HOUSE OF LORDS
Library Note

Protection of Freedoms Bill (HL Bill 99 of 2010–12)

This Library Note provides information on the Protection of Freedoms Bill, which is due for second reading in the House of Lords on 8 November 2011. The Note is intended to be read in conjunction with two House of Commons Library Research Papers, *Protection of Freedoms Bill* (23 February 2011, RP 11/20) and *Protection of Freedoms Bill: Committee Stage Report* (28 June 2011, RP 11/54) which provide background information and summarise the second reading debate and committee stage in the Commons. This Note summarises the Commons report stage and third reading, where discussion focused on retention of DNA profiles; wheel clamping and parking charges on private land; CCTV; safeguarding vulnerable groups; and pre-charge detention periods for terrorist suspects.

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1. Introduction

1.1 The Bill

The Protection of Freedoms Bill was introduced to the House of Commons on 11 February 2011. On the Home Office website, the Bill is described as "the next step in the government's legislative programme to safeguard civil liberties and reduce the burden of government intrusion into the lives of individuals". The Bill received its second reading in the House of Commons on 1 March 2011, and was considered in twenty sittings of a Public Bill Committee between 22 March and 17 May 2011. It was subject to a two-day report stage on 10 and 11 October 2011, and completed its passage through the House of Commons with its third reading on 11 October 2011.

The Bill was introduced to the House of Lords on 12 October 2011 and is due to receive its second reading on 8 November 2011. The Bill as introduced to the House of Lords and the accompanying Explanatory Notes can be found via the Bill's webpage: HL Bill 99 of 2010–12 and HL Bill 99—EN.

This Library Note summarises discussion on the Bill at report stage and third reading in the Commons. It is intended to be read in conjunction with two research papers produced by the House of Commons Library: *Protection of Freedoms Bill* (23 February 2011, RP 11/20), which sets out the policy and legislative background to the Bill, and *Protection of Freedoms Bill: Committee Stage Report* (28 June 2011, RP 11/54), which summarises the committee stage proceedings in the Commons.

The Home Office summarises the Bill's provisions as follows:

- DNA retention—adopting the protections of the Scottish model for the retention of DNA and fingerprints
- Fingerprinting of children in schools—introducing a requirement on schools and colleges to obtain the consent of parents before taking fingerprints (and other biometrics such as iris scanning) from children under the age of 18 years
- Further regulation of closed circuit television/automatic number plate recognition systems—introducing a statutory code of practice and the appointment of a surveillance camera commissioner with responsibility for reviewing and reporting on the operation of the code
- The use of the Regulation of Investigatory Powers Act 2000 by local authorities
- Stop and search powers
- Pre-charge detention
- Powers of entry—there are some 1,200 separate powers of entry contained in a mix of primary and secondary legislation. The bill creates three order-making powers to: (1) enable a minister of the crown (or the Welsh ministers) to repeal unnecessary powers of entry and associated powers; (2) consolidate a group of existing powers; or (3) attach additional safeguards to the exercise of such powers, including in particular provision requiring prior authorisation by a magistrates' court. Provisions

are also made for a code of practice governing the exercise of powers of entry

- Prohibiting wheel clamping—creating a new criminal offence to immobilise, move or prevent the movement of a vehicle without lawful authority. We are also changing the law so that parking providers and other landowners may seek to recover unpaid parking charges from the registered keeper of a vehicle

- Reform of the vetting and barring scheme and criminal records regime—introducing legislative provisions to implement the outcome of the reviews of the vetting and barring scheme and the criminal records regime, so as to scale them back to common-sense levels

- Disclosure of decriminalised convictions for consensual gay sex—changing the law so that historical convictions for consensual gay sex with over-16s no longer have to be disclosed

- Freedom of information—extending the freedom of information regime to cover companies wholly owned by two or more public authorities

- Right to data—creating an obligation on departments and other public authorities to proactively release datasets in a reusable format

- Office of the Information Commissioner—changes to the appointment and accountability arrangements to enhance the independence of the Information Commissioner

- Serious fraud trials—repealing provisions removing the right to trial by jury

(Home Office, Protection of Freedoms Bill, accessed 31 October 2011)

On the first day of report stage in the Commons, discussion covered the retention of DNA profiles and fingerprints, and wheel-clamping and the regulation of parking charges on private land. During the debate on the programme motion, there was also discussion of a provision not contained in the Bill, namely changing the law so that it would no longer be a public order offence to use insulting words or behaviour or to display insulting signs. The Government has launched a consultation on this, with a possible view to debating the issue further while the Bill is still in the House of Lords. On the second day of report stage, the regulation of closed circuit television (CCTV), safeguarding vulnerable groups and the maximum length of pre-charge detention for terrorist suspects were debated. The Bill's other provisions were not covered at report stage. At third reading, as well as some discussion of individual provisions, speakers focused on the principle of where the state should draw the line between protecting individual freedoms and keeping the general public safe.

1.2 Public Involvement

Alongside the usual parliamentary proceedings, the Protection of Freedoms Bill has been subject to some innovative proceedings intended to involve the public. The Government made a commitment in the Coalition Programme to introduce a Freedom Bill and to "implement a full programme of measures to reverse the substantial erosion of civil liberties and roll back state intrusion" (The Coalition, *Our Programme for Government*, May 2010, page 11). The 'Your Freedom' website was launched to invite

the public to “put forward their ideas on what laws and regulations we should do away with”. The website promised that “Your ideas will inform initiatives such as the proposed Freedom Bill”. At the end of the consultation period in September 2010, there had been more than 15,000 ideas submitted and nearly 77,000 comments posted by more than 47,000 registered users. The Government stated that “many of the public’s comments will be included in the Freedom Bill” (HL *Hansard*, 7 October 2010, col 30WA).

The Government also promised in the Coalition Programme to “introduce a new ‘public reading stage’ for bills to give the public an opportunity to comment on proposed legislation” (page 27). The Protection of Freedoms Bill was selected as a pilot for this process. A public reading stage website was launched, and the public was invited to submit comments on the Bill between 15 February and 7 March 2011. The Home Office prepared a *Public Reading Stage Report* for the House of Commons Public Bill Committee, summarising the comments received from the public.

1.3 Further Information

Two parliamentary select committees have recently published reports on the Bill: the Joint Committee on Human Rights, *Legislative Scrutiny: Protection of Freedoms Bill*, HL Paper 195 of session 2010–12 (7 October 2011), and the Delegated Powers and Regulatory Reform Committee, *Protection of Freedoms Bill; Education Bill: Government Amendments; London Olympic Games and Paralympic Games (Amendment) Bill: Government response,* HL Paper 209 of session 2010–12 (27 October 2011).

The report of the Joint Committee on the Draft Detention of Terrorist Suspects (Temporary Extensions) Bills, HL Paper 161 of session 2010–12 (23 June 2011), is also relevant to the Bill’s provisions on pre-charge detention of terrorist suspects—see section 4.3 of this Note for full details.

The Home Office has published a range of background documents to the Bill on its website, including: factsheets on various parts of the Bill; a list of the current powers of entry; copies of reviews and reports which have informed the legislative changes introduced in the Bill (on criminal records checks, vetting and barring, and counter-terrorism powers); European Convention on Human Rights memoranda; a memorandum setting out the delegated powers the Bill would confer and the reasons behind them; and impact assessments for various parts of the Bill.

2. New Clause 1 and Debate on the Report Stage Programme Motion

Introducing the programme motion, James Brokenshire (Conservative), Parliamentary Under Secretary of State for Crime and Security, said that it was structured to allow two days of debate for report and third reading, and to ensure that those provisions which had received most focus at committee stage should also be the focus of deliberations at report stage (HC *Hansard*, 10 October 2011, cols 80–1). He regretted that it was “unlikely that the House will be able to consider all the new clauses tabled for debate” (col 82).

