Legal Aid, Sentencing & Punishment of Offenders Bill House of Lords, Report Stage - March 2012

The Ministry of Justice's *Breaking the Cycle* Green Paper presented a coherent programme of legislative reform to reduce unnecessary use of imprisonment and to reduce offending. Such reform is designed to make better use of scarce public funds and ameliorate the damaging effects of populist criminal justice legislation from the past two decades that has resulted in record numbers of people in prison and unacceptable reconviction rates.

Now the Bill has been strengthened through the inclusion of Government amendments abolishing indeterminate sentences of Imprisonment for Public Protection (IPPs) and reforming the Rehabilitation of Offenders Act 1974, it contains many important features of the Green Paper. The Report Stage in the House of Lords provides an opportunity to consider further amendments to help create a fairer and more effective justice system and to make good outstanding omissions from the Bill. This briefing focuses on key amendments to Part 3 (Sentencing):

Chapter 1

- Awareness of Sentencing Options (New Clause)
- Offenders with Learning Difficulties (Clause 61)
- Restorative Justice (New Clause)
- Women in the criminal justice system (New Clause)
- Young adult offenders (New Clause)
- Alcohol monitoring requirements (New Clause)

Chapter 2

- Amendment of Bail Enactments (Clause 84 and Schedule 11)

Chapter 5

- Imprisonment for Public Protection (Clause 116 & 120)
- Life Sentence for Second Listed Offence (Clause 117)
- Extended Sentences (Clauses 118 & 119, Schedule 20)

Chapter 9

- Knife Crime (Clause 134)

For further information contact:

Mark Day, Head of Policy & Communications – 0207 689 7746
Marc Francis, Senior Policy & Campaigns Officer – 0207 689 7742

Sentencing (Part 3, Chapter 1)

New clause – Awareness of sentencing option (Amendment 151A)

Insert the following new Clause—

"Awareness of sentencing options

(1) The Lord Chancellor shall, by regulation, promote arrangements to ensure that each Probation Trust provides adequate information about community sentencing provision to all magistrates in the area for which it has responsibility.

(2) Regulations under subsection (1) may provide—

(a) guidelines for liaison between magistrates and Probation Trusts;
(b) a reimbursement scheme for magistrates expenses under paragraph (a); and
(c) such other provision as the Lord Chancellor thinks appropriate."

A reduction in liaison and communication between courts and magistrates and their local probation services is thought to have impeded sentencers in their work to pass a fair and proportionate sentence on a defendant found guilty, particularly those whose offending falls, according to sentencing guidelines, on the cusp between a community and a custodial penalty. This new clause would ensure that courts and magistrates are fully informed and complement the work of the Local Crime Community Sentence (LCCS) initiative, run by the Magistrates Association and the Probation Association and endorsed by the Lord Chief Justice. It will build public confidence in sentencing and raise awareness of the effectiveness of community penalties.

Clauses 61 – Offenders with learning disabilities (Government Amendment 152ZA)

Clause 61, Page 44, leave out lines 20 to 24 and insert—

"( ) Criminal Procedure Rules may—

(a) prescribe cases in which either duty does not apply, and
(b) make provision about how an explanation under subsection (3) is to be given."

Research shows that more than half of children who offend have speech, language and communication difficulties and around 23 per cent have learning disabilities. There is no routine screening to identify those with communication difficulties or learning disabilities so that appropriate support can be put in place to ensure their participation in court.

