PARLIAMENTARY DEBATES

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GENERAL COMMITTEES

Public Bill Committee

CRIME AND COURTS BILL [*LORDS*]

Twelfth Sitting

Tuesday 12 February 2013

(Morning)

CONTENTS

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Saturday 16 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 12 February 2013

(Morning)

[Nadine Dorries *in the Chair*]

Crime and Courts Bill [*Lords*]

Written evidence to be reported to the House

C&C 19 Ministry of Justice, supplementary evidence.
C&C 20 Ministry of Justice, supplementary evidence.
C&C 21 Fair Trials International.

Clause 38

Public order offences

8.55 am

Mr David Hanson (Delyn) (Lab): I beg to move amendment 113, in clause 38, page 40, line 38, at end insert—

'(4) The Government must publish an impact assessment on the removal of "insulting" from section 5(1) (harassment, alarm and distress) and from section 6(4) (mental element: miscellaneous) of the Public Order Act 1986 no later than 12 months after this legislation is enacted. This report must include details of the number of public order complaints made, the characteristics of each complaint and the outcome of each case.'.

My colleague, my hon. Friend the Member for Walthamstow, was due to move the amendment, but I will attempt to commence the discussion on it to keep the Committee engaged. Please accept that I am as versatile as the proverbial egg on such matters. I shall try my best to discuss the amendment in detail—I am sure that we have all been here at some point in our lives, Ms Dorries. The amendment is in my name and the names of my hon. Friends the Members for Darlington, for Walthamstow and for Sedgefield.

Paul Goggins (Wythenshawe and Sale East) (Lab): I welcome you to the Chair, Ms Dorries. For the benefit of the Committee, I wish to say that my right hon. Friend has shown over many years in government and opposition a breadth of understanding, experience and knowledge that will stand him in good stead this morning. We all look forward to his contribution and will hang on every word he utters.

Mr Hanson: I am grateful to my right hon. Friend. You may not be aware, Ms Dorries, but he and I spent two very happy years together in Northern Ireland and on occasion we had to deal with matters off the cuff.

I strongly feel that the amendment my hon. Friend the Member for Walthamstow supports will be of great interest to the Committee. It calls on the Government to publish an impact assessment on the removal of "insulting" from section 5(1) of the Public Order Act 1986, as discussed in another place. A range of colleagues who have discussed the issues have expressed considerable concern over many years about the use "insulting". The word has led to a lot of discussion in another place and among the public at large.

The amendment, which my hon. Friend will deal with in detail shortly, would ensure a public impact assessment on the removal of "insulting". We will assess whether we can support the Government's proposal, which we did not divide over in another place, today. With those introductory remarks—an appetiser for the main event—she will speak in detail about her concerns. I am grateful for this early dip in the water.

Stella Creasy (Walthamstow) (Lab/Co-op): We are discussing insulting language, and having relied on Transport for London and its variable qualities, I am well aware that I will hear much of it from my Whip this morning. I will have many insulting words to say to those who run the trains at Walthamstow station.

Clause 38 is an interesting clause, particularly with the amendment. In this job, we all have to deal with insults in our daily lives—if we are honest about the language we hear. There is a strong tradition in Parliament of insulting language. Looking at and thinking about the clause, I had cause to revisit some of my favourite pieces of insulting language in Parliament. People from both sides of the House have been less than parliamentary in how they talk about each other. Michael Foot once described a Tory MP as

"living proof that a pig's bladder on a stick can be elected"—[*Official Report*, 20 February 1990; Vol. 167, c. 873.]

The Minister for Policing and Criminal Justice (Damian Green) *rose—*

Stella Creasy: I hope the Minister is not going to suggest that I am referring to him.

Damian Green: No, no. For the record, it was Tony Banks who used that phrase, not Michael Foot. In memory of them both, we should get it right.

Stella Creasy: It is a wonderful thing to have my insults corrected by the right hon. Gentleman. I shall therefore refrain from suggesting that any of the ones that I am about to quote could ever be used in relation to him, particularly the one that I hope was indeed said by Churchill about Stafford Cripps:

"He has all the virtues I dislike and none of the vices I admire."

I certainly would not want to say that about the right hon. Gentleman.

9 am

My point is that being able to insult people has been part of British tradition. Being able to make what people might feel is a wry joke or a comedic instruction has been part of British culture for many years. Indeed, sometimes what people might think of as an insult is taken by some people as a compliment. My hon. Friend the Member for Walsall South is not in her place, but she regularly seems to take as a compliment my suggestion that she is like Gok Wan in her comments about what I wear. However, this amendment and this legislation refer to the times when something is perhaps not a joke, when something is perhaps not intended—

The Solicitor-General (Oliver Heald): Will the hon. Lady give way?

Stella Creasy: If the hon. Gentleman wishes to contend with a minute of Trinny and Susannah, I can only sit down and wait for what he might say.

The Solicitor-General: I was not intending to do that. Denis Healey, after an intervention from Lord Howe, Geoffrey Howe, said that it was

"like being savaged by a dead sheep."—[*Official Report*, 14 June 1978; 5th series, Vol. 951, c. 1027.]

Does the hon. Lady agree that that is a classic of its genre?

Stella Creasy: Absolutely. I certainly would not want to quote Aneurin Bevan in response to what the hon. Gentleman has said, because Bevan said that listening to a speech by Chamberlain was

"like paying a visit to Woolworth's: everything in its place and nothing above sixpence."

That is certainly not what I would say about the hon. Gentleman's interventions.

My point is that this clause and this amendment relate to when insults are not meant in good humour, with good faith, with good will—when people say and do things that are deliberately designed to hurt, to wound, not to be laughed off, not, indeed, to be an insight, but to cause distress and alarm in our society. Unfortunately, there are people who seek to do that.

We know that section 5 of the Public Order Act 1986 makes it an offence to use

"threatening, abusive or insulting words or behaviour"

or, indeed, "disorderly behaviour", but what is crucial, in terms of the way in which this legislation is enacted, is that the offence having occurred does not depend on stress having been caused, so although someone may not take offence, the way in which language is used is intended to threaten or to harm. Particularly crucial for this legislation and the way in which it is interpreted is that it is about the interpretation of that offence—how people take offence, in a sense. Whether people are intending to be insulting is less in the eye of the beholder and more in the person who listens to the insult or listens to the words that are being said.

We also understand, obviously, that the legislation can be cited in terms of a racial or religiously motivated offence. It is not about a gentle dig at someone, but about causing distress and alarm—the way in which it is done is designed to upset people, to curtail debate. I would like to think that all of us in this room are proud defenders of free speech, but all of us also recognise the way in which words can sometimes be used to curtail free speech, to shut down a debate, to harm or wound someone deliberately, to frighten someone into not speaking. Therefore, the way in which speech is interpreted, the way in which the guidance on section 5 is used, is critical.

The Crown Prosecution Service states:

"There must be a person within the sight or hearing of the suspect who is likely to be caused harassment, alarm or distress by the conduct in question. A police officer may be such a person, but remember that this is a question of fact to be decided in each case by the magistrates."

It is this question of how the determination of an insult was made, how the determination that fear and distress was caused was made, that is, I think, at the heart of the proposals to remove this piece of the legislation and, indeed, our amendment about understanding what impact that removal might have on certain groups of people who will be insulted or distressed by the use of language.

Both the police guidance and the CPS guidance are clear about the difficulty that there sometimes is about how the legislation might be interpreted. The ACPO guidance says that the key is to distinguish between the message or opinion being communicated and the manner in which it is conveyed.

"It is conduct of behaviour which is gratuitous and calculated to insult that is the subject of the offence, rather than the public expression of an offensive message or opinion."

My mother used to say that even if a person was trying to smile at someone, if they were saying something hurtful, it was still hurtful. That is one of the issues at the heart of some of this legislation. Given the uncertainty about the interpretation of someone's intention and the interpretation in relation to alarm or distress having being caused, Opposition Members think that it is right that this question has been examined. We think that it is right that people have considered whether this legislation has been used appropriately. I am sure that many people will have examples of where they feel that it has not been used appropriately—where it has been used to prosecute people whose words may not be very pleasant or appropriate, although whether they meet that threshold test of being designed to cause fear, harm or distress is in question.

Certainly the Joint Committee on Human Rights recommended that the Government look again at this issue, because it thought that threatening or abusive language should be covered by the remit of the legislation, but that insulting language was an unnecessary addition. The difficult test between whether something was insulting, as opposed to threatening or abusive, was debated in quite some detail by the Lords. The Joint Committee recommended that the Government amend this piece of legislation, and a broad campaign to achieve that has brought together an unusual set of bedfellows—both the National Secular Society and the Christian Institute, and also Mr Tatchell and the Independent Police Complaints Commission.

That is not quite as clear as saying there is widespread opinion that this piece of legislation, and particularly this offence of insulting language, is an unnecessary protection given that a large number of people wish to be able to insult people, or indeed a large number of people who feel comfortable with being insulted. The amendment would ensure that were we to remove the concept of insulting language from the legislation, that group of people who secure protection from the legislation would not be unduly harmed. By celebrating insults, free speech and that particularly and peculiarly British nature of debate and discussion, we do not want to inadvertently open the door to the persecution of minority groups within our communities. In particular, Stonewall has argued that section 5 provides protection for lesbian, gay and bisexual people against homophobic abuse; a pertinent point given some of the letters, emails and conversations that some of us may have had over the last couple of weeks.

[Stella Creasy]

Stonewall report that one in eight lesbian and gays experience a homophobic incident or hate crime every year, and 88% of those said that the incident involved insults, abuse, or harassment. I understand that many of my Labour colleagues wrote to the Prime Minister following some of his comments regarding the debates on the film "The Innocence of Muslims". I know how distressing that film was to many people in my community and how insulting they felt it was. I had particular cause to deal with it when the English Defence League threatened to show this film in my local community—the EDL has no connection to my local community, but it was clearly intending to use this material to cause harm, distress and to insult my local Muslim community. It would be interesting to hear if the Minister feels that that example of insulting behaviour would be dealt with by other forms of legislation. Certainly, Labour colleagues had cause to write to the Prime Minister when he said that there would be more protection for those who felt insulted by such films. Clearly, there seems to have been a bit of a volte-face in terms of the removal of the concept of insulting language, which the Government are now supporting—I note they did not support that in the Lords. We should, however, consider the impact on such groups.

It is interesting for the Opposition to consider that the Government, having accepted from the Lords that there is a problem, are now saying "Well, actually, let's just remove the concept because of what the Director of Public Prosecutions said". We have not yet seen the evidence of the likely impact of that removal on those minority groups and on those who do not have the same power and status within society to be able to challenge those people who wish to insult them. They need our protection, and that was the original intention of this legislation, even if, on occasion, it has not been used in the manner in which all of us would wish.

The DPP had suggested that the word insulting could safely be removed without the risk of undermining the ability of the CPS to bring prosecutions against those who commit an offence under the remaining parts of the Act. However, we are yet to see the detail of that. On Second Reading, the shadow Home Secretary asked the Minister to provide an assessment of the impact of the removal of section 5 on different groups, particularly vulnerable and minority ones. We have yet to see that.

I have a series of questions for the Minister. Has there been an assessment of the likely impact of the removal of section 5, given that we know that some groups are disproportionately affected by this piece of legislation? I believe that is why Lord Taylor of Holbeach in the other place said that it was not right to remove this piece of legislation. Have the Government ensured that all other forms of legislation will then be amended accordingly to make sure that if we do remove this concept of insult, there are other mechanisms for taking on those people who might seek to insult people in our society, and to cause that level of distress of harm? We believe that the amendment offers an opportunity to make sure that we have got the balance right in terms of protecting people and protecting the right to free speech, while also making sure that people have the right to live a life without distress. I look forward to the Minister's comments; I am sure he has a number of insults he may wish to share with the Committee. I would not dare to suggest that there are many that I could offer him or that would be as self-reflecting as I find them.

Mr David Burrowes (Enfield, Southgate) (Con): I congratulate the hon. Lady not only on getting here but also for giving us the last hurrah of this discredited part of section 5 of the Public Order Act. I was hoping and expecting that Opposition Members would at least be reluctant converts to the fact that insulting language needs to be removed from the legislation, but not yet. It will be interesting to see whether they want to vote against the clause standing part of the Bill.

On the amendment, we are not talking not about whether we insult people in the House or whether constituents insult us, but about whether we should criminalise insulting words and behaviour. The amendment is simply not necessary, because we already know full well what impact the clause will have. It will mean that students such as Sam Brown will no longer be arrested under section 5 of the Public Order Act for calling a police horse gay. Anti-seal-culling protesters will no longer be threatened with arrest and the seizure of their property for using toys seals coloured with red food dye to make their point. Street preachers such as Dale McAlpine will not be arrested and held in a police cell for simply responding to a police community support officer's question about Christian sexual ethics. Pensioners such as John Richards will no longer be liable to arrest for displaying an A4 window sign saying:

"Religions are fairy stories for adults".

Café owners such as Jamie Murray will no longer be warned by police officers to stop playing Christian DVDs in their premises. Peter Tatchell will not be arrested and charged for protesting against the fundamentalist Muslim group Hizb ut-Tahrir. People such Kyle Little will no longer be arrested for saying woof to two Labradors, and I should declare an interest as the owner of Labrador called Cholmeley.

Charlie Elphicke (Dover) (Con): Was Mr Little arrested for insulting the dog or a person?

Mr Burrowes: I do not have the precise detail, but we need to recognise that Labradors and Labrador owners will be safe under clause 38.

The clause will mean that teenagers will be able peacefully to protest against Scientology without being issued with a court summons. Hotels owners such as Ben and Sharon Vogelenzang will be free to engage in conversations with Muslim guests about Mohammed and about Islamic dress for women, without being charged under section 5 and consequently losing their business. That will be the impact of clause 38. Those are real-life examples, and there are sadly many more. Having been a practitioner dealing with many of the cases that came to court, I know that section 5 was lazily used. We should know that it is a public order offence to protect the public.

