

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

## Public Bill Committee

### INFRASTRUCTURE BILL [*LORDS*]

*Third Sitting*

*Thursday 18 December 2014*

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SCHEDULE 3 agreed to.

CLAUSES 14 to 19 agreed to.

Adjourned till Tuesday 6 January at twenty-five minutes past Nine o'clock.

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**The Committee consisted of the following Members:**

*Chairs:* †MR JIM HOOD, SIR ROGER GALE

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|---|--|
| † Blackman-Woods, Roberta ( <i>City of Durham</i> ) (Lab)               | † Parish, Neil ( <i>Tiverton and Honiton</i> ) (Con)   |
| Browne, Mr Jeremy ( <i>Taunton Deane</i> ) (LD)                         | † Raynsford, Mr Nick ( <i>Greenwich and Woolwich</i> ) (Lab)   |
| † Burden, Richard ( <i>Birmingham, Northfield</i> ) (Lab)               | Ruane, Chris ( <i>Vale of Clwyd</i> ) (Lab)  |
| Burt, Alistair ( <i>North East Bedfordshire</i> ) (Con)                 | † Rudd, Amber ( <i>Parliamentary Under-Secretary of State for Energy and Climate Change</i> )              |
| † Coffey, Dr Thérèse ( <i>Suffolk Coastal</i> ) (Con)                   | Shannon, Jim ( <i>Strangford</i> ) (DUP)   |
| † Greatrex, Tom ( <i>Rutherglen and Hamilton West</i> ) (Lab/Co-op)     | † Whitehead, Dr Alan ( <i>Southampton, Test</i> ) (Lab)  |
| † Hayes, Mr John ( <i>Minister of State, Department for Transport</i> ) | † Williams, Stephen ( <i>Parliamentary Under-Secretary of State for Communities and Local Government</i> ) |
| † Heaton-Harris, Chris ( <i>Daventry</i> ) (Con)                        | † Zahawi, Nadhim ( <i>Stratford-on-Avon</i> ) (Con)  |
| † Jenrick, Robert ( <i>Newark</i> ) (Con)                               |  |
| † Jones, Graham ( <i>Hyndburn</i> ) (Lab)                               | David Slater, Marek Kubala, <i>Committee Clerks</i>  |
| † Kwarteng, Kwasi ( <i>Spelthorne</i> ) (Con)                           |  |
| † Miller, Andrew ( <i>Ellesmere Port and Neston</i> ) (Lab)             |  |
| † Newmark, Mr Brooks ( <i>Braintree</i> ) (Con)                         | † <b>attended the Committee</b>  |

## Public Bill Committee

Thursday 18 December 2014

[MR JIM HOOD *in the Chair*]

### Infrastructure Bill [Lords]

11.30 am

**The Minister of State, Department for Transport (Mr John Hayes):** On a point of order, Mr Hood. I am grateful for your indulgence in allowing me to make some brief comments about an amendment that the Government intend to table for debate during later sittings. It relates to mobile phone and broadband services, which play an important role in supporting businesses, organisations and individuals. These services are underpinned by a complex network of infrastructure, and as consumer demand for communication services develops, so too must the infrastructure that delivers it.

The Government have a key role to play in ensuring that the legal framework is clear, robust and relevant for rolling out modern communications infrastructure. That is why the Government will bring forward reforms to the electronic communications code. The reformed code will be broadly based on the Law Commission's 2013 report, "The Electronic Communications Code". The Government thank the Law Commission for this extensive review. Reforms will include increased clarity around rights to move and remove electronic communications apparatus; greater automatic rights to upgrade and share this apparatus; a new forum for dispute resolution that will have powers to order interim and urgent access; and a new power to allow Government to reform the basis for wayleave valuation following public consultation.

**Richard Burden (Birmingham, Northfield) (Lab):** Further to that point of order, Mr Hood. I thank the Minister for giving us advance notice of his point of order. Obviously we will need to see the precise proposals, but this is something we will look at, and we will need to consult our colleagues shadowing the Departments affected. He will know that all Committee members are concerned to ensure that debate on other aspects of the Bill is not truncated. However, assuming those things are sorted out, I look forward to seeing the proposals, and we will consider them.

**The Chair:** I thank the Minister for that information. It was more a point of information than a point of order.

### Schedule 3

#### TRANSFER SCHEMES

**Richard Burden:** I beg to move amendment 20, in schedule 3, page 87, line 5, at end insert—

"(d) the change in employment shall not alter the terms and conditions of that person's employment."

**The Chair:** With this it will be convenient to consider schedule 3.

**Richard Burden:** It was remiss of me not to welcome you back to the Chair, Mr Hood—I was so taken with the point of order—and not to welcome Committee members back for the last sitting before we break for Christmas recess. Everybody is looking bright eyed and bushy tailed about the prospect of a final sitting. Actually, I suppose I am rushing ahead a bit by saying "bright eyed and bushy tailed", because that takes us on to invasive non-native species, so I will get rapidly back to the strategic highways company and amendment 20.

