this change and what he hoped to achieve by it. She referred to the Ministry of Justice’s 2019 review of the Parole Board, which had noted that restrictions on which members can hear particular types of cases had been gradually lifted

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<sup>227</sup> [PBC 11 July 2023, c469](#), a reference to the fact that the Government had recently announced that the proposed Bill of Rights Bill would not proceed

<sup>228</sup> As above

<sup>229</sup> As above, c470

<sup>230</sup> As above, c468

<sup>231</sup> [PBC Deb 11 July 2023 c470-471](#)

over time to allow greater flexibility and timeliness in listing and said mandating who should be on a panel seemed to be a backward step.<sup>232</sup>

She noted that the Parole Board Chief Executive, Martin Jones, had said it was best to allow the Parole Board, as a court, to decide on the appropriate panel members in each case. Ellie Reeves raised concerns voiced by Caroline Corby, the Chair of the Parole Board, and by the Prison Reform Trust, that the change would lead to delays.

## Power to remove Parole Board Chair

**Clause 48** (now 49) would create a power for the Secretary of State to remove the Parole Board Chair where they thought it necessary on the grounds of public confidence. Janet Daby, for Labour, moved an amendment that would change the possible grounds of dismissal, allowing the Secretary of State to remove the Chair only on grounds of misconduct or incapacity.<sup>233</sup>

Ellie Reeves referred to the concerns of Caroline Corby, the Chair of the Parole Board's, expressed to the Justice Committee, that if the power were used simply because the Parole Board had made a controversial decision, this would potentially impact on the independence of the Parole Board. She noted that after hearing evidence the Justice Committee had concluded that there should not be a statutory power to dismiss as proposed in the Bill.<sup>234</sup>

The Minister said that there is already a mechanism in place which allows for the Secretary of State to ask an independent panel to consider dismissing the Chair if there are concerns about their performance or their ability to do the job effectively. He said the new power would allow the Secretary of State to act independently, without referral to a panel, as a "last-resort" measure.<sup>235</sup>

**Clauses 46 and 47** (now 47 and 48) were ordered to stand part of the Bill.

## 4.5

## Prohibition on marriage or civil partnership of prisoners subject to whole life orders

**Clause 48** (now 49) would prohibit the marriage of those serving a life sentence in prison or other place of detention **and** who are subject to a whole life order.<sup>236</sup> This would not apply if the prisoner in question had written

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<sup>232</sup> [PBC Deb 11 July 2023 c471](#)

<sup>233</sup> [PBC Deb 11 July 2023 c472](#), amendment 120

<sup>234</sup> [PBC Deb 11 July 2023 c474](#)

<sup>235</sup> [PBC Deb 11 July 2023 c477](#)

<sup>236</sup> This would also be applicable to those prisoners subject to a mandatory life sentence received before December 2003 and who were notified in writing prior to that date that the Secretary of State did not intend for them ever to be released on licence – and the High Court must not since have ordered that early release provisions should instead apply: Ministry of Justice, [Explanatory Notes to the Victims and Prisoners Bill](#) (PDF), 29 March 2023, p46, para 669

permission from the Secretary of State to marry, although the Secretary of State would not be able to give permission unless satisfied that there were exceptional circumstances to justify it.

Similarly, **Clause 49** (now 50) would not permit two people to register as civil partners where either party was serving a life sentence in a prison or other place of detention **and** was subject to a whole life order. Again, the Secretary of State would be permitted to except such prisoners from the general prohibition on civil partnership.

**Clause 50** (now 51) would give the Secretary of State the power to make provisions consequential on sections 48 or 49 by regulations.

The Minister noted that prison governors are currently prevented from rejected a prisoner's application to marry in the absence of a security risk for the prison in question. Allowing prisoners subject to whole life orders to marry, he said, "rubs salt into the wounds of victims and their families and damages public confidence in our justice system".<sup>237</sup>

Ellie Reeves spoke in support of the clauses, stating that the proposed prohibition on marriage and civil partnerships was also a matter of safeguarding, as this group of prisoners have "great capacity for coercion and exploitation".<sup>238</sup> Ellie Reeves highlighted as an example the case of the marriage in prison of serial killer Levi Bellfield and said the proposed legislation would ensure that this could not happen again.<sup>239</sup>

Sarah Champion diverged from the Shadow Minister's position and expressed her opposition to Clauses 48 to 50. She questioned the Government's stance that the measures would be compatible with obligations under the European Convention on Human Rights and whether the provisions relating to marriage were being brought forward for reasons relating to headlines rather than being good legislation,<sup>240</sup> perhaps in response to the horror generated by a particular individual.<sup>241</sup>

