

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CRIME AND COURTS BILL [*LORDS*]

Third Sitting

Thursday 24 January 2013

(Morning)

CONTENTS

CLAUSES 2 and 3 agreed to.

SCHEDULE 2 agreed to.

CLAUSE 4 under consideration when the Committee
adjourned till this day at Two o'clock.

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The Committee consisted of the following Members:

Chairs: MARTIN CATON, † NADINE DORRIES

- | | |
|---------------------------------------------------------------------|----------------------------------------------------------------|
| † Barwell, Gavin (<i>Croydon Central</i>) (Con) | † Lopresti, Jack (<i>Filton and Bradley Stoke</i>) (Con) |
| † Browne, Mr Jeremy (<i>Minister of State, Home Department</i>) | McCabe, Steve (<i>Birmingham, Selly Oak</i>) (Lab) |
| † Burrowes, Mr David (<i>Enfield, Southgate</i>) (Con) | † McDonald, Andy (<i>Middlesbrough</i>) (Lab) |
| Chapman, Jenny (<i>Darlington</i>) (Lab) | † Paisley, Ian (<i>North Antrim</i>) (DUP) |
| † Creasy, Stella (<i>Walthamstow</i>) (Lab/Co-op) | † Rutley, David (<i>Macclesfield</i>) (Con) |
| † Elphicke, Charlie (<i>Dover</i>) (Con) | † Syms, Mr Robert (<i>Poole</i>) (Con) |
| Goggins, Paul (<i>Wythenshawe and Sale East</i>) (Lab) | † Vara, Mr Shailesh (<i>North West Cambridgeshire</i>) (Con) |
| Green, Damian (<i>Minister for Policing and Criminal Justice</i>) | Vaz, Valerie (<i>Walsall South</i>) (Lab) |
| † Hanson, Mr David (<i>Delyn</i>) (Lab) | † Wilson, Phil (<i>Sedgefield</i>) (Lab) |
| Heald, Oliver (<i>Solicitor-General</i>) | † Wright, Simon (<i>Norwich South</i>) (LD) |
| † Jones, Andrew (<i>Harrogate and Knaresborough</i>) (Con) | Neil Caulfield, John-Paul Flaherty, <i>Committee Clerks</i> |
| | † attended the Committee |

Public Bill Committee

Thursday 24 January 2013

(Morning)

[NADINE DORRIES *in the Chair*]

Crime and Courts Bill [Lords]

Written evidence to be reported to the House

C&C 01 Caritas Social Action Network
C&C 02 Law Society of England and Wales
C&C 03 Ministry of Justice
C&C 04 Robert Wyllie

Clause 2

STRATEGIC PRIORITIES

11.30 am

Mr David Hanson (Delyn) (Lab): I beg to move amendment 22, in clause 2, page 2, line 40, leave out ‘may’ and insert ‘will’.

The amendment is simple and easy to understand. The clause as currently drafted states that the Secretary of State

“may determine strategic priorities for the NCA.”

I want to replace the word “may” with “will” so that the clause states:

“will determine strategic priorities for the NCA.”

We had a useful discussion on clause 1, which establishes the National Crime Agency. You will recall, Ms Dorries, that along with your co-chair, Mr Caton, we had a long discussion on the governance structures of the National Crime Agency board. Amendment 22 moves us on to clause 2, which is about the strategic priorities for the National Crime Agency.

If the Minister can reassure me that the word “may” effectively means “will”, I will be happy to withdraw the amendment. The Secretary of State may determine the strategies of the National Crime Agency, but equally she or he may not. If the answer is that she may not, we are left with the director general of the National Crime Agency, who is appointed by the Home Secretary, being solely responsible for directing the priorities of the National Crime Agency. Clause 2(2) states:

“In determining strategic priorities for the NCA...the Secretary of State must consult—

(a) the strategic partners,

(b) the Director General”,

and this amorphous phrase:

“(c) any other persons whom the Secretary of State considers it is appropriate to consult.”

However, responsibility for strategic priorities should still ultimately lie with the Secretary of State.

As part of my preparation, I discussed the matter with the Association of Chief Police Officers. I spoke, via my office, to Chief Constable Mick Creedon, who leads for ACPO. He sits on the National Crime Agency design and operating transition board and is the ACPO lead on serious organised crime issues. He said that

when the Secretary of State is setting the strategic direction for the National Crime Agency, there will be a huge need for a clearer definition of what the agency is being set up to achieve. In my view, responsibility for that lies with Ministers.

Workstream groups are established under the Bill and there will be strategic command groups, but I think it is important that we set strategic priorities for the National Crime Agency. Going back to the points made by the hon. Member for North Antrim and others in our previous sitting, the strategic responsibilities lie with the Government. If the Government do not set them and they duck out of their responsibilities—“may” rather than “will”—the strategic priorities would ultimately be set, although in consultation with other bodies, by the director general.

If the director general sets the priorities, there is the potential for conflict downstream. We have already seen in the past year, as I mentioned on Tuesday, that the National Crime Agency, even though it is not yet fully formed, is becoming a port of call for areas of concern that have arisen and the Secretary of State has—quite rightly—said, “National Crime Agency, this is your responsibility. Please go and look at this issue.” The child abuse inquiry in north Wales is the most prominent case to date.

Will the Minister explain where responsibility would ultimately lie if the Secretary of State, who “may determine strategic priorities”, did not set any and ultimately there was conflict downstream for the director general over his or her actions? It is Keith Bristow now, but we are setting this in train for the future. The future Secretary of State might then be accountable to Parliament and then, ultimately, having not set strategic priorities, would be answerable to Parliament on what the director general has said, rather than on what—

Mr David Burrowes (Enfield, Southgate) (Con): I thank the right hon. Gentleman for giving way. I appreciate that his role involves finding ways to scrutinise, but he has experience of the House and the Committees and of being a Minister. Can he point to other times when he has taken forward a Bill containing a clause with “will” in it? “May” is obviously a term that is not “must”, and obviously does often cover “will”. Is he not dancing on a pinhead? Can he refer to other clauses of a similar nature which used “will” rather than “may”, which obviously is a proper term that is often distinguished from “must”?

Mr Hanson: I cannot off the top of my head, because I have not prepared in that way for that particular intervention. I accept that this might be a point. My simple point is to clarify what “may” means as opposed to “will”. In every way that I understand it, “may” means that “I might do something”—that I may determine strategic priorities for the National Crime Agency—but it does not mean that I will set them.

In my view, the word “will” gives a statutory undertaking that the Secretary of State ultimately has to sit down at least once a year and set out his priorities for 2013-14 for the National Crime Agency. He must say that he is consulting with the strategic partners, that he will consult with the director general and with these amorphous “other persons” that he considers appropriate. It means

that he will set the priorities, not that he may set them, and not that he might duck out of that responsibility; he will set them. It is of course important to get clarification on what that means.

Andy McDonald (Middlesbrough) (Lab): It appears very clear to me that the word “may” implies permission, whereas “will” confers an obligation upon the Secretary of State to set the strategic priorities. With respect to the hon. Member for Enfield, Southgate, I do not think it is dancing on a pinhead. I think it is actually a crucial and vital difference, and we are right to pursue this issue and see where the obligation lies. If there is to be an obligation, I would suggest that the word “will” would serve the purpose infinitely better.

Mr Hanson: I am grateful to my hon. Friend for his support. I do not think it an issue of dancing on a pinhead, and I think there is a clear difference between “may” and “will”. If the Minister in his response assures me that “may” means “will”, there may well be an opportunity for me to withdraw the amendment. However, I want some clarity about that, because as I read it—I am a simple man from up north; I might have got this wrong—“may” means that I have the responsibility not to do it. It means that I may be able to choose not to do it, rather than that I will have to do it. There is a subtle difference between the two that I think anybody listening to it would accept.

Charlie Elphicke (Dover) (Con): I thank the right hon. Gentleman for giving way. I am a simple man from down south, and I am a bit puzzled because the other day he argued for the vaunted independence of these organisations, and stated that quangos should be allowed to do their own thing. Yet today he argues that the Secretary of State “will” tell them what to do. It seems to me that he argues one thing one day and another thing the next.