Edward Leigh (Conservative) had tabled a new clause (new clause 1) to the Bill, under which using insulting words or behaviour or displaying insulting signs would no longer be an offence under section 5 of the Public Order Act 1986. This issue was not included in the Bill as drafted, although Mr Leigh had previously raised it at second reading (HC *Hansard*, 1 March 2011, cols 224–9). The programme motion would mean that discussion of new clause 1 could not take place until the end of the second day of report stage, meaning that in practice it was very unlikely there would be time left to debate it. Mr Leigh therefore tabled an amendment to the programme motion, which would have

ensured that new clauses relating to the Public Order Act 1986 would have been debated before any other amendments.

James Brokenshire said that the Government agreed that this issue should be examined further. He undertook to publish within the following few days a consultation seeking views on whether section 5 of the 1986 Act should be amended as Edward Leigh proposed. The consultation would run until early 2012, and once it had concluded the Government would set out its conclusions "as quickly as possible" so that they could inform the debate on this issue while the Bill was still in the House of Lords (HC *Hansard*, 10 October 2011, col 82).

Edward Leigh pointed out that in its report on the Bill, the Joint Committee on Human Rights had supported the amendment of the Public Order Act 1986 to remove references to offences based on insulting words or behaviour (col 84). The Committee considered "that this would be a human rights enhancing measure and would remove a risk that these provisions may be applied in a manner which is disproportionate and incompatible with the right to freedom of expression" (page 61). Mr Leigh observed that it was "ironic that the Government are using their own powers under the guillotine procedure to stifle a debate on freedom of speech" (col 84). He also questioned why the Government was consulting the public and had hinted that it might make a concession on this issue when the Bill reached the House of Lords, whilst "the only people who will not be consulted formally are those of us in the House of Commons" (cols 85–6).

James Brokenshire replied that the issue was not as straightforward as Mr Leigh implied:

> I would say to him that there are complexities attached, which is why the Government would prefer to consider and reflect on the matter carefully, and to enable a public consultation to take place so as to ensure all relevant issues are considered in the round and to inform the debate. It is worth mentioning that section 5 of the 1986 Act covers issues such as swearing at police officers and the case against the poppy burning on Remembrance Day. It is therefore appropriate to ensure proper consultation before taking any action.
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> (col 88)

Other members indicated that, regardless of whether they supported new clause 1, they would not support Edward Leigh's amendment to the programme motion because it would curtail the time available for discussing other measures contained in the Bill (cols 83 and 86). Mr Leigh's amendment was defeated by 243 votes to 62. The House voted in favour of the programme motion by 275 votes to 233.

On 13 October, the Home Office launched a consultation on police powers to promote and maintain public order. As well as consulting on the relevance of the word 'insulting' in section 5 of the Public Order Act 1986, the consultation deals with new powers to request removal of face coverings and new powers to impose curfews to prevent and control outbreaks of disorder. The consultation is due to close on 13 January 2012.

3. Commons Report Stage: Day One

3.1 Regime for the Retention of Fingerprints and DNA Profiles (Chapter 1 of Part 1)

The first part of the debate at report stage was on clause 3 of the Bill, which deals with the retention of fingerprints and DNA profiles taken from persons arrested for or charged with, but not convicted of, certain violent, sexual and terrorist offences, referred to as "qualifying offences". Under current legislation (the Police and Criminal Evidence Act

1984 (PACE), and the Terrorism Act 2000 for terrorist-related offences) no time limits are specified for the retention of this data. DNA profiles and fingerprints can only be removed from the Police National Computer in exceptional circumstances. In 2008, the European Court of Human Rights ruled in its judgment in the case of *S and Marper* that the indefinite retention of such material was in contravention of Article 8 of the European Convention on Human Rights (ECHR), the right to respect for private and family life.

To address this situation, the Labour Government introduced a new regime for the retention of biometric data in section 14 of the Crime and Security Act 2010. While the fingerprints and DNA profiles of adults convicted of an offence would continue to be kept indefinitely, biometric data of adults who were arrested but not convicted would only be retained for six years (for further background, see the House of Lords Library Note*, Crime and Security Bill,* March 2010, LLN 2010/010). However, section 14 of the 2010 Act was not commenced prior to the 2010 general election. Both the Conservatives and the Liberal Democrats had argued against a six-year retention period during the passage of the Crime and Security Bill. The Protection of Freedoms Bill would introduce a three-year retention period (with the possibility of a two-year extension) for biometric material taken from people arrested for or charged with, but not convicted of, a qualifying offence. This would be similar to the Scottish system, under which data taken from people suspected but not convicted of certain serious offences may be kept for three years. The Scottish model was highlighted in the European Court of Human Rights' judgment as being "notably consistent" with guidance from the Council of Europe on the retention of biometric data.

Alan Johnson (Labour), the former Home Secretary, moved amendment 89 which would have removed the requirement for the Biometric Commissioner to approve the retention of any material taken from a person arrested for but not charged with a qualifying offence. He explained that it was a cross-party amendment, and one of several in the group of amendments under discussion that sought to maintain the DNA retention regime specified in the Crime and Security Act 2010 (HC *Hansard*, 10 October 2011, col 97). Mr Johnson argued that "The provisions in the 2010 Act which we seek to retain are… based on evidence, unlike the Scottish model which is based on no evidence whatsoever" (col 98). He said that the three-year retention period used in Scotland "appears to have been plucked from the air". A review of the Scottish system by Professor Fraser had proved "that the system works, but that review did not assess whether a longer retention period would be beneficial or whether retention for three years was detrimental to solving serious crimes".

Mr Johnson sought to make the case for a six-year retention period. He argued that a six-year retention period was not incompatible with the ECHR:

> The retention of those arrested but not convicted can be justified as necessary and proportionate under the terms of the European Court's decision if their risk of being rearrested is higher than that of the general population. Analysis conducted by the Home Office suggests that that is indeed the case and that the risk falls to that of the level of the rest of the population gradually over a period of six years. It dips after three years, but it leaves a significant tail that is not eradicated until after six years.
>
> (col 98)

He also presented several case studies of men who had been convicted of rapes and sexual assaults and who had only been caught because their DNA profiles had been collected some time previously in connection with non-serious offences for which they were not prosecuted (cols 99–101). Mr Johnson said that the Chief Constable of the

West Midlands, who leads on biometric issues for the Association of Chief Police Officers (ACPO), had estimated that about a thousand fewer DNA matches would be made each year if the retention period was reduced from six years to three (col 99). Finally he urged that a six-year retention period should be maintained "so that the proper assessment of all the evidence, when we have six years' worth of it, can take place in a few years' time" (col 102). At that point, he said, it would be possible to go down to a three-year retention period if the evidence proved that six years was unnecessarily long.

James Brokenshire challenged Labour's approach, which he characterised as "seek[ing] to retain data and information for as long as possible in case it becomes useful" (col 102). While he fully recognised the importance of DNA evidence, he felt that the collection of DNA material should be seen as "part of a process of investigation and… not a panacea in itself" (col 105). He questioned what he saw as Labour's view that "the more people's DNA is on the database, the more effective it is" (col 106). In contrast, he described the Government's approach as:

> … about getting the right people on the national DNA database. By that, I mean those who have been convicted of crimes. We should focus on those who have committed crimes; we should look at recidivism and getting persistent prolific offenders, those who have been in prison and those who have committed crimes on the national DNA database.
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> ... The Labour party, when in Government, did not focus properly on putting the guilty on the database. We are focused on doing that, and on not retaining all the DNA of those innocent of any crime.
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> (cols 108–9)

David Hanson (Labour), the Shadow Policing Minister, spoke of the need to "balance the civil liberties of the British people with their ability to secure their future, free of murder, rape and crime" (col 110). He was concerned that limiting the period for which biometric material could be retained could lead to more people becoming victims of crime in the future. He quoted unpublished Home Office research, obtained by the Opposition through Freedom of Information requests, which estimated that "every year, 23,000 people, who under Labour's system would be on a DNA database, will, under Government plans, go on to commit further offences". Of these, it was estimated that some 6,000 would be serious offences such as rape, sexual offences, murder and manslaughter (col 111). He argued that protecting citizens from crime outweighed the fact that some people whose DNA would remain on the database for three years longer than the Government proposed might feel "aggrieved" (col 110).