Sarah Champion cited concerns given in written evidence by the Prison Reform Trust about "the introduction of specific carve-outs from human rights for people given custodial sentences", as well as written evidence from the Prisoners' Advice Service that the restriction on marriage and civil partnership was "a point of principle only, ostensibly to show the public that the Executive is not soft on those who commit the worst crimes".<sup>242</sup> She suggested that the Minister had not made a sufficiently clear argument for why the provisions needed to be in the Bill and asked for a further explanation, particularly of the

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<sup>237</sup> [PBC Deb 11 July 2023, c478](#)

<sup>238</sup> [PBC Deb 11 July 2023, c479](#)

<sup>239</sup> [PBC Deb 11 July 2023, c479](#)

<sup>240</sup> [PBC Deb 11 July 2023, c479](#)

<sup>241</sup> [PBC Deb 11 July 2023, c480](#)

<sup>242</sup> [PBC Deb 11 July 2023, c480](#)

exceptions and whether the provisions would apply retrospectively to those already married.<sup>243</sup>

The Minister denied the measures would make law based on an individual case; it was rather that an individual case had highlighted a broader concern.<sup>244</sup>

The Minister said his understanding was that the provisions would not have retrospective effect. Addressing the matter of exceptions to the general prohibition, he suggested that deathbed marriages could be permitted in the case of terminal illness or at the end of life.<sup>245</sup>

Sarah Champion questioned why a dying person should be excepted but others not.<sup>246</sup> In response, the Minister said, as a hypothetical example, that the only circumstance he could envisage this being the case “is where the long-term partner is also a whole-life prisoner and both are in prison at the end of life”.<sup>247</sup>

The Minister stated that while he was grateful for Sarah Champion airing her views, he “must resist her entreaties to either withdraw or change the clause”.<sup>248</sup>

Accordingly, **Clauses 48 to 50** (now 49 to 51) were ordered to stand part of the Bill.

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<sup>243</sup> [PBC Deb 11 July 2023, c480](#)

<sup>244</sup> [PBC Deb 11 July 2023, c481](#)

<sup>245</sup> [PBC Deb 11 July 2023, c481](#)

<sup>246</sup> [PBC Deb 11 July 2023, c481](#)

<sup>247</sup> [PBC Deb 11 July 2023, c481](#)

<sup>248</sup> [PBC Deb 11 July 2023, c482](#)

## 5 Jade’s Law: suspending parental responsibility

### 5.1 Government announcement

In October 2023, the Justice Secretary, Alex Chalk, announced the Government would table an amendment to the Victims and Prisoners Bill so that parents convicted of killing a partner or ex-partner with whom they have children would automatically have their parental responsibility suspended upon sentencing.<sup>249</sup> A [news story published by the Ministry of Justice](#) explained:

The rule will apply to anyone convicted of the murder or voluntary manslaughter of a person with whom they share parental responsibility and would then be reviewed swiftly by a judge to ensure it is in the best interests of the child. An automatic exemption would be put in place in cases where a domestic abuse victim kills their abuser.

The Government said the change would “better protect children by preventing killers from having any say over key elements of their life” and would mean “the bereaved will no longer have to go through the current process of applying to restrict parental responsibility through the family court”.

It added that the law would be named after Jade Ward (see below).<sup>250</sup>

Further details of the proposal were provided in a [letter from Alex Chalk to Sir Bob Neill, chair of the Justice Committee](#).<sup>251</sup> The letter explained:

- Parental responsibility would be automatically suspended through an order once a conviction had been made in the criminal court.
- The suspension would remain in place for the duration of the person’s sentence.
- There would be a review process in the family court, which would consider if the suspension of parental responsibility was in the child’s

<sup>249</sup> UKPOL.CO.UK, [Alex Chalk – 2023 Speech to Conservative Party Conference](#), 3 October 2023; Ministry of Justice, [Jade’s Law to be introduced to better protect children](#), 3 October 2023.

<sup>250</sup> Ministry of Justice, [Jade’s Law to be introduced to better protect children](#), 3 October 2023.

<sup>251</sup> DEP2023-0770, [Letter dated 02/10/2023 from Alex Chalk MP to Robert Neill MP regarding removal of parental responsibility for a person who is convicted of the murder/voluntary manslaughter of the other parent: amendment to the Victims and Prisoners Bill](#), 2 October 2023.

best interests and any application to have the suspension lifted from the convicted parent.

The letter said the review process would “ensure compliance with the European Convention on Human Rights and maintain the principle that any action taken by the family court is, first and foremost, in the best interests of the children involved in each case.”