Mr Hanson: I think the hon. Gentleman must have been doing his post on Tuesday, because I did not argue that at all. What I argued on Tuesday was for the Secretary of State to set strategic directions, but for the board to contribute to that and to do the challenge function, the monitoring and the budget responsibility. I argued that the board should follow on and sit on the director general, to ensure that the strategic objectives set by the Secretary of State were put into a local plan which would be achieved and which was followed through. In my view there is still a role for that board, but we have had that argument and I will not revisit it.

What I argue for here is for a strategic direction to be set by the Secretary of State, who for example would say that in 2013, with the command units available, human trafficking, drug abuse, child exploitation or whatever are the key strategic priorities. The Secretary of State would say that they expect these issues to be reduced by x or y per cent., and to do so certain things are expected to be done, because that is a strategic priority. The job of the director general is then to look at how he or she implements that, and the job of the board—had we had one—would have been to monitor progress on that, to challenge day to day, to put pressure on the Secretary of State and provide some expertise on how the National Crime Agency could deliver those tasks. So there is no contradiction between what I said on Tuesday and what I say now. I simply want clarity from the Minister.

If it helps, before the Minister responds I will quote the following:

“I quite like politicians and Governments who accept leadership and responsibility, and do not try to push off all the tasks to people who the public generally do not know, have never heard of and have not had a chance to select.”

I think that “will” meets the obligations of that quote. It means that politicians will accept leadership and responsibility and will not just push off tasks to people who the public do not know and will not have a chance to meet. I use that particular quote because it is the Minister speaking in Tuesday’s sitting at 10.45 am, in column 31 of *Hansard*. I hope that he will not go back on what he said on Tuesday about the need for responsibility to lie with the Secretary of State.

Gavin Barwell (Croydon Central) (Con): I have some sympathy with the point that the right hon. Gentleman is making about the importance of politicians setting the strategic direction. However, will he elucidate the difference between that argument in relation to this agency and the Labour party’s argument about police and crime commissioners, which was that there was a great risk in allowing politicians to set strategic priorities for the police, and that that would overlap with operational independence?

Mr Hanson: I think there is a real difference. Politicians have always set the direction and strategic policy of police authorities. Police authorities were made up of councillors, politicians, magistrates and independent members. They set an overall strategic level. Our argument with police and crime commissioners was that one person would be vested with that responsibility, rather than its being collective. I accept that one person is vested with responsibility in the National Crime Agency, but that one person is the Home Secretary, who is accountable to the House of Commons, appointed by a Prime Minister, and who usually has the majority support of Members of the House. There is therefore a great deal more overview and scrutiny of the Home Secretary than there would be on this matter.

I do not wish to push this too far, but I am trying to make the point that “will” and “may” are two different words. Even if “may” is a commonly used term, which it may be, I believe that “will” has a different meaning and, as my hon. Friend the Member for Middlesbrough said, confers a specific responsibility. “May” gives the opportunity for an opt-out. I wish to see, particularly in the absence of a board, responsibility for National Crime Agency strategic responsibilities lying firmly with the Home Secretary, and I hope that the Minister agrees.

The Minister of State, Home Department (Mr Jeremy Browne): It is a pleasure to serve under your chairmanship this morning, Ms Dorries. How bracing it was to start our deliberations with an Olympian quote on the nature of political authority. I was casting my mind back as to who might have said that—Winston Churchill, Franklin Roosevelt, even President Obama—only to find that it was myself. I can now retire happy, having been recognised for shedding light on the entire nature of how powers should be exercised in a modern democracy.

[Mr Jeremy Browne]

I am grateful to the right. hon Gentleman for tabling amendment 22, which he has indicated is a simple amendment that would convert the power conferred on the Home Secretary to set strategic priorities for the National Crime Agency into a duty—the change from “may” to “will”. We agree that the Home Secretary has a vital role in setting the strategic direction for the agency. Indeed, in practice—this point was made forcefully by my hon. Friend the Member for Enfield, Southgate—we would expect that the Home Secretary would always wish to set strategic priorities in accordance with the power granted by clause 2. It is rather hard to envisage circumstances in which she would decline to discharge—I was going to say “those obligations,” but they are not obligations—the option that is open to her, or where she would not regard it as an obligation. Clause 2 was drafted as a permissive power rather than a duty, however, in order to allow flexibility in any exceptional cases, even if they are hard to envisage, where a Secretary of State may choose not to set strategic priorities.

Mr Hanson: Will the Minister therefore tell the Committee in what circumstances he would expect the Secretary of State not to set the strategic priorities?

11.45 am

Mr Browne: Let me come to that precise point, but the right hon. Gentleman will prefer it if I answer him in a roundabout way, for reasons that will become apparent in a moment. Before I get to that point, I should note that this provision is similar to the equivalent provision made for the Serious Organised Crime Agency in section 9 of the Serious Organised Crime and Police Act 2005, so we have drawn on precedent. The Opposition, when they were in government, presumably thought it desirable to have flexibility in this matter, so I was going to ask the right hon. Gentleman whether he could tell me, and whether he had a good example.

To get to the nub of the matter, it is our intention that the National Crime Agency should at all times have appropriate strategic priorities in place, and that the Home Secretary should set those priorities. If the right hon. Gentleman withdraws his amendment on the understanding that I will go away and reflect on the substance of his point, we will look at whether the clause needs to be made more explicit, for the reasons that the hon. Member for Middlesbrough touched on in his intervention. In practice, for the reasons that my hon. Friend the Member for Enfield, Southgate gave, we do not envisage the clause having a substantial effect in legislative terms. For neatness and the avoidance of doubt, if the right hon. Gentleman withdraws his amendment, we will make sure that this issue is resolved to everybody’s mutual satisfaction.

Mr Hanson: I can see a win when I have got one. I accept it. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Mr Hanson: Clause 2(2) states:

“In determining strategic priorities for the NCA (including deciding whether there should be such priorities), the Secretary of State must consult...the strategic partners,...the Director General, and...other persons whom the Secretary of State considers it is appropriate to consult.”

Clause 15 gives the definition of strategic partners, but that definition, surprisingly, does not include the words “police and crime commissioner”. I have not tabled an amendment because it may simply be that the definition, “Such persons as appear to the Secretary of State to represent the views of local policing bodies”,

includes police and crime commissioners. However, I find that striking, because the creation of police and crime commissioners is a flagship Government policy, although I accept that it is not originally a policy of the Minister’s party. Given that clause 15 defines police and crime commissioners as a policing body, it would be helpful to let police and crime commissioners know, now they have been elected and founded, that they are part of the team and can be consulted formally.

Clause 15, on the interpretation of part 1, defines a range of bodies. Given that clause 2 only mentions strategic partners, the director general and the amorphous group of other people whom the Secretary of State considers it appropriate to consult, would it not have been better for clause 2(2) to have included a reference to clause 15, rather than to strategic partners? That would mean that all the bodies listed in clause 15 would know that they will potentially be consulted. Clause 2 does not specifically mention that the British Transport police, the civil nuclear constabulary, the Ministry of Defence police, the Serious Fraud Office, border revenue, the Police Service of Scotland, the Police Service of Northern Ireland and others can be consulted about the National Crime Agency’s plan.

I accept that the clause is only about a consultation on strategic priorities, but I feel that it is best to play as part of a team. If those bodies—in particular the more important, bigger ones such as the British Transport police—were asked what their views are, they might have a contribution to the strategic objectives of the National Crime Agency. At the moment, their views might be asked for and taken into account, but equally they might not be. If we are going to make the National Crime Agency a success, we should involve people so they feel it is acting on their behalf and setting priorities on their behalf. Clause 2 as drafted, although I have not amended it, seems to be slightly restrictive in terms of the consultation on strategic priorities.

Mr Browne: I should bring it to the Committee’s attention—one or two Members may have failed to notice this—that amendment 4 to clause 15, which, at the current rate of progress, we will probably arrive at some point this afternoon, makes precisely that point. The amendment stands in the right hon. Gentleman’s name. It may be of convenience to the Committee to discuss the issue then and not have me make the same speech twice.

