Criminal Justice and Courts Bill: Commons Stages

Standard Note: SN/HA/6882

Last updated: 14 June 2014

Author: Oonagh Gay, Gabrielle Garton Grimwood, Jacqui Beard, Pat Strickland, Catherine Fairbairn

Section Home Affairs Section

The *Criminal Justice and Courts Bill 2013-14* had its second reading on 24 February 2014. Library Research Paper 14/8 *The Criminal Justice and Courts Bill* provides background on the proposals in the Bill. There are four parts covering criminal justice, including offences relating to extreme pornographic images and release and recall of prisoners, young offenders, secure colleges and youth cautions, changes to courts and tribunals, including strict liability and jury misconduct, and judicial review changes, which attracted much written and oral evidence.

The Public Bill stage ran from 11 March to 1 April 2014. The first day of report was held on 12 May. There is a carry over motion applicable to the Bill and so the final day of report and third reading will take place in the next session.

There were a number of amendments to the Bill at committee stage, but no amendments or new clauses were added as a result of Government defeats. The Opposition concentrated most of its concern in relation to part 4 on judicial review changes, and there were a number of divisions on clause stand part debates. There were two new clauses:

- drugs for which prisoners can be tested and;
- offences of sending letters with intent to cause distress and anxiety.

These are clauses 14 and 18 respectively in the Bill as amended in public bill committee, Bill 192. There is a track-changed version of the Bill, which shows the amended text.

The Justice Secretary, Chris Grayling, tabled new clauses for report stage in 2013-14 session, on sentences for murder of police or prison officer, offences for disqualified drivers, on sentencing of young offenders for certain serious offences and on certain planning appeals. The first two were added to the Bill on 12 May 2014.

More Government amendments have been tabled for the final day of report and third reading. New proposals include:

- tackling personal injury claims;
- new offence to deal with police corruption;
- new offence of wilful neglect by care workers.

The Joint Committee on Human Rights published *The implications for justice of the Government's proposals to reform judicial review* on 30 April, which was critical of the Government's plans for judicial review in part 4 of the Bill. The programme motion provides for amendments to Part 4 to be debated on 14 June. The Joint Committee published a further report on the Bill on 11 June 2014. *Legislative Scrutiny (1) Criminal Justice and Courts Bill; (2) Deregulation Bill* which raised issues about rights of the child, increased sentences for terrorism, young offenders, criminal courts charge and repeated its concerns about judicial review changes.

Contents

1 Passage of the Bill in the Commons

1.1 Second reading

Second reading took place on 24 February 2014, where the Bill was unopposed although there were several criticisms made of individual clauses and parts. The Justice Secretary and Lord Chancellor, Chris Grayling, said that he "[could not] abide a situation in which serious sex offenders and terrorists may serve only half their sentence in prison" and automatic early release should not be a right. He would (he said) have preferred to do away with automatic early release in one step, but the measures in the Bill would make a start. He also hoped to make better use of new and emerging technology to monitor the whereabouts of offenders under supervision. In response to a question from Sir Edward Garnier, Chris Grayling said that the sentencing rules could not be applied retrospectively and so the costs of these measures would accumulate over the next 5 to 10 years.[1]

In reply, Sadiq Khan, for the Opposition, accused the Government of desperation and suggested that the Bill had "come from nowhere" and had been devised to keep busy fractious Conservative backbenchers. There were already two criminal justice bills waiting for royal assent.[2,3] He went on to say that of course the Opposition supported measures to keep the public safe from the most serious and violent criminals, but the abolition of sentences of imprisonment for public protection (IPP) had been misguided;[4] giving the Parole Board a say in whether some of the most serious offenders should be released at the half-way or two-thirds point or increasing the maximum sentence for a few offences was no substitute for judges having the power to impose an IPP.[5]

---

1 HC Deb 24 February 2014 cc48-50

2 HC Deb 24 February 2014 cc58-9

3 The *Antisocial Behaviour, Crime and Policing Act 2014* received Royal Assent on 13 March 2014, as did the *Offender Rehabilitation Act 2014.*

4 The abolition of sentences of imprisonment for public protection is discussed in Library standard note 06806 (28 November 2013).

5 HC Deb 24 February 2014 cc59-60

Chris Grayling argued that secure colleges would offer a new approach, placing a greater emphasis on education and rehabilitation and offering better value. He dismissed as "nonsense" the notion that the secure college would be the biggest children's prison in Europe and said it was much more akin to a "school or college with a fence around it".[6]

In response Sadiq Khan asked whether the secure college would be a teenage Titan prison.[7] It was not clear (he argued) where or how the money would be found for the secure college; might it not be better to spend that money on education and rehabilitation work in the existing secure estate?: He also referred to concerns about the use of restraint and argued that more clarity was needed about how the college would address issues underlying offending (such as mental health problems or addiction) and about what the Government intended for the network of secure children's homes.[8,9]

Chris Grayling also set out the Government position on Part 4 in relation to judicial review which appeared to be the most contentious issue. Mr Grayling commented:

> The Government have consulted extensively on this package of reform, and we did so with an open mind. Concerns were raised, both practical and principled, about proposals to reform "standing", which determines who can bring a judicial review, and I have decided not to pursue those. Judicial review must continue in its role as a check on the powers that be. It is an important tool for our society which allows people to challenge genuinely wrong decisions by public authorities. These reforms do not change that, and I would not want them to do so. They make it more difficult for pressure groups simply to use judicial review as a campaigning tool and for those with a financial vested interest—for example, one developer judicially reviewing another—to delay a process of investment, to derail a competitor or to derail a major project that is strategically and economically in the interests of this country. c58

Sadiq Khan argued that "In a country without a written constitution, we tinker at our peril with important checks and balances such as judicial review without proper thought." He also thought the provisions unnecessary:

> If we exclude immigration from judicial review, we will see that the situation has been static since the 1990s. A Bill passed 18 months ago by this Government moved immigration from judicial review to the tribunal system, so the problem they are seeking to address was dealt with nearly two years ago.c77

Keith Vaz and Alan Beith, chairs of the Home Affairs and Justice Select Committees respectively, raised points about the proposed secure colleges, crime in prison and on judicial review.[10] Elfyn Llwyd (Plaid Cymru spokesperson for justice) argued that the Bill represented posturing on the part of the Government.[11]

The Bill received a second reading without a division.[12]

---

6 HC Deb 24 February 2014 cc51-2

7 Titan prisons are discussed in the Library standard note *Building prisons: the bigger, the better?* (SN 05646, 10 February 2014)

8 HC Deb 24 February 2014 cc63-4

9 The controversy about the use of restraint and "reasonable force" is discussed at page 24 onwards of the Library Research Paper prepared for the Bill's second reading (RP14/8, 20 February 2014). In her blog post of 29 April 2014, Frances Crook, chief executive of the Howard League for Penal Reform, comments on the role and future use of secure children's homes and refers to the secure college as a "Titan jail for children".

10 HC Deb 24 February 2014 c88-90

11 HC Deb 24 February 2014 c70

12 HC Deb 24 February 2014 c126

1.2 Public Bill Committee stage

The original programme motion for Public Bill Committee provided for it to finish by 1 April 2014 and for report and third reading to take place on a single day. This was agreed without debate on 24 February 2014.[13] At the first sitting of the Committee on 11 March the programme motion was adopted without debate.

The Committee heard oral evidence from a number of witnesses on 11 and 13 March 2014. Written evidence received is available from the public proceedings webpage of the Bill. There were thirteen sittings from 11 March to 1 April. The Bill as amended by the Committee is Bill 192 of 2013-14.

There is a tracked changes version of the Bill as amended by Committee, which illustrates where changes are made.[14]

A carry over motion was agreed on 24 February to allow the Bill to be re-introduced if its stages were not complete by the end of the session. Standard Note 3236 Carry Over of Public Bills gives the background.

The first day of report stage for the Bill was on 12 May. The second day and third reading will take place .in the new session, given the carry over motion.

The individual clauses and parts of the Bill are discussed in the following sections of this Note. Square brackets are used to refer to the numbering of the Bill as reprinted after public bill committee stage, as two extra clauses were added (testing prisoners for drugs and sending letters with intent to cause distress).

1.3 Amendments tabled for Report stage

Amendments tabled for report are available on the Bill pages of the parliamentary website. Amendments dealt with in the first day on 12 May are detailed with below.

2 Part 1 Criminal Justice measures

Part 1 of the Bill deals with a number of criminal justice measures, including sentencing for dangerous offenders, release and recall of prisoners, cautions and possession of certain pornographic images. In the fifth Public Bill Committee sitting, shadow Justice Minister Dan Jarvis said that the Opposition hoped to be able to support most, if not all, of Part 1.[15]

2.1 Dangerous offenders

Clause 1 would increase the maximum sentence available for certain terrorism offences to life imprisonment. These include offences under section 4 of the *Explosive Substances Act 1883*, which currently has a maximum sentence of 14 years. In the Bill as introduced, this sentence increase extended to England, Wales and Northern Ireland only. Following confirmation from the Scottish Government that they were content with the proposal, the Government moved an amendment to extend this to Scotland as well, and this was agreed to without division.[16] Dan Jarvis did question whether, given the very small number of

---

13 HC Deb 24 February 2014 c127

14 *Compared Bills Criminal Justice and Courts Bill* UK Parliament website.

15 PBC Deb 18 March 2014 c164

16 PBC Deb 18 March 2014 c165

convictions over the past 10 years, the clause was more about "looking tough"; Justice Minister Jeremy Wright said the issue was not the number of convictions but how serious the offence could potentially be.[17] **Clause 2** and **clause 3** add certain offences, including terrorism-related ones, to the new dangerous offenders sentencing scheme introduced by the *Legal Aid Sentencing Punishment of Offenders Act 2012*. Both were agreed to without amendment. Dan Jarvis withdrew an amendment to clause 3 which raised issues to do with resources for the Parole Board to deal with the extra hearings. This was in the light of Jeremy Wright's assurances that the measures would not place "unmanageable demands" on the Parole Board.[18]

The Committee agreed some minor and technical Government amendments to schedule 1 (which, along with section 5, creates a new custodial sentence for offenders "of particular concern") to make sure driving bans given at the same time could be extended in the same way as they are for other custodial sentences.[19]

2.2 Release and recall of prisoners

Clauses 6 to 13 (and **schedule 2**) were considered by the Committee on 18 March 2014.

