PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CRIME AND COURTS BILL *[LORDS]*

Tenth Sitting

Tuesday 5 February 2013

(Afternoon)

CONTENTS

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

£6·00

PBC (Bill 115) 2012 - 2013

Members who wish to have copies of the Official Report of Proceedings in General Committees sent to them are requested to give notice to that effect at the Vote Office.

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 9 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

Tuesday 5 February 2013

(Afternoon)

[Martin Caton *in the Chair*]

Crime and Courts Bill [*Lords*]

Schedule 15

Dealing non-custodially with offenders

Amendment proposed (this day): 100, in schedule 15, page 262, line 24, leave out 'activities'.—*(Paul Goggins.)*

2 pm

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following:

Amendment 101, in schedule 15, page 262, line 27, leave out 'restorative justice requirements' and insert

'participation in a restorative conference'.

Amendment 102, in schedule 15, page 262, line 28, leave out 'justice' and insert 'conference'.

Amendment 103, in schedule 15, page 262, line 29, leave out 'an activity' and insert

'a meeting or series of meetings'.

Amendment 104, in schedule 15, page 262, line 33, leave out 'and'.

Amendment 105, in schedule 15, page 262, line 36, at end insert

'and

(d) which is facilitated by a restorative justice practioner whose role is to prepare for, facilitate and follow up the meeting.'.

Amendment 106, in schedule 15, page 262, leave out lines 37 to 42 and insert—

'(3) The victim is entitled to participate in any meeting which constitutes or forms part of a restorative conference.

(4) The restorative justice practitioner may allow any other person or persons—

(a) to participate in any meeting which constitutes or forms part of a restorative conference, or

(b) to attend any such meeting for any purpose specified by him including to provide additional information or to act as a supporter of the victim or the offender if he considers that their participation or attendance for that purpose would assist the process of restorative justice.

(4A) Participation by any person in a restorative conference shall require the consent of that person.

(4B) The Secretary of State may make rules about the procedure of restorative conferences.

(4C) Without prejudice to the generality of subsection (4B), rules made under this section may, in particular, make provision—

(a) specifying the circumstances under which the court should consider deferral and imposition of a restorative conference requirement,

(b) specifying which persons may act as restorative justice practioners,

(c) specifying what training and accreditation is required for the registration of restorative justice practioners and the standards they will work to,

(d) conferring or imposing functions on restorative conference facilitators (which may include power to exclude from a meeting constituting or forming part of a restorative conference persons otherwise entitled to participate in it),

(e) about the period within which restorative conferences must be completed, and

(f) about the information that must be returned to the court including the participation of the offender, a report on the restorative conference, its outcome and any action which the offender has agreed to undertake.

(4D) Rules made under this section are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument, and accordingly section 5 of the Statutory Instruments Act 1946 (c.36) applies to such rules.

(4E) Without prejudice to the generality of section 1(5)(a), where the passing of sentence has been deferred the court may include in a community order or in a youth rehabilitation order an activity requirement—

(a) requiring the offender to underatake any action to which he has agreed in a restorative conference, or

(b) where the victim has agreed to participate in a meeting constituting or forming part of a restorative conference at a subsequent time, requiring the offender to participate in that meeting.'.

Amendment 107, in schedule 15, page 262, line 43, leave out 'justice' and insert 'conference'.

Amendment 108, in schedule 15, page 263, line 1, leave out 'activity concerned' and insert 'conference'.

Amendment 109, in schedule 15, page 263, line 2, at end insert—

'(5A) A restorative conference requirement may be imposed whether or not the court considers that there is a real prospect that the defendant will be sentenced to a custodial sentence in the proceedings.

(5B) A restorative conference requirement may not be imposed unless the offender entered a plea of guilty to the offence.'.

Amendment 110, in schedule 15, page 263, line 4, at end insert—

'(7) In this section "participation" may include a victim's entitlement to participate by teleconference, video conference, or having another person represent their views to the offender on their behalf.'.

Paul Goggins (Wythenshawe and Sale East) (Lab): I do not intend to press amendments 101 to 105, but I was not happy with the Minister's response, and I intend to press amendment 106 to the vote.

The Chair: First, we must dispose of amendment 100.

Paul Goggins: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Minister for Policing and Criminal Justice (Damian Green) *rose—[Interruption.]*

The Chair: Are you speaking against?

Damian Green: Yes.

Paul Goggins: We are dividing.

The Chair: I have not put the question on amendment 106 yet. I have put the question to withdraw amendment 100.

Paul Goggins: I wish to put amendment 106 to the vote.

Jenny Chapman (Darlington) (Lab): We have already debated it.

Paul Goggins: We have debated it all morning.

Damian Green: If the hon. Lady is suggesting that she is never allowed to respond at the end of debates, she is inventing parliamentary procedure.

The Chair: Minister, you have responded, but if you have something very brief to add—

Paul Goggins: On a point of order, Mr Caton. The Minister responded in full. I have indicated that I wish to put the amendment to a vote. *[Interruption.]*

Damian Green: On a point of order, Mr Caton. I did indeed have something to say, not least because I had had a conversation with the hon. Gentleman just before, in which I was prepared to tell him something to his advantage about what would happen to the ideas in his amendments at later stages, or in the guidance, which I spoke about extensively this morning. But apparently he does not want me to put that on the record, so I will not.

Amendment proposed: 106, in schedule 15, page 262, leave out lines 37 to 42 and insert—

'(3) The victim is entitled to participate in any meeting which constitutes or forms part of a restorative conference.

(4) The restorative justice practitioner may allow any other person or persons—

(a) to participate in any meeting which constitutes or forms part of a restorative conference, or

(b) to attend any such meeting for any purpose specified by him including to provide additional information or to act as a supporter of the victim or the offender if he considers that their participation or attendance for that purpose would assist the process of restorative justice.

(4A) Participation by any person in a restorative conference shall require the consent of that person.

(4B) The Secretary of State may make rules about the procedure of restorative conferences.

(4C) Without prejudice to the generality of subsection (4B), rules made under this section may, in particular, make provision—

(a) specifying the circumstances under which the court should consider deferral and imposition of a restorative conference requirement,

(b) specifying which persons may act as restorative justice practioners,

(c) specifying what training and accreditation is required for the registration of restorative justice practioners and the standards they will work to,

(d) conferring or imposing functions on restorative conference facilitators (which may include power to exclude from a meeting constituting or forming part of a restorative conference persons otherwise entitled to participate in it),

(e) about the period within which restorative conferences must be completed, and

(f) about the information that must be returned to the court including the participation of the offender, a report on the restorative conference, its outcome and any action which the offender has agreed to undertake.

(4D) Rules made under this section are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument, and accordingly section 5 of the Statutory Instruments Act 1946 (c.36) applies to such rules.subsequent time, requiring the offender to participate in that meeting.'.

(4E) Without prejudice to the generality of section 1(5)(a), where the passing of sentence has been deferred the court may include in a community order or in a youth rehabilitation order an activity requirement—

(a) requiring the offender to underatake any action to which he has agreed in a restorative conference, or

(b) where the victim has agreed to participate in a meeting constituting or forming part of a restorative conference at a subsequent time, requiring the offender to participate in that meeting.'.—*(Paul Goggins.)*

Question put, That the amendment be made.

The Committee proceeded to a Division.

The Minister of State, Home Department (Mr Jeremy Browne): On a point of order, Mr Caton. As a member of the Committee, am I allowed to vote?

The Chair: Yes.

The Committee having divided: Ayes 8, Noes 9.

Division No. 4]

AYES

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

NOES

Browne, Mr Jeremy	Rutley, David
Green, rh Damian	Syms, Mr Robert
Heald, Oliver	Vara, Mr Shailesh
Jones, Andrew	Wright, Simon
Lopresti, Jack	

Question accordingly negatived.

Paul Goggins: Perhaps I may resume with the speech I would have expected to start four minutes ago but for the late arrival of some Government Members. The amendment we discussed this morning does not change where we are as a Committee. I have already expressed my profound disappointment with the Minister's response to the points that I made on amendments 100 to 110. I was surprised by the dismissive way in which he spoke, because I know that he has more time for restorative justice and its place in the mainstream of the criminal justice system than he seemed to indicate. If he has

[Paul Goggins]

further opportunity, I hope that he will perhaps put on the record rather more positive comments than the ones he made this morning. While I did not expect him to accept my amendments lock, stock and barrel, I did expect more engagement from him. I hope that it will be possible to get a clearer, firmer and more committed engagement on these issues.

The Bill as it is currently drafted does not say who is responsible for seeking the consent of those who will take part in restorative justice. Even though it spells out that there are restorative justice activities, it does not say what they are. The model that I proposed is the one that reflects the experience in Northern Ireland and elsewhere. It is of a properly co-ordinated restorative justice conference at which there is engagement between the victim and the offender.

The Solicitor-General (Oliver Heald): On a point of order, Mr Caton. It might be that some lack of attention on my part has led to this conclusion, but I thought that we had finished this group. The right hon. Gentleman moved to withdraw amendments 101 to 105. We then had a Division on amendment 106, which concluded the group.

The Chair: It did not actually conclude the group, because it goes right through to amendment 110. None the less, I should like to know where you are going with this, Mr Goggins.

Paul Goggins: I am still deliberating. One or two Government Members might be called away on urgent business, so I am still deliberating on whether to press the other amendments in the group. I have two real difficulties here. First, the Minister talked about local delivery and innovation, and I do not disagree with him on that. Of course it is necessary to have them. However, he would not talk about local innovation in relation to policing, probation or the courts. It is as if everything could be determined at the local level by those who operate on the ground. Of course we require the talents and the skills of people at a local level and their innovation, but it must happen within a framework. My amendments propose a framework in legislation that is backed up by statutory guidance that would give restorative justice some real standing within the criminal justice system. I fear that the Minister's reliance on non-statutory guidance sends out a clear message that the importance of restorative justice has not quite reached the level that we thought it had, which is regrettable. I genuinely hope that the Minister is prepared to reconsider some of those things.

Secondly, the Minister says that the non-statutory guidance is the way forward, but all my amendments are based on the Justice (Northern Ireland) Act 2002, which is a statutory scheme in legislation that has operated so well in Northern Ireland. It has a 70% victim participation rate and a 89% victim satisfaction rate. That is not non-statutory guidance; that is legislation backed up by statutory guidance. I do not see how the Minister can say that it does not work, because it patently does. It has worked in Northern Ireland, and could work in England and Wales.

The other matter about non-statutory guidance that will concern the Committee is that it takes such a measure further away from Parliament and the scrutiny of Committees such as this, and puts it in the hands of the Minister to get on and deal with. It diminishes our ability to scrutinise it in a way that we are able to do in the Committee today.

Having withdrawn some amendments and pressed one to a Division, which we regrettably lost narrowly by one vote, I now have to make a decision about the other amendments. I do not want to be a source of division in this Committee or in Parliament. I know, because of the extensive conversations that I have had, that there is support for restorative justice across the House. Members from all parts want to see it have a firmer place in the mainstream of the criminal justice system, and I want progress, not division.

Steve McCabe (Birmingham, Selly Oak) (Lab): I wonder whether my right hon. Friend would find things easier if the Minister were able to reassure him that some of the points that have been made would be picked up before the Bill had entirely completed its legislative process.

Paul Goggins: I am grateful to my hon. Friend because that is exactly what I want to put to the Minister. I have two specific requests to which I hope he will respond. Will he arrange for a meeting between me, the appropriate Minister—if not him, then the one who leads on restorative justice—and the Restorative Justice Council, and perhaps other Members of this Committee from all parties, to look in detail at the amendments and how they might operate, either in the Bill or in guidance, and to have that meeting before Report, so that we may explore this in greater detail and find common ground, where we can?

Secondly, will the Minister confirm that he is not ruling out the possibility of further amendments in relation to part 2 of schedule 15 that might help to clarify restorative justice, operating pre-sentence in a way that would be helpful to us in Parliament but most particularly to the victims of crime? Can there be a meeting before Report, and will the Minister confirm that he is not ruling out the possibility of further amendments on Report?

Damian Green: I am still not clear what the right hon. Gentleman is doing, since he has not told the Committee yet.

Paul Goggins: I am seeking an assurance before I decide whether to press my amendment. It is as simple as that, Mr Caton.

Damian Green: I will always consider the possibility of new amendments. I am not sure that the meeting in the form that the right hon. Gentleman suggests would be creative. It sounds a very large meeting to discuss detailed amendments and such. Perhaps the sensible thing would be for him and me to have a conversation outside this Committee.

Paul Goggins: I am always happy to have a conversation with the Minister, outside this meeting or at any time. I ask him to consider involving others, not a massive cast list, such as one or two of his advisers and one or two

people who have been advising me. That would be a group of half a dozen people; that is not asking the earth.

Damian Green: Without specifying who is there, it is difficult for me to say yes or no. The sensible thing is for the two of us to talk.

Paul Goggins: All I can say is that when I sat in the chair where the Minister is sitting, if an Opposition Member had, in his own words, put forward arguments that were good-spirited, well-intentioned and well directed, the idea of not having a meeting before Report would have been unthinkable. I am going to take what the Minister said in good faith—that he is prepared to have a meeting. He has indicated that he is prepared to meet with me and I am prepared to talk to him about that meeting. I hope that he will be constructive; I am sure he will. That ought to be his nature and he is the Minister and in the end he is in charge of the Bill and can decide what goes in or not. I will put my trust in the Minister—I hope it is not misplaced.

Jenny Chapman: I beg to move amendment 88, in schedule 15, page 263, line 37, before 'an electronic', insert 'in a case where the court also imposes a supervision requirement,'.

The Chair: With this it will be convenient to discuss amendment 89, in schedule 15, page 264, line 17, before 'an electronic', insert 'in a case where the court also imposes a supervision requirement,'.

Jenny Chapman: The amendments are about electronic monitoring, more commonly known as tagging of offenders. They would prevent an electronic monitoring requirement being handed down without being accompanied by a supervision requirement.

The reason we are concerned is that there is no evidence that tagging without supervision makes much impact either on reoffending or rehabilitation. There is not that much evidence that it makes a difference with supervision, to be fair. We think there is at least some opportunity with supervision to use tagging to its best effect, importantly to detect breach. We know that our probation staff at the moment are good at detecting when someone should be returned to custody, as happens frequently. It is an important method by which the public are kept safe when offenders are being held in the community.

2.15 pm

Part 4 of schedule 15 provides for an electronic monitoring requirement to be imposed as a requirement in its own right, rather than, as at present, as an ancillary measure to another requirement. Electronic monitoring, or tagging, is a valuable tool in the supervision of offenders and was accordingly included in the provisions for community orders in the Criminal Justice Act 2003. It provides an effective means of monitoring compliance, and we support the use of improved technology, such as GPS tagging, where it can be used to improve the effectiveness of sanctions and public safety in the community. The amendment addresses some concerns over the effectiveness of the Government's proposals. The contract will be expensive, costing millions of pounds, so we want to ensure that the money is spent wisely. Some £1 billion will be spent on the contract to tag offenders, and we want to be assured that the decision is not just the result of an effective sales job from G4S and Serco—the two current suppliers—and is based on something more sound than that.

