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GENERAL COMMITTEES

Public Bill Committee

CRIME AND COURTS BILL [*LORDS*]

Eleventh Sitting

Thursday 7 February 2013

(Morning)

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Monday 11 February 2013

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

The Committee consisted of the following Members:

Chairs: Martin Caton, † Nadine Dorries

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

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

† attended the Committee

Public Bill Committee

Thursday 7 February 2013

(Morning)

[Nadine Dorries *in the Chair*]

Crime and Courts Bill *[Lords]*

Written evidence to be reported to the House

C&C 12 Christopher Valaitis
C&C 15 Home Office supplementary evidence
C&C 16 Home Office supplementary evidence
C&C 17 Home Office supplementary evidence
C&C 18 Home Office supplementary evidence

11.30 am

Clause 36

Powers of immigration officers

Stella Creasy (Walthamstow) (Lab/Co-op): I beg to move amendment 84, in clause 36, page 34, line 29, after '2000', insert 'who is working in Criminal and Financial Investigation'.

The Chair: With this it will be convenient to discuss amendment 85, in clause 36, page 34, line 41, leave out subsections (4) and (5).

Stella Creasy: It is a pleasure, as always, to serve under your chairmanship, Ms Dorries, on this bright and sunny day. I hope that our debates will be as joyful.

Opposition Members are not opposed to the clause in principle. We have called for UK Border Agency officers to have the powers to deal with illegal immigration. I am disappointed not to see the hon. Member for Dover in his place today. Perhaps he has gone to get a new battery for his iPad; I do not know. On Tuesday, he was very concerned about overstayers and dealing with illegal immigration, as are Opposition Members.

The amendments, which are probing, attempt to get clarity from the Government on how the new powers will work and what powers the UKBA customs officers will have. We certainly recognise that it is a challenge for officers who turn up at premises and identify an overstayer who is here illegally, when they have no ability to deal with the issue and have to call on other assistance to be able to resolve the matter. However, the Government have not yet set out the exact powers that the officers will have and precisely how such powers will be used. I am sure the Minister will agree that we would like all officers to uphold the law and exercise it with judicious expertise.

The amendments speak to the specific powers that the Bill extends to immigration officers and are designed to test how the Government see the powers being used. We know that the Government have talked about a UK border command being part of the new crime agency, but we have yet to see any details on the powers and operational activities. Again, I refer to my own immigration casework—a cross that I bear with great pride for my people in Walthamstow. I have seen instances of UKBA officers not acting in an appropriate manner and who have perhaps gone beyond their remit. The clause will bring about a change in the powers, but how they will work is a question for all of us.

The extension of powers under the Regulation of Investigatory Powers Act 2000 and the Proceeds of Crime Act 2002 will be new for the officers. I look to members of one half of the coalition Government who I know have extreme concerns about RIPA. I hope that they will share my wish to ensure that it will be clear who is able to operate the powers under what jurisdiction. There is silence at the moment. I am sure that later on we will hear clarion calls emphasising how important it is that RIPA should not be abused.

The powers are serious. They authorise the use of covert surveillance, intrusive surveillance, and property interference such as wire tapping and installation of listening devices, as well as powers to authorise confiscation, detain cash and undertake money-laundering investigations. There is no detail at present. The Government have talked about providing guidance in due course about how criminal and financial investigation teams within the UKBA can operate, but we have not seen any details yet. If all officers are able to use the RIPA powers, I am sure many people in both the old and the new coalition might be concerned about how that will play out.

Amendment 84 simply seeks to do what the Government say they want to do in the explanatory notes to the Bill. It seeks clarity that the powers will be extended only to the

"Criminal and Financial Investigation teams in the UK Border Agency",

the people with the appropriate experience and expertise in using such powers, rather than giving the impression that all members of UKBA staff would be able to use such powers.

Amendment 85 speaks to concerns about the Proceeds of Crime Act 2002 and how it might be used by UKBA officers. It seeks to clarify how the Government envisage the powers will be used and which officers will be able to use them, and how that will then influence the UK border command. I hope that the Minister for Policing and Criminal Justice will clarify what the UK border command will do, where it will operate, who will be responsible for it and how it will be tasked. Obviously, there is an issue between the UKBA and the National Crime Agency. When the new and very serious powers are extended to customs officers, we need to have confidence that the powers will be used in an appropriate manner in support of tackling illegal immigration, which we all want to see dealt with. We do not want to see any misappropriation of powers. I look forward to the Minister's response.

The Minister for Policing and Criminal Justice (Damian Green): Welcome back, Ms Dorries, to the fun and frolic of the Committee. I am grateful to the hon. Member for Walthamstow for the tone of her speech and, in particular, for her general support for the purpose

of clause 36. The amendments would limit or remove the extension of immigration officers' powers conferred by the clause. Amendment 84 would require the authorising officer, who is responsible for authorising applications to interfere with property under section 93 of the Police Act 1997, to be

"an immigration officer who is a senior official"

in the Home Office who is also

"working in Criminal and Financial Investigation"

at the UK Border Agency.

I appreciate that the hon. Lady's intention is ensure that access to the powers is limited to immigration officers who work in the immigration criminal and financial investigation teams, but the amendment would actually broaden the range of persons who are permitted to authorise interference with property, which would lessen the safeguards by potentially lowering the grade of the authorising officer.

Clause 36(1) already establishes that only

"an immigration officer who is a senior official"

in the Home Office

"within the meaning of the Regulation of Investigatory Powers Act 2000 and who is designated"

for that purpose by the Home Secretary can be an authorising officer. In a police force, the chief constable acts as the authorising officer. In the Border Agency, the director of operations and deputy chief executive is of equivalent seniority, and they act in that role. If the authorising officer had to be drawn from the criminal and financial investigation teams, someone of a lower grade would perform the role. As such, amendment 84 would weaken the controls on the exercise of property interference, although I am sure that that is not what the hon. Lady intended.

Stella Creasy: I am interested in what the Minister says, but I am confused. The Government's explanatory note on clause 36 explicitly states that the purpose of the change to RIPA is

"to provide for immigration officers working in Criminal and Financial Investigation teams in the UK Border Agency ("UKBA") to be able to apply to exercise property interference powers equivalent to those already used by customs officials."

The Minister now seems to be saying that that is not correct. Will he clarify why that is in the explanatory notes?

Damian Green: No, the misunderstanding is about the authorising officer. At the moment, the director of operations, who is also the deputy chief executive, acts as the authorising officer. In legal terms, he is the equivalent of a chief constable, although he and the chief constables might have different views on that. Amendment 84 would require the authorising officer to be within the criminal and financial investigation teams, so the authorisation might be done at a lower level of the organisation. That is the point that I am trying to make.

I appreciate that the other purpose of the amendment is to write into the Bill the assurance that is given in the explanatory notes that the exercise will be limited in the way the hon. Lady has described. I assure her that we will limit the powers to specially trained immigration officers investigating immigration crime, and we do not feel that an explicit provision in primary legislation is necessary. Looking across the piece at the UKBA, we do not have that degree of specificity for customs officials, who currently have such powers. The aim is to provide parity between customs and immigration officers.

In practice, due to the existing safeguards in RIPA and the Police Act 1997 only specifically trained immigration officers would be able to exercise the powers in clause 36. Section 32 of RIPA outlines that for a senior authorising officer to grant authorisation for the carrying out of intrusive surveillance, they must ensure that the activity is "proportionate" and that it is necessary

"in the interests of national security; for the purpose of preventing or detecting crime"

and

"in the interests of the economic well-being of the United Kingdom".

The Police Act also imposes strict controls over the authorisation of property interference.

Stella Creasy: I thank the Minister for that helpful clarification. Will he update the Committee on how he sees the new provisions under the draft Communications Data Bill? In particular, how would the restrictions that might be imposed on the use of the powers in clause 36 in relation to people using online technologies fit with the description he has given? Will he update the Committee on the Home Office's current thinking on that matter?

Damian Green: The hon. Lady tempts me to a disquisition on the Communications Data Bill, but I will resist that temptation because it is not within the scope of the amendments, so Ms Dorries would rule me out of order.

