HOUSE OF LORDS
Library Note

Criminal Justice and Immigration Bill

(HL Bill 16 of 2007–08)

The Criminal Justice and Immigration Bill was introduced in the 2006–07 session, and was carried over into the current session. It covers a variety of areas, including youth rehabilitation orders, sentencing, appeals, Her Majesty's Commissioner for Offender Management and Prisons, criminal law, international co-operation in relation to criminal justice matters, violent offender orders, anti-social behaviour, policing, and special immigration status. The Bill has completed its passage through the House of Commons, and is due for a second reading debate on 22nd January 2008.

This Library Note summarises the key issues debated at the report stage in the House of Commons, focusing on industrial action by prison officers, self-defence, and provisions introduced as a consequence of Lord Carter Coles' review of prisons.

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1. Introduction

The Criminal Justice and Immigration Bill was introduced in the House of Commons in the 2006–07 session. It was presented to the House on 26th June 2007, and received a second reading on 8th October 2007. It was considered in 16 sittings of a public bill committee, which took oral evidence from a variety of organisations. The Bill was amended by the Government during the committee stage. The amendments included new clauses on the power of the Court of Appeal to disregard developments in the law, offences committed outside the United Kingdom, grooming and adoption, hatred on the grounds of sexual orientation, sexual offences prevention orders, and persistent sales of tobacco to persons under 18. After the eighth sitting of the committee, the Bill was subject to a carry-over motion, and was re-introduced in the House of Commons in the current session on 7th November 2007. The Bill completed its remaining stages on 9th January 2008. Further new clauses and amendments were introduced during the report stage, including provisions on community orders, imprisonment and detention for public protection, credit for period of remand on bail, early release of certain long-term prisoners, release of fine defaulters and contemnors, and industrial action by prison officers. The Bill was presented to the House of Lords on 9th January 2008, and is due for second reading debate on 22nd January 2008.

The *Explanatory Notes* to the Criminal Justice and Immigration Bill provide a useful introduction to the various areas covered. Further background information is contained in House of Commons Library Research Paper on the Bill (RP 07/65: 9th August 2007). A summary of the second reading debate and of the proceedings in the public bill committee can be found in a second House of Commons Library Research Paper on the Bill (RP 07/93: 19th December 2007).

This Lords Library Note summarises key discussion during the report stage in the House of Commons. A select bibliography of documents relevant to the various parts of the Bill and more general papers has been included at the end of the note.

2. Report Stage

The report stage of the Criminal Justice and Immigration Bill in the House of Commons took place on 9th January 2008 (HC *Hansard*, 9th January 2008, cols 325–480). The third reading debate followed immediately afterwards (HC *Hansard*, 9th January 2008, cols 480–489). These proceedings were preceded by a debate on a programme motion (HC *Hansard*, 9th January 2008, cols 308–324). The sections below summarise the debate on the programme motion, the debates on the Government new clauses and amendments relating to industrial action by prison officers, self-defence, and various provisions proposed as a result of the review of prisons carried out by Lord Carter of Coles.

In addition to these new clauses and amendments, the House considered Government amendments covering technical and drafting matters (cols 406–8); referral orders, which were a result of discussions at the committee stage (cols 408–25); and the transfer of prisoners out of the United Kingdom, thereby ratifying the additional protocol to the Council of Europe Convention on the Transfer of Sentenced Persons (Strasbourg, 18th December 1997) (cols 425–37). Non-Government amendments debated included a new clause on blasphemy and blasphemous libel proposed by Dr Evan Harris, Liberal Democrat Shadow Minister for Innovation, Universities and Skills (cols 437–55). Introducing his clause, Dr Harris noted that his proposals had cross party support, as well as support from various religions. He commented that although blasphemy was an ancient law, the last conviction had taken place in 1977, with the last successful public prosecution occurring in 1922. The law was ancient and was no longer needed, as there was already sufficient legal protection to deal with outraging public decency and public order offences, and as "the Almighty does not need the protection of these ridiculous laws, which is why many people with a religious perspective share the view that those offences should be abolished" (col 443). The Parliamentary Under-Secretary of State, Ministry of Justice, Maria Eagle, responded to the debate, and stated that although the Government were sympathetic to the case for abolition of blasphemy and blasphemous libel, they felt that the Anglican Church should be consulted before proposals were brought forward. The Government were currently consulting the Anglican Church, and intended to table amendments during the passage of the Bill through the House of Lords to achieve the aims of Dr Harris' amendment. As part of this group, two amendments to the provisions on hatred on the grounds of sexual orientation (clause 126 of HL Bill 16) were discussed, and divided upon. The first amendment was proposed by the Liberal Democrat Shadow Secretary of State for Justice and Lord Chancellor, David Heath, the second by Jim Dobbin, Labour/Co-operative MP for Heywood and Middleton (cols 465–72). In relation to the former, 64 MPs voted in favour and 316 against the amendment, and in relation to the latter 169 MPs voted in favour and 338 voted against the amendment. A new clause on prostitution tabled by Fiona Mactaggart, Labour MP for Slough, was also selected for debate, but ran out of time (cols 455–6).