The term 'ordinary language' in subsections (2) and (3) of clause 61 is imprecise; what is 'ordinary' to a magistrate or a judge may not be 'ordinary' to the individual offender. It is also used in clauses 87 and 96. Lord Rix and Baroness Quin laid amendments probing this issue in committee. Responding for the Government Lord McNally argued that:

> "The current duty requires that the explanation, as a minimum, should be in ordinary language. It does not therefore stop the court going further where required.... the advice that *Mencap* provided on the various techniques that could be used to explain a sentence to people with learning difficulties .... will be used in the training of judges and magistrates...." [1]

Following the committee stage debate the Government tabled amendment 152ZA to make provision for how an explanation under subsection (3) of clause 61 is to be given. We understand that ministers intend to encourage the Criminal Procedure Rules Committee to produce rules on how the duty to explain should be interpreted, including for defendants with learning disabilities and difficulties. The debate on the Government's amendment provides an opportunity to explain how this will be taken forward.

New clause - Restorative Justice Requirement (Amendments xx)

Insert the following new Clause—

"Restorative justice requirement

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

(2) In section 177(1) (community orders) after paragraph (j) insert—
"(ja) a restorative justice requirement (as defined by section 212A),".

(3) After section 212 insert—
"212A Restorative justice requirement

(1) In this Part "restorative justice requirement", in relation to relevant order, means a requirement that the offender must take part in a process of restorative justice involving him and any person or persons affected by the offence.

(2) A court may not impose a restorative justice requirement in respect of an offender unless the offender and another person or persons affected by the offence have expressed their willingness to participate in a process of restorative justice.

(3) A court may not impose a restorative justice requirement unless it is satisfied that arrangements for a process of restorative justice can be or have been made in the area where the offender will reside."."

Insert the following new Clause—

"Activity requirement: restorative justice activities

In section 201(2) of the Criminal Justice Act 2003 (activity requirement)—

(a) after "reparation" insert "or restorative justice", and

[1] House of Lords Official Report, 01 February 2012: Column 1660

(b) after “contact” insert “or mediation”.”

Insert the following new Clause—

“In section 142(1) of the Criminal Justice Act 2003 (purposes of sentencing) after paragraph (c) insert –

“(ca) the achievement of restorative justice,”.”

Restorative justice brings victims and offenders into communication, so that victims can tell offenders the impact of their crime and receive an apology; and so that offenders take responsibility and make amends. Restorative justice is embedded within the youth justice system, but fewer than one per cent of victims of adult crime currently have access to restorative justice. A Home Office research study showed that:

- Most victims agreed to participate in a face to face meeting with the offender;
- 85 per cent of victims said they were satisfied with the process;
- Participation in restorative justice reduced the frequency of re-offending by 14%.

The Restorative Justice Council has estimated that using restorative justice pre-sentence, with 70,000 adult offenders would produce savings of £185 million from reductions in re-offending alone. In its March 2010 Report, the Justice Select Committee, concluded, *“We urge the Justice Secretary to take immediate action to promote the use of restorative justice.”* [2]

The Coalition Government made clear its commitment to restorative justice in its original *Breaking the Cycle* Green Paper. More recently, it has published a victims’ strategy for consultation, which promises a “step change in restorative justice”.[3] An amendment to the Bill would help deliver that step change, integrating restorative justice with sentencing and the criminal justice process as a whole. Responding to an amendment along these lines tabled by Lord Woolf, Lord Hurd, Lord Dholakia and the Bishop of Liverpool at Committee Stage, Baroness Northover said:

> “Before whether further, specific legislation is necessary for restorative justice, we must make significant steps to build capacity to deliver it. Once we have begun to make greater strides in embedding restorative justice across the system and helping areas to put necessary provisions in place, we will reflect carefully both on whether to widen the application of restorative justice using the law and on how to do so, if it proves necessary to take this approach.” [4]

We recognise the severe resource constraints, and that the training the Government has provided in NOMS will roll out over three years. These new clauses enable the government to include in the legislative framework a basis for encouraging local development and developing its ambitions for restorative justice, expressed at length in the green paper and in the constructive consultation response. Lord Woolf is of the view that “restorative justice has reached a stage of maturity which deserves legislative recognition”. If restorative justice is denied a foothold in this important Bill, the risk is that

[2] *Cutting Crime: The case for justice reinvestment*, Justice Select Committee (March 2010)
[3] *Getting it right for victims and witnesses*, Ministry of Justice (January 2012)
[4] House of Lords, Official Report, 07 February 2012: Column 239

it will remain as just another good idea rather than be developed as a consistent and useful strand of sentencing policy and practice.

