



All Peers
House of Lords
London
SW1A 0PW

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16 February 2021

Dear Noble Peers,

COUNTER-TERRORISM AND SENTENCING BILL

I am writing to you following the Counter-Terrorism and Sentencing (CTS) Bill's Committee stages which concluded on Tuesday 9th February. In the final debates on group 24 and 25, I committed to write to the Committee to provide further detail on these government amendments. Please find this information detailed within Annex A, attached. I will also be placing a copy of this letter in the House Library.

Group 24 included several government amendments that are needed to ensure coherence between this legislation and the Sentencing Act 2020. At the time the CTS Bill was introduced, the Sentencing Bill was also passing through Parliament. Following amendments made to the Sentencing Bill during the Joint Committee for Consolidation Bills, further consequential amendments to this Bill were identified which are necessary to ensure both pieces of legislation work effectively. This group also included consequential amendments identified by the Ministry of Defence which are required to ensure a consistent approach in Service Law. Finally, there were additional technical amendments to ensure the Bill operates effectively in Scotland.

Group 25 included three amendments to make provision for technical sentence calculation adjustments in Scotland for use where multiple consecutive sentences are being served, and where at least one of them is a sentence for a terrorism offence.

There were two specific questions, on the operation of amendment 60 and amendment 67, which I would seek to address substantively in this letter, though a summary can also be found in the Annex.

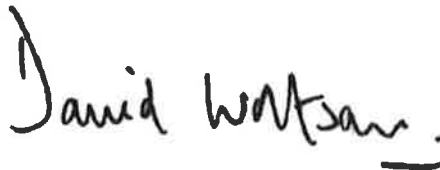
Amendment 60 ensures that the relevant body responsible for the release decision of a terrorist offender continues to be accountable for setting any relevant bespoke licence conditions, and ensures this provision clearly applies to standard determinate sentenced terrorist offenders as well as other sentence types. This means that where a terrorist offender is released at their automatic release date, for example, the end of their custodial term and so is not referred to the Parole Board, the Secretary of State has responsibility for setting licence conditions. Where the Board is responsible for release of an offender, for example with discretionary early release at the two-thirds point, the Secretary of State cannot alter or cancel a bespoke condition in the offender's licence unless the Board directs it. By clarifying where responsibility lies for setting or varying licence conditions, this amendment provides for a consistent approach with current practice for non-terrorist offenders.

Amendment 67 introduces new section 1B into the Prisoners and Criminal Proceedings (Scotland) Act 1993, which is required to ensure that terrorist offenders across the United Kingdom serve the appropriate custodial period of sentences for terrorism offences, in line with changes introduced by the Terrorist Offenders (Restriction of Early Release) Act 2020 and through this Bill. For these changes to take effect as intended in Scotland, where there are two or more sentences imposed consecutively, and at least one is a sentence imposed for a terrorism offence, we need to make provision that clarifies how that sentence, which I will refer to for ease as a 'terrorism sentence', should be served. This is because in Scotland multiple consecutive sentences are amalgamated into one sentence with one release date at the point of sentencing, a process referred to as 'single-terming'. This is a unique feature of Scottish sentencing and does not occur in the rest of the UK.

In developing this provision, it was agreed between the UK Government and the Scottish Government that we must deliver the bespoke release regime set out in this Bill in Scotland whilst also ensuring there was no undue impact on 'non-terrorism sentences', since these are a devolved matter. This amendment first ensures that non-terrorism sentences when imposed consecutively will remain subject to the Scottish process of single-terming, regardless of when they are imposed. Then, this amendment makes provision for the terrorism sentence to be served consecutively to the non-terrorism sentence or single term's custodial period and concurrently to the associated licence period. Where there are multiple terrorism sentences these will be aggregated in the same way they are in England, Wales and Northern Ireland, rather than single-termed, meaning their specific release provisions will be recognised. This has been agreed following extensive engagement with the Scottish Government as the least intrusive way of delivering our agreed intent. As noted by my Noble friend Lord Stewart of Dirleton, in the debate, this provision is supported by the Scottish Government, demonstrated by their recent promotion of a Legislative Consent Motion to the Scottish Parliament.

If you would like to discuss the Bill further, or have any further questions, then please do get in touch with my Private Secretary, Molly Stacey (PS.Lords@justice.gov.uk).