Schedule 3 enables the Secretary of State to make schemes transferring property rights and liabilities when a company is appointed, or ceases to be appointed, as a strategic highways company. Amendment 20 aims to address the real and widespread concerns among Highways Agency staff—there are some 3,500 of them—about this reform. I have met staff and Public and Commercial Services Union and Prospect union representatives in the agency and corresponded with a number of employees directly. I am sure that the Minister has done the same. If he has been in touch with the staff, I should think he will recognise some of the concerns that I have heard.

There is clearly anxiety about employee terms and conditions, pensions, and contracts changing, as the staff will no longer be civil servants. Concern has been expressed to me that we could end up with corners being cut in terms of the work involved. The new design standard for smart motorways, for example, is being given as a specific example of how that could affect working conditions. Also, the people I spoke to told me that new shift patterns for traffic officers are already having quite a detrimental effect on their work-life balance. They have raised with me concerns about the extent to which management are responding to feedback from employees. I have to say that the Highways Agency's recent people survey is quite disappointing. It seems that not a lot of improvement is being made in staff morale, and so on.

Employees have reported to me a countdown to the introduction of the GoCo, which they have found unhelpful. The countdown has increased their feeling of unsettlement, and they do not feel that they have so far received assurances on the concerns they have raised. The good thing about schedule 3 is that it makes provision for staff to have continuity of service under the Employment Rights Act 1996.

The Minister was very helpful when we addressed some of these matters in a previous sitting, but I hope he will forgive me if I press a little further. At the moment, schedule 3 does not guarantee the maintenance of terms and conditions under the TUPE regulations. He said in a letter to my hon. Friend the Member for Hayes and Harlington (John McDonnell) that the Cabinet Office statement of practice on staff transfers in the public sector will apply and that TUPE principles are expected to apply, but staff are still expressing concern that that will not necessarily be enforceable. I would be grateful if the Minister stated why the Government are unable to ensure that TUPE rules, obligations and liabilities will apply to any transfer involving staff under the Bill. If the TUPE rules will not and cannot apply, will he try to firm up some of the assurances to make them clear to staff, particularly against the background of anxiety?

I would also be grateful if the Minister looked into the following areas of concern. Will the civil service standard for pension schemes and redundancy agreements continue to apply to staff? Although we have had assurances on remuneration, particularly in relation to the agency's corporate staff, will he ensure that the company's directors and senior managers will be paid in accordance with the outcome of the senior civil service review committee?

Just to indicate the level of concern among staff, I will end with a quotation from a traffic officer in the agency who wrote to me about the proposed changes:

"I and many of my colleagues believe the changes will not bring the benefits that we are led to believe. For us at the sharp end it will not lead to the improvements that the HA suggest."

As I said when we debated clause 1, we remain to be convinced. Although we accept, and indeed welcome, the recognition of the need for a long-term funding formula and long-term funding certainty for the strategic road network, we remain to be convinced that a top-down reorganisation is either necessary or likely to deliver. We have the benefit of being able to debate such things in Committee, on Report and subsequently; staff do not have that benefit, and therefore they will be listening to our deliberations with interest. I hope the Minister is able to reassure them on some of those points.

**Mr Hayes:** Like the shadow Minister, I welcome you back to the Chair, Mr Hood. Let us hope that we can proceed today with a degree of alacrity that allows us all to go on to other, finer things—even finer things.

I regard this aspect of the Bill with considerable and proper concern. It is absolutely right, as the shadow Minister made clear, that staff associated with the Highways Agency—most of whom will be associated with the new body because of their expertise, background, experience and so on—understand the challenges associated with that change and that their interests are at the heart of what we do.

The last time I waxed lyrical on the Floor of the House about my family connections with trade unions, the Speaker invited me to place a family tree in the Library setting out those connections. I have not yet done that, but I will briefly repeat that my grandfather was the chairman of his union branch, my father was a shop steward and I am proud to be a member of a trade union myself. I take the working conditions of the people associated with this agency and with the new body extremely seriously, in that spirit. Anything that I do as the Minister will have at the heart of it a proper conversation with the staff through their unions—I have not yet referred to any of the notes that were prepared for me, by the way, but I will briefly later—and if there is a need for further meetings with the unions, I will have them personally.

I have made it a habit, in all the ministerial jobs that I have had, of bringing in the trade unions on a Chatham House basis to discuss with me directly any concerns that they have. When I first did that, when I was a Minister in the Department for Business, Innovation and Skills, I met the trade unions in the sector that I was responsible for, and we had a wonderful meeting, conducted in the spirit that I have just described, and they said to me at the end, in a quiet voice, "Of course, we would

never have got this from Labour." I do not mean that unkindly in any way, but it is important that we conduct ourselves in that way.

I will now move on to some formal responses to what the hon. Member for Birmingham, Northfield said.

**Andrew Miller** (Ellesmere Port and Neston) (Lab): I am extremely grateful to the Minister for giving way; I will be very brief. This problem has bedevilled transfers since the last one, which was fully protected in terms of employment and pension terms. That was Amersham International and it was rather a long time ago. Therefore, it is very important that the Minister spells out what he means by the word "expected" in his letter to the hon. Member for Hayes and Harlington (John McDonnell).

