PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CRIME AND COURTS BILL [*LORDS*]

Eighth Sitting

Thursday 31 January 2013

(Afternoon)

CONTENTS

CLAUSE 25 agreed to.
CLAUSE 26 disagreed to.
CLAUSES 27 to 29 agreed to, one with an amendment.
Adjourned till Tuesday 5 February at five minutes to Nine o'clock.

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not later than

Monday 4 February 2013

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

The Committee consisted of the following Members:

Chairs: † Martin Caton, Nadine Dorries

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

Neil Caulfield, John-Paul Flaherty, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 31 January 2013

(Afternoon)

[Martin Caton *in the Chair*]

Crime and Courts Bill [*Lords*]

2 pm

Sitting suspended for Divisions in the House.

2.32 pm

On resuming—

Clause 25 ordered to stand part of the Bill.

Clause 26

Enforcement services

Question proposed,

That the clause stand part of the Bill.

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

Government new clause 8—*Enforcement by taking control of goods.*

Government amendment 80.

The Minister for Policing and Criminal Justice (Damian Green): It is common ground in the Committee, as we know from the speech of the hon. Member for Darlington, that more needs to be done to protect debtors from the unscrupulous practices of a minority of bailiffs, while at the same time ensuring that legitimate creditors can collect the money they are owed. The Government's recent mid-term review reaffirmed our commitment to that effect.

Last February, the Ministry of Justice published the "Transforming bailiff action" consultation, which set out the key reforms that will deliver our commitment. When the issue was considered in the other place before Christmas, there was some frustration that the Government had not at that time published their response to the consultation. I think it fair to say that the frustration manifested itself in the vote on Baroness Meacher's amendment, which now forms clause 26 of the Bill. However, things have moved on.

On 25 January, we published our response to the consultation. The proposals in it, which I will come to shortly, offer a more measured and proportionate response to concerns about the actions of some bailiffs than that offered by the existing clause 26. To put our specific legislative proposals in their wider context, I will provide a brief overview of the totality of the reforms. In the Government's response we confirmed that we would implement part 3 of the Tribunals, Courts and Enforcement Act 2007. This will remove the confusing and antiquated laws that can thwart effective and proportionate enforcement, introducing in their place a new statutory framework that is fit for today's society.

In particular, the reforms will provide clarity about the powers of bailiffs and introduce a clear, fair charging regime, thereby tackling the root causes of aggressive bailiff action. Furthermore, the enforcement process and procedure will be defined clearly in legislation setting out how bailiffs can enter a property, what goods can and cannot be seized for sale and, crucially, what costs a bailiff can charge. The changes will be set against effective and targeted regulation to ensure that bailiffs are fit to carry out the work by introducing a mandatory training scheme, competence requirements and certification for all bailiffs.

The key characteristic of the Government's proposals is balance. They seek to ensure that a bailiff has all the tools necessary to carry out enforcement effectively and is adequately rewarded, while providing assurance for the debtor that the bailiff is properly trained and authorised to carry out such work, and that remedies are available when mistakes are made. With that in mind, there is also common ground in the Committee that the framework for the regulation of bailiffs under part 3 of the Tribunals, Courts and Enforcement Act 2007 generally strikes the right balance between ensuring that all bailiffs operate to appropriate minimum standards, while not subjecting the industry to over-burdensome regulation.

That being the case, I hope that the Committee can readily agree to new clause 8, which will enable us to correct a number of inadequacies in the legislation that are likely to have counter-productive effects if they are not dealt with; having done so, we will be able to move quickly to bring part 3 of the 2007 Act into force. The key changes made to the 2007 Act by the new clause are threefold. First, it will remove the ability to make regulations that would confer a power to use reasonable force against debtors. It is one thing to countenance the use of reasonable force to effect entry into premises, but it is quite another to authorise such force against a person.

With the benefit of time since the passing of the 2007 Act and of the additional consultation, we do not consider that there are any circumstances in which it would be suitable to use that particular regulation-making power, so it is appropriate to remove it. It is not acceptable or necessary for a bailiff to be aggressive when carrying out their duties, and debtors must be protected. That view was widely supported by all sectors, including the enforcement sector, in responses to our consultation paper.