Yours sincerely,

A handwritten signature in black ink that reads "David Wolfson". The signature is written in a cursive style with a horizontal line at the end.

**LORD (DAVID) WOLFSON
OF TREDEGAR, QC**

ANNEX A – LIST OF GOVERNMENT AMENDMENTS FROM GROUP 24 AND 25

Amendment	Purpose and effect
41	<p>This is a consequential, technical amendment to section 23A of the Terrorism Act 2000 which is required as a result of clause 1 of the Bill.</p> <p>Specifically, the consequential amendment to section 23A(4) of the Terrorism Act 2000 in paragraph 1(2) of Schedule 13 would, as it stands, leave the words “in accordance with section 30 of that Act” in section 23A(4)(a) with no reference to the Counter-Terrorism Act 2008 in subsection (4) to which “that Act” can point. We are therefore making amendment to section 23A(4) to ensure this subsection includes the necessary reference to the Counter-Terrorism Act 2008.</p>
42	<p>This is a consequential, technical amendment as a result of clause 1 of the Bill and the new Schedule A1, which lists terrorism offences for which a terrorist connection is not required to be considered. This amendment updates section 44(2)(e) of the Counter-Terrorism and Security Act 2015, which is newly inserted by paragraph 292 of Schedule 24 to the Sentencing Act 2020. Its effect is that the Independent Reviewer of Terrorism Legislation will be responsible for reviewing the operation of Schedule A1 of the Sentencing Code, in addition to Schedule 1 of that Code.</p>
43	<p>The purpose of this amendment is to remove an otiose provision. Paragraph 5 to Schedule 13 of the Bill seeks to omit paragraph 132 of Schedule 2 to the Sentencing (Pre-consolidation Amendments) Act 2020. However, the whole of Schedule 2 has already been repealed by Schedule 28 of the Sentencing Code so this amendment is to avoid duplication and confusion, and avoid the inclusion of an unnecessary provision in legislation.</p>
44	<p>The purpose of this amendment is to repeal a prospective amendment to the Sentencing Code which is no longer necessary. The effect is to repeal paragraph 4 of Schedule 22 to the Sentencing Act 2020 (to the extent that paragraph 4 is not yet in force when section 1 of this Act comes into force), which seeks to add offences set out in Schedule 4 to the Space Industry Act 2018 to the list of offences where a terrorist connection is to be considered at the point of sentencing. This amendment is unnecessary once clause 1 of the Counter-Terrorism and Sentencing Bill is in force, since it broadens the scope of non-terrorism offences that can be considered for a terrorist connection.</p>
45	<p>The purpose of this amendment is to ensure that the body responsible for release (either the Secretary of State, or the Parole Board) will be responsible for setting any relevant bespoke licence conditions in the context of the new serious terrorism sentence. This is to ensure that, where the Board is responsible for release of an offender, the Secretary of State cannot vary or cancel a bespoke condition in the offender’s licence unless the Board directs it.</p>
46	<p>The purpose of this amendment is consequential to the amendments in paragraph 9(6) of Schedule 13 of the Bill which exclude those serving Serious Terrorism Sentences from automatic further release after recall to prison.</p>
47	<p>The purpose of this amendment is to remove an unnecessary consequential amendment including a reference to a serious terrorism sentence in section 273 of the Sentencing Code which was advanced when the Bill was presented to Parliament. Paragraph (13) is removed, which previously referred to the Serious Terrorism Sentence.</p>