Electronic monitoring

Clause 6 makes provision for the electronic monitoring of offenders released from custody on licence, moving this from a discretionary, case by case to mandatory footing.

Dan Jarvis and Andy Slaughter's amendment to the clause would have removed the provision allowing for compulsory electronic monitoring and was intended (Dan Jarvis said) to address significant issues about the detail and supporting evidence for the measure, the need for the power and how it would be exercised.

The Opposition were in favour of electronic monitoring but (Dan Jarvis continued) the Ministry of Justice's own impact assessment showed that the new electronic monitoring condition would come with a range of associated but unquantified costs and there would also be risks. [20] Julian Huppert shared many of these concerns, while Yasmin Qureshi argued that judges should retain discretion over who was tagged.[21]

Responding to the debate, Jeremy Wright said that the ability to monitor whereabouts already existed in law; it was important to take advantage of what new technology could offer as that gave scope to do more to protect victims and deter crime. He agreed with Guy Opperman that electronic monitoring would save taxpayers' money and reduce the likelihood of reoffending. On the mandatory nature of the monitoring, he pointed out that compulsion would apply to the group or groups for whom the Secretary of State considered it sensible to apply electronic monitoring; the Secretary of State was not obliged to apply electronic monitoring to everyone leaving custody. In response to concerns about confining an offender to their home if domestic violence was present, he said that electronic monitoring was about monitoring whereabouts, not imposing a curfew.[22]

---

17 Ibid
18 Ibid cc170-171
19 Ibid c174
20 PBC Deb 18 March 2014 cc175-6
21 PBC Deb 18 March 2014 c178
22 PBC Deb 18 March 2014 cc180-3

The amendment was withdrawn.[23]

Another Opposition amendment – which would have imposed freedom of information requirements on those carrying out electronic monitoring, if they were not a public authority[24] **− was negatived on a division by 6 votes to 10.[25]**

Remaining unlawfully at large after recall

Clause 10 would create a new offence of remaining unlawfully at large after recall.

Dan Jarvis moved an amendment which would have added that such remaining at large should be deliberate, saying that this would make a significant difference to the most vulnerable offenders, who might fall victim to this offence through quite different circumstances.[26] Robert Buckland and Julian Huppert argued that, as with bail, the offence should be couched in terms of "reasonable excuse".[27] Responding to the amendment, Jeremy Wright argued that the clause already provided sufficient safeguards to ensure that only those deliberately and wilfully seeking to avoid serving the rest of their sentence would be caught by the new offence. The amendment was withdrawn and the clause was ordered to stand part of the Bill.

Schedule 2 was agreed to and **clauses 7 to 9** and **11 to 13** were also ordered to stand part of the Bill.[28]

2.3 Cautions

Clause 14 [15] places restrictions on the circumstances in which cautions may be used for serious and repeat offenders. Dan Jarvis described this as a reform Labour "wholeheartedly" welcomed, although he raised several issues in the clause stand part debate, including whether the rank of police officer who could issue cautions should be specified on the face of the Bill rather than in an order.[29] Jeremy Wright said that this would be set out in statutory guidance, and that the officer would have to be at least superintendent level if the offence was an indictable one (i.e. triable in the Crown Court). For "either way" or repeat offences, the officer would have to be at least inspector level. The clause was agreed to without amendment.[30]

Under **clause 15 [17]** the order specifying which either-way offences the restrictions will apply for would be subject to negative resolution procedure. A minor and technical Government amendment was agreed to which would amend the *Police and Criminal Evidence Act 1984* (PACE). Under section 37B of PACE, where the Director of Public Prosecutions decides a person should be given a caution but it does not prove possible to do so, the person should instead be charged with the offence. The amendment clarifies that the restriction in clause 14 would be one of the reasons why a caution might not be given. This was agreed to.[31]

---

23 PBC Deb 18 March 2014 c186
24 As defined by section 3 of the *Freedom of Information Act 2000*
25 PBC Deb 18 March 2014 c193
26 PBC Deb 18 March 2014 c194
27 PBC Deb 18 March 2014 cc195-6
28 PBC Deb 18 March 2014 c193
29 PBC 18 March 2014 c199
30 PBC 18 March 2014 c210
31 PBC 18 March 2014 c211

2.4 Possession of extreme pornographic images

Clause 16 [19] would ban the possession of extreme pornographic images depicting rape and other non-consensual sexual penetration.

Dan Jarvis welcomed the clause and said that Labour would work with the Government to stamp out "abhorrent images".[32] However, during the clause stand part debate, he raised a number of concerns about the wording of the clause.

Mr Jarvis was concerned that certain material would not be captured by the offence - for example, material that was "badly acted, such as clearly fictional depictions of rape".[33] An amendment was therefore moved, requiring images to be "real or simulated depictions" of certain sexual acts.[34] Jeremy Wright explained that the amendment was not necessary and said that the Bill's *Explanatory Notes* would be reconsidered to clarify that the offence would cover both staged and real depictions of rape or other penetration.[35]

Dan Jarvis spoke to an amendment so that the offence would apply to images appearing to portray under-age sexual activity; incest; and sexual activity involving sexual threats, humiliation or abuse.[36] Mr Wright replied by setting out the background to the creation of the existing offence of possessing extreme pornographic images. He explained that the offence was "carefully and deliberately" constructed so that it would not have a "serious impact on people's private sexual behaviour and personal freedoms".[37] He said that there was never any intention that the offence should be used to censor depictions of all activities that may appear distasteful or that would not appear in a film classified by the British Board of Film Classification.[38] Mr Wright also explained that existing legislation was "fully equipped" to deal with images of child sexual abuse.[39]

Another amendment proposed by Mr Jarvis sought to broaden the scope of the offence so that it would apply to the portrayal of sexual activity which involved a real or apparent lack of consent.[40] Mr Wright said that he could not accept the amendment as it would extend to images depicting *any* non-consensual sexual activity (including, arguably, kissing and touching) and was therefore "too broad".[41]

After welcoming Mr Wright's assurances and admitting that there was a "difficult balance" to be struck about the scope of the offence, Mr Jarvis withdrew his amendments and the clause was agreed.[42]

3 Part 2 Secure colleges for young offenders

Clause 17 [20] of the Bill as introduced, dealing with secure colleges and other places of detention of young offenders, was considered in Committee on 18 March 2014. **Clause 18 [21]**, dealing with contracting out of secure colleges, was considered in Committee on 20 March 2014 and **Clause 19 [22]**, dealing with the powers of the Youth Justice Board in

---

32 PBC Deb 18 March 2014 c211
33 PBC Deb 18 March 2014 c212
34 PBC Deb 18 March 2014 c211
35 PBC Deb 18 March 2014 c215
36 PBC Deb 18 March 2014 c211
37 PBC Deb 18 March 2014 c217
38 PBC Deb 18 March 2014 c217
39 PBC Deb 18 March 2014 c218
40 PBC Deb 18 March 2014 c211
41 PBC Deb 18 March 2014 c218
42 PBC Deb 18 March 2014 c219

relation to the provision of accommodation, was ordered to stand part of the Bill on the same date.

3.1 The size and design of the secure college

During the consideration of **clause 17**, and echoing the concerns expressed about the size of the secure college, Sarah Champion (Labour) noted that Sue Berelowicz, the deputy children's commissioner, had said in her evidence to the Committee that any prison for children had to be small enough and with high enough staff-to-child ratios that the children did not feel lost and it was not impersonal.[43] She therefore sought an assurance that the secure college would be designed in such a way as to replicate the secure feeling in children's homes.[44]

Design, Jeremy Wright agreed, would be crucial, reflecting the new approach of enforcing detention in an education facility (as opposed to, as now, providing education within detention facilities). Small units might not offer the necessary economies of scale or the breadth of different services that might be needed.[45] He returned to this theme during the debate on **clause 18**, when he repeated that putting all children and young people in secure children's homes (and having more of these, closer to home) would pose problems both in terms of cost and the suitability of the accommodation.[46]

Location of the "pathfinder" secure college

During the debate on **clause 18**, Valerie Vaz (Labour) queried why the "pathfinder" secure college should be in Leicestershire when the Ministry of Justice's own impact assessment showed that London was the area with the most acute need. Jeremy Wright pointed out that the Glen Parva site already had planning consent and the Ministry of Justice already had access to the land. The site was (he said) not too far away from the east midlands and east of England, where places were also needed.[47]

Age range of young people to be held in the secure college

Dan Jarvis (Labour) spoke to an amendment to **clause 17** which would have narrowed the age range of young people to be held in the secure college, removing those under the age of 15. The amendment was withdrawn, but in the debate it was observed that children aged between 12 and 14 were mostly accommodated in secure children's homes and they might be too vulnerable and too challenging to be accommodated in a secure college. Concerns were also expressed that the low numbers of children aged 12 to 14 in custody might mean that they would become lost in the system. In response, Jeremy Wright acknowledged that it could be daunting for 12 year olds to be in the same establishment as 17 year olds, but (he observed) 12 and 13 year olds were already successfully accommodated alongside older children in both secure training centres and secure children's homes. Young offender institutions, which hold boys over the age of 15, were not (he said) an apt comparison.[48] Later in the debate, Jeremy Wright said that 12, 13 and 14 year olds would be housed separately and careful thought would be given to accommodation arrangements. The Youth Justice Board would decide the appropriate place for each young person.[49]

---

43 PBC Deb 11 March 2014, c12 Q15
44 PBC Deb 18 March 2014 c224
45 PBC Deb 18 March 2014 cc227-8
46 PBC Deb 20 March 2014 cc268
47 PBC Deb 20 March 2014 c266
48 PBC Deb 18 March 2014 c232
49 PBC Deb 18 March 2014 c234

Girls in the youth custody population

Dan Jarvis spoke to an amendment to **clause 17** which would have prohibited placing girls and young women in a secure college. He noted that girls were a tiny minority in the youth custody population and Sue Berelowicz had argued to the Committee that they should be placed not in secure colleges but in small units.[50] In reply, Jeremy Wright acknowledged that there would be concerns about the potential risks to girls in accommodating a small number of girls in the same institution as a large number of boys, but (he suggested) secure training centres and secure children's homes were accommodating girls and boys in separate units within the same setting. It would be for the Youth Justice Board to decide the most appropriate establishment for any young person.[51]

3.2 Schedule 4: Contracting out secure college provision

Clause 18 introduces **Schedule 4**, making provision for contracting-out the provision and running of secure colleges, certification of secure college custody officers and contracting-out functions at directly-managed secure colleges.

