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Public Bill Committee

DEREGULATION BILL

Thirteenth Sitting

Tuesday 18 March 2014

(Morning)

CONTENTS

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Saturday 22 March 2014

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: †Mr Jim Hood, Mr Christopher Chope

† Barwell, Gavin *(Croydon Central)* (Con)
† Bingham, Andrew *(High Peak)* (Con)
† Brake, Tom *(Parliamentary Secretary, Office of the Leader of the House of Commons)*
† Bridgen, Andrew *(North West Leicestershire)* (Con)
† Cryer, John *(Leyton and Wanstead)* (Lab)
† Docherty, Thomas *(Dunfermline and West Fife)* (Lab)
Duddridge, James *(Rochford and Southend East)* (Con)
† Heald, Oliver *(Solicitor-General)*
† Hemming, John *(Birmingham, Yardley)* (LD)
Hopkins, Kelvin *(Luton North)* (Lab)
† Johnson, Gareth *(Dartford)* (Con)
† Maynard, Paul *(Blackpool North and Cleveleys)* (Con)
† Nokes, Caroline *(Romsey and Southampton North)* (Con)
† Onwurah, Chi *(Newcastle upon Tyne Central)* (Lab)
† Perkins, Toby *(Chesterfield)* (Lab)
† Rutley, David *(Macclesfield)* (Con)
† Shannon, Jim *(Strangford)* (DUP)
† Turner, Karl *(Kingston upon Hull East)* (Lab)
† Williamson, Chris *(Derby North)* (Lab)

Fergus Reid, David Slater, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 18 March 2014

(*Morning*)

[Mr Jim Hood *in the Chair*]

Deregulation Bill

Clause 44

Repeal of Senior President of Tribunals' duty to report on standards

8.55 am

Question proposed, That the clause stand part of the Bill.

The Solicitor-General (Oliver Heald): Clause 44 repeals the duty on the senior president of tribunals to report annually to the Secretary of State for Work and Pensions on the standards of decision making by the Department for Work and Pensions in decisions whose associated appeal rights are resolved at the first-tier tribunal for social security and child support. This duty is to be removed, with the agreement of the judiciary, because of the development of more effective and direct methods for providing feedback to the DWP and claimants, which have made the production of the report unnecessary. The change also provides a cost saving.

The repeal of the duty is not an attempt to remove transparency or accountability; rather, it represents an acknowledgment of recent reforms to the way in which decision makers and users receive feedback from the social security and child support tribunal. In July 2013, Her Majesty's Courts and Tribunals Service introduced the use of summary reasons in employment and support allowance appeals, starting initially in four sites. Under this initiative, a judge provides both parties with a short explanation for the decision reached. The Courts and Tribunals Service is working with the judiciary to implement the provision of summary reasons across other tribunal venues and for appeals brought against other types of benefit claims. Roll-out will be completed this year.

This approach balances the need to provide meaningful feedback on decisions made with the need to ensure that tribunal capacity is not unduly burdened. The initiative has provided a rich source of information and is helping to form improvements to DWP decision making. In implementing this new feedback mechanism, the judiciary and the Government agreed that the ongoing value of the senior president of tribunals' report was questionable, and that there was a duplicative cost of producing both the report and the individual feedback in each case as part of summary reasons.

Clause 44 does not, however, remove the senior president of tribunals' annual report, which is a separate report on the annual performance of tribunals in the Courts and Tribunals Service, which will continue to provide an annual vehicle for the senior president of tribunals to report on performance in each of the jurisdictions. I commend the clause to the Committee.

Karl Turner (Kingston upon Hull East) (Lab): As the Minister said, this amendment will remove the requirement for the senior president of tribunals to compile a formal report outlining the standards of the Secretary of State's decision making. I ought to declare an indirect interest at this point: my wife sits as a judicial member of the first-tier tribunal.

The amendment suggests that there are other methods of reporting that can be used by the judiciary. In practice, reports may be made by the judiciary regarding poor decision making or otherwise by the Secretary of State. However, due to there being no formal requirement to respond to such feedback, it is unlikely that any such reporting and feedback would have any impact on improving the Secretary of State's decision-making procedures. This amendment also reduces public access to such information, given that it removes the requirement for the Secretary of State to publicise the report. The only method of obtaining such information would be a request through, say, freedom of information. This diminishes transparency.

The Joint Committee on the draft Deregulation Bill heard evidence of a number of concerns about this clause. Concerns were raised about the timing of the repeal, at a time of significant changes to the benefits system and large increases in the number of appeals. The Opposition have sympathy with those concerns and I would associate myself with them. Members on this side of the Committee, along with disability rights campaigners, are worried that this clause limits the possibility that poor decision making by the Secretary of State that is subsequently appealed to the first-tier tribunal would not be published and therefore would not be open to criticism.

Chi Onwurah (Newcastle upon Tyne Central) (Lab): I thank my hon. Friend for making some excellent points. Does he think that the timing of the repeal of these provisions and the huge increase in the number of bad decisions that have apparently been made—particularly in relation to Atos and disability benefits—is a coincidence?

Karl Turner: My hon. Friend makes a valid point, which I will address later. Those of us on this side of the Committee have sympathy with the concerns that have been raised and we want to associate ourselves with them. Members of this side of the Committee, along with other disability rights campaigners, have raised concerns previously elsewhere in this House. It seems contrary to the principle of transparent and open justice to be doing away with this provision at a time when, as my hon. Friend has said, there has been a significant increase in appeals.

In the past, the senior president's report has been highly critical of the Department of Work and Pensions and Atos, regarding the disability benefit decision-making process. Previous presidents of the appeals tribunal have reported serious problems with Atos assessments and have stated that reports from Atos did not coincide with the reality.

Evidence to the Select Committee on Work and Pensions showed that in almost 50% of appeals, tribunals found in favour of the applicant, with 70% of claims being upheld by claimants who were represented at the appeal tribunal hearing. At a time when such a large number of

Department of Work and Pensions decisions are being appealed and a high proportion of those appeals are successful, it seems wholly inappropriate—a point made by my hon. Friend—to take away this important duty from the senior president of tribunals.

The report currently required under the legislation is an important source for improving standards. Improving standards is what this clause should be about—improving the decisions made by Departments of Government. An alternative might be to create a formal method of feedback from the judiciary, which is used by the Secretary of State to assess performance and which can be collated in the form of a register accessible by the public. The alternative and more direct methods for reporting that the Minister speaks of, which are referred to in the guidance notes to the Bill, are by their very nature informal and less transparent.

Those criticisms of the Secretary of State would not, for example, be open to freedom of information requests, perhaps because they would not be escalated up to Secretary of State level. It would be impractical for people to make a freedom of information request to every tribunal. Members of both sides of the Committee will have constituents visiting their surgeries complaining of poor—often wrong—reports by Atos. In practice, poor quality reports by Atos or wrong decisions at Jobcentre Plus may be referred after this clause becomes law to the regional district judge from the first-tier tribunal judge, but may not go further than that. This change definitely reduces the accountability of the Secretary of State.