New clause - Women's Justice Reform (Amendment 152BYJ)

Insert the following new Clause—

"CHAPTER 1A Women's Criminal Justice Policy Unit

Women's Criminal Justice Policy Unit

(1) There shall be a Women's Justice Policy Unit ("the Policy Unit") within the Ministry of Justice.

(2) The staff of the Policy Unit shall comprise officials from the Ministry of Justice and officials seconded from—
(a) the Department of Health;
(b) the Department of Communities and Local Government;
(c) the Department of Work and Pensions; and
(d) the Home Office.

(3) The Policy Unit shall report and be answerable to an inter-ministerial committee, including the Equalities Ministers, who shall be responsible for strategic oversight of the Policy Unit.

(4) The functions of the Policy Unit shall include—
(a) the development and implementation of a government strategy ("the strategy") for women offenders and for women at risk of offending; and
(b) review of the impact of government policies on women offenders and women at risk of offending.

(5) The policies which the Policy Unit shall review under subsection (4)(b) shall include but not be limited to policies in the areas of—
(a) the delivery of appropriate and effective services to women in the criminal justice system including in the areas of—
(i) the rehabilitation of offenders;
(ii) sentencing, including youth sentences and the imposition of community orders;
(iii) employment and treatment of prisoners; and
(b) housing;
(c) mental health; and
(d) children and families.

(6) The Ministers responsible for the strategic oversight of the Policy Unit shall lay before Parliament at least annually a report on the Policy Unit's exercise of its functions."

Over the last 15 years, the number of women in prison has more than doubled. Most serve short sentences for non-violent crime. Almost two-thirds of those serving less than 12 months are reconvicted within a year of release. The Home Office commissioned review of vulnerable women in the criminal justice system by Baroness Corston in 2007,

made it clear that there are sound social and economic reasons to reform women's justice. The average cost of a women's prison place is £56,415 per annum. By contrast, an intensive community order costs in the region of £10,000 - £15,000. There is widespread support for reform of women's justice from statutory agencies and professional bodies, criminal justice and women's charities and civic society groups, including the Soroptimists and the National Council of Women.

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), to which the UK is a signatory, encourages Member States to "adopt legislation to establish alternatives to imprisonment and to give priority to the financing of such systems, as well as to the development of the mechanisms needed for their implementation". It is regrettable that the Bill makes no mention of women whatsoever and, unless amended, could prove a missed opportunity to comply with the appropriate actions set out in the Bangkok Rules.

When women are sentenced to custody it has a profound impact on family life. Imprisonment will cause a third of women to lose their homes and up to 18,000 children are separated from their mothers each year. Many women offenders have themselves been victims of serious crime, domestic violence and sustained sexual abuse. In 2009, women accounted for 43 per cent of the 24,114 incidents of self-harm in prisons, despite representing just 5 per cent of the prison population.

In the committee stage debate on new clauses to improve accountability and oversight of women's justice, Lord Woolf, the former Lord Chief Justice, argued that, *"Women prisoners need a separate voice, in exactly the same way as young offenders need a separate voice."* [5] Labour spokesman, Lord Bach added that, *"A powerful statutory voice at the centre of the system, whatever it is called, would be of huge benefit."* [6]

Responding on behalf of the Government, the Justice Minister, Lord McNally, said:

> "On 24 January (the Prisons Minister) made a speech to the Corston funders, setting out a report on progress in this area. He set out the Government's strategy for women offenders, which ensures that women will benefit in key areas such as mental health, drug recovery, tackling violence against women, troubled families, employment and women's community services, reflecting the good work by NOMS to implement many of the recommendations in the Corston report." [7]

