HOUSE OF LORDS

Library Note

Legal Aid, Sentencing and Punishment of Offenders Bill (HL Bill 109 of 2010–12)

This Library Note provides information on the Legal Aid, Sentencing and Punishment of Offenders Bill, which is due for second reading in the House of Lords on 21 November 2011. The Note is intended to be read in conjunction with two House of Commons Library Research Papers: *Legal Aid, Sentencing and Punishment of Offenders Bill* (4 July 2011, RP 11/53) and *Legal Aid, Sentencing and Punishment of Offenders Bill: Committee Stage Report* (20 October 2011, RP 11/70) which provide background information and summarise the second reading debate and committee stage in the House of Commons. This note summarises the report stage and third reading debate in the House of Commons.

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1. Introduction

The Legal Aid, Sentencing and Punishment of Offenders Bill was introduced in the House of Commons on 21 June 2011, as Bill 205 of 2010–12. The parliament website offers a page of information on the Bill, including the text of the Bill and links to each debate. The Ministry of Justice website also has a page of information on the Bill, with a range of key documents.

The Bill covers several subjects: legal aid, litigation costs, sentencing and the rehabilitation and punishment of offenders. Before the publication of the Bill, the government carried out public consultation in each of these areas. The government had indicated in the Coalition Agreement that they intended to reform legal aid, stating "we will carry out a fundamental review of legal aid to make it work more efficiently" (*The Coalition: Our Programme for Government*, Cabinet Office, 20 May 2010). The government published a green paper on 15 November 2010, *Proposals for the Reform of Legal Aid in England and Wales*, and, following a consultation, issued a response, *Reform of Legal Aid in England and Wales: The Government Response*, on 21 June 2011. The government launched a consultation on litigation funding on 15 November 2010, *Proposals for Reform of Civil Litigation Funding and Costs in England and Wales: Implementation of Lord Justice Jackson's Recommendations*. This was based on the recommendations of a report by Lord Justice Jackson which was published in December 2009, *Review of Civil Litigation Costs: Final Report*. The government published its response to the consultation, *Reforming Civil Litigation Funding and Costs in England and Wales: Implementation of Lord Justice Jackson's Recommendations*, on 29 March 2011. The government published a green paper on sentencing and the punishment of offenders, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, on 7 December 2010. Following a consultation, the government published a response, *Breaking the Cycle: Government Response*, on 21 June 2011.

The government's proposals on legal aid were examined by the House of Commons Justice Committee, which published a report, *Government's Proposed Reform of Legal Aid*, on 30 March 2011 (HC 681-I of session 2010–12). The government issued a response, *Government Response to the Justice Committees' Third Report of Session 2010–11: The Government's Proposed Reform of Legal Aid* on 5 April 2011 (Cm 8111). The government's proposals also received considerable scrutiny in the press, and among interest groups; a House of Commons Library paper offers an overview: *Legal Aid: Controversy Surrounding the Government's Plans for Reform* (27 January 2011, SN/HA/5840). For a full account of the background to the Bill, please see the House of Commons Library paper, *Legal Aid, Sentencing and Punishment of Offenders Bill* (4 July 2011, RP 11/53).

The Bill received its second reading in the Commons on 29 June 2011, when the programme motion and money resolution were also agreed. Opening the debate, the Lord Chancellor and Secretary of State for Justice, Kenneth Clarke, stated:

> I am determined to reform the justice system in this country. Keeping the public safe, ensuring that those who break the law face the consequences and providing swift, cost-effective access to justice are fundamental responsibilities of the state towards its citizens. Yet the last 13 years of government have left us a system whose cost and scale have exploded and whose failings can no longer be tolerated.
>
> (HC *Hansard*, 29 June 2011, col 984)

Mr Clarke explained that the Bill aimed to address the "byzantine complexity" of the sentencing framework, and that "radical" criminal justice reform was necessary to challenge reoffending rates:

> Our punishments do not work. Community sentences are weak, asking little of offenders, and prisons have become so crowded that there is no space for governors to enforce regimes of meaningful work or reparation. Far too many prisoners are left idle in their cells, often on drugs. For that model, the taxpayer has the privilege of paying out an extraordinary sum—£44,000 per prison place per year.
>
> (ibid, col 984)

He suggested that the legal aid system had become "unaffordable" and had helped to create a "litigious society":

> Thanks to the present scope of legal aid and the way in which the no-win, no-fee system operates, many people and, in particular, many small businesses live in fear of legal action. I accept that access to justice for the protection of fundamental rights is vital for a democratic society—something on which I will not compromise. However, our current legal aid system can encourage people to bring their problems before the courts when the basic problem is not a legal one and would be better dealt with in other ways.
>
> (ibid, col 986)

The Public Bill Committee on the Legal Aid, Sentencing and Punishment of Offenders Bill published its call for written evidence on 30 June 2011. The Bill had 16 sittings in committee between 12 July and 11 October 2011. In its first four sessions the committee took evidence from a range of witnesses. Proceedings of the committee's sessions, along with all written evidence, can be found on the committee's page of the parliament website. A House of Commons Library Research paper provides an account of the committee stage, and a summary of the second reading debate: *Legal Aid, Sentencing and Punishment of Offenders Bill: Committee Stage Report* (20 October 2011, RP 11/70). This Note will summarise the report stage and third reading debate in the House of Commons.