We have seen massively reduced access to the courts in civil proceedings following the Legal Aid, Sentencing and Punishment of Offenders Act 2012. If the Lord Chancellor has his way, we will see justice denied in huge swathes of criminal cases as well. I mention that because it seems that the raison d'être of the coalition Government is to prevent the public challenging bad decisions. Judicial review has been severely attacked and undermined.

Toby Perkins (Chesterfield) (Lab): I would like to say on behalf of all my constituents in Chesterfield, particularly those in the advice sectors, how concerned they are about the steps we have seen to erode legal aid under this Government. They are having a significant impact on those agencies and the public's ability to get justice.

Karl Turner: I am grateful to my hon. Friend for making that point. I am sure that his constituents heard his intervention; if not, I am sure that he will make sure that they do.

Judicial review has been severely attacked and undermined, we have seen human rights destabilised and under constant threat from this Lord Chancellor, and the Government are apparently resisting the moves to open freedom of information to private companies with public contracts, despite the Prime Minister's apparent commitment to this before the general election in 2010.

Oliver Heald: Does the hon. Gentleman not acknowledge that giving summary reasons is a very helpful procedure? It means that Atos knows why the tribunal has overturned the assessment.

Karl Turner: The Solicitor-General makes a fair point. The first-tier tribunal judge is required to give reasons for his decision. However, transparency must surely be the ideal. I do not know how a member of the public could access the decision. It might not necessarily be the member of the public directly involved—the person whose appeal has been refused or accepted—who wants to access the information from that judge. That is why we suggest that this change is wrong.

Oliver Heald: There have always been a number of disability benefit cases that have been appealed. Since 2000—so, for the best part of 13 and a half years—the success rate of appeals has been about 40%, because these are quite difficult cases. That is a finding that could be in the annual report, but it will be anyway, because there is an annual report, as well as the one that is being abolished.

Karl Turner: There will be an annual report, but what about an actual bad decision by Atos—for example, a poor medical assessment? A really good example from a constituent of mine was someone who had suffered historically with severe mental health difficulties and was assessed by Atos by a physiotherapist. Now, it might be absolutely right for a physiotherapist to assess somebody who suffered with arthritis, say, but in my submission—and, indeed, in the opinion of most—it is not correct for a physiotherapist to be assessing people with mental health difficulties. That type of thing would be remarked upon by the first-tier tribunal judge, escalated to the regional district judge and then included in the report to which the Solicitor-General referred.

We have also seen the ability of working people to challenge employers diminished through the requirement to pay into the employment tribunal in order to have a dispute aired by the tribunal in cases such as those involving discrimination. The Opposition have some grave concerns about the Government's motives in relation to these changes, and although we do not seek to divide the Committee, we reserve the right to come back to this issue at a later stage.

I have some questions for the Minister. Is the senior president of tribunals overburdened by the existing requirement, as the Minister suggests, that he or she has already? What is the evidence for that assertion? How will the Government monitor performance standards of decision making when the clause comes into force? How will the public have access to other, less formal concerns raised by the judiciary? If there is to be an annual report—as the Minister has clearly said there is—it must be used to improve the decision making of the Department for Work and Pensions and the Secretary of State. How will decision making be monitored and improved if it is not as transparent as it is now? How will members of the public access information about the standards of decision making? Is this yet a further example of the coalition Government reducing access to justice and reducing Government accountability? That is what it seems to be on an initial reading of the Bill.

Chris Williamson (Derby North) (Lab): I rise to support my hon. Friend the Member for Kingston upon Hull East. I want to make a brief contribution on this clause, and I was prompted to speak by the comments of the

[Chris Williamson]

Solicitor-General. I do not know whether he had his tongue very firmly in his cheek when he made the statement this morning that this was not an attempt to remove transparency. Who is he trying to kid? It is clearly an attempt to remove transparency, and it is certainly an attempt to let the Secretary of State off the hook.

Let us look at what the clause says. At the moment—this is one of the things that will be removed—the legislation requires a report to be prepared by the senior president of tribunals about the standard of decision making in certain decisions of the Secretary of State. Obviously, these are made on the Secretary of State's behalf by people working in the various agencies. There is a public outcry about the standard of decision making, yet the Solicitor-General stands up this morning and expects us to accept that this is not an attempt to remove transparency, as he put it.

It seems to me that this Government are running scared of the public outcry, and the fact is that there is a very apparent inability to make good quality decisions. We know that large and increasing numbers of the decisions that have been made, particularly those affecting vulnerable disabled people, have been overturned on appeal. That brings into sharp relief the fact that this Government's cruel welfare reform agenda is having such a devastating impact on decent people up and down our country who have been the victim of very poor decisions by DWP about their entitlement.

Removing the obligation to report on the standard of decision making seems to make the situation far more opaque for the general public. It would make it harder to shine a light on the impact of the Government's welfare reform agenda and the way in which decisions are often overturned. I am really rather flabbergasted by the Solicitor-General's comments this morning. Transparent? Certainly not. This is absolutely an attempt to cover up the cruel welfare reform agenda that this Government have been driving.

John Cryer (Leyton and Wanstead) (Lab): It is an honour to serve under your chairmanship once again, Mr Hood. Before I speak about clause 44, perhaps I could mention briefly that since this Committee last met we have seen the passing of Tony Benn, and I think it is appropriate to pay tribute to him. When I was elected in 1997, I remember that the three people on our side of the House who really stood out as outstanding speakers were Tony Benn, Gwyneth Dunwoody and my hon. Friend the Member for Bolsover (Mr Skinner), of whom the Solicitor-General is such a great fan. Obviously, Dennis is the only one who is still with us, and he is still a brilliant speaker.

I remember Tony Benn holding the House absolutely enraptured by his oratory time after time, and it is a very sad day that he is no longer with us. I am sure that he would have something to say about clause 44, by the way—if I might string those points together in the way that Tony was so good at. I remember him saying, on platform after platform, things such as: "Am I my brother's keeper?", "An injury to others is an injury to all", "You do not cross a picket line", and "Jesus was an early Marxist". That particular argument might not have stood up to absolute scrutiny, but he always made it sound pretty good.

Let me move on to the clause. It is notable that almost half of appeals are now successful. We have all dealt with such cases in our constituencies, as I am sure Government Members have. Successful appeals were running at 40%, which was bad enough, but they are now at 50%.

9.15 am

Toby Perkins: Is my hon. Friend aware that when people get access to advice from organisations such as Derbyshire Unemployed Workers Centre and Citizens Advice, the rate of successful appeals is 70% or 80%? If people get quality support, that often shows decision making to be much worse than it looks otherwise.

John Cryer: I am grateful to my hon. Friend for that intervention, as I was not aware that the figure was as high as 70% or 80%. That is an even more stark condemnation of the changes that the Government are bringing in, coupled with the changes to legislation we have seen over the past three or four years.

Karl Turner: It has been mentioned that 70% of people who are represented are successful in their appeals. Does my hon. Friend agree that the clause is damaging because a large percentage of people do not bother to appeal, and they will clearly be affected? There will be no transparency, so people will not know whether decisions are bad; they might think that they just have to take them on the chin.