Because the activities detailed in clause 36 are undertaken only by specialist officers in the criminal and financial investigation teams, there is no question of immigration officers stationed at the border being able to exercise these powers. They have not been trained in the exercise of the powers or in any other criminal investigation activities, and the investigation of serious crime is certainly outside the scope of their job description. Furthermore, as with customs officials, the authorising officer would never authorise any application to interfere with property or the undertaking of instructive surveillance unless said activity was to be carried out by a suitably trained individual. The Office of the Surveillance Commissioner will provide oversight and scrutiny of all applications.

There are also practical difficulties in referring to the UKBA's criminal and financial investigation teams in statute, as they have no separate legal personality. Without amending primary legislation, there would be no flexibility to account for any future organisational or structural changes. I am happy to assure the Committee that my experience of the UKBA is that another structural change is always just around the corner, so trying to limit them in primary legislation would be ill-advised.

Amendment 85 would remove the powers sought for immigration officers to carry out financial investigations under the Proceeds of Crime Act 2002. By conferring such powers on immigration officers, we seek to enhance the effectiveness of the agency's investigatory capability and to place immigration officers on an equal footing with their customs officer counterparts. In particular, it will enable immigration officers to play their part in

[Damian Green]

dealing with the proceeds of organised immigration crime and lessen their reliance on outside bodies, particularly the police.

At present, only customs officials in the UKBA are able to use the full range of powers under the 2002 Act. Consequently, immigration officers have to rely on the few accredited financial investigators in the UKBA or seconded police officers to conduct investigations into serious immigration offences. That is clearly a weakness in the agency's ability to fight such criminality.

The hon. Lady, quite reasonably, asked about the specific powers. Clause 36 will amend the Police Act 1997 and RIPA to allow immigration officers who are investigating serious immigration crime to apply for authorisation to interfere with property and to exercise covert intrusive surveillance powers for use in residential premises or to install covert audio or video equipment. Those extensions will be subject to all the statutory safeguards that exist under part 3 of the 1997 Act and under RIPA.

Usage will be limited to only the investigation of serious crime, and all applications will require a sign-off by an authorising officer, who will be a senior civil servant and closest equivalent to a chief constable grade, as I have explained. In addition, all non-urgent intrusive surveillance and property interference authorisations will require the prior approval of the surveillance commissioner before they become valid and before any covert activity can take place.

The UKBA already has a track record of using such covert investigatory powers for the purposes of customs investigation, and its use has been subject to successful independent inspection by the Office of Surveillance Commissioners. The aim of the amendments to RIPA and the 1997 Act is to equalise the powers of immigration officers with their customs officer counterparts and other law enforcement agencies.

To give as full an explanation as I can about the powers, subsections (3) to (6) of the clause and schedule 17 will allow immigration officers to exercise the powers relating to money laundering, confiscation and detained cash investigations under part 8 of the Proceeds of Crime Act. Customs officials are already permitted to use such powers, but immigration officers have had to rely on the few accredited financial investigators in the UKBA or on seconded police officers to conduct such investigations. The UKBA's own customs officers have been unable to use powers under the 2002 Act in respect of immigration crime, despite being part of the same criminal investigation team. The Bill will ensure that the UKBA can take more effective action to counter all the immigration offences in its remit.

One of the many discussions we had in Committee on the sundry immigration Bills in the previous Parliament, when the Government created the UKBA, was about the fact that there are different levels of training and powers available to people who are working in the same agency. Clause 36 will reconcile one of the most important of those differentiations.

11.45 am

Stella Creasy: What the Minister is saying is helpful. As we said at the start, the Opposition agree that there is a need to tackle some of the anomalies in the powers.

The Minister is making a strong case about the way in which the UKBA will operate. Will he say a little bit about how that will influence UK border command, which is one of the four tasks of the National Crime Agency, in terms of who will make the tasking decisions, how that will operate and who will be responsible for some of the areas of immigration control that he is talking about? Obviously, there would be a crossover with border command. It would be helpful if he explained how he envisages that working.

Damian Green: The hon. Lady says that there will be a crossover, but there will not be a crossover. There will be separate institutions, both with crime-fighting powers. This clause is not about the powers of the NCA officers who will be working in the NCA border policing command. Part 1 of the Bill, which we have already discussed, provides for NCA officers to be designated with the powers of a constable, customs officer and immigration officer. So the NCA border command will have people with wider powers than the customs and immigration officer powers we are discussing here, because they will have the powers of a constable as well.

The way it works—which the hon. Lady is also asking about, perfectly reasonably—is that the border policing command will increasingly task UKBA to lead investigations into organised immigration crime. We expect such investigations to be undertaken effectively and promptly. To do that the UKBA people will need the extra powers given to them in this clause. That is how it all fits together. The hon. Lady said that these were probing amendments. Having heard the arguments, I hope that her questions are satisfied and that she is prepared to withdraw the amendments.

Stella Creasy: The Minister has been very helpful in clarifying some of the issues about operational decisions. I am glad to hear that he understands the concerns that we might have, certainly on the Opposition side of the Committee, about RIPA being extended. I still invite some of the Members on his side to speak up, but clearly that will not happen. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 36 ordered to stand part of the Bill.

Schedule 17 agreed to.

Clause 37

DRUGS AND DRIVING

Mr David Hanson (Delyn) (Lab): I beg to move amendment 5, in clause 37, page 38, line 40, leave out from beginning to 'and' in line 44.

The Chair: With this it will be convenient to discuss amendment 7, in clause 37, page 39, leave out lines 8 to 11 and insert—

> '() knowingly contrary to any advice (which may take account of any accompanying instructions given by the manufacturer or distributor of the drug), given by the person by whom the drug was prescribed or supplied, about the amount of time that should elapse between taking the drug and driving a motor vehicle.'.

Amendment 6, in clause 37, page 39, leave out lines 12 to 14.

Mr Hanson: It is a pleasure to be here again on a Thursday morning discussing these important matters. I will start by saying that the Opposition welcome clause 37 and also welcome, I hope in a cross-party way, the efforts made to bring the clause to the Bill. I would like to reach out to the hon. Gentlemen opposite by saying to the hon. Members for Croydon Central and for Enfield, Southgate that I welcome the contributions that have brought this issue to the Committee. The purpose of amendments 5, 6 and 7—and later, amendment 112—is not to try to scupper in any way the general principle behind clause 37. It is simply an attempt to tease out what the clause means, and more importantly, some of the practicalities around how it can be delivered.

The amendments taken together were to delete the proposal in the Bill that once charged with drug driving, the onus is on the defendant to prove that the exact instructions from the manufacturer were followed. Under amendments 5, 6 and 7, the onus instead is on the prosecution to prove beyond reasonable doubt that the defendant knowingly took the drugs in a way that the manufacturer did not intend. One of the concerns put to us very strongly—this should not be a strange argument to the Minister, because it was raised in another place—is the argument that some of the drugs that potentially fall under clause 37 could be drugs that are taken for a cold, flu or other illnesses, or else standard drugs which could change, once taken, and impact upon any drug test downstream.

The purpose of clause 37 is to stop people driving with drugs. It contains a clear definition of a "controlled drug" as defined in section 11 of the Road Traffic Act 1988, amended by the Misuse of Drugs Act 1971, and so on. However, I have had representations, as has the other place, that many day-to-day medicinal items could ultimately fall under the auspices of clause 37, which currently indicates that the onus would be on the individual charged with drug driving to prove that they were taking the medicine in accordance with the manufacturer's instructions.

The representations I have had are worthy of the Committee's and the Minister's consideration, particularly those from Napp Pharmaceuticals, a large leader in the manufacture of pharmaceuticals based in Cambridge Science Park since 1983, probably not too far away from the hon. Member for North West Cambridgeshire. It is the 15th largest UK pharmaceutical company, and has said in its representations to me and to the other place that patients who can show that they have a prescription should be excluded from being charged under the offence because they would have had to have knowingly acted contrary to medical advice by driving.