Alan Johnson's amendment was rejected on division by 291 votes to 232.

There was also a vote on Opposition amendment 108 which would have removed the requirement in clause 20 for the Secretary of State to appointment a Biometric Commissioner (or Commissioner for the Retention and Use of Biometric Material, to give the full title used in the Bill). Instead, the amendment would have required the Secretary of State to consult ACPO on the suitability of establishing such a post. There was little substantive debate on this amendment, although David Hanson expressed concerns about the role, wondering what the Biometric Commissioner's workload would be and what resources s/he would have (cols 111–2). This amendment was rejected by 227 votes to 91.

A number of Government amendments concerned with the role of the Biometric Commissioner were accepted without division (1–7, 8–15 and 33–38). James

Brokenshire explained that concerns had been expressed at committee stage that much of the detail about the arrangements for retaining biometric material taken from those arrested for, but not charged with, a qualifying offence was left to subordinate legislation. The Joint Committee on Human Rights had raised similar concerns. Mr Brokenshire said that the Government now agreed that it was appropriate to place such detail on the face of the Bill (cols 103–4). As amended, clause 3 would make it a specific requirement under section 63F(5)(c) of PACE that biometric material taken from a person arrested but not charged with a qualifying offence could only be kept with the consent of the Biometric Commissioner. Section 63FA (renumbered 63G in the Bill as introduced in the Lords) would be introduced to PACE setting out the circumstances in which a chief police officer could apply to the Commissioner for such consent. James Brokenshire explained:

> The first circumstance, in new section 63FA(2), is where the victim of the alleged offender is a minor, a vulnerable adult or is "associated" with the suspect. The second circumstance, in new section 63FA(3), is where none of the criteria in subsection (2) apply but the chief officer nonetheless considers it necessary to retain the material to prevent or detect crime. The chief officer must give the person to whom the biometric material relates a copy of the application made to the commissioner. It is then open to that person to make representations to the commissioner within 28 days and it will then fall to the commissioner to determine the application based on these papers.
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> (col 104)

Alan Johnson branded this procedure as "bureaucratic, convoluted and complex" (col 102). He feared that either the police would not use it at all, or the Commissioner would be inundated with applications, for example "in respect of every one of those 17,000 suspected rapists that Rape Crisis says are likely to be wiped off the DNA database".

A Government amendment was made to clause 24 to enable the National DNA Database Strategy Board to provide guidance to the police when they were applying for consent to retain data under section 63FA, helping to ensure consistency in the way that applications were made. Clause 20 was amended to make sure that provisions relating to the Commissioner's functions dovetailed with provisions in the Terrorism Prevention and Investigations Measures Bill. Another amendment to clause 20 extended the role of the Commissioner to provide him/her with a "general function of keeping under review the retention and use of DNA and fingerprints by police and other law enforcement authorities" (col 104).

Clause 17 would insert a new section 63T (renumbered 63U in the Bill as introduced in the Lords) into PACE, excluding certain material from the normal retention rules. Clause 17 was amended to ensure that the police could retain hard copies of material on case files after destroying records on the DNA and fingerprint databases. James Brokenshire explained that this was necessary to ensure that a copy of the material remained available for examination by defence experts and the Criminal Cases Review Commission if necessary (col 104). Additionally, samples recovered from a crime scene that provided evidence of contact between two people (eg traces of a victim's blood recovered from a suspect's hand) would not be covered by the requirement to destroy all samples within six months, but could be retained as long as necessary.[1]

[1] A distinction is made between the retention periods for physical *samples*, and electronic *profiles* derived from the samples.

Technical amendments were also made to Schedule 1, which governs the collection of biometric material under other Acts than PACE.

3.2 Parking Charges and Immobilisation (Chapter 2 of Part 3)

Clause 54 of the Bill would make the immobilisation of vehicles on private land a criminal offence. There has been cross-party agreement that action should be taken to curb the activities of some wheel-clamping operators who charge excessive release fees and intimidate drivers. However, concerns have also been raised that an outright ban on clamping on private land could lead rogue wheel-clamping operators to become rogue ticketers instead, issuing excessively expensive tickets for parking on private land. To address such concerns, Diana Johnson (Labour), the Shadow Minister for Crime and Security, tabled new clause 15 which would have made it an offence to issue excess parking charges. She explained that:

> New clause 15 would ensure that anyone issuing a penalty ticket must be registered with an accredited trade association, that all ticketers were currently members of the British Parking Association who must abide by the trade association's code of practice, which is agreed, in turn, with the DVLA. The new clause also means that tickets placed on the vehicle or those issued later through the use of ANPR—automatic number plate recognition—would be subject to an independent appeals procedure. This would ensure that the maximum fines on private land are the same as for those on public roads and that the same terms and conditions, the same right of appeal and the same prompt payment discount would apply.
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> (col 129)

Ms Johnson said that her proposal was supported by the RAC, the AA and the British Parking Association (cols 125–6). She believed that many people found it confusing that different laws applied to parking on a public highway, where there is a limit on fines and an independent appeals process, and parking on private land, where fines can be unlimited and there is no formal regulated appeals system. Her new clause, she argued, would "offer a sensible level of protection for those parking on private land equivalent to the protections offered to people who park on the highway" (col 125).

In response to new clause 15, Guy Opperman (Conservative) argued at several points in the debate that it was unnecessary to pass new legislation making it an offence to issue excessive parking charges, as the Fraud Act 2006 and the Theft Act 1968 already outlawed such activity, and motorists were protected by consumer protection laws (cols 128, 137–8 and 140). Diana Johnson pointed out that none of these Acts had ever been used to deal with the excessive charges imposed by wheel-clamping operators (col 140).

In her response to new clause 15, Lynne Featherstone (Liberal Democrat), the Minister for Equalities and Criminal Information, drew attention to the fact that the Government's proposal to ban wheel-clamping on private land was supported by the AA, Citizens Advice and members from both sides of the House (cols 130–1). She also pointed out that a ban on wheel-clamping in Scotland since 1992 had not led to significant problems with rogue ticketers. The situation would be kept under review, but she felt that the Government's proposal was "our best effort to get the balance right and to make sure that we proceed without the burdens of regulating everything in the land and instead let the parking industry look after itself so there is no cost to the taxpayer if ticketing is taken forward" (col 131).

Ms Featherstone argued that motorists would be protected from excessive parking charges by existing consumer legislation. Where terms and conditions for parking were displayed on prominent signs at the entrance to private land, consumer legislation would apply. Consumer legislation would protect consumers from misleading information and unfair contract terms. If there was no prominent sign setting out the terms and conditions for parking, consumer legislation would not apply. In this case, Ms Featherstone said, the motorist should not park there as s/he would probably be trespassing. Furthermore, companies could only pursue the keeper of a vehicle for a parking fee if they had his/her contact details. Ms Featherstone provided assurance that the DVLA would only provide those details to companies that were registered with an accredited trade association. She did not believe "that contract law and consumer protection are defective in any way" in providing adequate protection for motorists (col 135).