John Cryer: Yes, I agree with that. Many people with disabilities, particularly those that arise from mental ill health, are isolated and not aware that they can access Citizens Advice, their local Member of Parliament or their local councillor. They are simply unaware that those services exist. Probably like most hon. Members, on both sides of the House, I think we are probably all more accountable to our constituents than we ever have been in parliamentary history—we have numerous advice surgeries a month, street surgeries and door-knocking sessions—yet many people are still isolated and not aware that, under those circumstances, it would be appropriate to contact their MP or any other appropriate agency.

Chi Onwurah: I want echo and emphasise the points made by my hon. Friends, which have surprised me. This reflects Tony Benn's comments on power, but what has surprised me is how many constituents assume that a decision made by the state or a state organ is final and cannot be changed, and therefore think that they cannot do anything about it. Knowledge of levels of appeal might help in such cases.

John Cryer: I agree. While society has become less deferential, there is nevertheless still a feeling, as my hon. Friend said, that state decisions are set in stone, almost as if handed down on tablets from on high, and that those cannot be challenged. Tony used to say that if you meet somebody with political power, you should ask them certain questions: "What power have you got and on whose behalf do you exercise it? Who gave it to you? To whom are you accountable? And how can we get rid of you?" Unfortunately, when I was the MP for

Hornchurch, I used to go around quoting that and my constituents took me at my word and slung me out at the next election.

It is important that people realise that power should be accountable and that, in a democracy, it is. Freedom of information requests are not an appropriate way to deal with tribunal decisions, but we are talking about potentially relying on those in the future rather than the system that has prevailed thus far. As my hon. Friends have pointed out, numerous disability groups have objected to the clause, or at least raised serious questions about it.

I worked as a political officer at Unite the Union. It has a high proportion of disabled members and I worked with many of them quite regularly. They in turn worked with various disability groups and some of those groups contacted me to express their concerns about the clause. They think that it removes accountability and transparency from the system and I agree.

The reasons given by Atos and the Benefits Agency for removing benefits are becoming increasingly bizarre. By the way, I do not hold Ministers directly responsible for that, but it is part of a prevailing culture that removes benefits as often as possible, which comes from Whitehall and the Government. That culture is rooted in decisions by the DWP.

Recently, a disabled person who had had their benefits removed came to see me. The reason given was "prevailing labour market conditions." When he told me that, I did not actually believe it until he produced the letter he had received and I saw it. I had never seen it before in black and white as a reason for removing benefits. It is absolutely absurd. By the way, that person is now back on benefits, partly due to representations by myself and other agencies. However, to give a reason such as that is just bizarre; it was absolutely impenetrable. "Prevailing labour market conditions"? That was the reason to remove benefits from somebody who is disabled and perfectly entitled to benefits.

Also, sanctions are getting longer. I am now coming across cases where people are receiving sanctions of, say, three months for being late for an appointment, which is unduly harsh, particularly when we are talking about people who are disabled. That change is coupled with charging for access to tribunals, which I raised with the Prime Minister; unsurprisingly, I did not receive an answer. Actually, his failure to answer the question provoked a response from the Speaker, who rebuked him for failing to answer the question. The Prime Minister has been asked this question a number of times and still has not managed to provide an answer. He has not even given an unsatisfactory answer; he has not provided any answer. So we are seeing the removal of transparency and accountability, charging for access to tribunals, and the sharp decline in legal aid.

I will add one other comment. I do not excuse the Labour Government for taking—

The Solicitor-General: The hon. Gentleman will appreciate that there has never been legal aid for these tribunal appeals.

John Cryer: No, of course not, but it is part of removing access to justice from people across the board and it is part of the general culture I mentioned earlier, which is the culture of removing accountability, removing access to justice and denying people, to some extent, their basic human rights.

As I say, the questions about the changes have not been satisfactorily answered, and with all due respect the Solicitor-General has not really answered the questions this morning. He might do so now, but in his opening comments he did not really provide a rationale for these changes.

John Hemming (Birmingham, Yardley) (LD): The question about clause 44 is this: what does it achieve? My understanding is that section 15A of the Social Security Act 1998 was brought in by statutory instrument in 2008. Obviously, it was not in force during either the first or second Blair Government, and it only came into force during the third Labour Government. If it is such an essential part of justice and transparency, the first two Labour Governments in the first half of the—

Karl Turner: If I may correct the hon. Gentleman, the provision was set out in paragraphs 9 and 10 of schedule 1 to the 1998 Act, so it was indeed in statute.

John Hemming: I was reading something referring to section 15A.

Karl Turner: Yes, well—

John Hemming: And 15A—*[Interruption.]*

The Chair: Order.

John Hemming: The note I have here says something different from what the hon. Gentleman says. However, whichever way it may be, it is argued—with some force—that the decision making in DWP is not good. The question we then have to ask is whether this process makes it any better or not.

I will cite an example. I know of a case where somebody was sanctioned and they appealed it over a period of two years. Finally, at the first-tier tribunal, it was agreed that the person—a woman—was wrongly sanctioned. During the process, the Department for Work and Pensions had not turned up to the tribunal, and it had stayed the proceedings consequent to the case of Reilly & Wilson *v.* DWP, as it is allowed to do, but after that case had been determined. So the Department had done lots of procedural things that, in my view, are fundamentally wrong, but none of them would be picked up by the report set out in clause 44.

My concern is that if we are going to have accountability of judicial systems, as set out in the clause, that should be through the independent scrutiny of public judgments, not through what is effectively a judicial report that summarises what the judiciary think is important. Hence, I am quite happy to support clause 44, although I am very critical of the way that the DWP is handling cases.

Chris Williamson: I am not saying, and I do not think we are saying, that this is a panacea, a perfect piece of legislation or a silver bullet that cures all ills. It clearly does not, but it is a tool in the locker. Does the hon. Gentleman at least accept that the legislation as currently

[Chris Williamson]

constituted provides some opportunity to shed light on the quality of decision making so that action that can be taken?

John Hemming: The danger is that because the legislation looks only at part of the issue, it misdirects people. The issues that I have just mentioned are the misbehaviour of the Department in its handling of cases and the fact that someone can go two years without the cash.

Chris Williamson: I hear what the hon. Gentleman says, but how does getting rid of the requirement facilitate the improvement to which he refers? Would it not be better to keep it and look at other levers to tackle the problems that he identifies?

John Hemming: No, because that does not achieve the objective. The objectives are improved decision making and rapid tribunal processes to ensure that if people are entitled to cash, they get it. As it stands, substantial systemic failings have essentially been ignored, so to that extent, the Opposition have not made the case that the legislation delivers what we wish to see.

The Solicitor-General: We have had an interesting debate. To put the matter in context, before 2010, the available information from the tribunal sector about DWP decision making was the report. It was the document, but it did not give enough information to improve decision making and assessment, so the Government have tried to find ways to improve them.