It goes without saying that community sentences deal with offenders in the community, but it is vital for public safety that we get the provisions absolutely right. Electronic monitoring does exactly what it says. It monitors certain elements of an offender's behaviour, but it does nothing to challenge it. We have serious concerns that the use of electronic monitoring without, or instead of, other valuable requirements could be detrimental to the effectiveness of sentences.

In the response to the consultation, the Government note that there was support for tracking as long as it has the primary purpose of addressing reoffending or protecting the public. What evidence do the Government have that tagging is an effective means of tackling reoffending? Neither we nor any of the major interest groups have been able to find any. Her Majesty's inspectorate of probation does not have any either. In fact, its 2012 report notes:

> "It is, of course, unproven whether EM is effective in preventing reoffending"

and we share that view. On the whole, responses to the consultation argued that the requirement needed to be backed up with further rehabilitative requirements or that the preventive effect of a tag was likely to last for the duration of the order only—if we are lucky. The Government's impact assessment is far from encouraging, because it notes:

> "Use of tracking may discourage offenders from committing further offences".

However, no one knows that for sure. It is an awful lot of money to spend without a little more evidence on which to base the investment, especially given the evidence to the contrary that, with a bit of supervision and amending the way that the contract is done, a much more effective solution could be found.

It is our concern that the Government may consider electronic monitoring as an easy, non labour-intensive alternative to requirements, such as supervision, that do the genuine heavy lifting of probation work. Our amendment would provide that an electronic monitoring requirement could be imposed only with a supervision requirement, ensuring that, as well as the offender being tracked, the offender's behaviour is also tackled. With current technology, the tag cannot tell you whether the subject has been drinking or has been abusive to their partner. We even have plenty of examples of curfews being breached when someone is wearing a tag, because the technology is not infallible.

The changes would ensure that an offender had contact with probation staff, during which their behaviour could be challenged and efforts to comply with their order and reduce their risk of reoffending could be supported. All the evidence we have and all the research that has been done tells us that what really makes a difference is the relationship with, and the monitoring by, an offender manager. Where, therefore, is the front line of the rehabilitation revolution, as it is being called, to be found? At the moment, it seems to be all about speeches, with what we are doing on the ground evidence-free and, by the look of it, potentially very expensive.

There is serious concern about the contract for the tagging. The Government propose to contract out the majority of the supervision work to providers in the private and voluntary sectors. The enthusiasm for tagging might be driven by a belief that it is somehow an easy service to contract out, and if tagging is considered separate from other community orders that might be the case, but no one seems to agree with the Government on that, if that is indeed their argument. Our concerns about the Government's handling of the tagging contract, and the risk of lengthy and exceptionally expensive contracts that do not permit for advances in technology, suggest that it might be less easy than it looks.

I hold my hands up: if Labour won the next election we would not want to be lumbered with the best part of a seven or eight-year deal with a couple of contractors. It seems that the contract will be carved up between, at best, two providers. Without wishing to insult the Ministry of Justice, the track record of such contracting is not great. The Minister will be aware of the débacle over interpreters, and we certainly do not want to see anything similar with electronic monitoring.

Steve McCabe: While my hon. Friend is on that subject, do we have any indication of the cost? I understand that the current budget for tagging with community punishments is £120 million, but presumably the Minister plans to spend much more.

Jenny Chapman: That is my understanding also. It would be helpful if the Minister could provide the Committee with an estimate of the cost of this provision in the Bill, and an idea of how many offenders he expects will be tagged. Unless tagging is accompanied by supervision, it is just money down the drain. When we are making cuts elsewhere, that is a lot of money to spend on something that has no proven effectiveness.

The probation inspectorate also reported concerns about the number of cases in which electronic monitoring was being included in community orders without the recommendation of a pre-sentence report. In 2008, it found that 90% of community orders with electronic monitoring curfews had been made following a pre-sentence report but, worryingly, only 29% are now imposed with the benefit of such a report. The Minister will understand why I am concerned. The inspectorate raised concerns about the targeting of community orders with electronically monitored curfews and about their being used in inappropriate situations, such as domestic violence cases. Those concerns are extremely serious.

We will obviously listen carefully to what the Minister says, but we want some explicit assurances that tagging will not be used as widely as seems to be suggested, without pre-sentence reports and, importantly, without supervision. We must not get too carried away with the use of electronic monitoring and roll out provisions even further. We need to be sure that the basic use of the tool is targeted effectively and responsibly. We have some serious concerns to which I would be grateful if the Minister would respond.

Damian Green: I should start by saying that there is a specific issue with the amendments in relation to their effect where electronic monitoring is imposed to monitor compliance with another requirement—currently usually a curfew—but I will focus the main purpose of my remarks on the concerns that the hon. Lady has raised.

As the Committee will be aware from earlier discussions, we believe that the way to make community orders more effective and credible is for them to include an element that fulfils the purpose of punishment. We believe that to be essential if community orders are to carry the confidence of both the courts and the public. However, provided that is met, our approach has been to give the widest possible opportunity for the courts to use their discretion to impose the most suitable and proportionate requirement or combination of requirements for the offender before them. That is why, in designing the new mandatory punitive element of the community order, we have left it up to the courts to decide what fulfils the purpose of punishment in relation to each individual offender. Therefore, we are not attracted by restrictions, such as those set out in these amendments, that risk fettering the court's discretion about which requirements to impose in a particular case, unless there is a compelling need for them.

In the case of the new location monitoring—"tracking", "tagging" or whatever Members want to call it—provision, I am not persuaded that there is such a compelling need. Tracking will be available to the courts to fulfil the purpose of deterrence from committing further crimes. We believe that it will discourage offenders from reoffending, given that tracking data may be used to link them to the location of an offence. The type of offenders we envisage being subject to the new tracking requirement would be those prolific offenders, such as burglars, who continue to reoffend, causing repeated misery in the communities they live in.

The hon. Lady asks—not unreasonably—for evidence that tracking discourages reoffending. Some of the evidence that I bring to this debate actually comes from meeting offenders in Leeds who have been tracked; I met them when I visited the police and probation service there. The point made by police and probation practitioners in Leeds, which has also been made to me by senior police officers around the country, is that tracking and tagging has indeed had a mixed history, but that as technology improves and as the ability to track someone accurately increases, tracking becomes more effective. What I found interesting was that those who had been tagged agreed that tracking was stopping them from committing crimes.

Jenny Chapman: I am not surprised that the Minister was invited to meet offenders who thought the process was working well. We are not saying that there is no place for electronic monitoring of offenders; we think that it can work very effectively when accompanied by supervision. The Minister mentioned improvements in technology. We need to be reassured that although the contract will enable improvements and advances in technology that are sure to come because it is such a very long contract, those advances will happen without the taxpayer incurring extra costs. Is he able to do that?

Damian Green: Indeed. I was going to come to the issue of costs, but I will deal with it now if the hon. Lady prefers. The twin aims of the new competition for the electronic monitoring contract are to drive down costs and to introduce new technology. As she will understand, the competition for the contract is still going on, so it is impossible for me to give her a final unit cost. However, I assure her and the Committee that

the concerns that she has raised are precisely the concerns that the Government have. We want the process to be effective; we want it to be open to new technology, because I have seen on the ground that it is more effective, and to drive down unit costs.

Steve McCabe: Is there any evidence the Minister can point to—not an example on this occasion—that shows the effectiveness of electronic monitoring in the UK in reducing offending?

Damian Green: Those who have been tagged, and have received this kind of supervision plus a curfew, commit fewer reoffences within two years of the order being made, compared with those who just receive traditional supervision. The short answer is yes, there is some evidence. I accept all the caveats and the scepticism, but those involved in the process agree on the key nature of the application of new technology and the appropriate combination, both of which seem capable of driving down reoffending, which is obviously the whole purpose. The type of offenders we envisage being subject to the new tracking requirement would be precisely those prolific offenders, such as burglars, who continue to reoffend, causing repeated misery in their communities.

2.30 pm

Paul Goggins: I strongly endorse the search for appropriate use of electronic tracking; indeed, I was involved, in 2004, with the early pilots for electronic tracking and I hope that something has been learnt from them. The technology certainly ought to be a lot cheaper now. When the Minister was talking about the kind of offenders he intends to use tracking with, he twice referred to burglars. I would have thought that sex offenders would be quite high on his list. Will he confirm that the Government's intention is to use tracking for sex offenders?

Damian Green: Well, it could be. We envisage that tracking will be used for prolific offenders of all kinds who are liable to reoffend, and the right hon. Gentleman is right to identify sex offenders in that category. Clearly, the potential attraction to a court of imposing that kind of order—or part of an order—would be high, so I do not think that there is anything between us on that.

Tracking is not intended to be punitive, so in most cases we expect the courts to impose a punitive element alongside it. Imposing a tracking requirement does not stop the court imposing rehabilitative requirements, so as I keep emphasising, it would be part of the response to an individual issue, not the whole response.

Jenny Chapman: The Minister said that tracking was not intended to be punitive, but this morning we debated a clause that said that it could be punitive. I am a bit confused, because this morning the Committee decided that tracking could be punitive.

Damian Green: I said this morning that it would be for the courts to decide that one of the elements of a sentence had to be punitive, and that will be different in different cases, but tracking on its own has to be done with something else to be effective and it cannot be considered punitive. It may be that the hon. Lady, from her earlier remarks, is concerned that the new tracking requirement will be used as a substitute for what she sees as proper oversight of an offender, as provided by the obligation under the supervision requirement to attend appointments. I want to be clear to the Committee that that is not our intention.

Where the court imposes a tracking requirement as part of a community order or suspended sentence order, the responsible officer in relation to the offender will be an officer of a provider of probation services and will have the statutory duties set out in the Criminal Justice Act 2003. These duties are to make any arrangements that are necessary in connection with the requirements of the order, to promote compliance with the requirements and to take any necessary enforcement action. I think the hon. Lady asked who would be the front lines managing the process, so I hope that answers her point.

Those duties are not optional; they are mandatory and in our view, require the responsible officer to take an active role in supporting and overseeing the progress of the offender subject to a tracking requirement. In addition, they are accompanied by a requirement on the offender to keep in touch with his responsible officer, according to instructions given.

We accordingly do not subscribe to the view that an offender subject to a tracking requirement also needs a supervision requirement to support and manage the order. Supervision is a valuable component of a community order where the court considers that it is necessary in its own right to promote the offender's rehabilitation. There may be cases where the court decides to impose a supervision requirement alongside a tracking requirement, but we believe that decision should be left to the discretion of the court. For those reasons, I invite the hon. Lady to withdraw the amendment.

Jenny Chapman: I really am tempted to press the matter, but we will wait until Report. It is an awful lot of money to spend on something that we do not know works and if we are spending it on this, it is being taken from policing or probation budgets where it could be argued that it would be better spent.

We should look at the experience in the United States when deciding whether the system is something we want to embark on at such a scale. The research that has been conducted found that in the US, where tags are more advanced, the role of local police and probation services is significant. It says that £883 million could have been saved over the past 13 years if tagging had been implemented in a different way. That raises lots of questions about whether we are again spending money without giving it proper thought, to fill a gap in the Government's Bill because they have not properly thought through what to do with community sentences. Tempted as I am to divide the Committee, I think we will give the provision a little more thought, allow the Government time to come back with something a bit more intelligent, and perhaps come back to it on Report. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Damian Green: I beg to move amendment 79, in schedule 15, page 269, line 16, leave out paragraph 29.

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

[The Chair]

Amendment 90, in schedule 15, page 269, line 16, leave out 'with probation trusts' and insert

'for the provision of supervision of offenders'.

Amendment 91, in schedule 15, page 269, line 16, leave out

'require each probation trust to'.

Amendment 93, in schedule 15, page 269, line 22, at end insert—

'(3) The Secretary of State shall in each year publish a strategy for the delivery of appropriate and effective services for female offenders in the criminal justice system.'.

Damian Green: Part 7 of schedule 15 was inserted into the Bill on Third Reading in the other place. It requires contracts between the Secretary of State and probation trusts to place an obligation on trusts to make appropriate provision for the delivery of services for female offenders. This includes making provision for women in unpaid work and rehabilitative programmes, with their particular needs in mind. The hon. Member for Darlington seeks to amend the provision by replacing references to probation trusts with a more general requirement for contracts made by the Secretary of State for the supervision of offenders to make appropriate provision for the delivery of services to female offenders. In addition, she also seeks to introduce a new duty on the Secretary of State to publish an annual strategy detailing delivery of appropriate and effective systems for female offenders in the criminal justice system. I will deal first with amendment 93, as what I say will also be relevant to Government amendment 79, which seeks to remove part 7 from schedule 15.

Let me first make it clear that the Government are committed to addressing the factors associated with women's offending, and to taking a different approach where there is a need to differentiate provision for female offenders. Where the challenges are different, our responses likewise should be different. Only in that way can we rehabilitate female offenders and enable them to lead positive and productive lives.

We fully understand and are sympathetic to the concerns that prompted the insertion of part 7 of schedule 15 by the other place. We readily acknowledge that there are often many complex factors associated with women's offending, including domestic violence, sexual abuse, substance misuse and homelessness.

Let me assure the Committee that a considerable amount of cross-Government work is already taking place to address those needs. Some Committee members may recall that my hon. Friend the Member for Reigate (Mr Blunt) gave a speech last year setting out the Government's strategy for female offenders, which aims to ensure that women will benefit in key areas such as mental health and drug recovery. The strategy covers tackling violence against women, as well as troubled families and employment. It reflects the good work being done by the National Offender Management Service to implement many of the recommendations in Baroness Corston's report. That work of course continues.

However, I do not believe that a statutory requirement to publish an annual strategy for female offenders is necessary, or indeed the best way forward. We have already committed to publishing our strategic priorities for female offenders. I am pleased to say that my colleague, the Minister for Victims and Courts, my hon. Friend the Member for Maidstone and The Weald (Mrs Grant), whose portfolio includes responsibility for women in the criminal justice system, has been working to ensure that we get our current priorities right within the changing landscape of our rehabilitation revolution, and that women's specific needs are properly addressed. As part of the process, she is undertaking a series of visits to women's prisons and women's community services run by the voluntary sector, to see at first hand the needs of female offenders and how they can be met.

The Government will publish details of our priorities for female offenders and how we will deliver them before the end of March. It will be a living document and will be updated in response to changing circumstances and new priorities. At this time of considerable change, that is more helpful both to Government and to stakeholders than a static document, updated annually, as envisaged by amendment 93.