The villain of the piece in section 5, and the cause of many of these outrageous cases, is the issue of insulting words and behaviour.

Stella Creasy: We all recognise the examples he gave. Those are the sorts of things I mentioned, so we do not think the measure has necessarily been applied appropriately. The case he is making is about how the legislation on

insulting behaviour is applied, but will he say whether there are any incidents where it has been appropriately applied? Does he recognise that there are people in society whom it has protected from distress? This is about what we do to make sure that those people receive protection.

Mr Burrowes: The DPP has given advice on this. In many of these prosecutions, the insulting behaviour could properly have been characterised as abusive and could have been prosecuted quite properly. The problem is not only about cases coming to court and being properly prosecuted, but about the provision's chilling effect and its application. Previous Governments have attempted to issue guidance to deal with the inappropriate use of this provision, but the issue has not been dealt with properly, so, quite properly, the provision needs to be removed.

Steve McCabe (Birmingham, Selly Oak) (Lab): I agree with the hon. Gentleman, and he is right, but if the Government accepted the spirit, rather than the detail, of the amendment tabled by my hon. Friend the Member for Walthamstow, we would, in the future, have proof that he was right. If any attempt was made to change the law again in the future, there would be a body of evidence to show that it did not make sense.

9.15 am

Mr Burrowes: I hear the hon. Gentleman, but the straightforward reason for resisting the amendment is that the CPS and the DPP have already carried out a thorough impact assessment. The amendment is simply not necessary, and it is not necessary to resist the proposed change, as the right hon. Member for Delyn did in 2009, when he was a Minister and was lobbied to make reforms. I hope that he will not resist the clause and that he will be a reluctant convert. At that time he indicated that reform might deprive police of the power to criminalise those who torment disabled people. That claim, though well intentioned, I believe is wide of the mark. There is no need to outlaw insults and jeopardise civil liberties in order to protect some disabled people. Indeed, the hon. Member for Walthamstow also mentioned other groups. The "abuse" limb of section 5 is certainly wide enough to catch those who torment people.

There are better tools in the box than the "insulting" limb of section 5. Civil and criminal powers, the Protection from Harassment Act 1997, breach of the peace and other areas of public nuisance can be properly applied to ensure that it is targeted better in terms of police powers.

As the hon. Member for Walthamstow said, we only need to take the word of the Director of Public Prosecutions. He said,

"I therefore agree that the word 'insulting' could safely be removed without risk of undermining the ability of the CPS to bring prosecutions."

The impact of clause 38 is that it will not undermine the ability of the CPS to bring prosecutions in cases involving vulnerable victims. To bind the Government to the additional expense and inconvenience of an impact assessment in 12 months, as amendment 113 suggests, is unnecessary.

The reform was actively campaigned for by the Christian Institute, the National Secular Society, Rowan Atkinson, Peter Tatchell, Liberty, Justice, Big Brother Watch, the parliamentary Joint Committee on Human Rights and, indeed, the Liberal Democrats whose party policy includes reform of section 5. It is backed by the Equality and Human Rights Commission, the Independent Police Complaints Commission and ACPO. To those can now be added hon. Members and those in the other place.

The time has certainly come to make the change. We should not stand in the way of what the clause seeks to do. We need to take the word of Lord Hurd, the Home Secretary who introduced section 5 in 1986. He himself has voted for reform. When the legislation was going through Parliament he told the House of Commons that section 5 was originally intended to

"provide the police with more effective powers to protect the public against hooligan behaviour"—[*Official Report*, 13 January 1986; Vol. 89, c. 794.]

but without undermining civil liberties. It seems that he could see, along with everyone else, that it had undermined civil liberties and he joined the majority of Conservatives, Liberal Democrats and Labour Peers in voting for clause 38.

The change is overdue and the Government are right to back it. The impact assessment has been made; we do not need another. We should leave clause 38 alone. I finally ask the Minister to confirm that when guidance, as I understand the Home Secretary said, is issued on the application of section 5 without "insulting", there is proper consultation with all those groups in Reform Section 5 to ensure that the guidance is correct and does what is intended. Let us now decriminalise minor insults and let free speech begin.

The Minister of State, Home Department (Mr Jeremy Browne): Wow! Thank you, Ms Dorries, and welcome to what may be the final morning of our deliberations. We will see how we progress. The right hon. Member for Delyn set a commendable benchmark for brevity as he introduced the amendment. If we can stick to that sort of time limit throughout the rest of the day we should stay well on track.

I do not find this matter difficult. It seems a modest liberal measure and, as a modest liberal person, I commend it to the Committee. I shall speak a little bit more because I know a lot of debate has taken place in the other place and other public forums about the desirability of making the change. What is now clause 38 was added to the Bill in the other place by way of a non-Government amendment. This is the first time that a Government Minister in either House has had the opportunity to explain the Bill in its existing form.

The clause will amend section 5 of the Public Order Act 1986. It will no longer be an offence to use insulting words or behaviour that are likely to cause harassment, alarm or distress. It will also repeal as an offence the display of any writing or other form of visible representation that is insulting and likely to cause harassment, alarm or distress. Lastly, it will mean that the related racially aggravated offence would likewise not cover insulting words, behaviour, writing or pictures.

Those who have campaigned for this change in the law feel that the word "insulting" in section 5 could discourage people from exercising their right to freedom

[Mr Jeremy Browne]

of speech. My hon. Friend the Member for Enfield, Southgate gave some powerful examples. They feel it has a disproportionate impact in relation to groups who practise their religion by preaching in public. They feel that removal of the word "insulting" will give people greater clarity on what they can say and do in public without falling foul of the law. I strongly endorse the sentiment expressed by my hon. Friend the Member for Enfield, Southgate that people should be able to express their religious views in the course of their normal activities without feeling that they are likely to be arrested for that.

The Government have considered this matter carefully. They launched a public consultation in October 2011 that sought views on specific aspects of public order powers, including the effect of the word "insulting" in section 5. A summary of the responses to the consultation was published on 1 February.

The consultation showed that the arguments for and against removal of "insulting" are finely balanced, and we had representations from different viewpoints, but, in essence, it is a case of balancing the right of people in a democratic society to express themselves freely with the need to protect the rights of others to go about their lawful business without being caused harassment, alarm or distress. The Government recognise the need to protect freedom of speech, but we are also concerned to ensure that the police have the powers they need to tackle behaviour that is clearly unacceptable.

The Director of Public Prosecutions has re-examined the case law surrounding section 5 and could not identify any case that could not be characterised as "abusive" as well as "insulting" in the types of areas where Members and others have cause for concern that the law would otherwise be inadequate. He is therefore of the view that "insulting" could be removed safely from section 5 without undermining the ability of the CPS to bring prosecutions where appropriate. In light of that advice, the Government are content for the clause to remain in the Bill.

We will ensure that the police have clear guidance on the range of powers that remain available to them to deal with the sort of unacceptable behaviour with which section 5 is concerned, and on which I assume that it was originally conceived, including in respect of hate crime. For example, it will remain an offence under section 5 to use abusive or threatening behaviour or language that is likely to cause harassment, alarm or distress. It will also remain an offence under section 4A of the Public Order Act 1986 to cause intentional harassment, alarm or distress by using insulting language or behaviour. Where such actions are motivated by racial or religious hatred, they would constitute a racially or religiously aggravated offence under the Crime and Disorder Act 1998, with tougher penalties as a consequence.

Where such actions are motivated by other forms for prejudice—for example, against an individual's perceived disability or sexual orientation—the courts can also treat that as a general aggravating factor. For those reasons, we do not believe that removing "insulting" from section 5 will have an adverse impact on minority groups. I know that that is feared in some quarters, but I hope that I have allayed those concerns.

Stella Creasy: May I press the Minister on "Innocence of Muslims", partly because that reflects a new way in which insults are distributed within our society and also how perceived insults are distributed by online content in particular? He wrote back to my colleagues to say that the Racial and Religious Hatred Act 2006 and the Public Order Act 1986 were relevant in this instance, but guidance on these issues will be published for the police. We have not yet seen that guidance.

Clearly, that is a slightly different issue to someone being in the room at the time at which an insult is portrayed, but it is the threat of the insult that is the crucial question here. I know that that concerns and alarms many in my local community and the Minister has said himself that the Government will deal with that. Will he say whether, in those instances, he feels that other pieces of legislation would cover dealing with that type of insult?

Mr Browne: I am not sure it is entirely new because people have complained about insults to their religious beliefs since the inception of religion. The hon. Lady cites an example of Muslims, but going back 30 years or so many people with strong Christian beliefs very much objected to "Life of Brian", which they saw as insulting to their religious views. There are people who still take that view strongly today. It is a matter for the police, the CPS and the courts to decide what action to take in any particular case, but we obviously want, as best as possible, to try to ensure consistency in terms of the application of the law.

The hon. Lady said in her remarks that people should be protected from distress. I am not sure about that. I have been insulted and have found it distressing but I am not sure that someone should be arrested for causing me distress. There would be a lot of Members on the Opposition Benches who would be in prison if, every time they caused me distress, they were arrested. On the balance of harm to society, I have decided that we are better served by allowing them the freedom to use insulting language because the wider common good is served by that.

I am making a serious point, which is that I am not sure it is the role of the state to measure distress in the way that is envisaged by some Opposition members of the Committee. An insult may cause distress to one person and not to another, so it is difficult to calibrate these things finely. I am keen that we have protections against minorities—and majorities in some cases—who feel that they need them. I am trying to reassure the Committee that those protections will still exist. We are not sweeping away all laws that cover this area, but we feel that the law in terms of insulting behaviour goes further than it needs to.

Amendment 113 would require the Government to publish an impact assessment on the effect of Clause 38 within 12 months of its enactment setting out details of all public order complaints made, the nature of each complaint and the final outcome. In 2011-12, more than 28,000 offences were prosecuted under Section 5. I cannot believe that Members on the Opposition Benches, or indeed on this side of the Committee, would seriously want the police to send a report to the Home Secretary on each and every one of those incidents in the future.

While I recognise the need to monitor the impact of legislation, I do not agree that it is necessary or proportionate to produce a formal assessment in the

way proposed by the amendment. The consultation and subsequent debates in this House and in the other place have already allowed the Government to fully assess the impact of this measure including on minority groups. It is the view of the DPP that moving "insulting" from Section 5 will not undermine the ability of the CPS to bring appropriate prosecutions. There will also be a range of other offences available to the police to deploy against the sort of unacceptable behaviour covered by Section 5. The Government will ensure that the police have guidance on these powers.

We believe the measure will not impact adversely on minority groups. This position has been reached after careful consideration of the consultation and responses received from a range of bodies and individuals, many of which represent minority groups. We will, of course, keep the position under review, but on the basis of what I have said and the compelling arguments made by others, not least my hon. Friend the Member for Enfield, Southgate, I would ask Opposition Members to withdraw the amendment and to endorse the clause.

Stella Creasy: It is interesting that the Minister cannot quite clarify whether or not the way in which the film "Innocence of Muslims"—I wonder if the Minister has seen it or understood the concept of something being circulated on the internet and how that influences the ability—*[Interruption.]* I say "concept" because this legislation is quite clear about where the offence takes place. Obviously, it is possible for a piece of material that people feel is insulting to be circulated in this way. An offence could take place in one country—after all, that film was produced in America and yet has been transmitted in the UK. This raises some interesting questions about the jurisdiction where an offence takes place and who is held accountable for it.

I note that the Minister cannot clarify that. In my community they sought to threaten to broadcast the film in a public place, clearly designed to cause distress and upset the local community. Whether that would have been abusive as opposed to insulting is not something the Minister has set out.

I also note that the Minister says 28,000 incidents have taken place and yet there is no point in looking at whether in years to come the removal of this piece of legislation would have an impact on those 28,000 incidents and what happens. It seems slightly odd given what Lord Taylor said in the Lords, which is that the Government have a responsibility to protect the public so that communities and law-abiding citizens can live in peace and security. The police must have the powers they need to meet this responsibility. At that point Lord Taylor thought it was important to retain this measure.

The purpose of the amendment was merely to ensure that we were all on the same page. I will not press it to a vote. We recognise that there are issues on how "insulting" has been used, but I caution the Minister to look again at this issue, because many within our local communities do not share his confidence about distress and feel that they are particularly maligned in our society. They recognise that there is an issue about the portrayal of particular people within their religious faith. I was looking for the Minister to reassure us and give us specific examples of how other legislation could be used to protect those people, so that we can get that balance right.

9.30 am

I will happily give way to the hon. Member for Dover. I am sure he has been using his iPad avidly this morning to find some interesting insights.

Charlie Elphicke: I thank the hon. Lady for giving way. She has been very generous in taking interventions. If she were in government, does she think that her Government would be making the change that this Government are making?

Stella Creasy: That is a slightly odd question, partly because we have not seen the guidance. We are taking on faith—believe me, it is not often that I take something on faith—the Minister's suggestions on how this legislation will be used, because he has the DPP guidance and we do not. He has also seen the details of the 28,000, so he knows what the impact would be. We are taking it on faith when the Government say that other forms of legislation could be used to prosecute.

All we are seeking is clarity on what those other forms of legislation are, so that we can all be confident that if the possibility of someone being prosecuted for insulting behaviour is removed, sections of our communities that suffer abuse and distress from other people's behaviour are not opened up to having a lack of redress. The amendment was intended simply to probe that and ensure that the change has been thought through, especially given that the Government were in a different place on this issue in the other place. It is interesting for all of us who have looked at this issue to note that change of heart and to seek the evidence on which that change has been made.

My right hon. Friend the Member for Wythenshawe and Sale East has talked about the question of proof versus expectation, and that is what the amendment is about. We have also not seen the police guidance, which I am sure the Minister has been avidly drafting, so we do not know how it will be interpreted.

With that in mind, I am happy to withdraw the amendment. We wanted to put on record our concern: we would have liked to see those documents, so that we could have confidence and clarity about these instances. They will keep occurring and new technologies will allow new forms of insults to transgress within our societies, and groups who do not have the same power and equality to defend themselves will be affected.