**Mr Hayes:** Yes, I will try to come to that now.

This amendment, in the name of the hon. Member for Birmingham, Northfield, is designed to ensure that terms and conditions for staff remain the same when the Highways Agency changes its status. As I have said, I am very sympathetic to what the amendment is designed to achieve, and I would like to reassure the hon. Gentleman and the rest of the Committee about the measures we are taking to ensure that the terms and conditions of staff are protected.

In discussions with staff and their representatives over previous months, we have made it clear that staff will be transferred in accordance with TUPE principles. The transfer scheme goes wider than transferring staff, as the hon. Gentleman will have seen from the context of schedule 3 to the Bill. We have always made it clear that we want all staff to transfer and that there are no job losses. I said earlier that I expected most people to transfer. Of course, some people may choose not to, but I would expect anyone who wishes to, to transfer.

I have no doubt about the commitment and drive of the Highways Agency staff. They are a very important part of the company's future. We have already stated that existing employees who are members of the civil service pension scheme can remain within the scheme under the new fair deal arrangements, which came into force on 4 October 2013. The hon. Gentleman raised that and I want to be absolutely candid and clear about it. No time limits are set out in the new fair deal on how long staff can remain in the civil service pension scheme as long as they remain employed by the new company.

I know that there may be considerable interest in how much staff will be paid. With the Modernising the Employment Contract pay offer accepted, that will apply to staff transferring to the new company. We have not yet agreed the extent of flexibility from the current public sector pay arrangements, but we want to ensure that we are able to reward performance effectively, so that we can retain good people and attract others to work for the company. There is no intention whatever to put people into a worse set of circumstances than those that currently prevail. Indeed, it would be against our interests as a Government to do so, and in my judgment it would certainly be against the interests of the new body to do so.

**Richard Burden:** The Minister will know, though, what quite often happens when transfers like this take place. He has given a pretty clear guarantee that TUPE conditions or the equivalent of TUPE conditions will not simply be expected to apply, but will apply.

**Mr Hayes:** Yes.

**Richard Burden:** But then the Minister has gone on to say that after the transfer, new terms and conditions could be offered that would be better than previous ones.

**Mr Hayes:** Yes.

**Richard Burden:** I just ask the Minister to consider this. Often, employees in that situation can start to feel hemmed in. They can start to feel that they are being told, “Well, you can stay on your existing pay and conditions, but actually it’s going to be a lot better if you don’t do that, and in terms of career prospects, standing within the organisation and all of that, it becomes a problem.” Can the Minister give assurances that that will not apply in the new organisation?

**Mr Hayes:** I think that what the hon. Gentleman is seeking, and rightly so, is protection for members of staff. Frankly, there is bound to be speculation about the new arrangements and some staff might fear that their circumstances will be worse and that their pay and conditions might somehow be altered disadvantageously. I want to make it clear that a baseline is well established in two key principles.

11.45 am

Once the new organisation is in place, there will be opportunities for people to rise through the system and negotiate on the basis of the expertise that they bring—all the things that one would expect in such an organisation. However, I recognise that there is a case for providing further reassurance, so we intend to come forward with further details about how terms and conditions will be protected to ensure that baseline even beyond what I have said. I am passionate about that.

More generally—I note that schedule 3 stand part is in this grouping—schedule 3 sets out in detail what may be included in a transfer scheme under the power in clause 13 to make transfer schemes. A transfer scheme may be used to transfer property, rights and liabilities held in the Secretary of State’s name to a strategic highways company. In making a scheme, the Secretary of State must have regard to the company’s functions and its appointment to avoid wholly inappropriate assets being transferred. The schemes will contain the detail of assets and staff transferred—including, for example, details of property and contracts.

Highways England needs such assets to fulfil the duties and functions transferred to it by virtue of its appointment. It has a separate legal entity with clear responsibility to deliver against targets. Its suppliers, contractors and others must be confident that the company has legal authority to act and take decisions.

The general power also includes the ability to make transfers between different strategic highways companies or for transfers back to the Secretary of State. That provides flexibility for the future, but as I have stressed previously, there are no current plans to use that power. As a strategic highways company must be owned by the Secretary of State, transfers can only be between public bodies. That is another important protection, which is pertinent to the remarks made earlier in the Committee

about the future arrangements associated with Highways England and the assurance I gave at that time that it is a public body.

Schedule 3, among other things, describes what schemes may cover, how they may be applied and how they can be modified through agreement with the Secretary of State and the company. The underlying intention of clause 13 and the schedule that supports it is to provide for an orderly transfer of property, rights and liabilities to Highways England so that it is properly equipped to exercise its functions.

To return briefly to the hon. Gentleman’s amendment, I emphasised at the outset that I entirely understand the spirit in which it is offered, and I affirm my determination to ensure that redundancies, pensions and related matters are dealt with in the way that he asked and the way in which I committed. I am happy to meet union representatives personally to iron out any particular concerns they may have about anything that I have said today or anything else. For that reason, I hope that the hon. Gentleman will withdraw his amendment.

**Richard Burden:** I am grateful to the Minister for his assurances, which sounded firm. I welcome that. I am sure that the unions will want to take him up on his offer of a meeting.