Secondly, the new clause will allow enforcement agents who are executing a writ or warrant of control for enforcement of a High Court or county court debt to use reasonable force on entry to commercial premises. As I said, using reasonable force to secure entry to premises is quite different from using force against an individual. Enforcement agents already have such powers under common law, and we believe that the failure to confer an equivalent statutory power was a mistake in the 2007 Act. Commencing the 2007 Act provisions without such a power would have counter-productive effects, including the additional expense of applications being made routinely to the court for authorisation. Such additional costs would undoubtedly be passed on to the debtor.

The third key change to the 2007 Act would be to allow enforcement agents to re-enter any premises—domestic or commercial—where the debtor is in breach

of a controlled goods agreement to which they have consented. Here again, we are seeking to provide, in statute, what is already the position under common law when "walking possession" is agreed, leaving the debtor in a position to keep using the goods taken under control and pay the debt by instalments. It is important that all parties are fully aware of the consequences of bailiff action and we are trying to ensure that that is clear.

Bailiffs' powers of entry are just one element that causes confusion, allowing rogue operators to misrepresent their authority. It is important that all bailiffs' powers of entry are clearly set out in one place, and that they are specific and proportionate. It is our view that those amendments to the 2007 Act will help to avoid a number of unintended consequences, such as delays in the enforcement process, increased costs to the debtor and possible incentives for bailiffs to act aggressively.

Let me be clear. Commercial debtors should not be given the opportunity to evade enforcement action for High Court and county court debts, which could occur without the amendments to the 2007 Act. The balance of our reforms is to encourage compliance by debtors, and we envisage the controlled goods agreement providing that facility.

There is a danger that without the changes we may remove the possibility of negotiation and, in fact, encourage bailiffs to escalate to more aggressive action. Without the assurance that they will be able to re-enter premises quickly and remove goods should the agreement be broken, it is likely they will remove goods straight away. It is important that when debtors give consent, they are clear what that means and, in particular, that they are clear about the consequences should the agreement be broken. We will also include further safeguards in regulations stipulating that a bailiff will be required to give notice to the debtor of their intention to use reasonable force to re-enter premises. The agreement will make it clear that a bailiff has the right to re-enter the property to inspect the goods at any point or to remove them if the agreement is broken.

As I indicated, these amendments to the 2007 Act will not increase the existing powers of entry available to bailiffs. Rather, they codify in statute existing common law powers. Without the amendments, debtors are at risk of aggressive behaviour by bailiffs, making what is already a difficult situation much worse. We have both the opportunity to safeguard debtors from disreputable agents of the enforcement industry and ensure that we have an effective enforcement system. We believe that the clause does not provide those safeguards or ensure that we have an effective enforcement system. Without additional legislation, it does not do what it set out to do: supply debtors with an independent complaints process that meets their needs.

The Legal Services Act 2007 contemplates a service relationship between professionals, such as solicitors and their clients, which is not present between bailiffs and debtors. Under the clause, debtors would not be able to complain to the legal ombudsman because the bailiff is not providing them with a service as required for complaints under the Act. It is therefore neither sensible nor appropriate to try to force the regulation of bailiffs into this framework, which is not constructed to address the circumstances in question. It is also important to remember that there are already independent complaints processes available—for example, the local government ombudsman—for complaints relating to debt enforced on behalf of local authorities.

It is the Government's belief that we can provide far more useful protections to debtors, as well as the enforcement system itself, through the reforms set out in the recent consultation response, including the proposed amendments to the Tribunals, Courts and Enforcement Act. The reforms will address the causes of the majority of complaints, and will thereby reduce the need for an additional complaints process.

I alert the Committee to the fact that we have identified a technical defect in new clause 8. Members on both sides of the Committee should have a copy of a new version. Although it is right and proper that we debate it today with clause 26, I advise the Committee that we will withdraw new clause 8 and substitute a replacement in advance of our sitting on 12 February when the new clause will formally be taken. The revised new clause will have a modified new paragraph 19A in schedule 12 to the 2007 Act. It relates to the power to re-enter premises where the debtor is in breach of a controlled goods agreement. The proposed changes are of a technical nature designed to ensure that the new power has the necessary reach in respect of commercial premises. I apologise to the Committee for the necessity to do that, but I am sure hon. Members will agree that it is the best way.