48	<p>The purpose of this amendment is to remove an unnecessary consequential amendment which referred to the Serious Terrorism Sentence in section 284 of the Sentencing Code when this Bill was presented to Parliament. Paragraph (16) is removed to ensure legal clarity.</p>
49	<p>Section 61 of the Criminal Justice and Court Services Act 2000 (CJCSA 2000) has not been brought into force, but if it were, it would abolish the sentence of detention in a young offender institution. Since Clause 4 of this Bill will create, for adults under the age of 21, a serious terrorism sentence of detention in a young offender institution (DYOI), those references, or any references in other Acts made in consequence of them, would, if section 61 were to come into force, need to be appropriately and simultaneously amended. This amendment makes three changes to this effect:</p> <ul style="list-style-type: none"> • First, subsection 417(1) of the Sentencing Code provides that Schedule 22 (which amends the Sentencing Code and other related legislation) comes into force in accordance with regulations made by the Secretary of State. However, s417(3) excludes certain paragraphs of Schedule 22, which instead would come into force at the same time as section 61 CJCSA 2000, should that provision ever be brought into force. This Government amendment would add to the list of excluded provisions in s417(3) of the Code, to include a number of provisions of the Code which are added by this Bill. • Second, this amendment would change a number of references within Schedule 22, to ensure that new provisions added to the Code by this Bill are caught by the provisions in Schedule 22 that relate to abolition of DYOI, and therefore will commence only on the commencement of section 61 CJCA 2000. • Finally, it works with the amendment to page 52, line 27 (paragraph 25 of Schedule 2), to change the way that certain Space Industry Act offences are inserted into Schedule 17A. Rather than inserting them directly, such that they come into force with the CTS Bill (and prior to the SIA itself coming into force), as paragraph 25 would have done, it instead inserts them by way of Schedule 22, which will bring into force by way of regulations other references to the SIA offences. <p>This is a technical amendment, arising from the interaction between the Sentencing Code and the sentencing provisions of this Bill, to ensure a consistent and correct application of the Serious Terrorism Sentence. There are no plans to abolish the DYOI.</p>
50, 51, 53	<p>Schedule 8 of the Bill gives the service courts access to the new sentences that the Bill is making available in the civilian courts. The consequential amendments for Schedule 8 are dealt with in Part 5 of Schedule 18 rather than Part 4: these amendments moves a consequential amendment for Schedule 8 to Part 5.</p>
52	<p>The purpose of this amendment is to ensure that the amendment made by paragraph 12(2) of Schedule 13 to this Bill is subject to the transitional provision in clause 21(2). This ensures the same effect for this consequential amendment as for the other provisions of Schedule 13, as provided for at Clause 21(2) of the Bill.</p>
54	<p>This amendment adjusts a previous amendment to section 264(6A) of the Criminal Justice Act 2003 in order to clarify the insertion of the new youth sentence for terrorist offenders of particular concern aged under 18</p>

	(new section 252A) in section 264(6A)(a) of the 2003 Act. This is required to reflect an amendment made to section 264(6A)(a) by the Sentencing Bill at its Joint Committee stage.
55	<p>Section 61 of the Criminal Justice and Court Services Act 2000 has not been brought into force, but if it were, it would abolish the sentence of detention in a young offender institution. The purpose and effect of these amendments ensures the Sentencing Act 2020, in relation to its provisions relating to the abolition of a sentence of detention in a young offender institution (changes made by section 61 of the Criminal Justice and Courts Services Act on its commencement), apply in respect of the new youth sentence of detention for terrorist offenders of particular concern.</p> <p>As with amendment 49, this is a technical amendment, arising from the interaction between the Sentencing Code and the sentencing provisions of this Bill, to ensure a consistent and correct application of the Serious Terrorism Sentence. There are no plans to abolish the DYOI.</p>
56, 57, 58	The purpose of these amendments is to amend section 5 of the Rehabilitation Act 1974 as it extends to Scotland to ensure the effective application of the 1974 Act in respect of those sentenced to the service equivalent of the new youth sentence of terrorism of particular concern (as introduced by Part 3 of Schedule 8).
59	Where the Bill updates the sentencing powers of the civilian courts, equivalent changes are being made to the powers of the Court Martial. Those changes mean further minor consequential amendments are needed to Schedule 26 of the Sentencing Act 2020, which applies to the Court Martial.
60	<p>The purpose of this amendment is to ensure that the body responsible for release (either the Secretary of State, or the Parole Board) will be responsible for setting any relevant bespoke licence conditions for terrorist offenders subject to the restricted release provisions introduced by the Terrorist Offenders (Restriction of Early Release) Act 2020.</p> <p>The effect of this amendment is to ensure that, where the Board is responsible for discretionary initial release of an offender or re-release after recall, the Secretary of State cannot, vary or cancel a bespoke condition in the offender's licence unless the Board directs it. Where the Secretary of State is responsible for the release, he will retain the discretion to set the licence conditions.</p>
61	The purpose of this amendment is to provide the Secretary of State with a power to order an inquiry into the detention of a child where they are sentenced to the new terrorism sentence in Scotland. This amendment aligns the new terrorism sentence as it applies to children under the age of 16 with other sentences of detention available to children in Scotland.
62	<p>The purpose of these amendments is two-fold.</p> <p>Firstly, it amends section 5 of the Rehabilitation of Offenders Act 1974 (1974 Act), <u>as it extends to England and Wales</u>, to specify the rehabilitation periods for children (under 16 year olds) who are sentenced to the new terrorism sentence with fixed licence period in Scotland (introduced by clause 23). Secondly, it amends section 5 of the 1974 <u>as it extends to Scotland</u> to specify the rehabilitation periods for the Serious Terrorism Sentence for young offenders (as introduced in Scotland by clause 6) and the Terrorism Sentence for young offenders and children (as introduced in Scotland by clause 23).</p>