2.1 Programme Motion

The programme motion, moved by the Government, sought to timetable the proceedings on the remaining stages of the Criminal Justice and Immigration Bill (HC *Hansard*, 9th January 2008, cols 308–24). The aim of the programme motion was to ensure the completion of the remaining stages, including the debate on the programme motion, within eight hours of the commencement of the proceedings. In proposing the programme motion, the Minister of State, Ministry of Justice, David Hanson, anticipated that the official Opposition and the Liberal Democrats would oppose it, and confessed that in their position he might do the same. He was aware that it would be difficult for the House to discuss some of the amendments in the time allocated for debate, and that the

official Opposition and others would like more time to do so. Mr Hanson went on to state that the Government had structured the proceedings to enable a reasonable amount of time to be available to debate three significant new additions to the Bill: the clauses on the reserve statutory prohibition on prison officers taking industrial action; on the law relating to self-defence; and on sentencing and bail arrangements proposed as a result of the review of prisons by Lord Carter of Coles published in December 2007 as *Securing the Future—Proposals for the Efficient and Sustainable Use of Custody in England and Wales.*

The Shadow Minister for Justice, Edward Garnier, argued that the Criminal Justice and Immigration Bill had never been meant to become law. Instead, "it was intended as a headline catcher to give the impression that the Government, despite the departure of Tony Blair, was still at work" (col 310). He commented on the way in which the Bill had changed during its passage through the House of Commons: at second reading the Bill had had 128 clauses and 23 Schedules; during the committee stage, the Government had introduced 85 new clauses and 11 new Schedules, with only one of the new clauses, the clause covering the offence of hatred on the grounds of sexual orientation, having been mentioned at second reading; the Government had also introduced 400 amendments during the committee stage, bringing the total up to 176 clauses and 34 Schedules; and at the report stage, the Government had tabled a further 204 new provisions including clauses, Schedules, and amendments, some of which had only been tabled a few days previously, some at the end of the previous week. He contended that the Bill being considered was "a vastly expanded, vastly more incoherent and vastly more ridiculous Bill than it was at any stage before today" (col 312).

The Liberal Democrat Shadow Secretary of State for Justice and Lord Chancellor, David Heath, began his speech by agreeing with the Opposition about the timetable for the Bill. While he did not believe that programme motions were of necessity inadequate, he thought that "if the House is prepared to forego its responsibility to consider some of the most basic legislation that we are here to consider—criminal law—and to sub-contract it to the other place to do the job that we are supposed to do, all the guff about the primacy of the House of Commons and how important this place is as a debating Chamber means absolutely nothing" (col 312). Mr Heath commented that the House was being asked to believe that additional time to consider the Bill could not be found in January in a session that had begun in November, and that many members could have tabled more amendments if they had felt that it would have been possible for them to be considered. The matters being considered were not trivial, and the lack of debate constituted "an abuse of the House, made that much more difficult to stomach by the fact that the Lord Chancellor … told the Commons when he was Leader of the House how important it was that we respected the House's role, the rights of Back Benchers to intervene in debate, and the importance of Report as a part of the legislative process in which the whole House had the opportunity to debate matters that would otherwise be considered only by members of a Committee" (col 313).