We will want to see what is on the record, because at this time of the morning, even though it is not early, we do not always hear things correctly. Should such a meeting take place, we can return to these matters at other stages in the Bill’s passage. With that, I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Schedule 3 agreed to.*

*Clauses 14 and 15 ordered to stand part of the Bill.*

## Clause 16

### TRANSFER OF ADDITIONAL FUNCTIONS

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

**The Chair:** With this it will be convenient to consider clauses 17 and 18.

**Mr Hayes:** Clause 16 confers a power on the Secretary of State to amend legislation by regulation, subject to certain exclusions, so as to transfer functions from the Secretary of State to the highways companies. I hope to reassure the Committee that this is a pragmatic provision intended to provide a mechanism for sensibly allowing the transfer of additional functions relating to highways or planning to the strategic highways company. Such a power may be of use in future, particularly if it is a relevant function connected to other functions being transferred to strategic highways companies under the Bill, such as those set out in schedule 1. The transfer of such additional functions may involve a transfer of function that we might not consider appropriate now, but might consider appropriate once the structure has been up and running for a few years and is established, and its needs are better understood.

Equally, it may have been that, in preparing this Bill, the significance of a particular function was underestimated, and it might become apparent with experience that

transferring is a sensible step to take. The clause therefore creates a power to deal with the dynamism associated with establishing the new body. Whatever the reason for identifying the additional functions, the regulations for the transfer of any additional functions will be subject to the affirmative procedure, to ensure that Parliament has a proper opportunity to consider the matter. We consider that an appropriate balance between pragmatic, flexible and commonsensical policy and proper accountability to the interests of producing an assessable framework within which the strategic highways companies can operate.

Clause 17 confers a power on the Secretary of State to make consequential, supplementary, incidental or transitional provisions by regulation in connection with any order appointing a strategic highways company under clause 1 or any other provision made under part 1 of the Bill. On Second Reading, the hon. Member for Hayes and Harlington raised concerns about that point; my written response is in the Library of the House. I think I have made this clear, but I will say one more time—although I am not sure I can guarantee that, so perhaps I should say “another time”—that there is no hidden agenda here. We are absolutely clear, and I think the Bill makes it crystal clear—if something can be clearer than clarity—that it will be a public body. There is no attempt or device here to affect that determined intention.

The powers provided are meant to ensure that any consequential, supplementary, incidental or transitional amendments that may be required can be made in secondary legislation necessary, as I said. I have already shared a draft of a consequential provisions statutory instrument with Committee members to aid understanding of how that power might be used in practice.

Finally, clause 18 provides interpretations of key words used in part 1 of the Bill. There is nothing unusual in the terms—as we discussed at our last sitting, “users of the highway”, for example, means any users of the highway, including cyclists and pedestrians—but a definition was added to clause 18 in the other place to put that beyond doubt. The hon. Member for Birmingham, Northfield mentioned that amendment when he spoke at our last meeting. On those bases, I therefore commend the clauses to the Committee.

**Richard Burden:** I will spend a little time, if I may, asking the Minister to add a little more clarification to his clarity on a number of points. The first relates to clause 16, which is about additional functions. Can he answer a couple of questions about the additional functions envisaged? In the other place, Lord Whitty argued that the Bill should be more explicit in setting out what the company’s functions, roles and responsibilities should be. Those could include road construction, improvement and maintenance, safety, reducing emissions, public consultation and engagement, and relevant research and development.

The Government did not consider that necessary at the time. The Minister has helpfully produced, in draft form, a statutory instrument setting out some functions that are envisaged, but we are still unclear—perhaps, more importantly, people outside this place might still be unclear—about what additional functions could be transferred.

So in the light of the debate we had on Tuesday, it seems that functions could extend to commercial services and charging in some situations. The company will be able to authorise a third party to exercise those functions on its behalf. We would appreciate some further clarification on that point.

May I also raise a concern regarding planning, which may require the Government to consider transferring an additional function? It has been raised with me that the change of status will remove the current right of the agency to object to or place conditions on developments and the impact on the strategic road network. Currently, the agency acts on behalf of the Secretary of State and is able to intervene and require developers to contribute to the costs of upgrades or changes required on the strategic road network.

I now understand that the company will be a statutory consultee of the planning authority. That means that if planning permission is given for a development that could impact significantly on the strategic road network, the cost of the upgrade could be met solely by the company. That mirrors many of the issues of effective co-operation and consultation, which we discussed earlier in the week. I would appreciate the Minister’s response to that.

Clause 17 gives the Secretary of State regulation-making power to make consequential, supplementary and transitional provisions in connection with the Bill. In some places, that has been called a Henry VIII power and, as it was initially drafted, the Secretary of State would have been able to exercise it to amend, repeal or otherwise modify an Act. As we know, the House of Lords Delegated Powers and Regulatory Reform Committee issued a rather damning indictment of the clause, concluding that, as drafted, it was incoherent and unclear, and could have resulted in widely-drawn changes of legislation. That Committee said:

“We draw these powers, and the deficiencies in the explanations for them, to the attention of the House. We recommend that, unless the reason for their inclusion and their intended purpose can be fully explained to the satisfaction of the House, the words ‘otherwise modify’ and ‘(whenever passed or made)’ should be omitted”.