Just for a taster, however, the essence of our point is that clause 2 states that the Secretary of State must consult

“any other persons whom the Secretary of State considers it is appropriate to consult.”

Her hands are not shackled in that regard, and she may wish to consult police and crime commissioners. It is

not a requirement to consult them because they are responsible for their police forces, not the NCA. They may well have interesting insights to provide, which is why the Secretary of State may wish to consult them, but she is not required to do so. I can, as I said, discuss the issue in greater detail when the, in my view, more relevant clause 15 comes up, to which there is an amendment on precisely this point. I hope that the Committee will agree to the important but quite limited clause 2.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

OPERATIONS

Mr Hanson: I beg to move amendment 3, in clause 3, page 4, line 1, leave out subsection (10).

The Chair: With this it will be convenient to discuss the following:

Amendment 14, in schedule 2, page 50, line 19, after ‘must’, insert ‘by order’.

Amendment 40, in schedule 2, page 50, line 21, after ‘under’, insert ‘annual’.

Amendment 15, in schedule 2, page 50, line 24, at end insert—

‘() An order under this paragraph shall be in the form of a statutory instrument and is subject to approval by resolution of each House of Parliament.’

Amendment 16, in schedule 2, page 50, line 33, leave out paragraph (b).

Amendment 42, in schedule 2, page 51, line 12, leave out from ‘published’ to end of line 13.

Mr Hanson: I hope to be brief so that we can make some progress. We will not press amendment 3 to a vote, because it was tabled as a teaser and a tester to see what the Government think on the matter.

Amendment 3 would delete the schedule that establishes the framework, but that is not my intention. When we tabled the amendment, we intended to get some indication of what the framework would be. Helpfully, in part, following Tuesday’s discussions, the Minister and his officials drew our attention to the now published outline framework document for the NCA.

I still want to press the Minister on when the actual framework document will be published. The outline is helpful, but having looked at it over the past couple of days, we can see that it is very much an outline. In fact it is so much of an outline that, for example, item 10, which is about scrutiny, transparency and information, says, “Scrutiny”; it does not say how that scrutiny will happen. Under “publish information”, it does not say how. All the items are a series of headlines as to what the Government want to fill in in due course and how the framework will work. While the headlines themselves seem apparent, as ever with such matters, the devil is in the detail.

The Minister said on Tuesday that the Government cannot publish the framework document until the Bill receives Royal Assent. I simply ask him again what I asked on Tuesday. The outline framework document is a series of headings and indications of likely areas, but the detail will be in the paragraphs and the text that follows. While he says that he cannot legally produce the framework document until the Bill receives Royal

Assent, I will ask him again—gently and in a friendly way, in a spirit of co-operation—when he will be able to publish a draft of the framework document with the details.

My purpose of tabling amendment 3 is not to delete the framework document—self-evidently, we want one—but simply to ask the Minister when he will publish it. Even if the final version has to come after Royal Assent, will he consider publishing a much more detailed draft? The nub of what the NCA will do and how it will relate to other organisations will be governed by the draft.

To save time, Ms Dorries, I have only one other point to highlight from the amendments. Amendment 40 says that we want the framework document to be kept under annual review, and we also want to ensure that amendment 15 is considered, which aims to make sure that the framework is subject to affirmative resolution in each House of Parliament. Whatever our political differences are, the framework document should be published, not only in the Secretary of State’s world, but in a form that Members or interested parties can look at. Most importantly, if the framework document is to be reviewed, given that we will not see it in full until after the legislation receives Royal Assent, it would be a nice touch for the Minister to say, “Let’s have it affirmed by Parliament, so Parliament can discuss it and express a view.”

Significant powers will be included in the framework document that are to be exercised by the National Crime Agency and/or the Home Secretary, and those will not be approved by Parliament, even though schedule 2 says that the document will have effect. We do not yet know, with regard to subsection (10), what will have effect, because all we have is the outline document. We do not have the framework document, so we are giving carte blanche to the Minister, when we do not know what carte blanche actually is. In terms of parliamentary scrutiny, I think every Member would like to see the document. I do not want to cause trouble, but if we approve the proposal, we are doing so without knowing what we are approving.

Mr Browne: There is a slight danger of the Opposition fetishising the outline framework document, which we discussed at some length on Tuesday. I shall take the opportunity to discuss it in more detail now, for the purpose of reassuring any members of the Committee who would otherwise feel alarmed. As the right hon. Gentleman has explained, the set of amendments—there are six in this grouping—all relate to the NCA framework document. I would like to make some general points about the framework document first, and then move on to the substance of the amendments.

The framework document will be a joint statement of intent by the Home Secretary and the director general of the NCA, setting out how they will work together and the ways in which NCA functions are to be exercised. As set out in the outline framework document, we expect that the document will cover internal governance, accountability between the director general and the Home Secretary, financial arrangements, performance management and reporting, requirements in respect of tasking and co-ordination, and transparency arrangements, including setting out the classes of information to be published by the NCA.

[Mr Jeremy Browne]

The framework document is essentially an agreement between the Home Secretary and the director general about how they will work together to best fulfil their respective statutory duties and functions, and it is only those two persons who must have regard to the document. I think that Opposition Members have perhaps overstated the importance of the document, certainly in legislative terms. Although I do not want to downplay the document, it is clearly secondary to the legislation, which sets out the core governance arrangements and what will happen with the NCA. The framework document will be an agreement between the Home Secretary and the director general about how that will be put into practice, and it will not—and cannot—cut across the legislation that we have agreed in the Committee and in Parliament more generally in any way. As a result, the framework document can only be agreed following Royal Assent, once the provisions of the Bill are settled. We will then publish the document and lay it before Parliament at about the time the NCA is formally established, which we envisage being later this year, subject to parliamentary approval.

I recognise that some hon. Members are disappointed with the level of detail provided in the form of the outline framework document that we have supplied, but given the secondary nature of the document, it would be jumping the gun to produce a full draft of it before the Bill has completed its parliamentary passage. Were the right hon. Gentleman to be successful with some of the amendments he proposed in Committee, we may well need to reflect that in the framework document. As the Committee has not yet had a chance to consider all his amendments, we cannot be certain whether he will be successful with them. The content of the document will be informed by the parliamentary debates on the Bill in Committee and later in the Chamber, as well as by the detailed work in progress to build the agency.

12 noon

Such documents, agreed between Ministers and the agencies or Departments for which they have policy responsibility, are fairly commonplace in government, as the right hon. Member for Delyn will be aware. The Attorney-General, for example, has such a protocol in place with the Crown Prosecution Service and the Serious Fraud Office, which was established by the previous Government in 2009. Framework documents and protocols of this kind are not usually laid before Parliament—indeed, in some cases they are not made public at all—but we have rejected that course of action.

In the interests of transparency, we have proposed that the NCA's framework document be published and laid before Parliament. To go further and require parliamentary approval of the document, as amendments 14 and 15 would provide, is unnecessary, given that it will be essentially an agreement between the Home Secretary and director general about how they will do their jobs in respect of the NCA. I remind the right hon. Gentleman and other Opposition Members that the Serious Organised Crime and Police Act 2005 made no provision for a framework document for SOCA, let alone for subjecting such a document to parliamentary scrutiny.

Andy McDonald: Outrageous.

Mr Browne: It was shocking to reflect on that, but we have learned lessons and as a result have a far more transparent arrangement.

Amendment 16 would remove the requirement for the Home Secretary to obtain the consent of the director general of the NCA before issuing the framework document. As the leader of the agency, the director general will have an entirely proper interest in ensuring that the framework document arrangements reflect his or her operational view of the NCA and how it can operate most effectively and efficiently. Since the director general will be ultimately accountable to the Home Secretary for delivering the priorities of the NCA, it is only right that his or her consent is gained for decisions about how the agency is administered.