Ms Featherstone outlined a number of Government amendments to schedule 4, which would make provision for vehicle keepers to be held liable for unpaid parking charges in certain circumstances, for example where the identity of the driver is unknown (amendments 39–62). She said that many of these were technical and drafting amendments, and the Government's intention was "to clarify the effect of the provisions in order to reduce the potential for them to be misunderstood either deliberately or inadvertently by motorists, vehicle keepers and those responsible for parking restrictions and enforcement on private land" (col 132). Ms Featherstone said that the amendments strengthened safeguards for motorists and vehicle keepers in two ways, firstly by introducing an appeals process and secondly by introducing a reserve power on signage. Government amendment 59 introduced a requirement that the notice of charges given to a driver or vehicle keeper must set out the arrangements for the resolution of disputes or complaints. She continued:

> We have asked the parking sector, led by the British Parking Association, to establish an independent appeals body, funded by the parking industry and free to consumers, to cover tickets issued by members of the BPA or another accredited trade association. We have also made it clear that we will not bring the keeper liability provisions in schedule 4 into force unless and until the sector establishes, financially supports and agrees to abide by the decisions of an independent challenge body. Unlike the hon. Lady [Ms Johnson], we do not see a need to constitute this appeals body in legislation. We believe that effective self-regulation by the parking industry is the right way forward.
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> (col 132)

Government amendment 61 set out a reserve power to prescribe requirements on the display, content and location of signs at car parks and other relevant land.
Ms Featherstone explained that car park operators would have to abide by the British Parking Association code of practice on signage as a condition of being able to access DVLA keeper data, without which they could not pursue keepers for unpaid charges. Therefore, the Government considered that additional regulation on signage would not be necessary. Statutory rules on signage would only be brought in if there was clear evidence that the BPA code was not working (col 133).

Government amendment 47 extended the application of the keeper liability regime to circumstances where an obligation to pay a parking charge arose as a result of parking on land without permission, for example trespassing onto private land not intended to be used by the general public for parking. Ms Featherstone said that the Government was introducing this amendment to "address the concerns expressed by tenant associations and others about their ability to tackle unauthorised parking in communal parking areas once the ban on wheel-clamping came into force" (col 133). A further amendment would

allow for the use of CCTV or automatic number plate recognition technology, as well as the use of physical ticketing of vehicles, in order to manage parking on private land.

Another set of Government amendments (amendments 76–78) were to ensure that in relation to vehicle hire companies, liability for any parking charges whilst the vehicle was hired out would rest with the hirer, not the hire company (col 133). Diana Johnson pointed out that, according to hire car associations, specifying a six-month time limit as the duration of a hire arrangement was "a rather old-fashioned approach" as modern leasing practices often involved a longer period (col 130). Lynne Featherstone indicated that she would be happy to consider this point further (col 135).

The Government amendment which provoked most debate was amendment 21 to clause 54. Subsection (1) of clause 54 would make it an offence to immobilise a vehicle without lawful authority. Subsection (2) specifies that even if someone entitled to drive the vehicle gives consent to be immobilised, this does not constitute lawful authority. However, under subsection (3), subsection (2) does not apply if there was a fixed barrier present at the time the vehicle was parked. At committee stage, the Opposition argued that this represented a loophole whereby operators could continue to clamp on private land as long as there was a fixed barrier present at the exit, but Lynne Featherstone rejected this interpretation (Public Bill Committee, 28 April 2011, cols 413–4). She explained at report stage that:

> The provision is intended to permit the continued use of barriers as a legitimate means of parking control and enforcement once the ban on wheel-clamping comes into force. As I said many times in Committee, it is not our intention that the presence of a barrier should, in itself, confer lawful authority for the wheel-clamping of a vehicle.
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> (col 134)

Given the ambiguity of clause 54(3) as originally drafted, amendment 21 was intended to redraft that subsection to "put the matter beyond doubt", said Ms Featherstone. A landowner with a barrier in place would not be committing an offence of vehicle immobilisation under clause 54, but "that does not mean that the landowner will be able to resort to wheel-clamping or towing away in those circumstances" (col 134). Diana Johnson initially welcomed this amendment, although she noted that the British Parking Association still had doubts about the new wording, as it failed to mention wheel-clamping specifically (col 129). Later in the debate, however, she expressed concern that "rogue landowners" could refuse to lift the barrier to allow a motorist out of the car park unless the motorist paid an extortionate parking fee (col 134). Lynne Featherstone explained that this could not happen because if a landowner demanded a fee for releasing a vehicle without having clearly displayed the fees on a sign, he would be committing an offence. She said that motorists should not enter unless the signage displaying charges was clear (col 135). By the end of the debate, Diana Johnson was "even more concerned that companies that wish to get around the law, operate in an intimidating way and issue excessive parking tickets will see this as an opportunity to go ahead" (col 139).

Diana Johnson pressed new clause 15 to a vote, but lost by 230 votes to 301. Government amendments 21, 39–62 and 76–78 were accepted without division.

4. Commons Report Stage: Day Two

4.1 Regulation of CCTV (Chapter 1 of Part 2)

Chapter 1 of Part 2 of the Bill would provide for the introduction of a code of practice covering the operation of CCTV and other surveillance cameras in England and Wales, and the creation of a Surveillance Camera Commissioner to monitor compliance with the code. David Hanson (Labour) moved new clause 16, which would have required the Secretary of State to "commission a report by Her Majesty's Inspectorate of Constabulary into the use of CCTV by the police and local authorities as a measure for the prevention and detection of crime". He also spoke to a number of Opposition amendments which would have replaced the proposed statutory code with guidance on the use of CCTV. Mr Hanson said that the amendments were intended to "get a flavour at least of the Government's thinking and to place on record the Opposition's views" (HC *Hansard*, 11 October 2011, col 202).

Mr Hanson explained that "Labour members want to ensure that the role of CCTV is strengthened and its importance is recognised" (col 203). Throughout his speech, he quoted examples of cases where CCTV footage had been used to help catch criminals. He was concerned that the Coalition Programme for Government contained a commitment to implementing "a full programme of measures to... roll back state intrusion", and as part of that programme "to further regulate CCTV" (col 205). The Opposition therefore feared that the code could make it more difficult for local authorities to operate CCTV cameras. What he wanted, he said, was "a clear statement from the Minister and the Government that CCTV is important and that their proposals will not add to the bureaucracy, time and difficulty of putting CCTV cameras in place" (col 207). He also sought assurance that the police's use of ANPR technology would not be seen as "state intrusion" by the Government (col 209). Mr Hanson questioned why the code would only apply to cameras operated by the police and local authorities, but not those belonging to private individuals or organisations (col 210).

Keith Vaz (Labour), Chair of the Home Affairs Committee, Julian Huppert (Liberal Democrat) and Gareth Johnson (Conservative) all pointed out that it was not desirable to have unlimited numbers of CCTV cameras (cols 203–4, 206, 207 and 215–6). Nicola Blackwood (Conservative) argued that rather than creating new problems as Labour feared, a properly framed regulatory code could improve the situation for CCTV, particularly in addressing privacy issues (cols 206 and 208).