In July 2012, we introduced a drop-down menu for tribunals, which meant that each individual part would get feedback on why a decision had been reached. That was thought to be a step forward and was certainly welcomed. The summary reasons are a much more substantial improvement, giving a lot more information about, for example, what medical evidence there was. That approach is clearly designed to improve the decision making; it is not there for any other reason. Why would we do these things unless we wanted to improve things? The overall background is not one of trying to make decision making worse, but of trying to make it better. Hon. Members in a calm moment would agree that the original work capability assessment—a rather crude instrument—has been improved over recent years, although there may be further improvements needed. The background is a positive approach.

The hon. Member for Kingston upon Hull East asked whether the senior president is overburdened. The truth is that it is a busy job and the senior president is trying to use his budget and time as effectively as possible. With the summary reasons and other improvements made to providing information, the report, which costs money, is not needed. There is an annual report anyway. If the senior president wants to make general observations about the system, he can.

Karl Turner: General?

The Solicitor-General: The sorts of observations that were made in the report, which we are not continuing to produce, were about the ratio of cases that were successful on appeal and the fact that the oral evidence provided at a hearing had been the reason why the appeal was successful. They are general points. There is no reason at all why the senior president cannot make such points in his annual report; if he wants to, he can. Is it necessary to have a separate report, when all these other sources of information are now available for the purpose of improving? There is now much more feedback to assist in improving the performance and the annual report is available for judicial comment of a more general kind if needed.

9.30 am

Karl Turner: The Solicitor-General knows, doesn't he, that the first-tier tribunal judge, in giving summary explanation for a decision, does not go into the specifics of a case or mention in his or her opinion that the Atos medical assessment was wrong in any way. It is a very objective view of the decision that appeared before that judge, nothing else. It would not, therefore, make criticism of any organisation, would it?

The Solicitor-General: It explains the decision and clearly it is objective, because one expects judges to be objective. I cannot think that the hon. Gentleman would disagree about that.

It is also the case that there is a decision notice, which specifically explains what the rights of appeal are, so that people can appeal. The figures that the hon. Gentleman has produced are about a 40% success rate of overturning on disability cases. I am afraid that historically that has been about the level, because they are quite difficult, and of course the overall case load is much larger than the number of cases that are appealed. So there is feedback and the ability for the senior judge to give judicial reporting.

It was said that Atos decisions are bad. That is why we have appeals and why the notifications are in place, so that if a decision is wrong, it can be appealed. As part of the summary reasons feedback, the tribunal should explain what medical evidence it has relied on in reaching its decision; so I do not accept that there is no successful feedback. The improvement process for Atos and other providers is not just about this procedure, because the Department has contractual arrangements which are designed for that purpose.

Chris Williamson *rose—*

The Solicitor-General: I noticed the hon. Gentleman was flabbergasted—not for the first time—and I give way to him.

Chris Williamson: I am grateful to the Solicitor-General for giving way and I wonder if he has taken his tongue out of his cheek now. He talks about percentages and says that they are fairly consistent, but would he accept that there has been an increase in certain types of appeal? I think he alluded to that point, but can he clarify for the record whether there has been an upsurge? Even if he is correct about the percentage of successful appeals, that figure could mask the actual increase in the number of people who feel aggrieved and have had bad decisions imposed against them.

The Solicitor-General: When the work capability assessment's forerunner was introduced in 2008, there was a significant number of appeals. When a system is new or a change is made, numbers do increase. But the overall approach has made considerable improvements—with Professor Harrington looking at the work capability assessment on a number of occasions and improvements being made. Over time, that process could be expected to make the system better still.

Chris Williamson: The Solicitor-General has helpfully conceded that there has been an increase and put it down to the change in arrangements. Would it not be appropriate, therefore, to drop or delay the implementation of the clause until the situation has settled down, as he expects it will?

The Solicitor-General: Further information is being provided. We have introduced new systems and so we have gone from a world where this was the only information available to a world where there is an enormous increase in the amount of information—feedback—made available to improve performance. There is also the opportunity still in the annual report, if there is a need for a judicial comment. But the situation has not deteriorated; it has improved. There is much more information out there to help with the process.

The late Tony Benn has been mentioned. Members who are now part of the coalition did not agree with his politics, of course—in fact, we very seriously disagreed with them. Having said that, it is right to reflect that he was a charming man and a committed parliamentarian. He made some wonderful speeches in the House. I remember one where he was talking about anger—I think the hon. Member for Derby North would have enjoyed it—in which he said we should never forget the anger that drove us into this place and drove us on in politics, and the desire to do something to rectify that. Yes, he was a great figure and somebody that I certainly remember very well from the nine years that we served together in the House.

Karl Turner: Briefly, I have to tell the Minister that Opposition Members are clearly not satisfied or convinced by what he has said. To be fair to him, he has made the best of a bad job. I do not believe that the Minister thinks that the rationale for this is anything but trying to prevent transparency and challenge of public authorities. That was very clear in his remarks and his answers to questions from the Opposition. I said at the outset that we do not seek to divide the Committee on this clause, but we do reserve the right to come back to this at a later stage.

Question put and agreed to.

Clause 44 accordingly ordered to stand part of the Bill.

Clause 45

CRIMINAL PROCEDURE: WRITTEN WITNESS STATEMENTS

Question proposed, That the clause stand part of the Bill.

The Solicitor-General: Clause 45 allows the Criminal Procedure Rule Committee to extend the time for objecting to a written witness statement, so as to discourage holding objections and relieve the courts of the duty to read written statements aloud when there is no one present to hear them.

Karl Turner: I do not intend to detain the Committee for too long, but I shall probably speak for a few more minutes than the Solicitor-General. The clause proposes to amend the period in which notice can be given that a witness's written evidence cannot be agreed. This provision is said to reduce the number of witnesses unnecessarily required to attend court for a contested trial. On the face of it, it seems a sensible proposal. Currently, solicitors and barristers are often unable to agree witness requirements, as the seven days provided for in the legislation are often insufficient to obtain full instructions, carry out inquiries and consider the case sufficiently to make an informed judgment. A longer period would help to improve the holding objection.

Clearly, the criminal procedure rules will need to reach the correct balance and prevent any last-minute requirement for the witnesses to attend court to give live evidence. With good case management on the part of the defence and prosecution, this clause should assist with trial efficiency. However, my concern is that in an area of the Lord Chancellor's "stack it high and flog it cheap" model of criminal justice, this may not work as well as was intended. The clause also seeks to remove certain procedural matters from section 9 of the Criminal Justice Act 1967 relating to statements, such as what should be included in the statements, the serving of exhibits, the reading aloud of statements and the manner of the service of the statements.

The Opposition have some concerns about removing some of these procedural requirements, particularly in relation to the service of exhibits, although I will say at the outset that we do not intend to divide on the issue. In certain cases it may make little difference—for example, if the exhibit has little evidential value. However, in other situations, lack of service or lack of service within a reasonable time period will have a definite detrimental impact upon the defence. For example, if a statement is taken from the complainant of, say, an alleged assault, the complainant will have described their injury or injuries and further stated that the photographs evidencing the alleged injury are exhibited but not served. The court hearing the trial may not see the exhibits but may give more weight to the statement given that the injuries have been described and they are told that the photographs are available. The photographs may not illustrate the injuries as outlined but that could not be challenged. That is a clear concern. The same would apply to exhibits that have been served late or even on the day of the trial, which, given the huge cuts to the Crown Prosecution Service since 2010, may become more commonplace.