At the end of the debate on the programme motion, Mr Hanson said that in his 16 years in the House he could recall five years of programme motions in Opposition, and that there had not been any discussion by the Conservative party of repealing the procedure relating to programme motions. He pointed out that the Government had made statements to the House on the measures being brought forward that day on the Prison Service, on imprisonment for public protection, and on the reforms proposed by Lord Carter of Coles. The House divided on the programme motion, with 279 MPs voting in favour and 224 against the motion.

2.2 Industrial Action by Prison Officers

The Criminal Justice and Public Order Act 1994 provides a duty owed to the Secretary of State not to induce a prison officer to withhold his services or to commit a breach of discipline (section 127(1), (2)). The provision was enacted in response to industrial action within the Prison Service in the early 1990s. The Government established a pay-review body in 2000, and a comprehensive voluntary agreement was negotiated with the Prison Officers Association in 2001. This was replaced in 2005 by a joint industrial relations procedural agreement (JIRPA). The agreement enabled disputes to be resolved between the Prison Officers Association and the Prison Service. As a consequence of the agreement, the Government disapplied the statutory prohibition on industrial action contained in section 127. In May 2007, the Prison Officers Association gave twelve months notice of their intention to withdraw from the JIRPA. On 29th August 2007, even though they were still bound by the terms of the agreement, the Prison Officers Association gave the Prison Service one hour's notice of their intention to hold a 24 hour strike.

On 7th January 2008, the Secretary of State for Justice and Lord Chancellor, Jack Straw, announced to the House of Commons that he had tabled amendments to the Criminal Justice and Immigration Bill to be debated on report on 9th January 2008 (HC *Hansard*, 7th January 2008, cols 39–52). The purpose of the amendments was to provide a reserve statutory restriction on industrial action by prison officers. In his statement he said "the powers in the amendments would be applied only in the absence of a suitable trade union dispute resolution and recognition agreement between the Prison Service and the relevant trade unions" (col 39). Further information on the background to the proposals can be found in the House of Commons Library Standard Note *Prisons Officers Industrial Action* (SN/BT/4563: 8th January 2008).

In proposing the amendments at the report stage (HC *Hansard*, 9th January 2008, cols 325–480), Mr Straw began by outlining the views his party had held on industrial action in the Prison Service while they were in Opposition. During the course of the passage of the provisions which eventually became section 127 of the Criminal Justice and Public Order Act 1994, the Labour Opposition had spoken and voted against them. Mr Straw emphasised that in doing so, Alun Michael, Labour/Co-operative MP for Cardiff South and Penarth, had not given an undertaking to repeal section 127, and had "made it clear that there could be circumstances in which we would accept that such a restriction on industrial action in the Prison Service should be on the statute book" (col 326). When Mr Straw became Shadow Home Secretary in the summer of 1994, he considered, having consulted the Shadow Cabinet, whether to repeal the statutory prohibition. He came to the conclusion that the special circumstances applying to the operation of prisons meant this should not be done. He pointed out that neither he nor Tony Blair as Leader of the Opposition had ever given an undertaking to repeal section 127. Instead, he had on three occasions used his powers under section 127 to deal with situations within the Prison Service, and had not, in his recollection, had complaints from members of the House as a consequence.

John McDonnell, Labour MP for Hayes and Harlington, intervened and quoted from a letter of 6th July 1994 from Tony Blair to the Prison Officers Association in which it was stated that "an incoming Labour Government will want to put this situation right … and ensure, once again, that prison officers are treated in the same way and with the same working rights as other public servants" (col 327). The Prison Officers Association and the Labour and Trade Union movement had interpreted the letter, according to Mr McDonnell, as a commitment to restore the ability of prison officers to withdraw their labour. Mr Straw responded that he did not recall any pressure to repeal section 127,

from anyone, except from the Prison Officers Association. Furthermore, no commitment to do so had been included in either the 1997 or 2001 manifestos.