James Brokenshire responded that:

> The right hon Gentleman may be reassured about the Government's approach... if I quote what the consultation says at the outset:
>
> > "We do not intend therefore, that anything in our proposals should hamper the ability of the law enforcement agencies or any other organisation, to use such technology as necessary to prevent or detect crime, or otherwise help to ensure the safety and security of individuals. What is important is that such use is reasonable, justifiable and transparent so that citizens in turn feel properly informed about, and able to support, the security measures that are in place."
>
> (col 211)

He reassured Mr Hanson that "The Government recognise the important role that CCTV can play" (col 212). He explained that the code of practice would only apply to public

authorities, initially at least, because the Government wanted "to take a measured approach: we want incremental change rather than a sudden significant shift, in order not to undermine the purposes of CCTV that he has identified" (col 212). The private sector could adopt the code voluntarily to raise standards more generally, and the Bill provided for an extension of its ambit in due course, if that proved necessary, said Mr Brokenshire. The Government believed that a proper regulatory framework was needed to prevent the country "sleepwalking into a surveillance society" (a phrase first used in a report by the Home Affairs Committee) (col 213). Mr Brokenshire also pointed out that the ACPO officer leading on CCTV was, "in principle", supportive of the Government's approach (col 214).

The House divided and rejected new clause 16 by 319 votes to 229.

4.2 Safeguarding Vulnerable Groups (Chapters 1 and 2 of Part 5)

4.2.1 Disclosure and Barring Service

Chapter 1 of Part 5 of the Bill would amend the Safeguarding Vulnerable Groups Act 2006 which provides the framework for the Vetting and Barring Scheme currently operated by the Independent Safeguarding Authority (ISA). At committee stage in the Commons, a significant Government amendment was made which introduced a new clause and schedule (Clause 85 and Schedule 8 in the Bill as introduced in the House of Lords) providing for the dissolution of the ISA and the establishment of a new Disclosure and Barring Service (DBS).

At report stage, Lynne Featherstone tabled new clause 12, which would give the Treasury powers to ensure that the transfer of property, rights and liabilities from the ISA to the new DBS would be tax neutral. New clause 12 is included as clause 88 in the Bill as introduced to the House of Lords. Other technical amendments (Government amendments 23, 24 and 64) relating to the establishment of the DBS, were also made.

Diana Johnson said that the Opposition was not against creating the DBS, but was "concerned, however, that the Government prevented full and proper scrutiny of the setting up of the service by announcing only halfway through the consideration of the Bill the amendments that would achieve that" (col 224). She asked for reassurance from the Minister about the costs and effectiveness of the new computer system to be created for use by the DBS. Lynne Featherstone said that the new IT system was "a value-for-money decision":

> The IT spend estimate is £200 million over five years, which will be funded by fees. We would have had to replace the existing IT regardless of the establishment of the DBS. This has been arranged to time with when the contract would have come to an end.
>
> (col 224)

4.2.2 Barring and Criminal Records Certificates

Diana Johnson moved new clause 18, which would have required an enhanced Criminal Records Bureau (CRB) check to reveal whether an individual had been barred from working with vulnerable adults or children by the ISA. Under current legislation, the ISA maintains lists of people who are barred from undertaking "controlled" or "regulated" activity (as defined in the Safeguarding Vulnerable Groups Act 2006) with children and/or with vulnerable adults. The ISA makes decisions about who to bar using information held by the CRB such as details of individuals' criminal convictions, as well as non-conviction

information, such as details of acquittals, unproven allegations or criminal investigations that did not lead to charges. The ISA can also bar people on the basis of relevant information received from third parties, such as referrals from local authorities or professional bodies. Clauses 64 and 66 of the Bill (using the numbering of the Bill as introduced to the House of Lords) restrict the definition of "regulated" activity, and clause 68 abolishes the concept of "controlled" activity.

Ms Johnson explained the rationale behind new clause 18:

> Under new clause 18, the barred status of an individual would be revealed in a CRB check. The House will know that at present, an enhanced CRB check may reveal all convictions and cautions, regardless of whether they are relevant, and allegations made to the police that were not turned into convictions. One gets barred status information only if the person will be working in a regulated activity, and the Bill has produced a narrower definition of "regulated activity" than previously existed.
>
> (col 226)

Ms Johnson was worried that individuals who had been barred by the ISA could still end up working with children or vulnerable adults, as long as they were not engaging in regulated activity, and their employers would never know—particularly if the individual was working in a voluntary capacity—as their barred status would not be revealed in a CRB check. She pointed out that people on the barred list were not necessarily known to the police, as the ISA could have made the decision to bar them on the basis of information that had been supplied by a local education authority or a care home, but never referred to the police (col 226). She argued that "All employers, charities, voluntary groups and sports organisations should be able to benefit from [the] expertise and insight" of the ISA (col 227).

Diana Johnson also moved amendment 111 to clause 66 (clause 67 in the Bill as introduced to the House of Lords). Currently, anyone convicted of certain serious offences is automatically placed on the barred list, regardless of whether they have ever worked with, or ever intend to work with, children or vulnerable adults. The Bill would change this, so that when people were convicted of a serious offence, only those who had previously worked with vulnerable groups, or had expressed an intention to do so, would be automatically barred. Ms Johnson's amendment sought to maintain the status quo of "a presumption that an individual who had committed a serious offence would automatically go on the list". However, the amendment would also have introduced the right for that individual to present evidence in person and to call witnesses to argue that they should be taken off the list (col 228). Ms Johnson remarked that this would take account of the Joint Committee on Human Rights' recommendation that there should be a right of appeal.

Diana Johnson tabled another amendment (117) which sought to maintain the status quo. Currently, the CRB sends out two copies of a certificate once a check has been completed—one to the applicant, and one to the person/organisation that requested the CRB check, such as a prospective employer. Clause 79 of the Bill (using the numbering of the Bill as introduced to the House of Lords) would amend this system so that the certificate would only be sent to the individual applicant, who could then pass it on to the prospective employer. The point of doing it this way would be to allow the applicant to appeal to the CRB about any disputed information included on the certificate before the certificate was sent to a prospective employer. Ms Johnson's amendment would have required that when a CRB certificate was issued, the person who had requested it would

be notified, and the certificate would be sent directly to that person, as long as the applicant consented.

She explained that the Opposition had tabled this amendment because of concerns from the various sectors that used CRB checks on potential employees and volunteers (col 229). She feared that because the Bill's provisions would cause organisations practical difficulties, fewer CRB checks would end up being carried out, and more loopholes would be exploited. As prospective employers pay for CRB checks to be conducted, she thought it right that they should be notified once the certificate was issued, and, with the applicant's consent, of the outcome of the check. This would also prevent applicants from stalling in presenting their CRB certificate to a potential employer (col 230). Diana Johnson said that organisations which relied on large numbers of volunteers, such as the Football Association and Girlguiding UK, currently had centralised systems for processing CRB certificates, which worked well and ensured that the certificates were dealt with by experts within the organisation. If volunteers were required to present their own certificate to their manager locally, it could cause embarrassment if the CRB certificate disclosed a conviction or other information. Furthermore, the local manager might not be qualified to decide whether such information should lead to the volunteer being turned down (col 230).

Lynne Featherstone said that the Government wished "to strike a balance and bring back a common-sense approach to safeguarding, always with the proviso that the protection of children and vulnerable adults is foremost in our minds" (col 233). In response to new clause 18, she reiterated the Government's position that barred list information should only be provided in respect of posts that fell within the scope of regulated activity (cols 233–4).

Meg Munn (Labour), chair of the All-Party Parliamentary Group on Child Protection, argued that people engaged in non-regulated activity could still pose a threat to children:

> The Government propose that not all contact with children will be a regulated activity, but if somebody poses a risk to children, all contact with children, even when it appears at that moment to be well supervised, will pose a risk to children. That is the point. If someone is considered a risk to children and information about them is on the barring list, that information should be provided, regardless of whether the activity is regulated, in order that the person taking on that individual to do the non-regulated activity can decide whether the information on the barring list is relevant.
>
> (col 234)

Lynne Featherstone explained that people undertaking non-regulated activity with children would only be able to do so under supervision, and "if an activity is unsupervised, it is regulated" (col 234). Jenny Chapman (Labour) thought that "parents do not want people who are barred from working with children to be anywhere near their children, regardless of whether they are supervised" (col 234). Lynne Featherstone pointed out that:

> We do not want to arrive at a position in which an employer could deny a job in a non-regulated activity to an applicant on the basis that he or she was barred from regulated activity. In such circumstances, an employer would effectively be saying, "I'm not giving you this job, because you are barred from a completely

different area of work". That would plainly be wrong, and disproportionate to the aims of the disclosure regime. It could also lead to legal challenges.