63	This is a minor, technical amendment to insert the opening text for the consequential amendments to the Prisons (Scotland) Act 1989 in amendment 65. The amendment has no substantive effect.
64	The amendment has no substantive effect. The wording that is removed by this amendment is no longer necessary.
65	The purpose of this amendment is to apply the power of arrest by a constable or prison officer without warrant to a child under the age of 16 who is unlawfully at large following a sentence of detention under the new terrorism sentence in Scotland. The effect ensures the new terrorism sentence, in respect of children, aligns with other sentences of detention in respect of children in Scotland.
66	This amendment is consequential on the insertion of new section 1B of the Prisoners and Criminal Proceedings (Scotland) Act 1993 made by amendment 67. The effect of the amendment ensures that where, in Scotland, prisoners are serving consecutive sentences, one of which being a sentence for a terrorism offence, the sentences can be calculated with those for non-terrorism offences so that the appropriate custodial period of the terrorism sentence is always served in custody. The provision provides for technical sentence calculation adjustments to be made to achieve the purposes where multiple sentences are being served.
67	The purpose of the amendment is to ensure that terrorist offenders throughout the UK serve the appropriate custodial period of sentences for terrorism offences, which was altered in the Terrorist Offenders (Restriction of Early Release) Act 2020 and through this Bill. This is achieved through the introduction of new section 1B that provides clarity on the technical sentence calculation adjustments required where multiple sentences are being served in Scotland, where at least one is a terrorism sentence.
68	The purpose of this amendment is to extend the re-release provisions in section 3A of the 1993 Act to prisoners serving terrorism sentences and serious terrorism sentences, and to establish the re-release tests for prisoners to whom the provision applies. It also extends the review provisions in section 3B to those serving terrorism sentences.
69	The purpose of this amendment is to extend the re-release provisions in section 3A of the 1993 Act to children who are sentenced to a Terrorism Sentence. It also extends the review provisions in section 3B to children serving a Terrorism Sentence.
70	This amendment is consequential on the insertion of new section 1B of the Prisoners and Criminal Proceedings (Scotland) Act 1993 made by amendment 67 and ensures that terrorism sentences to which section 1AB of the Prisoners and Criminal Proceedings (Scotland) Act 1993 apply will not be treated as a single term for the purposes of Part 1 of the Act.
71	A significant amount of civilian sentencing legislation applies in the service courts. Some consequential changes being made to that legislation by Schedule 13 of the Bill will therefore alter the sentencing legislation that applies in the service courts. This amendment allows those changes to be brought into force by commencement regulations insofar as they affect the service courts.
72	This is an amendment to the commencement provisions of the Bill to include the consequential amendment being made to the Social

	<p>Work (Scotland) Act 1968 so that it will come into force on the day after the day on which this Bill is passed. The amendment to section 6A of that Act will enable the Scottish Government to order an inquiry to be held into the detention of a child under the new terrorism sentence with a fixed licence period in Scotland (as introduced by clause 23). This would align the powers to require an inquiry with other sentences of youth detention in Scotland.</p>
74, 76	<p>Amendment 74 is consequential on amendment 76. Amendment 76 allows changes being made to legislation by Schedule 13 of the Bill that will alter the sentencing legislation that applies in the service courts to be brought into force by commencement regulations insofar as they affect the service courts.</p>