Amendment 42 deals with the publication arrangements for the framework document. The important point to make is that the Government are committed to publishing the NCA framework document, as well as the other key documents referred to in the Bill, such as the annual plan and the annual report, in a fully transparent and accessible way so that all those with an interest in the agency's work can read them. The requirement in schedule 2 to publish the document

“in the manner which the Secretary of State considers appropriate”

is simply intended to indicate that it is for the Home Secretary, as the publisher of the framework document, to determine the most appropriate means of publication. We expect, for the avoidance of doubt or concern, that in practice the document will most likely be released via the NCA or Home Office website, or conceivably both.

Amendment 40 would require the framework document to be reviewed annually. While it is clearly important that the document should be kept up to date, that requirement is already fulfilled by the existing provision requiring the Home Secretary to keep it under review. We can leave it to the judgment of the Home Secretary and the director general to determine the frequency of such reviews, which could be more or less frequently than annually, without imposing a specific requirement. One could well imagine that once the NCA is bedded in, the need to make changes to the document may become less frequent. Accordingly, it would be far better to have a general requirement to keep the document under review, so that it can be revised as often as necessary—no more and no less—rather than having the rigid requirements envisaged by the amendment.

Finally, amendment 3 points in the opposite direction to the other amendments in the group by seeking not only to strike the provisions on the framework document from the Bill, but, on its coat tails, to remove the requirement on the director general to produce an annual report, which I am sure is not the right hon. Gentleman's intention. Indeed, I am sure he agrees that such a step would not be in the interests of transparency and accountability.

In summary, I have argued that the framework document, while undoubtedly important, is secondary to the Bill's provisions and so, while we have committed to publish it and lay it before Parliament, does not require further parliamentary scrutiny. It is appropriate, on the other hand, that it should have the director general's consent, since he or she will have to implement its arrangements. It should of course be kept under review, but I have

argued that an annual process is disproportionate. On that basis, I hope the right hon. Gentleman will feel able to withdraw his amendment.

Mr Hanson: I hope I gave the Minister food for thought. He knows that amendment 3 was never designed, as I said earlier, to knock out the framework document. It was a mechanism to test some points, which the Minister has responded to. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 3 ordered to stand part of the Bill.

Schedule 2

THE FRAMEWORK DOCUMENT & ANNUAL REPORT

Mr Hanson: I beg to move amendment 44, page 51, line 28, schedule 2, leave out ‘As soon as possible after’ and insert ‘Within three months of’.

I want to test the Minister on whether a time scale is needed in respect of the annual report, because otherwise the report could be published at any time; it could be 11 months after the end of the financial year, or even more than a year after the end of the financial year. There is no time limit under the clause. I am happy for the Minister to indicate whether he would agree to a time limit; three months was a random period, plucked from the air as a debating point. Will he agree to tightening up the measure slightly so that there is a firmer time scale?

Mr Browne: The amendment is completely understandable, but I want to explain briefly why the Government prefer the Committee not to accept it. As is the case for all Departments, the National Crime Agency will publish an annual report and accounts prepared in accordance with the Government Resources and Accounts Act 2000. The annual report and accounts, once audited by the National Audit Office, will be laid before Parliament following the end of each financial year. As a non-ministerial Department, the National Crime Agency will be under the same obligation as all other Departments.

Clearly, it is good practice for annual reports to be published as quickly as possible after the end of the financial year and the Bill, as drafted, reflects that by requiring the director general to issue the annual report “as soon as possible” after the end of each financial year. We expect, in most cases, that the NCA’s annual report would be laid before Parliament certainly before the summer recess, which typically begins in July of each year. That has been the case with the Serious Organised Crime Agency, and is approximately within the three to four-month time frame that the right hon. Gentleman set out in the amendment.

It would be inappropriate for the Bill to be completely prescriptive as there might be cases, for whatever reason, when it was simply not possible to publish the annual report within that timetable. To tie the NCA to a statutory legal requirement of a three-month window would be unhelpful but, that said, I do not disagree with the broad principle underlining the amendment, and our intention is to act within that time scale.

I remind the right hon. Gentleman that the Serious Organised Crime and Police Act 2005—this may be a familiar refrain for him—used a similar formula to that used under the Bill; SOCA is similarly required to issue its annual report as soon as possible after the end of the financial year. That being the case, that formula, put forward by the previous Government, has much to recommend it. Our view is to be helpful and as speedy as possible, but not to be tied to the time scale under the proposal. On that basis, I hope that the right hon. Gentleman agrees to withdraw the amendment.

Mr Hanson: As an aside, so that the Minister does not keep throwing previous Acts at me, if Governments always kept to everything that previous Governments said, there would be no progress and no changes would ever be made to legislation. It is possible to amend legislation that the Labour Government or, even dare I say it, previous Tory Governments brought in without it being a cardinal, criminal offence. Perhaps the Minister would like to table a new clause to that effect later. I was in Northern Ireland at the time, so I was not even responsible for that particular Bill.

The point has been made. We simply wanted clarity. The Minister said that the annual report would usually be produced by the summer recess, which is about a three-month period. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Schedule 2 agreed to.

Clause 4

RELATIONSHIPS BETWEEN NCA AND OTHER AGENCIES: TASKING ETC

Stella Creasy (Walthamstow) (Lab/Co-op): I beg to move amendment 28, in clause 4, page 4, line 12, at end insert—

‘(c) may be made only if the Director General has notified the Police and Crime Commissioner responsible for the totality of policing in that area.’

The Chair: With this it will be convenient to discuss amendment 29, in clause 4, page 4, line 23, at end insert—

‘(a) may be made only if the chief officer of a UK police force has notified the Police and Crime Commissioner responsible for the totality of policing in that area.’

Stella Creasy: May I say, as everyone else does, that it is a pleasure to serve under your chairmanship this morning, Ms Dorries? I am also pleased finally to be doing something to redress the gender imbalance in the room in terms of people speaking. [HON. MEMBERS: “Hear, hear.”] I am glad to hear the Government agree with that sentiment. Let us hope they put it into practice in their future actions—

Mr Robert Syms (Poole) (Con): We will not put it on the face of the Bill.

Stella Creasy: I fail to see it in the Bill, but I would love to see the amendment that the Government will be tabling shortly.

I hope, too, that I will live up to the Olympian standards of debate that we have had so far this morning, seeing that the Minister has set such a high bar for us all to pass. I am afraid that I am not as familiar with “Angry Birds” as some; perhaps that is where my shortcomings come from.

I hope that our amendments to clause 4 will move the debate forward. So far we have talked a lot about the strategic direction of the new crime agency and how it will be influenced by different partners. The amendments speak to the agency’s day-to-day operational protocols and how they will work, in particular the way in which it will use a new power that it will have on tasking. That is not the multi-tasking of being able to play “Angry Birds” and listen to the Committee in detail at the same time, but directing police forces and how they use their resources.

The power that the organisation will have is a new one that SOCA does not have. SOCA had the ability to make voluntary and directed arrangements under the direction of the Home Secretary, but clause 4 will empower the director general of the NCA to require police forces directly to co-operate with him and other law enforcement officers. There will be a reciprocal duty on crime-fighters and members of various agencies to assist NCA officers to discharge their functions. The NCA will be able to enter specific arrangements, and the amendments speak to how those powers will be used and what implications they may have for how the agency operates and how police forces around the country operate with the agency.

Let me be clear about the powers that we want to test the Minister on in order to understand how he sees them working. Clause 4(2) says that the director general may request a chief constable to perform a task that would assist the NCA to exercise its functions. In doing so, the director general

“must explain how performance of the requested task would so assist in the exercise of those functions.”

Schedule 3 sets out the nature of the resources that may be requested. They include equipment, officers, constables and members of staff at any UK law agency. However, paragraph 17 of schedule 3 reads:

“That does not limit the kinds of assistance that may be provided or required.”

Clearly, that is a substantial and possibly costly power for the new director general. It is therefore important to test what is meant by that and to satisfy all of us that it is not open to what might be termed mission creep by the director general.

That the Bill does not set out how the director general should explain why a performance would be requested, only that it must be explained, only further highlights the need to set out clearly in Parliament what sort of explanation should be given and who should be informed of the use of the powers if they are used. There is potentially no limit as to what may be requested.