An amendment to **schedule 4**, which would have added the assessment and promotion of the young people's best interests to the duties of a secure college custody officer, was withdrawn. Jeremy Wright responded to the amendment by pointing out that paragraph 8 of schedule 4 already required a custody officer in a secure college to attend to the well-being of a detained person.[52]

Another amendment to **schedule 4**, which would have defined more narrowly the circumstances in which custody officers could use reasonable force, provoked some intense discussion.

Jeremy Wright argued that paragraph 8 of the schedule, while listing the duties of a custody officer, did not authorise the use of force to maintain good order and discipline. Authority for that had (according to paragraph 10) to be given specifically by secure college rules.[53] Dan Jarvis accepted that there would be an occasional need to use reasonable force to resolve challenging situations, but the wording of the Bill was (he said) ambiguous. The Court of Appeal had found in 2008 that attempts to allow staff in secure training centres to use force to ensure good order and discipline violated the European convention on human rights. It would be helpful to know when the secure college rules might be published.[54] Sarah Champion pointed out that the use of restraint on children had been linked to deaths in custody.[55]

Jeremy Wright again argued that a custody officer's duties would include maintaining good order and discipline, but the Bill's provisions would not by themselves allow custody officers to use force for that purpose. Secure college rules were the correct place to set out the boundaries on the use of force and such use of force would not be possible unless the rules made specific provision. Force should not (he said) be used merely to secure compliance with an order. In the limited circumstances in which all attempts at resolving a situation without use of force had failed, and where the safety and welfare of that young person or of others was at risk, some force might be necessary as a last resort and subject to strict

---

50 PBC Deb 18 March 2014 c236
51 PBC Deb 18 March 2014 cc238-9
52 PBC Deb 20 March 2014 c297
53 PBC Deb 20 March 2014 c299
54 PBC Deb 20 March 2014 c300
55 PBC Deb 20 March 2014 c301-5

conditions and safeguards. *Minimising and managing physical restraint* and its associated policy documents gave parameters for the use of force as a last resort.[56]

On a division, the amendment was negatived by 10 votes to 6.

Contracting-out arrangements, stand part debate

In the debate on **clause 18** standing part of the Bill, Andy Slaughter (Labour) highlighted concerns about how the contracting arrangements under the clause would work; how the secure college could both provide the high level of service of a secure children's home and yet achieve economies of scale; why it was necessary to create a new type of institution rather than spend the money on education within existing institutions and the lack of detail about how education would be delivered.

Andy Slaughter also highlighted the likely role of "giant corporations" such as Serco, G4S and Capita; although he was not suggesting (he said) that the private sector should not be involved in the criminal justice system, lessons from the last four years had to be learnt.[57] Guy Opperman (Conservative), however, observed that the previous Government had employed G4S and Serco to run prisons.[58] Jeremy Wright reminded the Committee that the Government had referred apparent abuse of electronic monitoring contracts to the Serious Fraud Office for investigation.[59] The Government considered that the secure college model would give the opportunity to broaden the range of suppliers, because the Ministry of Justice would be looking for those with expertise in education and other things that the population of the secure college would need.[60] Governments of both colours had not (Jeremy Wright went on) managed contracts as effectively as they should; lessons were currently being learnt and work to improve contract management was under way.[61]

Concerns were expressed about transparency and the application of freedom of information principles to the contracts. Julian Huppert (Liberal Democrat) pointed to a recent response to a PQ by the Minister, Simon Hughes,[62] but Andy Slaughter argued that this did not go far enough.[63] An amendment to Schedule 4 which would have made any person with whom the Secretary of State entered into a contract a public authority under section 3 of the *Freedom of Information Act 2000* was put to the vote and **was negatived by 10 votes to 6.**

Concerns were also expressed about the continuity of education once children and young people left the secure college, especially if it was some distance from home. Jeremy Wright agreed that continuity would be extremely important and pointed out that those with special educational needs would have an education, health and care plan going into custody, but several Members remarked that not all children with special educational needs had a statement in place and, besides, the issue of continuity would apply to all children and young people at the secure college.[64]

Qualifications of staff and inspection

---

56 PBC Deb 20 March 2014 c306-7
57 PBC Deb 20 March 2014 cc250-4
58 PBC Deb 20 March 2014 c254
59 PBC Deb 20 March 2014 c257
60 PBC Deb 20 March 2014 c263
61 PBC Deb 20 March 2014 c264
62 HC Deb 18 March 2014, c638
63 PBC Deb 20 March 2014 c258
64 PBC Deb 20 March 2014 cc262-3

An amendment proposed by Sarah Champion, which would have required all staff employed as teachers, counsellors or nurses to hold qualifications as qualified teachers, accredited members of the British Association of Counsellors and Psychotherapists or registered children's nurses was withdrawn. Sarah Champion argued that teaching, care and psychological support staff ought to be specified on the face of the Bill (as the principal and security staff were).[65]

In response, Jeremy Wright said that high quality staff would be crucial to delivering better outcomes for young people in custody, covering both education and wider risk factors which often drive offending behaviour. The approach to staffing would reflect the Government's approach to education in England; it would be for education providers to decide how best to raise the engagement and attainment of young people in a secure college.[66]

Jeremy Wright also told the Committee, during the consideration of **clause 17**, that it was important that providers of secure colleges should meet the high expectations held of them. Two Government amendments, to provide for the inspection of secure colleges and secure training colleges and young offender institutions by HM Inspectorate of Prisons (in the case of secure colleges, jointly with Ofsted) were agreed.[67]

Secure colleges in Wales

A Government amendment to **clause 17** (with consequent amendment to **Schedule 3)** was agreed: Jeremy Wright informed the Committee that the Welsh Government had confirmed their support for the Bill to be amended, so as to enable the Secretary of State to provide secure colleges in Wales as well as in England.[68]

3.3 The future role of secure children's homes

The Committee also considered probing amendments to **clause 17**, tabled by Dan Jarvis and Andy Slaughter, intended to clarify the Government's plans for the future role of secure children's homes. Dan Jarvis remarked that the Youth Justice Board had announced that it would reduce its contract from 166 to 138 secure children's home places, a cut of 17% which created the risk of the youngest and most vulnerable children being inappropriately placed in large establishments unable to offer the same standard of care as a secure children's home.[69] Andy Slaughter warned that the Government should not throw the baby out with the bath water: secure children's homes and other existing provision should not take second place to secure colleges.[70]

In response, Jeremy Wright said that the Government envisaged that – if the first secure college was successful as a pathfinder and a network of secure colleges was then developed – most young people aged 12 to 17 in custody would be held in secure colleges, but it would be important to think carefully about how to accommodate and educate young people of different ages and with different needs.[71] Later in the debate, he said that there would still be a place for secure children's homes, but he could not agree with some of those who gave evidence to the Committee that it would be better to accommodate everyone in those homes, because of the cost of more than £200,000 a place and because a secure children's home

---

65 PBC Deb 20 March 2014 c287
66 PBC Deb 20 March 2014 cc290-1
67 PBC Deb 18 March 2014 cc241-3
68 PBC Deb 18 March 2014 c221
69 PBC Deb 18 March 2014 c222
70 PBC Deb 18 March 2014 c226
71 PBC Deb 18 March 2014 c227

would not be appropriate for some of the young people currently in detention.[72] The amendment was withdrawn.

Later in the debate, Jeremy Wright agreed with Andy Slaughter that (assuming the pathfinder secure college was a success) secure colleges would become the predominant form of institution, with secure children's homes reserved for a small minority of very vulnerable children and young offender institutions and secure training centres "effectively … a thing of the past".[73]

Other minor and technical Government amendments were agreed.[74]

4 Part 3 Courts and Tribunals

4.1 Trial by Single Justice on the Papers

Clauses 24 to 28 [26-30], dealing with trial by single justice on the papers, were considered in Committee on 25 March 2014.

Andy Slaughter, for Labour, sought to clarify the circumstances in which the new single justice procedure would be used, to look at the principle underlying the change to single magistrates, to look at the process in terms of attendance and information supplied to defendants and to ask whether there is any mitigation of the right to a fair trial or to open justice.[75]

Shailesh Vara, for the Government, emphasised that the cases dealt with using the procedure would be low-level, non-imprisonable cases. He gave examples of the offences likely to be in scope: speeding, driving without insurances and TV licence evasion.[76] He stated:

> The Government are providing a legal structure and the criminal courts procedure rules will contain the detail about how the measure is to be implemented. Stakeholders will be involved, including the Crown Prosecution Service, the police, the judiciary and the magistrates themselves. Indeed, magistrates have been consulted. All those people will be involved in coming up with the proper guidance that will be used to identify to which types of cases the provision will refer from the 2,000-plus that are eligible.
>
> I emphasise again that the cases involved will not be those that are likely to be controversial. Offences to which someone has pleaded not guilty will be dealt with under the existing system. I am talking about low-level, relatively routine cases that are dealt with on a standard level at the moment, in an absurd situation, with three benchers, lawyers, cases being read out, and the time and effort that goes with that. Legal advice will be available to the people concerned.[77]

Andy Slaughter proposed new clauses 12 to 15 (which were then not moved) and questioned why the Government had proposed a single magistrate system. The new clauses stated that throughout the process of trial and sentencing there should be a minimum of two magistrates, rather than a single magistrate.[78]

---

72 PBC Deb 18 March 2014 cc233-4
73 PBC Deb 18 March 2014 cc240
74 PBC Deb 20 March cc308-10
75 PBC Deb 25 March 2014 c319
76 PBC Deb 25 March 2014 c324
77 PBC Deb 25 March 2014 c325
78 PBC Deb 25 March 2014 c331

Andy Slaughter referred to briefings produced by Liberty and Justice, quoting from a Liberty briefing which argues that the single magistrate proposal would significantly harm the principles of trial by jury and open justice.[79] Liberty said:

> It is impossible for a single magistrate to form a "panel of peers" and this will offend against the basic premise of trial by jury. Further, perceived flaws in the current lay magistracy system are addressed at least in part by the requirement that magistrates sit in open court and as a panel. These complaints will be exacerbated by the single magistrates process. Complaints about the current system include that the lay magistracy are not sufficiently representative of society; that magistrates should not be charged with reaching decisions of both fact and law, that there is wide discrepancy in magistrate sentencing, and that they rely too heavily on legal clerks. Further, a magistrate deciding cases and sentences while sitting in private, fatally undermines the principle of open justice. The slow erosion of these bedrock principle risks dangerously undermining public trust and confidence in the criminal justice system over the long-term.[80]

Mr Vara responded that he failed to see the benefits of two magistrates, as opposed to one. He expressed confidence that in simple, straightforward cases magistrates are capable of reaching a decision by themselves.[81]

Andy Slaughter proposed an amendment which sought to ensure that the single magistrate procedure would only be used in cases where there had been a response from the defendant.[82] In response to concerns raised by Valerie Vaz regarding the right to a fair trial, Mr Vara said the new procedure would be compatible with Article 6 of the European Convention on Human Rights and said that the presumption at the moment is that all summary trials in the traditional magistrates court go ahead whether the accused is present or not. He also noted that significant numbers of defendants fail to respond to the current procedure.[83] Andy Slaughter withdrew the amendment.[84]

The Committee considered amendments spoken to by Andy Slaughter which, he said, concerned the principle of open justice.[85] Amendment 44 would have required that case lists be published, containing details of cases to be considered and decisions reached by a single justice. Amendment 42 would have removed the provision that a case heard under the single justice could be decided other than in open court.