It follows from what I have said that the Government's concern is not with the underlying principle behind the Lords amendments, now part 7 of schedule 15. However, we do not believe that the provisions are helpful, and I will explain why. As Members are aware, the Government recently published their proposals for taking forward the next steps of the rehabilitation revolution. The consultation document sets out our proposals to reform the management and rehabilitation of offenders in the community through a new focus on life management and mentoring support for offenders. Offenders with complex problems and chaotic lifestyles need support to turn their lives around, combined with proper punishment. That is the tough but intelligent package we intend to provide.

The consultation includes proposals on the provision of a wide range of services and proposals to introduce payment by results, so that in the future the taxpayer pays for services that demonstrate a reduction in reoffending. National commissioning would replace commissioning by probation trusts. We intend to open up rehabilitative services to a wide range of new providers in the private and voluntary sectors, who will bring their creativity and innovation to bear on this pressing problem and be paid by results to drive down reoffending.

Paul Goggins: Will the Minister confirm whether within the new framework for commissioning probation services the Government intend to agree contracts with providers specifically for female offenders?

Damian Green: We are still at the consultation stage. People are bringing forward ideas. That is certainly an interesting idea, which we are considering, but we are in the middle of a consultation, so all good ideas are gratefully received, particularly from the right hon. Gentleman.

Given the ongoing consultation and proposed changes to the structure of service delivery and probation trusts, it could be unhelpful to introduce legislation specifying commissioning duties for women's services. We need to hear consultation responses and reach a considered view on how best to deliver services that will enable female offenders to address the often complex factors associated with their offending.

With changes on the horizon, we must be mindful that introducing additional statutory provisions could have unintended consequences. Although I appreciate

that amendments 90 and 91 take account of the Government's consultation, they would still leave us with a provision that is at best premature, given the ongoing consultation, and at worst could impose a counter-productive straitjacket on offender management services.

I assure hon. Members that we recognise that a particular set of needs and priorities are relevant to services for female offenders, and we will ensure they are addressed in our overall approach. Our consultation document specifically asks for views on how we can use the new commissioning model, including payment by results, to ensure better outcomes for female offenders.

I am pleased that as part of the consultation, the Under-Secretary of State for Justice, my hon. Friend the Member for Maidstone, recently chaired a stakeholder event to look in detail at how we might improve services for female offenders. That reflects her strong personal commitment to the issue, as well as the fact that the Government are still gathering views on the shape of rehabilitative services.

Finally, I assure the Committee that the removal of part 7 from the Bill will not undermine the delivery of appropriate services for female offenders. Indeed, there are already clear public commitments to that effect, which apply to providers commissioned by the Secretary of State to deliver offender management services. Objective 2 of the Ministry of Justice equalities objectives ensures:

"Provision of gender-specific community services to improve support for vulnerable women in the criminal justice system."

To support that, the Government have provided an additional £3.78 million to probation trusts to fund 31 women's community services in 2012-13.

Such services aim to address the factors associated with women's offending, including substance misuse, mental health issues and histories of domestic violence and abuse. The centres also offer options for the courts to support and complement the statutory work of probation trusts in the delivery of community and suspended sentence orders and to support women in the successful completion of post-release licences. That additional funding is now embedded in National Offender Management Service community budget baselines, to allow for continued support of provision for women in 2013-14.

I hope I have reassured the Committee that the Government remain committed to ensuring the provision of appropriate services that address the particular needs of female offenders, and that ongoing work demonstrates that. In the circumstances, I hope that the hon. Member for Darlington is reassured and will agree not to press her amendments. I ask the Committee to support amendment 79.

Jenny Chapman: No, I am not reassured at all. Part 7, added in the other place, makes a lot of sense. I feel frustrated because we have been here before. We had these arguments all through the passage of the Legal Aid, Sentencing and Punishment of Offenders Bill; we were promised that there would be improvements and a strategy, and that priorities would be published. Nothing happened. This time, we are told that it will happen in March. I do not feel minded to be reassured. I would like to press the amendment to a Division, to keep part 7.

2.45 pm

Part 7 determines that appropriate provision of services for female offenders must be supplied. The debate has been had over and over again in recent years, and it is disappointing that we are having to fight to protect part 7 from being removed and that we are having this row yet again. It leads people to think that there is some sort of difference between us on issues particular to female offenders, but I do not think that there is. We agree on those issues, but the Government do not seem to pin themselves down on what they should do about the matter. They are prepared to invest some money—about £3 million on 30 projects—but it is as though they are saying, "That's the job done." I appreciate that this is not the Minister's area of responsibility, but given that he represents the Government, it would be good if he took the message back to the relevant Minister so that we might see some action on the issue.

Part 7 was added to schedule 15 by consensus in the other place, one of whose Members is the noble Baroness Corston. As many Committee members know, although some may not, the Corston report was published almost six years ago, and I understand that its recommendations were recently adopted as Liberal Democrat policy. *[Interruption.]* I am invited by my right hon. Friend the Member for Delyn to repeat the fact that the recommendations, of which I think there were 51, of the Corston report were adopted in full by the Liberal Democrats as recently as 2011—goodness.

Mr Robert Syms (Poole) (Con): A long time ago.

Jenny Chapman: Yes.

Our view is based not on a desire for preferential treatment for women, as the Government themselves agree, but on an evidenced understanding of the differences in circumstances of, and the most effective means of tackling reoffending in, the female offending population.

I debated this issue in Westminster Hall with the hon. Member for Shipley (Philip Davies) a few weeks ago, so I know that there is no consensus across the House. However, I welcomed the response of the Minister in that debate, and she and I were in a great deal of agreement, if not consensus, on what we should be doing. But we seem to be lacking any action from the Government, which is the point that we are trying to make through the amendments and our desire to retain part 7.

As I have said, the argument has been had many times before, and it has pretty much been won. Progress was made under the previous Labour Government, particularly through the leadership of my hon. Friend the Member for Garston and Halewood (Maria Eagle), and we have seen the excellent, targeted supervision work that goes on in women's centres around the country. It is great that the Minister is going to visit some of them, although it is not all that reassuring, given that she is the responsible Minister.

Members on both sides of the House have spoken eloquently in support of the need for intelligent provision of women's services, and the Government included provisions for female offenders in the consultation. The Government's response states that they

"recognise that women can have a different profile of risks and needs to men",

[Jenny Chapman]

and are committed to ensuring that there is suitable provision in the community to

"help to address factors associated with women's offending, such as mental health; substance misuse; domestic and sexual violence; housing, finance and employment needs."

We are therefore divided not on whether it is sensible to take action, but on how serious we are about getting on with it. The Minister will forgive my sense of frustration, having been through this row already—with, it has to be said, different Justice Ministers—and having been through this all before, at seeing absolutely no progress. After LASPO, which does not have a single direct mention of female offenders, the Government are now seeking to remove the only mention of them that has been successfully inserted into this Bill. Their argument is on the technicalities of it and the uncertainty about probation reform, but, having listened to the Minister, I do not think that that is sufficient reason to remove a statutory duty to make progress in an area that so badly needs it, and on which the Government have stalled, with progress having slowed since their arrival in office.

Helpfully for the Government, amendments 90 and 91 would solve their concerns. They remove any specific mention of commissioning structures. When this proposal was included in the Lords, it made reference to probation trusts. Since then, we have heard announcements about the Government's intention to change the way probation services are provided. We did not want that to be an impediment to the Government accepting this part of schedule 15, so our amendments would make paragraph 29(1) read:

"Contracts made by the Secretary of State for the provision of supervision of offenders shall make appropriate provision for the delivery of services to female offenders."

That allows for a change in the way that these contracts may be let in the future.

If the Government are serious about their commitment to providing a system that works, they should be more than happy to withdraw their opposition to part 7 and consider instead our amendments. If they are not, that is telling of their lack of genuine commitment to this area of reform. I do not think that what the Minister has said helps to shift us from that point of view.

Amendment 93 is simple, recognisable—it is almost word for word an amendment that we tabled to the Legal Aid, Sentencing and Punishment of Offenders Bill—and would provide for a duty on the Secretary of State to publish a strategy on services for female offenders. When we tabled it previously, we were fobbed off and told, "Oh, we'll do it in a few months' time." That has not happened and it is just not good enough. We know that the Government are not opposed to the worth of such a strategy, as they have promised one before in their responses to the attempted amendments to the LASPO Bill and October's consultation. The strategy, it was said, would be published before the end of 2012, but still we have not seen it. The Minister now says that it will happen in March, but I think he will forgive our lack of faith in that commitment.

This is not an area in which the Government can keep providing words but no action, and offering supposed support but running scared from anything that commits them to taking action. This is an issue on which we need to and can make progress, and part 7 should be welcomed by the Government as an indication of their desire and plans to do just that. I want to push the Committee to a vote on this issue. The Government keep saying that legislation is not needed because a strategy is coming, but it has not come. We now need the pressure of legislation to make the Government take this issue seriously.

Damian Green: I am disappointed by the rather churlish tone of the hon. Lady's remarks. She says that she wants action; I detailed the extra money, the new community services being set up in more than 30 areas, and the personal commitment of the Minister for Victims and the Courts, my hon. Friend the Member for Maidstone and The Weald. I agree that that there is not much on this issue that actually divides the House, but if the hon. Lady insists on pressing for a vote, I urge the Committee to vote in favour of Government amendment 79.

Question put, That the amendment be made.

The Committee divided: Ayes 10, Noes 7.

Division No. 5]

AYES

Browne, Mr Jeremy	Lopresti, Jack
Elphicke, Charlie	Rutley, David
Green, rh Damian	Syms, Mr Robert
Heald, Oliver	Vara, Mr Shailesh
Jones, Andrew	Wright, Simon

NOES

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

Question accordingly agreed to.

Amendment 79 agreed to.

The Chair: Ms Chapman, do I understand that you want to press amendments 90, 91 and 93 to a Division?

Jenny Chapman: The amendments were to change part 7, which the Government have just removed.

The Chair: I am sorry; I had a note. We will move on.

Schedule 15, as amended, agreed to.

Clause 32

DEFERRED PROSECUTION AGREEMENTS

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

The Solicitor-General: Clause 32 does no more than give effect to schedule 16, which establishes deferred prosecution agreements. In the circumstances, I propose that we have the substantive debate on the relevant provisions when we reach the schedule.

Question put and agreed to.

Clause 32 accordingly ordered to stand part of the Bill.

Schedule 16

DEFERRED PROSECUTION AGREEMENTS

Jenny Chapman: I beg to move amendment 94, in schedule 16, page 274, line 27, at end insert—

'Sentencing guidelines for DPAs

4A (1) The Sentencing Council must produce a guideline on the financial penalties and remedial measures appropriate for a DPA.

(2) The Coroners and Justice Act 2009 is amended as follows—

(a) at the end of section 120(1) insert "and corporate bodies, partnerships and unincorporated associations who have been charged with an offence but whose prosecution has been deferred under Schedule 16 to the Crime and Courts Act 2013"

(3) Where the Council has prepared guidelines under subsection (1), it must publish them as draft guidelines.

(4) The Council must consult the following persons about the draft guidelines—

(a) the Secretary of State;

(b) such persons as the Secretary of State may direct;

(c) such other persons as the Council considers appropriate.

(5) Before the guideline is permitted to come into effect, it shall be laid before Parliament, which shall have the opportunity of debating it.

4B (1) If the guideline is amended or replaced, the Sentencing Council must publish the new guideline as a draft guideline.

(2) The Sentencing Council must consult the following persons about the new guideline—

(a) the Secretary of State;

(b) such persons as the Secretary of State may direct;

(c) such other persons as the designated prosecutors consider appropriate.'.

The Chair: With this it will be convenient to discuss amendment 95, in schedule 16, page 275, line 9, at end insert—

'(6) A DPA must not contain a term granting a blanket indemnity for prosecution for undisclosed criminal acts committed in the past.

(7) A DPA must have regard to the DPA guideline issued by the Sentencing Council.'.

Jenny Chapman: It might be helpful for colleagues if I briefly explain what a deferred prosecution agreement is. A DPA is an agreement between a prosecutor and an organisation facing prosecution for an alleged economic or financial offence. The prosecutor agrees to institute, but defer, criminal proceedings against the organisation—normally, we are talking about big companies here. In return, the organisation agrees to comply with a set range of terms and conditions, such as paying a financial penalty; compensating victims; disgorging—a great phrase—any profits made from the alleged offence; or making changes to its behaviour, policies or employee training. A DPA includes an expiry date on which it ceases to have effect. If the company breaches its conditions, the DPA is terminated and it will then be prosecuted. DPAs will apply only to financial and economic crime and to organisations, not to individuals. They are being adopted because it is currently very difficult to prosecute for that sort of crime, and even when a case can be brought forward, it takes a very long time and costs an awful lot of money to do so.

Amendment 94 provides for the Sentencing Council to publish guidelines on what penalties and remedial measures are appropriate for different levels of offence. Amendment 95 ensures that a DPA cannot include blanket indemnity for a company's past crimes, including ones that have not even been disclosed. The amendments deal with minor changes and propose some valuable improvements that the provision would benefit from.

Schedule 16 provides for the importation of deferred prosecution agreements from the United States, as a tool for dealing with corporate economic and financial crime. The rationale is pretty clear. At present, prosecution of serious cases is difficult and costs an inordinate amount of time and money. The hope that the Government have for DPAs is that their use might allow for swifter resolution, and importantly, that they might bolster the aim of changing behaviour. The new system, however, means a substantial shift in practice, and for that reason, it is worthy of debate in Committee. It is incredibly important, not least for public confidence, that we tread carefully and get this right. I know that the Minister will agree with that.

3 pm

Amendment 94 provides for the Sentencing Council to produce guidelines on the penalties and remedial measures appropriate for inclusion in a deferred prosecution agreement. This is not a new idea. In fact, it is something on which we and the Government used to agree. The majority of the process for agreeing a DPA will take place behind closed doors. Two of the main concerns raised about the proposals are that the public might believe companies are being allowed to buy their way out of trouble, or that companies might not be incentivised to enter into such an agreement. DPAs deal with criminal behaviour, so consistency and clarity in penalties is important. Transparency in how penalties are determined will encourage public confidence and ensure that the system is well understood and predictable and that it has the support of companies as well.

The Government suggested that the Sentencing Council should be asked to draw up a specific set of guidelines for DPAs. They argued that that would

"benefit the prosecutor, the party entering into the DPA, the court, and ultimately wider society."

However, the Government withdrew from that intention and they gave two reasons: first, that it would require amendment to primary legislation, which is what our amendment today is; and secondly, because the Sentencing Council is due at some stage to revise its guidelines on offences that include those likely to be covered by a DPA.

We are not convinced that loose, general guidelines are enough in this case. We hold with the Government's original argument that clarity in the agreements is absolutely key to ensuring that the system is as effective and credible as we can possibly make it. It will be interesting to discover the Government's thinking behind that change.