I will put it simply. I am not a doctor, Ms Dorries, and I would never personally administer medicine to anybody. However, there may well be occasions when you or I go down to a well-known chemist in town and pick up a well-known prescription, look cursorily at the bottle and take the prescribed medicine for a number of days. We may well give it to our children for a number of days, or whatever, but we will not necessarily have read every word of the large piece of white paper that normally comes inside the carton with the bottle. The key question for the Minister is not on the principle of the legislation; it is on whether the onus should be on the individual who has been charged for being over the limit defined in clause 37 because they did not follow the manufacturer's instructions. The onus is currently on them to prove that they did not follow the manufacturer's instructions, rather than on the prosecution to prove otherwise.

The amendments would simply switch it around so that the prosecution has to prove that an individual took the prescribed drugs in a way that was deliberately contrary to the instructions given by the manufacture, and that the drugs were not used for their proper purpose but were misused, rather than potentially catching people who may have taken those drugs for legitimate reasons. The purpose of the amendment is to test that with the Minister.

Steve McCabe (Birmingham, Selly Oak) (Lab): I understand exactly what my right hon. Friend is asking. However, I wonder why a person should be charged at all if they are taking something legitimately available over a chemist's counter or on prescription. Surely the production of the prescription or clear evidence of how it was purchased should be sufficient? Otherwise we are going to be lining up thousands and thousands of people to be processed through the court system, which they will clog up at enormous public expense in order to defend themselves. Surely not only should the onus be on the prosecution, but before we get to that stage there should be legitimate grounds for overruling any prosecution.

Mr Hanson: The reason I mentioned that in this case is because of the evidence given to me by pharmaceutical companies. I cannot test it, because I am not a qualified doctor, but I am putting it to the Minister so that he can examine and test it. The evidence indicates, for example, that co-codamol—I confess I do not take it very often; I cannot recall the last time I took it, but somebody somewhere in Britain today will be taking it—an over-the-counter pain relief product, metabolises in the blood as morphine, which has exactly the same effect as heroin. If somebody is found with morphine in their blood, what is the nature of the test?

At the legislation stands, the individual will have to go to court, perhaps for the first time in their life, and face that court over the position regarding the taking of co-codamol. For co-codamol, again, the manufacturer's instructions would appear on a large piece of white paper, which might say, "Only take four tablets a day." The individual may have taken six tablets that day, for whatever reason. As drafted, the Bill places the onus on the defendant to prove that they took the drugs legitimately. The amendments, which reflect amendments tabled in another place, would switch that emphasis. The onus would be on the prosecutor, not the defendant, to prove that the person took another drug, or used the drug in a way contrary to the manufacturer's instructions. The fact that the Bill contains a defence is a good thing. There needs to be a defence in law. The amendments seek to shift the onus of the defence from the individual to the prosecution, who must prove complicity with actions contrary to the spirit of clause 37.

I want to test the Minister on this issue. It is not about the principle. I fully support the need to address the issue of people who drive under the influence of drugs, in the broader sense of the word as defined by the Misuse of Drugs Act 1971. However, I want the Minister to give some clarification on the clause and talk us through the arguments. Let us test them in the Committee. Let us see whether the onus should be on the prosecution or the defence.

[Mr Hanson]

When we debate amendment 112, we will discuss the implementation of clause 37, which I want to go into in some detail. What technology will be used? How will it be determined? How should we look at the issues in a positive way to ensure that the objectives of clause 37 are met? A cloud has been put into my mind, not by the principle of the Bill, but by pharmaceutical companies. Occasionally, legitimate products will show up in tests when a person has not wilfully misused drugs or driven under the influence of drugs. I want to get the Minister's view about the test. Where is the dividing line on these matters?

Valerie Vaz (Walsall South) (Lab): Is it the case that the person is guilty, and must prove their innocence? Is that a shift of the burden?

Mr Hanson: I am simply testing the Minister. He has a large number of people to help him with these matters, and it is important that we test him. At the moment, subsection (3) states:

"It is a defence for a person ("D") charged with an offence under this section to show that…the specified controlled drug had been prescribed or supplied to D for medical or dental purposes",

and

"D took the drug in accordance with any directions given by the person by whom the drug was prescribed or supplied, and with any accompanying instructions (so far as consistent with any such directions) given by the manufacturer or distributor of the drug".

My simple test to the Minister is this: how many in the Committee have ever read a four or five-page white sheet attached to an over the counter drug? *[Interruption.]* The Minister and the hon. Member for Harrogate and Knaresborough have put up their hands. I will not identify which hon. Members are shaking their heads.

I simply want to test the Minister on this important issue. His clarification of the meaning of the clause will affect case law on these issues. I am sure that neither you, Ms Dorries, nor I, nor the Minister want to see somebody who has taken two co-codamol too many, which metabolises into morphine in the blood, as does heroin, charged with an offence and having to put forward the defence themselves, rather than the prosecution having to convince the jury. The purpose of the amendments is to test that shift. At the moment, they would shift the burden from the defence on to the prosecution.

12 noon

The Minister of State, Home Department (Mr Jeremy Browne): I have not had the opportunity to speak in the Committee for a couple of weeks. It is nice to be back ready, rested and willing to go. The right hon. Gentleman raised an important issue, and other Members contributed to the debate. I welcome their broad endorsement of what the Government are trying to do. Obviously, we want to avoid a situation in which people who are behaving legally and appropriately are caught by the provisions. At the same time, we do not want to provide a broad exemption—this touches on the point made by the hon. Member for Birmingham, Selly Oak—that could be used as a big hole in the legislation by people who have not behaved legally and appropriately, to escape the consequences of their actions in a way that none of us would like. That is the balance that we are trying to strike.

Before I get to the essence of the amendments, may I pay tribute to my hon. Friend the Member for Croydon Central? He is a member of the Committee, but also a multi-talented man. He is a Parliamentary Private Secretary to the Secretary of State for Education, who is at this very moment explaining an important development in the evolution of Government policy in the main Chamber of the House, so my hon. Friend the Member for Croydon Central is not able to be in Committee at the moment. Members of all parties respect him for the campaigning that he has done on drug-driving, particularly on behalf of his constituents who have been directly affected. The provision is, to a great extent, testimony to his endeavours. I know that others, including my hon. Friend the Member for Enfield, Southgate, who is also on the Committee, have taken a close interest in the issue and I commend them.

The amendments relate to concerns about the Government's approach to drug-driving and, in particular, how the new offence will affect drivers who take prescription or over-the-counter medicines: entirely legal medicines. Let me first reassure the Committee that the Government fully accept that the concerns are legitimate. It is to no one's benefit for drivers who are innocent of any wrongdoing to be arrested. The new offence is intended to target those who drive after taking illicit drugs or prescription drugs that are being misused. The Government have therefore included a defence so that a person who has taken their medication in accordance with medical advice would not be guilty of the offence.

The medical defence itself provides considerable protection to those taking properly prescribed or supplied medical drugs. The defence—this is the point made by the hon. Member for Walsall South—places what is known as an evidential burden on a person accused of committing the offence. In practice, that means that the accused person must simply put forward enough evidence to raise an issue regarding the defence that is worth consideration by the court, following which it is for the prosecution to prove beyond reasonable doubt that the defence cannot be relied on. In other words, if somebody were to bring forward a prescription, that would be sufficient, unless it could be proven by the other side that they had behaved improperly.

Steve McCabe: I want to understand how the provision would work. Let us say that the police stop someone and they feel that they have sufficient reason to believe that that someone is driving with drugs in their system above whatever the permitted level is, and the person says, "Look, I'm taking this." None the less, the police would proceed to refer that case to the Crown Prosecution Service. It is highly likely that that person would then end up in court, and the defence that has been referred to is the defence that they would then be able to call on, having been processed through that part of the system.

Mr Browne: The Bill provides a platform for future decisions on levels and so on, which are not contained in the Bill, so the person would have to fail on that count as well. Of course, if the police had stopped them because their driving was erratic and they were found to have alcohol in their system—

Steve McCabe: There would be no defence.