Andy Slaughter noted submissions made by the Magistrates Association, Justice, Liberty and the PCS union which raised concerns that, in cases using the procedure proposed, justice may no longer be seen to be done. Andy Slaughter stated that the opposition position that all proceedings should continue to be held in open court.[86]

Mr Vara stated that amendment 42 would undermine one of the main drivers of the policy. He said that the Government consider that the time wasted and the costs incurred in

---

79 PBC Deb 25 March 2014 c335

80 *Liberty's Committee Stage briefing on Parts 1, 2 and 3 of the Criminal Justice and Courts Bill in the House of Commons*, March 2014, para 24
See also Justice, *Criminal Justice and Courts Bill: House of Commons Committee Stage Briefing and suggested amendments on Criminal Justice Proposals*, March 2014, paras 19-22

81 PBC Deb 25 March 2014 c337

82 PBC Deb 25 March 2014 c341

83 PBC Deb 25 March 2014 c344

84 PBC Deb 25 March 2014 c346

85 PBC Deb 25 March 2014 c350

86 PBC Deb 25 March 2014 c351

requiring magistrates to sit in open court and decide cases is disproportionate in the type of low-level cases to which the procedure will apply. With regard to the publishing of case lists he said this was a matter best left to the criminal procedure rules. Mr Slaughter expressed the view that transparency was being sacrificed for flexibility and pressed the amendment to a division. It was defeated 8 votes to 7.[87]

Andy Slaughter spoke to amendments which he later withdrew, regarding the situation where the defendant did not understand the information contained in the single justice procedure notice and the removal of the power to discharge from the list of sentences available to a single justice.[88]

In the course of the Committee's consideration of these clauses, the Government moved a number of amendments intended to ensure flexibility within the new procedure. These amendments were agreed.[89]

4.2 Criminal Courts Charge

Andy Slaughter spoke to a number of amendments relating to the criminal courts charge. **Clause 29 [32]** provides for a charge that would be imposed on all adult offenders who have been convicted of a criminal offence in respect of the costs of the criminal courts. Several of the amendments aimed to give the courts discretion as to whether to impose the charge. Other amendments would have required that imposing the charge be 'just and reasonable in the opinion of the court' and that the court give reasons for either imposing or not imposing the charge.[90]

Amendment 112 would have amended clause 29 to state that it would be inappropriate to order a charge to be paid in certain specified circumstances, including; where, in the opinion of the court, it may affect a decision on plea, where the enforcement costs are likely to amount to more than the value of the charge and before a written means assessment had been carried out.

Mr Slaughter commented that the Magistrates Association had advised the Government to allow the court discretion in imposing the charge. The Magistrates Association said:

> The court is in the best position to identify in which cases the ordering of payment of court costs would be inappropriate or unreasonable.[91]

Mr Slaughter noted Liberty's view that there already exists a wide judicial discretion for costs orders in the criminal justice system. He also drew attention to the evidence given to the Committee by the Prison Reform Trust, Howard League and the Criminal Justice Alliance which stated that the charge would be an additional burden on offenders and their families.[92]

In response, Mr Vara said that the changes proposed by the amendments would not only make the scheme more complicated and difficult to understand and apply, but would also create the risk of unequal treatment of different offenders.[93] He stated that offenders who are poor or on low incomes would be protected by provisions built into the proposals. The court

---

87 PBC Deb 25 March 2014 c354
88 PBC Deb 25 March c361-364
89 PBC Deb 25 March 2014 c317, c346 and c356-8
90 PBC Deb 25 March 2014 c365
91 PBC Written Evidence submitted by the Magistrates' Association (CJC 20)
92 PBC Deb 25 March 2014 c366
93 PBC Deb 25 March 2014 c372

would take the means of an offender into account when setting the rate of repayment and offenders would be able to pay by instalment and request to vary the rate of repayment.

Mr Vara resisted the amendments which sought to change the circumstances in which the charge would be imposed. He said that it was unnecessary to specify that the charge would not be imposed if, in the opinion of the court, doing so would affect a decision on plea, noting that the charge would only be imposed long after the defendant had made a decision about plea. He stated that the proposal that the charge should not be imposed where the enforcement costs are likely to exceed the value of the charge was both unnecessary and unworkable, it being impossible for the court to anticipate how much enforcement activity will be required. The proposed requirement for a written means test would also, he said, be unnecessary as systems are already in place to ensure that the court is provided with information about an offender's means.[94]

Mr Slaughter stated that he thought the proposal was a mistake. He said:

> We do not say as a matter of principle that there should be no contribution at all. We have reservations about the fact that the Government's proposal is a departure that will mean an individual paying for a process that is really part of due process. It is a constitutional requirement. The criminal justice system must function properly, fairly and timeously. That is not the responsibility of those caught up in it—that is the caveat.[95]

The lead amendment was pressed to division and defeated 10 votes to 6.[96]

Andy Slaughter proposed and later withdrew, a probing amendment that would have required an assessment of the offender's finances to be made before a date for collection of the charge is decided. Mr Vara stated that he was confident that the existing practices and legislation for the enforcement of court-ordered financial imposition, which would be extended to cover the charge, would serve the purpose the amendment sought to achieve.[97]

Mr Slaughter also spoke to, and later withdrew, amendments concerning the position regarding the charge where there is more than defendant and the application of the charge to young offenders.[98]

Clause 30 [33] of the Bill would require the Lord Chancellor to review the operation of the new provisions for criminal court charges after an initial period and, if appropriate, to repeal by regulations. Mr Slaughter proposed an amendment which would have changed the initial period from three years to one and required (rather than allowed) the Lord Chancellor to make consequential and transitional provisions. Mr Vara said that it would not be possible to carry out a review after 12 months and that he was not convinced that a duty to create consequential and transitional provisions was necessary. Mr Slaughter stated that he was broadly satisfied and withdrew the amendment.[99]

---

94 PBC Deb 25 March 2014 c364
95 PBC Deb 25 March 2014 c375
96 PBC Deb 25 March 2014 c376
97 PBC Deb 25 March 2014 c377
98 PBC Deb 25 March 2014 c378-380
99 PBC Deb 25 March 2014 c383

4.3 Collection of Fines: Variation of collection orders

Clause 31 [34] would make changes to the powers of fines officers to vary collection orders. Mr Slaughter moved an amendment which would provide that the power to vary an offender's rate of repayment could only be exercised by an officer of the court directly employed by HMCTS. Mr Vara said that there is nothing inappropriate about an external provider performing the powers used by fines officers to vary collection rates. The amendment was withdrawn.[100]

4.4 "Leapfrog" appeals in civil proceedings

Clauses 32 to 35 [clauses 35 to 38] were discussed on 25 March 2014. Andy Slaughter confirmed that the Opposition was not opposed in principle to the provisions relating to appeals in civil proceedings ("leapfrog" appeals directly to the Supreme Court, missing the Court of Appeal), except in relation to appeals from the Special Immigration Appeals Commission.[101] However, he said that he had concerns about the use of the term "national importance" and considered that this should be for the Supreme Court, rather than the first instance court, to consider.

> We are talking about the highest court in the land, a court whose time is precious and whose role is specialised. There is a danger that either too many cases will end up there, because of determinations made by a court of first instance, or that the wrong type of cases will end up there, because of the "national importance" criterion in the Bill.[102]

Andy Slaughter also spoke to amendments intended to narrow some of the criteria so that a leapfrog appeal would not be allowed:

- where a declaration had been made under section 6 of the *Justice and Security Act 2013* (that the closed material procedure could be used in the proceedings);
- without the consent of one or more parties unless by decision of the Supreme Court following an oral hearing;
- where one or more of the parties was unrepresented.

Shailesh Vara said that it was important to remove the requirement for the consent of all parties before a case could leapfrog in order to prevent one party from exercising a veto on an appropriate case being expedited, adding that the court would still be able to take into account the views of the parties. He also said that the Government considered that the judge at first instance had an important role in the process, a view which had been supported by the senior judiciary in their response to the consultation.

Mr Vara considered that the use of the closed material procedure should not preclude a case from leapfrogging and that the requirement for the consent of both the judge at first instance and the Supreme Court would be a sufficient safeguard against misuse.

The amendment relating to unrepresented parties was, Shailesh Vara said, unworkable and could allow one defendant among many to defeat a leapfrogging application simply by

---

[100] PBC Deb 25 March 2014 c385
[101] PBC Deb 25 March 2014 c386
[102] PBC Deb 25 March 2014 c388

terminating their relationship with their legal advisers temporarily, or where they were fully qualified lawyers representing themselves.[103]

Andy Slaughter said that the provisions went "too far" but he withdrew the amendments he had proposed. However, he pressed for a vote on the question of whether **Clause 35** (appeals from the Special Immigration Appeals Commission) should stand part of the Bill, saying that this was "perhaps the most obvious case in which the loosening of the leapfrog process is inappropriate". **The clause was agreed to by 11 votes to 7**.[104]

4.5 Wasted costs orders

Andy Slaughter questioned the point of **Clause 36 [39]** which would require the court, when making a wasted costs order, to inform an approved regulator and/or the Director of Legal Aid Casework as it considered appropriate. He asked whether the clause would simply restate the discretion the court had already.