Mr Straw went on to discuss the voluntary agreement and the reforms of industrial relations in the Prison Service, which were intended to make the use of section 127 unnecessary. During the course of the negotiations it had been made clear to the Prison Officers Association that the Government would only consent to a voluntary agreement that included "a comprehensive and legally binding undertaking by the Association not to take industrial action" (col 327). In 2005, the Prison Officers Association signed up to the JIRPA, and the Government therefore disapplied section 127. Mr Straw cited a written answer published in the Commons *Hansard* in which the conditions were set out: "if the POA gives notice to terminate the agreement with no alternative arrangements being in place, the Secretary of State would ask Parliament to reintroduce statutory constraints such as existed prior to disapplication of section 127" (quoted at col 328). Mr Straw noted that once the Prison Officers Association had signed the JIRPA, "it had voluntarily accepted that whatever else happened in the Prison Service, there could not be industrial action because of the risk to public safety and … to the welfare of prisoners". He contended that the industrial action on 29th August 2007 had demonstrated the risks to prisoners.

Although the Prison Officers Association asserted, in a letter to MPs, that it had been forced to sign the voluntary agreement, Mr Straw stated that this had not been the case. He said that the agreement had been submitted to a delegate conference, the Association had examined the agreement carefully, had signed it, and had accepted the arrangements for dealing with industrial disputes.

The Conservative MP for Sleaford and North Hykeham, Douglas Hogg, intervened asking why reliance on a voluntary agreement should ever have been contemplated. Mr Straw responded that the Prison Officers Association had said that they were ready for a voluntary agreement, accepted that the voluntary agreement would be comprehensive, and that if notice to terminate the agreement was given, the Government would reinstate the statutory powers under section 127. The Prison Officers Association had given the Government twelve months notice in May 2007 that they were terminating the agreement. The provisions to reinstate the statutory prohibition were being introduced as part of the Criminal Justice and Immigration Bill due to the amount of time it took for legislation to pass through Parliament. The only other option would have been to wait until May 2008 and then to introduce emergency legislation. In addition, the industrial action by the Prison Officers Association on 29th August 2007 had influenced the decision to introduce legislation at this time.

Once the Government had received notice from the Prison Officers Association that they intended to terminate the agreement, the Trades Union Congress had been asked to appoint somebody to facilitate negotiations for a new joint industrial procedure agreement. Ed Sweeney, the Chairman of Acas (Advisory, Conciliation and Arbitration Service), was appointed, and his report, *A Review of Industrial Relations in the Prison Service in England and Wales*, was published in January 2008. Mr Straw said that in the report, Mr Sweeney had suggested that "after a successful agreement and two years of stability, discussion should take place between the Prison Service and the POA with a view to establishing minimum cover arrangements instead of a statutory ban" (col 330). Mr Straw had committed himself to follow this course of action in his statement to the House on 7th January 2008. John McDonnell intervened, asking why provisions to reinstate the ban on industrial action under section 127 were being brought forward at this stage rather than waiting for negotiations to proceed between the Prison Officers Association and the Prison Service. Mr Straw responded that the actions of the

Government were not precipitate, and that the Prison Officers Association had been aware of the Government's intentions.

The Shadow Secretary of State for Justice, Nick Herbert, also began his speech by discussing the policy of Labour towards section 127 while in Opposition. He said that when in Opposition, the Government had fought against the legislation outlawing strike action in the Prison Service, citing the excerpt from Tony Blair's letter to the Prison Officers Association mentioned above. He added that Labour Opposition spokesmen had gone "around the country … giving the impression to members of the POA that section 127 was not only being resisted but would be repealed" (col 334). He went on to say "the fact is that whatever the subsequent justifications, the Labour party opposed the legislation originally, and promised to repeal it". This they had done three years ago when the statutory provisions were replaced with a voluntary agreement which the country had been assured provided the same protections as the statutory no-strike prohibition had. The Government were now being forced into having to reintroduce the same legislation. He questioned why the Government had repealed the legislation in the first place and why they were now, with 48 hours notice, reinstating the provision previously removed. The Government had not, in Mr Herbert's opinion, satisfactorily explained why they had disapplied the statutory provisions in the first place. Mr Herbert noted that in exchange for a no-strike agreement, it had been agreed that there would be a pay review, and that any award would be honoured. Mr Straw had said early in the debate that the award could not be honoured in full due to "exceptional economic circumstances". The breach of this deal "has driven [the Prison Officers Association's] anger about current arrangements" (col 335).