Steve McCabe: I think most people would be happy with anything that speeds up justice and provides a more timely process. Is it not fair to say that the type of activities that these people will be involved in that will come to the attention of the prosecutors will resemble

[Steve McCabe]

fraud, money laundering, bribery and market fixing? The idea that anyone should be able to buy their way out of that with something that amounts to a get-out-of-jail-free card is alien to anything that we should be supporting in this place.

Jenny Chapman: My hon. Friend expresses extremely eloquently the concern that many people have about DPAs. We cannot have a situation in which a company can avoid justice in a way that an individual cannot. That is why clarity and transparency in the way the Government were initially proposing to proceed was the best way of going forward. We are challenging the Government to explain their shift in position.

Amendment 95 provides that guidelines issued by the Sentencing Council should be adhered to, and also covers one further concern. The amendment would prevent a DPA including a blanket indemnity from prosecution for past offences, both disclosed and undisclosed. An example of such a case occurred between the Serious Fraud office and BAE in 2010, during which the judge explicitly noted his surprise at the terms of the deal. There is a lot of discretion given in the agreement of a DPA, and it is important that that does not stray into a disapplication of the law. I would welcome the Minister's comments on those two concerns.

The Solicitor-General: I shall start with amendment 94, which is about the Sentencing Council producing specific guidelines for a deferred prosecution agreement. This was part of the original consultation, which was published in May 2012. The reason for suggesting that there should be such guidelines was because there is an absence of sentencing guidelines on the appropriate fines payable by corporate offenders—companies and the like—for the economic and financial offences in respect of which proposed DPAs would be available. Since the consultation, the Sentencing Council has said that it intends to produce guidelines to cover a number of the offences encompassed by DPAs, including fraud, money laundering and bribery offences. Of course, they will be published. This work comes within the council's existing remit as set out in section 120 of the Coroners and Justice Act 2009.

So the model for DPAs outlined in schedule 16 specifically provides that the amount of any financial penalty term under a DPA must be comparable to what a court would have been likely to impose on conviction following a guilty plea. Sentencing guidelines will therefore be relevant in determining that amount. Our view is that it will be more transparent to have the sentencing guidelines for the offences known. There is very little authority on it at the moment and the basis will be the same as for a guilty plea. These new sentencing guidelines will serve the purposes of the guidance we initially envisaged would be provided by a specific DPA guideline, thereby rendering a specific DPA guideline unnecessary.

We recognise that sentencing guidelines will have an important role in providing consistency and certainty to the parties negotiating the terms of a DPA, in particular when setting the financial penalty. These guidelines will also assist the court. The Sentencing Council is already under a statutory obligation to consult a number of parties, including the Justice Committee, when preparing the guidelines. It is not currently a statutory requirement for the guidelines to be debated by Parliament before they come into effect. These arrangements have worked well and we believe that examination of draft guidelines by the Justice Committee provides an appropriate level of parliamentary scrutiny. Given this, I am not persuaded that the alternative procedures which we originally thought were the way forward should be put in place.

On amendment 95, we have sought to keep the number of mandatory elements of a DPA to a minimum and have not sought to prohibit the inclusion in a DPA of any particular type of term. However DPAs are not intended to provide an indemnity for prosecution for undisclosed acts. Any conduct not covered by the DPA would remain susceptible to investigation and prosecution in the usual way. The DPA only acts as a bar on prosecution for particular offences specified in the indictment that will be produced which is suspended while the agreement is in force. So it will be absolutely clear—it is a transparent system because it also has a judge supervising it—what offences are covered by the deferment of prosecution. This means that the court will be looking to ensure that the interests of justice are properly dealt with and that it is a fair, reasonable and proportionate agreement. There is also a statement of facts which goes with the indictment which will set out exactly what the prosecution are agreeing to. There is no question that a term in a DPA could seek to provide any broader immunity from prosecution than that.

Valerie Vaz (Walsall South) (Lab): Can a judge set aside a DPA just as a judge could set aside a consent order?

The Solicitor-General: Yes. There will be a preliminary hearing where the judge looks at what is proposed. He will give his views. There will then be a final hearing where he looks at the thing again. The test is interests of justice and then what is fair, reasonable and proportionate. If on the second occasion he still feels that this is in the interests of justice and passes the test, it would be made public in open court. It would be made known. There would be the indictment which would set out what offences were covered and the statement of facts. So it is an entirely transparent system. The previous Solicitor-General, my hon. and learned Friend the Member for Harborough (Sir Edward Garnier), to whom I must pay tribute, was anxious that we should learn from the American experience and have something that was more suited to the British situation. I hope that in the light of those few comments the hon. Lady will withdraw the amendment.

Jenny Chapman: I am minded to withdraw the amendment, and I thank the Minister for his response. I note that in the US, which he may know is the only other jurisdiction that uses DPAs, the sentencing guidelines are exceptionally detailed to allow for consistency and confidence that no penalty is plucked from thin air or watered down for convenience. The Government need to be particularly mindful of that when using DPAs here.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Jenny Chapman: I beg to move amendment 96, in schedule 16, page 275, line 27, at end insert—

'( ) Where the Director of Public Prosecutions and the Director of the Serious Fraud Office have produced a code under sub-paragraph (1), they must publish it as a draft code.

( ) The Director of Public Prosecutions and the Director of the Serious Fraud Office must consult the following persons about the draft code—

(a) the Secretary of State;

(b) such persons as the Secretary of State may direct;

(c) such other persons as the Director of Public Prosecutions and the Director of the Serious Fraud Office consider appropriate.

( ) Before the code is permitted to come into effect, it shall be laid before Parliament.'.

The Chair: With this it will be convenient to discuss amendment 82, in schedule 16, page 275, line 33, at end insert—

'( ) The Director of Public Prosecutions and the Director of the Serious Fraud Office must publish the new code as a draft code.

( ) The Director of Public Prosecutions and the Director of the Serious Fraud Office must consult the following persons about the amended code—

(a) the Secretary of State;

(b) such persons as the Secretary of State may direct;

(c) such other persons as the Director of Public Prosecutions and the Director of the Serious Fraud Office consider appropriate.

( ) Before the code is permitted to come into effect, it shall be laid before Parliament.'.

Jenny Chapman: The schedule specifies that the Director of Public Prosecutions and the director of the Serious Fraud Office will issue a code of guidance for prosecutors on general principles for agreeing DPAs, such as when they should be used and what information should be disclosed by the prosecutor to the company. Our amendments provide that they must consult before publishing the code, just as the DPP does on the CPS code for Crown prosecutors. The provision is important, and we just want to test the Government on why they think our proposal is not a good idea. The amendments are simple and would bring the DPA proposals in line with common practice.

The Government intend the joint code to be comparable to the code for Crown prosecutors issued by the DPP. The DPP and CPS consult widely on the CPS code prior to adopting a new version. The newest version of that code was published only last week following a three-month public consultation. We learned today at Justice questions that we will not have those any more, so it would be interesting to find out what we will be getting. Consultation is established best practice in an area where we have much experience and expertise, and it is vital that we extend that practice into an area such as DPAs, which is uncharted territory for our prosecution service. The Government have sought to ensure that DPAs are consistent with other statutory provisions on guidance for prosecutors, and our amendment takes that to its logical conclusion.

The Solicitor-General: The scheme for DPAs is a new concept, and the schedule provides for bespoke guidance to be issued to prosecutors to support the DPA scheme and to ensure that it operates fairly and consistently. In providing for a bespoke code on DPAs we have sought to ensure parity with the existing statutory provisions on guidance for prosecutors.

The code for Crown prosecutors sets out the general principles that prosecutors should follow when undertaking their usual prosecutorial functions. The code for DPAs will do the same, by giving guidance to prosecutors on the exercise of their discretion to enter into a DPA and on operational matters. As such, the code is principally an operational document, as is the code for Crown prosecutors, and seeks to preserve prosecutorial discretion in operational matters. The fundamental principle of prosecutorial independence means that it is appropriate for the code to be issued by the Director of Public Prosecutions and the director of the Serious Fraud Office.

In the other place we provided assurance that the Director of Public Prosecutions and the director of the SFO will consult jointly on the code of practice for DPAs in the same way that the Director of Public Prosecutions consults on changes to the code for Crown prosecutors. Indeed, hon. Members may have seen that at the end of January the Director of Public Prosecutions published a new edition following a three-month consultation. We consider that that approach will provide adequate opportunity for interested persons to offer their views on the contents of this code.

For that reason, we do not think it necessary to make express provision to publish the code in draft, nor to create any additional consultation requirement, in particular where such requirements are the subject of a direction of the Secretary of State, as the amendments provide. We want to maintain the independence of the prosecutorial side. In addition, a mechanism for putting the deferred prosecution agreement code before Parliament is already provided for in schedule 16, in paragraph 6(3), which requires the code for DPAs to be set out in the Director of Public Prosecutions' annual report for the year of the code being issued; section 9 of the Prosecution of Offences Act 1985 requires that annual report to be laid before Parliament.

3.15 pm

I recognise that we are making new law, and it does not follow that we must slavishly follow precedent. The approach taken in the 1985 Act, however, is founded on that principle of prosecutorial independence, which ought to be timeless, and we should leave as much discretion as possible in the hands of the DPP and of the Serious Fraud Office director. We can and should leave the rest to their good sense.

I hope that the hon. Lady agrees that, on reflection, the Bill provides for the better approach and that we have met her main concern.

Jenny Chapman: I am broadly satisfied with what the Minister has said. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Jenny Chapman: I beg to move amendment 97, in schedule 16, page 280, line 25, leave out—

'or to disgorge profits made from the alleged offence'.

The Chair: With this it will be convenient to discuss amendment 98, in schedule 16, page 280, line 26, at end insert—

'( ) Any money that is received by a prosecutor under a term of a DPA that required for P to disgorge profits from the alleged offence is to be distributed according to the Home Office's Asset Recovery Incentive Scheme.'.

Jenny Chapman: Amendments 97 and 98 would provide for the money confiscated as part of the DPA to go into the Home Office's asset recovery incentive scheme instead of into the Consolidated Fund—the Treasury—as the Bill specifies. The scheme returns the proceeds of crime to law enforcement agencies, distributing out between the police, the court service and the Crown Prosecution Service.

The amendments provide for disgorged profits—the phrase used—that are received under the terms of a DPA to be returned to where they most appropriately belong. DPAs would be brought into line with other asset recovery arrangements. The numbers could be considerably large, and they could support an important revenue stream for prosecuting and law enforcement agencies, in particular in the light of the current budget cuts being sustained in criminal justice—although there is a lot of money to spend on tagging, we have noted. The change is minor, but has some obvious benefits. I think that the Minister ought to give the amendments serious consideration.

The Solicitor-General: Perhaps I might clarify one matter, which I think I said clearly earlier but will repeat for the record. A judge can refuse to approve a DPA, in the first place. He may also, if there is a breach of a concluded DPA, terminate it. There are also some provisions for variation. It would not be right to say, however, that a judge, once a DPA has been concluded, can set it aside. There is a degree of settled situation, which is reflected in the schedule.

As regards the scheme for DPAs and disgorgement profits, the asset recovery incentivisation scheme is a non-statutory scheme that was established in 2006 and is administered by the Home Office. The purpose of ARIS is to encourage criminal justice agencies to recover the profits of criminality by distributing proceeds recovered under the Proceeds of Crime Act back to front-line agencies. The incentive reflects the resource-intensive nature of recovering profits of criminality. Being a non-statutory scheme, for technical reasons it would not be appropriate to make direct reference to it in the schedule.

Jenny Chapman: This is really disappointing. I tabled the amendment in good faith, and I think that it is a sensible suggestion. It may not be statutory, but it is as near as damn it the best example there is. It is a little unhelpful of the Minister. I think it is legitimate to draw a parallel between the two schemes, although the other one is not statutory.

The Solicitor-General: I have got a bit more to say, so perhaps the hon. Lady will forgive me in a minute.

Similar to the provisions that we are discussing, the core statute dealing with asset recovery, the Proceeds of Crime Act 2002, directs that the money collected under that Act by either the Director of Public Prosecutions or the director of the Serious Fraud Office should be paid into the Consolidated Fund, with no further provision for its destination or use. There is no established mechanism in statute. The asset recovery incentivisation scheme is a non-statutory scheme that exists as an incentive in the context of the Proceeds of Crime Act 2002.

More broadly, as I have said elsewhere, the terms of a DPA will be tailored to fit individual cases, and are likely to include a mix of monetary and non-monetary requirements. As the agreement is made voluntarily between the parties, neither the prosecutor nor the court that approves a DPA will take any part in enforcing the payment of moneys payable under it. The organisation simply enters into the agreement voluntarily, and we envisage that it would honour fully the terms of that agreement. Where an organisation fails to comply with the agreement, the schedule provides for the consequences, which could ultimately include the termination of the DPA and prosecution of the organisation.

Those reasons obviate the need for a separate, resource-intensive and lengthy process to recover assets. As a consequence, there is no need to encourage that through the asset recovery incentivisation scheme. I submit that it is not the same as the Proceeds of Crime Act 2002. For those reasons, we see no need to make additional provision in relation to the final destination of any profit disgorged under a DPA. I therefore respectfully invite the hon. Lady to withdraw her amendments.

Jenny Chapman: Respectfully, the Minister could just get up and say that he does not want to do it, which would be fine. The reasons that he has given do not add up. He is saying that we cannot have one because there isn't one, which is our point: we think that there should be one. The Government seem unwilling to pursue it any further. They have put on record that they do not think that it is a good idea. We do, and we will think about it some more and perhaps return to it later. However, the Minister has made his position clear, whatever dubious reasons he has come up with: he will not pursue the idea through the Bill. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the schedule be the Sixteenth schedule to the Bill.

The Chair: With this it will be convenient to consider amendment 99, in clause 42, page 43, line 17, at end insert—

'(4A) The provisions under Schedule 16 shall cease to have effect at the end of a five-year period beginning with the day the provisions come into force.

(4B) Before the end of the five-year period detailed in subsection (4A), the Secretary of State must—

(a) provide for a review of these provisions, in consultation with the Director of Public Prosecutions and the Director of the Serious Fraud Office;

(b) set out the conclusions of the review; and

(c) lay a Report on the review before both Houses of Parliament.'.

The Solicitor-General: As the hon. Member for Darlington has explained—or is about to explain—amendment 99 seeks to introduce a sunset clause. *[Interruption.]* It might even be more convenient for me to sit down for a moment and let her do so. Then I could respond to it and deal with clause stand part. If you are happy with that, Mr Caton, I will do so.

The Chair: I am perfectly happy with that.

Jenny Chapman: The Minister is being most gracious this afternoon. Amendment 99 is effectively a sunset clause providing for legislation to run out in five years and be renewed only after review. We tabled it because the measures are a new step for our system, and we

think that it makes sense to proceed with a safety net. Essentially, it is a probing amendment that seeks to raise the issue of review. This is uncharted legal territory. Although we subscribe to the notion that the measures are a sensible way of dealing with certain cases, the importance of ensuring that we do it well and take public confidence with us cannot be overstated.