(col 235)

Lynne Featherstone reminded the House that the fact of a bar would be disclosed on an enhanced CRB check for anyone engaged in regulated activity; this was "essential" because "barred people are prohibited by law from doing such work" (col 237). Following up on Diana Johnson's point that sometimes third parties gave information to the ISA without reporting it to the police, Lynne Featherstone argued that where there were concerns about a person's suitability for working with vulnerable groups, it should be reported to the police as well as to the ISA. This would allow such information to be included in a CRB check if appropriate. The Government would "encourage employers and volunteer users to ensure that the police, as well as the barring authority are informed... It is absolutely inappropriate not to do so if a school or organisation suspects that someone is unsuitable to work with children" (col 237). She also reminded the House that even under the current system, it was possible that some people on the barred list could have access to children on an infrequent basis, for example as volunteers in schools. She maintained that "There will always be people who have some contact with children whom parents cannot check" (col 238).

With regard to the arrangements for issuing CRB certificates, Ms Featherstone argued that there was no reason why the Bill's provisions should discourage people from volunteering, or prevent organisations from taking decisions about employing someone centrally rather than at a local level (col 239). However, she said that she was prepared to consider further the Opposition's proposals for notifying a prospective employer about a certificate being issued (cols 239 and 240–1).

On division, new clause 18 was defeated by 295 votes to 224. Amendment 111 was defeated by 290 votes to 221.

4.2.3 Regulated Activity Relating to Children

Clause 64 (in the Bill as introduced in the Lords) excludes voluntary work with children from being "regulated activity" under the Safeguarding Vulnerable Groups Act 2006 if the work is "on a regular basis, subject to the day to day supervision of another person who is engaged in regulated activity relating to children". Diana Johnson moved amendment 112, which would have omitted this wording and would have therefore made voluntary work with children a "regulated activity". Ms Johnson raised concerns that supervised volunteers would not be subject to any form of CRB check or barred status check. She noted that:

> The Sport and Recreation Alliance, Fair Play for Children and other charities have highlighted the problems in using the notion of supervision for deciding whether a person is in a position to exploit their relationship with children... The problem is not the activity they are performing, which could well be properly supervised; rather it is the fact that they are building relationships with children which they might go on to exploit. The charities I mentioned point out that supervision is an inappropriate notion in this context as it ignores the secondary access that can be used to build up a relationship with a child or vulnerable adult. If someone is in such a position of trust, they might later take action that could be detrimental to the child or vulnerable adult.
>
> (cols 246–7)

As an alternative to amendment 112, Diana Johnson also spoke to Opposition amendments 114 to 116, which would have changed the definition of the level of supervision required, from “day to day” to “close and constant”. She argued that “Using a definition of ‘day to day’ supervision to cover people such as a football coach or an assistant in a school classroom is not sufficient, as it allows individuals to be left unsupervised for long periods” or even in a different room (col 247). In her view, anyone taking part in activities away from where their supervisor was working should be subject to background checks.

Lynne Featherstone responded that this issue had already been covered at considerable length during the committee stage. She regarded the Bill’s existing definition of supervised work as “tight”. She clarified that:

> Supervision must be ongoing, so a once-a-week meeting between the supervisor and the supervised would not meet the requirement. The supervision must be on a daily basis and it must be done by someone who is in regulated activity themselves and, therefore has been checked against the barred list.
>
> We believe that our proposals in this part of the Bill strike a better balance between the roles played by the state and employers in situ in protecting the vulnerable. Those activities presenting the greatest risks, such as unsupervised work with children or vulnerable adults, remain subject to the central barring and vetting arrangements. We do not think those arrangements are necessary where regular supervision takes place on a daily basis. I should emphasise that that does not mean that checks should not, or cannot, be carried out in relation to work that falls outside regulated activity.
>
> (col 249)

Diana Johnson withdrew amendment 112.

Two Government amendments (22 and 63) were made, which required the Secretary of State to issue statutory guidance “for the purpose of assisting regulated activity providers and personnel suppliers in deciding whether supervision is of such a kind that... the person being supervised would not be engaging in regulated activity relating to children” (cols 254–5). Diana Johnson said that the Opposition welcomed this (col 248).

4.3 Pre-Charge Detention of Terrorist Suspects (Part 4)

4.3.1 Background

The final subject debated at report stage was the length of time that terrorist suspects may be detained without charge. The Terrorism Act 2006 extended the maximum pre-charge detention period for terrorist suspects from 14 to 28 days, but specified that this would revert to 14 days after one year, unless the 28-day maximum was renewed by an affirmative order. Orders were made in 2007, 2008 and 2009 extending the 28-day period for a year at a time. In July 2010, an order was made to extend the 28-day period for six months. On 13 July 2010, the Home Secretary Theresa May announced a review of counter-terrorism powers, including pre-charge detention powers. She said that maintaining the 28-day pre-charge detention period for the next six months would “provide us with sufficient time to look carefully at pre-charge detention in the review and to explore how we can reduce the period of detention below 28 days” (HC *Hansard*, 13 July 2010, col 797).

In answer to an urgent question on 20 January 2011, the Home Office Minister Damian Green announced that the Government would "not be seeking to extend the order allowing the maximum 28-day limit and, accordingly, the current order will lapse on 25 January and the maximum limit of pre-charge detention will, from that time, revert to 14 days" (HC *Hansard*, 20 January 2011, col 1009). The following day, the Counter Terrorism Review was published. It recommended that "the limit on pre-charge detention for terrorist suspects should be set at 14 days, and that limit should be reflected on the face of primary legislation" (HM Government, *Review of Counter Terrorism and Security Powers: Review findings and recommendations,* Cm 8004, para 26). However, it also "accepted that there may be rare cases where a longer period of detention may be required" (ibid). It therefore recommended that "Emergency legislation extending the period of pre-charge detention to 28 days should be drafted and discussed with the Opposition, but not introduced, in order to deal with urgent situations when more than 14 days is considered necessary, for example in response to multiple coordinated attacks and/or during multiple large and simultaneous investigations" (para 29).

Accordingly, clause 57 of the Protection of Freedoms Bill removes the order-making power under section 25 of the Terrorism Act 2006, ensuring that it would no longer be possible to use that provision to extend the maximum pre-charge detention period from 14 to 28 days. In February 2011 the Government published two draft bills, the Detention of Terrorist Suspects (Temporary Extension) Bills (Cm 8018), which would allow the pre-charge detention period to be raised from 14 to 28 days in exceptional circumstances. One Bill is drafted so that it could be used immediately, while section 25 of the Terrorism Act 2006 is still in force, and the other is drafted for use after that section had been repealed. Theresa May later set out "three broad scenarios" in which an extension of the pre-charge detention period might become necessary:

- In response to a fundamental change in the threat environment which means that the police and CPS anticipated that multiple complex and simultaneous investigations would necessitate 28 days.

- During an investigation or series of investigations, but before arrests, which was so complex or significant that 14 days was not considered sufficient.

- During an investigation but after arrests had taken place.