Some exhibits require further investigation, such as CCTV that shows an alleged offence and then shows witnesses, where present, who have not been located or proofed. The defence are at a disadvantage because they are not in a position to make such inquiries without asking for an adjournment to do so. That is clearly contrary to the principles of the criminal procedure rules, namely, reducing delay, and it is noted that the intention is for the Criminal Procedure Rule Committee to ensure that the criminal procedure rules provide for

[Karl Turner]

rules to safeguard those principles and provide the appropriate protections for the defendant. We welcome that.

However, it is also observed that in practice the rules are not enforced stringently, particularly when it comes to deadlines for service and for other applications. It is often a bone of contention, particularly in the magistrates court in my experience, when the CPS has been required to comply with the criminal procedure rules for service but has not done it; it simply has not had time to do it, so service comes late—very often on the beginning of a summary trial. The Opposition want to raise these concerns and put them on the record. As I have said, the defence are often criticised when such situations occur, but the defence barrister, who has met the defendant probably a few minutes before the beginning of the trial, will say, "Actually, the instructing solicitor should have raised this earlier." People tend to, if I may put it crudely, take the rap for others, but in my experience it is very often the CPS that is failing, rather than defence solicitors or barristers.

Will there be proper enforcement of the criminal procedure rules? What measures will be in place to enforce the criminal procedure rules? The Solicitor-General is bound to say, as an eminent member of the Bar, that the court can already impose sanctions for non-compliance, in terms of costs or by disallowing the adducing of evidence. But we all know that those sanctions are rarely used by courts despite the widespread lack of compliance, particularly on the part of the CPS. Finally, what safeguards are in place to ensure that the current situation remains?

The Solicitor-General: Let me start by agreeing with the hon. Gentleman that rules should provide for fair and timely procedures and should be properly enforced. As we know, in this place there is nothing more important than to have a Chairman who is on top of the rules. That is true in court as well.

The hon. Gentleman is right to draw attention to those matters. The courts are moving from the days of counsel's notebook and fountain pen into a new era of technology, and I believe that making wi-fi and other modern technology available at court will help to alleviate a lot of the problems we have seen over the years, when a document has not been available at court or a procedural problem has arisen at the last minute. Courts' gradually moving—well, fairly quickly now—towards a digitised approach will bring a lot of improvements in the system. Standards of performance by the police, the Crown Prosecution Service and the defence could improve further. The rules committee has the confidence of the profession and the judiciary, partly because of its make-up, and is capable of producing rules of the sort the hon. Gentleman would wish.

9.45 am

Karl Turner: The Solicitor-General says that the standards of the Crown Prosecution Service are improving, and those of the defence. Does he think the defence is likely to improve when, this Thursday, it receives an 8.7% cut to its fees? When new contracts kick in, as proposed by the Lord Chancellor, it will receive another 8.75% cut to its fees. How will its quality of provision of service improve in those very straitened circumstances?

The Solicitor-General: It is not for me—*[Interruption.]*

The Chair: Order. The hon. Member for Kingston upon Hull East must control himself better. He knows better than to speak across the Committee.

The Solicitor-General: The amendment is not really about legal aid. *[Interruption.]*

The Chair: Order. I have asked hon. Member for Kingston upon Hull East to keep in order. He may be frustrated and disappointed by some of the responses but he must keep in order.

Karl Turner: On a point of order, Mr Hood. I apologise sincerely to you for speaking from a sedentary position, but it is fair to point out that the Parliamentary Secretary, Office of the Leader of the House of Commons was pointing to me and telling me to shush. Is that in order?

The Chair: That is a remark rather than a point of order. I did not hear the Parliamentary Secretary. He is therefore not out of order if the Chair did not hear him.

The Solicitor-General: It is not part of my role on this clause to talk about legal aid, because the cases we are referring to with this change are those in which nobody attends court and yet we have the solemnity of the magistrate, the clerk, the reading out of statements and so on. If somebody attends court, one fully accepts that that is necessary, but when nobody is there, we think that these procedures could be dispensed with. That is what clause 45 is all about and I commend it to the Committee.

Question put and agreed to.

Clause 45 accordingly ordered to stand part of the Bill.

Clause 46

CRIMINAL PROCEDURE: WRITTEN GUILTY PLEAS

Question proposed, That the clause stand part of the Bill.

The Solicitor-General: This is another in this group of clauses which allows the Criminal Procedure Rule Committee to relieve courts of the duty to do things which are unnecessary. The clause will relieve courts of the duty to read aloud prosecution and defence documents where the defendant pleads guilty and does not attend court. Parliament began the process of relieving magistrates courts of inefficient obligations to read aloud information which the court is considering or to read aloud the court's decision when no one apart from the magistrates and their staff are there to hear it. That happens often when the court is dealing with cases where the defence has sent in a written guilty plea or has simply not turned up.

Section 64 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 changed section 174 of the Criminal Justice Act 2003 to give the Criminal Procedure Rule Committee the power to make rules about situations where the court need not announce out loud its sentencing reasons or the effect of its sentence. Rules have been made, however, that require the court to announce the

reasons for deciding on a sentence, unless neither the defendant nor any member of the public is present. They require the court to announce the effect of the sentence unless the defendant is absent or their ill health or disorderly conduct makes such an explanation impractical.

However, it is important to have open justice. If reporters or other members of the public who did not attend want information about a case, the rules allow for that. Clause 46 allows the Criminal Procedure Rule Committee to make rules such as those for other circumstances. Apart from the general law that gives journalists special rights, the criminal procedure rules already acknowledge the importance of allowing what happens at a hearing that is open to the public to be reported to the public, even if no one attends. That does not mean that documents should be read out solemnly and announcements made out loud if no one is there. Removing such a requirement does not interfere with open justice and should result in greater efficiency. I commend the clause to the Committee.

Karl Turner: I will try to be brief. As the Solicitor-General has said, the amendment dispenses with the requirement for certain items to be read aloud in court. I think the cases that the Government have referred to involve minor road traffic matters or perhaps TV licence evasion—I expected the hon. Member for North West Leicestershire, who is not in his place, to get terribly excited at the mention of TV licence evasion.

In my experience, it can be frustrating to have to listen when cases are proven in absence, particularly when defendants have failed to plead guilty by post and simply do not attend court. Statements and other documents have to be read out, and formal convictions must be formally stated by the bench of magistrates. However, we have some slight reservations about the removal of the requirement to read statements out.

First, when statements are being read out, everyone can be assured that the relevant evidence in the case is being heard and acknowledged by the tribunal. It would be far too easy for a court to read statements, rather than the prosecutor reading them into the record. In my humble opinion, the bench of magistrates may soon tire of absorbing the evidence. It is less clear to the public that the evidence has been properly considered. Justice must not simply be done; it must be seen to be done.