I do not expect the Government to take enthusiastically to the notion of a sunset clause, but I impress on them the importance of ensuring that the operation of DPAs, particularly how frequently they are used, is carefully and thoroughly reviewed. The amendment is our way of putting that across. A sunset clause would ensure a review of how well the provisions were performing before they assumed permanency. There might be other ways in which we could ensure that such a review was conducted, so assuming that the Minister will not agree to such a clause, perhaps he will be happy to update us on what measures he thinks will be in place so that a proper review of the provisions and their effect will be carried out.

The Solicitor-General: The hon. Lady is right. I am not going to agree to a sunset clause. It is absolutely right to examine how we monitor and review progress. The effect of such a clause would be for schedule 16 to cease to have effect five years after coming into force. That would be rigid. The Government consider the amendment to be unnecessary because of the measures that were outlined in the other place. We gave an undertaking that we will review the operation of the scheme following its introduction. In any event, we are committed to reviewing all new primary legislation within five years of Royal Assent in line with the Government's policy on post-legislative scrutiny.

Jenny Chapman: I am curious and take, up to a point, what the Minister says. However, I am aware that, under other measures, the Government have introduced sunset clauses, one example of which is the Scrap Metal Dealers Bill. I am intrigued to know why sometimes it is appropriate and yet other times the Government do not want to engage in such action.

The Solicitor-General: I am happy to engage with that point. It is something that needs to be dealt with. The reason why acceptance would be a difficulty is that particular periods are provided for within the DPA. Therefore, it would be difficult to have a cut-off, as it would mean that, at a certain date, the provision ceases. There would come a point at which no DPAs could be made because of the uncertainty.

Jenny Chapman: We would start the review before the cut-off.

The Solicitor-General: Obviously, the review would be started before that time, but a fixed date means that there would be rigidity.

Furthermore, the Government have said that they are willing to have a full review. We would certainly finish it in five years, but it would start before then. Such an amendment would create unnecessary rigidity, given that the Government are committed to reviewing the matter.

In 2011, fraud cost its victims and the taxpayer £73 billion. That level of criminal activity, which damages the economy, must be tackled and organisations involved in such wrongdoing must be held to account. As we have debated, the National Crime Agency will have a strong focus on combating economic crime. DPAs will support the work of the NCA in that area by offering an additional tool in the battle against corporate wrongdoing, and it will help prosecutors overcome the difficulties associated with bringing organisations to justice for economic crime.

The list of offences under part 2 sets out with absolute certainty the scope of the scheme. The Government are committed to testing the new approach and will monitor and evaluate its use and success before considering broadening it. A DPA will be a voluntary agreement between a prosecutor and an organisation under investigation. In return for complying with tough terms and conditions, a prosecution will be formally commenced and then deferred. However, it is worth making the point—an issue that the hon. Member for Birmingham, Selly Oak raised—that there are, of course, some companies when it would be unacceptable even to consider a DPA. When a company is set up as a vehicle for crime, clearly that would be inappropriate and wrong. There will be many cases when it would not be right, and many cases when it would, so it is correct to be discerning about the matter and to say that the individuals who might have committed individual crimes will, of course, be subject to prosecution if there were evidence.

Steve McCabe: I am curious about how that works. If the company enters voluntarily into a DPA, how will it then be possible to prosecute an individual? Would the individual not have a reasonable defence that what they did was part of a corporate activity?

3.30 pm

The Solicitor-General: No. If an individual has committed criminal offences, that is not a defence.

Steve McCabe: I may not have put that clearly. I am trying to understand. If a company enters into a voluntary arrangement, surely the individual cannot then be pursued over issues that have already been voluntarily disclosed and agreed. Their sins will be wrapped up in the activity of the DPA. There would have to be exceptional additional behaviour by the individual to result in a personal prosecution.

The Solicitor-General: No, that is not right. One can imagine, in a situation where a company's management is changed and they realise that there has been wrongdoing, that the company would want to ensure that nothing of this sort happens again. A DPA in those circumstances may well be a good way forward, because it would mean that the company could ensure that it has proper compliance arrangements and can pay the fine and disgorge profits, but the business itself would not collapse, which would have implications for employees and the economy. There is no question but that the individuals who did the original wrongdoing—if the evidence is there, which it would need to be—could and should be prosecuted. It is not a get out of jail free card for executives who have committed crimes, and it should not be.

[The Solicitor-General]

Transparency and openness are key to this. The American experience, which my predecessor drew on, is different from what is proposed here, which is that a judge will approve the scheme and look to the interests of justice and what is fair, reasonable and proportionate. The DPA will be approved in open court.

DPAs will ultimately enable prosecutors to secure tough sanctions against an organisation and ensure reparation for victims without the uncertainty, expense, complexity and length of a criminal trial. They will also provide certainty for the company. It is worth bearing it in mind that the only penalty that can be imposed on a company, if it is successfully prosecuted, is financial. The advantage of a DPA is that other conditions can be part of the agreement. It is not just a fine; it can be a compliance agreement or a number of other important measures. The DPA has particular advantages and is an important new part of the toolkit in tackling serous fraud and economic offending more generally. I commend the schedule to the Committee. I hope we resist the blandishments of amendment 99.

Question put and agreed to.

Schedule 16 agreed to.

Clause 33 ordered to stand part of the Bill.

Clause 34

Appeals against refusal of entry clearance to visit the UK

Stella Creasy: I beg to move amendment 83, in clause 34, page 33, line 42, at end insert—

'(5A) After section 50(2)(c) (Procedure) of the 2006 Act insert—

(2A) In respect of any application or claim in connection with immigration (whether or not under the rules referred to in subsection (1) or any other enactment) the Secretary of State may make provision for the communication of an immigration officer with the applicant before a decision is taken in respect of that application or claim.

(2B) Provisions under (2A) may include communication with the individual so as to obtain additional information relevant to their application or claim.".

(5B) Before the coming into force of this section, the Secretary of State must make provision for communication between an immigration officer and the applicant for the purposes of obtaining further necessary information not included in the original application, as provided for under sections 50(2A) and (2B) of the 2006 Act.'.

It is a pleasure to serve under your chairmanship, as always, Mr Caton. We come to the part of the Bill that contains the Government's proposed changes to immigration legislation and immigration officer powers. This amendment and clause 34 do not necessarily speak to the debates on what is right for this country on immigration, but how we manage it and the concerns that many of us have about the processes governing the immigration system. All Governments have struggled to get the issue right, but the debate before us is about process, rather than the policies behind who is entitled to come to the UK.

My right hon. Friend the Member for Blackburn (Mr Straw) always says that there are a number of divisions within this House, first and foremost, on political and ideological grounds, but also between those Members who have a large immigration case load and those who do not. I put myself in the former category. As MP for Walthamstow I have dealt with a huge number of constituents about a number of issues to do with the immigration service over the past two and a half to three years. Indeed, when the Minister was in his former role I had cause to write to him about a number of people. I will not comment on his response rate or its implications.

All of us have to deal with the complexities of our immigration system. Those Members who were listening attentively in previous sittings will have heard me talk about the Amosu family. One of the reasons I feel very passionately about that family is that I have had cause to deal with them on a number of occasions. The first was when I helped a member of their family who had been refused a visit visa to come to the UK to resolve the issues around his ability to enter the country. That gave me a tremendous amount of pride—although that is probably the wrong word—as an MP; just three weeks later, a member of the family, Ezekiel, was killed and by resolving the issue around the visit visa, I was able to enable Ezekiel to meet the young gentleman who was seeking that visa. That was of tremendous comfort to the family at the point when Ezekiel was cruelly taken from us in a gang-related incident.

The problems that Ezekiel's family faced were not unique. Countless constituents have come to me who are bemused and bewildered by the immigration system, particularly the family visit visas. That is why many of us are deeply concerned by the Government's proposals, and are questioning whether those proposals are the right way to resolve some of the challenges in the system. We all understand the issue around the visit visa system, and in particular that it is only for family visit visas that applicants have a full right of appeal. We are dealing with taxpayers in the UK who want to bring family members over to the UK, so it is right that we have a system that deals with their concerns. However, whether the visa is a family visit visa, a student visa or a work visa, everybody has to satisfy the same conditions. The issue is how those conditions are set up, in terms of whether people are genuinely seeking entry to the UK for the purpose for which the visa is being issued.

Damian Green *indicated dissent.*

Stella Creasy: The Minister is shaking his head, but that is the general principle; visas are issued for a certain purpose.

Damian Green: The hon. Lady has corrected herself. She initially said that everyone had to satisfy the same criteria. That is simply not true. The criteria for a visit visa and for a student visa are radically different.

Stella Creasy: The Minister is getting ahead of himself. My point is that there are a series of criteria that everybody has to satisfy for a visa, so it is worth looking at what those criteria are for a family visit visa. In particular, those criteria are that the applicants are genuinely seeking entry to the UK as a visitor; that they do not intend to remain for more than six months; that they intend to leave at the end; and that they have sufficient arrangements for their maintenance and accommodation without needing access to public funds.

The issue then is how those criteria are managed and applied by entry visa officers. We know that there are great concerns among certain communities in the UK about how the process is managed, because of the variation in the way in which those criteria are applied. For that reason, the Government have proposed to delete the ability to appeal a decision that has been refused and propose instead simply to encourage people to make repeat applications.

On Second Reading, the Minister said:

"People who are refused visit visas may reapply as many times as they like, and may provide further information in support of their applications…. Removing the full right of appeal from family visitors will save £107 million over the 10 years following enactment."—[*Official Report*, 14 January 2013; Vol. 556, c. 706.]

There was also an implication that, because the fee for an appeal is £80 but the fee for an application is slightly cheaper, such a scenario would be better for everyone. That simple reasoning belies the problems that people are facing and the challenges that we have to address within our immigration system. I remind the Minister that when the right of appeal was first introduced, in the Immigration and Asylum Act 1999, Members on both sides of the House supported it. The Opposition's grave concern is that removing the right of appeal could disproportionately affect a number of communities within the UK because of the way the visit visa system is managed across the world. We already know that 38% of appeals are determined as successful; that is a huge amount and suggests that the way in which decisions are being made is not appropriate.

Indeed, widespread evidence of bad decision making within the UK Border Agency has been identified by the chief inspector of the UKBA. Taking the entry clearance decisions that are not currently subject to a full right of appeal—the situation that the Minister wants for all family visit visas—in 33% of the 1,500 cases that the inspector looked at, it was clear that the entry clearance officer had not properly considered the evidence around the criteria that have to be implemented. This is not simply an issue about non-family visit visas; in a sample reviewed by the chief inspector, one in three family visas were also found not to have been determined appropriately.

New evidence was the only thing that was considered in 63% of the allowed appeals. The Minister will argue that it is for people making the application to provide the information at the first point of application. One of the concerns that we all have is that the process itself is not clear about what information is required. Many of our constituents who come to us about these issues do not understand what is missing because the refusal letters suggest that they should be providing information that they were not told that they needed to provide in the first place.

Crucially, removing the right of appeal would deny those people the right to challenge the consequences of a refusal of their application. The fact that so many applications, when appealed, are successful on second reading shows that there is a need to look again at these problems. First and foremost, people are not told what information to submit to make an application. It is rare, in my experience, with constituents and their relatives abroad, for people not to try to produce the evidence and to get it right first time. Often, they are people trying to bring relatives over for family occasions. I have spoken to many people whose family weddings and funerals have been ruined because they were not able to bring important family members over for that period of time. They are not people applying on a whim. They are desperate to get it right so they can bring somebody with them. Time and again, the people who come to my office have submitted evidence that has either been overlooked by entry clearance officers, or has been lost. In most circumstances, even if they applied for a right of appeal, it is too late to meet the deadlines for family events, so those special occasions are ruined by process problems.

It is not just about not being told what to submit. There is widespread evidence that management of cases and the way in which they are managed in different areas are haphazard. In 2011, the inspector's report found that of the cases handled by the visa section in New York, only 19% failed one or more of the decision making quality indicators. In contrast, the figure for Africa was 37%, and 50% for the region covering the Gulf, Iran and Pakistan. Those are the also the posts with the poorest records of document retention.

In 2010, John Vine discovered that the managers of entry clearance officers were dismissive of decisions made by immigration officers. They are therefore not learning from the problems that people experience with the system. More importantly, he found that of the cases that went to Abu Dhabi, where many of the decisions about Pakistani cases are determined, people from the Gulf received better treatment from the immigration system than people from Pakistan. It took John Vine's intervention to highlight that this is not an appropriate way for a system to be managed, and that things need to be changed.

Given disproportionate evidence about where appeals come from, and where problems might lie in the way in which entry clearance officers are operating the system, it is clear that some communities in the UK will be hit much harder by the decision to remove the right of appeal than others. We know that Pakistan, India, Nigeria, Bangladesh and Iran are the five nationalities with the highest volume of refused family visitors in 2010. Indeed, 48% of applications from Pakistan are refused. Yet when we look at the appeal rate and see the challenges that come forward, a question is raised about how these applications are dealt with.

The independent inspector systematically identified errors in the way in which processes are dealt with. The standards of evidence are not being met and there are inconsistent approaches to how applications are dealt with. It is also clear that the internal review process that the Minister might seek to bring in would not address those problems. When the independent inspector looked at the way in which cases were reviewed, he found that in 30% of cases the entry clearance manager failed to pick up on poor decision making by the entry clearance officer.

The amendment is designed to try to deal with some of the problems in the process. We all understand the need to make the process right, above all for family members in the UK trying to bring somebody here, and to make sure that we have efficiency within the systems that we operate. We all understand the difficulties of trying to get a standardised service across the world for dealing with entry clearance officers. We must understand that the problems come from within the system itself, rather than from the applicants. We must look at the

[Stella Creasy]

system itself and ask what we can do to improve it. The amendment does exactly that. It learns from something the hon. Member for Cambridge said. I am not often one to quote Members of one half of the coalition, but I thought he had it right when he said,

"It seems that there are two possible solutions: the first is to have better decision making by UK Border Agency, and the second—the option the Government have chosen to adopt—is simply to stop appeals happening. We need the Border Agency to be much clearer about the information it requests and give people the opportunity to provide extra information that was not initially required. That could solve the problem in a far simpler and less draconian way."—[*Official Report*, 14 January 2013; Vol. 556, c. 697.]

3.45 pm

Often, if someone brings me, as a local MP, a letter of refusal, I will go through with them what information they have provided and try to explain to them what information is being sought by the entry clearance officer. It is often a simple question. Members of my local community want to go to immigration appeals because they have more confidence in immigration judges to be fair in scrutinising information that they provide, and also because that ensures that they have the opportunity to put the information forward and that therefore they are not potentially hampered by having had an application refused. It is worth noting that if someone's application is refused, that could affect their ability to apply again for up to 10 years, especially if they are accused of producing false documents. I have brought a sample of some of my case work involving precisely those scenarios.