(Letter from Theresa May to Lord Armstrong, Chair of the Joint Committee on the Draft Detention of Terrorist Suspects (Temporary Extensions) Bills, 3 October 2011)

The draft Bills were scrutinised by a Joint Committee of both Houses. The Committee agreed that "the Government is right to wish to create a contingency power to extend the maximum period for pre-charge detention beyond 14 days up to not more than 28 days in exceptional circumstances" (Joint Committee on the Draft Detention of Terrorist Suspects (Temporary Extensions) Bills, *Draft Detention of Terrorist Suspects (Temporary Extensions) Bills Report*, HL Paper 161 of session 2010–12, para 165). Although the Committee recognised the Government's desire to do this through emergency primary legislation, so that the decision would be subject to parliamentary scrutiny, the Committee identified problems with this approach. Firstly, there would be a risk of prejudicing a suspect's right to a fair trial. Secondly, there was "an unacceptable degree of risk that it would in practice be almost impossible to introduce and pass the legislation required within a sufficiently short period of time when Parliament was in recess (particularly the long summer recess) or at the time of a general election during the

period between the dissolution of one Parliament and the opening of a new Parliament" (para 165).

As an alternative approach, the Committee recommended that the Protection of Freedoms Bill should be amended to confer on the Secretary of State the power to make an order to extend the pre-charge detention period to 28 days for a three-month period. This order could only be made if the Secretary of State was satisfied that exceptional circumstances applied and had obtained the agreement of the Attorney General. The order itself would not be subject to parliamentary procedure, so as to avoid prejudicing future trials, but the order-making power should be subject to regular parliamentary review. The Committee also recommended that there should be a statutory requirement that any extension of detention beyond 14 days would have to be followed by an independent review. After the conclusion of all judicial proceedings in individual cases affected by the extension of the maximum pre-charge detention period, the Secretary of State could be required to account to Parliament for his/her use of the power. S/he would have to demonstrate that before making the order, s/he and the Attorney General had been satisfied that "exceptional circumstances" applied (paras 134-9).

4.3.2 New Clause 13 and New Clause 14

At report stage, James Brokenshire moved new clause 13, which set out an emergency power for the Secretary of State to make a temporary order extending the pre-charge detention period from 14 to 28 days for a period of three months, but only in "very limited circumstances", namely if Parliament had been dissolved, or in the period following a dissolution of Parliament but before the Queen's Speech had taken place (HC *Hansard*, 11 October 2011, col 260). He said that this clause was being introduced to address the Committee's concern about what would happen if Parliament were dissolved when the Government wanted to extend the maximum pre-charge detention period (col 262). Mr Brokenshire explained that the Government had also acted upon other concerns raised by the Joint Committee:

> ... we welcome two of the Committee's further recommendations for increased safeguards, and we have included them in new clause 13. First, applications for any warrant of further detention that would see an individual detained for longer than 14 days may be made only with the personal consent of the Director of Public Prosecutions or the equivalent post holder in Scotland or Northern Ireland. Secondly, whenever an individual is detained for longer than 14 days, their case will be reviewed by the independent reviewer of terrorism legislation, or someone on their behalf, and a report of that review will be sent to the Secretary of State as soon as possible.
>
> Both those changes will also be incorporated in the draft fast-track legislation to increase the maximum length of pre-charge detention to 28 days.
>
> (col 265)

New clause 14, tabled by Paul Goggins (Labour), who had been a member of the Joint Committee, was debated at the same time. Mr Goggins explained that it reflected the Committee's conclusions and recommendations (col 270). It would have introduced an order-making power for the Secretary of State to extend the maximum pre-charge detention period to 28 days, as recommended in the Committee's report. This power could be used at any time that exceptional circumstances made an extension of the pre-charge detention period necessary (whereas new clause 13 would only give the Secretary of State an order-making power when Parliament was dissolved and therefore could not pass emergency primary legislation). Mr Goggins acknowledged that "The

objective of the Committee and the Government is the same, but the question is how to extend beyond 14 days" (col 271). He said the Committee had "concluded that the route of primary legislation was simply too risky and uncertain to be relied upon in what, in any event, would be extremely challenging circumstances" (col 271).

In response to new clause 14, James Brokenshire said that the Government believed that "the exceptional nature of these powers to extend the maximum period beyond 14 days means that, where feasible, the principle of 28-day detention should be debated and approved by Parliament" (col 262). He quoted the Home Secretary's response to the Joint Committee's report, arguing that an order-making power of the type recommended by the Committee would "not be a clear expression that the 'normal' maximum period of pre-charge detention should be no longer than 14 days" (col 262).

During the report stage debate, several members of the Joint Committee re-stated their concerns about the Government's legislative approach. Alun Michael (Labour/Co-operative) pressed Mr Brokenshire on the precise circumstances under which the maximum detention period could be extended. He focused on "the fact that an extension of detention can be made only if more time is required for investigation and in order to bring cases before the court, and [it] is not intended to be some form of preventive detention" (col 259). He reminded the Minister that "multiple attacks in themselves would not justify the use of the power... it is the weight of investigation and preparation of cases that would be the trigger" (col 260). Given this, Mr Michael argued that:

> ... the problem with a debate by the House of Commons is that the evidence of the need for a longer period will be based only on a specific case or number of cases. If we have a massive number of cases, we will get away from the individual case, but that is an unlikely circumstance, and if the need for detention beyond 14 days relates just to one case, or to two or three, it is almost impossible to envisage a debate that would not refer to them.
>
> (col 263)

Menzies Campbell (Liberal Democrat), another member of the Joint Committee, was also concerned about this point. He asked: "How could one be assured that, in the course of a debate here about such primary legislation, nothing would take place that did not have the effect of prejudicing the right to a fair trial?" (col 263).

Mr Brokenshire took the view that "no contingency mechanism will be perfect and meet all the needs of everybody"; given this, the Government had made a judgement that its approach was "the appropriate way forward" (col 263). With regard to the discussion of individual cases in Parliament, he replied that:

> Parliament has shown itself capable in the past of conducting debates about sensitive issues and of being recalled quickly in exceptional circumstances.
>
> ... the debates and consideration would need to be handled carefully, but in our judgment that does not make the process impossible; far from it.
>
> ... Parliament would not be able to discuss matters relating to particular individuals or anything that might compromise an investigation or a future prosecution, but it is important to recognise the clear difference between Parliament's considering whether 28-day detention should be available in principle and the judiciary's role in determining whether in an individual case to extend a detention warrant under schedule 8 to the 2000 Act [the Terrorism Act

> 2000]. Parliament would not take a decision about an individual suspect or suspects; that would be a decision for the proper judicial process.
>
> (cols 263–4)

Paul Goggins thought that while ministers would be well briefed on what they could or could not say during a parliamentary debate in these circumstances, "neither [James Brokenshire] nor anyone could guarantee that a Member of the House would not say something that could lead to a subsequent trial being compromised" (col 272). On the other hand, "so little information might be given by the Minister in the context of the debate that the whole process would be completely meaningless". Mr Goggins acknowledged that James Brokenshire was right to draw a distinction between the roles of Parliament and the judiciary, but he was concerned that in practice "the debate on the principle and the debate on the practical application in an individual case would become very blurred", particularly in a situation where arrests had been made but an investigation was running out of time (col 272).

Paul Goggins also raised doubts about the practicalities of passing emergency legislation. He said that House of Commons clerks had told him that a minimum of 48 hours would be required to recall Parliament during a recess.[2] He reminded the House that the former Home Secretary Jack Straw told the Committee that it had taken nine days to recall Parliament following a terrorist attack in Northern Ireland that killed 29 people and injured 200. "In the context of an ongoing investigation into particular suspects in a particularly urgent inquiry", said Mr Goggins, "that would make the whole process of primary legislation completely impractical" (col 273).

