

Counter-Terrorism and Sentencing Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

[Amendments marked ★ are new or have been altered]

Amendment
No.

Clause 1

LORD MARKS OF HENLEY-ON-THAMES
LORD PADDICK
BARONESS HAMWEE

1★

Page 1, line 8, at end insert –

“(aa) after subsection (1) insert –

“(1A) The court may not assume that an offence has a terrorist connection for the purpose of this section unless –

- (a) the defendant has admitted in person and in open court that the offence has such a terrorist connection, or
- (b) where the defendant does not make such an admission, the court is satisfied beyond reasonable doubt upon a trial of the issue that the offence has a terrorist connection.

(1B) A trial held pursuant to subsection (1A)(b) above must be determined by a jury unless the court determines that the interests of justice would be better served by a trial by a judge alone upon evidence admissible in a criminal court.””

Member’s explanatory statement

This amendment would require a trial of the issue as to whether or not there is a terrorist connection in relation to an aggravated offence.

Clause 27

LORD CARLILE OF BERRIEW

2

Leave out Clause 27 and insert the following new Clause –

“Continued imprisonment of terrorist prisoners during the extension period of an extended sentence of imprisonment

- (1) The Criminal Justice Act 2003 is amended as follows.

Clause 27 - continued

- (2) In section 247A(7) (restricted eligibility for release on licence of terrorist prisoners), at the beginning insert “Subject to section 247B,”.
- (3) After section 247A insert—
“247B Continued imprisonment of terrorist prisoners during extension period of an extended sentence of imprisonment
 - (1) This section applies to a terrorist prisoner within the meaning of section 247A, where—
 - (a) an extended sentence of imprisonment was imposed on the prisoner under section 226A or 226B, or under section 254, 266, 268A, 279 or 282A of the Sentencing Code, and
 - (b) the prisoner is in custody, in accordance with section 247A, immediately before the expiry of the appropriate custodial term.
 - (2) The prisoner must only be released under section 247A(7) in accordance with the provisions of this section.
 - (3) It is the duty of the Secretary of State to refer the case of the prisoner to the Board—
 - (a) as soon as the prisoner has served the appropriate custodial term, and
 - (b) if the prisoner is still in custody, every year, before the anniversary of the conclusion of the appropriate custodial term.
 - (4) It is the duty of the Secretary of State to release the prisoner on licence as soon as the Board has directed the release of the prisoner under this section.
 - (5) The Board must not give a direction under subsection (4) unless—
 - (a) the Secretary of State has referred the prisoner’s case to the Board, and
 - (b) the Board is satisfied that—
 - (i) the prisoner does not represent a grave risk to the public, and
 - (ii) it is no longer necessary for the protection of the public that the prisoner should be confined.
 - (6) Where the Secretary of State has not released the prisoner in accordance with subsection (4) by the conclusion of the extension period, it is the duty of the Secretary of State to release the prisoner immediately upon the conclusion of the extension period.
 - (7) For the purposes of this section—
“appropriate custodial term” has the same meaning as in section 247A,
“extension period”, in relation to a sentence imposed under section 226A or 226B, or under section 254, 266, 268A, 279 or 282A of the Sentencing Code, means the period determined as such by the court under that provision.
 - (8) Nothing in this section affects the duty of the Secretary of State to release a person whose release has been directed by the Board before this section comes into force.”

Clause 29

LORD WOLFSON OF TREDEGAR

- 3 Page 25, line 6, leave out from “is” to end of line 9 and insert –
- “(a) a sentence of imprisonment imposed under section 205ZA of the 1995 Act (serious terrorism sentence),
 - (b) a sentence of imprisonment imposed under section 205ZC of that Act (terrorism sentence with fixed licence period), or
 - (c) an extended sentence imposed under section 210A of that Act in respect of a terrorism offence.”

Member’s explanatory statement

This amendment expands the scope of new section 26ZA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 by making it applicable also in relation to a person who is serving an extended sentence under section 210A of the Criminal Procedure (Scotland) Act 1995 in respect of a terrorism offence.