Allowing entry clearance officers to go back to people to ask questions about the information that has been submitted and to seek clarification would be a simple and cost-effective way to address the problems in the system—telling people that there is an opportunity to put their case forward and to clarify the information that the entry clearance officer is asking for, which is the additional evidence that should have been submitted first time because they have been asked to provide it, rather than wait for an appeal or a refusal letter telling them that they had not submitted something that they never knew they had to submit.

That is why experts who deal with the immigration system on a daily basis call for revisions to the system rather than the removal of the right of appeal. The immigration law practitioners association contends that there are often valid reasons why applicants submit additional evidence on appeal: they were told that they needed to bring information that they were not told about in the first stage of the process, or that the visa officer's reasons for refusal became apparent only on appeal.

That is why, in November 2012, the Joint Committee on Human Rights called on the Government to provide Parliament with evidence of the proportion of appeals that succeed as a result of new evidence, where the applicant should have provided the information at the initial application, rather than evidence that was required due to UKBA error. We have not seen that information as yet.

The Minister has not provided clarity on why he believes the onus to get the system right should be on our constituents' families, rather than on the ability of entry clearance officers to be consistent with the applications. We know that there are consequences for a person who then applies for a new visa; the fact that their first visa application had been refused will be taken into account, without an opportunity to explain why that application was refused. Taking away the applicants' right of appeal could have huge consequences for people who seek to bring their family members here—quite reasonably and fairly. They come not to stay, but to take part in family events and see family members. They want to be able to enjoy visiting Britain, be part of our tourism industry, and go home. There are huge consequences, just as with Ezekiel's family, as they would not have been able to put Ezekiel and Xavier together so that they could have a short time to know each other. There are consequences to reducing the ability of people to come here and visit their families, which is what the amendment tries to prevent.

Charlie Elphicke (Dover) (Con): Does the hon. Lady think that there is no abuse at all and that there are no issues with overstaying?

Stella Creasy: That is not the case I am making. The point I am making is that having a system where 38% of rejections are overturned on appeal tells us that there is something about the way in which the system makes decisions. The independent inspector has identified a number of problems about the way in which decisions are made.

If the hon. Gentleman had to deal on a daily basis with the refusal letters and with the bewildering situation that many of our constituents find themselves in, trying to help family members come to the UK to visit, he would understand the concern that all of us have. If we take away the right of appeal, taking away someone's ability to clarify the information that is sought, and simply say to them, "Apply again," when that new application will say that their first application had been refused, with the suggestion that they might have provided misleading documents, it could have huge consequences for the justice in our system as well as for the family members in the UK.

Charlie Elphicke: I appreciate the hon. Lady's understandable concern. It is good to meet people and talk. Nevertheless, there is an issue with overstaying. Does she take that seriously? What would she do about it?

Stella Creasy: We will come on to the powers of immigration officers. The clause will do nothing about overstaying. It is about the process of people applying for visas in the first place and how we get that right. The hon. Gentleman has an understandable concern about overstayers, but that is not what the amendment is trying to get right. The amendment is trying to get right the process through which people come to the UK.

If the hon. Gentleman reads the kind of requests that entry clearance officers are making for information, which frankly should have been clearer at the start of the process, he will understand the concerns that all of us have. I am sure that the hon. Gentleman would not want somebody who is trying to come to the UK to visit family members—this is not about working or studying—being repeatedly refused the opportunity without being able to understand why. People find that making one

application after another influences their ability to get a visa, and they get stuck not being able to see family members as a result. None of that is to do overstayers; that is a separate issue about how our immigration service works when people are in the UK. Were the right of appeal to be retained, there is no evidence to suggest that that would somehow increase the number of overstayers, unless the hon. Gentleman has information otherwise. It is simply a non sequitur in the debate.

What does the Minister have to say in response to our amendment? I hope that he recognises that we are genuinely trying to understand where is the best place within the process of family visit visas to get things right in the first place. I hope he will acknowledge that such visas are not always dealt with correctly in the first place, which could have severe consequences, particularly for those communities applying in areas where there is widespread evidence that the independent inspector has identified poor-quality decision making.

If the Minister does not believe that giving entry clearance officers the ability to talk to applicants before they make their decision is the appropriate way to deal with these system challenges, will he set out where else he believes that that opportunity for challenge and redress can be introduced in a simple and cost-effective manner? He must accept that removing the right of appeal actually closes down the opportunity for clarification within the system and could lead to further process problems and further cost to the public purse in the long run.

Damian Green: I will address all the questions that the hon. Lady asked and, indeed, the amendment. To help her and the Committee, I stress that the Government of course understand that family visit visas can help to maintain family links, which is why this country granted some 370,000 in 2011. However, the full appeal right for those refused such a visa is anomalous. It is the only form of visit visa that attracts such a right of appeal. Moreover, the appeal right is not of great benefit when people are seeking to come to the UK for a specific family event—a point that is often made in debates on the issue. At present, the appeal process can take up to eight months to be concluded, by which time the event is more than likely to have passed. In contrast, the UK Border Agency will normally make a decision on a fresh application within 15 days, which is a much more practical choice for those who feel that they deserve a visit visa after an initial refusal. Every refusal is accompanied by a detailed letter setting out the reasons for the refusal, which can be addressed in a reapplication. My hon. Friend the Member for Dover made the point that we cannot assume that all applications are genuine, because experience tells us that they are not. As long as no deception was involved, however, each subsequent application is treated entirely on its own merits.

Valerie Vaz: Could the Minister give us figures for the cases that are, as he says, the result of deception?

Damian Green: I shall give lots of figures in a minute in response to the questions of the hon. Member for Walthamstow.

For the taxpayer, removing the full right of appeal will result in savings of £107 million over the 10 years after enactment. It will free up resource in the UK Border Agency and Her Majesty's Courts and Tribunals Service, allowing greater priority to be given to cases that have far-reaching impacts for the individuals involved and society, such as asylum claims or the deportation of foreign criminals.

The hon. Member for Walthamstow argued that the appeal right should be retained, because decision making by entry clearance officers is poor. Of course, the UK Border Agency does not get it right every single time, but it is important not to exaggerate deficiencies in the quality of decision making. We need to be careful not to draw the wrong conclusions from the statistics for successful appeals. Our analysis suggests that the vast majority—around two thirds—of family visit visa appeals allowed were on the basis of new evidence submitted after the original application was made. In many instances, the tribunal was quite simply making a different decision based on different information.

The hon. Lady asked about appeal rates. In 2011-12, the UK Border Agency won 44% of appeals and 32% were allowed, which was an improvement on previous years. Analysis of a sample done in April 2011 showed that new evidence produced at appeal was the only reason for the tribunal's decision in 63% of those cases. In only 8% was new evidence not at least a factor in the allowed appeal.

Stella Creasy: We all accept that new information is being produced at appeal. As the Joint Committee asked the Minister to break down the information, it would be helpful to understand what was new information asked for at the initial application, as opposed to what was new information required due to UKBA error. Clarity is needed about what people could reasonably have been expected to provide at an application process, and what they were not told they needed to provide.

Damian Green: The information that they need to provide does not change at every stage. The hon. Lady made the point that entry clearance officers should specify what documents are required. The immigration rules for family visit applications do not specify documents that applicants must submit to support their applications. The rules instead lay out a set of requirements that applicants must meet. There are a number of different types of documentation that an applicant could use to demonstrate that they have met the immigration rules and the credibility of their application, depending on the context in which they are applying and their individual circumstances. Always insisting on a specified set of documents could place an unreasonable or disproportionate obligation on some applicants, given the diverse range of situations it would need to cover.

The hon. Lady asked a number of other questions. In particular, she made the point, which I partly accept, that clearly the decision-making process is not perfect. Indeed, she quoted various reports of the chief inspector, some of them, to be fair, going back to 2010, since when there have been significant improvements, although there is always more to be done. The UKBA is publishing supporting documents guidance specifically for family visitors. It provides extensive guidance on the type of documents that customers should consider submitting and is regularly updated.

Stella Creasy: I want to quote to the Minister from a piece of casework I received. It is a letter of refusal for entry clearance in which the entry clearance officer says that

"it is unclear whether the notary is attesting that the contents of the documents are as reflected in government records or whether the translation is true and accurate."

Does the Minister agree that had the person applying for the visa been offered the opportunity to clarify what document they were providing at the time of application, it would have saved everybody a great deal of expense in terms of scrutinising the application? Asking for clarification, as part of the refusal, of what the document presented is or the translation is, is rather too late in the process.

Damian Green: If the applicant failed to meet the requirements, as presumably they had in that case, it is perfectly reasonable for the entry clearance officer to refuse.

Stella Creasy: The letter is from an entry clearance officer who does not understand the information presented. I am asking whether the Minister thinks it would be fair and proper for the entry clearance officer to be able to contact the applicant and ask about the document in front of them before refusing.

Damian Green: It is obviously quite difficult to comment on an individual case. I have not even seen the documentation, let alone the exchange of correspondence. Entry clearance officers are experienced and see many documents from a particular country. I can tell the hon. Lady from my own experience as Minister for Immigration that the variety in quality of documents from different parts of the world is quite startling. Entry clearance officers develop an eye for documents about which they are reasonably suspicious, in particular documents they have never seen before. Understandably that might well excite them to activity.

The UKBA is constantly trying to improve the service it provides. It now translates visitor visa guidance into six languages: Arabic, Chinese, Hindi, Russian, Thai and Turkish. If the application is refused, the refusal notice contains full and clear reasons for the decision. There are more changes to come to the family visit application form, setting out even more clearly information needed from customers and to help visa officers. Improvements to the online visa application process are being developed that will enhance the customer journey and provide for additional translated guidance to assist applicants through the application process. Those improvements will be implemented in May.

4 pm

On top of that, the UKBA holds regular workshops for entry clearance officers on decision quality and has increased the number of interviews of both sponsors and applicants as part of the assessment process. The agency is currently assessing how and where it can extend that programme. Recent reports by the chief inspector, John Vine, have commented on the improvement.

The hon. Member for Walthamstow specifically mentioned problems in the past in Abu Dhabi. The Abu Dhabi visa section has also piloted a new approach to refusal decisions since November 2011, precisely to meet the complaints rightly raised by the chief inspector. The aim is to improve further both the quality of decision notices and the consideration of available evidence.

I am absolutely not denying that there have been problems, but the UKBA is making strenuous efforts to address the practical problems and within that system, the anomalous right of full appeal stands out as an expensive and unnecessary difficulty. If applicants have additional information, they can always reapply. The appeals system should not be used as a second application. It is more time consuming and can be expensive.

The effect of the amendment would be to introduce an additional stage in the process of considering an application for a family visit visa. It would require that the decision on an application is delayed while the immigration officer contacts the applicant to seek any necessary further information. I am not persuaded by the case for the amendment. It is simply not needed. Immigration officers, including entry clearance officers, already have the power to contact an applicant at any point in the application process, including if there is specific information absent from an application. However, while the power is already available to entry clearance officers, and is exercised in appropriate cases, it is important to bear in mind that family visit visa decisions are made on the balance of probabilities, and the onus is on applicants to satisfy the visa officer that they meet the requirements of the relevant immigration rules. It is applicants' responsibility to prepare their application properly and to submit whatever evidence they think is necessary to satisfy the visa officer that they meet the rules.

The UK Border Agency publishes supporting documents guidance specifically for family visitors to help them. The vast majority of applicants are able to understand the application process and the requirements for evidence. I can only pray the facts in support. In 2011, of the 452,200 applications received for a family visit visa, 79% were issued at the initial decision-making stage, so four in five visa applications go straight through the system with a yes. There is no sense in which the system unduly seeks to stop people who have a perfect right to be here from making a visit to this country.

If the amendment was made, it would effectively impose a requirement on entry clearance officers to make inquiries of all applicants who do not provide sufficient information with their application. I am not persuaded that such a general requirement, which would clearly have significant resource implications, can be justified. It would also mean that the current fast service that the overwhelming majority of applicants receive would be degraded. Having regard to the guidance provided by UKBA and the fact that the vast majority of applicants are successful, it is disproportionate to impose that additional burden on entry clearance officers.

Stella Creasy: The Minister talks about the numbers of people who are successful. If we look at the full figures, there were 444,373 applications, of which 85,151 were refused; 44,809 appeals were then made and 16,783 were allowed. In terms of percentages, almost one in five applications refused are discovered on appeal to have been refused wrongly. The Minister will accept that is quite a substantial problem with the process. Those are the figures for 2011. While we all appreciate

that investment is going into trying to iron out some of the entry clearance issues at different geographical locations, there is obviously still some way to go. Removing the right of appeal will not deal with any of the issues about the application process; it will simply make the frustrations worse for the almost 20% of people who should have had their application approved in the first place.

Damian Green: First, I am not sure that 20% is an appallingly high figure. It seems to me that there are often genuine differences of opinion, and that is why legal systems have appeal processes. I can only repeat the point that reapplying is much quicker than going through the appeal process; in particular, if somebody is coming for a specific event, that is a quicker way of ensuring that they can get to the relevant family event than going through what is a lengthy, and therefore expensive, appeals process.

Stella Creasy: I want to press the Minister on this because there are a number of people whose applications are refused on general grounds, so it is difficult for them to understand what they got wrong in their first application. It is often only when they get to appeal that they have the opportunity to discuss what the entry clearance officer was looking for and their concerns become apparent. That is particularly an issue when people are accused of providing false documents or documents that cannot be substantiated. Those are serious allegations and they can influence people's ability to get a visa in the future. What can the Minister say to all the people who are refused on general grounds for refusal about how they can move forward under this system?

Damian Green: I am not entirely clear what the hon. Lady means by general grounds for refusal. As she says, the refusal letter will say why somebody has been refused and they can therefore address that in a fresh application. Clearly everyone wants a fast and efficient service for all applicants; the UKBA will need to continue, and will continue, to work to improve decision quality, but the responsibility for making an application that meets the requirements of the immigration laws must ultimately rest with the applicant. In light of those points, I hope that the hon. Lady will agree to withdraw her amendments.

Stella Creasy: It is difficult to listen to the Minister's argument because we all want the system to work fairly, quickly and appropriately for people and there is a different debate to be had about the appropriate level of immigration and the appropriate system for managing people who want to come to the UK. This is fundamentally about the process that we use to deal with immigration applications and the real and widespread concerns that people have about the process, as the Minister admitted.

We all recognise that work is being done to try to improve the way we deal with immigration applications across the world; indeed, one of the problems is that we have to deal with the variations in different regions. But for the Minister simply to say that it has all been put online or to say that it is all about the way the applicant applies makes me wish that he had the level of immigration casework that I deal with. I see some people whose application I do not think is appropriate, but I also see an awful lot of people who are desperate to understand what they have to get right and desperately fearful about the decisions being made. I do not think that he understands the disquiet among a number of communities about the proposal. Why was it that in 1999 there was uniform support across the House?