The Opposition recognise that there is a need to limit bureaucracy and to ensure that new working relationships are set in place from the get-go of the NCA, to ensure that it is effective, but it is the operation of the powers that concerns us. Schedule 3 resembles Jiminy Cricket in

his rendition of “I wish I may, I wish I might”, in the way that it says the director general may interact with the chief officers of police forces. Paragraph 4(1) requires the director general to keep chief officers informed of any information obtained by the NCA that he considers to be relevant to the exercise of a function of a chief officer, but paragraph 4(2) reads:

“This paragraph does not require the Director General to keep the chief officer...informed of information which appears to the Director General to be information obtained...from that chief officer or any other member of that police force.”

I am not sure quite what the Minister’s intention is, and I would be grateful for clarity on how he sees the day-to-day operational liaison role and how it will influence how crimes are investigated.

The Minister spoke eloquently on Tuesday about how the NCA might be involved in working with police forces on gun crime, particularly looking at the importation of guns through ports such as Dover that might be used on the streets of London or further afield as part of an organised gang’s dealing in drugs. Clearly, in the course of investigating and prosecuting such crimes, a number of pieces of information would come to light about the ways in which serious organised gangs operate in the UK. It would be interesting to know whether the Minister, under the schedule, intends that the NCA would only talk about the gun crime in that situation, or whether there would be a point at which officers in the NCA would liaise with officers and police forces about more minor crimes that might be associated with the Serious Organised Crime Act 2005, or with other individuals who might be involved and would be implicated in the course of their investigation, but were not the primary target of the investigation.

12.15 pm

We are trying to test issues about how the NCA will operate in practice, in particular—the elephant in the room, of course—how those day to day operations will be impacted by the election of police and crime commissioners. As my right hon. Friend the Member for Wythenshawe and Sale East pointed out on Tuesday, there is no mention of police and crime commissioners in the Bill. It seems rather strange to Opposition Members, simply because we heard the Prime Minister call it a big and important Government reform for policing. A Home Office Minister stated:

“From 15 November onwards, any development in crime prevention, policing and criminal justice will need to engage PCCs and they will be key in its implementation.”—[*Official Report, House of Lords*, 1 November 2012; Vol. 740, c. 689.]

We know that police and crime commissioners now have a statutory duty to secure the maintenance of the police force for their area, yet despite that, the Bill gives the director general wide powers to require a police force to perform a task of unspecified magnitude, scope or significance without regard to the police or crime commissioner or indeed vice versa. We could get to a situation where a police and crime commissioner would not know if a request for resources had been made or was affordable or, vice versa, that a chief officer, rather than dealing with an issue in their own patch, could ask for the NCA to intervene without involving the police and crime commissioner in discussing that request and whether it was appropriate.

When that argument was made in the other place, the Government rejected it, saying that notifying police and crime commissioners might interrupt a time-critical operation and might amount to political interference. Indeed, they even argued that talking to police and crime commissioners about requests for resources would be entirely discretionary. They gave the example that if a kidnapping were to take place in a jurisdiction, the police and crime commissioner might have their phone switched off and therefore working with them on such a major issue in their local area was immaterial to whether the investigation should take place. I find it surprising that the Government think it would be political interference rather than simply a good working relationship to ensure that all those responsible for the operations of the police are involved in discussions on major issues such as that.

We have talked about the fabled framework document. Again, it makes no mention of police and crime commissioners, nor does it set out how day to day operational relationships will work, yet as the Minister said earlier, that is exactly what the framework document is supposed to do. He said that the framework document should be informed by the debates that we have in Committee. I am mindful that the amendments clearly speak to a debate that the Home Office itself must have been having. Otherwise, why did it issue a taskforce fact sheet about the Bill and the very way the tasking power of tasking would operate, which states:

“If the Director General issues a direction to the Chief Constable of a police force in England and Wales to perform a task or to provide assistance, the Director General will then notify both the Home Secretary and the relevant Police and Crime Commissioner. This obligation will be set out in the NCA Framework Document. This ensures that the Police and Crime Commissioner can properly hold their Chief Constable to account for cooperating effectively with the NCA as set out in the Strategic Policing Requirement. It also ensures that the Home Secretary can hold the Director General to account for issuing a direction.”?

In tabling the amendments, the Opposition are trying to help the Home Office and Ministers clarify their own intentions, because it seems that they are rather confused about the relationship they see the police and crime commissioners having under the powers. It would be helpful if the Minister would set out which is correct. Is it the fact sheet the Home Office has put out about the Bill and how it sees it operating, or the framework document, and perhaps his comments on Tuesday about whether it was worth involving police and crime commissioners in the day to day operations of the National Crime Agency?

We see the amendments as simply tidying up and making good on the aspirations of the fact sheet and some of those within the Home Office about the way police and crime commissioners will be involved in the day to day operations of the National Crime Agency and how police forces will co-operate with them.

Andy McDonald: We have had police and crime commissioners since 15 November, yet on the face of the Bill, they seem to have been expunged altogether. I am greatly fearful that if these provisions go through without amendment, there is a real danger that police and crime commissioners will be out of the loop in some key issues, which will undermine their position. They will have strategic responsibility for the delivery of policing in their area, but that role will be eroded before

it has even started if they are not included, as my hon. Friend describes. Does she agree that we have an agenda to establish PCCs, but it is undermined by the provisions as they currently stand?

Stella Creasy: My hon. Friend raises a very important point. I am mindful that the fact sheet was clearly produced prior to the police and crime commissioner elections, when the Government were keen on police and crime commissioners. There was certainly recognition that they needed to be able to work with the various mechanisms of policing, but it seems to have been watered down somewhat in recent months. Our debate on Tuesday may have reflected that. I would be interested if the Minister could clarify whether the officials who produced the fact sheet on how they see the police and crime commissioners interacting with the National Crime Agency—particularly around the power of tasking—are correct, or whether, as his comments on Tuesday would lead us to believe, police and crime commissioners will simply be left to pick up the bill without knowing what they are paying for and why.

The amendments are very clearly about notifying. They are not necessarily about police and crime commissioners being able to challenge any decision or any request for tasking. We recognise that power within the Bill. However, it is about how people work together on the ground, and I would welcome the Minister's comments.

Mr Browne: There is only one issue that seems to obsess Opposition Members more than the outline framework document, and that is police and crime commissioners. I have been a Home Office Minister for only four months, but with every single piece of legislation that comes forward—whether or not it has anything to do with police and crime commissioners—it seems to be the main preoccupation of Labour Members to talk about PCCs. Yet they are in place, they are part of the policing landscape, elections have taken place, and we move on to considering the measures in the National Crime Agency under the Bill. Of course police and crime commissioners are significant people, but Labour seems to have a sort of hang -p about them, which I do not fully understand.

Let me explain how we see the arrangements working, because it is not unreasonable for amendments 28 and 29 to probe how the interaction will take place. The hon. Member for Walthamstow has drawn attention both to the tasking arrangements between the NCA and UK police forces and other law enforcement bodies, and to the NCA's relationship with police and crime commissioners. The amendments would put a statutory duty on the director general of the NCA to notify the relevant police and crime commissioner prior to tasking the chief constable under the provisions for voluntary tasking. Those are voluntary arrangements between the NCA and an individual police force or group of police forces, working together to keep people in this country safe. That duty will also apply to a chief constable where he or she has tasked the director general under those provisions, so tasking is a two-way street. It is how police forces and the NCA can work together for their mutual benefit and in the interests of the wider public.

[Mr Jeremy Browne]

Similar amendments were put forward in the other place, and for two reasons I remain to be convinced of the need to add such a provision to the Bill. First, voluntary tasking between the National Crime Agency and partners will take place on a routine, day to day basis. These are not one-off events; we want seamless interaction between police forces and groups of police forces and the NCA to protect the public, based on shared priorities and mutual co-operation. I see no need for police and crime commissioners to be routinely notified, any more than they would necessarily be routinely notified when one police force works with another. If we have an issue in Somerset, with crime taking place on the border between Somerset and Devon, there may be all kinds of minor operational acts of co-operation between Avon and Somerset police and Devon and Cornwall police. We would not expect the two PCCs for those police forces necessarily to be notified every time there was a minor piece of collaboration, nor would we expect such notification before the collaboration took place. We envisage the same methods applying to the NCA's interaction with police forces, and we fear that the proposals in the amendments would be an unnecessary and burdensome step.