We would like the Government to take a more reasoned view in future and perhaps come back to the evidence base on which the decision has been made. We do not have the evidence base, so we are having to take it on faith. I am a great believer in taking on faith the Minister's words and I would not insult him by suggesting that he said something that he did not believe in, although that may perhaps have been the case in the past. That is the question of being part of a coalition. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 38 ordered to stand part of the Bill.

New Clause 8

ENFORCEMENT BY TAKING CONTROL OF GOODS

'(1) Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (procedure for taking control of goods) is amended as follows.

(2) In paragraph 17 (enforcement agent may use reasonable force to enter etc where paragraph 18 or 19 applies) for "or 19" substitute ", 18A, 19 or 19A".

(3) After paragraph 18 insert—

18A (1) This paragraph applies if these conditions are met—

(a) the enforcement agent has power to enter the premises under paragraph 14;

(b) the enforcement agent reasonably believes that the debtor carries on a trade or business on the premises;

(c) the enforcement agent is acting under a writ or warrant of control issued for the purpose of recovering a sum payable under a High Court or county court judgment;

(d) the sum so payable is not a traffic contravention debt.

(2) "Traffic contravention debt" has the meaning given by section 82(2) of the Traffic Management Act 2004."

(4) After paragraph 19 insert—

19A (1) This paragraph applies if these conditions are met—

(a) the enforcement agent has power to enter the premises under paragraph 16;

(b) the premises are not premises on which the enforcement agent reasonably believes that the debtor carries on a trade or business;

(c) the enforcement agent has taken control of the goods by entering into a controlled goods agreement with the debtor;

(d) the debtor has failed to comply with any provision of the controlled goods agreement relating to the payment by the debtor of the debt;

(e) the debtor has been given notice of the intention of the enforcement agent to enter the premises to inspect the goods or to remove them for storage or sale;

(f) paragraph 18 does not apply.

(2) For the purposes of a notice under sub-paragraph (1)(e), regulations must state—

(a) the minimum period of notice;

(b) the form of the notice;

(c) what it must contain;

(d) how it must be given;

(e) who must give it.

(3) The enforcement agent must keep a record of the time when a notice under sub-paragraph (1)(e) is given.

(4) If regulations authorise it, the court may order in prescribed circumstances that the notice given may be less than the minimum period.

(5) The order may be subject to conditions."

(5) In paragraphs 24(2) and 31(5) (no power to use force against persons except to extent provided in regulations) omit ", except to the extent that regulations provide that it does".

(6) Omit paragraph 53(2) (controlled goods to be treated as abandoned if unsold after a sale).

(7) Omit paragraph 56(2) (securities to be treated as abandoned if not disposed of in accordance with notice of disposal).

(8) In consequence of the repeals in subsection (5), in section 90 of the Tribunals, Courts and Enforcement Act 2007 (regulations under Part 3)—

(a) omit subsection (4) (procedure for regulations under paragraphs 24(2) and 31(5) of Schedule 12), and

(b) in subsection (5) omit "In any other case".

(9) In Schedule 13 to that Act (taking control of goods: amendments)—

(a) in paragraph 37 (repeal in section 66(2) of the Criminal Justice Act 1972) for the words after "etc.)," substitute "omit subsection (2).",

(b) in paragraph 74 (repeal of sections 93 to 100 of the County Courts Act 1984) after "93 to" insert "98 and",

(c) in paragraph 85 (amendment of section 436 of the Insolvency Act 1986) for "436" substitute "436(1)",

(d) in paragraph 125 (amendment of section 15 of the Employment Tribunals Act 1996) for ""by execution issued from the county court"" substitute "the words from "by execution", to "court" in the first place after "by execution",", and

(e) in paragraph 134 (which amends Schedule 17 to the Financial Services and Markets Act 2000) for "paragraph 16(a)" substitute "paragraphs 16(a) and 16D(a)".'.—*(Damian Green.)*

Brought up, and read the First time.

Damian Green: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss the following: amendment (a) to Government new clause 8, in new paragraph 19A(1), leave out paragraph (b).

Amendment (b) to Government new clause 8, in new paragraph 19A(1)(f), leave out

'paragraph 18 does not apply'

and insert

'neither paragraph 18 nor paragraph 19 applies.'.

Damian Green: For the convenience of the Committee, I will speak only to the amendments. As you have said, Ms Dorries, we have had a full debate on the new clause itself. One of the purposes of new clause 8 is to ensure that enforcement agents have the appropriate powers for re-entry to premises where the debtor has previously entered into a controlled goods agreement, but is now in breach of the agreement. The Government's intention in tabling new clause 8 was to ensure that the provision did not overlap with or leave any gaps in its interaction with the other powers to re-enter premises, which are contained in paragraphs 18 and 19 of schedule 12 to the Tribunals, Courts and Enforcement Act 2007.

Without amendments (a) and (b), however, the new clause leaves a gap. It would not cover cases where a debtor has entered into a controlled goods agreement for goods on trade or business premises which have a debt of non-domestic rates or commercial rent arrears and is in breach of the agreement. Amendment (a) cures one part of the problem by removing paragraph (b) of new paragraph 19A(1), which limits application to premises that are not trade or business premises. That closes the gap and ensures that a commercial debtor cannot evade enforcement. Amendment (b) cures the other part by making it clear in the new provision that both paragraph 18 and paragraph 19 of schedule 12 to the 2007 Act do not apply, rather than just paragraph 18. That ensures that closing the gap does not produce any duplication or overlap. I hope that I have explained the purpose of the amendments clearly, and I therefore commend them to the Committee.

Question put and agreed to.

New clause 8 accordingly read a Second time.

Amendments made to new clause 8: (a), in new paragraph 19A(1), leave out paragraph (b).

(b), in new paragraph 19A(1)(f), leave out

'paragraph 18 does not apply'

and insert

'neither paragraph 18 nor paragraph 19 applies.'.—*(Damian Green.)*

New clause 8, as amended, added to the Bill.

New Clause 11

EXTRADITION

'Schedule *[Extradition]* (extradition) has effect.'.—*(Mr Browne.)*

Brought up, and read the First time.

Mr Browne: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss Government new schedule 1—*Extradition.*

Mr Browne: New clause 11 deals with an issue that will affect a relatively small number of people, but it raises some big principles and substantial public interest, so I will speak on it at some length in the hope that the Committee fully understands the Government's intention.

On Second Reading, my right hon. Friend the Home Secretary indicated that we would be bringing forward amendments to the Extradition Act 2003 during the Committee stage to address two of the key issues that were considered by the review of our extradition arrangements. The new clause fulfils that commitment.

Part 1 of new schedule 1 relates to the so-called "forum bar". The Government's decision to introduce a forum bar to extradition is in response to the widespread concern across Parliament and the public that insufficient safeguards are currently built into cases of concurrent jurisdiction—where two or more courts from different countries simultaneously have jurisdiction over a specific case. I know that some members of the Committee—including my hon. Friend the Member for Enfield, Southgate, who has shown a consistent interest in this matter—and indeed some Members of the House as a whole, would prefer us simply to commence the existing forum provisions in schedule 13 to the Police and Justice Act 2006. We considered this issue at length, but have concluded that the existing provision would be cumbersome in practice and lead to wholly unnecessary delays in the extradition process.

The Government's amendments to the Extradition Act 2003 introduce a carefully modified forum provision, which has been designed to minimise delays while still providing greater openness and safeguards for those who are subject to extradition proceedings. Our forum amendments allow a judge to bar extradition, on forum grounds, if the extradition would not be in the interests of justice.

In considering whether or not to bar extradition, a judge will have to consider whether a substantial measure of the alleged offences occurred in the UK. The judge must also, and only, consider where most of the harm occurred or was intended to occur; the interests of any victims; whether the Crown Prosecution Service or its equivalent considers that there should be no prosecution in the UK; whether the evidence is available in the UK; the desirability and practicability of all prosecutions relating to the offence taking place in one country; and the person's connections with the UK. Those factors broadly reflect the issues that the CPS has to consider under its published guidelines for handling concurrent jurisdiction cases.

Importantly, the judge must have regard to the desirability of not requiring the disclosure of any matter that is subject to restrictions on disclosure in the requesting state. The provision is deliberately worded broadly so as to ensure that the judge places weight on the views of the requesting state that material that is sensitive in their jurisdiction is not disclosed in open court. That will cover cases where sensitive material is not the subject of a prosecutor's certificate—I will refer to that shortly—perhaps because it is not directly relevant to a prosecution in the United Kingdom, but it is relevant to the question whether a prosecution should take place at all.

We do not want the judge considering forum to cause any undesirable consequences, for example jeopardising a possible investigation and/or prosecution in the requesting state by ordering the disclosure of sensitive foreign material. In cases where the prosecutor has taken a formal decision not to prosecute in the United Kingdom because there is insufficient admissible evidence available, because it is not in the public interest for such a prosecution to take place or because there are concerns about the disclosure of sensitive material in any UK proceedings, a prosecutor's certificate can be issued to that effect. That will prevent extradition being barred on forum grounds.

The purpose of the prosecutor's certificate is to ensure that the subject of the extradition request—perhaps somebody wanted for a very serious offence—does not escape prosecution altogether because a domestic prosecution is not possible. The Government amendments point to particular circumstances where a prosecutor's certificate may be appropriate, namely in cases where there is sensitive material which cannot be disclosed in open court because, for example, doing so would compromise national security or the investigation of terrorism or serious crime, or in cases where it is not in the public interest for such a prosecution to take place.

Although the issuing of the prosecutor's certificate means that forum will not be considered as part of the extradition proceedings in the magistrates court, the decision to issue one can be judicially reviewed as part of any extradition appeal to the High Court. These new measures will apply to European arrest warrant and non-EAW cases covered by the Extradition Act 2003. I believe that these measures will make our extradition arrangements more open and transparent and will ensure that, in cases of concurrent jurisdiction, due consideration will given by the prosecutors to any decision about whether or not a person could be prosecuted in the United Kingdom because they know that they will need to justify any decision in front of a judge in open court, not behind closed doors, as happens at the moment.

Mr Burrowes: May I commend the fact that the Government are introducing a forum bar after much discussion and history on the issue? Will the Minister give more detail on his suggestion that to commence the provisions in the Police and Justice Act 2006 would be cumbersome in practice? What does he think will be cumbersome in practice? I also want to ask the Minister whether he can point to any cases of the sort that has taken up much of our time—I was involved with the case of Gary McKinnon—that will be impacted by the proposed forum bar?

Mr Browne: I do not know whether it is appropriate for me to point to historical individual cases. As I said at the beginning, a small number of people will be affected. The measure will routinely apply to only a small number of cases. The point I was trying to make is

[Mr Jeremy Browne]

that we want to have a clearly understood method for assessing the appropriate forum for a trial to take place when two areas of jurisdiction apply. The example that is always given is between us and the United States, but it need not necessarily be the United States. We do not want to see a person escape having a trial because it is not possible to prosecute the person in the United Kingdom, although they have a perfectly good case to answer in another jurisdiction—the United States is a case in point.

The forum bar should not prevent a trial from taking place. It should be used to judge, when there are two potential venues for the trial, which is the most appropriate forum. As I said, there are provisions to make sure that information that is provided from the other country is handled appropriately. We want to ensure that those measures are applied fairly and openly, and that people can attend the court case to see justice taking place. We want to ensure that the process is as efficient and streamlined as possible.

Broadly, the concern that has been brought before us is that the provisions in the 2006 Act would lead to unnecessary delays. As I say, we are trying to ensure that everybody, including those obviously adversely affected, feels that the process is swift and consistent with justice being done. The Government judge that the new provisions will achieve that more effectively.

9.45 pm

Part 2 of the new schedule relates to a slightly different matter. At present, the Home Secretary is obliged to consider human rights issues raised after a person has exhausted their appeal rights, because she is a "public authority" for the purposes of the Human Rights Act 1998, section 6(1) of which makes it clear that public authorities must not act in a way that is incompatible with the European convention on human rights. If a person raises new human rights matters that have not previously been considered during the progress of an extradition case, the Home Secretary must consider them to ensure that the person's extradition is compatible with those rights. That can lead to significant delays while cases are considered and while any decision to uphold the extradition is challenged in the courts.

By preventing the Secretary of State from considering whether extradition is compatible with the European convention on human rights and transferring examination of such cases to the courts, the new schedule will strike a better balance between the two competing considerations of ensuring that there is consideration of late human rights issues that are deserving of the court's attention and ensuring that people cannot abuse the system and endlessly delay extradition through last-minute, specious human rights points that may be subject to judicial review. The change will significantly reduce delays in cases that are currently referred to the Home Secretary, and it will ensure that decisions about late human rights issues are taken by the courts, which already have responsibility for such issues during all other stages of the part 2 process.

It is legitimate for the Home Secretary to play some role in the extradition process, and that will remain the case. Ministers will still sign an extradition order for part 2 countries—those not covered by the EAW—to confirm that there are no statutory bars to an extradition once it has been approved by the district judge. That covers such issues as the death penalty, onward extradition from a third country and transfer from the International Criminal Court. Diplomatic assurances are occasionally required in those cases, and it is right that Ministers should continue to deal with them.

The provisions in parts 1 and 2 of the new schedule extend throughout the United Kingdom, but, following discussions with Justice Ministers in Scotland and Northern Ireland, the Secretary of State has decided that the provisions will be commenced in Scotland and Northern Ireland only with the agreement of the respective devolved Administrations. Finally, part 3 of new schedule 1 makes technical amendments to the 2003 Act in respect of Scottish extradition proceedings. I am content to set them out in detail, but I suggest that our debate should focus on parts 1 and 2, because Committee members are more likely to want to make broad points of political interest about them.