Addressing the complex needs of women offenders requires close co-operation across government departments and between local and national agencies. Experience shows this is unlikely without effective governance. As the recent report of the independent Women's Justice Taskforce highlighted, some of the lessons from youth justice could usefully be extended to women.[8] Overall, women offenders represent a similar proportion in the offender population as under-18 year olds and levels of vulnerability are not dissimilar. The Youth Justice Board has helped to achieve a measurable reduction in the numbers of children in prison, the numbers of young people entering the justice system for the first time, and in youth offending. With clear leadership and accountability to report annually to Parliament, it should be possible to similarly reduce offending by women and women's prison numbers.

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[5] Ibid, 15 February 2012: Column 871
[6] Ibid, 15 February 2012: Column 873
[7] Ibid, 15 February 2012: Column 875
[8] Women's Justice Taskforce (2010), Reforming Women's Justice, London: Prison Reform Trust

New Clause - Young Adults Strategy (Amendment 152BYK)

Insert the following new Clause—

"CHAPTER 1A Young adult offenders strategy

Young Adult Offenders Strategy

(1) The Secretary of State shall in each year—

(a) publish a strategy designed to promote the just and appropriate treatment of young adult offenders in the criminal justice process, and

(b) appoint a person with responsibility for leading and co-ordinating the implementation of that strategy.

(2) Publication under subsection (1)(a) shall be effected in such manner as the Secretary of State considers appropriate for the purpose of bringing the strategy to the attention of persons engaged in the administration of criminal justice and of the public.

(3) For the purposes of this section "young adult offender" means a person who is aged at least 18 but under 21 when convicted."

Young men aged 18-20 years-old are disproportionately represented in the prison population. At the end of September 2011, there were 8,317 young people aged 18-20 in prison in England and Wales. In the twelve months to June 2011, there were 12,509 young people sent to prison under sentence. In the past 15 years the number of sentenced young adults has increased by 30 per cent. While people aged 18-24 account for one in 10 of the UK population, they account for a third of those sentenced to prison each year, a third of the probation caseload and a third of the total social and economic costs of crime.[9]

Although pockets of good practice exist, figures show that prison is not effective in reducing reoffending by this age group, especially those serving short sentences. 58% of young people released from custody in the first quarter of 2008 reoffended within a year.[10] Her Majesty's Chief Inspector of Prisons has raised concerns about young adults sentenced to Detention in a Young Offenders Institution (YOI), describing his impression of *"young men sleeping through their sentences"* in HMYOI Rochester [11] and a lack of engagement in work, education and training opportunities across the YOI estate.[12]

The Prison Reform Trust has been impressed by the success of the pilot Intensive Alternative to Custody (IAC) schemes run by Greater Manchester Probation Trust and West Yorkshire Probation Trust, which are tailored to the specific needs of young adults. They are achieving good compliance rates and the indications are that they are also

[9] Transition to Adulthood (2010) Why is the criminal justice system failing young adults? London: Transition to Adulthood
[10] Hansard HC, 17 January 2011, c653W
[11] Report of an announced inspection of HMYOI Rochester, HMCIP (June 2011)
[12] HM Chief Inspector of Prisons – Annual Report 2010/11

successful in reducing reoffending rates. Experienced probation officers describe the IACs as the first real opportunity that they have had to create requirements that will change offending behaviour. Local magistrates also support the IAC approach.