The tasking provisions build on the mutual assistance provisions provided under the Serious Organised Crime and Police Act 2005, which did not contain a requirement for the chief constable to notify the police authorities—the predecessors of the police and crime commissioners—in the event of co-operative arrangements between the SOCA and police forces. That may have been a good point. We looked carefully at the precedent and we think the previous Government's judgment on that matter was wise; indeed, it was wiser than the judgment that informed the amendments.

Imposing that duty could, at best, introduce new barriers to co-operative working between police forces and law enforcement partners, and, at worst, disrupt a time-critical operation. Let me give the Committee an example of what we fear will happen if the amendments are accepted. The chief constable may need to task the director general of the NCA to provide urgent support on a live kidnapping case, or to provide specific intelligence to aid the stop or arrest of a potentially dangerous individual. I ask the Committee to consider whether it is a good idea that in those circumstances, no collaborative action can take place—the NCA cannot assist the police force that serves our constituents—until the police and crime commissioner is found. They may be on holiday or, as the hon. Member for Walthamstow said, they may have turned their mobile phone off and be hard to contact. Is it a good idea to have a blanket mandatory notification requirement under such circumstances, any more than it would be for two police forces working together? I gave the examples of Avon and Somerset and Devon and Cornwall.

My second reason for rejecting the amendments is that the proposal could involve a police and crime commissioner in the operational decision making of a chief constable. Let me emphasise that tasking is undoubtedly an operational matter. The provisions for two-way tasking enable the National Crime Agency and partners to draw on one another's support for operational activities—not just strategic decision making, but day-to-day

operational activities—in the fight against serious and organised crime. Those arrangements provide the opportunity for chief constables to draw on the NCA's specialist services—for example, intelligence, overseas information and intelligence, and cyber assets—and enable the director general of the NCA to draw on partner assets.

Indeed, as I recall, the Opposition also made clear the importance of protecting the operational independence of the chief constable during the Commons Committee debates on the Police Reform and Social Responsibility Bill in 2011. On 25 January 2011—two years ago tomorrow—the hon. Member for Gedling (Vernon Coaker) said:

“The issue of operational independence and the ability of the chief constable to be operationally responsible, without interference from a politician directly elected on a mandate, is of fundamental importance to all of us”.—[*Official Report, Police Reform and Social Responsibility Public Bill Committee*, 25 January 2011; c. 205.]

We took the hon. Gentleman's words to heart. We think it is right that the director general of the NCA and the chief constable are able to carry their operational duties without interference from a politically elected person, as the hon. Gentleman feared and the amendments envisage.

We agree with the hon. Member for Gedling and the people who drafted the Serious and Organised Crime and Police Act 2005; we agree with the independence of the police and the seamless operational interactivity between police forces and the NCA. On that basis, I invite the Committee to reject the amendments.

12.30 pm

Stella Creasy: I was surprised and interested to hear the Minister talking in such a way about the role of police and crime commissioners. He will be aware of his colleague's words on the role of police and crime commissioners: they are meant to be key in the implementation of any policing work in a local area. His comments about the concept of co-operation and how that would be ruined by talking to each other speaks volumes about the current mood in the coalition.

The amendments are designed to put on the record the importance of good working relationships—simply notifying and ensuring that people are interacting with each other. The 2005 Act that set up SOCA was passed prior to the introduction of police and crime commissioners—a major reform, as the Government were wont to call it last year. How things have changed, because today we hear the Minister talking as though police and crime commissioners are completely incidental to any decisions about the way in which resources are used in any police force.

I am sure that many police and crime commissioners who have heard the Minister's words today will be worried by the way in which he talks of excluding them not only from strategic discussions at a national level in relation to the role of the NCA, but in local discussions about what is happening on their patch. The amendments are simply about what is happening on their patch.

Mr Browne: Directed tasking is a different order, which is why the framework document contains a requirement on the director general to notify the Home

Secretary and the relevant police and crime commissioner as soon as is feasible, if the issue is a direction to the chief constable of a police force to perform a task or to provide assistance. Although the hon. Lady says that PCCs are not mentioned in the Bill, it does refer to “local policing bodies”, which is the term that covers PCCs as well as the Mayor of London and the City of London police authority, which does not involve PCCs in quite the same way. Those local policing bodies must be consulted on the strategic priorities and the annual plan, so a role is envisaged for PCCs. We are not overlooking them, but we do not think it is necessary for them to be involved on a minute, minute-by-minute operational basis in the decisions made by the NCA and police forces.

Stella Creasy: I thank the Minister for his comments. Our debate about when the powers will be used will be a better time to test the question about the minutiae of operational decisions and when the NCA will be involved in working with local police forces.

Our amendments are intended to try to get the Minister to say more clearly that police and crime commissioners are a key part of the way in which policing is going to operate on the ground, which would include them negotiating with the NCA and being involved in discussions about what is being done in any commissioner’s patch. I have no wish to test the opinion of the Committee, but we simply note how quickly the Government’s attitude towards police and crime commissioners has gone from red hot—saying, “This is the future of policing”—to lukewarm, saying, “They are there; we might as well let them know when things are happening.” I hope that their attitude does not become glacial, because otherwise, as many Opposition Members feared, we will find that this is a costly and expensive piece of bureaucracy that adds little to the future of policing in this country. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stella Creasy: I beg to move amendment 27, in clause 4, page 4, line 28, after ‘may’, insert ‘in exceptional circumstances’.

The amendment is about the nature of the powers. It is designed to get the Minister to set out more clearly when he thinks the powers will be used. We have just had an interesting discussion in which the Minister talked about the minutiae of policing operations in which the NCA might be involved and which requests for resources might be made.

When the matter was discussed in the other place, the Government spokesman talked about the powers being used only in exceptional circumstances. The amendment would simply make that clear in the Bill so that we do not get what I referred to in our previous debate as mission creep, through which resources are routinely required from police forces across the country for NCA activities, given the consequential impact that that might have on local policing priorities and local policing action. Has the Minister set out more clearly for the director general—indeed, does he intend to in our final framework document—the circumstances in which the powers can be requested, when a decision can be made that a voluntary arrangement cannot be reached, and therefore when the formal power to task will be used?

Mr Browne: The hon. Lady draws attention to the directed tasking arrangements in clause 4. For the avoidance of doubt for any hon. Members who have not considered this matter as fully as I have, there are two types of tasking: voluntary tasking, which is when the police force is asked to undertake a task on behalf of the NCA; and directed tasking, which is when the police force is required by the NCA to undertake a task. Obviously that is a stronger power, and the Committee will rightly wish to consider it.

The amendment would place a duty on the director general of the National Crime Agency to issue a direction to a chief constable only in “exceptional circumstances”. The amendment rightfully concerns itself with circumstances in which the significant power of directed tasking would be used. I emphasise that, in almost all cases, tasking will be voluntary. We want mutual arrangements that are based on strong relationships and co-operation that exploit intelligence and build on existing arrangements. Far from that being a coercive arrangement, I suspect that the voluntary nature of the activity will be welcomed by both sides on a daily basis. It is essential, however, that the director general has the authority to co-ordinate a UK-wide response in the very limited situations when voluntary tasking arrangements cannot be agreed and when they consider it expedient for action to be taken by a police force in the wider national interest of trying to reduce and combat serious and organised crime.

I welcomed the comments that were made by the right hon. Member for Blackburn (Mr Straw), a former Home Secretary, on Second Reading. He said:

“it is inevitable that the Bill should give powers of tasking to the new director general... Without that ultimate power, there will be an imbalance in the priorities that territorial forces can set.”—[*Official Report*, 14 January 2013; Vol. 556, c. 658.]

While I do not believe that an imbalance between local and UK-wide priorities for police forces is inevitable, directed arrangements provide a necessary backstop in the event that action needs to be taken.