Secondly, on occasion it becomes clear as the case is being read out and outlined by the prosecutor to the court that the evidence may not be sufficient to reach the satisfactory standard to convict—this is an experience I have witnessed directly. That is often pointed out by the court clerk or the legal adviser to the lay bench of magistrates, or by canvassing issues between, say, the prosecution and the court clerk and, very rarely in such instances, the defence—the defendant paying for a solicitor to be there in their absence is very rare.

The removal of the requirement to read cases out might increase the number of wrongful convictions for what, prima facie, might be minor offences. An example might be where a defendant is at risk of "totting". That is where he or she has 12 penalty points on their driving licence and they have been photographed exceeding 30 mph, which means they might "tot", which can have significant life-changing effects, including the loss of one's livelihood.

Thirdly, there has been a recent increase in large road traffic courts listing 70 or 80 cases in one road traffic session. Again, I am concerned that if cases are no longer formally read out, evidence will not be properly considered. As a practising criminal lawyer, I am not one to suggest that the police—now responsible for prosecuting road traffic offences, by the way—are anything but completely honest, but my reservations need to be placed on the record.

Gareth Johnson (Dartford) (Con): Speaking as a former court clerk myself, I want to ask the hon. Gentleman whether he would accept that some of the concerns he raises could be allayed by the fact that there would not be a wrongful conviction, because we are dealing with written pleas of guilt. If there are concerns about totting, the magistrate would simply adjourn the matter for the defendant to attend court and give reasons why they should not be disqualified from driving.

Karl Turner: I take the hon. Gentleman's point, but on my reading of the clause there would not necessarily be written guilty pleas. There may be a situation where there has been no response whatever. The Solicitor-General will correct me if I am wrong, but that is my reading of the effect of the clause.

I wonder whether the Minister could briefly answer one or two questions. Will there be a new procedure for dealing with cases proven in absence, to ensure that evidence is properly considered? Will the number of cases listed be monitored, to ensure sufficient court time to consider evidence properly? Will magistrates have the opportunity to retire and read statements themselves? Will requirements under the Disability Discrimination Act 1995 be complied with, for example in cases where a member of the magistrates bench is visually impaired? Is it correct that in practice Braille or audio will be required? Finally, what provisions will be made to assist magistrates who have such disabilities?

The Solicitor-General: Let me start by saying that what we are trying to do—or rather, what the Government are trying to do with the assistance of the courts and the judiciary—is have a system where a full trial occurs when necessary and a serious matter is dealt with to the very high standards we have in this country. However, if someone is guilty, they should plead guilty as soon as possible, and cases should be triaged, so that the right amount of resource and judicial effort is there for the right sort of case.

It is right that there are proposals in the Criminal Justice and Courts Bill to commence proceedings by written charge and requisition. Certain prosecutors will be able to commence proceedings by way of written charge and the single justice procedure notice. Under this new procedure, the defendant will be required to respond in writing to the allegation, and the case may be tried before a single justice rather than in an open court, without the parties being present. In deciding the case, the single justice will rely solely on the document served on the accused and any written submission provided by the accused. Obviously, this is suitable only for particular minor cases, but it will make a big difference to the overall efficiency of the courts because there are a very large number of such cases.

[The Solicitor-General]

Yes, justice must be seen to be done, and I have already described the procedures that will be in place to ensure that reporters and the public can access the decisions. As my hon. Friend the Member for Dartford made clear, it is of course the duty of the clerk of the court to ensure that there are not cases where a legal point or a particular concern about totting goes unremarked. Our system also has a well established route of appeal.

My submission to the Committee would be that the Criminal Procedure Rule Committee will be in charge of the process of writing rules to adjust and, where necessary, discard these requirements. The members of that committee are most expert in what they do. There is a considerable improvement in efficiency for the Courts Service in these proposals. Yes, of course adjustments will need to be made for particular disabilities, and they will be. On that basis, I would advise the Committee to agree to the clause.

Question put and agreed to.

Clause 46 accordingly ordered to stand part of the Bill.

Clause 47

Criminal procedure: powers to make Criminal Procedure Rules

Question proposed, That the clause stand part of the Bill.

10 am

The Solicitor-General: The clause amends several statutory provisions under which applications are made to a judge to allow criminal procedure rules to prescribe the procedure to be followed for those applications. It caused the media some concern, and I shall refer to the discussions and results of that shortly.

At the moment, such applications are excluded from the ambit of the criminal procedure rules. That is inadvertent—it could be said that it was a mistake—but it came about in the following way. The Courts Act 2003 provides for rules to govern the practice and procedure to be followed in the criminal courts, but the criminal courts are defined as the Crown court and the magistrates courts. A judge sitting alone to hear an application does not technically constitute the Crown court and is therefore not covered by the definition. Allowing rules to prescribe the procedure for such applications will bring them into line with other, similar applications, helping to keep criminal procedure consistent and easy to find. It also makes it possible for the Criminal Procedure Rule Committee to keep the procedure up to date and efficient in the light of experience.

A separate issue arises from the Police and Criminal Evidence Act 1984 and the provision in schedule 1 for making applications for production orders. Those orders require specified persons to produce potential evidence for an investigator that an ordinary search warrant would not cover. PACE contains procedural requirements that are not found in other statutes under which production orders may be sought, such as the Terrorism Act 2000 and the Proceeds of Crime Act 2002.

It is sensible to bring the procedures generally into line for two reasons. First, the existence of different court procedures for applying for different sorts of court orders at the same time causes confusion and leads to avoidable litigation and expense. Secondly, the PACE procedures are inflexible and unhelpfully constrain what the rules can provide in relation to applications for a production order. As the law stands, everyone against whom an application for a PACE production order is made is obliged to become involved and attend a court hearing because of the PACE requirement for having all the parties at the hearing.

Banks and businesses against which PACE production orders are normally sought often do not have any objection to the order that the police want, as long as it is made by a court. All they want is a court order; they do not want the trouble and expense of being dragged into legal proceedings about information they happen to hold that might be useful to an investigation. On the other hand, the criminal procedure rules could differentiate cases where a party wished to appear from those where the application could be determined without a hearing. Setting out the procedure in the rules also has the advantage that it could be in much greater detail than in a statute and include modern features such as electronic communication.

It is rare for applications for production orders to be made against journalists. However, in response to concerns that media representatives who were consulted expressed, the Government have worked with them on an amendment that could preserve the status quo on journalistic material. That means that, when an application is made for the production of journalistic material, the amendment would allow the existing legislation to apply, and a court hearing would be mandatory.

The Government are also conducting an informal sounding exercise to ascertain whether there are any concerns about the effect of the clause other than in respect of journalistic material. If, as I expect, there are none, the Government could table on Report an amendment that has been agreed with the media to take account of journalists' concerns.

Clause 47 is a modest change in the law that would relieve other respondents such as businesses and banks of unnecessary burdens. It will mean that courts are no longer forced to arrange unwanted and unnecessary hearings for people who might well not turn up and are quite happy for an order to be made. I commend the clause to the Committee.