We sought assurances in the other place that there should be an affirmative procedure, and I am pleased to say that the Government accepted that. However, I wonder whether other Committee members are satisfied with the changes that have been made and the Government’s assurances.

Finally, clause 18 clarifies the interpretation of various terms in the Bill. We are pleased to see the Government recognise that the users of highways include cyclists and pedestrians. That is the explicit recognition of different types of road user that the Bill must reflect. I hope, as we get nearer to the conclusion of Committee and vote on new clause 4, that the Government side will consider that new clause 4 would add some extra voice to the intention of including other road users in the provisions of the Bill. I hope that they will support that when we come to that point in our proceedings.

12 noon

**Mr Hayes:** Let me deal with the matters that the hon. Gentleman has made, but not in the order he made them because I want to keep people interested. Let us deal with the Delegated Powers and Regulatory Reform Committee point, which is a good one. Its criticism was understandable. It expressed concern, as he said, that

[Mr Hayes]

the Bill permitted non-textual modification of primary legislation without using the affirmative procedure. We have amended the Bill to allow for that, as I made clear in my earlier remarks. That will give the House the chance to consider any modifications, which is right. Essentially, I agree with him that we need to debate it further.

The point about the cost, which was an interesting one, is a perfectly fair query. I would expect any of the current practice with which the Highways Agency is engaged to continue with the new body. I see no good reason to change that. It seems unacceptable for the costs of a particular scheme in particular circumstances to be borne by the new body if they are not borne by the Highways Agency. I reassure the hon. Gentleman about that.

On the issue of additional functions that might be transferred, that is, again, a fair point. It is hard to know at the moment what additional functions might be transferred. Indeed, in a sense, the clause is designed to deal with that uncertainty. For example, in relation to property management, the functions might be connected to that role. I want to be, as I said at the beginning, sufficiently permissive about what those functions might look like that we do not inhibit the flexibility and responsiveness of the new organisation, but not so much as to prevent proper consideration or scrutiny of any changes. Therefore, I am more than happy, if any of those changes are significant or substantial—that is, if the new body takes additional functions in the future that require further scrutiny—to agree to bring them before the House, perhaps in the form of a written statement, so that people can scrutinise what is happening. We need to consider what “significant or substantial” means because otherwise we could be doing that every day. None the less, I understand the hon. Gentleman’s point, and I will reflect on it and see if we can come up with a reasonable definition of “significant and substantial” and then work on the kind of approach that I have briefly outlined.

**Richard Burden:** I am grateful to the Minister because that will be useful in relation to the functions. On the point he made about charging, I again welcome his assurance, and his intention is clear. I have a suspicion that it might actually require a provision in the Bill, partly because of the status and nature of the company having been transferred. We have not tabled an amendment to that effect, but as we reach Report, the Government might want to reflect on whether such a provision needs to be in the Bill.

**Mr Hayes:** So that we can make progress, I will reflect on that. If we consider the character of today’s discussion and believe that further measures need to be taken, beyond what we have already committed to in terms of affirmative procedure, then we will do it.

These matters are quite technical, but they are important. I do not want to inhibit the development of the new organisation, but on the other hand, we need to guarantee that there is proper scrutiny. I will reflect on that and I hope that on that basis we can make progress.

*Question put and agreed to.*

*Clause 16 accordingly ordered to stand part of the Bill.  
Clauses 17 and 18 ordered to stand part of the Bill.*

## Clause 19

### POWERS OF BRITISH TRANSPORT POLICE FORCE

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

**Mr Hayes:** Formally.

**Richard Burden:** This is on the British Transport police.

**Mr Hayes:** I am sorry, Mr Hood. My desire to make progress nearly overcame me. Alacrity is a feature of the way I deal with matters in this House.

The first paragraph of clause 19 concerns extending the British Transport police’s jurisdiction under section 100 of the Anti-terrorism Crime and Security Act 2001. We believe that some of the current limitations set out in section 100 of the 2001 Act may compromise the BTP’s effectiveness and may impact on its interoperability with the territorial police forces.

Now is time to bare my soul again, Mr Hood. We have had quite a discussion about this in Government because these issues are challenging and interesting, though technical. Different solutions to the issue of interoperability have been proposed. There are different ways to achieve the objective that I briefly outlined. As a result of those considerations and partly in response to representations we have received, we have decided to remove the requirement for BTP officers to be either in uniform or able to produce a warrant card in order to be able to act beyond their core railway jurisdiction where there is an immediate need to do so and they are acting on their own initiative. Subject to any limitations placed on them under the Police and Criminal Evidence Act 1984, a BTP officer will be able to act whenever immediate intervention is required, whether on duty or not, and regardless of the officer’s regular jurisdiction.

We are also adding the prevention of damage to property to those circumstances in which a BTP officer may act beyond their normal jurisdiction. Extending the jurisdiction to include the safeguarding of property provides a very limited extension of BTP’s remit, exercisable when the officer is satisfied that he has reasonable grounds on which to determine that he should exercise his constabulary powers rather than secure the attendance of an officer from the territorial force, or in response to a request from an officer of that force to act.