Mr Browne: Exactly. There would be no defence at all. Someone is stopped because their driving is erratic and dangerous to the public. They are then found to have drugs in their system, consumed potentially, as the right hon. Member for Delyn just said, either illegally or legally. At that point, the concern that has been raised with us is, "Wait a second. What about the person who has taken the drug entirely legally?"

I do not think we can have an absolute presumption that the person has not done anything wrong—they are driving erratically and have drugs in their system. We are trying to stop erratic drug-driving. Rather than the burden of proof being on the person to prove their innocence, as long as they can show the necessary paperwork to prove that they were taking drugs appropriately, the burden will be on the other side to prove that the person has behaved improperly.

Mr Hanson: The Minister has just said that there are no evidential tests in the Bill—that there is simply a power. He said that he will look at those matters later, but I want some clarification from him on where the line is likely to be drawn. A fifth co-codamol on a prescription of four co-codamol a day may be different from 20 co-codamol on the same prescription. There are issues regarding implementation, which we will come on to when we debate amendment 112, but the Minister can help by focusing on that in this debate.

Mr Browne: The police and the CPS have some flexibility. Obviously it would cause the public some concern if that flexibility was so great that they felt the powers were not being used even-handedly. However, the police will be aware of the statutory defence of taking a specified controlled drug in accordance with medical advice. I would imagine that if a driver was able to demonstrate there and then that it was regular medication, the police might decide that it was not in anyone's interests to take the matter any further. The CPS's code has a requirement that prosecutors

"should swiftly stop cases…where the public interest clearly does not require a prosecution".

I would hope that in a clear-cut case of, for example, an elderly constituent on regular medication, common sense would prevail straight away.

The Committee is right to be vigilant about the power. However, I invite hon. Members to be mindful that, in cases where someone is driving in a way that a police officer has reason to believe is dangerous and who has drugs in their system, which may be the cause of that dangerous driving, it is not unreasonable at least to consider the matter seriously at that stage. In some cases they may be taking illegal drugs, which could also have been prescribed, in a different form, and they may be a direct threat to other motorists or pedestrians, around 200 of whom are killed each year, by our estimate, by drug-driving. We therefore must ensure that the exemptions are not so broadly prescribed that the Bill fails to achieve its objective.

Charlie Elphicke (Dover) (Con): Is it not right that, in principle, all motorists owe primarily a responsibility to other motorists to drive safely and not to drive when they are impaired? If I go down to the pharmacy, get a whole load of sleeping pills, take them—perfectly legally—and then go driving, is that not my fault? Should I not be taking serious responsibility for my actions?

Mr Browne: My hon. Friend makes an entirely valid point. Some people who are not taking drugs may see their ability to drive a car become impaired over time because of a degenerative medical condition. Such people should be mindful that they do not cause a danger to other motorists or to pedestrians, even though they have a driving licence and are theoretically able to drive. If they cannot be confident that they are able to control the car in a way that maximises the safety of everyone around them, they should not be driving.

Steve McCabe: Surely we are not talking about people who deliberately and recklessly set out to drive a vehicle knowing that they have taken excessive drugs. We are talking about people who have good reason to believe that their driving is unimpaired and that the drugs are perfectly legal, medical, prescribed or advised. They are caught by the judgment of a police officer. As we know from the analysis of drink-driving stops, the judgment of police officers varies dramatically. Surely that is what we are concentrating on. As this is a new law, I am curious to know, if such instances result in court cases, have we any idea of the number of likely potential prosecutions? At a time when the Government are so concerned to cut the costs in the courts, we could be storing up a huge bill for prosecution that will ultimately fail.

Mr Browne: I urge the hon. Gentleman to be cautious in his line of criticism. He paints a picture of huge numbers of law-abiding citizens, who are driving perfectly safely from A to B on some mild form of prescription drugs, being hauled before the courts in a brutal and authoritative way. As we speak, there are large numbers of well-meaning, law-abiding citizens who have taken prescription drugs and who are driving to the shops and they are not being pulled over in huge numbers by police officers, because they are driving entirely safely and appropriately for the circumstances around them. Let me expand on that point.

Mr Hanson: The Bill, in subsection (4)(b), says that the defence of taking a drug in accordance with instructions is not available if the driver's actions were

"contrary to any accompanying instructions about that matter (so far as consistent with any such advice) given by the manufacturer or distributor of the drug."

That is what we are trying to delete to put the onus on the prosecution. At the moment, if someone does not take the drug in accordance with exact instructions and it is proved that they are over the limit, whatever that might be, they will face prosecution. The onus should be on the fact that it was malicious or dangerous rather than standard, everyday matters.

Mr Browne: I welcome that intervention, but if I may progress with my speech I will get to the nub of that point. To continue on the point made by the hon. Member for Birmingham, Selly Oak, in most cases those on prescribed medicine containing specified controlled drugs would only come to notice—this relates to the point made by the hon. Member for Dover—if their driving was impaired or for some other reason requiring police action. It is important that the Committee appreciates that the police can only stop and question an individual driver in very particular circumstances, such as when they have been involved in an accident. People who are

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taking their medication appropriately and driving safely would no more expect to be stopped under this legislation than they are today.

In addition, under the Code for Crown Prosecutors, the public interest should clearly be taken into account when a prosecution is put forward. Furthermore, the Government expect that the courts will take a sensible approach to the operation of the new offence. For example, a defendant seeking to rely on the medical defence may be afforded more or less leeway depending on the facts of a particular case, such as the nature of the medical advice provided and the wording on the accompanying leaflet. It is certainly not our intention to try and catch out every person who has not read the microscopic lettering on the back of a very long white leaflet.

We want to apply the measure reasonably. However, I say to Opposition Members that if we put a massive hole in the middle of this legislation, which is where the hon. Member for Walsall South appears to be coming from, and say that people who have taken vast quantities of drugs, way over what is recommended by manufacturers or is on their prescription—

Valerie Vaz *rose—*

Mr Browne: Let me finish my point. I am talking about people who are taking what is explicitly stated as a dangerous dose for driving or operating heavy machinery and a drug that other people take in illegal form. If they do not have to provide any evidence at all that they have behaved properly, we will be creating a very big hole in the legislation, which will mean that people who are drug-driving will get off their offences when they do not deserve to, and I am sure that Committee members would not wish them to.

12.15 pm

Valerie Vaz: The point I understand my right hon. Friend the Member for Delyn was making was that very often people do not know. Subsection (2) states:

"D is guilty of an offence if the proportion of the drug in D's blood or urine exceeds the specified limit for that drug."

So they are already guilty if they are stopped. They perform the test. It is over the limit and they are guilty. That brings in the point made by my hon. Friend the Member for Birmingham, Selly Oak, which is that the courts will be clogged up with these cases because people will then have to go to court to prove their innocence.

Mr Browne: At the risk of repeating myself, someone who is driving safely with an appropriate level of a prescription drug in their system is unlikely to be stopped by the police. If they are stopped by the police then the police may use their discretion in a sensible and rational way. If not, and it goes to the Crown Prosecution Service, the CPS in many circumstances may wish not to proceed.

Valerie Vaz: They may be driving erratically.

Mr Browne: If so, it raises legitimate concerns if one is trying to cross the road in front of that person. That is getting to the essence of this part of the Bill.

Requiring the prosecutor to prove that a drug had been taken knowingly—the point made by the right hon. Member for Delyn—against medical advice, as amendment 7 would do, would increase the practical difficulties in taking enforcement action against people abusing drugs with medical uses. If amendment 7 were accepted it would be difficult for the prosecutor to rebut the defence and to prove beyond reasonable doubt that there had been clear directions from a doctor and/or instructions issued by the manufacturers or distributors accompanying the medicine containing specified controlled drugs; that the concentration of the drug in the defendant's body indicated that the medical advice on taking the drug could not have been followed; and finally, that the drug had knowingly been taken contrary to that advice.

That is the crucial point. How do we prove that that was done knowingly? A person is driving erratically; they are unsafe for other motorists and pedestrians. They have the drug in their system. They have taken a drug in excess of the amount advised to them by the manufacturer or by the doctor. If we accept the amendment we will put an extra hurdle in the way of protecting other motorists and pedestrians by saying that we have to prove that the person knowingly undertook that course of events. Our view is, that would be too big a hole in the legislation.