Shailesh Vara said that the Government considered that the implications of receiving a wasted costs order should be strengthened so that legal representatives were encouraged to consider more carefully their decisions relating to handling claims and on whether to pursue a case. He said that the question of whether it was appropriate to make such a notification would remain a matter for the court to determine, based on the facts of a case.

Andy Slaughter withdrew the amendment he had proposed on this point.[105]

4.6 Contempt of court and jury misconduct

The Committee took oral evidence from David Ormerod. the Law Commissioner responsible for criminal law at its second sitting.[106] Mr Ormerod commented on clauses 43[45] and 46[48] which were not directly drawn from the Law Commission recommendations.[107] Professor Cheryl Thomas, professor of judicial studies at University College London law faculty gave evidence at the fourth sitting on 13 March 2014. She expressed her concerns about the powers to take away electronic devices from jurors in clause 43.[108] She also criticised clause 46 as not precisely drafted. [109]

Written evidence was received from the BBC and a number of media organisations on the operation of clauses 40 to 41.[110] This evidence was critical of the proposed powers and argued that the draft regulations for these clauses should be available during the passage of the Bill, so that their operation would be more transparent. The Newspaper Society made similar points.It also expressed concern about the effect of the Attorney General's powers:

> 13 From the point of principle, it is a potentially dangerous step for the Attorney General (a member of the Government of the day) to be given the statutory power to dispense notices to anyone—editor, publisher of newspapers, magazines, books or other material in any media, broadcaster, website owner, library, individual—suggesting that lawfully published archive material be removed from public view as a forerunner to court injunction and threat of contempt proceedings, with the service of

---

103 PBC Deb 25 March 2014 c388-92
104 PBC Deb 25 March 2014 c393
105 PBC Deb 25 March 2014 c393-5
106 PBC Deb 11 March 2014 c68 c Q165
107 Ibid c70
108 PBC Deb 13 March 2014 c127
109 Ibid c129
110 Written evidence submitted by the BBC, Guardian Newspapers etc (CJC 42)

> that notice then removing a defence that would otherwise be available to the recipient if the server of the notice, the AG, chooses to bring contempt proceedings. It appears that it is the service and receipt of the notice, not the validity of the AG's legal opinion as to contempt, that would actually deprive any or all recipients of any defence[111]

Strict liability

The Committee examined **Clauses 37 to 39 [40 to 42]** at its tenth sitting on 25 March 2014. Andy Slaughter, quoted the concerns of the Newspaper Society about the Attorney General. Shailesh Vara, made it clear that the Government were not prepared to accept a probing amendment on this point, since a balance was to be struck, as illustrated in the following exchange:

> Removing the notice procedure would mean that if potentially prejudicial material was available before court proceedings, and remained available after those proceedings began, the publisher or distributor would have a complete defence against contempt of court. It is vital that defendants should be tried by the courts, not by the media. The amendment would result in prejudicial material remaining available, which could increase the risk of an unfair trial. There would be no ability to bring contempt of court proceedings against a publisher. We do not believe that would achieve the right balance between rights. I therefore urge the hon. Gentleman to withdraw his amendment.
>
> **Mr Slaughter:** I will not press the amendment to a vote, but what is the Minister's response to a Government Law Officer being able to intervene by issuing notices to small publishers and individuals?
>
> **Mr Vara:** Very simply, it is important to have a balance, and that balance is ultimately decided by the Government Law Officer. We are not trying to take sides in any way; we are trying to see that justice prevails, whether it is a small publisher or a big publisher. [112]

The amendment was withdrawn.

Mr Slaughter then queried whether the Bill was being a "little heavy handed with jurors" This prompted a general discussion, but Mr Slaughter did not press his probing amendment and the clause was adopted, as were the next two clauses after some further debate.[113] He went to express concern about the drafting of clause 44[47]:

> I do not want to put the case too strongly, but on something defined as "prohibited conduct", I would say, if I am generous to the Government, that they are trying to dot the i's and cross the t's because they are trying to deal with cases that do not fall into convenient existing boxes, and to look ahead to see other forms of abuse, so they have come up with a catch-all phrase, and that is dangerous.[114]

In response, Mr Vara said that he "recognise[d] the hon. Gentleman's concern, and if he agrees to withdraw his amendment at this stage, I will take his suggestion away and give it my full consideration. " Mr Vara moved some drafting amendments and other amendments which would introduce an exception allowing disclosure to the police. Mr Vara commented that this would implement a recommendation made by the Law Commission in December in

---

111 Written evidence submitted by the Newspaper Society (CJC 24)
112 PBC 25 March 2014 c398
113 PBC 25 March 2014 c404
114 PBC 25 March 2014 c407

its report on contempt. [115] Other technical amendments made clear that a judge does not have to communicate personally with jurors who wish to discuss jury deliberations that might provide grounds for an appeal against conviction, and that information about such deliberations might be disclosed in parties to relevant proceedings.

Jury research

The Committee went on to discuss whether the Law Commission's recommendations on reform of the *Contempt of Court Act 1981* on jury research should be accepted. Mr Vara said that the Government had not yet responded to the Commission and that any amendment was premature (c413). Mr's Slaughter proposed a new clause 24 on jury education but this was rejected as premature at this stage by the Government.[116]

5 Part 4 Judicial Review

The Committee received a considerable number of written submissions on this part of the Bill. The Bingham Centre report *Streamlining Judicial Review in a manner consistent with the rule of law* published in February 2014 is also relevant. The Commitee also took oral evidence at its second, third and fourth sittings on part 4. Details can be found on the Bill pages on the parliamentary website.[117]

Clauses **50 to 57 [53 to 60]** were debated at the 11th, 12th and 13th sittings on 27 March 2014 and 1 April 2014.

5.1 Opposition approach to part 4

Andy Slaughter made some general comments on the overall Opposition approach to Part 4, arguing that the evidence sessions had indicated widespread dissatisfaction:

> We heard from some of the most eminent practitioners in the country, not only professional bodies such as the Law Society and the Bar Council, but intervening groups and non-governmental organisations such as Justice, Liberty and the Public Law Project, which are considered to be the ultimate authority in the area. We also heard from the Constitutional and Administrative Law Bar Association, Nicola Mackintosh, Nick Armstrong, Adam Wagner, Michael Fordham and Angus Walker, who are some of the leading exponents.[118]

Substantially different outcomes

Clause 50 [53] (Likelihood of substantially different outcome for applicant) was debated extensively on 27 March on clause stand part rather than individual amendments, but Mr Vara was not prepared to accept amendments, arguing that clause struck "a fair and sensible balance between limiting the potential for the abuse of judicial review and protecting its vital role as a check on public authorities".[119] **The clause was added to the Bill by 10 votes to 6.**

On 27 March 2014 at the eleventh sitting, a number of amendments were discussed but none were accepted. Mr Vara resisted amendments on **clause 51 [clause 54**] which dealt with provision of information about financial resources and the clause was adopted by 10 votes to 6.[120] Mr Slaughter then spoke to two amendments on **clause 52 [55]** which he later

---

[115] PBC 25 March 2014 c408
[116] PBC 27 March 2014 c421
[117] http://services.parliament.uk/bills/2013-14/criminaljusticeandcourts/stages.html
[118] PBC Deb 27 March 2014 c425
[119] PBC Deb 27 March 2014 c440
[120] PBC Deb 27 March 2014 c448

withdrew, but pressed the clause itself to a division. **The clause was added by 10 votes to 6.**[121]

Intervenors and costs

Andy Slaughter then introduced a series of amendments to **clause 53 [56]** on intervenors and costs, noting "We heard from a number of witnesses that they believe that the clause will effectively kill off intervention as far as the charitable sector and NGOs are concerned."[122] The Liberal Democrat Julian Hippert also expressed his concerns and Mr Vara promised to lconsider his concerns and to see whether anything can be done before consideration on Report. [123]The clause was added to the Bill by 8 votes to 6.

Capping of costs

At the 12th sitting on 27 March Mr Slaughter argued that if the Government should move on extending protective costs to the leave stage, and that objective of this provision was to severely to curtail the use of protective costs orders, one of the methods developed in the administrative court to allow meritorious judicial reviews to go ahead. (c472) However he did not press his amendment to a division. None of the amendments on this clause were formally moved and Mr Vara argued that the provisions gave the Government the opportunity to respond quickly, without the need for primary legislation, should it become necessary to amend, add or remove. The clause was added to the bill by 10 votes to 6 (c475). The next two clauses were not opposed.

Planning appeals

The Conservative backbencher Robert Neill put forward amendments to broaden the scope of **subsection 57(6) [60(7)]** relating to planning appeals with the support of the Law Society. Andy Slaughter indicated that he did not oppose the amendments and that his party also welcomed efforts to "rationalise, speed up and codify provisions relating to planning proceedings" (col 487). In response, the Minister, Shailesh Vara, promised to consider the points which had some merit, but without commitment. [124]

5.2 Legal aid changes in judicial review cases

On 1 April **New Clause 23** was debated. According to Mr Slaughter, this clause was designed to ensure that changes to legal aid for judicial review would be made through primary legislation in the Government consultation paper:

> The new clause is a necessity—we intend to push it to the vote if the Minister does not accept it—because nothing in the Bill deals with the proposals in the Government's consultation and the proposals that are in tandem with the Bill to limit the availability of legal aid in judicial review proceedings. That seems to us to be a significant and deliberate omission. As the whole of part 4 is given over to judicial review and related matters and other parts of the Bill, such as the clauses on appeals, are generated principally by the Government's war on judicial review, there seems no reason why these significant proposals on restriction of legal aid should not be in the Bill too.[125]

Mr Vara did not accept the necessity for the new clause, arguing that it would constrain the Lord Chancellor from making further revisions and amendment to the schedule in the *Legal*

---

[121] PBC Deb 27 March 2014 c4558
[122] PBC Deb 27 March 2014 c455
[123] PBC Deb 27 March 2014 c475
[124] PBC Deb 27 March 2014 c484

[125] PBC Deb 1 April 2014 c526

Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) to reflect the Government's priorities. The new clause was defeated by 9 votes to 6.[126]

5.3 Joint Committee on Human Rights report on part 4

The Joint Committee on Human Rights issued a strongly worded report on 30 April 2014 on the changes proposed in the Bill. The press release from the Committee stated:

> The Committee points out that the growth in judicial review cases over recent years, which the Government cites as a fundamental reason for changes to the judicial review system, was substantially founded upon an increase in immigration cases; these cases are now being dealt with outside that system – and so the principal cause of the rise in judicial review cases no longer exists. In the Committee's view, the proposals on judicial review expose the conflict inherent in the combined roles of the Lord Chancellor and Secretary of State for Justice, and it calls for a thoroughgoing review of the issues raised by the Minister's dual roles[127]

The JCHR report, *The implications for justice of the Government's proposals to reform judicial review,* argued that there were constitutional issues at stake:

> In our view, the Government's proposals on judicial review expose the conflict inherent in the combined roles of the Lord Chancellor and Secretary of State for Justice which raises issues which should be considered by a number of parliamentary committees. We think the time is approaching for there to be a thoroughgoing review of the effect of combining in one person the roles of Lord Chancellor and Secretary of State for Justice and of the consequent restructuring of departmental responsibilities between the Home Office and the Ministry of Justice. [128]

There continues to be commentary and discussion about part 4. Dr Mark Elliott of Cambridge University has contributed to the UK Constitutional Law Association blog on the JCHR report.[129]

6 New clauses added to the Bill

6.1 Drugs for which prisoners may be tested

The Library Research paper *Reducing reoffending: the "what works" debate* (RP12/71, 23 November 2012) offers a summary at page 53 onwards of the National Offender Management Service's (NOMS) approach to getting prisoners off drugs and breaking the link between substance misuse and reoffending and some of the commentary and criticism that that approach has generated.