2. Report Stage

The report stage took place over three days, between 31 October and 2 November 2011. For a list of all the amendments and new clauses which MPs considered during report stage, and the outcomes of divisions on each, please see the page of the parliament website entitled 'Report Stage and Third Reading of Legal Aid, Sentencing and Punishment of Offenders Bill'.

2.1 Report Stage: Motion to Introduce Three New Subjects to the Bill

Opening the debate on the first day, 31 October 2011, Kenneth Clarke, the Lord Chancellor and Secretary of State for Justice, moved the following motion:

> That, notwithstanding that such provisions could not have been proposed in Committee without an Instruction from the House, amendments may be proposed on Consideration of the Legal Aid, Sentencing and Punishment of Offenders Bill to—

(a) provide for measures against the payment or receipt of referral fees in connection with the provision of legal services,

(b) create a new offence relating to squatting, and

(c) amend section 76 of the Criminal Justice and Immigration Act 2008 (reasonable force for purposes of self-defence etc).

(HC *Hansard*, 31 October, col 620)

He said that:

> The motion seeks to widen the scope of the Bill in order to provide for measures to be introduced on the payment of referral fees, on the creation of a new criminal offence relating to squatting and to amend the law that governs the use of reasonable force for the purposes of self-defence.
>
> (ibid)

Mr Clarke sought to explain why the government were "introducing measures on these three topics and bringing them to the floor of the House rather late in the day, on report". He explained that consultations on referral fees and squatting had not been completed in time to introduce these proposals before. On self-defence, he said that the Prime Minister had announced on 21 June 2011 that the government "would put beyond doubt that home owners and small shopkeepers who use reasonable force to defend themselves or their properties will not be prosecuted" (ibid, col 621).

Sir Alan Beith, Chair of the Justice Committee, objected to the introduction of these subjects at report stage:

> I happen to be sympathetic to all three things the Secretary of State is trying to do, but surely he must take account of the fact that the procedures of the House, which he is trying to bypass, provide that there should be a general discussion on the principle of doing something, followed by a detailed discussion in Committee of how it can be done and then an opportunity to make further amendments on report if necessary.
>
> (ibid, col 621)

Sadiq Khan, Shadow Lord Chancellor and Justice Secretary, said that the Opposition would not vote against the motion, but regretted that these subjects had not been introduced before:

> None of the matters outlined in the motion—self-defence, squatting and referral fees—was unknown to the coalition government when they began consultation in May 2010. There have been three separate green papers and lots of discussion, debate and consultation... I am sure that the other House will be watching this debate and the way the government are seeking to make legislation on the hoof at the 11th hour.
>
> (ibid)

Kenneth Clarke responded to such concerns, arguing:

> There are essentially no surprises here, because Members have been perfectly well aware of the proposals for all three subjects... The right to self-defence was in the Coalition Agreement when the government were formed, so everyone knew that we would return to it, and the Prime Minister announced it again in June. Banning referral fees was in Lord Justice Jackson's report on reform of civil litigation costs, which we are already acting on, as far as no win, no fee arrangements are concerned. We delayed making proposals on referral fees because we were waiting for the Legal Services Board to give its opinion following consultation. We have been consulting on squatting, as I have said. The inclusion of these subjects is hardly surprising. All three have been referred to and debated on the floor of the House, so I hope that it will agree to extend the scope of the Bill.
>
> (ibid, col 622)

The motion was agreed to without a division.

2.2 Report Stage Programme Motion

The Parliamentary Under-Secretary of State for Justice, Jonathan Djanogly, moved a programme motion which proposed that the report stage and third reading should be completed in three days, with specific times allocated to discussion of each area of the Bill. He said:

> There are some considerable government amendments to get through, and I accept that it is unusual to be adding new topics to a Bill at this stage, but the Justice Secretary explained the reason for that in the previous debate. However, three days on report will provide adequate time to debate the amendments thoroughly. It is unusual to have three days on report—indeed, this is the first time that this government have made three days available for debate on report. I hope that the additional time will be seen as reflecting our ongoing commitment to the thorough scrutiny of the Bill, and that it will be welcomed by all members on both sides of the House. We have inserted a few knives—namely, on the second day—to ensure that we have proper time to debate the government's new clauses on extended determinate sentences, referral fees, fines, self-defence and squatting.
>
> (HC *Hansard*, 31 October 2011, col 627)

Sadiq Khan protested that the programme motion would not allow enough time for debate:

> During debate today, tomorrow and on Wednesday, many important issues of substance will arise, which our constituents believe are worthy of debate before a vote... When we discuss knife crime on Wednesday, we will also discuss legal aid, litigation funding and costs, sentencing, bail, and release and recall of prisoners. The suggestion that we can have anything like the substantive debate that our constituents demand is folly.
>
> (ibid, cols 627–8)

Simon Hughes, the Liberal Democrat Deputy Leader, responded by suggesting:

> We should recognise that the government have been unusually generous in providing more time for report and third reading than I remember under any other Labour or Tory government.
>
> (ibid, col 628)

The motion was agreed to on a division (Ayes 292, Noes 209).