We appreciate that there are those who would prefer to see subsection (3) removed in its entirety. That relates to the discussions that I mentioned. That would thereby remove the need for the BTP officer to make a judgment whether to act or to await the attendance of a territorial force officer who would in the normal course of events deal with the particular incident, or to act at the request of the relevant territorial police force.

We believe that members of the BTP, indeed all police officers, have to make judgment calls such as those in relation to all the powers and privileges that they exercise in carrying out their duties. The “reasonable grounds” test is no different from the one they have to exercise when exercising their powers under section 100(2) of the same Act, for example, or when deciding whether to arrest someone.

The power of arrest under section 24 of the Police and Criminal Evidence Act 1984 can be exercised only if a constable has reasonable grounds for believing that it is necessary to arrest the person. As BTP officers must apply the “reasonable grounds” test to all aspects of their functions, requiring them to continue to apply the same test when deciding whether or not they should exercise their powers under section 100(3)(b) should not prove to be a challenge, nor should it result in any uncertainty or delay in responding to the public.

The BTP was created as a specialist force to police the railways, with its jurisdiction limited to railway and railway-related matters other than in exceptional circumstances, or where its operational capacity to carry out its core functions would be impeded.

We believe that it is important that BTP officers are able to act outside their normal jurisdiction, but only when there is an immediate need to do so.

**Tom Greatrex** (Rutherglen and Hamilton West) (Lab/Co-op): I am grateful to the Minister for giving way. Just briefly, I am following what he is saying and I am sure he will be aware that the cross-party Smith agreement included a recommendation for the British Transport police operating in Scotland to be subsumed within the national police force, Police Scotland. Given what the Minister just said about the way that the British Transport police officers need to be able to do their job on the transport system, has he had any discussion with the Scottish Government or Police Scotland about how this would operate in reality, particularly on cross-border rail services?

**Mr Hayes:** What a delight to hear from the hon. Gentleman for the first time in our considerations. I had a feeling—an instinct—that he might raise that issue, given his deep understanding of and profound interest in the matters. His question was, essentially: what would the impact be of the Smith commission conclusion that the function of the British Transport police should be devolved to the Scottish Government? The answer, in short, is none, as the legislation to enact the recommendations of the commission will not enter Parliament until after the next election. I looked at that quite closely, and the advice I have received is that one can only make laws in prevailing circumstances; we cannot anticipate different circumstances, because of course none of us can reliably know quite what will happen after the election. As a result, it would be inappropriate for us to make assumptions about that.

You are right, Mr Hood, as is the hon. Gentleman, to be interested these matters, and it is true that the Scottish Government have indicated that they are concerned that the proposed amendment will potentially blur the lines of responsibility and accountability between Police Scotland and the British Transport police. They are concerned that any agreement to support the operation without uniform would cause confusion and potentially lead to a reduction of public confidence. That has certainly been the stated position of the Scottish Government.

My judgment is that we have to do what we do on the basis of the circumstances that we face. Having considered this carefully—I looked at all kinds of ways that the objectives that I set out in my earlier remarks could be

achieved—we have probably got this right. I am very happy to enter into further discussion with the hon. Gentleman about that, and if he feels that I need to write to him or the Scottish Government, of course I will. Why would I not take that delightful opportunity? I understand his question and its significance; perhaps I could leave it at that.

I was speaking about the formation of the British Transport police. I do not want to truncate my remarks and so affect their persuasiveness. We believe that it is important that British Transport police officers are able to act outside their normal jurisdiction, but only when there is an immediate need to do so. The exercise of judgment should be conducted in a way that is already the normal practice of police officers on a daily basis. We do not think that the retention of section 100 3(b) of the Anti-terrorism, Crime and Security Act 2001 places an unnecessary restriction on British Transport police officers or is an impediment to the force’s operational effectiveness. The changes do not compromise the existing role of British Transport police in any way. It is our firm view that British Transport police focuses on its core role—that is why we retain the view that we should have a dedicated railway police force—but there will clearly be circumstances under which it should be allowed to stray beyond that core purpose. That is what the public and police officers would expect, and it is the right thing to do.

The second paragraph of the clause pertains to the powers of the British Transport police to issue notices under section 172 of the Road Traffic Act 1988. It recognises that the drafting of the Act failed to provide the BTP with the same powers as territorial police forces to require vehicle owners to disclose the identity of drivers who have committed road traffic offences. That presented a serious obstacle for the BTP when investigating and prosecuting road traffic offences occurring in the railway environment. Again, we discussed that at some length. I am thinking of incidents around or by a railway station or other railway property.

12.15 pm

Section 172 empowers the police to write to vehicle keepers and request information on who was driving the vehicle at the time an offence was committed. Failure to comply with the request is an offence carrying a court fine of up to £1,000 or a fixed penalty of £200. Given the BTP’s role in road traffic law enforcement, it seems sensible that it should have the same information-seeking powers as other police forces.