It is in the overwhelming public interest that our extradition arrangements function properly. If the public and Parliament are to have confidence in those arrangements, it is vital that extradition decisions are not only fair but seen to be fair. Decisions must be made in open court, where they can be challenged and explained. The introduction of the forum bar will make our extradition arrangements more open and transparent and provide greater safeguards for individuals. Removing the Home Secretary's role in considering human rights matters in extradition cases strikes the right balance between ensuring that late human rights issues that are deserving of the court's attention are considered and ensuring that people are not able to abuse the system and delay extradition endlessly by means of raising last-minute and specious human rights points. It is right that the Courts should consider those matters.

In short, I hope that Members on both sides of the Committee agree that the provisions make well-judged changes to our extradition arrangements. They are not meant to be unduly partisan, but to reflect concerns raised on all sides of the House and among the public generally about ensuring that we have the right balance and the right measures in place. After much consideration and expert input, the response to those concerns is the new clause and the new schedule, which I commend to the Committee.

Mr Hanson: It is not in my nature to be grumpy, Ms Dorries, it really is not, but on this occasion I start with a little bit of a grump, which I hope that the Committee will accept.

The Home Secretary mentioned on Second Reading, which I recall was in October 2012, that she would table amendments on extradition. The amendments were tabled so late last week that they were starred amendments in our discussions on Thursday and are only being considered today because of that circumstance.

Important matters that were highlighted in October last year have been brought late to Committee, in the twilight of the Committee stage. I feel a little bit grumpy about that, but I reflect grumpiness from some people outside the House, who may have wished to comment on the relevant clauses in detail. Since the amendments were tabled, I have received submissions, as other Committee

members no doubt have, from Liberty and Fair Trials International. Committee members—including the hon. Member for Enfield, Southgate, for example, who has taken a considerable interest in this matter both in government and when in opposition—have to respond to the amendments late in the day, although they have not had much chance in this Committee even to table amendments to the new clauses.

If you will accept my grumpiness, Ms Dorries, I hope that the Minister will accept that I do not mean to start the debate in a churlish fashion. If the Secretary of State said in October that she would table amendments, she must have had some clarity about what they were going to be. To table them on 5 February for a debate on 12 February is not what I would term good practice.

I will try to brighten my demeanour, following that grumpy start, by saying that there is a relative welcome from Opposition Committee members for the clarity that the Minister seeks to introduce. He will know that we amended the 2006 Act to allow the forum bar to take place. The points he has introduced today on inserting an additional ground for a forum on which extradition can be barred provides at least some clarity. I want to press the Minister on whether that will have any effect in real life, because that is the key issue.

In considering whether to bar extradition, a judge will now, under the Minister's proposals, have the opportunity to examine whether a substantial measure of the alleged criminal activity was performed in the United Kingdom. The judge will also consider the points that the Minister mentioned: where most harm occurred; the interest of victims; the view of the CPS or equivalent, and whether there should be a prosecution in the UK; where the evidence is available; the location of witnesses; and the person's connections to the UK. Those are all fair and reasonable tests. The Minister will not have too much trouble from us on those matters.

The Minister's second proposal would remove the ability of the Secretary of State to consider human rights grounds to bar extradition. In a sense, we are relatively relaxed about that provision being introduced, given the stresses and strains that I know Secretaries of State, including the current one, have been through on such issues in relation to notable cases.

We must not forget that, throughout it all, extradition arrangements are important to allow us to bring back to this country suspected criminals who fled justice here, and to ensure that suspected criminals are returned to other countries. More than 600 people have been returned to Britain in the past few years, including the failed bomber Hussain Osman, who was extradited from Italy. We have returned to foreign parts many people who have committed crimes there.

The issue will get ever more complicated as life progresses. As the Minister knows, the evidence base will increasingly become a worldwide issue for cybercrime and use of the internet, rather than simply a UK issue. My hon. Friend the Member for Walthamstow takes an interest in that. The Government must recognise that crime created on the internet and through an e-mail trail—an evidence trail—will present many new challenges for law enforcement. The need for effective extradition will therefore be extremely important; Britain's online economy is now worth £82 billion a year and intellectual property theft, just as a starter, costs about £9.2 billion a year, industrial espionage about £7.6 billion and extortion about £2.2 billion. Those crimes can be committed abroad or in this country, and the evidential test and forum bar proposed by the Government need to be under constant review to ensure that we do not lose track of the considerable crime based abroad that has an impact on British citizens, or vice versa.

We do not have too much criticism of the proposals, but I want to test the Minister on how he feels that they will make a difference in high-profile cases such as that of the constituent of the hon. Member for Enfield, Southgate. Liberty, for example, argued to us:

> "The proposed test is so tightly circumscribed and sets such a high threshold that it will make little difference in future cases where extradition would not be in the interests of justice."

One of the key issues in the debate over Gary McKinnon, the constituent of the hon. Member for Enfield, Southgate, was to do with health, but mental health is not cited in the forum bar as an issue to be considered by a judge, yet it was exactly the factor used by the Home Secretary to stop the extradition of Gary McKinnon—the potential suicide risk for that individual.

Will the Minister indicate what will change as a result of the proposal? I quote again from Liberty:

> "The need for a forum bar to extradition has become increasingly apparent in recent years. With the advent of the internet in particular it is now the case that online activity in one part of the world can result in allegations of criminal liability in another without the offender ever stepping outside their living room…Coupled with the increasing willingness of countries to assert extra-territorial jurisdiction, the threat of extradition in these circumstances is becoming an increasingly serious problem given the lack of judicial protections built into our domestic extradition legislation."

Does the Minister believe that his proposals on the forum bar would potentially give that judicial discretion in a range of cases? As I see it, rather than increasing judicial discretion, the proposals might be considered by some people who may have wished to comment had they had time as limiting judicial discretion, because of the effect of things outside the bar listed in the proposals before the Committee.

The following points were put to us and to all Committee members, so it is only fair that the Minister consider and respond to them. Fair Trials International contacted me at the end of last week, post the tabling of the new clause and new schedule by the Minister. It wanted consideration of a number of points during our process. Even if I had agreed with the proposals, it was too late to table amendments in Committee to what the Minister was suggesting, so late were the new clause and schedule brought forward. We can do so on Report, but it may save time all round if he can look at some of the issues in his response.

Fair Trials International put to me that, for example, it would like consideration given to proposals as part of this package that no extradition should take place until a case is ready for trial, to prevent the many cases of premature extradition currently blighting the system. It would like courts to be able to seek further information in cases of suspicion of the mistaken identity of a requested person. It also raised the issue of whether British nationals or residents wanted under conviction warrants, and serving their sentence in the UK, could avoid extradition whether or not agreement could be reached about serving sentences as a matter of course in the United Kingdom.

[Mr Hanson]

I place those points on record because, even if I had not tabled amendments, Fair Trials International wanted the issues raised as part of the debate and there was no opportunity to do so. Perhaps the Minister will address those concerns in due course.

10 am

I do not want to say too much more, Ms Dorries. Extradition is an important feature of our criminal law, both for our protection in the United Kingdom and for co-operation at international level. I finish with a quote from Liberty:

"The fundamental problem with our extradition framework is that judicial discretion has been all but removed. The proposed forum bar test does nothing to restore that. An 'interests of justice' test is an inherently judicial function, yet the proposed test attempts to predetermine what this will mean in any case. The test sets an extremely high threshold, preventing a judge from considering all of the circumstances of a particular case".

I just want the Minister to respond to those concerns. We have looked at the issue as a whole, and I am sure the Minister will throw things back at us. I want some assurance from him that the measure will actually make a difference, because that is what the Committee is testing. I do not want him to introduce proposals that ultimately do not solve the difficult conundrums that my right hon. Friends and I have had to deal with in government, and which he and his right hon. Friends have to deal with now.

I finish on a point that I had not intended to mention, but the Minister has teased me into doing so. He mentioned Scotland and Northern Ireland in his introductory remarks. If I heard him correctly, he said that Scotland and Northern Ireland would have to agree ultimately to the proposals before the Committee today. I hope he will take this from me in a non-grumpy mode, but the track record so far for getting the Northern Ireland Assembly to agree on matters in the Bill is not particularly strong. Already on the National Crime Agency, we have not had a legislative consent motion from Northern Ireland. The Administration in Scotland—I hope I reflect their aspirations correctly—wish to completely remove themselves from the United Kingdom at the first opportunity.

What discussions has the Minister had with the Scottish Administration on the implementation of the UK-wide proposal before the Committee today? At what stage—when, where and how—does he intend to discuss the matter with the Northern Ireland Administration so that we have a UK-wide approach to the issue? Will he tell the Committee now when he expects Scotland and Northern Ireland to agree to whichever final proposal goes through the sausage machine of this parliamentary procedure?

I have tried not to be too grumpy. There was an element of grumpiness in my comments, but I hope that the Minister will respond in a positive way.

Mr Burrowes: I have taken on board the words of the right hon. Member for Delyn, and I will try to be positive and not grumpy. Hon. Members have been concerned about extradition arrangements for several years. There have been Back-Bench debates and Select Committee reports, and constituents' cases have been taken up by hon. Members who have concerns about extradition and want an opportunity to be able to consider the new clause. I hope that after this debate there might be an opportunity for meetings with Ministers to go through some of the details. I am sure there will be an opportunity on Report to go through further details and amendments.

I commend the fact that the Government are introducing the new clause and the new forum bar to extradition after so many years of concerns. In essence, there is a need for judicial discretion in the area of extradition. I want to focus my remarks on the need for proper judicial discretion—a noble intention—and whether we are achieving sufficient discretion.

I obviously have a particular interest in relation to my constituent Gary McKinnon. His 10-year battle not to be extradited was a cause that was joined by hon. Members from all parties in the House and led to the Home Secretary taking the right decision to stop Gary's extradition on human rights grounds.

It is with that case in mind that I consider what effect the provision will have, and whether the future Gary McKinnons of this world—who I hope will not be in the same situation as Gary—will gain from proper judicial discretion, by way of a new forum bar. It is also the case, obviously, that the Gary McKinnon situation arises in cases that we want to deal with, and where a substantial measure of the alleged criminal activity takes place in this country or in other jurisdictions.

The other area is whether we can properly consider the interests of justice in an open and transparent manner—as the Minister says—taking account of where prosecutions should properly take place. But there should also be consideration, as happened in the case of Gary McKinnon, of mental health concerns and the possibility that human rights are being breached.

The other area of concern, which arose in relation to Gary McKinnon, is the role of the Home Secretary. On one hand, there are those who say that the Gary McKinnon example shows how long it takes for a case to go before the Home Secretary. Gary McKinnon's case went before previous Home Secretaries; there were challenges and appeals, and the case went on for many years. In one sense, that case can be prayed in aid to say that we need to introduce part 2, to take discretion away from the Home Secretary.

At the same time, however, there are other areas, including the fact that the decision by the Home Secretary was crucial; her intervention quite literally saved my constituent's life and properly upheld human rights concerns. We need to look carefully at whether part 2, taken with part 1, provides sufficient judicial discretion to take account of human rights concerns and, as in the case of my constituent, the impact on mental health.

Steve McCabe: Is the hon. Gentleman not concerned that what will actually happen means that the discretion that the Home Secretary exercised will no longer be available for someone such as Gary McKinnon? If it had been left to judges, he would now be in the United States.

Mr Burrowes: The hon. Gentleman makes a good point. However, the issue at which we need to look carefully is whether that discretion can be dealt with in

an open and transparent manner, rather than in private and through lobbying and pressure, including political pressure. I know that the Home Secretary did not cede to that political pressure in Gary McKinnon's case, and dealt with the case quite properly on the basis of human rights concerns based on medical evidence. Nevertheless, would it not have been much better if that decision could have been made a long while before the end of the 10 years of torture that Gary McKinnon went through, and in an open manner and in a judicial forum that could properly apply a broad discretion in the interests of justice? I suggest that the example of Gary McKinnon and others could be properly applied in a much better way for all concerned.

The other area of interest in this discussion is the legislative history of this matter, which I alluded to earlier when I intervened on the Minister. It has been considered in previous Bill Committees, and there is previous legislation, in the form of the Police and Justice Act 2006 and its uncommenced provisions, that is of some relevance.

I suggest that we want to get to a point where there is a proper forum bar, but one that addresses the Minister's intentions of being open and transparent and that properly allows wide judicial discretion. My primary concern is that the new clause meets the premise that if a case could be tried in the UK, there is a presumption that it ought to be tried in the UK. Such a presumption could be overcome by the requesting state demonstrating why it would be in the interests of justice for the trial to take place overseas, but importantly, it would be for the requesting state to make that case before the extradition courts, and if it failed to do so the extradition would not be granted.

I do not believe that that particular premise is properly met, as yet, by the new clause. The advantage of that approach is that it would be consistent with the fundamental principle of territoriality and with the practical approach that is taken by most of our extradition partners. If cases were dealt with under that presumption, there would be an encouragement for prosecutors to ensure at an early stage, before cases came to court, that correct prosecutorial principles were applied, and not on an arbitrary basis. If they had to, they would justify those principles to an extradition court in the interests of justice.

Turning specifically to the new clause and new schedule, concerns have been coming to me thick and fast through various papers and legal opinions, including a document by Alun Jones, QC, stating that one problem with the proposals was that

"the factors to be taken into account in applying the test may well be biased in favour of the requesting Government and exclude important matters from consideration. The second is the importance of the 'certificate', which is a way of fettering a judicial discretion; it would compel the judge to attach decisive importance to only one of the many factors to be taken into account,"

rather than looking in a balanced way at all the interests of justice factors,

"and, worse, the certificate would reflect an attitude taken in private"

when the intention of the new clause is to make the process open and transparent. He continues:

"This would not only unfairly weight the decision in favour of 'the prosecutor': it would undermine the independent scrutiny of the court."

That would be a particular concern in cases in which we want to ensure not only that justice has been done, but that it has been seen to be done.

The fact that the extradition framework does not properly provide judicial discretion is a fundamental problem, and one that has been aired on both sides of the Committee. We need to ensure that the extradition framework provides judicial discretion. The forum bar is intended to do that, but it may fall short of what is needed. The interests of justice test is an inherently judicial function. Soon after the Home Secretary made the decision not to extradite Gary McKinnon, I was in an interview with a lawyer who had advised the United States Attorney-General and others. When I said that we in this country wanted to have a proper interests of justice test, he mocked the idea, asking, "What is an interests of justice test? How can that properly be applied by a court?" He clearly had a different view of the interests of justice test, which is applied routinely in courts up and down the land.