I invite the Committee to envisage an operation stretching across five or six police forces in a region in which it is essential that all the forces work together with the NCA to make it a success. While it is hard to envisage this happening in practice, if one of the forces was unco-operative and a vital component was missing from the operation as a result, one can see why it would be in the wider interests of the public in that region—and, indeed, the country—for that force to be required by the NCA to play its part in that operation.

Having robust safeguards to prevent the misuse of directed tasking powers is, of course, essential. There are, however, already robust safeguards in the Bill on directed tasking. For the director general to use the directed tasking powers, he must meet a threefold test: that the performance of the task would assist the National Crime Agency to exercise its functions; that it is expedient for the chief constable to be directed to perform that task; and that satisfactory voluntary arrangements cannot be made or cannot be made in time. In other words, that is a power that the director general should use only if it is necessary for that police force to perform the task and it is not possible to have a voluntary arrangement.

Gavin Barwell: My hon. Friend has had some gentle fun at the shadow Minister's expense by citing previous precedent. Will he tell us the position for the existing bodies that the agency will replace? Do they have this power of direction?

Mr Browne: I shall answer that extremely good point once I have finished this passage of my response to the hon. Lady, because I would not want to break off halfway through explaining, for the benefit of her and other members of the Committee, why the test for exercising these important powers that the director general needs to meet is onerous, given that the way in which the power could apply to their individual police forces could concern members of the Committee.

I was saying that the director general will, of course, have to demonstrate that the threefold test is met, but a further safeguard is outlined in schedule 1: the director general must personally exercise the power, and may only delegate it in his absence to a senior NCA officer who would be nominated for that purpose. That is an important point, because I know that Members sometimes raise concerns about who will exercise such powers, because even if that is done in the name of the most important officer or official in an organisation, is it done in practice by that person? In this case, the power will be exercised at that highest level, and it may only be delegated in the director general's absence to a very senior NCA officer.

To respond to my hon. Friend the Member for Croydon Central, SOCA does not currently have the power to task other agencies, so this will be a new power. That gets to the nub of why the NCA is a wider-reaching organisation than SOCA, because it has the ability—the valuable ability, as the former Home Secretary, the right hon. Member for Blackburn, recognised—to take a broad, overarching approach to the threat of national, and in some cases international, serious and organised crime. That is a bit of a departure, and although we recognise that in the vast majority of cases the tasking will be voluntary, we have put in place safeguards to ensure that in the rare cases when it is directed, it is done appropriately.

I am not persuaded that the amendment is necessary in the light of the existing stringent test for which the Bill already provides. On that basis, I ask the hon. Lady to withdraw her amendment.

Stella Creasy: I thank the Minister for his comments. I am surprised, and perhaps saddened, that he does not agree with his colleagues in the other place about the importance of saying that these powers will be used only in exceptional circumstances. We are all aware of people in our lives who believe that they are directing us to undertake a course of action voluntarily—my mother is particularly fond of that mode of operation.

It is important to set out, first and foremost, that the director general should be seeking consensus with police forces—and, dare I say it, with police and crime commissioners—on the importance and priority attached to certain operations to deal with serious organised crime. It is also important to set out the expectation that such a tasking power will be used only in exceptional circumstances. The Minister could not quite address the question of exceptionality and the circumstances in

which he believes this backstop power would be used. Indeed, the fact that he simply calls it a backstop power is a little concerning.

Mr Browne: How does the hon. Lady define exceptional circumstances?

Stella Creasy: The Minister is slightly not listening to the question. He said that the Bill was clear enough about when these powers will be used, and the amendment would set out that that would be only in exceptional circumstances—on the rare occasions when voluntary co-ordination could not be reached. For example, how that voluntary co-operation is negotiated might be one test that the Government could set.

I am also influenced by the words of the Minister's colleague in the other place, who said that exceptional circumstances are an important principle. Through my amendment, I was simply inviting the Minister to reify that, but he has chosen not to. I do not particularly want to test the Committee's will on the amendment, but I am sure that all those involved in policing will note that he said that he believes that the power is simply a backstop without setting out where the back is and where the front is. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stella Creasy: I beg to move amendment 31, in clause 4, page 4, line 34, at end insert—

'(7A) The Government will report annually to Parliament on the number of times a direction has been issued and to whom.'

There is a recurring theme here, as I am trying to test the Government and the Home Office on how the day-to-day operational capacity of the National Crime Agency will be used and what that will mean for police forces and all those concerned with the management of public resources.

Amendment 31 would test how the directed powers are used. We have just debated exceptional circumstances, but the Minister did not want to set out what he feels an exceptional circumstance would be. Perhaps by reporting through Parliament, as the amendment would require the Government to do, we could get clarity on that exceptionality and how police forces use these powers. The amendment would address the way in which not only the National Crime Agency act, but local police forces, in terms of the number of times directions are sought and acted on. It would require the National Crime Agency to report such occasions to Parliament annually so that we could see how the power had been used.

12.45 pm

The hon. Member for Croydon Central was rather surprised to learn that this power of direction was new and had not previously been available to the Serious Organised Crime Agency. Many of us recognise the importance of being able to offer that strategic lead. The amendment puts forward an important principle of accountability and transparency on how that power would be used.

I am sure that we will debate subsequently the merits of annual reports and what information they contain. The Minister will understand my scepticism because

although this is a new power that needs scrutinising, we cannot guarantee that it will be in the annual report that the NCA is required to produce. It is important to set out now that such information will be available for public scrutiny, and the amendment is designed to do exactly that. If the Minister gave the commitment that the annual report would always include clarity on when direction was given and by whom, and which forces were tasked, that would be helpful.

Mr Browne: As the hon. Lady explained, amendment 31 would place a statutory duty on the Government to report annually to Parliament on the use of the directed tasking powers in the Bill. I agree with her that it is vital that the director general is properly held to account for the National Crime Agency's tasking and co-ordination functions and will be held to account by the Home Secretary, who is in turn accountable to Parliament. Indeed, I would expect the director general to report on the NCA's co-ordination and tasking remit in his annual report, which will be laid before Parliament.

However, I remain unconvinced that it is necessary, or indeed appropriate, to place a statutory duty on the Government to report annually on the number of times and to whom a direction has been issued. First, robust legal safeguards are already in place around directed tasking to prevent misuse, which I already outlined in response to the previous amendment.

In addition to the safeguards, the director general will, under the terms of the framework document, be required to notify the relevant police and crime commissioner and the Home Secretary as soon as is feasible if he or she issues a direction to a police force to perform a task or to provide assistance, so that information will be available to the people who provide the strategic direction of those forces. That will enable the police and crime commissioner and the Home Secretary to hold the chief constable and director general to account for the issuing of the direction.

Secondly, reporting on the number of times a directed power has been issued and to whom, without the context and detail of the specific circumstances surrounding the direction, could be misleading. For example, when issuing a direction, the director general will have taken several factors into account, some of which would relate to specific operational details around the capacity and capability of individual agencies. That type of information will be operationally sensitive and, as such, should not be made public. Without the context of why a direction was issued, however, the information could be open to misinterpretation.

Andy McDonald: Can the Minister describe any mechanism that would guarantee that Parliament received a report simply on the number of times the powers were exercised, without interfering with operational sensitivities? For the reasons that he set out, I do not think that anybody is suggesting for one moment that such a level of detail be made available.

Mr Browne: No, I am not able to provide that guarantee for the reason I just explained, which is that the numbers without context may be misleading. If extra context is provided, that may be operationally sensitive. The fact that tasking is being done on a more routine, or more

frequent, basis is illustrative of the priorities of the National Crime Agency or could be deemed to be such, so there are sensitivities.

I had hoped that the hon. Gentleman and other Opposition Members would be reassured by the point that I made a moment ago, because of their concerns about whether police and crime commissioners are playing a role. I said that the director general will be required to notify the relevant police and crime commissioner and the Home Secretary if he or she issues a direction to a police force to perform a task or to provide assistance.

The information will be known by the directly elected police and crime commissioner. He or she may or may not choose to share that information; that would probably depend on its nature. The Home Secretary is answerable to Parliament, and she will be able to justify the actions that have been taken by bodies for which she is responsible to Parliament and the directly elected Members who constitute Parliament.