The potential for a serious accident involving a road vehicle and a train where a car is left on a level crossing—we talked about this a great deal in the Department—or parked in an inappropriate manner in the railway environment requires that the BTP be able to identify drivers committing offences within their jurisdiction and bring the relevant legal proceedings. There has been a particular request to make that change in respect of level crossings. I need not elaborate on that; the case for why it matters is almost implicit.

As section 172 is a non-devolved matter in relation to Scotland and Wales, the proposed change will apply to all of Great Britain and does not require a legislative consent motion. On that basis, I commend the clause to the Committee.

**Richard Burden:** We now move to part 2 of the Bill. I welcome the opportunity to say a few words about the extension of the powers of the British Transport police covered in this clause. The extension of powers will enable the force to gather information and prevent damage to property. The purpose of the provisions was well set out by Lord Faulkner in the first Committee stage of the Bill in the other place.

The powers, jurisdiction and role of the British Transport police have been the subject of extensive debate over the past decade. Hon. Members will know that there is a consensus, as the Minister indicated in his remarks, that the British Transport police does an effective job not only of tackling crime on UK railways but of supporting policing more generally in society. There were officers on the railway in 1826, before the Met was established in London, and today the British Transport police undertakes operations from counter-terrorism and firearms to public order and investigative policing. The force participates in joint police initiatives, including on cable theft, the G8, the Olympics and so on.

As it became clear in earlier stages of debate on the Bill, and as the Minister has mentioned, the BTP's current jurisdiction, which encompasses only the railway, seems to have a level of absurdity about it. Currently, if a BTP officer is not on the railway and comes across an incident requiring enforcement action, they must first go through a process that seems a bit nonsensical if we are trying to combat crime. They are required to contact the local police force to ask whether they will allow the BTP to deal with the incident. They then have the power to take enforcement action, but only after a delay and at the risk of losing either evidence or the offenders themselves.

BTP officers are also required to be in uniform or in possession of documentary evidence proving that they are police officers, such as a warrant card, when there is no such requirement for any other police officers. Finally, the fact that BTP officers are currently prevented from obtaining the identity of the registered owner of a vehicle committing an offence is clearly a problem for safety. The Minister referred specifically to incidents involving level crossings, which can lead not only to offences but to tragic consequences unless we get it right.

The artificial barrier that currently exists between what the BTP can and cannot do is bizarre and confusing. Let us consider what happens if an incident such as a fight or an assault occurs just outside a railway station. There will be trained officers potentially powerless to take action. As I said on Second Reading, the current jurisdiction rules just do not make sense to the public, who do not discriminate between a Home Office police officer and a British Transport police officer. They rightly expect a responsive service from any police officer at the scene of a crime or at an incident of public disorder.

We are pleased that the Bill now enables the BTP to investigate drivers who commit road traffic offences on the railway; permits them to take action to prevent property theft—such as theft of a bicycle at a cycle rack at a station—without needing to involve an officer from a different force; and enables BTP officers to act on their own initiative when in plain clothes and without a warrant card, if immediate intervention is required. However, one anomaly remains. The Government have

not removed the need for BTP officers to make a judgment call on whether to act or wait for a local officer who would normally deal with the incident. The Government say that removing the need for that judgment would risk distracting the BTP, which is paid for by the railway industry, from its primary purpose of protecting the railway.

I would like to question the Minister further on that. Although a judgment call on such matters might seem fairly straightforward, as the chair of the British Transport Police Authority has stated, in reality it

“requires BTP officers to work through a complex legal test, often in quick time, which can result in uncertainty, challenge and delays in responding to the public”.

Under the strictest sense of the legislation, BTP officers will still have to call their Home Office counterparts to attend the scene of a crime, otherwise they could be attacked by lawyers for not acting properly. I am not suggesting that that would happen in practice a lot of the time. However, when we are framing laws, we have to think about the unusual and what a skilled team of lawyers would do in that situation.

That requirement on BTP officers does not apply to any other officers. It means that BTP officers will still be treated differently, which does not seem right. I do not think that the Government's argument—that BTP officers will suddenly go rogue and neglect their primary duty to police the railways—stands up. In fact, that assertion was rejected by the chair of the BTPA, who said that the BTP is

“committed to reducing crime and disruption on the railways by 20% by 2019. This focus, reinforced by the oversight of the Authority and the requirement to satisfy BTP stakeholders will ensure that strong control will be exercised with regard to any wider jurisdictional power granted for BTP”.

I urge the Minister to look again at that issue. Ending that requirement is supported not only by the BTP, but by the chair and CEO of the College of Policing, and the British Transport Police Federation. Fully implementing the amendment proposed by Lord Faulkner in the other place is not about changing the primary purpose of the BTP; rather, it is about giving its officers the same status, position and legal protection as every other police officer in the UK.

Finally, will the Minister say a bit more about the Smith commission? I understand his point that until the Smith commission provisions are implemented, they are not implemented, and things have to be done. I can understand that; however, the Minister in the other place said that

“the Scottish Government have decided that they are unable to support such an amendment.”—[*Official Report, House of Lords*, 3 November 2014; Vol. 756, c. 1517.]

There is an issue about why that is. It seems important to me that there is a dialogue between the Scottish Government and the UK Government on the process of the BTP's devolution to Scotland more generally.