I believe that we need to respect that judicial function, and we must ensure that we do not predetermine outcomes before matters even reach court. We should not allow the threshold to be so high that it prevents a court from properly considering all the circumstances of a particular case, including—this is particularly relevant to my constituent Gary McKinnon—factors such as the mental health of a defendant. It is quite proper to ask whether the test in the new schedule would have prevented the extradition of Gary McKinnon. The Home Secretary stopped the extradition, and she said in the House:

"I have concluded that Mr McKinnon's extradition would give rise to such a high risk of him ending his life that a decision to extradite would be incompatible with Mr McKinnon's human rights."—[*Official Report*, 16 October 2012; Vol. 551, c. 164.]

On behalf of my constituent, I ask whether the decision that was made, quite properly, by the Home Secretary in October would be applied in a similar manner by a court that was considering the extradition of someone in circumstances similar to those of Mr McKinnon.

Mr Hanson: Does the hon. Gentleman agree that, as I said in my contribution, the absence of mental health considerations from the forum bar test will have a critical impact in the new landscape that the Minister has outlined?

Mr Burrowes: I am saying that they would be important. We have had the new clause and the new schedule for only a matter of days. Even at this early stage of scrutiny, it is important that we highlight the fact that there seem to be some limits to judicial discretion. We often talk about extradition in the abstract, but my constituent Gary McKinnon offers a real-life example of someone whose life was at stake, particularly because of the impact on his mental health. I am concerned that any future provisions provide the opportunity for a judge to decide on that. We should not predetermine for a judge the cases to which that should apply in the interests of justice, but at the very least we need to keep discretion wide. The courts can quite properly determine what is in the interests of justice and what is not, and we must allow them to do so.

The new clause and new schedule are the result of cases such as that of Gary McKinnon and others, and it seems strange that the forum bar does not allow for the

[Mr Burrowes]

consideration of issues that were particularly pertinent in such cases. We might consider reversing the presumption so that we can move away from the concerns expressed by Sir Scott Baker in his report on extradition. He was quite properly concerned about the issue of future forum bars being cognisant of satellite litigation. If we reversed the presumption and required, for example, prosecutors to persuade the judge that he should extradite, all the factors that should have been considered in the decision-making process would necessarily be put into open court and the judge would make his decision based on transparency. That is what we can do. If we limit the threshold, we may limit our opportunity to have that open and transparent discussion.

10.15 am

To conclude, I look forward to hearing the Minister's response and hope that it will allay some of my concerns. May I ask for further discussions, both in meetings and on Report, to ensure that we achieve what we want, which is to have a forum bar that properly respects the interests of justice to ensure that we are able to move forward in an open and transparent manner?

Mr Browne: I am grateful to the right hon. Member for Delyn and my hon. Friend the Member for Enfield, Southgate for their thoughtful contributions to our deliberations this morning. I welcome the broad support that exists for our decision to introduce a forum bar in the Bill. As I have indicated, it is our view that the forum bar will increase openness and fairness in the extradition process and make it more effective at the same time.

In developing the amendments to the Extradition Act 2003, we have had to strike the difficult balance of introducing greater openness into the extradition process, without letting that lead to unacceptable delays or creating a situation whereby people who are accused of often serious crimes escape justice because they cannot be tried in the UK and cannot be extradited because their extradition has been barred.

The process is meant to determine the most appropriate place for a trial to take place, but there are legitimate grounds on which extradition is requested of us and on which we make extradition requests of other countries. Sometimes the debate appears to start from the assumption that extradition is in itself undesirable and that we need to put more and more obstacles in its way. However, there may be some crimes, such as those that involve international networks and conspiracies, where extradition is appropriate, so we need to ensure that proper safeguards are in place, and that they are not unacceptably onerous. We always knew that our amendments would not satisfy everybody, because some people have a presumption at one end of the scale and others at the other end. We have tried and, I believe, succeeded in striking a reasonable balance.

I realise that the formation of our forum bar will not meet all the points raised by my hon. Friend, and I would be happy to meet him to discuss further details. I have been advised that the Police and Justice Act 2006, which some people have suggested would be a more appropriate measure to use than those that we are bringing forward, is too cumbersome. It is too widely drawn and would not have the desired effect of striking this correct balance between preventing inappropriate extraditions and not allowing perfectly reasonable requests to be unduly thwarted.

Our approach puts such safeguards in place. It is worth touching on them once more for the Committee because, as I said, sometimes people talk as though the automatic presumption is that extradition will take place and that the safeguards are rather limited. However, if people talk to those who request extraditions of us, they will find that that is not how it is seen.

We agree about the importance of allowing the judge to bar extradition on forum grounds, if the extradition would not be in the interests of justice. We have not set out a presumption that anyone should be tried in the UK, but we have, none the less, set out that a judge must give due weight to all the relevant factors that should dictate whether a trial in the UK is the most appropriate course of action. The list is substantial, including whether a substantial measure of the alleged criminal activity took place in the UK; where most of the harm occurred or was intended to occur; the interests of any victims; whether the relevant prosecutor considers that there should be prosecution in the UK; whether the evidence is available in the UK; the desirability and practicability of all prosecutions for the offence taking place in the same country; and the person's connections with the United Kingdom. On top of those factors, I can reassure members who have raised it that mental health can also be taken into account and is already a consideration that the courts take into account. It is covered by section 87, on human rights, and section 91, on physical or mental condition, of the Extradition Act 2003.

My point is that a substantial number of factors can be taken into account to prevent extradition. If one approached the matter from the other side of the equation and thought that extradition was appropriate in a given case, one might be of the view that there were a large number of barriers to overcome and it would be quite difficult to extradite someone. We have tried to get the right balance. Extradition is a serious decision to take. We do not want it to be easy, but we do not want it to be impossible either. Where it is judged to be appropriate and where the conditions are satisfied, we should not put rules in place that make it impossible in practical terms to extradite somebody.

Taken together, all the factors that I have mentioned will allow a judge to rule on the most appropriate jurisdiction for trial, while also ensuring that if a trial in the UK is the preferred option, sufficient evidence is available to ensure that such a prosecution can take place. Members have suggested something similar, which is that when deciding which course of action is in the interests of justice, the judge must first consider whether a prosecution in the United Kingdom is possible. Where a serious and legitimate allegation is made and the defendant has a case to answer, it is not reasonable for us to judge that it is not possible to have the case in the United Kingdom, yet not be willing to countenance extradition. That would lead to a state of limbo where justice may not be done or seen to be done, and it would be appropriate for further legal proceedings to take place.

These are the balances that we seek to strike, but both the Government's proposals and other proposals, including the one made by my hon. Friend the Member for Enfield,

Southgate, will ensure that prosecutors from the United Kingdom, as well as those in the requesting state, give full consideration to forum issues, because they will know that they will need to justify any decision in front of a judge in open court.

The exception is when a prosecutor takes a formal decision not to prosecute in the United Kingdom because it is not in the public interest for that prosecution to take place because there is insufficient admissible evidence available; or when a prosecutor issues a certificate stating that a UK prosecution is not possible because of concerns about the disclosure of such material in a UK prosecution. Although the forum issue will not have been considered by the judge in the magistrates court, the prosecutor will have had to give full consideration to the issue before issuing such a certificate, because any decision would be open to judicial review in the High Court. That is also the case at the moment—any decision to issue a certificate is fully and properly scrutinised. I hope that helps to explain the thinking behind our proposals, and I hope that I have been able to reassure my hon. Friend and the Committee that the provisions in new schedule 1 are the best way of addressing this issue.

Ultimately, this come down to judgment. Somebody has to make some judgments, and these cases are not always entirely black and white, but we feel that these judgments being made in an open court in a transparent way and meeting the criteria that we have put in place is as reasonable a situation as we could hope to achieve. For those reasons, I commend the new clause and new schedule to the Committee.

Mr Hanson: I may have missed it, and if so I apologise to the Minister, but could he cover the points on a time line for decisions by Scotland and Northern Ireland? I do not recall him addressing that points in his response.

Mr Browne: I apologise to the right hon. Gentleman. He is right to draw the Committee's attention to my failure. I have had it explained to me like this: extradition is a reserved matter, and the fact that certain functions of the Home Secretary are being transferred to Scottish Ministers in part 2 of the Bill does not change that position. However, because Scottish Ministers and courts have a role in the process, we have decided that the provisions should be commenced only with their consent. I will write to the right hon. Gentleman about any discussions that take place to ensure that that is done with the effectiveness that we both want.

Mr Hanson: Well, that is fine, and I look forward to receiving the Minister's letter whenever it comes. Will he indicate whether he expects those discussions to take place so that implementation of the proposals is on the same day, rather than having different implementation dates because of different responses from Scotland and Northern Ireland? I particularly relate that question to Northern Ireland, because we already have a bit of a battle with Northern Ireland about part 1 of the Bill, and I wonder whether such difficulties will arise in this case. I want clarification, and this is the time to get it from the Minister.

Mr Browne: The right hon. Gentleman is right to seek clarity, not least because, as he said, we are keen to apply UK jurisdiction, where it applies, as effectively and efficiently as possible, while having due regard to other constituent parts of the UK. I cannot assure him about implementation being on the same day, because that is a matter for further discussions. However, the Home Secretary seeks to be generous and inclusive in how she involves all the component parts of the UK, and I seek the same attributes in how I keep Committee members informed, so I will certainly write to the right hon. Gentleman with any information that we can provide that might assist him.

Mr Hanson: I am grateful to the Minister, but I want to press him further. The Committee should be aware that he has just said that, unless he undertakes discussions and reaches a conclusion at some point in the next few weeks and months, a citizen of the United Kingdom living in Edinburgh or Belfast might be treated differently from a citizen living in Enfield, Southgate. I wonder whether, in the interest of our being all in this together and one nation, that is a sensible way forward. I await the Minister's letter, but I strongly advise him that if the United States seeks the extradition of three United Kingdom citizens—one living in Belfast, one in Edinburgh and one in London—and the Minister has not ensured coterminous jurisdiction across the UK, we might have difficulties downstream.

Mr Browne: I take the right hon. Gentleman's point. Of course, we have always had a different legal system in Scotland. It was the Labour Government—he was a member of it, or certainly, as a Labour MP, a supporter of it—who introduced the devolution settlement with which we are now familiar in Scotland and Northern Ireland. With virtually all legislation before the House, we have to strike the right balance of protecting UK citizens as a whole while being aware of the unique constitutional arrangements that exist in the United Kingdom. We are keen to strike that balance and to ensure that people in Enfield, Southgate are treated exactly as we would wish while ensuring that high standards of justice apply throughout the UK.

I have said that we will commence the provisions in Scotland and Northern Ireland only with the agreement of the devolved Administrations. I will certainly take on board the right hon. Gentleman's points in any further discussions with them. We want to proceed with the changes with their consent, and I shall write to the right hon. Gentleman to reassure him on those points in due course.

10.30 am

Mr Hanson: The purpose of my intervention is simply to say that this is a UK responsibility. While the consent is required in Scotland and Northern Ireland, it is ultimately a UK responsibility, as the Minister has indicated. My simple plea to him is that, whatever arrangements are made, the decision and implementation should take place on a UK basis on a set future date, rather than with potentially different implementation dates.

Question put and agreed to.

New clause 11 accordingly read a Second time, and added to the Bill.

New Clause 12

CIVIL RECOVERY OF THE PROCEEDS ETC OF UNLAWFUL CONDUCT

'(1) Part 5 of the Proceeds of Crime Act 2002 (civil recovery of the proceeds etc of unlawful conduct) is amended as follows.

(2) After section 282 insert—

"Scope of powers

282A Scope of powers

'(1) An order under this Chapter may be made by the High Court or the Court of Session—

(a) in respect of property wherever situated, and

(b) in respect of a person wherever domiciled, resident or present,

subject to subsection (2).

(2) Such an order may not be made by the High Court or the Court of Session in respect of—

(a) property that is outside the United Kingdom, or

(b) property that is in the United Kingdom but outside the relevant part of the United Kingdom,

unless there is or has been a connection between the case and the relevant part of the United Kingdom.

(3) The circumstances in which there is or has been such a connection include those described in Schedule 7A.

(4) "The relevant part of the United Kingdom" means—

(a) in relation to an order made by the High Court in England and Wales, England and Wales,

(b) in relation to an order made by the High Court in Northern Ireland, Northern Ireland, and

(c) in relation to an order made by the Court of Session, Scotland."

(3) After Schedule 7 insert—

"SCHEDULE 7A

CONNECTION WITH RELEVANT PART OF UNITED KINGDOM

Unlawful conduct

1 There is a connection where the unlawful conduct occurred entirely or partly in the relevant part of the United Kingdom.

Property

2 There has been a connection where the property in question has been in the relevant part of the United Kingdom, but only if it was recoverable property in relation to the unlawful conduct for some or all of the time it was there.

3 There is a connection where there is other property in the relevant part of the United Kingdom that is recoverable property in relation to the unlawful conduct.

4 There has been a connection where, at any time, there has been other property in the relevant part of the United Kingdom that, at the time, was recoverable property in relation to the unlawful conduct.

Person

5 (1) There is or has been a connection where a person described in sub-paragraph (2)—

(a) is linked to the relevant part of the United Kingdom,

(b) was linked to that part of the United Kingdom at a time when the unlawful conduct, or some of the unlawful conduct, was taking place, or

(c) has been linked to that part of the United Kingdom at any time since that conduct took place.

(2) Those persons are—

(a) a person whose conduct was, or was part of, the unlawful conduct;

(b) a person who was deprived of property by the unlawful conduct;

(c) a person who holds the property in question;

(d) a person who has held the property in question, but only if it was recoverable property in relation to the unlawful conduct at the time;

(e) a person who holds other property that is recoverable property in relation to the unlawful conduct;

(f) a person who, at any time, has held other property that was recoverable property in relation to the unlawful conduct at the time.