In conclusion, the Government are committed to protecting debtors from aggressive bailiff action. We are clear that intimidating behaviour and the oppressive and underhand tactics practised by some bailiffs are completely unacceptable. The provisions in the 2007 Act focus on the root causes of many complaints. In light of that, we do not consider that the clause is necessary, and I invite the Committee to agree that it should not stand part of the Bill. In due course, the Committee should support Government new clause 8 and amendment 80.

Jenny Chapman (Darlington) (Lab): The Opposition think that clause 26 should stand part of the Bill. It would amend the Legal Services Act 2007 to introduce a bailiffs and enforcement agents council, which would be a regulator for bailiff services. Although there is a lot to be commended in new clause 8 and amendment 80—in particular, the removal of the possible power of use of force against a person—they fall short of doing what clause 26 seeks to achieve.

Clause 26 allows a complainant against a bailiff redress to an ombudsman. It is important that we keep the clause because there are many instances when things might go wrong. The clause was included in the Bill after a Government defeat in the Lords, and the Government now plan, as the Minister indicated, to oppose clause stand part. The Government's bailiff plan is to implement part 3 of the Tribunals, Courts and Enforcement Act, which lays out procedure and rules for the seizure of goods, and allows regulations to be introduced on a set fee structure. It creates a certification regime for bailiffs. The Government are not introducing an independent regulator or an independent complaints process. We think that those provisions are important and should remain part of the Bill.

2.45 pm

Credit is due to all sides for their recognition of the problem. It is necessary to improve the rules and safeguards that govern those who undertake enforcement work, and the previous Government laid the foundations for such improvements. The Tribunals, Courts and Enforcement Act made strides in codifying more than 800 years of bailiff and enforcement law and addressing some of the years of bad practice. Part 3, which the Government intend to implement, contains improvements designed by the previous Government, including acceptable modes of entry, restrictions on contact times, protection for vulnerable parties and provisions to introduce regulations on a proportional fee structure and an enhanced certification procedure.

The previous Government laid those foundations so that they could be built on; that is what we want to see now. The planned project was for the establishment of an independent regulator to underpin the clarifications, and that remains the Opposition position, which was laid out in a written ministerial statement:

"Provisions under the Act…will provide clarity for debtors and certainty for creditors and be underpinned by independent regulation of the enforcement industry. Regulation will not only improve the efficiency and effectiveness of both civil and criminal enforcement but it will also offer protection to vulnerable debtors, who genuinely cannot pay, and reduce the scope for abuse of the system. A formalised structure to regulate the industry would raise standards of professionalism within the industry and give the public greater confidence".—[*Official Report*, 17 March 2009; Vol. 489, c. 47W.]

We would like to see an independent regulator, which is why we are arguing to keep clause 26.

However, the Government argue that the changes to the law and the enhancement of the certification system are enough; that they will address "some of the current complaint issues"—complaint issues is putting it mildly—and that "an independent regulator of complaints is unnecessary." We disagree, as, I think, does the majority of the advice sector, which deals with the current complaint issues. I believe Members have received correspondence from the citizens advice bureaux, among other advice providers, which share our concern about the lack of independent complaints procedures. The enhanced certificate system was designed as an interim measure in the long-term goal of independent regulation. The Government have stopped at the stop-gap provisions. We think that not only is robust, independent regulation missing from their proposals, but they are now seeking to take us back even further by deleting clause 26.

The clause provides for one small but central element of an independent regulatory system, which is an independent grievance process. Enforcement services would be treated as a reserved legal activity, with the bailiffs and enforcement agents council acting as the authorising body for individuals and companies carrying out these activities. With the BEAC as an approved legal services regulator, the Office for Legal Complaints would have jurisdiction to deal with complaints about enforcement agents under the ombudsman scheme.

The clause was introduced by Baroness Meacher in the other place, and her words best sum up the reason for its importance:

"The case for oversight of the bailiff industry and for a grievance procedure delivered independently from bailiff firms has been accepted by previous Conservative and Labour Governments. Only an independent complaints ombudsman can deliver redress in a way that is consistent with principles of administrative justice, award financial restitution where appropriate, publish data on good and bad practice and, most importantly, make recommendations for improvements."—[*Official Report, House of Lords,* 18 December 2012; Vol. 741, c. 1476.]