Mr David Burrowes (Enfield, Southgate) (Con): I have some experience of driving cases. It is important to deal with this proportionately and we are trying to avoid a lack of proportionality for those drivers who are legitimately taking medication. One practical way to deal with this, once the roadside drugalyser is in operation, is to follow the route through and have guidance that, just as one has to provide insurance documentation to the police station, people could provide information on the medication. Within seven days people could go to the police station and provide all the evidence. That would deal with the disproportionality of someone being arrested and having to go to court to prove their innocence. That may well be a practical way for us to deal with some of these concerns.

Mr Browne: It will be important to make sure that the practical arrangements strike the right balance. My hon. Friend is right to bring that issue to the Committee's attention. I would emphasise again: the reason these manufacturers' notes say that it is unsafe to drive or operate heavy machinery if more is taken than the recommended amount, is normally because it is unsafe to drive or operate heavy machinery. So for us to say in the Bill that it is all right to ignore the instructions seems a dangerous basis on which to proceed. But we are saying that if it can be demonstrated that the medication has been taken within the guidelines, that is a perfectly reasonable defence. Putting "knowingly" in the legislation would make the offence unduly difficult to enforce. It would therefore not provide a useful alternative to prosecuting drug-drivers under the section 4 impairment offence where 40% of proceedings were withdrawn or dismissed in 2010.

Steve McCabe: I want to pursue the point a little further. The Minister is asking us to take too much on trust. Surely the truth is that these are recommended levels. Just as in the case of alcohol, a person's size,

weight, body chemistry and the length of time they have been taking the drug will have an impact on what is found in any testing. The Minister is asking us to accept that everyone is the same and that if you deviate from the recommended level, you are at fault. His hon. Friend the Member for Enfield, Southgate has offered a way out, which would at least reduce the prospect of people being dragged before the courts who need not be there.

Mr Browne: Let me put the counter-case to the hon. Gentleman. He raised the parallel of drink-driving. Would it not be a weird state of affairs if somebody was stopped by the police because they were driving in a way that put at risk the lives of other motorists and pedestrians, was breathalysed and found to have alcohol in their body, perhaps over the drink-driving level, but because we could not prove that they had knowingly drunk up to and above that level, we were not able to prosecute them? I am inviting members of the Committee to think that, in those circumstances, a lot of people would say, "Hang on a second—we have got to try and strike a balance that protects pedestrians and motorists as well as protecting people from being unfairly prosecuted."

If the prosecution has to demonstrate that the person knowingly drank the alcohol, we will then have a defence such as, "My drink was spiked," or, "I thought I was a person fat enough to be not at risk of going over the limit," and so on. An exemption gap would be created through which we could drive a coach and horses. We would come back in a few years' time and the Minister standing here—it may even still be me—would be criticised, not least by Opposition Members, and asked why we had allowed legislation to pass whereby so many people had been killed or maimed by drunk drivers because we had put such a big exemption in place.

Charlie Elphicke: I support the Minister. This amendment is ill-founded. We need to be strong on drug-driving and have a zero tolerance policy. It is the responsibility of motorists to ensure that they drive and operate machinery safely in the interests of other people, both pedestrians and drivers. It is shocking that the Labour Party is putting forward this amendment.

Mr Browne: My hon. Friend displays the clarity of political purpose and message that I remember so well from Nottingham University Conservative Association meetings—which I did not attend, because I was not a member—but which I heard from down the corridor at the much better-attended Liberal Democrat association meetings. He spoke very forcefully those 20 or so years ago and he continues to do so to this day. But I would invite Committee Members to endorse the approach I have put forward and to reject these well-intentioned but, in our view, mistaken amendments.

Mr Hanson: To put the hon. Member for Dover at ease, he will know that it is the Opposition's duty to test some of the proposals in any legislation. We are trying to tease out some of the real issues that might be practically delivered on the ground once the legislation has passed. The purpose of this amendment was to do that in relation to the evidential test and where that test lies—whether it be on the defendant or the prosecution. I will withdraw the amendment, but give notice to the Minister that we may return to these matters on Report. I hope that the Minister will reflect on what has been said. It is not about the principle of tackling drug-driving; nobody wants to see people driving under the influence of drugs and causing death on the roads. The principle of the amendments was to tease out from the Minister where that line is drawn and how that operates in practice. Perhaps he can give some reflection to that. We may return to this later, dependent on progress. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mr Hanson: I beg to move amendment 112, in clause 37, page 40, line 31, at end insert—

'(8) A review of the implementation of section 37 shall be undertaken within 12 months of Royal Assent and a report laid before both Houses of Parliament.'.

I pay tribute to the hon. Member for Croydon Central for his efforts in bringing such matters to the attention of the Government in his campaign on behalf of his constituents. The amendment is fair. It would be the right action to take, and the Bill would be better for such a provision. I hope that members of the Committee will reflect on our deliberations.

The Minister has said that evidential tests have not been established on the drug level required under clause 37. At what stage does he intend to establish the relevant evidential tests? Will they be different for different types of drugs, such as heroin, cannabis, cocaine and, dare I even say it, co-codamol? If so, what will that mean in practice? We discussed earlier the impact of certain drugs on different people. Each member of the Committee is a different size and weight. Will such details have an impact on the evidential test under the clause, when agreed by Parliament downstream? What is the test, and how will it be determined?

I am also interested to know what assessment the Minister is making of how the tests will be undertaken. We have had discussions about people being taken to police stations for swabs and blood tests. How will that be done in practice? I have had a cursory glance at that marvellous tool, the internet, to find out about the development of the roadside drugalyser. Does the hon. Gentleman have information on such equipment being touted at the moment? What tests has he undertaken on the reliability of the drugalyser? What licensing measures does he intend to put in place, and what methods will be used by police forces at the roadside? What assessment has been made of suppliers of such equipment? Does he expect the tests to be taken at the roadside, in police accommodation or prison? What would be the unit cost of a drugalyser? How many drugalysers does the hon. Gentleman anticipate police forces buying? Does he intend them to be bought at a local police force level? *[Interruption.]*

The Minister says that such questions are not for our discussions on the amendment. The amendment is in order, and it states that a

"review of the implementation of section 37 shall be undertaken within 12 months of Royal Assent and a report laid before both Houses of Parliament."

He should recognise that accepting proposals is one thing, but their being operational on the street and meeting the issues highlighted by the hon. Member for Croydon Central is another. The acceptance into law of

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clause 37 will have an effect, but I am interested in its implementation. Such a provision touches on testing, the drugs covered by the testing, the individuals who might be tested, the equipment and method of testing, and the reliability, licensing and suppliers of the equipment.

Implementation is also connected with the cost of such measures to police forces. I am interested in the unit cost of the drugalysers that might or might not be licensed by the Minister. It touches on whether we intend to have a national or a local purchase of them. The Home Office might organise a national contract to buy *x* thousand drugalysers and supply them to police forces. I do not know. I want clarification on that in relation to the implementation of clause 37.

12.30 pm

Has the Minister assessed what training will be required by police forces for police officers and others to be able to undertake the testing to an effective standard? Has he had discussions with police forces about their taking up the powers in clause 37 and at what date does he expect those powers to be operational following Royal Assent? The issue is not simply about passing the legislation, but ensuring that police forces are ready, equipment is in place, officers are trained and that people know what the legislation is before a downstream implementation takes place. If forces are signed up to that, can the Minister tell us whether all 43 forces expect to operate the drugalyser and the drug testing within 12 months of Royal Assent? If he does not know, will he find out and bring the information to us? What will the legal requirement be for forces to undertake the provision in clause 37? Will the Minister clarify that? Will it be something that they can exercise or something that they have to exercise?