(3) A person is linked to the relevant part of the United Kingdom if the person is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who, under the British Nationality Act 1981, is a British subject,

(c) a British protected person within the meaning of that Act,

(d) a body incorporated or constituted under the law of any part of the United Kingdom, or

(e) a person domiciled, resident or present in the relevant part of the United Kingdom.

Property held on trust

6 (1) There is a connection where the property in question is property held on trust, or an interest in property held on trust, and—

(a) the trust arises under the law of any part of the United Kingdom,

(b) the trust is entirely or partly governed by the law of any part of the United Kingdom,

(c) one or more of the trustees is linked to the relevant part of the United Kingdom, or

(d) one or more of the beneficiaries of the trust is linked to the relevant part of the United Kingdom.

(2) A person is linked to the relevant part of the United Kingdom if the person falls within paragraph 5(3).

(3) "Beneficiaries" includes beneficiaries with a contingent interest in the trust property and potential beneficiaries.

Interpretation

7 "The relevant part of the United Kingdom" has the meaning given in section 282A(4).

8 "The unlawful conduct" means—

(a) in a case in which the property in question was obtained through unlawful conduct, that conduct,

(b) in a case in which the property in question represents property obtained through unlawful conduct, that conduct, or

(c) in a case in which it is shown that the property in question was obtained through unlawful conduct of one of a number of kinds or represents property so obtained (see section 242(2)(b)), one or more of those kinds of conduct."

(4) Omit section 286 (scope of powers: Scotland).

(5) In section 316 (general interpretation), after subsection (8A) insert—

"(8B) An enforcement authority in relation to a part of the United Kingdom may take proceedings there for an order under Chapter 2 of this Part in respect of any property or person, whether or not the property or person is (or is domiciled, resident or present) in that part of the United Kingdom."

(6) In Schedule *[Proceeds of crime: civil recovery of the proceeds etc of unlawful conduct]* (proceeds of crime: civil recovery of the proceeds etc of unlawful conduct)—

(a) Part 1 makes provision about the enforcement of interim orders in the United Kingdom, and

(b) Part 2 makes provision about enforcement where property or evidence is outside the United Kingdom.

(7) The amendments made by this section and Part 2 of Schedule *[Proceeds of crime: civil recovery of the proceeds etc of unlawful conduct]* are deemed always to have had effect.

(8) The amendments made by this section and Schedule *[Proceeds of crime: civil recovery of the proceeds etc of unlawful conduct]* do not affect the extent to which provisions of the Proceeds of Crime Act 2002 (other than Chapter 2 of Part 5), or of any other enactment, apply in respect of persons or property outside the United Kingdom or outside a particular part of the United Kingdom.'.—*(Mr Browne.)*

Brought up, and read the First time.

Mr Browne: I beg to move, That the clause be read a Second time.

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

Government new clause 13—*Investigations.*

Government new schedule 2—*Proceeds of crime: civil recovery of the proceeds etc of unlawful conduct.*

Government new schedule 3—*Proceeds of crime: investigations.*

Government amendments 114 to 117.

Mr Browne: We now move on to amendments to the Proceeds of Crime Act 2002. These provisions respond to the Supreme Court's judgment of July 2012 in the case of Perry *v.* SOCA, which has had significant adverse consequences on our civil recovery provisions. It was always the intention under part 5 of the Proceeds of Crime Act to be able to recover property representing the proceeds of unlawful conduct that was located abroad. Importantly, it was also intended that such property would have some connection with the United Kingdom. In the case of Perry *v.* SOCA, the Supreme Court ruled that the Act did not clearly create an overseas reach compared with other parts of the legislation. In the light of the judgment, the High Court of England and Wales is limited to making orders, including freezing, investigation and recovery orders, only against property in England and Wales. This means, for example, that if an individual had a villa located in Spain that was thought to be derived from the proceeds of unlawful conduct, the property could not be recovered, even if the unlawful conduct had occurred here in the United Kingdom—or more specifically, in England and Wales.

These amendments essentially put the Proceeds of Crime Act back in the position that we, law enforcement agencies and the courts thought that it was before the Supreme Court judgment. We are not trying to break new ground; we are trying only to recover ground that we had not realised, until the judgment, that we had lost. There is no new policy. The provisions do not extend the reach of the Proceeds of Crime Act beyond that envisaged in 2002, and they provide a non-exhaustive list of the connections whereby property located overseas can be subject to freezing, recovery and investigation in civil recovery proceedings in the United Kingdom. Those connections include that the unlawful conduct took place here, that the property is or has been here, and that the person who carried out the unlawful conduct, the victim or the persons who hold or have held the property are or have been here, or are a British citizen.

The provisions will have retrospective effect. They will come into force on Royal Assent to close the gap that has been created between what it was thought the Proceeds of Crime Act achieved and what it did achieve. Existing safeguards and protections relating to victims and bona fide purchases will continue to operate. These provisions operate on a UK-wide basis in the same way as the 2002 Act. However, they engage devolution considerations and therefore trigger the Sewel convention.

Regrettably, the Northern Ireland Executive have failed to reach agreement on a legislative consent motion for our provisions in response to the judgment. We are carefully considering the implications of the Executive's decision with a view to bringing forward any necessary amendments to these provisions—

Steve McCabe: Will the Minister give way?

Mr Browne: I was on my final paragraph. Would the hon. Gentleman rather that I gave way, or would he prefer to make his own contributions? I am not sure whether my giving way will help him to get an answer, but I will do my best.

Steve McCabe: I am extremely grateful to the Minister and I can see exactly what he is trying to do. After the provisions have been tidied up, will they cover criminals based in this country who fleece investors for money for foreign holiday complexes that are not then transferred to the investors, but are actually built and therefore benefit the criminals? Will those complexes now fall under the Proceeds of Crime Act, and could the money be pursued in that way?

Mr Browne: My understanding is that the answer is yes, although that might well have been captured in any case. Our intention is that if there is a United Kingdom component, it will fall under the scope of the Act, as amended. Obviously we are not a global policeman when somebody has acquired assets in one place and uses them in another country but we cannot establish a UK connection or link, or, in other words, if a non-British citizen improperly acquires money in a non-UK country to buy a property in another non-UK country. However, if there is a sufficient UK component—if, for example, there were a non-UK citizen buying a property in the United Kingdom, or a UK citizen buying a property elsewhere in the world—we would see that as falling within the scope of the legislation and we would therefore be able to take action.

As I said, the Northern Ireland Executive have failed to reach agreement on a legislative consent motion for our amendments in response to the judgment. We are carefully considering the implications of the Executive's decision with a view to bringing forward any necessary amendments to these provisions on Report so that the UK Parliament only legislates on matters within the legislative competence of the Northern Ireland Assembly with the consent of that Assembly.

Ian Paisley (North Antrim) (DUP): Last week, when I took the opportunity to meet Mr Bristow, I put these points to him. I asked him whether the security of Northern Ireland would be undermined by not getting this legislative consent, and more importantly what impact it would have on the rest of the United Kingdom. His answer was chilling: the whole of the UK would be considerably undermined by failure to achieve this legislative consent. We really need to think outside the box about

[Ian Paisley]

how to get around this, because otherwise the great work that this Bill, as enacted, will be able to achieve across the whole of the UK will be undermined. There is now a soft underbelly that is open to people trafficking, smuggling, drug dealers and serious and organised crime gangs. Does the Minister agree?

Mr Browne: The hon. Gentleman has put his position on record very powerfully. I agree with the underlying sentiment of what he says. We do want the provisions to apply UK-wide because we believe that gives greater resilience. We want people in all the component parts of the United Kingdom to benefit from measures that we obviously believe are well-designed law enforcement measures, or we would not have brought them forward in the first place. I hope that people in Northern Ireland—and elsewhere in the United Kingdom, for that matter—do not treat what we are doing with an instinctive suspicion. When serious criminality takes place and undermines people's livelihoods or safety, it is in all our interests to try to ensure that we take appropriate measures to protect people. That should apply just as much in Northern Ireland as it does in England or any other part of the United Kingdom.

Of course, we must respect the devolution settlement. We continue to discuss the implications with the Northern Ireland Executive, but we should not legislate on transferred matters without consent. That is, of course, the occasional frustration that exists when power is devolved to another part of the United Kingdom because the process of reaching conclusions becomes more cumbersome than if power is held exclusively in one place. However, we hope to make as much progress as possible in Northern Ireland, because we regard that as being in the interests of the people of Northern Ireland, as well as of the rest of the United Kingdom.

Ian Paisley: I really want the Minister to go further, because I agree that the whole principle is that we want this to apply equally and equitably across the United Kingdom. He indicated that he agreed with the thrust of what I said, but the message is that failure for Northern Ireland makes the whole Bill defective, because there is then an opening that crime gangs and others can exploit. It is not about the damage done to the citizens of Northern Ireland, much as I care for them; it is about the damage that will now be done to all the citizens of the United Kingdom of Great Britain and Northern Ireland. That is the point that the Minister has to address. We cannot move forward on the basis of a hope, a skip, a wish and a prayer. The issue must be addressed and, given the Assembly's failure to deal with it, it must be addressed in this legislature, not in the Assembly.

Mr Browne: I respect the sincerity with which the hon. Gentleman makes his point, but I do not accept that the Bill is—I cannot remember the word he used.

Ian Paisley: Defective.

Mr Browne: I do not accept that the legislation is defective as a result of some of the shared frustrations that we have about Northern Ireland. In the context of the new clause, a person whose financial gains are acquired through criminal means in England, for example, could be affected, and that will apply regardless of deliberations in Northern Ireland.

I will make one concession, so to speak, to the hon. Gentleman's argument, which is that politicians of all parties in Northern Ireland have to be careful about making Northern Ireland a place that is less resilient to serious and organised crime than other parts of the United Kingdom. Why would it be in the interests of the citizens of Northern Ireland to live in a place where, in some cases, dangerous criminals can act with greater freedom than they can in England? If I were a politician representing a constituency in Northern Ireland, I would be uncomfortable with the idea that dangerous or violent criminals could act with a degree of relative impunity in Northern Ireland compared with in other parts of the UK.

The Government are bringing forward measures on serious and organised crime because we want to give greater resilience to the system and because we realise that our constituents sometimes face serious threats—possibly to their lives, but certainly to their wider well-being. Those concerns apply throughout the United Kingdom, but just having such concerns is not good enough; we have to legislate to address them and that is what we are trying to do in Committee. I hope that that approach will be understood and taken on board by politicians in all parties in Northern Ireland.

Mr Hanson: I will not detain the Committee for long, because the Opposition support the measures in principle, but I want to question the Minister on consent and Northern Ireland. He indicated that amendments will be tabled on Report, which may be three or four weeks away—I am not party to the Government's plans. What steps will the Government take between now and Report, given that the Minister has to look at the policy implications, to get the Northern Ireland Assembly on board? There may be UK citizens—even though they may not regard themselves as such—living in Northern Ireland with substantial property interests in the Republic of Ireland who may be undertaking criminal activity. It is therefore incumbent on the Minister, before we conclude our consideration of this group, to provide a road map as to how he will convince the Northern Ireland Assembly and how he will bring the matter before the House of Commons in a way that can be endorsed on a United Kingdom basis. My right hon. Friend the Member for Wythenshawe and Sale East, my hon. Friend the Member for North Antrim and I know Northern Ireland well, and cross-border criminal activity does occur. Property and assets may be held on both sides of the border by people undertaking such activity, so it is important that we do not have a great big hole in our back door that allows such activity to take place.

10.45 am

Mr Browne: I agree. I have often found myself in the unenviable position during these discussions of trying to explain the constraints under which the United Kingdom Government sometimes operate while not wishing to suggest that I welcome those constraints. As I just said to the hon. Member for North Antrim, we bring forward this legislation because we take the threat of serious and organised crime seriously and think it should be taken seriously in all four component parts of the United

Kingdom. As I said in my introductory remarks, if we believe that property bought by a British national in Spain was paid for with the proceeds of unlawful conduct that happened in the United Kingdom, the fact that the property is in Spain should not be a bar. We do not want it to be a bar, and we tabled the new clause so that it will come within the scope of the Bill. Otherwise, there would be a massive hole in the legislation. If a person used the illegal proceeds to buy a house just outside London in Kent it would fall within the scope of the Bill, but if they bought a nice house in Spain it would not. We do not want—this will need to be tested and understood—places closer to home than Spain to be suitable for buying properties without us being able to extend the legislation to cover them.

Mr Hanson: In that case, could the Minister assure us that after Royal Assent a British citizen who lives in, for example, Armagh, who owns property or substantial assets in Dublin, will be covered by the provisions in the Bill?

Mr Browne: The right hon. Gentleman puts his finger on the nature of the issue that we are addressing.

Mr Hanson: With respect to the Minister, I know that. I am asking him for a road map so that in three weeks we get to a position where that does not occur.

Mr Browne: The only point I make is that I do not want it to occur. We agree with each other. I am in favour of the right hon. Gentleman and his right hon. Friend the Member for Wythenshawe and Sale East, who we are told is so knowledgeable and influential in this area, bringing any positive influence to bear. This is not a point of disagreement between the Government and the Opposition. We are working hard to ensure that the Bill is as effective as it can be.

We are working with politicians in Northern Ireland to achieve that. If necessary, we will table amendments on Report, the effects of which will be debated at that stage. We hope that the Northern Ireland Assembly will pass a legislative consent motion. However, if a legislative consent motion is not secured before Royal Assent, we will explore whether we can include a mechanism in the Bill to apply the provisions in full to Northern Ireland at a future date with the consent of the Assembly if it is willing to trigger that mechanism after Royal Assent. No stone is being left unturned in the Government's attempt to make sure the provisions apply across the United Kingdom. Everybody on the Committee understands that. We welcome any assistance that can be brought to bear on that task. We all have the same objectives.