Stella Creasy: I am afraid that the Minister has opened a Pandora's box in his discussion of what I thought would be a relatively straightforward question about how we would be able to monitor how the new power is used.

A number of questions spring to mind. First and foremost, the Minister mentioned that police and crime commissioners will be notified when direct tasking is used. Will that information be subject to freedom of information requests, given that he also said that it would not be possible to set out that information at a parliamentary level or through the NCA annual report because that might compromise operational powers?

Mr Browne: Let me check the details of FOI-ability—if that is a word. I will shed a bit more light on this. The type of operations that we are talking about may well be those where the NCA is working on trying to gather intelligence and apprehend a violent, dangerous, serious crime group who are, for example, intent on committing a series of armed robberies that are a major threat to the public. They are doing that, working with police forces in the relevant areas where it is thought that those crimes are likely to be committed and in other areas where the guns that will be used for these armed robberies are being smuggled—or bought and sold—by organised criminal gangs.

In some circumstances, it may be that directed tasking is required to make sure that there is no missing link in that operation, although we would envisage that, by and large, the arrangements would be voluntary because it would be in the interests of all of the police forces—those where the guns are being smuggled or bought and sold and those where they may actually be used for armed robbery—to be working seamlessly with the National Crime Agency. I doubt whether we then want to make available more detail than is necessary—indeed, to the gangs themselves.

At the moment, while there are all kinds of covert operations going on to try to keep the public safe, we have a debate going on in the Chamber about whether the voting age should be 16. Details of those operations are not routinely reported to Parliament because successive Governments have recognised that the nature of some of this material may not be appropriate for the public arena.

[Mr Jeremy Browne]

I do not think that the hon. Lady is on to as much as she seems to think she is when she says that there is some great act of concealment going on here. We already said that it would be rare to have directed tasking, but, as the right hon. Member for Blackburn made clear, in some circumstances it may be necessary. That power will be used sparingly and, when that power is used, the police and crime commissioner and the Home Secretary will be notified. That is the right way to proceed.

Stella Creasy: Again, the Minister does not seem to be quite consistent. Earlier, he talked about tasking happening on a routine basis, but now he says that it may happen on a rare basis. Let us get to the heart of this: will local taxpayers, who pay the police precept, be able to know whether the cost of the resources that they have to pay for have been commissioned by the director general in the National Crime Agency—yes or no? Will they be able to FOI that information? Will, at least, the police and crime panels be told whether resources have been required for that purpose?

Mr Browne: I am sorry; perhaps I was not clear enough. I would imagine that voluntary tasking will happen on a routine basis. In the same way as in the example I gave earlier, I would imagine that Devon and Cornwall police and Avon and Somerset police would, as a matter of routine, co-operate on crime that happens on the border of Somerset and Devon.

Voluntary give and take and reciprocal arrangements will be put in place on a case-by-case basis, depending on a particular operation. On NCA tracking, I gave an example on Tuesday of guns coming from the United States via the Netherlands into Kent through Dover and then being transported up the motorways into Greater Manchester. Those illegally smuggled guns would obviously have gone through the areas of several police forces.

The optimum point at which we would use our intelligence to apprehend the smugglers before the guns could be used by criminal gangs might not be in Kent or Greater Manchester, but at some point in between—or in collaboration with the Dutch police, when the guns were in transit through the Netherlands. All sorts of voluntary arrangements would be made, so it would be in the interests of those who were paying the police precept in both Greater Manchester and Kent to have greater capacity provided for their police forces so that the public could be kept safer in their areas.

Separately, and much more limited, is directed tasking. The example that I gave earlier was that of half a dozen forces in a region. If one of those forces, for whatever reason, were not co-operative, as a result of which there was a missing piece in the jigsaw in that region, that force might in particular circumstances be directed by the director general of the NCA.

Stella Creasy: Will the Minister give way?

Mr Browne: I have not finished responding to the previous query yet.

Mr Hanson: It is a simple question.

Mr Browne: It was a simple question in the sense of being a question informed by simple knowledge.

The director general of the NCA, because he had used the power of directed tasking, would inform the police and crime commissioner and the Home Secretary. I am not sure that other members of the Committee are as troubled as the hon. Lady, but I might be wrong

Gavin Barwell: The Minister has spelt out some compelling reasons why, in terms of some operational details, we might not want to make available all the information that the amendment suggests. Will my hon. Friend reflect on one point? In his example, he spoke about the possibility of one particular police force not being co-operative, for whatever reason. As a London MP, I would be interested if the Metropolitan police were regularly not co-operating with the new agency. He set out good reasons for not accepting the amendment, but he might want to reflect on the public interest if there were not a good relationship between a particular force and the agency.

Mr Browne: My hon. Friend makes an entirely valid point, although we are on quite hypothetical territory. I cannot really understand why a police force would not wish to have the extra capacity and expertise that the NCA will provide. He has perhaps cited the least good example, as he represents in his constituency the police force with the greatest capacity in the United Kingdom.

Smaller, rural police forces have limited capacity to fight serious and organised crime because, luckily for them, there is little organised crime in their force areas. They have fairly modest budgets and fairly limited expertise. They will work with the NCA, perhaps on a wider project when part of a crime gang is touching on their force area. In such cases, they will have their capacity greatly enhanced to the benefit of local people who pay their precept towards the police. Although notionally, in accountancy terms, free, people will also be paying for the NCA through their taxes at the same time and will be beneficiaries from it.

On the freedom of information point, it is proposed that the NCA be exempt in respect of freedom of information provisions. As for information held by PCCs, my understanding is that there might be circumstances in which freedom of information would apply, but because there are exemptions under the FOI Act, police and crime commissioners could appeal under the exemption provisions under the Act if they were being required to publish information that was operationally sensitive in the detection of serious and organised crime.

Stella Creasy: The Minister raises further issues. First, can he clarify why he considers that voluntary tasking arrangements will not involve sensitive information, but that directed tasking information might?

If people are being asked to collaborate, especially with the work that the NCA will be doing, operational sensitive material may well be part of the process—so releasing information about what has been done with resources will be sensitive, whether it is a voluntary or a directed task. The Minister needs to reflect on that. The question about FOIs and transparency is not a minor issue; it is about a new power and a new way in which the police will work. If he cannot answer the question on freedom of information—and it is quite clear that he cannot, because he has not looked at how this will work

with police and crime commissioners—can he answer whether or not police and crime commissioner panels could request this information, so that they knew?

Are we simply going to see police and crime commissioners having to justify increases in their council tax precept in order to pay for operations when they cannot explain to the public what they are paying for?

Mr Browne: The hon. Lady keeps saying that she is on to something, but because she says it with great fervour does not mean it is true; what she means is that she is getting more and more excitable about not being on to something.

I accept that voluntary arrangements will deal with serious and organised crime, and directed arrangements will deal with serious and organised crime. That is because the nature of the NCA is to deal with serious and organised crime. The hon. Lady's amendment says:

“The Government will report annually to Parliament on the number of times a direction has been issued and to whom”.

It does not talk about the voluntary aspects. I am doing the hon. Lady the credit of dealing with her point about direction and I say that PCCs and the Home Secretary will be notified if a directed act of tasking

takes place; and that the NCA is exempt from freedom of information, assuming the Bill goes through as envisaged by the Government.

As for the arrangements of PCCs, that is covered elsewhere and is not the responsibility of this Bill. However, to try to be helpful and go beyond my remit—because I want to be a co-operative Minister—I could envisage the circumstances where the PCC may apply successfully for an exemption from freedom of information if the FOI request was about an extremely sensitive operation in collaboration with other bodies to try and tackle serious and organised crime in their area.

I fear that I cannot do more to be helpful, however much I try. While I accept the need for cross-checks and balances around the use of directed assistance and tasking powers and the need for transparency, we must take into account the need to protect sensitive operational information. On that basis, I hope that the hon. Lady will agree to withdraw her amendment.

Ordered, That the debate be now adjourned.—
(*Mr Syms.*)

1.2 pm

Adjourned till this day at Two o'clock.