- 4 Page 25, line 10, after “Part” insert “, except sections 1AB, 1A and 1B,”

Member’s explanatory statement

This amendment excludes sections 1AB, 1A and 1B of the Prisoners and Criminal Proceedings (Scotland) Act 1993 from the scope of new section 26ZA(3) of that Act.

- 5 Page 25, line 35, leave out “section 1A(1)(c)” and insert “sections 1A(1)(c) and 1B(11)”

Member’s explanatory statement

This amendment makes new section 26ZA(7) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 subject to section 1B(11) of that Act (inserted by paragraph 52(4) of Schedule 13 to the Bill).

- 6 Page 26, line 8, leave out “means”

Member’s explanatory statement

This amendment is consequential on the amendment at page 26, line 11.

- 7 Page 26, line 9, after “prisoner,” insert “means –
(a) ”

Member’s explanatory statement

This amendment is consequential on the amendment at page 26, line 11.

- 8 Page 26, line 11, leave out “205ZC” and insert “section 205ZC of the 1995 Act, or
(b) the term determined as the custodial term by the court that imposes the extended sentence on the prisoner under section 210A of that Act;”

Member’s explanatory statement

This amendment provides for the purposes of new section 26ZA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 a definition of “appropriate custodial term” in relation to an extended sentence under section 210A of the Criminal Procedure (Scotland) Act 1995 imposed in respect of a terrorism offence.

9 Page 26, line 14, after “205ZA” insert “of the 1995 Act”

Member’s explanatory statement

This amendment clarifies that the reference to section 205ZA is a reference to section 205ZA of the Criminal Procedure (Scotland) Act 1995 (defined as “the 1995 Act” for the purposes of Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993).

10 Page 26, line 18, after “205ZC” insert “of that Act”

Member’s explanatory statement

This amendment clarifies that the reference to section 205ZC is a reference to section 205ZC of the Criminal Procedure (Scotland) Act 1995 (defined as “the 1995 Act” for the purposes of Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993).

11 Page 26, line 20, at end insert –

“(c) in relation to an extended sentence imposed on a terrorist prisoner under section 210A of that Act in respect of a terrorism offence, the period specified as such under that section by the court that imposes the sentence on the prisoner.”

Member’s explanatory statement

This amendment provides for the purposes of new section 26ZA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 a definition of “extension period” in relation to an extended sentence under section 210A of the Criminal Procedure (Scotland) Act 1995 imposed in respect of a terrorism offence.

After Clause 31

LORD MARKS OF HENLEY-ON-THAMES
LORD PADDICK
BARONESS HAMWEE

12★ Insert the following new Clause –

“Review of sections 1 to 31

- (1) The Secretary of State must arrange for an independent review of the impact of sections 1 to 31 of this Act to be carried out in relation to the initial one-year period.
- (2) The Secretary of State must, after consultation with the Independent Reviewer of Terrorism Legislation, appoint a person with professional experience relating to imprisonment for offences of terrorism to conduct the review.
- (3) The review under subsection (1) must consider but is not limited to considering any evidence as to any effects of this Act –
 - (a) by the imposition of longer prison sentences upon the reform or rehabilitation of those offenders on whom they are imposed;
 - (b) upon the reform or rehabilitation of those offenders required to serve a greater proportion of their sentences in prison and a correspondingly smaller proportion on licence;
 - (c) upon the radicalisation of prisoners other than those upon whom longer prison sentences are imposed or who are required to serve a greater proportion of their sentences in prison;

After Clause 31 - continued

- (d) on the degree to which those prisoners upon whom a serious terrorist sentence is imposed are segregated from other prisoners.
- (4) The review must be completed as soon as practicable after the end of the initial one-year period.
- (5) As soon as practicable after a person has carried out the review in relation to a particular period, the person must –
 - (a) produce a report of the outcome of the review, and
 - (b) send a copy of the report to the Secretary of State.
- (6) The Secretary of State must lay before each House of Parliament a copy of the report under subsection (5)(b) within one month of receiving the report.
- (7) In this section, “initial one-year period” means the period of one year beginning with the day on which this Act is passed.”