Ian Paisley: Could the Minister outline the discussions he is currently engaged in with the Northern Ireland parties? What are his officials doing to ensure that the good sense he talked about will prevail on the Social Democratic and Labour party and Sinn Fein, which are in blocking mode?

Mr Browne: It is probably not appropriate to reveal the nature of those conversations in detail to the Committee. Obviously, a lot of the discussions between officials are of a more technical nature. The hon. Gentleman understands the position, and we have been pretty clear about it in the course of the past half hour. I hope that, by means of detailed negotiations or by means of all the political parties in Northern Ireland coming to the same conclusion about the desirability of thwarting serious organised crime, we reach an end point where people in Northern Ireland are as protected by these measure as people in England. That is the Government's objective.

Question put and agreed to.

New clause 12 accordingly read a Second time, and added to the Bill.

New Clause 13

INVESTIGATIONS

'In Schedule [Proceeds of crime: investigations](proceeds of crime: investigations)—

(a) Part 1 makes provision about orders and warrants sought under Part 8 of the Proceeds of Crime Act 2002 in connection with civil recovery investigations,

(b) Part 2 makes provision about obtaining evidence overseas, and

(c) Part 3 makes consequential amendments relating to immigration officers and to the National Crime Agency.'.—*(Damian Green.)*

Brought up, read the First and Second time, and added to the Bill.

New Clause 14

DEPORTATION ON NATIONAL SECURITY GROUNDS: APPEALS

'(1) Section 97A of the Nationality, Immigration and Asylum Act 2002 (deportation on national security grounds: appeal rights) is amended as follows.

(2) After subsection (1) insert—

"(1A) This section also applies where the Secretary of State certifies, in the case of a person in respect of whom a deportation order has been made which states that it is made in accordance with section 32(5) of the UK Borders Act 2007, that the person's removal from the United Kingdom would be in the interests of national security."

(3) For subsection (2)(c) substitute—

"(c) section 2(5) of the Special Immigration Appeals Commission Act 1997 (whether appeals brought against decisions certified under section 97 may be brought from within the United Kingdom) does not apply, but see instead the following provisions of this section."

(4) After subsection (2) insert—

"(2A) The person while in the United Kingdom may not bring or continue an appeal under section 2 of the Special Immigration Appeals Commission Act 1997—

(a) against the decision to make the deportation order, or

(b) against any refusal to revoke the deportation order,

unless the person has made a human rights claim while in the United Kingdom.

(2B) Subsection (2A) does not allow the person while in the United Kingdom to bring or continue an appeal if the Secretary of State certifies that removal of the person—

(a) to the country or territory to which the person is proposed to be removed, and

(b) despite the appeals process not having been begun or not having been exhausted,

would not breach the United Kingdom's obligations under the Human Rights Convention.

(2C) The grounds upon which a certificate may be given under subsection (2B) include (in particular)—

(a) that the person would not, before the appeals process is exhausted, face a real risk of serious irreversible harm if removed to the country or territory to which the person is proposed to be removed;

(b) that the whole or part of any human rights claim made by the person is clearly unfounded.

(2D) Subsection (2A) does not allow the person while in the United Kingdom to bring an appeal on a non-human-rights ground, or to continue an appeal so far as brought on non-human-rights grounds, if the Secretary of State certifies that removal of the person—

(a) to the country or territory to which the person is proposed to be removed, and

(b) despite the appeals process, so far as relating to appeal on non-human-rights grounds, not having been begun or not having been exhausted,

would not breach the United Kingdom's obligations under the Human Rights Convention.

(2E) In subsection (2D) "non-human-rights ground" means any ground other than the ground that removal of the person from the United Kingdom in consequence of the decision to make the deportation order would be unlawful under section 6 of the Human Rights Act 1998 as being incompatible with a person's Convention rights.

(2F) If a certificate in respect of a person is given under subsection (2B), the person may apply to the Special Immigration Appeals Commission to set aside the certificate.

(2G) If a person makes an application under subsection (2F) then the Commission, in determining whether the certificate should be set aside, must apply the principles that would be applied in judicial review proceedings.

(2H) The Commission's determination of a review under subsection (2F) is final.

(2J) The Commission may direct that a person who has made and not withdrawn an application under subsection (2F) is not to be removed from the United Kingdom at a time when the review has not been finally determined by the Commission.

(2K) Sections 5 and 6 of the Special Immigration Appeals Commission Act 1997 apply in relation to reviews under subsection (2F) (and to applicants for such reviews) as they apply in relation to appeals under section 2 or 2B of that Act (and to persons bringing such appeals).

(2L) Any exercise of power to make rules under section 5 of that Act in relation to reviews under subsection (2F) is to be with a view to securing that proceedings on such reviews are handled expeditiously."

(5) In subsection (3) (appeal against certificate under subsection (2)(c)(iii)) for "(2)(c)(iii)" substitute "(2D)".'.—*(Damian Green.)*

Brought up, and read the First time.

Damian Green: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss Government amendment 118.

Damian Green: As the Home Secretary said in her statement to the House on extradition issues on 16 October, and again in her statement about Abu Qatada on 12 November, it takes too long to remove foreign nationals who pose a threat to national security. This new clause intends to limit the circumstances in which national security related deportations attract in-country rights of appeal on human rights grounds. The provision will take away an appellant's right to have his substantive appeal against deportation heard in country where the Secretary of State certifies that removal prior to his appeal being finally determined would not breach the UK's obligations under the European convention on human rights.

The Secretary of State may certify in particular on the grounds that the applicant's human rights claim is clearly unfounded, or that the individual would not face a real risk of serious, irreversible harm if we moved before the appeals process is exhausted. The clearly unfounded test is well established as it is already set out in section 94 of the Nationality, Immigration and Asylum Act 2002. The test of serious irreversible harm is that used by the European Court of Human Rights when deciding whether to issue a rule 39 direction to suspend removal from a country prior to its substantive consideration and appeals against deportation or removal.

The new clause also implements the approach that the European Court of Human Rights has adopted in its jurisprudence on when domestic regimes must grant in-country appeals. On 13 December 2012, the Grand Chamber of the European Court of Human Rights confirmed, in its judgment in de Souza Ribeiro *v.* France, that there must be a suspensive appeal in cases where there is a threat to life or risk of torture, but in cases raising issues as to family or private life, a suspensive appeal is not always required. Appellants will have a right to appeal to the Special Immigration Appeals Commission for the certificate to be set aside. The intention is that SAIC would review such an application fairly but expeditiously.

As national security deportation cases often involve human rights claims, where it is alleged that individuals may face the risk of torture or worse on return, there are significant constraints on our ability to deport before an appeal is heard in the UK. The Government take deportation action only ever when they consider it lawful to do so and would not deport if they thought that there was a real risk that the person would be tortured on return. However, we accept that deportees are entitled to challenge that assessment. Moreover, we think it right that they are able to do so before being deported, as an appeal on the basis that one would be tortured is worthless if, in practice, the person has been deported and tortured before the appeal is heard.

Nevertheless, the new clause will support our ability to deport in future cases, in particular, where individuals raise less fundamental human rights issues, such as the right to a private life, or if their human rights claim is unfounded. For example, a person may suffer no serious irreversible harm in being away from their family for a few months while they appeal, even if they claim that permanent deportation would be contrary to the right to family or private life. The person will still have an appeal, and if they win they will be able to return to the UK. Nevertheless, having the individual out of the UK pending the appeal could be of real benefit in the context of the relatively small number of national security deportation cases. This measure is one of a number of reforms being explored by the Home Office and Ministry of Justice to support the Government's ability to deport foreign national terrorists more quickly than at present. As such, I commend it to the Committee.

Mr Hanson: I have two questions on the new clause. The Minister touched on the first one. Proposed new subsection (2C) uses the phrase

"real risk of serious irreversible harm".

The Minister has given one example of that, but I would welcome a clearer definition from him. These matters will be tested in court and it is important that he places a clear definition on record so that that defence does not become a mud pile further downstream when we are trying to deport people who have committed alleged serious terrorist offences.

Secondly, proposed new subsection (2C) states that one of the grounds on which a certificate may be granted is that

"the whole or part of any human rights claim made by the person is clearly unfounded."

Again, will the Minister indicate what would make a human rights claim clearly unfounded, so that we can have some clarity on the matter should it come before the courts? The people who will be dealt with by the provisions in the new clause are not individuals who will be removed from the country with any great ease. They will use any issue that could help keep them in the United Kingdom. If there is no clarity about what "clearly unfounded" means, I suspect that they may well use the great British judicial system to test that phrase to its nth limit. It would therefore be welcome if the Minister could clear up what the phrase means, so that the deliberations of the Committee can be reflected upon should any such test come before the courts.

Damian Green: I am happy to answer those two questions. The real risk of serious irreversible harm is the test used already by the European Court of Human Rights when deciding whether to issue a direction to suspend removal, so there is a body of case law for the right hon. Gentleman and others to consider. I hope he will accept that one of the virtues of using that test is precisely that it avoids the situation he described of people using the judicial system to play games; in particular, by using the Strasbourg Court test, we are seeking to minimise the opportunity for subjects to delay their removal by raising the issue in Strasbourg. He asked what the phrase means in practice; in particular, the test applies when there is a real risk of violation of article 2, on the right to life, or article 3, on prohibition of torture, of the European convention on human rights. That is what we regard as serious and irreversible harm. In a sense, that is reasonably straightforward.

The right hon. Gentleman also asked about the phrase "clearly unfounded". To repeat partly what I said in my opening remarks, that is a well established test that was laid down in legislation in 2002, so we have 11 years of case law on what it means. Essentially, it means that a human rights claim will be clearly unfounded if it is not arguable in a court or if it is frivolous—as I say, we have 11 years of case law that establishes what that kind of frivolity is. There are a number of examples of cases that are thrown out by the courts at all times.

The right hon. Gentleman legitimately questioned the two phrases; however, neither is giving rise to any new concepts. Both cover complex issues, but those are not new for the courts: there is a body of case law at both European and national level covering the two concepts. I hope that satisfies him.

Question put and agreed to.

New clause 14 accordingly read a Second time, and added to the Bill.

New Clause 2

REGIONAL ORGANISED CRIME TASK FORCES

'(1) The Secretary of State may make arrangements for the establishment of regional organised crime task forces.

(2) Such bodies will comprise representatives of—

(a) the NCA;

(b) local police forces;

(c) HM Revenue and Customs;

(d) the UK Border Agency;

(e) local authorities;

(f) business; and

(g) the Police and Crime Commissioners.

(3) Each regional organised crime task force will make its own arrangements for—

(a) administration; and

(b) chairing the body.

(4) The purpose of the Regional Organised Crime Task Force will be to—

(a) encourage and support joint working to counter organised crime; and

(b) increase public awareness of the causes and impact of organised crime.'.—*(Paul Goggins.)*

Brought up, and read the First time.

Paul Goggins: I beg to move, That the clause be read a Second time.

The great thing about this Christmas tree Bill is that we fly from one subject to another with great variation and speed; my own comments will be speedy. The intention behind new clause 2 is to press the Minister to share with the Committee his thinking about the framework for tackling organised crime at a level between the national and the very local. Clearly the National Crime Agency will spearhead the national and international effort on organised crime in the United Kingdom, and police forces will focus on organised crime as it shows itself at local level, but there is an argument for taking a more strategic, regional view in relation to organised crime. New clause 2 would provide a framework for doing so.

11 am

Ironically, given the Committee's recent discussion on Northern Ireland and the legislative consent motion, or rather the absence of a legislative consent motion, the model that I am proposing is based firmly on the experience of the Organised Crime Task Force in Northern Ireland, which has operated very effectively for the past decade. It is now chaired by the Justice Minister David Ford and has within it representatives of the police, at the moment of SOCA and in future, one hopes, of the National Crime Agency, the UK Border Agency, various Government Departments, the private sector—in other words, the whole sweep of organisations and agencies that may have an interest in and an angle on organised crime. By bringing them together, the impact is there to be seen.

Every year the Organised Crime Task Force publishes a threat assessment and an annual report of its achievements. It is instructive to look at the priorities that have been set out in the most recent threat assessment. It includes many issues that we would be very familiar with: drugs and money laundering, for example, but it

also includes issues that are specific to Northern Ireland, for example tiger kidnapping, which is a particularly difficult problem which is faced by law enforcement there. It is able to focus on those issues which are common to other areas but specific to Northern Ireland.

The achievements are commendable. Last year more than £30 million-worth of drugs were seized, 33 potential victims of human trafficking were rescued; £4.44 million of criminal assets were seized. The Justice Minister has done a lot to make sure that a substantial amount of those assets is returned to the communities where the greatest harm is done by organised criminal gangs. More than 23 million counterfeit and smuggled cigarettes were seized.

The model as it has operated in Northern Ireland has been able to focus on those issues which are real issues there, but also to achieve some significant results. Reflecting on the absence of a legislative consent motion, I find it deeply ironic that the enthusiasm for asset recovery in Northern Ireland has been greater than any other part of the United Kingdom. When the previous Government decided to close down the Assets Recovery Agency and put it in with SOCA there was a public revolt in Northern Ireland. I am sure the hon. Member for North Antrim will remember it; such was the level of public feeling.

For most of the rest of the United Kingdom, many people did not even realise there was an Assets Recovery Agency, but it was very high-profile there. SOCA has been a very effective partner within the Organised Crime Task Force ever since it came into being in 2006. So, it is working and the decision not to give legislative consent to the new framework would prevent the many successes that are already taking place.

On new clause 2, I am suggesting three things to the Minister. In subsection (2) I list the various agencies and organisations that ought to be members of a regional organised crime taskforce. For the rest of the United Kingdom, obviously the local police forces would need to be involved. The framework may look different in different regions but would clearly go beyond one particular police force area. I would want to see Her Majesty's Revenue and Customs involved. Obviously the National Crime Agency would be represented. The local authorities from that particular region should be there, because it could be that signs of organised crime are picked up by trading standards officers and other officials within local authorities. Of course, the police and crime commissioners for that particular region should also be involved. I would be interested to know whether the Minister thinks that list is deficient. There may be other agencies, organisations and sectors that he would like to include that I have not included. I would be very happy to hear if he has further suggestions.