Responding to probing amendments tabled at Committee Stage by Lord Adebowale and Lord Ramsbotham extending these interventions, Baroness Northover warned that, "Affordability is, of course, critical. If we were to create extra burdens through statute by delivering intensive interventions and supervision to this age group, the Government would not have the resources to deliver what we prescribed."[13] However, she encouraged Peers to look towards the extension of the Payment by Results model:

> "The Government are looking at how the IAC principles could be extended nationally. The analysis of the reoffending rates of offenders who took part in the IAC pilots is under way at the moment. The spirit of the amendment ties in very well with work that we are already doing to improve community sentences generally .... we are currently conducting a review of adult community sentences and hope to publish a consultation document shortly." [14]

The Prison Reform Trust welcomes these steps and recognises that the Government is unable to accept amendments at this stage legislating for specific interventions. However, we remain convinced that a more focussed and intensive approach to rehabilitating young adult offenders is needed. A basis for reform would be the requirement suggested in Lord Ramsbotham's amendment 152BYK to publish a strategy for reducing offending by older teenagers, with an annual progress report to Parliament.

New clause – Alcohol Monitoring Requirements (Amendments 152A, 152B, 152C & 152D

Nearly two-thirds of the 87,000 people in prison admit to being hazardous drinkers and alcohol is recognised as a major contributing factor to violent offending and public disorder. In recent years a great deal of time and money has been spent developing drugs policies and treatment. In comparison alcohol misuse has not been given sufficient attention or funding.

Measures that will genuinely divert people with alcohol problems away from custody and into effective treatment are welcome. However, we share concerns raised by the Criminal Justice Alliance that the new sobriety orders could potentially lead to net widening, high levels of breach, and therefore higher custody rates.

As the Criminal Justice Alliance states: "Targeting the right individuals and ensuring that adequate community services that address the underlying causes of drinking will be important as these orders will not be able to tackle the problem of alcohol misuse and offending on their own, concerns highlighted by Addaction and Alcohol Concern. They both expressed apprehension that the new focus on abstention could take attention away from counselling and therapy and possibly be used to deal solely with alcoholics and not those who have committed offences."[15]

[13] House of Lords, Official Report, 07 February 2012: Column 223
[14] Ibid
[15] CJA (2012), CJA Briefing Note: Sobriety Orders, London: Criminal Justice Alliance

Commenting on the scheme to be piloted in London, the chief executive of Alcohol Concern Eric Appleby said: "I think it's a populist measure; the important thing about this is that it shouldn't just be seen as a punitive measure. The use of the testing must be part of a wider regime to actually help the person address their drinking as a process of rehabilitation. Just simply to stop them drinking is not going to help anyone much."[16]

Bail and Remand (Part 3, Chapter 2)

Clause 84 & Schedule 11 – Amendment to Bail Enactments

Over 53,000 people are sent to prison each year to await trial. By law, someone appearing before a court to face charges is entitled to a presumption in favour of bail, unless they are charged with serious offences such as murder, manslaughter or rape. However, unlike sentencing, which is proportionate to the seriousness of the offence, bail decisions can be based on the perceived risk that the defendant will fail to appear for trial, intimidate witnesses, or commit further offences.

- In 2009, 39 per cent of people remanded into custody did not go on to receive a custodial sentence, including around 11,000 who were acquitted.
- Just under two-thirds of people received into prison on remand awaiting trial are accused of non-violent offences.
- Remand prisoners make up around 15 per cent of the prison population, but they accounted for 50 per cent of self-inflicted deaths in 2010.

Time on remand is a punishment with harmful effects that go beyond the loss of liberty. In 2009, the average time spent on remand was 15 weeks. As remand prisoners are held in local prisons, which are typically older and more overcrowded, they are more likely to be locked up for most of the day, more likely to be confined two to a cell, and less likely to have opportunities to work. Moreover, even a relatively short period in custody can result in homelessness, family breakdown and loss of employment.

Clause 83 and Schedule 11 establish a test of a reasonable probability that the offence is imprisonable as a criterion of whether the court can deny bail. The “no real prospect test” would mean that defendants should not be remanded to custody if the offence is such that they are unlikely to receive a custodial sentence. The test will not restrict custodial remand for serious crimes, nor where there is a risk that the person will, if released on bail, engage in domestic violence.

We hope Peers will support this reform and not amend Schedule 11.