2.3 Legal Aid

Debate on the first day, 31 October 2011, focused on the people who should be eligible to receive legal aid. The Legal Aid, Sentencing and Punishment of Offenders Bill proposes to limit eligibility for legal aid. One group of government amendments and several Opposition amendments sought to make the case to allow certain groups of people to retain access to legal aid.

2.3.1 Legal Aid for Domestic Violence Immigration Rule Cases

Jonathan Djanogly, Parliamentary Under-Secretary of State for Justice, moved a group of government amendments to extend eligibility for legal aid to some immigrant victims of domestic violence. He explained that:

> Government amendment 59 would amend Part 1 of Schedule 1 to bring domestic violence immigration rule cases into the scope of legal aid, as I announced to the Public Bill Committee on 19 July. Government amendment 63 would amend Part 3 of Schedule 1 to ensure that civil legal aid were available for the advocacy of such cases in the first-tier tribunal. Advocacy will also be available in the upper tribunal by virtue of paragraph 14 of Part 3.
>
> Under the domestic violence immigration rule, someone on a spousal visa, which is valid for a limited period of time, and whose relationship has permanently broken down as a result of domestic violence, can apply for indefinite leave to remain in the United Kingdom. As I said in committee, we accept that these cases are very unusual and different from other immigration cases, given the real risk that without legal aid spouses will stay trapped in abusive relationships for fear of jeopardising their immigration status. The trauma that they may have suffered will often make it very difficult to cope with that type of application, and they are also under time pressure, because they have only limited access to public funds to avoid destitution, so for those reasons we seek to make these amendments to Schedule 1.
>
> (HC *Hansard*, 31 October 2011, col 650)

On 19 July 2011, Mr Djanogly had told the Public Bill Committee:

> The matter of including cases brought under the immigration domestic violence rule in the scope of civil legal aid was raised a great deal during the consultation, and we considered the point carefully. Although we accepted that the applicants in such cases were vulnerable, we did not think, on balance, that legal aid was required, essentially because the applications, similar to other immigrant applications, were paper-based. We recognised that people might need assistance with obtaining the required documentary evidence, but we considered that such assistance need not be specialist legal assistance funded by legal aid.

> After further consideration, however, we accept that such cases are unusual. There is a real risk that, without legal aid, people will stay trapped in abusive relationships out of fear of jeopardising their immigration status. The type of trauma that they might have suffered will often make it difficult to cope with such applications. We also appreciate that people apply under great pressure of time, and access to a properly designated immigration adviser is a factor. We intend to table a government amendment to bring such cases into scope at a later stage.
>
> (HC Official Report, 19 July 2011, col 245)

The "immigration domestic violence rule" which Mr Djanogly refers to is the special provision in the Immigration Rules which allows a victim of domestic violence who has leave to remain in the UK as the spouse or partner of a British person or someone who is settled in the UK, to apply to stay permanently in the UK even if the marriage has ended (*Statement of Changes in Immigration Rules*, HC 395, session 1993–94, as amended, paragraphs 289A–289C). These provisions do not cover European Economic Area nationals or people who have limited leave as the spouse of a temporary migrant. For more information on this subject, please see the House of Commons Library briefing, *Immigration: Domestic Violence* (5 May 2011, SN04644).

During the report stage debate on 31 October 2011, Caroline Lucas, Leader of the Green Party, argued that amendment 59 was too limited. She tabled amendment 113, which aimed to offer legal aid to a broader group of immigrant victims of domestic violence.

Jonathan Djanogly said that the government were considering the matter, stating: "we are looking at cases of EEA spouses who have suffered dramatic abuse" (ibid, col 689).

Government amendments 59 to 63, which covered this subject, were agreed to without a division. Caroline Lucas did not press her amendment to a division.

2.3.2 Legal Aid for Victims of Domestic Violence

The House divided on two further amendments which focused on legal aid for victims of domestic violence. This has been an issue which has attracted controversy since the first green paper was published on legal aid. The green paper proposed that claimants in cases of domestic violence should remain eligible for legal aid. It also proposed that, while legal aid would not normally be available for ancillary relief and private law family and children proceedings, legal aid should remain available in cases where domestic violence was an important aspect of the case (*Proposals for the Reform of Legal Aid in England and Wales*, 15 November 2010, paragraphs 4.64–4.68). The paper set out certain criteria which would be considered evidence of domestic abuse when applying for legal aid in such cases:

- ancillary relief, or private law children and family proceedings, where the Legal Services Commission is funding ongoing domestic violence (or forced marriage) proceedings brought by the applicant for legal aid, or has funded such proceedings within the last twelve months and an order was made, arising from the same relationship;

- ancillary relief, or private law children and family proceedings, where there are ongoing domestic violence (or forced marriage) proceedings brought by the applicant for legal aid, where the applicant has funded proceedings privately or has acted as a litigant in person, or where there have been

such proceedings in the last twelve months and an order was made, arising from the same relationship;

- ancillary relief, or private law children and family proceedings, where there is a non-molestation order, occupation order, forced marriage protection order or other protective injunction in place against the applicant's ex-partner (or in the case of forced marriage, against any other person); and

- ancillary relief, or private law children and family proceedings, where the applicant's partner has been convicted of a criminal offence concerning violence or abuse towards their family (unless the conviction is spent).