The proposed amendments have not yet been published.

## 5.2 Murder of Jade Ward and campaign

Currently, if a parent is convicted of murdering their children’s other parent they retain their parental responsibility unless a court order is made to restrict or terminate it. Concerns have been raised that this can enable them to continue to exercise control – for example, by asking for school reports, being consulted on medical issues, or withholding consent to a child being issued with a passport.

The issue received particular attention following the murder of Jade Ward by her ex-partner, Russell Marsh, in August 2021.<sup>252</sup> Jade Ward’s family said the fact that Marsh retained his parental responsibility despite being convicted of her murder in April 2022 meant he could still exercise control over the family. They argued that a parent should automatically lose their parental responsibility if they are convicted of murdering the other parent. Jade’s father, for example, was reported as saying, “He’s still allowed to say which school they go to, what dentist, whether they can go on holiday or whether they can’t go on holiday. There’s loads of other things he gets control of. He should automatically have no rights.”<sup>253</sup>

### E-petition and Commons debate

An [e-petition to the UK Government and Parliament calling for a parent’s parental responsibility to be automatically suspended](#), during their term of imprisonment, where they are convicted of murdering the other parent, was created by a friend of Jade Ward’s family in 2022. It received over 130,000 signatures.<sup>254</sup>

In its initial response to the e-petition in June 2022, the Government noted the court can already exercise powers to effectively remove all parental powers and authority where this is appropriate (see background information below). It also highlighted that the court can prevent an individual from repeatedly

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<sup>252</sup> BBC News, [Jade Marsh: Russell Marsh jailed for estranged wife’s murder](#), 12 April 2022.

<sup>253</sup> ITV News, [Jade Ward: Father of woman murdered by her husband demands he has rights over children removed](#), 24 May 2023.

<sup>254</sup> E-petition 614893, [Automatically suspend PR rights of parent guilty of murdering the other parent](#).

bringing issues back before the court (under section 91(14) of the Children Act 1989). However, the response also said the Government recognised:

...that in situations where one parent is convicted of the murder of the other parent, the process for restricting parental responsibility from a parent who is imprisoned can be time consuming, and that making or responding to court applications, and attending multiple court hearings on related issues of parental responsibility can often be onerous for those involved.<sup>255</sup>

## Westminster Hall debate

A [Westminster Hall debate on the e-petition](#) was held on 7 November 2022. Opening the debate, Mark Tami MP suggested people would be “gobsmacked” if they realised how the law worked in this area. He said:

I understand that Jade’s parents have been told that if they want to take their grandsons on holiday abroad, they need permission from the father. A convicted parent must also be consulted on issues such as where the children go to school and the medical treatment they receive. Effectively, Marsh has the right to veto decisions made by Jade’s parents and pursue a family court hearing.

...As with Jade’s boys, the children are often in the care of the family of the deceased parent. The current process effectively grants the convicted parent the means to continue the control and coercion of the family in the way they did prior to the murder of the victim.<sup>256</sup>

While noting that the courts can limit a person’s parental responsibility, he said this was expensive, time-consuming and emotionally draining for the families. He added that it also still puts the onus on the family to prove that parental rights should be restricted. The onus should instead, he said, be on the convicted murderer to prove that they should have parental responsibility.<sup>257</sup> This argument was echoed by other Members.<sup>258</sup>

Sarah Atherton MP raised a particular concern that the process for obtaining parental responsibility “is lengthy and expensive, and that, as a direct result of that lengthy process, parental responsibility remains with the perpetrator of a crime until the process is complete.” She added that her concern with automatically removing parental responsibility “is that we need to have processes in place to deal with the gap in care and decision making.”<sup>259</sup>

The Shadow Justice Minister, Ellie Reeves, said the Labour Party supported the proposal and that “a Labour Government would put Jade’s law on to the statute book.”<sup>260</sup>

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<sup>255</sup> E-petition 614893, [Automatically suspend PR rights of parent guilty of murdering the other parent](#).

<sup>256</sup> [HC Deb 7 November 2022, c2WH](#).

<sup>257</sup> [HC Deb 7 November 2022, cc3-4WH](#).

<sup>258</sup> For example, [HC Deb 7 November, cc13-14WH](#).

<sup>259</sup> [HC Deb 7 November 2022, c8WH](#).

<sup>260</sup> [HC Deb 7 November 2022, c15WH](#).