On the point that my hon. Friend the Member for Birmingham, Selly Oak mentioned earlier, presumably some people in due course will be caught and sentenced by the courts under clause 37. I know that the Minister will have estimates, so I will ask. How many people are sentenced to prison and to community sentences in a 12-month period? What training will be undertaken by the courts, magistracy and judiciary in the next 12 months? When does he expect the provision to be enforced in law? What will happen in Scotland and Northern Ireland, which are constituent parts of the United Kingdom? Does he expect the legislation to be taken up by the Scottish Parliament and the Northern Ireland Assembly, so that we have a standardised procedure across the United Kingdom, or does he expect people to be able to cross the Scottish or Northern Ireland border and not face the penalties that they might face elsewhere in the United Kingdom?

My points are not raised to say the provision is not a good idea, but because somebody needs to think about how the matters are implemented. I expect the Home Office to have considered that, but it is incumbent on the Minister to share it with the Committee while we are considering the clause. The last thing that the constituents of the hon. Member for Croydon Central want is for legislation to be passed but not universally implemented throughout the United Kingdom; not implemented in an effective way; implemented at a greater cost to the taxpayer than need be; and with no assessment of what the outcomes are in relation to prison and community sentence placements. Will the Minister address those issues?

The issues are relevant and interesting. We are asking for a 12-month report so that we can say to the Minister—if the Bill gets Royal Assent in 12 months' time—"Where are we on this?" That will be of great interest to everybody who has campaigned for the provision, not least the hon. Members on his own side.

Gavin Barwell (Croydon Central) (Con): May I inquire of the Chair whether it would be in order to make some general remarks on the clause at this point, or will we have a separate stand part debate?

The Chair: It would be better to wait for the stand part debate.

Gavin Barwell: In that case, I will wait until then.

Mr Browne: This is almost a point of order. It is quite hard for me to speak as a Minister to what is a very broad amendment without touching on the stand part debate. Would it be helpful for the Committee to almost merge the two into part of a general discussion on the clause?

Mr Hanson: If it helps the Committee, I will not be speaking in the stand part debate.

The Chair: In that case, Mr Barwell will speak now.

Gavin Barwell: I am sorry to have caused confusion. I also apologise to the Committee for not being here for the debate on the earlier amendments. I am grateful to the right hon. Gentleman for his kind words. I understand that in my absence the Minister also said some kind things. The explanation that my Secretary of State was making a statement was probably provided; that is why I was not here.

I am also grateful for the general tenor of the remarks of the right hon. Member for Delyn. This is not a party political issue, and Members from all parties share concern about the gap that currently exists in the law and the fairly widespread problem of people driving under the influence of drugs. I am grateful for the points he made. I want to put on record the contributions of my hon. Friends the Members for Orpington and for Eastbourne; members of the family of Lillian Groves live in their constituencies and they joined our lobbying campaign.

I do not want to take up too much of the Committee's time, so I shall not rehearse the tragic circumstances in which Lillian lost her life. I suspect that all members of the Committee were at the Second Reading debate when I spoke about that.

I begin with a general point, which I think lay behind some of the arguments made by the right hon. Member for Delyn: Lillian's family feel that a package of measures is required to deal with the problem. Changing the law so that there is an effective sanction for those who drive while under the influence of drugs is an important part, but it will not on its own deal with the problem. The family are looking for two other things, the first of

which is more effective sentencing. My hon. Friend the Member for Enfield, Southgate will touch on that when we come to schedule 18, so I will leave it for the moment.

The second thing the family want is for the police to have equipment at their disposal that enables them to detect at the roadside when drivers are driving under the influence of drugs. Currently, there is a pretty complicated procedure in which officers conduct a field test, essentially, and if they suspect someone is under the influence, they go back to the police station, a doctor has to be called and a blood test done. That is clearly a long, time-consuming and costly process, and is only ever likely to be used when there is a strong suspicion that someone is very heavily under the influence of drugs. A device at the roadside, similar to the breathalyser widely employed by police forces across the country, is required.

When all three of those pieces are in place—the new law, the use of devices at the roadside and appropriate sentencing—a concerted enforcement campaign by police forces is required. The equivalent issue of drink-driving was fairly widespread a couple of generations ago, even after it became illegal, because there were people who had grown up when it was legal to drink and drive; they had done so for years, and did not see why they should change their behaviour. We only really began to see a change in patterns of behaviour when there were concerted media and enforcement campaigns. People began to see that if they drove while drunk, there was a high likelihood that they would be caught, and that if they were caught, they would lose their right to drive for a period of time.

It is important to put on the record that a package of measures is needed. Some of the questions that the right hon. Gentleman asked cut to the core of the issue. The first issue is drugalysers, if we want to call them that—devices that officers can use. My understanding is that something called "type approval" is required for their use, which comes from the Home Office. I believe that the Home Office has now issued type approval for the use of a device at police stations. That is an important step forward; it is progress. Perhaps the Minister can confirm this, but I think the intention is to get type approval for the use of a device at the roadside in 2014. It is important to put those processes in place and ensure that police forces have resources and equipment readily available.

I alerted the Minister in advance to my desire to talk a little about what the limit might be. I know that he will not be able to answer my questions today, because an expert scientific committee is looking into the issue, but Lillian's family most want me to make the case for zero limits. I shall make their case, and I shall also set out to the Committee the caveats that I have told the family, because this is a balanced and nuanced issue.

The family's view is that some drugs are illegal and therefore should not be in anyone's system, so there is no excuse for a person having any level of them in their system while driving. However, against that we have to weigh the fact that this is a road safety measure, and we do not want a situation where the law could be challenged by lawyers arguing that there was no evidence to back up the limits that have been set. There is a difficult balance: if we set the limits at a certain level, we will be asked why we are tolerating some people driving with a certain amount of an illegal substance in their blood, but if we do not set limits that are backed by scientific evidence there is a danger of legal challenge.

At the moment, the wording of the Bill is rather opaque. Proposed new section 5A(9) of the Road Traffic Act 1988 states:

"A limit specified under subsection (2) may be zero."

It does not say whether it will or will not be zero. I know that the Minister is limited in what he can say, but can he at least give the Committee a feel for the Government's thinking on the issue? That would be helpful.

The final issue is the timing of implementation, a point which the right hon. Gentleman raised. Provided the Bill receives Royal Assent by a certain date—I assume the Government hope that will be by the end of this Session—it would be useful for the family of Lillian Groves to know when this provision will be on the statute book and brought into force.

I have further remarks, about sentencing, to make in support of my hon. Friend the Member for Enfield, Southgate when we come to schedule 18. Once again, I apologise to the Committee for not being here at the start of proceedings.

Steve McCabe: I understand the wish of the hon. Member for Croydon Central to pursue this matter. We all want to acknowledge how hard he has worked on it. I agree with the Government's intentions, but my fear is that the clause is far too loose. In practice, the measures may not deal with some of the concerns the hon. Gentleman raised, and could end up dragging before the courts, at enormous expense to the public purse, people we would otherwise regard as perfectly innocent, decent and normal citizens.

Before we approve the provisions, we need to know more about how the Government's intentions will work in practice, with regard to some of the points that my right hon. Friend the Member for Delyn has raised. We need to know the level of drugs that will likely result in a prosecution. Will it be equivalent to current levels for alcohol in drink-driving offences? What work has been done to show that comparable tests can be achieved?

A roadside drugalyser is a seductive prospect and I can see why people want to explore that option, but I have not yet read anything that convinces me that reliable technology is available to serve that purpose. If we are to approve the measures in the clause we need to know what the resulting effect will be.

Despite the Minister's efforts to persuade us, I remain deeply sceptical about the safeguards available to people taking legitimate medicines. I am also deeply sceptical about how the medical defence would operate. I have heard enough from the Minister to be convinced that the provisions will result in quite a lot of innocent people coming before our courts.

I want to ask about some practical issues. What will happen to someone who is shown by the test to have in their system traces of a drug that may have been purchased legally, but has metamorphosed, as my right hon. Friend suggested, particularly if the traces cannot be shown to have impaired the person's driving because of the time when the test was undertaken? The hon. Member for Croydon Central says that he wants a level of zero. I understand exactly why he says that, but a zero level increases the likelihood that far more people would be successfully prosecuted, so I am not sure how that would work.