Damian Green: The hon. Lady has provoked me. One could almost date 1999 as the point when the immigration system in this country started to go completely out of control, and produced many of the problems that some of us have been grappling with for the past few years. I would not pray in aid 1999 as a golden era for immigration control in this country.

Stella Creasy: The Minister misses the point that I am making. At the time, people across the House recognised the challenges of family visit visas. It is interesting to hear him criticising his former colleagues, many of whom are still in the House. It would be interesting to see how they view his proposals, having voted for them to begin with.

Damian Green: It includes me.

Stella Creasy: It is interesting that the Minister now thinks that he was wrong. I encourage him to stick with his original concern: to make sure that there is a fair and appropriate process in which people have an opportunity to challenge decisions that might have long-lasting consequences for them and their family. That is what he is denying thousands of people by taking away their right of appeal.

The Minister has not satisfactorily answered the question about what will happen to people whose card will be marked by having had their visa application refused without the opportunity to query the decision and to challenge how an entry clearance officer has interpreted information. He has not said anything that will offer comfort to people who will be stuck, wondering how on earth they can move forward. I regularly see people who have been offered visas before but then find themselves having to appeal because next time around a different entry clearance officer makes a different decision. There is nothing in the process that denudes the right and responsibility of the applicant to get the application right. From the information we all have, we know there are still challenges on the way decisions are being made. The amendment is a simple way of putting that right and reducing the cost to the public purse.

If the Minister had confidence in the investments and in the changes he is making within the immigration system, he would not remove the right of appeal because he would expect more correct decisions to be made the first time around. He seems to be giving up on the idea that it can be dealt with, and instead to be saying, "People will just need to keep applying." That is a bit like the old contention that people should just keep applying for their driving test; if they applied at the right time of the month they might get through and at other times of the month they would not. That is hugely unfair.

Mr Shailesh Vara (North West Cambridgeshire) (Con): The hon. Lady says that the amendment will reduce the cost, but what she proposes will increase the cost to the state. It is a resources issue as well, so I cannot see how

[Mr Shailesh Vara]

an immigration officer having to go back to someone to seek further information—as she has just said—would reduce the cost.

Stella Creasy: The hon. Gentleman's suggestion is interesting, because the Minister said that could already happen, in theory. It is not clear to me, therefore, where the Government stand.

Mr Vara: If the hon. Lady checks *Hansard* tomorrow she will find that the Minister actually said that there is a huge resources issue.

Stella Creasy: But the Minister also clearly said that entry clearance officers could contact applicants if they wanted to. The amendment simply seeks to ensure that that is part of the process. *[Interruption.]* The Whip seems not to want the Minister to be held to account for his words.

Mr Vara: My right hon. Friend said that they can and do contact people as and when they feel it necessary.

Stella Creasy: I am now completely perplexed as to what the hon. Gentleman is trying to argue. Is he suggesting that it is a good idea for entry clearance officers to be in contact with applicants? If he is, I hope that he supports the amendment, which tries to bring that element of challenge and clarification into the process earlier on, rather than seeking to get to the point at which a refusal letter has to be issued.

Mr Vara: This is my last intervention. We are saying that the system at the moment is satisfactory. Immigration officers have the right to contact, and they do so as and when necessary. The hon. Lady is trying to introduce something that is already happening and for which there is a process.

Stella Creasy: I am interested that the hon. Gentleman seems to think that the situation is satisfactory, because the independent inspectors do not. Forgive me, but I will be guided by them as well as by my own experience of the problems that people face in the system. There is absolutely the confusion that the hon. Gentleman talks about, about whether entry clearance officers will or will not contact people. In the example I gave from my own casework, had the entry clearance officer been able to use a power to go to the person and ask, "What is this document?" we might have saved them money because they would not have had to deal with repeat claims and would have avoided the costs of a refusal notice and an appeal.

The amendment simply tries to work out the best place to improve the system, because ultimately our constituents want a fair and just system that they can understand. The Minister has not fully responded to the queries that many of us have about the system and our concerns about the implications of removing the right to appeal. I am not satisfied with the answer, and we will test the Committee's opinion by not withdrawing the amendment.

Valerie Vaz: May I ask the Minister to clarify a number of things? Usually when we talk about immigration there seems to be a debate about whether things are fraudulent or we talk about overstayers. That is not the case with some of the people who come here to visit. They come to see their families, for weddings and funerals. It is interesting that people from the Department for Business, Innovation and Skills or any other Department can go off to India on high trade missions, wanting to see their former colonies, but they will not allow family members of people from the former colonies to come here. They consider them overstayers, or to be doing so fraudulently.

The Minister mentioned that he had figures for the number of fraudulent cases, so please will he provide them? Will he also say whether he has assessed the impact of no right of appeal on Members of Parliament who contact the Minister for Immigration about cases? I wrote to the right hon. Gentleman, in his previous guise as Minister for Immigration, about some cases, but I did not get much satisfaction; he said he could not consider many of them. Sometimes the people involved were told to appeal, even though it was way after the weddings and funerals. That seems slightly odd, but it goes to the heart of what this country is about, which is the rule of law. The right of appeal is the basis of a civilised society, as the Prime Minister himself has said. Will the Minister respond, and say how much it will cost in terms of Ministers' time when they have to reply to all the MPs who write to them because there is no appeal process?

4.15 pm

Damian Green: The hon. Lady wildly overstates her case. Her remarks about colonialism were bizarre, not least in the context of her comment that we do not want those people to come back here. I have just said that 80% of family visit visas from all round the world are granted straight away, so the suggestion that there is any resistance to people coming to this country on such visas is factually wrong.

The hon. Lady's second point was about the rule of law being the basis for a civilised society. I completely agree, but laws are changed all the time and that is what we are doing here today. As her hon. Friend the Member for Walthamstow pointed out, this is a change to a law introduced in 1999. We are talking about not Magna Carta, but an anomalous right of appeal introduced mistakenly and supported by hon. Members, including Conservatives, who were in the House at the time. We should learn from our mistakes. It was not sensible to have that outright right of appeal for family visit visas alone, and we are seeking to change that anomaly.

On abuse, 22,000 asylum applications were straightforwardly refused in 2009. Some 20,000 were refused in 2010 and 15,600 in 2011, of which 3% were matched to family visit visas issued on appeal. That is the bit of the iceberg that can be measured. Those appeals were from people who came here on a family visit visa and applied for asylum, which is a pretty clear indication that the original application for the family visit visa was not genuine. It is difficult to disaggregate the figure, and that is the best indicator that we have.

I repeat the overall point that of course we need to improve the family visit visa system. It allows the vast

majority of people in quickly, smoothly and sensibly, as it should, but there is abuse of the system and it is clearly sensible to try to weed out that abuse. The right of appeal stands out as an anomaly in the wider immigration system, and is not cost-effective or time-effective in allowing redress against bad decisions.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 6]

AYES

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

NOES

Browne, Mr Jeremy	Lopresti, Jack
Elphicke, Charlie	Syms, Mr Robert
Green, rh Damian	Vara, Mr Shailesh
Heald, Oliver	Wright, Simon
Jones, Andrew	

Question accordingly negatived.

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

Stella Creasy: The Opposition have tried to propose sensible reforms to the immigration system to address people's concerns, but the Government have rejected those suggestions out of hand.

The Minister makes a very poor case for removing the right of appeal. If it had not been a factor in the functioning of the immigration system, it would not have been so successful over the past 14 years. The Minister suggested that he got it wrong when he voted for the right of appeal the first time round, but the fact that nearly 40% of cases are upheld on appeal demonstrates that there is a problem in the system, which suggests that his original opinion on the importance of a just and fair immigration system was correct and that his Damascene conversion took him in the wrong direction.

The Minister seems to think that there is no role for judges in the process, and he is content to allow entry clearance officers and internal reviews to be both judge and jury of a system that is patently not working to the standards that we would want if our own family members were involved. His comments about the tip of the iceberg leave a bitter taste in the mouth of those of us who deal daily with families affected by the system. I hope that he will reflect on the impression his comments give about his true feelings towards people who bring their family members into the country.

Committee members who have high immigration case loads have a completely selfish vested interest in the matter, because we know that if the clause becomes law, we will be deluged with people asking for help and we will have to approach Ministers to try to find out the information that people require.

The clause is unfair and a false economy, and the Opposition will not support it. We think that wherever people have come from, if they have settled in the UK and they want to bring family over, there should be a fair and just process to enable them to do so. They must have full confidence that the process is fair and just, because they are taxpayers too, after all. The clause will simply remove their right of appeal, and it is not fair or right.

Damian Green: I disagree with all that. The hon. Lady's contention that the immigration system has been successful since 1999 is extraordinary.

I understand the distinction that she makes, and it is correct. Regardless of the absolute numbers, however, since the change was made the tribunal system has been clogged up, vast amounts of taxpayers' money has been spent and individuals' angst has been increased, so I do not believe that the system has been successful at all.

I have said this several times, but I will say it again: our proposals are better for the families involved. The hon. Lady seems to be saying that only by preserving this expensive, sclerotic system can we help families who are bringing visitors over from abroad. She is absolutely dead wrong. I am concerned to ensure that people can bring family visitors to the country under a system that is efficient, fair and quick, and our proposals will help to achieve that. Those of us who have been dealing with immigration casework for a long time will know that the idea that, somehow, post-1999 things got better and less onerous because there was a full right of appeal is the opposite of the truth.

Stella Creasy: I take issue with the Minister, because the Opposition believe that making better decisions the first time round would save expense and distress to all concerned. We contend that the fact that so many appeals are successful speaks to the systematic problems in our immigration system, and that removing the right of appeal would not remove that fundamental, systematic problem, which the Minister must address.

Damian Green: Absolutely. I inherited systemic problems in the immigration system, and the UKBA has been working extremely hard to address precisely those problems. If the hon. Lady reads through John Vine's reports over the past few years, she will see that he has identified some serious problems and that when he has gone back to re-inspect—as he does, quite correctly—the UKBA has very often addressed the problems that he pointed out. Therefore, and most importantly, the relatives of those tax-paying British citizens whom she and I both care about are getting a better service than they used to. Less divides us than she might think.

Stella Creasy: I certainly agree that what we all want is a system that works fairly. I have read John Vine's reports in detail, and I recognise that some progress has been made, but the critical issue is that only some progress has been made and it is too variable across the world. Does the Minister not accept that it might be better, if he genuinely believes that we are going to get to a point where the visa applications and decisions made every single time are first class, to wait until the inspector says so rather than removing the right of appeal now?

Damian Green: Waiting for 100% perfection in the provision of any public service before seeking to improve it in a small way would be a recipe for permanent inaction.

Steve McCabe: Aiming for 100% is perhaps asking too much, but I am sure that, like me, the Minister has been to visit entry clearance officers in various countries and heard the criticisms of what is wrong with the system in the area where they work. Why does he not give us some comfort today by telling us what he is doing to put that right? At the moment, he is taking away the one mechanism that allows us to identify what is going wrong and gives people a chance of putting it right. Why does he not go back to what he has learned and fix that first? That is what my hon. Friend is asking for.

Damian Green: I will not weary the Committee again, but I went through quite a long list of improvements that have been made specifically to address this issue over the course of the past two years, including much greater availability of translation services and of the capacity to read the guidance for the applications in different languages around the world, better training of entry clearance officers and responses to John Vine's report.

Improvements are happening all the time. There will be another tranche of improvements in May 2013. The hon. Gentleman is right in his underlying thought, and it is exactly what needs to be done. What is not necessary is the preservation of the current system. I remind Opposition Members of the Labour party's 1997 manifesto, which included a pledge to reinstate

"a streamlined system of appeals for visitors denied a visa."

An appeal process that takes eight months to come to a decision, as opposed to 15 days to consider a fresh application, is absolutely not a streamlined system. The UKBA system is getting more efficient. The appeal system to which the Opposition seem bizarrely wedded is a recipe for delay, confusion and disappointment for all our constituents. That is why I commend the clause to the Committee.

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

The Committee divided: Ayes 10, Noes 7.

Division No. 7]

AYES

Browne, Mr Jeremy	Lopresti, Jack
Elphicke, Charlie	Rutley, David
Green, rh Damian	Syms, Mr Robert
Heald, Oliver	Vara, Mr Shailesh
Jones, Andrew	Wright, Simon

NOES

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

Question accordingly agreed to.

Clause 34 ordered to stand part of the Bill.

Clause 35

RESTRICTION ON RIGHT OF APPEAL FROM WITHIN THE UNITED KINGDOM

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

Stella Creasy: We come to a slightly different element within the immigration system. The Opposition recognise that there are cases in which it is right and proper for the Home Secretary to act, but we want some reassurances about how this severe power will be used. It removes the right of appeal for persons who have leave to remain in the UK if their leave is cut short by the Secretary of State because they have left the country. The power is to be exercised if someone's presence in the country is no longer conducive to the public good. I am sure that the Minister will want to tell the Committee about the particular case that has prompted the need to clarify this element of the law.

Clause 35 seeks to reverse the effect of the Court of Appeal's judgment, and relates to that gentleman who left the UK under a European arrest warrant, had his leave removed and then was acquitted of the charges that he had been charged with in Italy but had his right to return to the UK blocked.

4.30 pm

Obviously it is worth pointing out that this clause will only refer to those people who are non-European economic area nationals, and that there is separate legislation around EEA nationals. It is clear that the ability of the state to deal with those situations is unsatisfactory. However, the question for all of us is whether these new requirements will make it harder or easier to manage those situations. In particular, I would welcome the Minister's comments on some of the following points.

First and foremost, how does the Home Secretary make an assessment that somebody should be refused the ability to return? It is not entirely clear how that process will be conducted. In particular, could this be a reason that is then used perhaps to refuse engagement with a warrant process? I know that we will come on to discuss issues around European warrants at a later date, but there is obviously a concern that if somebody was possibly to be denied their leave to remain as a result of their leaving the country, that may be grounds for refusing participation in a warrant process. At least it would be helpful to know if the Minister has received legal advice that that may be grounds for refusing participation in a warrant process.

It would also be useful to learn from the Minister what reasons for leaving the country could be used to trigger such a power. For example, if someone left the country because of a family bereavement or if there was intelligence about their intentions, would that be enough? What does that then mean for the original decision to grant leave, and for any persons who may be affected by that? Again, obviously those of us who deal on a regular basis with people who have leave to remain will be aware that they may have dependants who may be affected by that decision on leave to remain. Will this affect those individuals? It would be useful if the Minister could say a little bit about that.

Where does this process leave a person who is in the process of claiming asylum in the UK, and who is therefore unable to return to another nation from which to conduct an appeal in the first place? I think that is the point that all of us who are considering this power are most concerned about—persons who may be stateless. A person who is extradited may find themselves stranded outside the UK, unable to return to the UK

and in a country where they have no status, with all the risks to the protection of their human rights that that entails.