[16] Alcohol Concern (2012), ‘Cautious welcome for alcohol offender scheme, 10 February 2012

Dangerous Offenders (Part 3, Chapter 5)

Clause 116 – Abolition of certain sentences for dangerous offenders

The Prison Reform Trust and allied organisations welcome clause 116, which abolishes the indeterminate sentence of Imprisonment for Public Protection (IPP) and the equivalent sentence of Detention for Public Protection (DPP) for under-18s. It addresses the consequences of ill drafted legislation which has left thousands of people sentenced to a bureaucratic limbo with little or no hope of gaining legitimate release.

As of March 2011, there were 6,550 prisoners serving an IPP or DPP sentence. 3,500 of these prisoners are held beyond their tariff expiry date. Between implementation of the Act in 2005 and 2011, just 320 people serving IPPs were released from custody.[17] In 2010, the new Prisons & Probation Minister, Crispin Blunt MP said that many IPP prisoners "cannot get on courses because our prisons are overcrowded and unable to address offending behaviour. That is not a defensible position."[18]

Clause 117 - Life Sentence for Second Listed Offence (Amendment 154)

Leave out Clause 117

Clause 117 would require the courts to impose a mandatory life sentence on a person aged 18 or over convicted of a specified offence which is serious enough to justify a sentence of imprisonment of 10 years or more; and who, has previously been convicted of a specified offence for which they were sentenced to imprisonment for life or for a period of 10 years or more. It was overwhelmingly opposed by peers at committee stage. It is an unnecessary adjunct to legislation and would fetter judicial discretion.

Mandatory life sentences are currently restricted to convictions for murder. To depart from this principle, even with the allowances for the exercise of discretion by the courts built into the new provisions, could be seen as the thin end of the wedge. Mandatory sentences limit the ability of sentencers to take the specific circumstances of the individual case fully into account. Long, determinate sentences are already available for serious offences and judges should be allowed discretion to utilise them.

Clause 118 & 119 - Extended Sentences (Amendments 154MA, 154NA & 154YFA)

Clause 118, page 96, line 11, at end insert –

"(10) The court must specify whether the requisite custodial period shall be one-half or two-thirds of the appropriate custodial term determined by the court."

Clause 118, page 96, line 45, after "over." Insert –

"(8) The court must specify whether the requisite custodial period shall be one-half or two-thirds of the appropriate custodial term determined by the court."

[17] Ibid, 21 November 2011: Column 825
[18] House of Commons, Official Report, 15 June 2010: Column 730

> Clause 119, page 98, line 5, after "term" insert "except where the court has specified that the requisite custodial period shall be one-half of the appropriate custodial term".

The abolition of the IPP is welcome and will right a longstanding injustice. Concerns remain, however, about the impact of the new extended sentence. The calculation of the new sentence is complex, which could undermine the need for clarity and transparency in sentencing. To ensure proper planning and provision, a comprehensive resource assessment setting out the potential impact of these proposals is needed.

Lord Dholakia's probing amendment at committee stage highlighted concerns regarding the provision that offenders should serve a minimum of two-thirds of the sentence in custody. At present prisoners serving determinate sentences are released on licence after serving half the sentence in custody. This also currently applies to offenders serving extended sentences. The new minimum two thirds custodial tariff could result in people being subject to a shorter period of post-release supervision on licence, thereby limiting judicial discretion in imposing a sentence where it was felt an extended period on license was necessary. Responding to Lord Dholakia on behalf of the Government, Lord McNally said:

> "I listened to my noble friend's idea about discretion. As always with suggestions from my noble friend, I will ponder this one between now and Report." [19]

This fresh amendment would give courts discretion over the release date of offenders given extended sentences. In appropriate cases, courts would be able to retain the current position whereby prisoners serving extended sentences are released after half the sentence. In other cases, where the court considered it necessary, it could specify that the offender will not be released until s/he has served two-thirds of the sentence.