(ibid, paragraph 4.67).

Several commentators suggested that these criteria appeared to imply a too narrow definition of domestic violence. For example, in a Westminster Hall debate on the green paper, Robert Buckland, Conservative MP for South Swindon, said that in his experience of working as a barrister, there was no "unified definition of what is meant by 'domestic violence'":

> I have dealt with domestic violence cases for many years, and they take many forms. It is not just a question of physical violence. Often there is a course of conduct involving a mental process and psychological damage to a partner.
>
> (HC *Hansard*, 14 December 2010, col 201WH)

The Justice Committee also raised this matter in its report on the green paper. The committee questioned whether the government should use domestic violence "as a gateway to legal aid funding", arguing that an alternative means should be found "to focus family law legal aid expenditure on the most deserving cases". However, the committee suggested that "if the government does insist on retaining domestic violence as a criterion for legal aid eligibility it should adopt a definition of domestic abuse which explicitly incorporates non-physical abuse"(*Government's Proposed Reform of Legal Aid*, 30 March 2011, HC 681-I of session 2010–12, paragraph 88).

The government's response to the green paper indicated that they would reconsider the criteria which would be considered evidence of domestic violence:

> Most respondents to the consultation welcomed the proposal to retain legal aid for cases involving domestic violence. But many argued that the criteria were drawn too narrowly. Concerns were also raised that the proposal would lead to false allegations of domestic violence.
>
> ... The government accepts that, to ensure that victims of domestic violence are protected, the criteria for the domestic violence exception originally proposed in the consultation need to be widened, whilst maintaining the requirement for objective evidence of domestic violence. We have therefore decided to accept some additional circumstances as evidence of domestic violence, so that the criteria should target legal aid to genuine cases without providing an incentive for unfounded allegations of domestic violence. As with the original proposals, only one of these criteria would need to be met:
>
> - there are ongoing criminal proceedings for a domestic violence offence by the other party towards the applicant for funding;

- the victim has been referred to a multi-agency risk assessment conference (as a high risk victim of domestic violence) and a plan has been put in place to protect them from violence by the other party; or

- there has been a finding of fact in the family courts of domestic violence by the other party giving rise to the risk of harm to the victim, but the victim has not already been granted legal aid.

(*Reform of Legal Aid in England and Wales: The Government Response*, 21 June 2011, paragraphs 22–23)

However, the government announced that they had decided to remove one of the criteria from the list proposed in the green paper:

> However, the government is concerned that one of the original criteria proposed for the domestic violence exception, where there are ongoing proceedings for a domestic violence order (such as a non-molestation order or an occupation order) or forced marriage protection order, but an order has not yet been made, could lead to false claims of domestic violence for the purpose of securing legal aid. For this reason, the government has decided not to include this criterion in the domestic violence exception.
>
> (ibid, paragraph 24)

The government also indicated that they intended to maintain the 12 month time limit proposed in the green paper:

> These criteria will be subject to the 12 month time limit set out in the consultation paper. This means that legal aid will be available, for example, where there has been a referral to a multi-agency risk assessment conference in the past 12 months, as well as where a protective injunction or other order has been put in place in the past 12 months.
>
> (ibid, paragraph 25)

In his written ministerial statement on the day of the Bill's first reading, Kenneth Clarke said "following careful consideration, today's response makes some significant changes in matters of detail... Following consultation, we are strengthening specific provisions to ensure availability in private family cases for victims of domestic violence" (HC *Hansard*, 21 June 2011, col 12WS) The Bill includes a definition of domestic violence which goes beyond physical abuse to include mental and sexual abuse, neglect, maltreatment and exploitation. For a more detailed account of the debate on this issue prior to the commons second reading, please see the House of Commons Library papers *Legal Aid for Victims of Domestic Violence* (27 January 2011, SN/HA/5839) and *Legal Aid, Sentencing and Punishment of Offenders Bill* (4 July 2011, RP 11/53).