Mr Herbert went on to comment that he thought the proposed reserve power went further than section 127, as the new clause did not just make industrial action by prison officers unlawful, it also covered any other action likely to affect the normal working of a prison. This formulation had already been commented on earlier in the debate by David Anderson, Labour MP for Blaydon, and Jack Straw had undertaken to look at the formulation with a view to bringing forward amendments in the House of Lords.

The Shadow Secretary of State for Justice concluded his speech by saying: "we have now reached a position of future uncertainty because of how the Government have reneged on the pay award. They have mishandled the situation in prisons and allowed them to become overcrowded, so damaging relations with the POA that it is necessary for them to assume this power again. Being forced into that situation is an indictment of the Government's handling of this matter, so I am not surprised that the Secretary of State looked so sheepish about it both on Monday and today" (col 336).

The Liberal Democrat Shadow Secretary of State for Justice and Lord Chancellor, David Heath, thought that the problem was not the one proposed by Jack Straw. He suggested that everyone would prefer to have a voluntary agreement prohibiting industrial action rather than statutory provisions, if the agreement could be made to work. However wildcat action had taken place, and this could not be ignored. He did not believe that industrial action was ever proper in a prison environment. The other side of the coin was "that avoiding industrial action, and ensuring that we have an environment in which it is inconceivable, requires proper negotiating machinery and proper, binding arbitration on issues of grievance, and it requires management and Government who listen to what the people in the service are saying" (col 339). Mr Heath thought that it was regrettable that legislation was being discussed when the Sweeney report, which contained many positive proposals for improving the situation, had only been published a few days earlier.

In relation to the amendments proposed, he was concerned that the Secretary of State for Justice and Lord Chancellor had announced earlier that he intended to rewrite the provisions in the House of Lords. He thought that this was another example of why one should not legislate on such important matters on report and expect the House "to rubber-stamp the legislation in the context of a very abbreviated time scale when it should be subjected to proper reflection, consideration and scrutiny before moving to the other place" (col 340).

He concluded by saying that although he accepted for the moment the need to bring forward the proposals, he regretted the need to do so: "it speaks of failure of management and failure of the negotiating machinery between the Government, the management of the Prison Service and the work force. It suggests that industrial relations are at an unacceptable level in a key public service. My message to the Government is: they really must do better" (col 340).

The House proceeded to divide on the new clause, and 481 MPs voted in favour and 46 against it. The resulting provisions are contained in clauses 189 and 190 of the Criminal Justice and Immigration Bill as introduced in the House of Lords (HL Bill 16).

2.3 Self-Defence

In September 2007, the Secretary of State for Justice and Lord Chancellor, Jack Straw, told the Labour party conference that he intended to urgently review the balance of the law on self-defence "to ensure that those who seek to protect themselves, their loved ones, their homes and other citizens, know that the law really is on their side, that we back those who do their duty" (http://www.labour.org.uk/conference/jack_straw_speech). During the course of the second reading debate on the Criminal Justice and Immigration Bill, he confirmed that the Government were going to look at the law on self-defence. At the committee stage, the Shadow Minister for Justice, Edward Garnier, tabled a number of amendments based upon a private member's Bill introduced by Anne McIntosh, Shadow Minister for Environment, Food and Rural Affairs, in the 2005–06 session. Further information on these proposals is available in the House of Commons Library research papers *Criminal Justice and Immigration Bill: Committee Stage Report* (RP 07/93: 19th December 2007) and *Criminal Law (Amendment) (Protection of Property) Bill (Bill 18 of 2005–06)* (RP 05/83: 28th November 2005).

The amendments introduced on self-defence by the Government at report stage were intended to clarify the law on self-defence (HC *Hansard*, 9th January 2008, cols 345–62). The amendments provided that the question whether the degree of force used by the person charged with the offence ("D") was reasonable in the circumstances was to be decided by reference to the circumstances as he believed them to be. The degree of force used by D was not to be regarded as having been reasonable in those circumstances if it was disproportionate in those circumstances. In deciding the question the following considerations were to be taken into account in so far as they were relevant to the case: (a) that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and (b) that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constituted strong evidence that only reasonable action was taken by that person for that purpose.