Member’s explanatory statement

This Clause would require an independent review of the impact of sections 1 to 31 of the Act after one year, with particular attention to radicalisation in prisons and the effects of longer periods of imprisonment on reform and rehabilitation and radicalisation in prisons and of segregating serious terrorist offenders.

After Clause 32

LORD PADDICK
BARONESS HAMWEE

13★

Insert the following new Clause –

“Review of polygraph licence conditions for terrorist offenders

- (1) Within three years after the date on which section 32 comes into force, the Secretary of State must commission an independent review of and report on the use and operation of the polygraph condition under section 28 of the Offender Management Act 2007 with regard to relevant terrorist offences.
- (2) The reviewer may undertake and arrange research, and the Secretary of State must provide to the reviewer such information as the reviewer requests.
- (3) The report must include –
 - (a) data on the number of terrorist offenders subject to the condition during the period under review, and the numbers of polygraph tests applied, and
 - (b) data on the number of terrorist offenders recalled to custody following a test.
- (4) The report may include –
 - (a) recommendations regarding regulations, rules and codes of practice, and
 - (b) any other relevant recommendations.
- (5) Within 56 days of receipt of the report, the Secretary of State must publish it, subject to the omission of any material that the Secretary of State considers might prejudice public safety.”

Member's explanatory statement

This amendment would require the Secretary of State to commission an independent review of polygraph licence conditions for terrorist offenders.

Clause 34

LORD WOLFSON OF TREDEGAR
LORD ANDERSON OF IPSWICH
LORD THOMAS OF CWMGIEDD

- 14 Page 29, line 21, leave out “has reasonable grounds for suspecting” and insert “reasonably believes”

Member's explanatory statement

This amendment would change the proposed new test for the imposition of a terrorism prevention and investigation measure from one of reasonable suspicion of involvement in terrorism-related activity to one of reasonable belief of such involvement.

LORD PADDICK
BARONESS HAMWEE

- 15★ Leave out Clause 34

Member's explanatory statement

This would remove Clause 34 (TPIMs: condition as to involvement in terrorism-related activity) from the bill.

Clause 35

LORD ANDERSON OF IPSWICH
LORD THOMAS OF CWMGIEDD
LORD PONSONBY OF SHULBREDE

- 16 Page 29, line 28, leave out “one or more” and insert “up to three”

Member's explanatory statement

This amendment would impose a four-year limit for TPIM notices.

LORD PADDICK
BARONESS HAMWEE

- 17★ Leave out Clause 35

Member's explanatory statement

This would remove Clause 35 (TPIMs: extension of time limit) from the bill.

Clause 37

LORD PADDICK
BARONESS HAMWEE

- 18★ Leave out Clause 37

Member's explanatory statement

This would remove Clause 37 (TPIMs: extension of residence measure) from the bill.

Clause 38

LORD PADDICK
BARONESS HAMWEE

19★ Page 32, line 15, at end insert –

“(2A) The Secretary of State must publish a code of practice relating to –
(a) the conduct of, and
(b) the use of reports on the results of,
polygraph sessions.

(2B) Before publication of the code of practice under section (2A), the Secretary of State must consult appropriate persons.”

Member’s explanatory statement

This amendment would require the Secretary of State to publish a code of practice relating to the conduct and use of polygraph sessions.

20★ Page 32, line 25, at end insert –

“(4A) A TPIM notice may not be extended on the basis, or mainly on the basis, of –

(a) any statement made by the individual while participating in a polygraph session,

(b) any physiological reaction of the individual while being questioned in the course of a polygraph examination.”

Member’s explanatory statement

This amendment would prevent the extension of a TPIM notice on the basis of a statement or reaction of an individual during a polygraph session.

21★ Leave out Clause 38

Member’s explanatory statement

This would remove Clause 38 (TPIMs: polygraph measure) from the bill.