During the second reading debate, several MPs raised the issue of the definition of domestic abuse. Alan Beith commented that he was pleased that the government had responded to the Justice Committee's concerns on this issue (HC *Hansard*, 29 June 2011, col 1003). However, Andy Slaughter, Shadow Justice Minister, argued the definition in the Bill remained too narrow:

> Despite the Lord Chancellor's protestations, the government have not listened to the women's institute or Amnesty on domestic violence. They have not listened to people such as Jeannie Bloomfield, president of the women's institute in Suffolk,

> who survived domestic violence years ago and has become an advocate for those who suffer it today. She wrote to me, fearful for the future. She said that, under the government's definition of domestic violence, she would not have received the legal aid that allowed her and her daughters to escape abuse.
>
> (HC *Hansard*, 29 June 2011, col 1059)

The Public Bill Committee also debated this question. Several MPs suggested that the Bill should include the definition of domestic violence used by the Association of Chief Police Officers, which they felt was more comprehensive. The most recent ACPO guidance document on domestic violence states:

> The shared ACPO, Crown Prosecution Service and government definition of domestic violence is: "any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults, aged 18 and over, who are or have been intimate partners or family members, regardless of gender and sexuality". (Family members are defined as mother, father, son, daughter, brother, sister and grandparents, whether directly related, in-laws or step-family)
>
> (*Investigating Domestic Abuse*, 2008, page 7)

Jonathan Djanogly responded to such concerns in the Public Bill Committee:

> The domestic violence exceptional gateway, as it were, is a difficult balancing act for the government. On one hand, we want genuine victims of domestic violence to receive the benefit of legal aid in cases in which they will face their abuser as the other party; on the other, we heard many concerns during consultation that such proposals might cause a rise in unfounded allegations. We want to guard against that. We need clear, objective evidence of domestic violence to target legal aid on genuine cases in which the victim needs assistance.
>
> (HC Official Report, 6 September 2011, col 358)

He said that the forms of evidence which would be accepted for victims of domestic violence would not be on the face of the Bill, but would be set out in regulations under clause 10 of the Bill. For a summary of discussion of this issue during the committee stage, please see page 11 of the House of Commons Library paper *Legal Aid, Sentencing and Punishment of Offenders Bill: Committee Stage Report* (20 October 2011, RP 11/70).

During the first day of the report stage, the House divided on two amendments to the Bill's provision on legal aid for victims of domestic violence. Elfyn Llwyd, Plaid Cymru's Westminster Group Leader and Justice spokesman, spoke to amendment 92, which would have broadened the definition of domestic violence by removing the words "physical or mental abuse" and replacing them with "any incident of threatening behaviour, violence or abuse (whether physical, mental, financial or emotional)" (HC *Hansard*, 31 October 2011, col 663). He said he sought to bring the definition closer to the ACPO definition:

> In committee, the Minister claimed repeatedly that if we widened the definition of domestic violence, we would have to rely on self-reporting. I do not quite understand that correlation, but never mind. That point was made ad nauseum. I fear that the government do not realise the gravity of the situation. Considering the criminal under-reporting of domestic abuse, it is astonishing to think that the

> government are giving so much weight to allegations of misreporting. Women will, on average, experience 35 incidents of abuse before reporting it to the police, and we should not treat their witness statements lightly.
>
> (ibid, col 665)

Jonathan Djanogly had suggested, in his opening remarks, that the amendment was unnecessary, because:

> The definition in the Bill embraces mental as well as physical abuse, neglect, maltreatment and exploitation. Those references would cover, for example, abusive behaviour relating to the family finances. The definition in the Bill would not exclude from scope any of the types of abuse covered by the definition used by the Association of Chief Police Officers.
>
> (ibid, col 640)

He added that, since the regulations on forms of evidence which would be accepted for victims of violence would be set out in secondary legislation, the definition did not warrant so much discussion:

> The regulations will be produced once the Bill comes into law. Those criteria will set out the specific requirements as to evidence of the fact of abuse or the risk of abuse. The definition of abuse itself is therefore only a preliminary part of the picture. In that sense, it might be argued that it makes little difference whether definition takes one form or another arguably rather similar form. However, we are still not convinced that the definition should be changed in the way suggested in the amendments.
>
> (ibid, col 640)

Amendment 92 was defeated on a division (Ayes 237; Noes 305).

Andy Slaughter moved amendment 74, in order to increase the forms of evidence which could be given to prove that somebody was a victim of domestic violence. He proposed that, alongside the forms of evidence listed in the Bill, other items should be accepted such as a relevant court conviction or police caution; a relevant court order; a finding of fact in the family courts of domestic violence by the other party; an undertaking given to a court that the perpetrator of the abuse will not approach the applicant who is the victim of the abuse; a medical report from a doctor; or a letter from a social service department, domestic violence support organisation, counsellor, midwife, or school (ibid, cols 655–6). He added that "contrary to the government's guidance, the amendment would not limit the time since which such evidence was generated to a year".