Indeed, that is why the United Nations High Commissioner for Refugees has expressed concerns that the clause might have potentially serious implications for those people who are recognised as refugees or stateless persons, in particular that it might cause refoulement, which is a wonderful word that all of us have had to learn. The hon. Member for Dover looks perplexed; "refoulement" is about a person being sent back to a place where they are at risk of persecution. *[Interruption.]* It is suggested that the hon. Member always looks perplexed. No, it is simply that he is studying his iPad with great and due diligence; I am absolutely sure of that. However, the concept of refoulement is a very serious concern in relation to this proposal. Can the Minister say whether the Government have taken any advice about that?

Again, what if a person against whom this power is used has family or dependants in the UK? I have already said that it would be helpful if the Minister would say what would happen to their leave to remain. Would they have any article 8 rights as a result of their being present in the country?

If someone cannot return to the UK, how will the Government ensure that there is a proper and fair process in which they can give evidence if they lodge an appeal from wherever they may be based at the time? How would the Government classify a person who was a "high-harm individual", who are the persons that the Government suggest this power might be used against? If, for example, as in the case that we have seen, the charges were dropped against somebody, would they then have their leave automatically reinstated? Would there have to be a further process? What process of clarification would there be in such circumstances? That would be an issue.

There is also the fear that the Government might lie in wait for somebody to leave the country. Could the Minister say a little more about the evidence-gathering process under which this power would be used? Obviously, the suggestion is that it would be used if there was evidence that somebody had done something untoward overseas while they were out of the country. There is no case, or indeed process, on which to judge that, so it would be helpful if the Minister would set out how the Government see that power being used, and on what basis that evidence would be gathered.

The Opposition understand that there is a need to clarify this situation, but we just want to have the assurances and protections to ensure that this clause could not be misused, whether intentionally or unintentionally, by the Home Secretary in dealing with persons who have leave to remain in the UK. Let us be clear: we are talking about people who already have leave to remain in the UK, not people whose application for leave has yet to be determined. A judgment has already been made that this person has a right to be in the UK, so removing that right is a very serious measure indeed.

If the Minister said a little in response to my questions, that would be very helpful to the Opposition in understanding the implications of this clause.

Damian Green: I am grateful to the hon. Lady for her tone in discussing the clause, which addresses a current anomaly in legislation that allows an individual to return here to appeal a decision to cancel their existing leave, despite their having been excluded by the Home Secretary from the United Kingdom. Exclusion from the UK is a key tool in tackling those who seek to cause harm to this country. Exclusion is used to tackle a range of conduct including terrorist-related activity, serious criminality and engagement in unacceptable behaviour. The exclusion power is used sparingly and is reserved for those considered to be the highest harm cases. Its purpose is to prevent those identified from coming to the UK, to deter others engaging in similar activity and, most importantly, to protect the public. It is therefore crucial that once the Secretary of State makes such a decision, it is given full and immediate effect. It should not be undermined by a separate immigration decision to cancel leave that is taken only to give effect to the exclusion and the accompanying appeal right that it brings.

Of course, any such decision by the Secretary of State should be open to challenge and review by the courts, but the Government believe that given the nature of such cases, it is wholly reasonable that judicial scrutiny of the facts should be carried out while the individual remains outside the United Kingdom. That is why we are seeking to make the change.

Clause 35 therefore seeks to provide the Secretary of State with a certification power where she decides that the decision to cancel leave under section 82(2)(e) of the Nationality, Immigration and Asylum Act 2002 was taken on the grounds that the individual's presence in the United Kingdom would not be conducive to the public good. In practice, that means that the decision was taken to given effect to an exclusion decision. The effect will be that after certification, where the individual is outside the United Kingdom at the time of the decision, the in-country right of appeal under section 92 of the 2002 Act no longer applies to such a decision and is replaced by an appeal from outside the United Kingdom only.

The hon. Lady asked a number of detailed questions. She asked what types of conduct or individual would fall into that category. An exclusion decision by the Secretary of State is a direction that can be made in cases where the Secretary of State considers that an individual's exclusion would be conducive to the public good. Those decisions are most frequently made in respect of individuals engaged in activity that constitutes a threat to the national security of the UK, serious criminal activity or activity that falls within the published policy of unacceptable behaviour.

A decision to cancel a person's leave to enter or remain while he or she is outside the United Kingdom is taken under paragraph 13(7) of the Immigration (Leave to Enter and Remain) Order 2000. Such a decision may be taken on the grounds set out in paragraph 321A of the immigration laws, which state under paragraph 4 that an individual's leave to enter or remain is to be cancelled where the Secretary of State has personally directed that the exclusion of that person from the United Kingdom is conducive to the public good. There is no definition in legislation of "not conducive to the public good", but a high proportion of exclusion cases relate to individuals engaged in terrorist-related activity,

[Damian Green]

organised crime or unacceptable behaviours, and published criteria exist for unacceptable behaviours. As I have said, the exclusion power is widely drawn and is not defined in legislation, but it is very sparingly used and reserved for the highest harm cases.

Stella Creasy: The Minister is obviously talking about people who have engaged in serious criminal activity. Does he not consider that we would not wait for such people to leave the country before we acted? There is therefore a slight anomaly about how the immigration system works with the criminal justice system. I am sure that he will say that the National Crime Agency will resolve all those challenges, but the people he is talking about will already have been dealt with in any case, in terms of their status and their ability to remain in the UK, by virtue of their criminal behaviour.

Damian Green: The truth is that some will and some will not. I would not be hubristic enough to claim that the National Crime Agency will abolish serious and organised crime; would that that were the case.

Mr Syms: Second term.

Damian Green: Yes, that is a long-term aspiration.

Sometimes new evidence comes to light on serious and organised criminals and in terrorist cases. If that evidence comes to light when somebody is not in this country, it is extremely important for the Home Secretary to have the power to exclude them. Once that evidence comes to light and the Home Secretary agrees that one of the criteria has been met, it can be done immediately. I should stress how sparingly the power has been used; it is used on about five individuals a year.

The hon. Lady asked about refugees and asylum. Excluding an individual with refugee status would involve the revocation, cancellation, or some other cessation, of that individual's refugee status, which is a separate step that obviously would not be taken remotely lightly. However, where an individual poses a threat the UK, we believe that they should be excluded from the country. If somebody does have that status, there is that extra serious piece of thinking to be done.

The hon. Lady raised the point about whether there was a deliberate policy of waiting for individuals to leave the UK. As I have said, there is no policy to that effect. Indeed the Committee will be aware that a range of deportation cases in respect of national security activity are ongoing.

Stella Creasy: I want to return to a point the Minister made about people who have asylum or refugee status. The concept of refoulement is a very serious concern in this instance. If the Government were to revoke somebody's refugee status in the UK, that person may be forced back to a place where they would suffer persecution. If somebody has been granted asylum and refugee status in the UK, there is obviously a recognition that they are at risk of such persecution. I just want to test the Minister—could he say a little more about what provision the Government have made to ensure that that would not be the case in these circumstances?

Damian Green: The only time that that would apply in these circumstances would be if the person was actually in the country that they said was a danger to them at the time that their leave to enter was revoked. I have to tell the hon. Lady that from my experience as Immigration Minister I know of cases where people have claimed asylum from countries but been found to have travelled back and forth to those countries, so it is not an unknown circumstance, but let us assume for the sake of her argument that they would not have gone back there. One would assume that they would be in another country where they were not in danger and where there was no danger of refoulement.

Stella Creasy: With respect, I think that the Minister is not correct. If somebody were to travel to another country, perhaps within the European Union, and their status were revoked, there would still be the possibility that they could be deported to the country from which they fled persecution, because they had been granted asylum in the UK, not in the country they were visiting. So, somebody would either end up as a stateless individual, or we could, by default, be responsible for their refoulement back to the country of original persecution.

Damian Green: That would be the precise argument that would be tested in the courts. That person would perhaps be in another European Union country. They would be, by definition, in a perfectly safe country, or they may have gone back to the country where they were allegedly in danger. So, one way or another, they would be able to have their court case argued in this country. In any case, they would not be put back into danger, so we would not fall foul of the human rights convention.

I was talking about an individual who had left the UK. Characteristically, we are talking about a situation where an individual leaves the UK for a period of time to meet with like-minded people and potentially acquire new skills that would, if utilised back in the UK, pose a significant and serious threat to the population as a whole. That tends to be the sort of case that occurs in this particular area.

The hon. Lady asked about the effect on the family of the person excluded. The decisions does not have any effect on dependants. Again, there would be a court case and it would be open for the defendant's legal team to bring up article 8 rights if they so wished.

Charlie Elphicke: It seems to me that this issue of refoulement has been protected quite considerably. That was true in the case of Sani Adel Ali, a paedophile rapist from Sudan who could not be deported from this country after his crimes because of his human rights.

Damian Green: Yes, my hon. Friend and I probably share views about cases such as that, as do the vast majority of the public. Nevertheless, we operate within the law.

Stella Creasy: We all share concerns about those sorts of cases. I am pleased to see the hon. Member for Dover using his iPad. Obviously, he was talking about someone who was stuck in the UK—as opposed to someone who had already left the UK, which is what

the clause refers to—and then rescinding their right to remain in the UK. It is a different scenario when someone is outside the country and able to exercise their right of appeal, as opposed to someone who is in the UK. Perhaps if he continues to scroll down, he might read some examples of that.

4.45 pm

Damian Green: I feel we are going down a byway here. If it is possible to exclude serious rapists from this country, I would prefer to do so. Indeed, I would prefer them to be locked up anywhere around the world. The provision will be reserved for the highest harm cases. That is why we have restricted such a change to individuals whose presence is certified by the Secretary of State personally to be non-conducive to the public good. Since 2005, there have been an average of fewer than five individuals per year who have been excluded and in conjunction with the decision had their leave to enter or remain cancelled.

The clause seeks to maintain the operational integrity of the Secretary of State's power to exclude an individual from the UK. The decisions are never taken lightly. They are reserved for the highest harm individuals and it is therefore imperative that such a decision remains operationally effective pending judicial scrutiny.

Stella Creasy: The Minister did not answer one of the questions that is at the heart of the matter. He talks about the ability of people to exercise the right of appeal to the decision, but he has not addressed the question about how they might be able to give evidence themselves within a court process. What provision would be made to ensure that people could give evidence if they were not able to come back to the UK to take part? There is also the question about people who do not voluntarily leave the UK, but who leave as part of an extradition process. Has the Minister had legal advice as to whether the power would then be used by defendants who say that they could not take part in an extradition process because it would risk their ability to remain in the UK?

Damian Green: I genuinely do not understand the hon. Lady's last point. She talks about a defendant agreeing to take part in an extradition process, but in my experience nobody agrees to it. We extradite them. If we have removed them from the country, they presumably would not have had the right to remain.

I will address the hon. Lady's first point. The conduct of the individual concerned should be placed in context. She is rightly concerned about the rights of people in court, but that right has to be balanced against what might be a severe danger to the population at large. The idea that the necessity to appear in person in a court case should outweigh the necessity to protect public safety in this country is a route that I hope she would not wish to go down. If she did, I certainly would not want to follow her there.

I see no reason why, on notification, the individual cannot instruct legal representatives of their own choosing to pursue an appeal from abroad. Indeed, that has happened in previous cases before the Special Immigration Appeals Commission and continues to be the case now. Technology allows for individuals to provide instructions to representatives and, if requested, via video link in person to the appeal forum. In addition, it would not be unreasonable for the appointed legal team to visit the individual abroad to take instructions. Appeals before the Special Immigration Appeals Commission are provided with legal aid to fund an appeal, subject to the usual scrutiny on affordability of the applicant. Therefore, an individual in this position has access to the full merits appeal that the cancellation decision brings, even though it takes place outside the United Kingdom, in line with the exclusion decision.

Stella Creasy: I thank the Minister for his answer. He saved himself by looking at what courts could do to ensure that they can take evidence from the person in question. I am sure that he would not want a court to decide to overturn the decision to remove somebody's right to remain on the basis that they had not been given a fair and appropriate hearing, although some judges may want to do that.

May I press the Minister on what advice he has had, if there is this power and there has been the clarification, about whether people seeking to fight an extradition charge can argue that they would be at risk of refoulement or persecution if denied the right of appeal to remain in the UK? Such people's rights would be summarily curtailed, and leaving the country would itself thus trigger the ability of the Secretary of State to use such a power, which might be problematic for them.

I hope that the Minister understands that my point is about the power being used as a reason not to extradite somebody, because it is exercised when that person is out of the country. He is still looking quizzical—I would love to offer him an iPad to look it up. Will he clarify the legal advice he has received about how to make this a robust power, so that there is no suggestion that it could influence any extradition proceedings? That would be very helpful.

Damian Green: I understand the hon. Lady's point, but I looked quizzical because I was trying to work out the circumstances in which that might come about. *[Interruption.]* If the hon. Lady or anyone else has an example, they may wish to bring it up. She does—excellent.

Stella Creasy: I suggest that the case we have discussed, which may well have triggered the need to resolve such an anomaly, is a good example. Somebody was extradited to Italy under a European arrest warrant. Could their legal team have argued against the extradition warrant on the basis that the person might lose their right to remain, as they did? I am seeking clarification about that from the Minister.

Damian Green: The truth is that legal teams can and will seize on any argument in any case. I am not a judge or a lawyer—distinguished lawyers are sitting next to me in Committee—but it seems to me that it would be clutching at straws to argue in an extradition case that there was a danger that the client was potentially so dangerous to public order that they were one of those rare individuals who have to be personally excluded by the Home Secretary, because they met one of the most serious criteria for danger to the public at large. Anyone praying that in aid while arguing against someone's extradition would be given fairly short shrift by the court. I genuinely do not see that as an objection.

Stella Creasy: It is helpful that the Minister has said that, but it would be even more helpful if he clarified that he had thought through the process of refoulement. The other point that he has not yet addressed is the impact of the provision on the right to remain of any dependants.

Damian Green: I have already done so.

Stella Creasy: The Minister has talked about article 8 rights, but not about people coming here as dependants of somebody who has limited leave to remain. If their family moves, would they have the right to apply for leave to remain?

Damian Green: I shall say this only once: the provision affects the individual concerned and not their family or dependants.

Stella Creasy: With respect, the Minister has not been entirely clear, because there are people whose leave to remain in the UK is dependent on that of a primary applicant. I am simply trying to clarify whether such decisions have any knock-on effects. It is not unreasonable for Opposition Front Benchers to ask such questions. The Minister might reflect that, if a question is repeatedly asked, perhaps the answer was not as clear as it might have been.

Damian Green: For the third time, the answer is no, it would not. The provision affects the individual concerned and not the others. I cannot say it any more clearly than that.

Question put and agreed to.

Clause 35 accordingly ordered to stand part of the Bill.

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

4.52 pm

Adjourned till Thursday 7 February at half-past Eleven o'clock.