Mr Straw referred to his own experiences of seeking to apprehend someone, and commented that on such occasions there was no time to make "a careful, fine judgment about the balance of the law" (col 347). Instead one acted instinctively, and "where people act reasonably, in good faith, the law should clearly be on their side" (col 347). The purpose of the law, according to Jack Straw, was to draw on the best and most

positive case law, and to clarify it. Anne McIntosh intervened and proposed that the amendments tabled by the Opposition, which mirrored the wording of her private member's Bill, were clearer than the Government's clause. The key element of the Opposition amendments was that the force used needed to be grossly disproportionate, and that this was or ought to have been apparent to the person using such force. Mr Straw responded that the civil test, based upon grossly disproportionate force created under the Criminal Justice Act 2003 in respect of any claim by a criminal against a victim who had assaulted or damaged him, could not be imported into criminal law, "not least because of the European Convention on Human Rights" (col 348). The Shadow Attorney General, Dominic Grieve, pointed out that the new clause was a restatement of existing law, and that the law envisaged cases in which disproportionate force may be legitimate. Therefore by allowing prosecutions only in cases where force was grossly disproportionate, the provisions would fall well within the scope of article 2 of the European Convention on Human Rights. He did not see how the amendment proposed by his party could fall foul of the European Convention on Human Rights, "particularly in the restricted circumstances to which they apply, which concern householders and closed premises when a victim is under a particular difficulty because they are unable to get away, temporise or disengage" (col 349). Jack Straw said that in the rare cases where a prosecution in such circumstances reached court "it would be for a jury to decide behind closed doors whether it thought that the force used was acceptable" (col 349).

The Shadow Secretary of State for Justice, Nick Herbert, also took up the issue of the difference between the tests in the Government and Conservative proposals. He said that the Conservative amendment sought to "give greater clarity to the law not by introducing the concept of people acting reasonably but by permitting them, when protecting themselves or their property against a trespasser, to use a degree of force provided that that force was not grossly disproportionate and as long as it should not have been apparent to the person that such force was grossly disproportionate" (col 350). Mr Herbert thought that Parliament needed to send out a clear and unambiguous message to the owners of homes and premises that should they use force where they were fearful of the actions of a trespasser, the law would be on their side. He did not see how restating existing case law could send out such a message.

Mr Herbert went on to refer to Jack Straw's conference pledge, and suggested that Mr Straw had had difficulty persuading his department of the need to change the law. Mr Straw responded that everybody accepted that the number of cases going to court was tiny, and that the problem was unnecessary and gratuitous investigations at an earlier stage. He believed "that we need to clarify the law, but that we must choose the best case law, rather than a compendium thereof" (col 353). This would lead to a change in the way in which the law worked, which was what he had meant in his conference speech. Mr Herbert thought that "if merely restating case law would amount to greater protection for householders, engender greater confidence or prevent police from arresting and investigating people when they should not, why has not the existing guidance—which the Government introduced after the last review, instituted by Tony Blair—succeeded in achieving that?" (col 354). He concluded that he felt that the balance between the two components of the offence in the Conservative amendment was right.

The Liberal Democrat Shadow Secretary of State for Justice and Lord Chancellor, David Heath, commented that all parties had always shared the view that there was a problem with the way in which cases of self-defence were investigated and sometimes prosecuted. He felt that the current law was competent to deal with the circumstances being discussed, and that the problem was not with the number of cases that ended up in court, but with the number of cases that were being investigated. In relation to the test, he felt that the formulation proposed by the Government worked better than that

proposed by the Conservatives. While the Government test gave latitude in terms of the state of mind of the person under attack, and allowed them to believe something that was wholly wrong provided that they genuinely believed that at the time, the Conservative test required that it should be apparent to the person that he was using grossly disproportionate force, a term that was undefined.