Several MPs spoke in favour of the amendment. Particular interest centred around the use of "undertakings" as evidence. The Justice Committee recommended in their report on the legal aid green paper that undertakings should be admissible as evidence. The Ministry of Justice had responded to say that it did not consider them a reliable form of evidence:

> We have considered whether undertakings given during the course of domestic violence proceedings should be accepted as evidence of domestic violence. An individual accused of abuse can give an undertaking without admitting that domestic violence has taken place, and undertakings do not involve a finding of fact by the courts. This means that undertakings may be given in cases where

> domestic violence has not taken place. Undertakings are therefore not in themselves sufficiently clear, objective evidence of domestic violence and, for that reason, we have decided that they should not be accepted for this purpose.
>
> (*Government Response to the Justice Committee's Third Report of Session 2010/11: The Government's Proposed Reform of Legal Aid*, 5 April 2011, Cm 8111, paragraph 43)

However, during the report stage debate MPs such as Helen Grant (Conservative MP for Maidstone and the Weald) suggested that the government should reconsider their position:

> An undertaking is a legally binding document. It is signed by the parties and usually sealed by the court. It is a solemn promise that is given to the judge. If it is breached, the person who breaches the order can commit on it, so it is specific and clear, and eminently acceptable in my opinion to be part of the criteria. Having been a domestic violence and family lawyer for the past 23 years, I am worried that the exclusion of undertakings from the criteria will create a perverse incentive not to dispose of a matter at the earliest opportunity, but to continue with the litigation from fear that further problems may come out of the woodwork, which, as family lawyers, we believe are coming in the future.
>
> (HC *Hansard*, 31 October, col 655)

Referring to the position of the Law Society (see Catherine Baksi in the *Law Society Gazette*, 'Domestic violence rules "boost cost of disputes"', 21 July 2011), Andy Slaughter said:

> I hope that the Minister has read the Law Society's comments—he may be familiar with practice in the family courts—that many more matters are dealt with by way of undertaking than by way of trial process. Excluding undertakings from his criteria makes it not only logistically more difficult, but almost certain that the trial process, with all the inherent difficulties of inflaming the situation, will be the norm rather than the exception.
>
> (HC *Hansard*, 31 October, col 655)

Jonathan Djanogly said that he would consider the admissibility of undertakings again:

> The government's current position is that a person can give an undertaking, for instance not to be violent towards family members, without admitting to domestic violence, meaning that undertakings may be given in cases where domestic violence has not taken place. We do not think that undertakings would provide sufficiently clear objective evidence that domestic violence has occurred, but we shall look into that further.
>
> (ibid, col 687)

On the other forms of evidence proposed by the amendment, Mr Djanogly said:

> Accepting police cautions would be inconsistent with our proposal to include in the criteria "criminal convictions unless that conviction is spent", as simple cautions are not convictions and become spent immediately. A harassment warning is notice that a complaint has been received by the police; it is not considered to be proof that an offence has occurred, and police are not obliged to

> investigate the allegation. We therefore do not consider that harassment warnings would provide sufficiently clear objective evidence that domestic violence has occurred.
>
> (ibid, col 687)

He went on to say that evidence from medical professionals might be problematic because:

> We are not convinced that they would be best placed to assess whether domestic violence has occurred. They might witness injuries, but it might be difficult for them to determine how they had occurred, and again there would be strong elements of self-reporting, rather than objective evidence. Evidence from medical professionals could, however, depending on the circumstances and on a judge's assessment, lead in the family courts to a finding of fact that domestic violence has occurred, and that would trigger funding.
>
> (ibid, col 688)

He reiterated the government's intention to set out regulations on this subject in secondary legislation (ibid, col 687). Amendment 74 was defeated on a division (Ayes 232; Noes 305).

2.3.3 Legal Aid in Family Reunion Immigration Cases

Simon Hughes asked the Minister to consider extending legal aid in complex family reunion immigration cases:

> My office handles a lot of asylum and immigration cases, and of course some of them are entirely straightforward, as the Minister has suggested. Does he accept, however, that some family reunion cases are definitely not straightforward? They might involve a child being in a different country from the mother, or someone not having a passport. There could also be real issues involved in proving the relationship. Will he look again at the opportunity for some cases—I am not arguing for the generality—to be eligible for legal assistance?
>
> (HC *Hansard*, 31 October 2011, col 651)

Jonathan Djanogly answered that he would look at this matter again:

> I certainly agree with my right hon. Friend that some immigration cases are complex, and I think that the point that he has raised is one for me to look at after today. I will do so, and I will come back to him on that.
>
> (ibid)

2.3.4 Legal Aid in Cases of Clinical Negligence

The House also divided on amendment 142 which sought to bring cases of clinical negligence back into the scope of legal aid. This amendment was tabled by Karl Turner, Labour MP for Kingston upon Hull East, along with Andy Slaughter and Elfyn Llwyd.

The Bill makes most cases of clinical negligence ineligible for legal aid, apart from cases which may be eligible for the "exceptional funding scheme" which applies to cases in which a denial of legal aid could be considered a contravention of the European

Convention on Human Rights. However, the Bill also takes forward proposals contained in the green paper on civil litigation which remove the recoverability of conditional fee arrangements (CFA) success fees and after the event (ATE) insurance premiums from the losing party in most cases. The government response to the consultation on the green paper indicated that the government would make one change to Lord Justice Jackson's key recommendations: ATE insurance premiums to cover the cost of expert reports in clinical negligence cases would be recoverable (*Reforming Civil Litigation Funding and Costs in England and Wales: Implementation of Lord Justice Jackson's Recommendations*, 29 March 2011, paragraph 6).