One plank of NOMS' approach is the use of mandatory drug testing (MDT) within prisons and young offender institutions. Section 16A of the *Prison Act 1952* (as amended) makes provision for prisoners to be tested for drugs. Subsection 3 defines a "drug" as

> any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971.

Clause 14 of the Bill as amended in Committee (Bill 192) was introduced in Committee as a Government amendment on 27 March as **new clause 21**. The clause enables the Secretary of State to add to the scope of the MDT programme in prisons and young offender

---

126 PBC Deb 1 April 2014 c532

127 "Evidence lacking for Government's proposed reforms to judicial review" 30 April Joint Committee on Human Rights

128 HL Paper 174 HC 868 2013-14, Summary

129 Mark Elliott: Judicial Review Reform 1 May 2014 UK Constitutional Law Association blog

institutions, by specifying in secondary legislation non-controlled drugs as well as those controlled under the *Misuse of Drugs Act 1971*.

The origins of the clause lie in a Private Member's Bill promoted by Margot James (Conservative), the *Prisons (Drug Testing Bill)* of 2013-14.

In introducing the clause, Jeremy Wright said that MDT was an effective measure of drug use within prisons and played an important part in the response to that misuse. Nonetheless, the drug-testing power in section 16A of the *Prison Act 1952* had not kept pace with the changing pattern of drug misuse within prisons, as more prisoners were now misusing prescription medicines and new psychoactive substances, many of which are not controlled under the *Misuse of Drugs Act 1971*.[130] He agreed with Robert Buckland (Conservative) that other action also needed to be taken, to prevent prescription drugs which had been dispensed legitimately to one prisoner finding their way to others.

Dan Jarvis confirmed that the Opposition had no objection to the clause and it was added to the Bill.

6.2 Offence of sending letters etc with intent to cause distress or anxiety

Angie Bray moved a new clause, now **Clause 17**, on 27 March which would make the offence in section 1 of the *Malicious Communications Act 1988* of sending letters etc. with intent to cause distress or anxiety, triable either-way (i.e. in either the magistrates' court or Crown court) and provide that the maximum penalty be increased, on indictment, to two years' imprisonment, an unlimited fine or both.[131] Currently the offence is a summary-only offence (dealt with in the magistrates' court) and the maximum penalty is six months' imprisonment, a fine of up to £5,000 or both.

Angie Bray told the Committee that her interest arose from a case in her constituency where a girl aged 13 or 14 was sent 'unwanted explicit sexual text messages' by a man in his forties. She said that after a judge had dismissed a case brought against the man for an attempt to groom a child and meet them for sexual activity,[132] the Crown Prosecution Service had been unable to then prosecute him under the *Malicious Communications Act 1988* because the six month time-limit for bringing prosecutions for summary-only offences had expired.[133]

Jeremy Wright noted that Ministers had also received separate representations that the six-month time limit hampers police investigations into other internet related offences that might be charged under section 1 of the 1988 Act, including 'trolling'.

He said that the Government would welcome and accept the new clause:

> … the world is changing and the law needs to change with it. We must recognise that the internet and mobile phones are increasingly used to send or attempt to send offensive and distressing material, including to vulnerable young people. Police and prosecutors need adequate time to respond to such offending and tough penalties

---

130 PBC Deb 27 March 2014 c488

131 PBC Deb 27 March 2014 c489

132 Section 15 *Sexual Offences Act 2003* and *Criminal Attempts Act 1981*

133 A magistrates' court may not try an accused for a summary offence unless the information (essentially a statement describing the allegation and the accused) was laid within six months of when the offence was allegedly committed (section 127 *Magistrates' Court Act 1980*). There are some exceptions to this rule, set out in section 127.

> should be available to the courts. The Government therefore welcome and accept the new clause. [134]

Andy Slaughter said the Opposition would not oppose the new clause. It was read a second time and added to the bill.

6.3 Debates on new clauses not added to Bill

Sarah Champion moved a new clause which would have amended the offence set out in section 15 of the *Sexual Offences Act 2003* (meeting a child following sexual grooming). Currently the offence is committed where the adult defendant has met or communicated with the child on at least two occasions and subsequently meets or arranges to meet, or travels with the intention of meeting the child with the intention of committing a sexual offence (as defined) against the child. The new clause proposed reducing the number of occasions that the defendant must initially meet or communicate with the child from two to one.

Jeremy Wright explained the Government's reservations about the new clause:

> As I understand it, section 15 of the 2003 Act was crafted to cover what was thought at that time to be a gap in the law in respect of grooming. Grooming covers situations where an adult establishes contact with a child with the intention of gaining the child's trust and confidence, but with the ultimate purpose of meeting that child for sexual activity. In practice, what is required in terms of what the defendant actually does may not, in fact, amount to a great deal under this offence, and to reduce the necessary contact to one such text could be thought to be disproportionate given the seriousness of the offence. It would remove the essence of the course of conduct through which a child's trust is gained, which is central to the purpose of section 15.[135]

Mr Wright stated that the Government was open to suggestions that would strengthen the law in this area and that he would reflect on what had been said. Sarah Champion withdrew the clause.[136]

There was further debate on 27 March (12th sitting) on other new clauses, none of which were added to the Bill. Sarah Champion spoke to New Clause 10 on amending the *Child Abduction Act 1984* in respect of the offence of abduction.[137] This would have rectified a disparity in ages of children abducted based on whether or not the child was in care. In response, Jeremy Wright resisted the new clause but promised to consider the underlying issue.[138]

Dan Jarvis introduced New Clause 11 (offence of assaulting a worker selling alcohol). He said that the new clause was supported by a number of organisations including many retail groups and unions, who were concerned about protecting bar and off-licence staff. In response, Jeremy Wright argued that the clause would make the offence harder to prosecute: **Dan Jarvis pressed the new clause to a division which was lost by 10 votes to 5.**[139]

---

134 PBC Deb 27 March 2014 c493
135 PBC Deb 27 March 2014 c497
136 PBC Deb 27 March 2014 c498
137 PBC Deb 25 March 2014 c498
138 PBC Deb 27 March 2014 c501
139 PBC Deb 27 March 2014 c507

Dan Jarvis then introduced new clause 16 designed to protect confidential information for victims of domestic and sexual abuse, Mr Vara promised to consider the arguments raised in principle and so Mr Jarvis withdrew the clause.[140]

Andy Slaughter then spoke to New Clause 19 on permission hearing and costs, in relation to judicial review. It would have clarified that the costs following on a formal hearing on permission should normally be paid by the losing party, as recommended in the Bingham report.[141] He later withdrew the clause, but said he had not been persuaded by the Government response.[142]

Finally, Dan Jarvis introduced New Clause 22, designed to increase sentences for aggravation related to membership of the armed forces. In response, Mr Vara said that the Government was not convinced of the need to make changes in the criminal law and the clause was withdrawn, although Mr Jarvis indicated that the Opposition might return to it at a future date.[143]

7 Report stage first day 12 May 2014

A second programme motion was approved on 12 May just before the first day of report which provided for new clauses to be debated as follows, split between the two days, one in each session:

First day	
New Clauses and new Schedules relating to any of the following: (a) driving offences; (b) determination of the minimum term in relation to mandatory life sentences; (c) committal of young offenders to the Crown Court for sentence.	7.00 pm
New Clauses and new Schedules relating to any of the following: (a) treatment, release and recall of prisoners; (b) adult cautions; (c) offences of sexual grooming of children or abduction of children; (d) Armed Forces; amendments to Part 1.	8.30 pm

[140] PBC Deb 27 March 2014 c512
[141] *Streamlining Judicial Review in a manner consistent with the rule of law* February 2014 Bingham Centre
[142] PBC Deb 27 March 2014 c514
[143] PBC Deb 27 March 2014 c520

New Clauses and new Schedules relating to any of the following: (a) detention of young offenders; (b) youth cautions; (c) referral orders; amendments to Part 2;	10.00 pm
New Clauses and new Schedules relating to any of the following: (a) trial in magistrates' courts on the papers; (b) charging offenders in respect of costs of criminal courts; (c) collection of fines; (d) appeals in civil proceedings, other than judicial review and challenges to planning-related decisions; (e) wasted costs in civil proceedings; (f) contempt of court; (g) juries and members of the Court Martial; amendments to Part 3.	
Second day	
New Clauses and new Schedules relating to judicial review and challenges to planning-related decisions; amendments to Part 4.	Two hours after commencement of proceedings on Consideration
New Clauses and new Schedules relating to offences of possessing or using offensive weapons; remaining new Clauses and new Schedules; amendments to Part 5; remaining proceedings on Consideration.	One hour before the moment of interruption

(5) Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on the second day.—(Mr Vara.)[144]

The second day of report is expected on 14 June 2014.