Clause 120 – Power to change test for release on licence

The Prison Reform Trust hears from many IPP prisoners who, because of lack of resources for risk-reduction courses, cannot gain a place on programmes that are pivotal to their release. The situation is even worse for prisoners who are mentally ill and those with learning disabilities because they are barred from offending behaviour programmes. As Lord Ramsbotham argued in Committee, *"It is patently wrong for release to be dependent on courses and programmes that simply are not available."* [20]

Currently around 3,500 IPP prisoners are held beyond their tariff expiry date. Between implementation of the Act in 2005 and 2011, just 320 people serving IPPs were released from custody. An IPP prisoner, in a letter to the Prison Reform Trust's Advice and Information Team, wrote: *"Currently I serve [an IPP sentence] with a tariff of 71 days. Presently, I now enter the fifth year of incarceration on this sentence."*

This clause provides ministers with the powers to change the test for release on license of certain prisoners, namely those serving an IPP sentence or the new proposed extended sentence. At Committee Stage, several Peers questioned whether the clause provides a just and fair release test for people serving IPP and extended sentences.

[19] House of Lords, Official Report, 9 February 2012, Column 467
[20] Ibid, 09 February 2012: Column 436

Lord McNally reassured them that, *"It is absolutely not the Government's intention to use the power to make it harder for prisoners to demonstrate reduced risk."* [21]

Clause 134 - Knife Crime (Amendment 157)

Leave out Clause 134

This clause was added to the Bill shortly before its publication. It introduces a mandatory minimum six month sentence for adults convicted of using a knife or offensive weapon to threaten and endanger. The Justice Secretary brought forward a further amendment at Report Stage in the House of Commons, introducing a mandatory minimum four month Detention and Training Order (DTO) for 16 and 17 years olds convicted of the same offence.

There is understandable public concern about knife crime. Young people themselves are most likely to be the victims of this offence. However, mandatory prison sentences fetter the discretion of judges and magistrates. The courts already have the power to sentence an under-18 year-old to a term of up to four years in prison for possession of a knife in a public place. The latest statistics show that the number of such offences by children in the last quarter reduced by 27 per cent in the past two years.

Responding to amendments from Baroness Linklater and Lord Dholakia deleting the minimum sentence for adults as well as 16 and 17 year-olds, Lord McNally said:

> "My Lords, we believe that currently there is no offence that specifically targets the behaviour covered by this clause; namely, the most serious of threatening behaviour where people carrying a knife or an offensive weapon use it to threaten and cause, 'immediate risk of serious physical harm to that other person'. We believe that we are sending a clear message to those who behave in that way that they cannot expect leniency."
>
> "I do not think that it does any harm, particularly in the 16 to 17 year-old age group, to do a little bit of public relations and to send out a message that it is not fashionable-it might even be plain stupid-to carry a knife, to brandish it and to threaten people with it.... it is right to have minimum sentences specified in law where a certain offence warrants a strong and clear message that a certain type of behaviour will not be tolerated in a decent and law-abiding society." [22]

We recognise the Government's desire to send a strong message, but remain concerned about the impact of the new clause on children in particular. Imprisonment should be used only as a last resort and for the shortest possible time. The impact assessment for this extension suggests that 200-400 more children are likely to be imprisoned as a result. Given that over 70 per cent of children are reconvicted within a year of leaving custody, evidence suggests that imprisonment is rarely rehabilitative for this age group and that other measures, including restorative justice and intensive, well-supervised community sentences, could be used to much better effect. Lord Lloyd has tabled amendment 154 to delete clause 134. Sixteen and 17 year-olds could be excluded from the legislation along with other children by deleting subsections (1)(6)(b), (1)(7), (2)(8)(b) and (2)(9).

[21] Ibid, 09 February 2012: Column 446
[22] Ibid, 15 February 2012: Column 901