After Clause 40

LORD WOLFSON OF TREDEGAR
LORD ANDERSON OF IPSWICH
LORD THOMAS OF CWMGIEDD
BARONESS JONES OF MOULSECOOMB

22 Insert the following new Clause –

“TPIMs: annual review

(1) In section 20 of the Terrorism Prevention and Investigation Measures Act 2011 (reviews of the operation of that Act) –

(a) after subsection (1) insert –

“(1A) The independent reviewer must carry out a review under this section in respect of each calendar year starting with 2022 and ending with 2026.

After Clause 40 - continued

Each review must be completed as soon as reasonably practicable after the year to which it relates.”;

- (b) in subsection (2), after “calendar year” insert “after 2026”;
- (c) in subsection (4), for “subsection (2)” substitute “this section”;
- (d) after subsection (6) insert—
 - “(7) Subsection (1A) does not require a review to be carried out in respect of any calendar year during the whole of which the Secretary of State’s TPIM powers (within the meaning given by section 21(8)) do not exist because of their expiry or repeal under section 21.”

- (2) Subsection (1) does not affect any duty to carry out a review further to a notification given under section 20(2) of the Terrorism Prevention and Investigation Measures Act 2011 before the coming into force of this section.”

Member’s explanatory statement

This amendment would reinstate the requirement for an annual review of the Terrorism Prevention and Investigation Measures Act 2011 by an independent reviewer for a period of five years beginning with 2022 (with reviews at the discretion of the reviewer after that period).

Clause 44

LORD PADDICK
BARONESS HAMWEE

23★ Page 35, line 26, leave out subsection (1) and insert—

- “(1) In section 20(9) of the Counter-Terrorism and Border Security Act 2019 (persons vulnerable to being drawn into terrorism) omit the words from “within the period” to the end and substitute “by 31 December 2021”.”

Member’s explanatory statement

This amendment would reinstate the deadline for the independent review of the Prevent strategy.

After Clause 44

LORD FALCONER OF THOROTON
BARONESS JONES OF MOULSECOOMB

24 Insert the following new Clause—

“Counter-Terrorism and Sentencing Strategy Review

- (1) The Secretary of State must commission a review and publish a report into—
 - (a) the effectiveness of current strategies to deal with lone terrorists;
 - (b) the effectiveness and availability of deradicalisation programmes in prisons;
 - (c) the effectiveness and reliability of polygraph testing;
 - (d) the impact of the removal of early release for dangerous terrorist prisoners;

After Clause 44 - continued

- (e) the role of pre-sentence reporting in the case of serious terrorism offences.
- (2) The report must be laid before Parliament within the period of 12 months beginning with the day on which this Act is passed.”

LORD PONSONBY OF SHULBREDE
BARONESS JONES OF MOULSECOOMB

25 Insert the following new Clause –

“Review of impact of this Act

- (1) The Secretary of State must commission a review and publish a report into the impact of this Act on –
 - (a) prison capacity;
 - (b) the National Probation Service and the probation support provided to offenders convicted for terrorist offences;
 - (c) levels of bad behaviour in prisons;
 - (d) financial matters including the financial impact of –
 - (i) extended sentences and their impact on the prison estate,
 - (ii) extended licence periods,
 - (iii) any increased staffing resources required for Her Majesty’s Prison and Probation Service,
 - (iv) the extended offenders of particular concern regime, and
 - (v) adding polygraph testing to certain offenders’ licence conditions.
- (2) The report must be laid before Parliament within the period of 12 months beginning with the day on which this Act is passed.”

Clause 48

LORD WOLFSON OF TREDEGAR

26 Page 37, line 13, at end insert –

- “(4A) Nothing in subsections (1) to (4) limits the extent within the United Kingdom of any provision made, or inserted, by or under this Act so far as it is applied (by whatever words) by or under the Armed Forces Act 2006.
- (4B) Subsections (1) and (2) of section 384 of the Armed Forces Act 2006 (extent outside the United Kingdom) apply to the armed forces provisions as those subsections apply to the provisions of that Act.
- (4C) The following are “armed forces provisions” –
 - (a) a provision made, or inserted, by or under this Act so far as it is applied (by whatever words) by or under the Armed Forces Act 2006;
 - (b) an amendment, modification or repeal made by or under this Act of –
 - (i) a provision of or made under the Armed Forces Act 2006,
 - (ii) a provision that amends, modifies or repeals a provision of, or made under, that Act, or
 - (iii) any other provision, so far as the provision is applied (by whatever words) by or under that Act.”