12.45 pm

I understand that the recommended levels take into account people's size and weight, and that absorption depends on how the drug is administered. Clause 37, if it succeeds at all, will mean that those taking illegal drugs and driving could be prosecuted, but those taking legal highs will be at perfect liberty to use our highways undetected and unchallenged. It seems to me that the clause will not do what the Government intend.

Mr Browne: There have been substantial contributions from Members on both sides of the Committee. Many of those contributions consisted of factual questions rather than statements of opinion, so I will do my best to give factual answers.

Amendment 112 envisages a review. The Government agree that it is important to consider carefully the drugs and limits that the offence will cover and the effectiveness of its operation. The Secretary of State is expressly required by section 195 of the Road Traffic Act 1988 to consult before making regulations on such matters, and the public consultation will allow a wide range of stakeholders and interested parties to provide views and evidence. The regulations will be subject to the affirmative resolution procedure, so they will have to be debated and approved in each House.

I make this point to the hon. Member for Birmingham, Selly Oak. There are some big, legitimate questions about how to get the proposals right. We want to achieve the desired aim of deterring and stopping drug-drivers but to avoid the potential pitfall of pulling into the net people we do not want to include. That is precisely why people with expert knowledge of the matter are looking at those questions. Later this year, we will make specific proposals on limits, which will be subject to a public consultation and will be debated and approved by Parliament before they become law. At the moment, I cannot give the Committee the relevant levels. It is difficult for me to defend work that does not yet exist and it is difficult for us to debate it, but Members of Parliament will have the opportunity to do so. That is part of the overall process of Parliament's being satisfied that the measure will work in practice.

Once the new offence is in operation, it will be subject to the normal post-legislative scrutiny process, which was introduced by the previous Government. The Government will commission research to evaluate the effectiveness of the new offence, and the results will be published on the Department for Transport's website. There will, therefore, be lots of other opportunities for scrutiny.

To answer another question, we do not envisage that the measure will come into effect such that the public will see it operating on their streets until the end of 2014. Quite a lot of water is yet to pass under the bridge, so we can make sure that we have the details right. The Bill deals with the broad concept, on which I think Members agree. The consultation and opportunities to discuss its details will arise in due course, and I hope that Members will take those opportunities.

Many hon. Members touched on broader points. Everyone agrees that drug-driving is a significant problem. Sir Peter North in his 2010 report said that it was "out of all proportion" to the number of fatal and serious injury accidents reported by the police as "involving impairment by drugs." Impairment by drugs was recorded as a contributory factor in about 3% of fatal road incidents in Great Britain in 2011, or in 1,012 casualties, including 54 deaths. Previous research suggests that around 200 deaths per year in Great Britain are associated with drivers on drugs. Although the problem may be on a scale comparable to that of drink-driving, the number of successful prosecutions of drug-impaired drivers is disproportionately very small in comparison with enforcement against drink-drivers. That is the gap we seek to close with the legislation. While research suggests that the prevalence of illegal drugs in the driving population is about 55% that of alcohol, the number of proceedings related to drug-impaired drivers in 2010 was less than 5% of the number of drink-drivers. Of the drug-driving proceedings at magistrates courts, about 40% were dismissed or withdrawn, compared with only 3% of drink-drive proceedings. We have to be careful that people who are a threat to public safety through drug-driving do not have a far greater likelihood of escaping the full and just consequences of the law, compared with someone who is an equivalent threat through drink-driving. That is the point I was trying to make.

Gavin Barwell: The Minister is making a powerful point. To reinforce that, is it not also the case that the scientific evidence clearly shows the dangerous result of people driving under the influence of both drink and drugs? When there are several substances, it exponentially magnifies the danger.

Mr Browne: My hon. Friend makes an entirely valid point, but also touches on another difficulty, which is why it is necessary for us to get this right. Different drugs in combination, even when one of those drugs—alcohol—is entirely legal, can have a severe effect on people's ability to drive safely. We need to capture that person's combination of drugs in the regulations, but problems are posed in ensuring we get the details right.

The new offence established by clause 37 will relieve the need for the police to prove impairment case by case where a specified controlled drug has been detected above the specified limit for that drug. The new offence relates to driving with a specified controlled drug in the body above the specified limit. Controlled drugs are governed by the Misuse of Drugs Act 1971, and defined in section 2 of that Act. The new offence will apply to controlled drugs that are specified in regulations for the purposes of the new offence. It is a significant step forward in bringing the law relating to drug-driving into line with that for drink-driving.

The clause provides the framework for the new offence and includes a regulation-making power to specify which controlled drugs will be covered by the new offence and what the limit will be for each of them. There will be a consultation on that, which hon. Members will have an opportunity to discuss when it is revealed. The regulations will be subject to public consultation and the affirmative procedure in Parliament.

The Department for Transport asked a panel of experts, chaired by Dr Kim Wolff, to advise which controlled drugs should be covered by the new offence and what the specified limits of those drugs should be. We have now received the panel's report and expect to publish it shortly. We will consider the panel's recommendations carefully. Later this year, as I have said, we will consult

on the specific proposals on the drugs to be included and the limits to be specified in regulations. We envisage that, subject to parliamentary approval, the new offences will come into effect by the end of next year.

The Government will also consider whether limits should be set on blood and urine—there was a lot of the interest in the Committee about how that will work in practice—or solely on blood. Setting limits solely on blood may be more appropriate if it proves impossible to set limits on urine that accurately correspond with the limits on blood.

That takes me to another point about how the measure will be tested in practice. The new offence is not the only action we are taking to improve enforcement against drug-drivers. We have already achieved type approval for the first preliminary drug-testing device for use in police stations. A similar device for drug testing at the roadside will have to meet additional environmental, operational and other requirements, and we expect to issue the specification for the device later in 2013. Both drug-testing devices are preliminary screening devices and will involve taking saliva samples. If the sample tests positive, there will be no need for the police to seek further medical assessment of the subject prior to requiring a blood or urine specimen to be provided.

It is the result of the laboratory analysis of the evidential blood or urine specimen that will be used in the prosecution. The saliva is the initial stage, but we are looking at whether limits on blood or urine are more appropriate. All roadside screeners will be subject to a rigorous type approval process. Cost will be a matter for suppliers of the equipment. In summary, many of the people who understand how to test for evidence of drugs in the system are looking at how it can be done in an efficient way that is fair to the person accused of committing a serious crime.

Overall, the clause and related provisions in schedule 18 are part of a wider approach to tackle the problem of drug-driving. The approach also includes introducing drug screening equipment and campaigning to raise public awareness.

The Government are keen to make swift progress on introducing the new offence and will aim to have the regulations specifying the controlled drugs, covering the new offence and limits in place by the end of next year; but I know that the Committee will understand that, given all the technical issues that have been raised, we need to ensure that the details are right. We welcome, and will welcome, contributions from Members on both sides of the House as these matters are debated in Parliament in the months ahead.

Mr Hanson: I suspect that, when I had the opportunity to sit in the Minister's Chair, had I brought forward in Committee a measure that had so little detail and so little potential implementation plan around it, I would have been shredded—I say that genuinely.

The Minister is asking the Committee to take a lot on trust. As I read what he said today, we do not yet know what drugs will be tested for, or the specific limits, or how the equipment will be developed. He says that he will license some roadside drug-testing equipment, but we do not know what that is, or its reliability. We do not know its source. We do not know its cost. We do not know how much that will impose on police budgets. We do not know what the training requirements will be. We do not have the detail yet—except for the framework of the legislation. We do not know, if I came back on a visitation three years hence and looked at the matter again, how many prosecutions would have taken place, how many people would have gone to prison, how many community sentences, roadside tests, challenges there would have been and how many difficulties would have arisen.

The purpose of the amendment is not to cause difficulty to the Minister, because the objective is one that we seek. The question simply is: has the proposal been thought through? What the Minister has said does not give me that reassurance.