The Public Bill Committee discussed the issue of clinical negligence at length. Andy Slaughter spoke to an amendment which would have put clinical negligence back into scope for legal aid, arguing that:

> Legal aid for clinical negligence cases is the cheapest route for both litigating parties when looking at the alternatives. Taking clinical negligence out of scope for legal aid would cost the state more overall if access to justice remains possible for all deserving claimants. Most costs will simply be transferred from the Ministry of Justice to the NHS, but the Ministry of Justice's impact statement takes no account whatever of that.
>
> (HC Official Record, 6 September 2011, col 334)

However, Jonathan Djanogly pointed out that some clinical negligence cases would continue to receive legal aid funding through the exceptional funding scheme and denied that it would be cheaper to continue to provide legal aid for cases of clinical negligence (ibid, col 339).

During the report stage Karl Turner spoke to amendment 142:

> Victims of clinical negligence will suffer a double hit in the Bill: not only will they be unable to gain access to legal aid, but they will suffer the prospect of paying potentially crippling legal fees from their hard-fought-for damages. The government tell us, "That's not a problem, because conditional fee arrangements offer a safety net to victims of criminal negligence". I respectfully suggest that that is not the position.
>
> If CFAs were being left with their integrity intact, as the previous government had intended, I might have had some sympathy with the government's argument. CFAs were, if I am right, introduced by the previous government to ensure that people who did not qualify for legal aid had an opportunity to instruct solicitors on a no win, no fee basis. Solicitors often take on complex and risky cases, knowing that they can claim costs and a success fee from the losing party, but proposed changes will result in victims who win their case paying costly legal fees out of their damages. That cannot be right. Damages are not, as the government would have us believe, some sort of lottery win. They are paid for damage done to the individual. It is about putting a person who has suffered a loss back into the position they were in before the injury occurred.
>
> (HC *Hansard*, 31 October 2011, col 695)

Several Members sought clarification on the "exceptional funding scheme". Tom Brake asked the Minister to confirm that "all very serious cases will be addressed through the exceptional funding route" (ibid, col 695), while Alan Beith suggested that:

> Members of this House and those in the other place need to be assured that this combination of measures—the willingness of solicitors and counsel to undertake cases as an appreciation of their significance and the public good, the availability of the government's exceptional provisions for some types of serious case and what remains of the CFA system—will between them cater for some of these very serious cases. This House and the other place will need to be given some assurance, otherwise I strongly suspect that when the Bill comes back to us it will have been significantly amended.
>
> (ibid, col 702)

Jonathan Djanogly sought to reassure MPs on this question:

> We recognise that many clinical negligence cases involve serious issues, but for most a conditional fee agreement will be a suitable alternative to public funding. According to NHS figures for 2010–11, 82 percent of clinical negligence cases, where the funding method is known, were funded by means other than legal aid. That is the current position. We therefore consider that legal aid is not justified in such cases, and that our limited funding would be better targeted at other priority areas, such as those involving physical safety, liberty and homelessness. However, we have proposed an exceptional funding scheme to ensure that some individual clinical negligence cases will continue to receive legal aid when failure to do so would be likely to result in a breach of the individual's right to legal aid under the Human Rights Act 1998 or European Union law.
>
> In considering whether exceptional funding should be granted, we will take into account the client's ability to present their own case, the complexity of the matter, the importance of the issues at stake and all other relevant circumstances.
>
> (ibid, col 709)

Amendment 142 was defeated on a division (Ayes 229; Noes 300).

2.3.5 Legal Aid for Claimants in Complex Cases

The discussion on eligibility for legal aid was curtailed on 31 October 2011 by the programme motion. Discussion on eligibility for legal aid resumed on 2 November, when the Opposition proposed a new clause which would have made legal aid available in "complex cases". Yvonne Fovargue, Labour MP for Makerfield, tabled new clause 17, to allow the Director of Legal Aid Casework to extend legal aid to cases in which an individual had "complex, interconnected needs in relation to which the individual requires comprehensive civil legal services", but where some of these legal services were no longer eligible for legal aid (HC *Hansard*, 2 November 2011, col 1007). Yvonne Fovargue suggested:

> It is well known that many problems in social welfare law are interconnected and that clients invariably approach agencies with clusters of problems, which is why the social welfare law cluster of housing, benefit, debt and employment was introduced in the first place... My new clause would allow agencies to deal with all the issues. They would not have to take a piecemeal approach, but could make difficult decisions on which issues are legally aidable and which are not, so that

> the individual would not be left to struggle with the complex non-legally aidable issues alone.
>
> (ibid, col 962)

Stephen Lloyd, Liberal Democrat MP for Eastbourne and Chairman of the All Party Group on Citizens Advice, said:

> At a time when we are making radical changes to the welfare system by introducing universal credit, replacing disability living allowance and making substantial changes to employment and support allowance, it is unwise to withdraw the support for people who are challenging bad decisions. As we all know, in the process of reform, mistakes can be made. As I am sure the House is aware, the introduction of the Employment and Support Allowance has generated a significant volume of appeals and 39 percent of Employment and Support Allowance appeals are still being found in favour of the appellant.
>
> (ibid, cols 971–2)