We do not think it is good enough for the Government to say, "We have dealt with this—there will be fewer problems next year." We know that the job done by bailiffs is complex and difficult. Next year, hundreds of families, including many working households, will be hit by cuts to working tax credits, the 1% uprating of social security, the bedroom tax, cuts to council tax benefit and many other austerity measures. We predict that many people will be pushed into tough times and will have to face bailiffs for the first time. We will make a desperate situation even more desperate by not allowing people access to some kind of ombudsman.

The Government have a duty to ensure that when things go wrong, our constituents have a right of redress and have systems that are robust and—as far as they can be—watertight to protect them. Redress to an ombudsman is not an outlandish or unreasonable provision, nor is it unusual in public life; it is the norm.

In a letter sent to the Committee by the Minister, he said that he believes that the provision would be unnecessary and disproportionate. On the contrary, we think that the area is volatile and that it is more necessary than ever to keep the safeguard, and we want to keep clause 26.

Damian Green: I will respond briefly to the hon. Lady, who set out the position that was put equally eloquently in another place by the noble Baroness Meacher. I have two points.

First, new clause 8 will introduce precisely the safeguards that we think will be effective in controlling the minority of enforcement action that is either unnecessarily tough or breaks what any of us would regard as appropriate codes of behaviour. Secondly, it is worth considering in a bit of detail on whose behalf the action is being taken. About 80% of debt enforced by bailiff action is owed to local government. Local authorities are already subject to independent consideration, falling, as they do, in the remit of the local government ombudsman. As such, enforcement action undertaken by bailiffs acting on behalf of local authorities can also fall within the local government ombudsman's remit.

Jenny Chapman: Is the Minister suggesting that someone who is visited in their home by bailiffs and feels that they have been inappropriately dealt with—perhaps there were threats of violence or threats to the children, or all the things that we know go on—has to work out who asked the bailiffs to call and which debt it was, and then work out which ombudsman would be appropriate, and then find their way through the system? Is that the complaints system that the Minister is proposing?

Damian Green: I am talking about an ombudsman system, and the hon. Lady is talking about an ombudsman system, so we are talking about the same system. She said that people have to work out to whom they owe a debt. In my experience, if they have got to that stage, they will have had innumerable bits of correspondence saying, "You owe this council tax debt" or, "You owe

this other debt to a local authority." I think the number of people who find bailiffs at their door but have no idea why is quite small.

Stella Creasy (Walthamstow) (Lab/Co-op): I would love to share with the Minister some of my casework, because that is not my experience regarding people being wrongly chased. Recently, a constituent of mine was chased for a parking ticket that was not his. Fraud takes place. Some of the people we deal with have multiple debts, and one of the things they do is ignore the letters, so they are confused. When bailiffs turn up, it is often the first point when people are confronted with the reality of the level of debt they are in. Does the Minister accept that the system may not be as simple as he hopes?

Damian Green: I am saying that 80% of the debts are to local government, and there is an ombudsman system. The hon. Member for Darlington proposes to keep clause 26, and the extra—I think more effective—proposals in Government new clause 8 will provide for another ombudsman system, so I do not think it would remove any confusion element.

The remaining debt types are overwhelmingly owed to central Government—child support, Her Majesty's Revenue and Customs or Her Majesty's Courts and Tribunals Service. I am sure the Committee is united in saying that we need effective enforcement action to enforce those debts. Otherwise, the burden of paying them falls on hard-working and honest taxpayers. They should not become victims in this event.

Jenny Chapman: Some of the people on the receiving end of bailiff activities are honest taxpayers too. Someone can be an honest taxpayer and owe money to the Child Support Agency at the same time.

Damian Green: If a person is not paying their child support, they should. If the hon. Lady is saying that child support payments are somehow less important than other payments to the public sector—

Jenny Chapman: I am not.

Damian Green: That is what the hon. Lady appears to be saying, and I disagree. In the end, we are arguing about which is the most effective system for the proper enforcement of debt—that should happen—while not allowing some of the irregularities and excesses that we all know have occurred in the past. As I said, new clause 8 provides that effective procedure, and it is more effective than the defective procedure proposed in the existing clause 26. That is why I urge the Committee to vote down clause 26.

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

The Committee divided: Ayes 7, Noes 10.

Division No. 3]

AYES

Chapman, Jenny	McCabe, Steve
Creasy, Stella	Vaz, Valerie
Goggins, rh Paul	
Hanson, rh Mr David	Wilson, Phil

NOES

Barwell, Gavin	Lopresti, Jack
Burrowes, Mr David	Rutley, David
Elphicke, Charlie	Syms, Mr Robert
Green, rh Damian	Vara, Mr Shailesh
Heald, Oliver	Wright, Simon

Question accordingly negatived.