Karl Turner: The Solicitor-General may have answered one or two of my concerns, but I want to make some points. As he said, the clause would remove the statutory formality and protection for the requirement to make applications before a circuit judge for various orders, such as warrants and production orders. Currently, where a warrant is issued by a judge under legislation, if the criteria are not met and the respondent feels that the order has been made incorrectly, it may be challenged in a higher court. The proposal is that the criteria will be set within the criminal procedure rules.

It is unclear how any warrant or production order can be challenged if it is felt that the order or warrant has been incorrectly granted. It is not clear why the amendment is being proposed. What is to be gained by

removing the statutory protection? The Opposition could be forgiven for having some scepticism that the purpose of the amendment is to remove the procedural and legal protection from the improper and inappropriate use of such powers, with little power on the part of the respondent to challenge the grant of such orders.

We acknowledge that part of the proposed amendment would allow for such applications to be made by e-mail or other electronic means, which would reduce the necessity for the police to attend court to make the application in person. However, we have some reservations about whether applications would be given sufficient time and consideration by the judge when made in that manner. It is one thing for an application to be made before a judge in person; it is quite different for a judge simply to consider a written application in his chambers. In addition, such a method of application would preclude any questioning or scrutiny of the applicant by the judge. We need some assurances from the Secretary of State that, if the amendment is agreed to, there will be some form of protection in the criminal procedure rules for challenge.

Concern has also been expressed about clause 47(3), which would repeal paragraphs 7 to 10 of schedule 1 to the Police and Criminal Evidence Act 1984. That schedule deals with excluded or special procedure material. Excluded material includes documents and records used by journalists and held in confidence. To be fair, the Minister mentioned that in his opening remarks, and I hear what he has said about it. Paragraphs 7 to 11 of schedule 1 to the 1984 Act mandate the police to make any such application for materials inter partes, so that all parties to the proceedings are informed of the application and the journalist may make representations about why the excluded material should not be disclosed.

The concern expressed by some is that as the rules for safeguarding the press's right to keep sources confidential are so important, the powers relating to excluded material should be retained directly in legislation and not delegated rules, under which the courts could be given more powers to force journalists to disclose material. There are worries that clause 47(3) will threaten journalistic protections and remove the statutory procedural safeguards set out in schedule 1 to PACE. I have some sympathy with the notion that removal from parliamentary scrutiny of such a fundamental free speech protection is worrying. Although nothing in the Bill suggests that that is an intentional consequence of clause 47, we seek assurances from the Minister that journalistic freedoms will be protected.

I am aware that my hon. Friend the Member for Hayes and Harlington (John McDonnell) has met the Minister with responsibility for Government policy on this issue and that the Government seek to come to a mutually acceptable position. However, for the sake of completeness if nothing else, I want to put a couple of questions to the Minister. First, what protections will be afforded to ensure journalistic freedoms as they currently exist? Secondly, what form of challenge will be available in the event that that an order of the court is said to have been granted ultra vires?

The Solicitor-General: I have considerable sympathy with the points raised by the hon. Gentleman. It is important that there are proper protections in the criminal procedure rules. I believe that the profession, the judiciary and those who speak for victims do have confidence in the Criminal Procedure Rule Committee, given its make-up and track record. Having said that, I am happy to assure hon. Members that there will still be the right of challenge. If an order is made ex parte, the respondent or person who is the subject of the order could apply to discharge it. The rules will also provide that if an inter partes hearing is required or desired, that will occur. As far as journalistic material is concerned, as I indicated, an agreement has been reached with the media representatives on an amendment, but we want to finish the sounding exercise to ensure that nobody else has a similar concern.

The protections that the hon. Gentleman hoped for are there. We intend those to continue, with inter partes hearings where needed. The real point, which I hope I made in my opening remarks, is that many banks, building societies and other organisations want to help investigators and they need a court order to disclose. In such circumstances, it should not be necessary for them to be solemnly dragged to court and made to attend a hearing, with all the costs and inconvenience that that involves, unless they want that or if there is a reason for that. The clause aims to address that.

Question put and agreed to.

Clause 47 accordingly ordered to stand part of the Bill.

Clause 48

"MAPPA arrangements" to cease to apply to certain offenders

Question proposed, That the clause stand part of the Bill.

The Solicitor-General: Until recently the courts could make disqualification orders to prevent offenders from working with children. Anyone subject to a disqualification order must also be managed by criminal justice agencies under multi-agency public protection arrangements.

Disqualifications were abolished and replaced with a barring scheme run by the Disclosure and Barring Service. All those who were subject to disqualification orders have been fully considered by the DBS, which looked at every order and decided how to convert those into entries on its barred lists. Anyone barred from working with children will still be prevented from getting employment with children through the barring system. However, no existing disqualification orders have been revoked and those orders are imposed for life, so they last much longer than probation supervision on licence after an offender is released from prison. They can also last much longer than sex offender registration, under which offenders must notify the police of various information.

Unlike those other situations, someone subject to a so-called stand-alone disqualification order does not have a duty to stay in touch or co-operate with the authorities, but those authorities are obliged by the MAPPA legislation to manage such people through that process. That is in contrast to those on the new barred list, who are not required to be managed under MAPPA simply because of their barred status. The clause rectifies that inconsistency. Subsection (6) takes disqualification orders out of the scope for MAPPA. There are, however, arrangements to tighten the general

[The Solicitor-General]

way in which high-risk offenders who were previously under disqualification orders are managed so that there are no risks in making that change.

In subsection (5), six offences are added to the list in the Criminal Justice Act 2003 that automatically leads to MAPPA management in cases that attract sentences of 12 months or more. In practice, many of the offences for which disqualification orders were given automatically qualified for MAPPA management and the small number that did not are the extra offences that have been added. That ensures that all offences for which a disqualification order had to be imposed now qualify for automatic MAPPA management where those receive sentences of 12 months or more.

Secondly, there is MAPPA agencies' discretion over offenders who are not automatically managed under MAPPA. The list in the 2003 Act applies to relevant sexual offences but not to violent offences, for which someone has to receive 12 months or more to be covered. There has always been discretion to bring an offender under MAPPA if that is warranted by the risk they present, even if they receive a shorter sentence. That continues to apply and will ensure that high-risk offenders continue to be managed.

The clause will remove inconsistency with the new vetting and barring arrangements while ensuring that dangerous offenders are still managed effectively under MAPPA. I am confident that all dangerous offenders who ought to be managed will be managed, and I commend the clause to the Committee.

10.15 am

Karl Turner: The clause addresses the requirement for agencies to share information relating to offenders who pose a potential risk of harm to the public. That includes offenders who have been convicted of sexual and/or violent offences. The clause will remove the requirement to share information solely because someone is subject to a disqualification order barring them from working with children or vulnerable adults following their conviction. The power of the court to impose such an order was repealed by the Safeguarding Vulnerable Groups Act 2006. The clause adds six offences to schedule 15 to the Criminal Justice Act 2003 that are classed as offences for which a conviction may suggest a risk to the public. The list will now effectively include any offence that could have resulted in a disqualification order being made. I see the Solicitor-General nodding to confirm that that is the case.