Responding to the debate, the Justice Minister, Edward Argar, said he sympathised with the views expressed in the e-petition but had reservations about whether the proposal was “necessarily the best way of achieving the outcomes sought.”<sup>261</sup> He added:

...we must look at the issues case by case; there is no one-size-fits-all approach. Each case is different. That is one of the reasons why there are reservations about having an automatic presumption, rather than letting the courts consider each case. It is important to note that under the Children Act 1989, the welfare of the child, rather than the views or interests of any adult, is the uppermost consideration in cases that come before the court.

[...]

Our view is that it is important that courts continue to have the flexibility that the Children Act gives them to make decisions that are tailored to the unique life of every child.

The legal challenge to the concept of automatic suspension is that it risks not aligning with the existing principles underpinning that key piece of legislation—the 1989 Act—and the way it works.<sup>262</sup>

## 5.3

## Reaction to the Government announcement

The Government’s announcement that it would amend the Bill to automatically suspend a parent’s parental responsibility where they are convicted of killing a child’s other parent was welcomed by Jade Ward’s family, by Mark Tami MP, and by domestic abuse charities.<sup>263</sup> The Shadow Justice Secretary, Shabana Mahmood, also welcomed the announcement but said the decision had taken too long.<sup>264</sup>

In an article on the Local Government Lawyer website, three lawyers suggested important things to consider with regards to the proposal. This included:

- Will there be either a time limit for the suspension to expire or mechanism for an offender to regain parental responsibility?
- Will there be any kind of interim suspension for a person charged or remanded pending trial?

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<sup>261</sup> [HC Deb 7 November 2022, c17WH](#).

<sup>262</sup> [HC Deb 7 November 2022, cc19WH and 21WH](#).

<sup>263</sup> BBC News, [Jade Ward: Pride of murdered woman's family over law change](#), 3 October 2023; Women’s Aid, [Women’s Aid statement in response to Government’s plans to introduce Jade’s Law](#), 3 October 2023; Safer Places, [Safer Places Responds to Jade’s Law Announcement](#).

<sup>264</sup> Sky News, [Parents who kill their partner to automatically lose rights over children under government proposals](#), 3 October 2023.



- Will the responsibility fall to the local authority to refer the matter to the Family Court for a review of the suspension of parental responsibility?
- Will Cafcass be involved in the review process at all?
- How will the exemption for domestic abuse victims operate in practice? Will they need to prove domestic abuse?<sup>265</sup>

## 5.4

### Background: parental responsibility

The Children Act 1989 [defines parental responsibility](#) as “all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and [their] property”.<sup>266</sup> Parental responsibility is distinct from legal parentage. For example, biological fathers will usually be a child’s legal parent but do not necessarily automatically acquire parental responsibility for them.

#### Losing parental responsibility

The only circumstances where a child’s legal mother can lose parental responsibility is through an adoption order, or a parental order (in respect of a surrogate child that the mother gave birth to). Both these orders also remove their status as the child’s legal parent.

This is the same where a father or other parent acquired parental responsibility by being married to or in a civil partnership with the mother at the time of the birth.

Where a child’s father or other parent acquired parental responsibility through other means it can be brought to an end by a court order. Any person with parental responsibility, or the child themselves if they have sufficient understanding, may apply to the court for such an order.<sup>267</sup> When considering whether to revoke a person’s parental responsibility, the court’s paramount consideration must be the welfare of the child.<sup>268</sup>

#### Limiting parental responsibility

The court can also restrict a person’s parental responsibility by making an order that in some way limits their rights in relation to the child without terminating their parental responsibility completely.

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<sup>265</sup> Local Government Lawyer, [Implementation of Jade’s law](#), 13 October 2023.

<sup>266</sup> [Children Act 1989](#), section 3(1).

<sup>267</sup> [Children Act 1989](#), sections 4(2A) and 4ZA(6).

<sup>268</sup> [\[2017\] EWHC 3250 \(Fam\)](#) as cited in Hershman and McFarlane, *Children Law and Practice*, para A316.

This can apply to people who cannot have their parental responsibility removed by the court (for example, legal mothers or married fathers).

In a 2017 judgment, for example, the court prohibiting a married father from taking any steps in the exercise of any aspect of his parental responsibility in relation to his children.<sup>269</sup>

## Further information

More detailed information on parental responsibility, including how it is acquired and lost is provided in the [Library briefing on parental responsibility in England and Wales](#).<sup>270</sup>

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<sup>269</sup> [\[2017\] EWHC 3250 \(Fam\)](#) as cited in Hershman and McFarlane, Children Law and Practice, para A315.

<sup>270</sup> Commons Library briefing CBP-8760, [Parental responsibility in England and Wales](#).

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