The House did not divide on the amendment discussed, and the Government's new clause was adopted. The provisions on self-defence are contained in clause 128 of the Criminal Justice and Immigration Bill as introduced in the House of Lords (HL Bill 16).

2.4 Review of Prisons

In June 2007, the Government asked Lord Carter of Coles to consider options for improving the balance between the supply of prison places and demand for them, and to make recommendations on how this could be achieved. Lord Carter published the results of his review, *Securing the Future—Proposals for the Efficient and Sustainable Use of Custody in England and Wales*, in December 2007. His key recommendations were:

- a significant expansion of the current prison building programme should begin immediately so that up to 6,500 additional new places, on top of the significant expansion already planned, can be provided by the end of 2012;
- larger, state of the art prisons should be planned and developed now so that from 2012 there can be approximately 5,000 new places that will allow for a programme of closures of inefficient and ineffective prisons offering better value for money and much improved chances of reducing re-offending and crime;
- that a structured sentencing framework and permanent Sentencing Commission should be developed, with judicial leadership, to improve the transparency, predictability and consistency of sentencing and the criminal justice system; and
- there are grounds for a more efficient approach to the way operations and headquarters' overheads are structured and managed.

On publication of Lord Carter's report, the Government made a statement to Parliament in which they agreed to bring forward amendments to the Criminal Justice and Immigration Bill to give effect to a number of Lord Carter's recommendations (HC *Hansard*, 5th December 2007, cols 827–37; HL *Hansard*, 5th December 2007, cols 1703–17). During the report stage of the Criminal Justice and Immigration Bill in the House of Commons, these Government new clauses and amendments were debated (HC *Hansard*, 9th January 2008, cols 362–406). The group of amendments included clauses on bail conditions, credit for period of remand on bail, sentences of imprisonment and detention for public protection, extended sentences for certain violent or sexual offences, release on licence of prisoners serving extended sentences, release of fine defaulters and contemnors, early release of certain long-term prisoners, and electronic monitoring of persons released on bail.

The Minister of State, Ministry of Justice, David Hanson, introduced the group of amendments stating that Lord Carter had made recommendations designed to increase the capacity of the prison estate and to develop a more sustainable approach to the use of custody. In December 2007, the Government had announced additional funding to extend prison capacity. In relation to custody, Lord Carter had, Mr Hanson said, proposed five specific measures: "the reform of public protection sentences to allow

greater flexibility in the use of those sentences; the reform of bail legislation to ensure that remand in custody is reserved for serious and dangerous defendants; allowing defendants who comply with the terms of their curfew while on bail to be credited for doing so when sentenced; aligning the release arrangements for prisoners serving sentences under the Criminal Justice Acts of 1991 and 2003; and restricting the availability of community sentences for those convicted of non-imprisonable offences" (col 364).

Mr Hanson then spoke to the amendments in each of these categories. In relation to the amendments on imprisonment for public protection, he noted that the Chief Inspector of Prisons, Anne Owers, had said that sentences were not targeted to the right offenders, and that the Chairman of Parole Board had said that there was a case for review. The changes proposed would not affect the availability of imprisonment for public protection for serious offenders, but would increase judicial discretion and would impose a seriousness threshold. The amendments relating to bail meant that offenders charged with less serious imprisonable offences would be treated more like those charged with non-imprisonable offences in the context of bail. As a result of these amendments, approximately 200 more people would be released on bail than at present. A further 200 places would be gained through the amendments to the Bill relating to credit for time spent on bail under electronically monitored curfew. The amendments aligning release arrangements for prisoners serving sentences under the Criminal Justice Acts 1991 and 2003 had the effect, according to Mr Hanson, of enhancing public protection, as "placing all such prisoners on licence, and making them subject to probation supervision for the whole of the second part of their sentence, will make them liable to recall at any time if their behaviour gives cause for concern" (col 367). The amendments relating to community orders were necessary as courts were increasingly using community orders instead of fines for low level offending. This had the effect of diverting probation resources from dealing with more serious offenders. The amendments would restrict the use of community orders to imprisonable offences.