Clause 26 disagreed to.

Clause 27 ordered to stand part of the Bill.

Clause 28

ENABLING THE MAKING, AND USE, OF FILMS AND OTHER RECORDINGS OF PROCEEDINGS

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

Damian Green: I beg to move amendment 70, in clause 28, page 30, line 18, leave out from 'In' to end of line 20 and insert

"the case of any particular proceedings of a court or tribunal, the court or tribunal may in the interests of justice or in order to ensure that a person is not unduly prejudiced—".

Clause 28 provides for the current bans on photography and sound recording in courts to be lifted, under conditions to be set out in secondary legislation. Allowing the public to see first hand at least part of the court process will help to increase their understanding of the justice system, make it less opaque and increase public confidence. However, while it is important for justice to be seen to be done, it cannot be at the expense of the proper administration of justice. The courts deal with serious matters that can affect the liberty, livelihood and reputation of all the parties involved. It is vital therefore that safeguards are in place to protect the rights and interests of individuals connected with proceedings, and the interests of justice.

To that end, we propose that clause 28 should be amended to strengthen the judiciary's veto to stop or suspend filming or to prohibit the broadcasting of filmed material. The clause currently allows the court to decide that particular proceedings should not be filmed or broadcast, where necessary to ensure the fairness of the proceedings or that any person involved in the proceedings is not unduly prejudiced. Those tests should be broadened to allow the judicial veto to be used when any person may suffer undue prejudice as a result of filming or broadcast. As it stands, only individuals who are party to proceedings are protected. However, the court should be allowed to consider the impact on other individuals not party to proceedings, for example the families of victims and offenders, when considering whether to use the judicial veto.

Furthermore, the court should be able to stop or suspend filming or prevent broadcast in the interests of justice, rather than just to ensure the fairness of proceedings. That will enable the judiciary to look at the wider impact of filming and broadcasting, beyond the direct impact on the proceedings in question, when deciding whether to permit filming or broadcasting. While the tests broaden the factors that the court is entitled to consider when deciding whether to allow the broadcasting of proceedings,

[Damian Green]

we believe they still carry a presumption in favour of broadcasting. As such, I commend amendment 70 to the Committee.

3 pm

Jenny Chapman: We welcome the clause and are in favour of the principle that open justice will enhance understanding of our justice system and increase confidence in sentencing. We welcome in particular the amendments introduced by the Government in another place to make any order made by the Lord Chancellor under clause 28 subject to an affirmative resolution procedure. There is precedent for broadcasting certain elements of proceedings in the Supreme Court and that is working well. The number of people using the service shows that there is some public appetite for it and that people may engage with the courts process in this way.

We agree with the measured proposals put forward by the Government to allow judgments and legal arguments in cases before the Court of Appeal to be broadcast, with the proposal to take those forward in time and, with much scrutiny and care, to the High Court. We support the safeguards in the Bill that leave discretion with the court to stop filming, or refuse to allow broadcast of recorded footage, where it is concerned that it would interfere with the proper administration of justice.

We know that the Government intend that victims, witnesses, jurors and defendants would not be filmed in any circumstances. That requirement is not in the Bill but is expected to be included in secondary legislation. Is the Minister happy to put on record that the safeguards against the filming of those parties will be placed in statute? We can support the proposal but we would like the Minister to update the Committee on the work the Government intend to do to ensure that victims and witnesses are properly protected. In which case, I expect we can support the provision.

Damian Green: I am grateful to the hon. Lady for her initial remarks. As she says, we believe that justice should be seen to be done. We also believe there clearly need to be protections. I am grateful for her support for the extension of protection offered under our amendment.

The hon. Lady asked specifically about the secondary legislation. Our current plan is that it should be inclusionary rather than exclusionary. In other words, rather than specifically delineating groups of people who cannot be filmed, it will say who can be filmed. The current plans are that they will be judges and advocates. I hope that meets her consideration; it has just been done in a different way.

Amendment 70 agreed to.

Clause 28, as amended, ordered to stand part of the Bill.

Clause 29 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Mr Syms.)*

3.4 pm

Adjourned till Tuesday 5 February at five minutes to Nine o'clock.