

Victims and Prisoners Bill

AMENDMENTS TO BE MOVED ON REPORT

[Supplementary to the Marshalled List]

Amendment
No.

Clause 24

BARONESS MORGAN OF COTES

- 87A★ Clause 24, page 23, line 15, leave out “giving notice under section 44B” and insert “seeking agreement under section 44B and giving notice under section 44CA”

BARONESS MORGAN OF COTES
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- 88A★ Clause 24, page 23, line 22, leave out from beginning to end of line 2 on page 25 and insert –

“44B Making a victim information request

- (1) An authorised person may request information stored by a third party in respect of a victim if the subject of the information –
 - (a) has voluntarily provided details of the third party to an authorised person, and
 - (b) has agreed to the authorised person approaching the third party for specified information.
- (2) The power in subsection (1) may be exercised only for the purposes of preventing, detecting, investigating or prosecuting crime.
- (3) The reference in subsection (2) to crime is a reference to –
 - (a) conduct which constitutes one or more criminal offences in any part of the United Kingdom, or
 - (b) conduct which, if it took place in any part of the United Kingdom, would constitute one or more criminal offences.
- (4) An authorised person may exercise the power in subsection (1) only if –
 - (a) the authorised person reasonably believes that information stored by the third party is relevant to a reasonable line of enquiry which is being, or is to be, pursued by an authorised person, and

- (b) the authorised person is satisfied that exercise of the power is necessary and proportionate to achieve the purpose within subsection (2) for which the person proposes to exercise the power.
- (5) Subsection (6) applies if the authorised person thinks that, in exercising the power, there is a risk of obtaining information other than information necessary for a purpose within subsection (2) for which the authorised person may exercise the power.
- (6) The authorised person must, to be satisfied that the exercise of the power in subsection (1) is proportionate, be satisfied that—
 - (a) there are no other means of obtaining the information sought by the authorised person which avoid that risk, or
 - (b) there are such other means, but it is not reasonably practicable to use them.
- (7) Subsection (8) applies if the authorised person thinks that, in exercising the power in subsection (1) there is a risk of obtaining confidential information.
- (8) The authorised person must, to be satisfied that the exercise of the power is proportionate—
 - (a) have regard to the matters in subsection (9), and
 - (b) be satisfied that—
 - (i) there are no other means of obtaining the information sought by the authorised person which avoid that risk, or
 - (ii) there are such other means, but it is not reasonably practicable to use them.
- (9) The matters referred to in subsection (8)(a) are—
 - (a) the amount of confidential information likely to be stored by the third party, and
 - (b) the potential relevance of the confidential information to a purpose within subsection (2) for which the authorised person may exercise the power.
- (10) An authorised person must have regard to the code of practice for the time being in force under section 44D in exercising, or deciding whether to exercise, the power in subsection (1).
- (11) This section does not affect any power relating to the extraction or production of information, or any power to seize any item or obtain any information, conferred by an enactment or rule of law.

44C Application of section 44B to children and adults without capacity

- (1) A child is not to be treated for the purposes of section 44B(1) as being capable of—
 - (a) voluntarily providing information about third parties who hold information about them to an authorised person for those purposes, or

- (b) agreeing for those purposes that the authorised person can approach the third party for specified information.
- (2) If a child is the subject of the information held by a third party, a person who is not the subject of the information but is listed in subsection (3) may –
 - (a) voluntarily provide information about the third party to an authorised person for the purposes of section 44B(1), and
 - (b) agree for those purposes to the authorised person requesting specified information from the third party.
- (3) The persons mentioned in subsection (2) are –
 - (a) a parent or guardian of the child or, if the child is in the care of a relevant authority or voluntary organisation, a person representing that authority or organisation, or
 - (b) if no person within paragraph (a) is available, any responsible person who is aged 18 or over other than a relevant authorised person.
- (4) Before exercising the power under section 44B(1) by virtue of subsection (2), an authorised person must, so far as it is reasonably practicable to do so –
 - (a) ascertain the views of the child, and
 - (b) have regard to any views so ascertained, taking account of the child’s age and maturity.
- (5) If an authorised person (“A”) exercises the power under section 44B(1) as a result of action taken under subsection (2) by a person within subsection (3)(b), A must, unless A considers that it is not appropriate to do so, inform a person within subsection (3)(a) that A has exercised the power.
- (6) An adult without capacity is not to be treated for the purposes of section 44B(1) as being capable of –
 - (a) voluntarily providing information of third parties who hold information about them to an authorised person for those purposes, or
 - (b) agreeing for those purposes that the authorised person can approach the third party for specified information.
- (7) If an adult without capacity is the subject of the information held by a third party, a person who is not the subject of the information but is listed in subsection (8) may –
 - (a) voluntarily provide information about the third party to an authorised person for the purposes of section 44B(1), and
 - (b) agree for those purposes to the authorised person requesting specified information from the third party.
- (8) The persons mentioned in subsection (7) are –
 - (a) a parent or guardian of the adult without capacity or, if the adult without capacity is in the care of a relevant authority or voluntary organisation, a person representing that authority or organisation,
 - (b) a registered social worker,