Responding for the Opposition, Chris Bryant, a Shadow Home Office Minister, said that "everybody agrees that the norm should be 14 days" but that also, "it is universally accepted that there may be exceptional circumstances in which we would need to go beyond 14 days" (col 266). However, his view was that "the Government are going down the wrong route" in their proposal for dealing with this (col 268). He agreed with the Joint Committee's concerns about the sensitivities of holding a parliamentary debate without prejudicing an individual case. Furthermore, he felt that "on the whole, emergency legislation is a bad idea". With emergency legislation on this issue in particular, he said:

> I can imagine a point where we are nine days into somebody's detention and then the Government realise that they need their emergency legislation. They would not be able to start that process until the eleventh day, and then they would suddenly be saying, "Right, we've got to put it all through this House and the other House in one day". That leads to very dangerous decision-making and it is a bad route to go down.
>
> (col 268)

Therefore, he said that he preferred the approach set out in new clause 14 tabled by members of the Joint Committee, although "we still need to resolve some of the issues about the level of corralling needed to ensure that the power is not used gratuitously, that the Secretary of State is not able to proceed unhindered, and so on". Chris Bryant said he suspected that "this will not be the end of the matter in this House and that their lordships will want to look very closely at whether there is a better route to achieve the same end" (col 268).

[2] The procedure provided for in the Government's new clause 13 is not for periods when Parliament is in recess. During a recess, Parliament would need to be recalled to pass emergency primary legislation.

An alternative view was put by William Cash (Conservative). He described the Government as "treading a rather wobbly line" when talking about "a permanent reduction in the maximum detention period to 14 days", whilst at the same time making emergency provisions to extend it up to 28 days again (col 265). He argued:

> I believe very strongly that if there is a case for extending the period from 14 to 28 days, the Government, by referring to the period in question as merely 14 days and describing it as a permanent reduction in clause 57, and then talking about certain circumstances of an emergency nature that extend it to 28 days, effectively sell the argument down the river... if there is a case for it being 28 days in certain circumstances, for heaven's sake let us just accept that 28 days will be used very rarely and only in special circumstances.
>
> (col 269)

Concluding the debate, James Brokenshire said:

> We believe that the structure being created is reliable and available, and that the House is able to make the distinction and understand its role, as contrasted with that of the judiciary; hence the reason why I commend new clause 13 to the House and urge Members to reject new clause 14, although I recognise the important points that the Joint Committee made.
>
> (col 277)

New clause 13 was added to the Bill, becoming clause 58 in the Bill as introduced in the House of Lords.

5. Third Reading

Following completion of the report stage, Theresa May, the Home Secretary, moved that the Bill be given a third reading. She characterised the Bill as an attempt to strike "the balance between keeping the public safe and defending our liberties". She said that:

> The first responsibility of any Government is to keep the British public safe and free. That means protecting them from crime, terrorism and other threats, but it also means defending our democratic institutions, our liberties and our way of life. This Government are determined to cut crime and reduce the risk of terrorism, at the same time as we restore the freedoms and liberties that define British society.
>
> (HC *Hansard*, 11 October 2011, col 281)

She accused the previous Labour Government of having "chipped away at those freedoms and liberties" for 13 years:

> They chipped away at the notion that a person is innocent until proven guilty ... They ... provided for the indefinite retention of the DNA profiles of more than one million innocent people. They treated more than a quarter of the whole work force —some 11 million people—as potential abusers of children and vulnerable adults, by requiring them to be monitored as part of an overbearing vetting and barring system.
>
> The previous Government chipped away at the right to liberty by seeking to extend the maximum period of pre-charge detention to 42 and even to 90 days—

> until forced by the will of this Parliament to settle for 28 days. They then made 28 days the norm rather than the exception. They chipped away at the historic right to trial by jury; they chipped away at the notion that people should be able to live in safety and security in their own homes by creating hundreds of new powers of entry; and they chipped away at our right to privacy by creating a number of enormous Government databases...
>
> (col 282)

Mrs May argued that the Bill's provisions on the retention of DNA profiles struck "the right balance between protecting our communities and protecting the rights of the innocent". She said that by providing for a code of practice overseen by a new Surveillance Camera Commissioner, the Bill would "help to ensure that CCTV retains public support and therefore continues to be an effective tool in fighting crime". On safeguarding vulnerable groups, she believed that the Bill applied "some much-needed common sense" to the criminal records regime and the vetting and barring scheme (col 283). Overall, she considered that "The Bill continues the work of this Government in repairing the damage done to our traditional freedoms and historic civil liberties, while at the same time taking a careful and proportionate approach to protecting the public" (col 282).

Responding for the Opposition, Yvette Cooper, the Shadow Home Secretary, welcomed the Bill's provisions on removing old convictions for consensual gay sex, removing restrictions on the timing of marriage ceremonies, adding to the list of bodies subject to the Freedom of Information Act 2000, and putting in place tighter restrictions on the Regulation of Investigatory Powers Act 2000 and on stop and search powers (col 283). She said that Labour also welcomed the action on rogue wheel clampers, but "would have preferred the Government to have gone further by taking further action on rogue ticketers" (cols 283–4). While Labour agreed with the principle of restricting pre-charge detention for terrorist offences to 14 days, Ms Cooper described the Home Secretary as "unwise" not to have made changes to the Bill as advocated by members of the cross-party Joint Committee (col 285).

Ms Cooper explained that her party also had "some serious and deep concerns" about the Bill, which meant that they could not support its third reading (col 285). Firstly, Labour objected to the fact that someone who had been convicted of a sexual offence against a child would no longer automatically be barred from working with children in future, and that the information that an individual had been barred from working with children would not have to be disclosed if they applied for a supervised post working with children. Secondly, she argued that the Bill's provisions on the retention of DNA profiles would "make it harder, not easier, for the police to fight crime" (col 285). She accused the Government of adopting a three-year retention policy "based on no evidence whatsoever" and said that:

> Government members have their priorities wrong if they think that it is more important to keep people's DNA for three years rather than six than it is to solve 1,000 more crimes, that it is more important to do that than to have DNA matches for 23,000 more criminals each year, and that it is more important to protect the rights of a rape suspect to keep their DNA code off the database altogether than to take the action that Rape Crisis has called for to make it easier to catch rapists in future.
>
> (col 287)

Thirdly, she believed that on CCTV, the Bill added "layers of bureaucracy that make it harder for the police to do their job" (col 287). Ms Cooper concluded:

> We believe that it is important to protect people's freedom, but protecting people's freedom means not just protecting them against unwarranted interference by the police or by the state, but protecting them against unwarranted interference, abuse or violence by other people. Freedom means protecting people from crime, too.
>
> ... We believe that this is a risky Bill that puts at risk freedom for crime victims, makes it harder for the police to do their job and ignores important evidence about the way in which crimes need to be solved. That is why we cannot support it on Third Reading, and will vote against it tonight.
>
> (col 287)

The other speakers at third reading largely supported the Government on the Bill. Pete Wishart (SNP) believed that "Anything that tackles Labour's anti-civil libertarian stance deserves the support of the House" (col 288). Tom Brake (Liberal Democrat) said he was proud that the Bill would be one of the first on the statute book under the new Government. He thought that "We have proved beyond a shadow of a doubt that, where there is a will, Government can strengthen civil liberties and safeguard safety and security—a fact that we had forgotten after 13 years of Labour rule" (col 289). John Redwood (Conservative) described the Bill as "an extremely welcome contribution to restoring the liberties of the British people" (col 292). Nicola Blackwood (Conservative) was happy to support the Bill, since "over the past 10 years, the Labour party has given away liberties without evidence, as far as I can see, that doing so would make us safer" (col 295). Stephen Phillips (Conservative) agreed that "this coalition Government are beginning to address the inroads that the last Government made into the liberties of the British people" (col 296).

The Bill received its third reading by 320 votes to 227.

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