Member's explanatory statement

This amendment clarifies that provisions of the Bill which have a limited extent within the United Kingdom (such as amendments of the Sentencing Code) have UK-wide extent so far as they are applied by the Armed Forces Act 2006. It also provides for the provisions of the Bill that relate to the armed forces to extend, or be extended, outside the United Kingdom in the same way as the Armed Forces Act 2006.

Schedule 13

LORD WOLFSON OF TREDEGAR

- 27 Page 121, line 4, leave out from “section” to “for” in line 5 and insert “1 (release of short-term, long-term and life prisoners) –
(a) in subsection (3A),”

Member's explanatory statement

This is consequential on the amendment at page 121, line 5.

- 28 Page 121, line 5, at end insert –
“(b) in subsection (9), after “applies” insert “to the extent that the person is serving a sentence of imprisonment imposed in respect of an offence within section 1AB(2).”

Member's explanatory statement

This amendment amends section 1(9) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 in light of new section 1B of that Act (inserted by paragraph 52(4) of Schedule 13 to the Bill).

- 29 Page 121, line 5, at end insert –
“(2A) In section 1AA (release of certain sexual offenders), for subsection (9) substitute –
“(9) This section is subject to section 1B.””

Member's explanatory statement

This amendment amends section 1AA(9) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 in light of new section 1B of that Act (inserted by paragraph 52(4) of Schedule 13 to the Bill).

- 30 Page 121, line 30, at end insert –
“(5B) Subsection (4) is subject to sections 1A and 1B.”

Member's explanatory statement

This amendment amends section 1AB of the Prisoners and Criminal Proceedings (Scotland) Act 1993 so as to make subsection (4) of that section subject to sections 1A and 1B of that Act (section 1B being inserted by paragraph 52(4) of Schedule 13 to the Bill).

- 31 Page 123, line 37, at end insert –
“(14) This section applies to a prisoner on whom sentence was imposed before the day on which paragraph 52(4) of Schedule 13 to the Counter-Terrorism and Sentencing Act 2021 came into force as it applies to a prisoner on whom sentence was imposed on or after that day.”

Member's explanatory statement

This amendment amends section 1B of the Prisoners and Criminal Proceedings (Scotland) Act 1993 so that it will apply in relation to sentences imposed before the date on which the provision of the Bill inserting section 1B into that Act comes into force.

32 Page 124, line 1, at end insert –

“(a) in the case of a prisoner to whom section 1AB(3) applies,”

Member's explanatory statement

This amendment is consequential on the amendment at page 124, line 4.

33 Page 124, line 4, at end insert “or,

(b) in the case of a prisoner to whom section 1AB(3) does not apply by virtue of section 1AB(2A), before the day on which the Scottish Ministers are required to release the prisoner under section 26ZA(5).”

Member's explanatory statement

This amendment prevents a life prisoner who is also serving a terrorism sentence to which section 1AB(2A) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 applies from making a requirement under section 2(6) of that Act before the day on which the prisoner would otherwise be eligible for release on licence under section 26ZA(5) of that Act.

34 Page 125, line 12, leave out “omit the words “Subject to subsection (2A),”” and insert “for “subsection (2A)” substitute “section 1B””

Member's explanatory statement

This amendment amends section 5 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 in light of new section 1B of that Act (inserted by paragraph 52(4) of Schedule 13 to the Bill).

35 Page 125, line 13, at end insert –

“(c) in subsection (4), after “1A” insert “, 1B”.”