On 15 December the Under-Secretary of State for Transport, the hon. Member for Devizes (Claire Perry) wrote:

“There have been no discussions between the Secretary of State and his counterpart in the Scottish Government about the implications for the future of the British Transport Police.”

On the same day in the other place, Baroness Kramer replied to a written question by saying that the Government

“has committed to delivering draft clauses by 25 January 2015.”—*[Official Report, House of Lords, 15 December 2014; Vol. 758, c. WA4.]*

She said that those clauses would include one on the BTP. We need to establish whether the Government are talking to the Scottish Government at the moment. If they are not, they should be. We need to end the confusion on that, so I hope the Minister will write to us and clarify some of the points that my hon. Friend raised.

As I have given a general welcome to the clause, I do not intend to divide the Committee. In two days we have covered all the Bill’s provisions relating to the Highways Agency changes, and no doubt there will be more discussion of that on Report. There will be votes on new clauses at the end, but we have completed those discussions. In the past half hour, assuming there are no further comments—of course hon. Members have the right to make further comments—we have completed the entire second part of the Bill. As shadow Minister, it is not for me to say what might be an appropriate place to pause the Committee’s deliberations, but as it is Christmas, this might be an appropriate time. If that suggestion is taken up by those who take up such suggestions, I wish you, Mr Hood, a happy Christmas. I wish all members of the Committee a happy Christmas. If this is the last time I speak in Committee this side of Christmas, I look forward to seeing everyone in the new year.

**Mr Hayes:** The hon. Gentleman, as I anticipated, has considered this matter with his usual diligence and has raised the important questions. There is the considerable question of the judgment call of police officers in such circumstances. He is right to suggest that we could have chosen to address it differently. As with so many things, it is not an open-and-shut case, but I think that we have reached the right position. I gave this a lot of consideration, and I think the position is the right one because we expect police officers, as I emphasised earlier and I now amplify, to make judgment calls in the normal course of their work. It is the business of a police officer to exercise judgment, and they do so daily in responding to often challenging and extremely varied circumstances. That includes making judgment calls about their powers and privileges. It is about the exercise of their powers, and as MPs, notwithstanding our strong support for the police, we all sometimes take up constituency cases in which we think that the police have not exercised their power correctly. Those cases are always dealt with and taken seriously by chief constables, as you know, Mr Hood. I am an extremely robust and committed defender of our police forces, and I have always taken the view that they are what stand between us and chaos. I am a very confident advocate of the police’s capacity and ability to exercise the judgment calls that are central to this short debate.

12.30 pm

To that end, the “reasonable grounds” test is no different from the one that police have when exercising their powers under section 100(2) of the Anti-terrorism,

Crime and Security Act 2001. The power of arrest under section 24 of the Police and Criminal Evidence Act 1984 can be exercised only if a constable has reasonable grounds for believing that it is necessary to arrest someone. As BTP officers must exercise reasonable grounds in all aspects of their functions, requiring them to continue to apply the same test when deciding whether to exercise their powers should not prove to be a challenge, nor should it result in any uncertainty or delay in responding to the public. In the end, the acid test is whether the practical application of these powers delivers the outcome that we all seek—that officers, exercising their judgment, will respond to circumstances in or around a railway station, or indeed elsewhere, where appropriate.

I think that we have got that about right and that we will be proved right. I am reassured that that is the case by the fact that the chairman of the British Transport Police Authority, whose letter the hon. Gentleman referred to, had a meeting with Baroness Kramer subsequent to writing that letter and I think that she now accepts the Government’s position. I will, however, clarify that point.

Similarly, on devolution I am happy to clarify all aspects of the relationship between the Scottish Government’s position and our position in the way I suggested earlier to the hon. Gentleman. I am also happy to communicate with the Scottish Government to clarify their position further to that debate, if that would be appropriate—it may well be.

These are never open-and-shut cases, but I think that we have come to the right, balanced position, subject to further deliberation on the Scottish issue in the way I just described. I am also happy to have further discussions with British Transport police if there is such a need.

I think I can recommend with some confidence that the clause stand part of the Bill. However, before I sit down, let me add my good wishes to those offered already to you, Mr Hood, as well as Sir Roger Gale and all members of the Committee. The hon. Member for Birmingham, Northfield is right that we have made good progress.

I dedicate this to my good friend, the hon. Member for Rutherglen and Hamilton West:

“No love that in a family dwells,  
No carolling in frosty air,  
Nor all the steeple-shaking bells  
Can with this single truth compare—  
That God was man in Palestine  
And lives today in bread and wine.”

*Question put and agreed to.*

*Clause 19 accordingly ordered to stand part of the Bill.*

*Ordered,* That further consideration be now adjourned.  
—(*Dr Coffey.*)

12.33 pm

*Adjourned till Tuesday 6 January at twenty-five minutes past Nine o’clock.*

**Written evidence reported to the House**

IB 08 Campaign for Better Transport

IB 09 Chartered Institution of Highways & Transportation  
(CIHT)

IB 10 Sustrans

IB 11 James A. Coghlan

IB 12 UK Green Building Council

IB 13 National Farmers' Union

IB 14 Letter from Mrs Anne Main MP