- (c) a person who, under a power of attorney, may make decisions for the purposes of subsection (7)(a) and (b) on behalf of the adult without capacity,
 - (d) a deputy appointed under section 16 of the Mental Capacity Act 2005 (powers to make decisions and appoint deputies: general),
 - (e) if no person within any of paragraphs (a) to (e) is available, any responsible person who is aged 18 or over other than a relevant authorised person.
- (9) For the purposes of this Chapter a person is an adult without capacity if—
- (a) in relation to England and Wales, the person is an adult who, within the meaning of the Mental Capacity Act 2005, lacks capacity to do the things mentioned in section 44B(1)(a) and (b);
 - (b) in relation to Scotland, the person is an adult (within the meaning of this Chapter) who is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000 in relation to the matters mentioned in section 44B(1)(a) and (b);
 - (c) in relation to Northern Ireland, the person is an adult who, within the meaning of the Mental Capacity Act (Northern Ireland) 2016, lacks capacity to do the things mentioned in section 44B(1)(a) and (b).
- (11) In this Chapter—
- “local authority” —
- (a) in relation to England, means a county council, a district council for an area for which there is no county council, a London borough council or the Common Council of the City of London in its capacity as a local authority;
 - (b) in relation to Wales, means a county council or a county borough council;
 - (c) in relation to Scotland, means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (constitution of councils);
- “registered social worker” means a person registered as a social worker in a register maintained by —
- (a) Social Work England,
 - (b) Social Care Wales,
 - (c) the Scottish Social Services Council, or
 - (d) the Northern Ireland Social Care Council;
- “relevant authorised person” in relation to the extraction of information from an electronic device for a particular purpose, means an authorised person who may extract the information from the device for that purpose;
- “relevant authority” —
- (a) in relation to England and Wales and Scotland, means a local authority;

- (b) in relation to Northern Ireland, means an authority within the meaning of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2));
- “voluntary organisation” –
- (a) in relation to England and Wales, has the same meaning as in the Children Act 1989;
 - (b) in relation to Scotland, has the same meaning as in Part 2 of the Children (Scotland) Act 1995;
 - (c) in relation to Northern Ireland, has the same meaning as in the Children (Northern Ireland) Order 1995.
- (12) This section is subject to section 44CA (requirements for voluntary provision and agreement).

44CA Requirements for voluntary provision and agreement

- (1) A person (“P”) is to be treated for the purposes of section 44B or 44C as having –
 - (a) voluntarily provided details of the third party to an authorised person, and
 - (b) agreed to the authorised person approaching the third party for specified information.only if the requirements of this section have been met.
- (2) An authorised person must not have placed undue pressure on P to provide the details of the third party or agree to the authorised person approaching the third party for specified information.
- (3) An authorised person must have given P notice in writing –
 - (a) specifying or describing the information that is sought,
 - (b) specifying the reason why the information is sought,
 - (c) specifying how the information will be dealt with once it has been obtained,
 - (d) stating that P may refuse to provide the details of the third party or agree to the authorised person approaching the third party to obtain the information, and
 - (e) stating that the investigation or enquiry for the purposes of which the information is sought will not be brought to an end merely because P refuses to provide the details of the third party or agree to the approach to the third-party information holder.
- (4) Subject to subsection (5), P must have confirmed in writing that P has –
 - (a) voluntarily provided details of the third party to an authorised person, and
 - (b) agreed to the authorised person approaching the third party for specified information.
- (5) If P was unable to provide that confirmation in writing as a result of P’s physical impairment or lack of literacy skills –

- (a) P must have given that confirmation orally, and
 - (b) an authorised person must have recorded P’s confirmation in writing.
- (6) If P’s confirmation was given in writing and in hard copy form, the authorised person must have given P a copy of that confirmation (in hard copy or electronic form).
- (7) If P’s confirmation was given orally, the authorised person must have given P a copy of the record of that confirmation (in hard copy or electronic form).”

Member's explanatory statement

This amendment seeks to mirror the wording of the clauses dealing with victim information requests with that of the clauses dealing with digital data requests in the Police, Crime, Sentencing and Courts Act 2022. This would therefore provide consistency and parity between the frameworks for digital data requests and victim information requests, and granting victims who are subject to these requests the same additional safeguards that are in place for digital data requests.

Clause 48

LORD BLUNKETT
BARONESS CHAKRABARTI
THE LORD BISHOP OF GLOUCESTER
LORD HODGSON OF ASTLEY ABBOTTS

This Amendment replaces Amendment 130, which contained a production error and therefore appeared in the wrong place on the marshalled list

138A★ Clause 48, page 52, line 14, at end insert –

- “(ii) at the end of the definition of “the qualifying period” insert “in the case of a person serving a sentence of imprisonment for public protection and one and a half years beginning with the date of his release in the case of a person serving a sentence of detention for public protection.””

Member's explanatory statement

This amendment would halve the qualifying period for men and women who were sentenced as children in line with other statutory provisions, such as when convictions become “spent”, to reflect the principle that children change in a shorter period than adults.

Clause 60

BARONESS MORGAN OF COTES

158★ Clause 60, page 59, line 21, at end insert –

- “(aa) section 24;”

Member's explanatory statement

This amendment would extend section 24 to England, Wales, Scotland and Northern Ireland.

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