Member's explanatory statement

This amendment amends section 5 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 in light of new section 1B of that Act (inserted by paragraph 52(4) of Schedule 13 to the Bill).

36 Page 125, line 29, at end insert –

“(za) in subsection (3) –

- (i) after “(2) above” insert “or, as the case may be, section 1AB(4) or 26ZA(5)(a)”;
- (ii) after “sentence)” insert “or, as the case may be, before the date on which the sentence under section 205ZC(5) as originally imposed by the court expires”;
- (iii) after “so elapses” insert “or, as the case may be, the sentence under section 205ZC(5) expires;””

Member's explanatory statement

This amendment makes consequential amendments of section 7 of the Prisoners and Criminal Proceedings (Scotland) Act 1993.

- 37 Page 125, line 42, at end insert –
 “(ba) in subsection (5)(b), after “(1A)” insert “, 1B”;

Member's explanatory statement

This amendment amends section 7 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 in light of new section 1B of that Act (inserted by paragraph 52(4) of Schedule 13 to the Bill).

- 38 Page 125, line 48, leave out “(3) to (5) and” and insert “(2) and (3) to”

Member's explanatory statement

This amendment makes consequential amendments of section 7 of the Prisoners and Criminal Proceedings (Scotland) Act 1993.

- 39 Page 126, line 1, leave out from “insert” to end of line 14 and insert ““to the extent that detention is imposed on the person under section 205ZC(5) of the 1995 Act.”;
 (e) after subsection (8) insert –
 “(9) This section is subject to section 1B.””

Member's explanatory statement

This amendment makes consequential amendments of section 7 of the Prisoners and Criminal Proceedings (Scotland) Act 1993.

- 40 Page 126, line 16, at end insert –
 “(12A) In section 26A (extended sentences: application of section) –
 (a) in subsection (1), after “sentences)” insert “other than an extended sentence imposed in respect of a terrorism offence.”;
 (b) in subsection (2), for “section 1A” substitute “sections 1A and 1B”;
 (c) in subsection (6), for “section 1A(c)” substitute “sections 1A(1)(c) and 1B(11).””

Member's explanatory statement

This amendment excludes a prisoner subject to an extended sentence under section 210A of the Criminal Procedure (Scotland) Act 1995 in respect of a terrorism offence from the scope of section 26A of the Prisoners and Criminal Proceedings (Scotland) Act 1993. It also amends that section 26A in consequence of new section 1B of that Act.

- 41 Page 126, line 25, at end insert –
 “(5B) In determining, for the purposes of subsection (5), whether a sentence passed on a person in respect of an offence (other than an offence within section 1AB(2)) is to be treated as part of a single term, any sentence passed on the person in respect of an offence within section 1AB(2) is to be ignored.”

Member's explanatory statement

This amendment inserts new subsection (5B) into section 27 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 clarifying that, in determining whether non-terrorism sentences are to be treated as a single term, sentences imposed in respect of terrorism offences within section 1AB of that Act are to be ignored.

42 Page 126, line 44, at end insert –

- “(b) in each of paragraphs 10(2)(a) and (5)(a) and 11(2)(a) and (4)(a) –
 - (i) after “1A,” insert “1B,”;
 - (ii) after “21,” insert “26ZA,”.

Member's explanatory statement

This amendment makes minor amendments of paragraphs 10 and 11 of Schedule 1 to the Crime (Sentences) Act 1997 in consequence of the insertion of sections 1B and 26ZA into the Prisoners and Criminal Proceedings (Scotland) Act 1993.

43 Page 127, line 5, at end insert –

- “(b) after “1A,” insert “1B,”;
- (c) after “10” insert “, 26ZA”.

Member's explanatory statement

This amendment makes minor amendments of section 24(c) of the International Criminal Court (Scotland) Act 2001 in consequence of the insertion of sections 1B and 26ZA into the Prisoners and Criminal Proceedings (Scotland) Act 1993.

Counter-Terrorism and Sentencing Bill

MARSHALLED
LIST OF AMENDMENTS
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ON REPORT

26 February 2021