My proposal is that the regional taskforce be left to its own devices in terms of organising its own administration and deciding who should lead and chair the taskforce. That is best left to them rather than to Ministers to decide. Crucially, subsection (4) sets out the purpose of the regional organised crime taskforce. That is to do two things. One is to encourage joint working, which is very important particularly in getting law enforcement and the private sector to work closely together. If, for example, there is a specific problem of cash in transit robberies within a particular locality, it is vital that the police, the National Crime Agency and the banks should work together in order to make sure that they can deal with that issue. The idea of the regional structure is to promote that greater sense of partnership and joint working.

The second purpose is to increase public awareness of the causes and impacts of organised crime. Even though successive Ministers have done their best to highlight the causes and impacts, too little is understood by the general public. For example, when someone is tempted to buy, because it is cheaper, a dodgy or cut-price DVD that is clearly counterfeit, they may not realise that they are putting money into the hands of drug and people traffickers, who reinvest in their criminal enterprises in a way that is deeply harmful to many people. It is very important that at regional level, law enforcement, public authorities and the private sector take on the task of raising public awareness about the causes and impact of organised crime.

Three things are proposed in new clause 2: the make-up of the organised crime taskforce for each region; the way it should be organised and chaired; and its purpose in encouraging joint working and a greater understanding among the public.

Ian Paisley: I was a member of the OCTF in Northern Ireland under the chairmanship of the right hon. Gentleman. It was a unique opportunity to gain insight into the needs and requirements of the OCTF on a regional basis. I support the points that my colleague has made. I believe that the lessons learnt should be applied across the rest of the UK. Indeed, this is an opportunity when such lessons can be applied.

Paul Goggins: I am grateful to my hon. Friend for his intervention. He reminds me that he would have represented the Policing Board on the Organised Crime Task Force. The Policing Board was another body that was bound into the work of that particular group.

I put my suggestions to the Minister to be helpful and I look forward to his comments. He will agree that we have to combat organised crime at every level. We have a new agency that will spearhead that work, but it cannot simply be left to operate at national level. We have to reinforce the work of local police forces and find new and strategic ways of tackling criminal gangs who operate at local, regional, national and international level. We must be absolutely unstinting in our efforts to bring all sectors together in the fight against organised crime. I look forward to what the Minister has to say.

Mr Hanson: I support my right hon. Friend's proposal. There is certainly merit in hearing from the Government about how, on a regional basis, the role of the NCA will fit in with the roles of agencies such as Revenue and Customs, the Border Agency, local authorities, businesses and police and crime commissioners. I accept that some of those will come under the jurisdiction of the NCA. My right hon. Friend's proposed new clause gives us a chance to look at the matter. Local authorities have roles and responsibilities for trading standards, which can look into counterfeiting and the confiscation of illegal goods, and we have the Government's innovation of police and crime commissioners. I am keen to know how they will mix in with the work of the NCA on a regional basis.

My right hon. Friend's proposal for the establishment of a regional organised crime taskforce provides the opportunity to bring together the NCA and its various streams of work on a regional basis and allows us to look at some of the other major players. Local authorities, police and crime commissioners and businesses in the area are major players. I support my right hon. Friend's proposed new clause.

Mr Browne: I strongly support the basic instincts that underline the new clause proposed by the right hon. Member for Wythenshawe and Sale East. In the relatively short time that I have been a Home Office Minister, an area of policing and law enforcement that I had previously not been sufficiently aware of, but have become more aware of—I have become more impressed as a result of becoming more aware of it—is the need for enhanced regional capacity.

Before we get on to other organisations—border forces and others that have a law enforcement role—there is clearly a big disparity between the larger and smaller police forces. Some of the larger forces have the capacity to deal with serious and organised crime, because, of course, they tend to have more serious and organised crime, which means that they develop greater expertise. However, they also have more critical mass in terms of budget and people, compared to small police forces that do not typically have either the accumulated experience or the number of people to deal with serious and organised crime, particularly when a one-off incident or group of incidents disturbs their normal pattern of work.

It is important that we have a National Crime Agency that can, in Home Office jargon, dock effectively with different parts of the law enforcement landscape, to use another bit of jargon, because we want to ensure that the NCA is properly connected, that there is the capacity and the right level of expertise in the system to respond meaningfully to requests for collaborative work, and that the flow in both directions is as effective as possible.

Committee members will be forgiven for suspecting that this level of thinking really applies only in Northern Ireland, given the debate up to now. However, we have 10 regional organised crime units in England and Wales. I visited the one in Derbyshire, which is widely regarded as the most effective in England and Wales in terms of co-ordination of activity. The 10 regional organised crime units in England and Wales are embedded in local policing and accountable to police and crime commissioners. They include seconded officers from SOCA, HMRC, the UKBA and a number of other agencies—the right hon. Member for Wythenshawe and Sale East made the point that the units are not made up exclusively of police.

Regional organised crime units co-ordinate the fight against organised crime at regional level and provide specialist support and expertise to police forces and other agencies. Such support ranges from producing regional threat assessments to mounting technical surveillance operations against organised criminal groups. Again, I make the point that there is obviously more capacity for that type of activity in a force such as Greater Manchester police than there would be in a small rural force. Their mission is simple: they must tackle both organised crime groups causing the greatest levels of harm to communities in their region, and organised crime that is occurring across local boundaries, including county or force boundaries.

Regional organised crime units have grown and developed over a number of years and are making a real contribution to the overall response to organised crime. Their key strength is their understanding of how local communities are affected by organised criminality and their consequent ability to tailor their law enforcement response accordingly, alongside their importance in linking upwards to national agencies—the docking mechanism I mentioned a moment ago. We see merit in the bottom-up rather than top-down element, because responses to organised crime may be different in the south-west of England from those in another part of the country where there might be bigger forces or cities, or less dispersed rurality. Law enforcement agencies will have different ways of applying the same lessons in different parts of the country.

Rather than replacing the agencies with a new structure prescribed in legislation, as the right hon. Member for Wythenshawe and Sale East intends through his new clause, we are supporting them to become better. In any case, the Government's organised crime strategy sets out a clear commitment to turn the regional units into a more integrated network with greater consistency and interoperability. Through the publication of the strategic policing requirement, we have put into statute the expectation that all forces have or have access to a specific set of capabilities to tackle organised crime and other national threats, and the expectation that forces collaborate, where appropriate, to deliver these capabilities. Building on those clear expectations, the police and partner agencies have agreed a set of core capabilities for the regional organised crime units in order to achieve greater consistency in the current arrangements. All chief officers are being encouraged to formalise those arrangements by signing collaboration agreements.

The Home Office is actively supporting that work. We already provide £16 million of direct funding to those units to fund some of the core capabilities, and we are looking at ways to increase that funding and provide a more stable funding model for units in the future. Our focus is on improving what exists and what has grown up organically, making it more effective and more co-ordinated and learning from better practice, without having a new structure set in statue that has too much of a one-size-fits-all feel to it.

11.15 am

The right hon. Member for Wythenshawe and Sale East proposed that the new taskforces should have representation from a list of bodies, but those bodies are already able to engage with the work of regional organised crime units under the existing non-statutory arrangements. I hope I can assure all hon. Members by setting out how the system works at present. As I said, the regional units are made up of officers drawn from a number of agencies including police forces, the Serious Organised Crime Agency, Her Majesty's Revenue and Customs and the UK Border Agency. Police forces are already plugged into their local communities, community safety groups, businesses and other interested parties in their locality.

In summary, the idea is a good one, and something we want to see more of. Critical mass is afforded by region-level capacity; with 5 million or 6 million people, it feels as though a gap would be filled between the National Crime Agency and some of the smaller, and in many cases more rural, forces, which without collaboration

would not have that type of capacity. I know that the new clause is probing and in any case, it only states that the Home Secretary "may" do things, rather than compelling her. This short debate has been useful and this area of policy development will continue to be of interest to Members.

We do not have a finalised institutional architecture yet—if there ever can be one. Some regions are seen by the police as more effective than others in learning from best practice. As I said, what applies in one region does not necessarily apply so well in another. It depends, for example, on the relative size of the different police forces in that region and their experiences of working collaboratively in the past. We are trying to improve standards of service delivery, while making sure that each region is accountable to the people of that region and provides a service that is tailor-made to be most effective in that region. With that, I ask the right hon. Member for Wythenshawe and Sale East not to press his new clause, and to be confident in the knowledge that the Government share his enthusiasm for further policy development in this area.

Paul Goggins: I am encouraged by what the Minister said about the regional organised crime units. It is good to hear about their work and it is good to hear that they will continue under the National Crime Agency to be a major focus for organising law enforcement efforts.

I will make three points. First, I do not intend to press the new clause. The Minister is right; the issue needs to be left to the discretion of local arrangements, because what works in one area may not work in another. In the north-west of England, which is my neck of the woods, we would have to debate what we meant by "region", because in Manchester we would think of ourselves as being the Manchester city region, but in terms of organised crime, law enforcement would want to look at what was happening on Merseyside as well as in Manchester. There would be debate about the appropriate regional level for an organised crime taskforce.

Secondly, as the National Crime Agency begins its work, once the law is enacted and we move into the new phase, it is important that the regional units look to broaden the partnerships and do not just leave it to law enforcement. The units should try to engage with local authorities, the private sector and others who know about the impact of organised crime, whether it be on their business or on local communities. There has to be breadth to those partnerships, and I hope the Minister will take that forward in any discussions that he and his ministerial colleagues have with Keith Bristow and others at the National Crime Agency, as well as at local policing level too.

Thirdly, it is the important job of the units and local police forces to ensure that public attention is drawn to the causes and impacts of organised crime. I gave the example of a cut-price counterfeit DVD seeming an attractive proposition for somebody who is fairly hard-up, but the money goes into the hands of organised criminal gangs. We have to get that message across to people at community level. Many of the good community leaders in community safety groups and so on should be brought into that work where possible.

I hope that the Minister and his colleagues, in discussions with the NCA, will take forward those issues about partnership and public awareness. Once again, they show that organised crime cannot be left to one level alone. It operates at many levels where the system—our law enforcement agencies and others—needs an appropriate framework to fight back. I beg to ask leave to withdraw the motion.

New clause, by leave, withdrawn.

The Chair: I suspend the Committee until 11.25, at which point I will adjourn, as Mr Burrowes is not present—unless someone else speaks to new clause 3 in the name of Mr Burrowes.

Paul Goggins: As Mr Burrowes left the Committee to attend to other urgent business, he asked me if I would speak to new clause 3.

The Chair: In that case, Mr Goggins, we now come to new clause 3.

New Clause 3

CHILD MALTREATMENT

'Section 1 of the Children and Young Persons Act 1933 (Cruelty to persons under sixteen) is hereby repealed and replaced as follows—

"**1 Child maltreatment**

(1) It is an offence for a person with responsibility for a child intentionally or recklessly to subject that child or allow that child to be subjected to maltreatment, whether by act or omission, such that the child suffers, or is likely to suffer, significant harm.

(2) For the purposes of this section:

(a) 'recklessly' shall mean that a person with responsibility for a child foresaw a risk that an act or omission regarding that child would be likely to result in significant harm, but nonetheless unreasonably decided to take that risk;

(b) 'responsibility' shall be as defined in section 17;

(c) 'maltreatment' includes—

(i) neglect (including abandonment),

(ii) physical abuse,

(iii) sexual abuse,

(iv) exploitation, and

(v) emotional abuse (including exposing the child to violence against others in the same household);

(d) 'harm' means the impairment of—

(i) physical or mental health, or

(ii) physical, intellectual, emotional, social or behavioural development.

(3) Where the question of whether harm suffered by a child is significant turns on the child's health or development, that child's health or development shall be compared with that which could reasonably be expected of a similar child."'.—*(Paul Goggins.)*

Brought up, and read the First time.

Paul Goggins: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss

Amendment 72, in title, line 6, after 'driving', insert 'to amend the law relating to children and young persons;'.

Paul Goggins: This is a fairly dramatic switch from organised crime taskforces to child neglect. None the less, it is an important new focus for our Committee. I am happy to speak to the new clause which is in the names of the hon. Member for South Swindon (Mr Buckland) and the hon. Member for Enfield,

Southgate. I commend them for the work they continue to do on the issue. Much work has gone on with Action for Children and I have been involved with it too.

The new clause seeks to update and modernise the law on child neglect. Action for Children does tremendous work and I pay tribute in particular to the contribution of Baroness Butler-Sloss. She has applied her vast experience of family law and child welfare to the issue in a very helpful way.

Action for Children convened a panel of experts, which last week reported its findings on the need to update the law and replace it with a new offence of child maltreatment. The new definition is more than just a new form of words; it reflects the fact that it is now 80 years since the existing law on child neglect came into operation, through the Children and Young Persons Act 1933.

Neglect is the most common form of child abuse in our community. The worst cases come to public attention, and sadly we read of stories of children so neglected that they starved to death; or of children killed in accidents that were completely avoidable if their parents or those caring for them had been more closely involved and offered closer supervision.

Child neglect is the most common reason for a child protection referral. Therefore it is very much in the minds of the police and social services departments that child neglect affects the lives of some of the most vulnerable and needy children in our community. I support the proposal because I hope it will probe and provoke debate and response from the Ministers on that important issue.

Steve McCabe: My right hon. Friend said that he hoped the new clause would probe. Surely the whole purpose of the Bill is to remedy deficiencies in law enforcement, the courts and the procedures that we employ. That has been the thrust of every Minister's proposition in the course of the Committee. Here we have a glaring weakness in the law that fails to protect children and plenty of cross-party support to do something simple to remedy it. I encourage my right hon. Friend not only to probe but to invite the Minister to accept the new clause.

Paul Goggins: Perhaps I should define what I mean by the word probe in this instance. I am not looking for a casual conversation, I am looking for action.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.