Mr Browne: The purpose of this part of the Bill is to establish in law the principle of drug-driving as an offence. The right hon. Gentleman is right to talk about limits and how they will apply in practice, but Parliament will have an opportunity to discuss them, and to reject them if it does not approve of them. It is difficult for us to give estimates on how many people would breach the offence until we are in a position to introduce the limits and the testing procedures. What we are doing now is seeking to establish the broad principle that the area is right for us to legislate on. On that, I think there is agreement in the Committee.

Mr Hanson: In six years of proposing, as a Minister, legislation that impacted on the criminal justice system in one form or another, not once did I propose something when I did not have at least a briefing note saying, "This will mean 60 extra prison places" or, "5,000 community hours" or something else. That is what Ministers should have before them.

Steve McCabe: Where does it say in the Bill what the Minister has just said? Surely, if the Minister means what he has just said, at the least he would accept amendment 112.

Mr Hanson: I hope that I am a decent sort of bloke, and I am trying to take the Minister on trust on this issue. I do not want to scupper the objective of the Government or that of the hon. Member for Croydon Central. However, I hope the Minister recognises that the points we have raised today are legitimate, not because we disagree with the legislation, but because we want it to be effective. For that to happen, we need to know—we are giving him our trust today—when and how the tests will be introduced; how parliamentary scrutiny of the tests will take place; how the tests will be monitored by the equipment; whether the equipment is reliable; how much the equipment will cost; whether Humberside, North Wales and West Midlands police will take it up; how much the equipment will cost to them; and whether there will be a national contract for the equipment, or whether it will be left locally.

What assurance can the Minister give me that the 43 police and crime commissioners will allocate money for the drugalyser—whatever it is, however much it costs—in their budgets? None of those things are clear. I am simply saying to the Minister that those things should be clear. It is a case of cart and horse with these issues. I am willing to give the cart the opportunity to be created, but I think the Minister needs to give us some more downstream information about the horse.

1 pm

Perhaps the Minister can think about this issue again before Report. This is the first stage of detailed parliamentary scrutiny; Report is to come, and we may revisit this issue. I give notice to his officials via him that they will have to start preparing 10 answers to parliamentary questions that I will table, possibly today, for clarity on some of these issues.

Gavin Barwell: I do not wish to make this political. The right hon. Gentleman asked questions that are perfectly legitimate for the Opposition to ask. I will just make three quick points. First, alongside the list of risks that he quite legitimately raised, there is the issue of how many lives the Bill may save. Secondly, other countries already use these kinds of devices, although it may be that in the UK we rightly require a slightly higher standard of accuracy before we introduce them. Thirdly, the Wolff committee gave a briefing to Members—I do not want to speak for that committee—that stated it was trying to find limits for these substances that are an equivalent level of impairment to the blood alcohol limit for drink-driving. That is a sensible precedent to follow.

Mr Hanson: I hope the hon. Gentleman will accept that I fully understand that. If we can reduce death by drug-driving, we should aim to do so. The purpose of the past 30 minutes' debate was to make sure that if we revisit this issue in three or four years' time the hon. Gentleman, if he still takes an interest in this matter—I am sure that he will, in one form or another—will be able to say that when the Bill was enacted, the Government implemented it in a way that dealt with this issue.

I am not yet clear, from what the Minister said, about all the downstream implications of the clause. I am not clear that all the testing has been done to the satisfaction, not just of the Minister and his officials, but of the whole House of Commons. I am willing to withdraw the amendment, but I hope the Minister recognises that there are serious issues to be dealt with. We will take an interest, even this very day, in how those matters are progressing. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 37 ordered to stand part of the Bill.

Schedule 18

DRUGS AND DRIVING: MINOR AND CONSEQUENTIAL AMENDMENTS

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

Mr Burrowes: One might say this schedule is where the rubber hits the road in relation to the practical impact and penalties. Ordinarily, the drug-driving offence will attract a penalty of six months in a magistrates court. However, concerns have been raised about the penalties for very serious cases, not least by my hon. Friend the Member for Croydon Central, to whom I pay tribute for his sterling, champion efforts in bringing this provision to this stage. For Lillian and for others who, sadly, have lost their lives at the hands of drivers who had in their system controlled drugs over the specified limit, we want to know that those drivers will be subject to a penalty more serious than six months. The plain intention of the Bill is that they will be subject to an indictable offence with a potential sentence of 14 years in prison. We welcome schedule 18(2).

The Minister made it clear in correspondence with my hon. Friend the Member for Croydon Central that charges of causing death by careless driving whilst under the influence of drugs can be brought with evidence that the driver has in his body a specified controlled drug which exceeds the specified limit. This means that it is not necessary to have independent evidence of the standard of driving to bring that charge. That means that in tragic cases such as that of my hon. Friend's constituent, drivers will rightly face a serious penalty.

I seek clarification. There is a gap, which the Minister's words could no doubt plug. I want to ensure that there is no inequity. A driver who is over the specified limit of alcohol, who kills someone, is subject to a penalty. Is that penalty the same as that set out in schedule 18 for drivers with controlled drugs over the specified limit? Will the Minister clarify whether, for a driver who kills someone, their being over the drug or drink-driving limit is sufficient, without any other independent evidence on the standard of driving, for them to be charged with death by careless driving and face up to 14 years' imprisonment?

Mr Browne: Clause 37 creates the new offence of driving with a specified controlled drug in the body in excess of the specified limit for that drug. Schedule 18 makes a number of related consequential and minor amendments to give full effect to that offence. Under section 3A of the Road Traffic Act 1988—I hope that this will clarify matters for my hon. Friend—when someone who has drugs in their body drives carelessly and causes a death, they can be charged with the offence of causing death while under the influence of drink or drugs only if impaired driving is established specifically in the case concerned. The section 3A offence carries a maximum penalty of 14 years' imprisonment.

Where impairment due to drugs cannot be established, the offence of causing death by careless driving in section 2B of the 1988 Act can still be used. The maximum penalty for the section 2B offence is five years' imprisonment. The maximum penalty for the section 3A offence is considerably higher than for the section 2B offence, to reflect the aggravating circumstances of driving while impaired by drink or drugs. For drink-driving, the section 3A offence can be used if a driver has a concentration of alcohol in his or her body in excess of the prescribed limit. The effect of schedule 18 will be to apply the same principle to the new drug-driving offence. That is likely to involve a small number of cases, but each case is associated with a death and is therefore obviously very important.

Mr Burrowes: I welcome that helpful clarification. I want it to be made clear, however, that it will not be necessary for the prosecutor to independently prove careless driving as the standard of driving, and that the effect is that someone's being over the prescribed limit for drugs or alcohol will be sufficient for the prosecutor to be able to make the decision to charge them with a serious offence.

Mr Browne: My understanding is that it will not be necessary. I hope that I have clarified the point.

Schedule 18 also makes provision for allowing up to a maximum of three preliminary tests to be administered to investigate whether a drug-driving offence has been committed. The preliminary tests would involve taking saliva samples. Provisions for taking more than one sample are needed to ensure that testing equipment can screen effectively for the presence of a sufficient range of drugs for the purposes of the new offence. If a suspect, without reasonable excuse, fails to co-operate with a preliminary test, he or she may be charged with the offence of failing to co-operate with a preliminary test under section 6 of the 1988 Act. That will remain the case when more than one test may be required.

The consequential amendments also provide the powers needed to require evidential blood or urine tests for the purposes of the new offence. Similar provision already exists for the specific drink-driving offence and the impairment offence under sections 5 and 4 respectively of the 1988 Act. Consequential amendments have also been made so as to require a medical practitioner to advise that a person's condition may be due to a drug before that person can be required to provide an evidential specimen.

Schedule 18 is technical, containing a series of minor, but nevertheless important, changes that give force to clause 37. I hope that I have reassured my hon. Friend and that the Committee will endorse the schedule.

Question put and agreed to.

Schedule 18 accordingly agreed to.

Ordered, That the Order of the Committee of 22 January be amended by leaving out the sitting on Thursday 7 February at 2 pm.—*(Mr Syms.)*

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

1.9 pm

Adjourned till Tuesday 12 February at Five minutes to Nine o'clock.