We have no objection to the clause, as it appears that anyone who would have been subject to the MAPPA information-sharing criteria due to being subject to a disqualification order will remain subject to MAPPA information sharing by virtue of having previously been convicted of a relevant offence in schedule 15 to the 2003 Act, as amended. That is my understanding from reading the Bill, and it therefore appears sensible to tidy up the requirement, subject to the same level of protection being afforded to the public, but I want to raise a brief question. Can the Minister assure the Committee that the amendments to schedule 15 to the 2003 Act will apply retrospectively to the MAPPA information-sharing criteria so that any offender subject to a disqualification order will remain subject to MAPPA information sharing?

The Solicitor-General: The point is that if someone has committed an offence on the list, as amended, they will be a MAPPA-controlled individual. I have mentioned the change for violent offences, in which a 12-month sentence will be required, and I think we would both accept that that is a sensible change. The answer to the hon. Gentleman's question is yes.

Question put and agreed to.

Clause 48 accordingly ordered to stand part of the Bill.

Clause 49

REMOVAL OF REQUIREMENT THAT PRISON CLOSURES BE MADE BY ORDER

Question proposed, That the clause stand part of the Bill.

The Solicitor-General: The clause removes the requirement for prison closures to be effected by order, which brings the procedure in line with the process for opening prisons. Doing so will make the process more efficient and remove unnecessary provisions from the statute book. Subsection (2)(a) will remove the requirement for a prison closure to be effected by an order made by the Secretary of State. The current procedure does not provide a high degree of parliamentary scrutiny or influence on prison closure decisions because such orders, although they are laid before Parliament, only happen after they are made, and they are not subject to any parliamentary procedure. So although the orders are laid, nothing happens. Decisions to close prisons will continue to be announced to Parliament in advance by written ministerial statement, as is currently the case, but in practice Parliament will continue to be informed of prison closures in the way that it is now. The point about the modern system is that it means parliamentarians have the opportunity to take steps in this place for Adjournment debates and so on, if they wish to dispute a closure in any way. So a ministerial statement in advance is a better option.

Subsection (2)(b) omits section 37(2) and (3) of the Prison Act 1952, which require special reasons in order to close the only prison in a county. That is a historical provision, which is no longer considered necessary. At one time there was a duty on each county to have a prison. The roots of the Prison Act 1952 lie in the Prison Act 1877, which transferred responsibility for all local prisons—the county jails—to central Government control. The Prison Act 1877 ensured that

> "The sheriff of any sheriffdom shall not be liable for the escape of a prisoner".

It also provided that

"any painful test to a prisoner to detect malingering",

could only be applied by authority of an order from the visiting committee of justices or a prison commissioner. It requires special reasons in order to close the only prison in a particular county. The order in Parliament was the record of what the reasons were, if it was that class of closure,

Ensuring that we have a custodial estate that has sufficient places to meet the demand of the courts while securing best value for money for the taxpayer, combined with modern travel, means that we no longer need to

retain provisions that reflect a historical model based on county jails and a different world in terms of the criminal justice system.

Subsection (3) makes minor amendments to section 43(5) and (5A) of the Prison Act 1952, which are consequential to the repeal that I mentioned. Subsection (4) makes consequential amendments to section 52 of the Prison Act, reflecting that prison closures no longer require the making of an order. These changes simplify the final procedural step for closing a prison, by making the process more efficient and removing unnecessary provisions from the statute book. I commend the clause to the Committee.

Karl Turner: We will not seek to divide the Committee on the clause, but we do have some concerns. My reading is that this effectively allows the Secretary of State of the day to make the decision to close a prison without any real parliamentary scrutiny. The Prison Service is one of the fundamental provisions for public safety and protection and should be carefully preserved. The concern is that prison closure may follow for various reasons and may not necessarily be the best thing for the area in which the prison is based.

The Solicitor-General: I started off with the same slight concern that the hon. Gentleman has just described. Then I looked into it and discovered that there is no procedure for this statutory instrument. Normally, we have the affirmative, the negative or super-affirmative procedure, but with this type of statutory instrument, it just gets laid and that is it. So there is no real scrutiny element. That is why the written ministerial statement announcing it in advance has been introduced. I do not know whether that helps the hon. Gentleman.

Karl Turner: It assists to some extent, but we can envisage a situation where there is a notification that a prison is to close in a particular area and various lobby groups contact their MPs to argue against such a proposal. They may feel that their voices are not being heard when the decision may go unchallenged. This, we would argue, would reduce accountability in an area where, it is fair to say, we are already struggling with the increasing prison population. I am bound to be sceptical and suspicious. I wonder whether the provision is more about closing publicly run and managed prisons and replacing them with privately run prisons. Open and transparent debate is crucial for such decision making.

What consultation process will apply to prison closures under the new regime? Is this not really just about closing publicly owned prisons and replacing them with establishments run by G4S/Serco, which, respectfully, are not necessarily working?

Jim Shannon (Strangford) (DUP): There is sometimes flexibility for private prisons in relation to rules and regulations and we have had examples that show that there are more escapees from privately run prisons. Does the hon. Gentleman feel that there is a greater need for control centrally, within Government, over prisons in the regime, regarding rules and regulations and the way that they are run?

Karl Turner: The hon. Gentleman makes a valid point. However, with respect, I am not sure that it is entirely on all fours with the clause, but it is a point worth making and it was well made. With that, I shall sit down and hand over to the Solicitor-General.

The Solicitor-General: It may help the hon. Gentleman if I give the example of Her Majesty's prison Dorchester. On 4 September 2013, the closure was announced in advance by a written ministerial statement. If there had been controversy about that, colleagues could have asked for Adjournment debates or raised the matter in Parliament, as we all do. On 29 November, the last prisoner left. The closing ceremony was held on 17 December and on 9 January the Closure of Prisons Order 2014 was laid, which put it on the record, of course, that that prison had closed. On 31 January, the official, formal closure occurred. Under the proposals, the only thing that would change is the laying of the order. That is not a debatable order; it is simply one that describes in the official record of the House the fact that the prison has closed.

In a world where each county had to have a prison and reasons had to be given if a county's prison was closed, the order put that on the record formally. However, that was not the trigger for a debate or an accountability measure of the sort that the hon. Gentleman mentioned, which is why, of course, we now have the written ministerial statement in advance, the idea being to give colleagues a chance to comment and campaign, if they wish. I hope that that provides some reassurance that Parliament will still be able to debate closures. In fact, the new procedure of giving advance warning helps with that.

This is something from the past that we no longer need.

Karl Turner: I am reassured by the Minister's remarks. However, it was important to get on the record our concerns about publicly run and publicly managed prisons being closed and replaced with privately run establishments, which, I respectfully submit, are not as good as publicly run establishments.

The Solicitor-General: The hon. Gentleman reminds me that I had not said anything about his comments on general policy. The Government have to decide what the best structure is for prisons and what the best arrangements are, whether private or public. The hon. Gentleman's party, which was in government until 2010, had much the same approach as the current Government.

Question put and agreed to.

Clause 49 accordingly ordered to stand part of the Bill.

Ordered, That further consideration of the Bill be now adjourned.—*(Gavin Barwell.)*

10.30 am

Adjourned till this day at Two o'clock.