[144] HC Deb 12 May 2014 c457

7.1 New clause: offences committed by disqualified drivers

Jeremy Wright, for the Government, moved New Clause 14 on 12 May to amend the *Road Traffic Act 1988* to make the offence of causing death by dangerous driving while disqualified an indictable offence and increases the maximum penalty for such conduct to 10 years imprisonment. It also creates an offence of causing serious injury by driving while disqualified – an either way offence with a maximum penalty of 4 years' imprisonment.[145] The new clause was added to the Bill. A Labour New Clause 22 on driving while disqualified was negatived by 291 votes to 196.[146]

7.2 New clause: term of imprisonment for murder of police or prison officer

Government New Clause 10 was added to the Bill. The Member's Explanatory Statement to the amendment was as follows:

> Member's explanatory statement
>
> This amendment provides that the court should normally start by considering a whole life term when sentencing an offender for the murder of a police or prison officer in the course of his or her duty. Currently, the starting point in these cases is a minimum term of 30 years.[147]

The clause was added to the Bill without a division.[148]

7.3 Other non –Government new clauses not added to the Bill on 12 May

The Conservative Philip Davies spoke to New Clause 29 on fixed term recalls for prisoners, and New Clause 38 making deportees ineligible for resettlement licences. There was a division on the latter which was lost by 469 votes to 6.[149]

New clauses 2 and 3 on sexual grooming and child abduction tabled by Sarah Champion were also not added to the bill, although there was cross party support. Amendment 20 on extreme forms of pornography was also unsuccessful, as was an Opposition New Clause 15 on aggravated offences against members of the armed forces, which was negatived by 277 to 195.[150] New clause 19 and associated amendments on secure colleges offered an opportunity to debate part 1 of the Bill. For the Government, Jeremy Wright said that it was accepted that 10 and 11 year olds were not appropriate for secure colleges, but resisted attempts to ensure that neither girls nor anyone under 15 was held in a college. New Clause 19 was negatived by 295 votes to 196 .[151]

8 Report stage second day and third reading

There are a number of Government amendments and new clauses to be debated on 14 June in the new session 2014-15. Some were tabled in the new session.

---

145 Members explanatory statement for NC 14 Consideration of Bill 12 May 2014
146 HC Deb 12 May 2014 c480
147 Criminal Justice and Courts Bill Consideration of Bill Amendments 12 May 2014
148 HC Deb 12 May 2014 c 485
149 HC Deb 12 May 2014 c513
150 HC Deb 12 May 2014 c518
151 HC Deb 12 May 2014 c537

8.1 New government clauses to be debated on 17 June 2014

Planning challenges

New Clause 52 and New Schedule 3 provide that a range of planning-related decisions may only be brought with the leave of the High Court, and enables challenges to costs orders connected with some planning decisions to be challenged as part of the same application. Planning challenges were discussed in Public Bill Committee at the 12th sitting where Mr Vara promised to consider proposed amendments from Robert Neill. [152]

Personal injury claims[153]

On 9 June 2014 there was a written statement from Shailesh Vara, junior minister at the Ministry for Justice, on plans for legislation aimed at tackling fraudulent personal injury claims:

> **The Parliamentary Under-Secretary of State for Justice (Mr Shailesh Vara):** My noble Friend, the Minister for civil justice and legal policy, Lord Faulks QC, has made the following written ministerial statement:
>
> The Government intend to bring forward at the earliest opportunity legislative measures aimed at tackling unjustified personal injury claims.
>
> First, we intend to introduce legislation to require the court to dismiss in its entirety any personal injury claim where it is satisfied that the claimant has been fundamentally dishonest, unless it would cause substantial injustice to the claimant to do so. These provisions are particularly relevant both to cases where the claimant has grossly exaggerated his or her own claim, and to cases where the claimant has colluded with another person in a fraudulent claim relating to the same incident (for example, a "phantom passenger" case where a claimant is genuinely injured in a car accident, but colludes with another person who dishonestly claims to have been in the vehicle and also injured).
>
> Under the current law, the courts have discretion to dismiss a claim entirely for fraudulent behaviour, but will only do so in very exceptional cases, and will generally still award the claimant compensation in relation to the "genuine" element of the claim. We intend to strengthen the law so that dismissal of the claim in its entirety should become the norm in such cases.
>
> Secondly, the Government intend to bring a statutory ban on the offer of inducements by lawyers in personal injury cases. Examples abound of solicitors offering money or gifts such as iPads to clients for pursuing a personal injury claim.
>
> This encourages unnecessary claims, and suggests that lawyers are making too much money out of the process and seeking to offset the effect of the Government's much needed ban on the payment and receipt of referral fees.
>
> On 1 April 2013, the Ministry of Justice banned claims management companies from offering cash inducements to consumers to make claims, and we propose to introduce a similar prohibition to cover lawyers as soon as legislative time allows.[154]

Chris Grayling tabled New clause 51 which is described as follows in the Member's explanatory statement:

---

152 PBC Deb 27 March 2014 c484

153 This section contributed by Tim Edmonds Business and Transport Section, Commons Library

154 HC Deb 9 June 2014 c26WS

Member's explanatory statement

> This new clause requires a court to dismiss in its entirety any personal injury claim where it is satisfied that the claimant has been fundamentally dishonest, unless it would cause substantial injustice to the claimant to do so, and makes certain related provision.[155]

The issue of inflated insurance claims is hardly new and is not reserved to motor insurance. It also varies in intent. Individuals seldom have a good idea of what their property is worth – it is possible that underinsurance is as common as false claims. Recently the insurance industry has taken a rather tougher stance on cases where it believes there is deliberate and substantial inflation of claims. Arguing that in such cases the whole of the claim should be thrown out not just the fraudulent part. Zurich Insurance took action against a policy holder to the Supreme Court in 2102. The claim for £838,000 damages had been reduced by a County Court to just £88,716 covering the genuine part of the claim. The insurer/respondent took the case to the Supreme Court and argued that the whole claim should be dismissed. The Supreme Court dismissed their claim saying:

> We have reached the conclusion that, notwithstanding the decision and clear reasoning of the Court of Appeal in *Ul-Haq*, the court does have jurisdiction to strike out a statement of case under CPR 3.4(2) for abuse of process even after the trial of an action in circumstances where the court has been able to make a proper assessment of both liability and quantum. However, we further conclude, for many of the reasons given by the Court of Appeal, that, as a matter of principle, it should only do so in very exceptional circumstances.[156]

The industry argued that without the expectation that the complete claim would be rejected if the fraud is discovered, there is no deterrent to making inflated claims in the first place. The judgement commented on this view:

> 50. It was submitted on behalf of the defendant that it is necessary to use the power to strike out the claim in circumstances of this kind in order to deter fraudulent claims of the type made by the claimant in the instant case because they are all too prevalent. We accept that all reasonable steps should be taken to deter them. However, there is a balance to be struck. To date the balance has been struck by assessing both liability and quantum and, provided that those assessments can be carried out fairly, to give judgment in the ordinary way. The reasons for that approach are explained by the Court of Appeal in both *Masood v Zahoor* and *Ul- Haq v Shah.*
>
> 51. We accept that such an approach will be correct in the vast majority of cases. Moreover, we do not accept the submission that, unless such claims are struck out, dishonest claimants will not be deterred. There are many ways in which deterrence can be achieved. They include ensuring that the dishonesty does not increase the award of damages, making orders for costs, reducing interest, proceedings for contempt and criminal proceedings.

It is in the sphere of motor insurance, however, that the 'battle against fraud' has been mostly keenly fought and within that the prevalence of 'whiplash' injuries is the commonest battleground.

---

[155] *Notice of Amendments 10 June 2014 Criminal Justice and Courts Bill 2014-15*

[156] Supreme Court; *Fairclough Homes Limited (Appellant) v Summers (Respondent);* 27 June 2012

An Association of British Insurers Report – *Lifting the bonnet* – published in March 2013 found that 20% of all premium income is spent on whiplash claims, second only to 'repair costs and replacement vehicles' at 29%.[157]

Previously, the Ministry of Justice had held a consultation on whiplash injury claims from December 2012 to March 2013 in which it proposed to raise the threshold for small claims courts claims.[3]. Following the Transport Select Committee report into whiplash injuries in July 2013. [4] The Government chose to delay making a decision regarding any increase to the small claims court limit for personal injury. It decided to undertake more work on a proposal to create independent specialist medical panels to support better diagnosis of possible whiplash injuries and the giving of objective, impartial advice including to the court. The Government response to the Transport Select Committee was published in October 2013[5] and a further response published in December 2013.[6]

On 7 June 2014 Chris Grayling told the BBC that he expected insurance premiums for motorists to fall as result of the proposed legislation.[7] A recent Ministry of Justice press release outlined various measures which the Government claims will, or have, helped to reduce insurance premiums:

- Reduced by more than half the fees lawyers can charge insurers for processing basic, uncontested claims for compensation for minor injuries suffered in road accidents – from £1,200 to £500
- a ban on referral fees paid between lawyers, insurers, claims firms, garages and others for profitable claims, by implementing Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;
- the Claims Portal, used by lawyers and insurers to settle payouts for road accidents quickly and simply, has been extended to cover claims up to the value of £25,000 and now extends beyond road traffic accidents to claims for accidents at work and in public places;
- increased the fixed penalty for driving without insurance from £200 to £300; and since introducing Continuous Insurance Enforcement in 2011, making it illegal to own an uninsured vehicle unless it has a registered statutory off road notification, the number of vehicles without insurance has fallen from 1.4m in 2010 to 1.2m in 2012.
- Banned claims management companies from offering cash incentives or gifts to people who bring them claims. Recommend a friend deals also banned, along with contracts agreed only over the phone
- Changed the law so that regulated companies which breach Claims Management Regulation Unit rules can be fined (as well as the existing sanctions of being suspended of closed down). We have recently consulted on the level of the fines – which are proposed at up to 20 per cent of the annual turnover of companies - for

---

[157] More information on motor insurance premiums and the prevalence and distribution of whiplash claims can be found in a Library standard note *Motor Insurance SN/BT/6061*

[3] Reducing the number and cost of whiplash claims Ministry of Justice

[4] Transport Select Committee Cost of transport insurance: whiplash HC 117 July 3013

[5] Cm 8738

[6] Further Government Response to Transport Committee's Fourth Report 2013-14

[7] "New laws to stop claims firms from giving away tablet PCs" 7 June 2014 *BBC News*

offences including using information gathered by unsolicited calls and texts, providing bad services or wasting time and money by making spurious or unsubstantiated claims. This will mean fines of hundreds of thousands of pounds, and potentially millions in some cases[158]

Corrupt police officers

New clause 44 is intended to supplement the existing offence of misconduct in public office for police officers:

> ***Member's explanatory statement***
> This new Clause makes it an offence for a police officer and certain other persons to exercise the powers and privileges of a constable in a way which is corrupt or otherwise improper. It supplements the existing common law offence of misconduct in public office.