The Shadow Minister of State, Edward Garnier, began by commenting on the lack of time available to scrutinise the amendments put forward. He considered that the origin of the new clauses and amendments proposed was the Government's mismanagement, which was not confined to the prison estate. Overcrowding was easy see, but what was more difficult to see was the "the equivalent overcrowding or overstretching of the probation and community punishment system" (col 368). These issues were demonstrated, according to Mr Garnier, by the early release of certain long-term prisoners system. Here, prisoners who had not been adequately rehabilitated or prepared for resettlement were being released early. However, where sentences were short, it was the last few days of the sentence in which the most important rehabilitation work took place. Where such preparation did not take place, the Probation Service was then being faced with having to look after people who were "essentially being thrown out of the back of the aeroplane without a parachute" (col 368).

Mr Garnier turned his attention to the substance of the amendments proposed. In relation to credit for periods spent on bail, he commented that it was difficult for the public to understand why the credit period should be taken into account. For example, where curfew orders were imposed from early evening to early morning to allow people to go to work, but which were designed to prevent people causing trouble at night time, a good part of the period credited would be spent by the individual in bed: "if someone has committed an offence that crosses the custody threshold—an offence that is serious enough to warrant a custodial sentence—it will cause a great deal of scepticism, undermine public confidence in the justice system and make the Government look increasingly ridiculous if the court is then required to say, 'By the way, all the time that

you have spent at home in bed is time that can be taken away from your custodial sentence'" (col 369).

The Shadow Minister for Justice was particularly concerned about the clauses relating to imprisonment for public protection, and hoped that the House of Lords would be able to give them more scrutiny and consideration. Prisoners on such sentences often found it difficult, as a result of the Government's mismanagement of the system and overcrowding, to obtain places on the relevant courses that would enable them to demonstrate that they had reached a level of behaviour that would allow them to be released. David Hanson immediately responded that he shared this view and that this was why the Government had proposed the amendments. However, Mr Garnier thought that the answer was not to dilute the system of imprisonment for public protection by increasing the minimum tariff, but to ensure that the system worked by making sufficient places for rehabilitation available so that prisoners could demonstrate that they were safe to be released.

Finally, Mr Garnier thought that the provisions related to community orders and release of fine defaulters and contemnors were being put forward because the Government could not manage the criminal justice system properly.

David Heath, Liberal Democrat Shadow Secretary of State for Justice and Lord Chancellor, also began his speech by commenting on the programme motion and that this group of new clauses and amendments illustrated the fact that it was "quite impossible to scrutinise such serious matters in this way. We are effectively giving a licence to the unelected House to do the job that we are elected to do" (col 374). The amendments proposed were designed to remove prisoners from the overcrowded system. Mr Heath agreed with the Minister that there were too many people within the prison system. He argued that there were many people in the prison system who should not be there, and that the amendments did not deal with people with mental illness who needed secure accommodation enabling them to be treated properly. Nor did the amendments deal with alcohol or drug addicts who were not receiving proper treatment. He drew attention to the resourcing of the Probation Service, and commented that both elements of the National Offender Management Service were overstretched: "as a result, prisons do not do the job in terms of rehabilitation and deterrence that people fondly imagine that they do, and the probation service is unable to provide a satisfactory alternative that enjoys the public confidence" (col 375).

The Minister of State, Ministry of Justice, David Hanson, responded to the debate saying that many of the points raised had gone wider than the amendments proposed. He explained that Lord Carter of Coles had engaged in significant consultation with the judiciary, the Prison Service, the National Offender Management Service, and with interested parties. The measures proposed by the Government through the amendments were only part of Lord Carter's recommendations, which included building additional prison capacity. He turned to the comments made on individual amendments. In relation to bail credit, he recognised that there was a difference between remand and curfew, which was why the offender was only credited with half the time spent on curfew, rather than the full time. It was important to ensure that individuals could maintain their lives, which is why curfew needed to be considered before sentencing in full. In relation to imprisonment for public protection, he felt that setting a minimum period allowed for offender behaviour to be addressed through planning and proper investment. Furthermore, the Government had put in place additional resources to provide courses for those who were now at minimum tariff or post-minimum tariff.

The Opposition sought to divide the House, and 309 MPs voted in favour and 236 against one of the clauses within this group of amendments.

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