The Home Office announced the background to the proposed new offence on 10 June:

> It would cover cases in which a police officer acts improperly with a view to obtaining an advantage for themselves or someone else – or causing some form of detriment to someone else.
>
> It would also be used when an officer "fails to act" for a corrupt purpose, for example if they know a suspect did not commit a particular crime but hide that knowledge because they have a relationship with the guilty party.
>
> And it would also apply when an officer threatens to do something, or not do something, for an improper purpose.
>
> The new offence would carry a maximum sentence of 14 years' imprisonment.
>
> Home Secretary Theresa May announced plans for the new offence during her statement to Parliament about the outcome of the Ellison Review.[159]

The Ellison review was a review into allegations of corruption in relation to the murder of the black teenager Stephen Lawrence. The Home Secretary made an oral statement on the review on 6 March 2014.

Ill-treatment or wilful neglect by care workers

The Government has tabled New Clauses 46 to 50 and New Schedule 2 which would introduce a new offence of ill-treatment or wilful neglect for health and adult social care workers and providers.

The National Advisory Group on the Safety of Patients in England, which was set up following the Francis Review[160] to conduct an independent review on improving patient safety (known as the Berwick Review as it was led by Professor Don Berwick),[161] published its recommendations in August 2013. The Group recommended the creation of a new statutory offence of "wilful or reckless neglect or mistreatment of patients" that could be used to prosecute individuals or organisations.[162] The Group acknowledged that a series of sanctions

---

158 Ibid.

159 "Home Office unveils new corruption offence" 10 June 2014

160 Robert Francis QC, *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry* (Francis Report), 6 February 2013

161 National Advisory Group on the Safety of Patients in England; Professor Don Berwick, *A promise to learn – a commitment to act: improving the safety of patients in England,* August 2013

162 With individual sanctions on a par with those in Section 44 of the Mental Health Capacity Act 2005.

and powers are already available to regulators such as CQC and the Health and Safety Executive, and also emphasised that the use of criminal sanctions should be extremely rare and should not criminalise unintended errors, but it nevertheless took the view that a new offence would act as a deterrent to wilful or reckless neglect or mistreatment.

In its final response to the Francis Review, the Government accepted the recommendation of the National Advisory Group and said that it would consult on and introduce legislation to create a new offence, to ensure "there is ultimate accountability for those guilty of the most extreme types of poor care."[163]

The Government published its consultation document, *New offence of ill-treatment or wilful neglect*, in February 2014. The consultation closed on Monday 31 March. Explaining the comparatively short timescale for the consultation, the Government said:

> In line with the Government's commitment to implement the reforms coming out of the Francis Inquiry as soon as possible, we want to move forward on this quickly. In addition, our previous stakeholder engagement activity means that many of the key stakeholders are already aware of our proposals and have had some time to consider their response to them.

The Francis and Berwick reviews considered regulatory issues around the serious failures in NHS care at Stafford Hospital but the Government's proposed new offence of ill treatment or wilful neglect would apply in all formal adult health and social care settings, in both the public and private sectors.[164] The proposed offence would cover England and Wales.

8.2 Mandatory sentencing for knife possession

The Conservative backbencher Nick De Bois tabled New Clauses 6 and 7 in May 2014 which have gained significant backbench support. They would introduce introduce a six-month mandatory minimum sentence for anyone who is convicted of possessing a knife for a second time. The Deputy Prime Minister, Nick Clegg, indicated that the Liberal Democrats could not support the provision.[165] The new clauses are due for debate on 14 June 2014.

9 Joint Committee on Human Rights legislative scrutiny report

This report was issued on 11 June.[166] It raised a number of concerns about the Bill. The summary is reproduced below:

> The rights of the child
>
> While we welcome the Government's acknowledgment of the importance to this Bill of the relevant international standards concerning the rights of children and, specifically, the rights of children within the youth justice system, there is no evidence to suggest that these standards were considered by the Ministry of Justice prior to the publication of the Bill, despite the commitment given by the Government in December 2010 always to have due regard to the UNCRC when developing law and policy This is not the first time that such a lack of evident consideration has been commented on in our scrutiny

---

163 DH, *Hard Truths, the Journey to Putting Patients First*, Cm 8754-II (19 November 2013) pages 35

164 There are already specific criminal offences which address wilful ill-treatment or neglect of children, and ill-treatment or wilful neglect of adults who lack capacity or those subject to the *Mental Health Act 1983*, at the hands of those entrusted with their care (for example, the prosecutions following the Winterbourne View scandal were brought under section 127 of the *Mental Health Act 1983*). However, there is no equivalent specific offence in relation to adults with full capacity.

165 "This knife crime law won't work" 7 May 2014 *Guardian*

166 14th report of 2013-14 HL 189/HC 1293. It was ordered to be printed on 12 May 2014

Reports. We intend to return to the question of whether the Government has made any progress towards implementing this commitment.

Increased sentence for terrorism offences

The Bill increases the maximum sentence for certain terrorism-related offences from 10 or 14 years to life imprisonment. The Bill also adds these and other terrorism-related offences to the list of serious offences which are subject to the dangerous offenders sentencing scheme. The combined effect of this is that offenders may receive an automatic life sentence, they may be eligible to receive an "Extended Determinate Sentence", and they will be subject to discretionary early release, after an assessment of risk by the Parole Board. They may even receive a "whole life order" in cases of sufficient seriousness. We believe that significant increases in maximum sentences require clear and transparent justifications which in this case have not been given.

The Government has clarified what was meant in its ECHR Memorandum when it stated that the effect of the provisions in these clauses of the Bill may be to "compel" courts to make whole life orders in certain cases concerning these terrorism-related offences. It is now clear that the compulsion only obtains where a court decides for itself that the case is sufficiently serious to warrant such an order, in which case the court has no choice but to make such an order.

Although the Court of Appeal in the *McLoughlin* case has brought welcome clarification of the legal position concerning "whole life orders", we believe that, in view of the legal uncertainty that remains about the availability of a review mechanism for such orders, more specific details need to be provided about this mechanism, including the timetable on which such a review can be sought, the grounds on which it can be sought, who should conduct such a review, and the periodic availability of further such reviews after the first review. The current Bill provides an opportunity for Parliament to remove any legal uncertainty by specifying the details of the review mechanism. We have therefore suggested a probing amendment to the Bill in order to give Parliament the opportunity to debate the desirability of amending the statutory framework to put beyond legal doubt the availability of this mechanism, in accordance with the principle of subsidiarity.

Electronic monitoring following release on licence

The Bill would give the Secretary of State a power to require compulsory electronic monitoring of offenders released on licence. It also provides for a Code of Practice to be issued by the Secretary of State relating to the processing of data gathered in the course of monitoring people under electronic monitoring conditions imposed on offenders following their release on licence. The detailed safeguards in the Code of Practice will be crucial to ensuring that the processing of data so gathered is carried out in such a way that any interference with the right to respect for private life is necessary and proportionate to the legitimate aims pursued. We recommend that the Bill be amended to make the Code subject to some form of parliamentary procedure in order to ensure that Parliament has as opportunity to scrutinise the adequacy of the relevant safeguards.

Extreme pornography

We welcome, as a human rights enhancing measure, the provision in the Bill to extend the current offence of possession of extreme pornography to include possession of pornographic images depicting rape and other non-consensual sexual penetration. We consider that the cultural harm of extreme pornography, as set out in the evidence provided to us by the Government and others, provides a strong justification for

legislative action, and for the proportionate restriction of individual rights to private life and freely to receive and impart information.

Young offenders

The Bill provides for a new form of youth detention accommodation, with a focus on education—namely, secure colleges. We emphasise the importance of existing international human rights standards to these provisions: for example, that the State should set up small open facilities where children can be tended to on an individual basis and so avoid the additional negative effects of deprivation of liberty; and that institutions should be decentralised to allow for children to continue having access to their families and their communities. We note that the Government does not appear to have carried out any equality impact assessments of the proposed secure colleges policy, and we recommend that such assessments should be carried out and made available to Parliament at the earliest opportunity. We call on the Government to provide further information in relation to SEN provision in secure colleges.

The Bill provides the authority for a secure college custody officer, "if authorised to do so by secure college rules", to use reasonable force where necessary to ensure good order and discipline on the part of persons detained in a secure college. This provision of the Bill directly raises a human rights compatibility issue which has already been the subject of an inquiry and Report by our predecessor Committee in the last Parliament; of a judicial decision by the Court of Appeal; and of recommendations by the UN treaty monitoring bodies. In our view, it is clear from the reasoning of the Court of Appeal in the case of *C v Secretary of State for Justice* that it is incompatible with Articles 3 and 8 ECHR for any law, whether primary or secondary legislation, to authorise the use of force on children and young people for the purposes of good order and discipline. We therefore recommend that the relevant provision in Schedule 4 of the Bill should be deleted, and the Bill should be amended to make explicit that secure college rules can only authorise the use of reasonable force on children as a last resort; only for the purposes of preventing harm to the child or others; and that only the minimum force necessary should be used.

Criminal courts charge

We have considered the extent to which the criminal courts charge proposed in the Bill is likely to influence impecunious defendants' decisions about whether to plead guilty, whether to elect summary or jury trial, and whether to appeal against conviction or sentence. We have found it difficult to assess this risk in the absence of clear evidence about the impact of court charges in practice. We therefore recommend that the Government monitor carefully the impact of the criminal courts charge on the right of defendants to a fair trial of the criminal charge against them, and make available to Parliament the results of that monitoring. In the meantime we recommend that Parliament be provided with any other evidence that already exists about the impact of other, existing, charges and fees on criminal defendants' decisions about plea, mode of trial and appeals.

Contempt of court

Part 3 of the Bill makes changes to the law of contempt of court and juror misconduct in response to concerns that the law striking the balance between the right to a fair trial and the right to freedom of expression needs updating for the internet age. It provides for a statutory procedure whereby the Attorney General may issue a formal notice to a publisher informing them that there are active proceedings and identifying prejudicial on-line material. We recommend that the Government publish a draft of the regulations

setting out this procedure at the earliest opportunity to enable Parliament to scrutinise them for their possible implications for freedom of expression.

Judicial Review

We also set out again for the sake of comprehensiveness the amendments proposed to the Bill in our recent Report on the implications for access to justice of the Government's proposed reforms to judicial review.