Keith Vaz, Labour MP and Chair of the Home Affairs Committee, suggested that:

> One of the problems with the reduction in legal aid is that a whole generation of lawyers with expertise in welfare, immigration and education law will disappear. The only type of lawyers churned out of law colleges will be those who can do corporate litigation.
>
> (ibid, col 973)

Jonathan Djanogly said that he was opposed to the new clause because it "would widen the scope of legal aid and increase its cost at a time when we are seeking to focus funding on the highest priority cases" (ibid, col 1003). Mr Djanogly said that paragraph 39 of Schedule 1 of the Bill ensured that there would be provision for legal aid in "mixed cases, where the case is partly in and partly out of scope" (ibid, col 1003).

However, he acknowledged that MPs had concerns about social welfare:

> I appreciate that various right hon and hon members have used the new clause as a hook to debate admittedly important issues on the scope of social welfare law and legal aid... The government have already made a number of changes to our proposals in the area of social welfare law following consultation, which shows that we are aware of concerns and have been listening.
>
> (ibid, col 1003)

He said that "as this Bill heads to the other place, we will continue to listen and engage on this important issue" (ibid, col 1003). New Clause 17 was defeated on a division (Ayes 238, Noes 301).

2.4 Indeterminate Sentences

On the second day of the report stage Kenneth Clarke introduced several new clauses and new Schedules to remove the existing arrangements for indeterminate sentences and introduce alternative determinate sentences. New clauses 30 to 34 and new Schedules 4 to 7 relate to sentences of imprisonment or detention for public protection.

In the Bill as amended (HL Bill 109 of 2010–12), new clauses 30 to 34 have become clauses 113 to 117, and new Schedules 4 to 7 have become Schedules 16 to 19. The government released an impact assessment to accompany their proposed changes: *Review of Indeterminate Sentences for Public Protection (IPPs): Equality Impact Assessment* (Ministry of Justice, November 2011).

Sentences of imprisonment for public protection, or "IPP sentences" are sentences which are given to a person who has committed a specified violent or sexual offence which is judged not to merit a life sentence. Once they have served their tariff the prisoner must satisfy the Parole Board that they no longer pose a risk to society before they can be released. For more information please see House of Commons Library paper *Sentences of Imprisonment for Public Protection* (19 October 2011, SN/HA/6086).

The government had consulted on a new approach to IPP sentences as part of the consultation on sentencing reform. The green paper, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders* (7 December 2010), stated:

> Public safety remains our primary concern and indeterminate sentences will always be appropriate for the most serious crimes. The government has no intention of changing life sentences. However, we believe that indeterminate sentences of imprisonment for public protection should only be available for the most dangerous offenders.
>
> (paragraph 183)

The Legal Aid, Sentencing and Punishment of Offenders Bill did not contain provisions on the IPP when it was introduced in the House of Commons on 21 June 2011. However, in a press conference which the Prime Minister gave on the same day, he explained that the government would be conducting a review of IPP sentences, and the government response to the sentencing green paper, also published on 21 June, made the following comments:

> We are conducting the IPP review with a view to replacing the current IPP regime with a much tougher determinate sentencing framework which includes:
>
> - an increased number of serious offenders would receive life sentences—with mandatory life sentences for the most serious repeat offenders;
> - it would be less open to challenge in the courts than the IPP system;
> - serious sexual and violent offenders would spend at least two-thirds of their sentence in prison, where they can't pose a risk to the public, rather than being automatically released halfway through their sentence—and they would only ever be released before the end of their sentence if the Parole Board are satisfied that it is safe to do so; and
> - there would be compulsory programmes for dangerous offenders while they are in prison, to make them change their ways and not just commit more crimes when they are released.
>
> We will also review the Parole Board arrangements for the rehabilitation of those with IPPs, to ensure that real work is done to reform offenders while in prison.
>
> (*Breaking the Cycle: Government Response*, 21 June 2011, page 11)

During the second reading debate on the Legal Aid, Sentencing and Punishment of Offenders Bill, there was some debate on the government's proposals on IPPs. Sadiq Khan said that Labour opposed the abolition of IPPs:

> Labour's position on IPPs is clear: offenders must be punished and reformed. They must not pose a risk to the public and proper due process must be followed before their release, supported by courses and programmes and an effectively resourced Parole Board, to allow rehabilitation to take place. We will not accept plans that water down the protection given to the public by IPPs. We believe that there is a continuing role for IPPs. They should be reserved for very serious and violent offenders—those who are the biggest risk to the public—as was their original purpose.
>
> (HC *Hansard*, 29 June 2011, col 999)

Mr Khan also protested that the changes were not introduced in time for the second reading. Jonathan Djanogly responded that the government would be reviewing IPP sentences with a view to replacing them with "a clear, tough, predictable system of long, determinate sentences", saying that the government would complete its review by the autumn and would announce their proposals then (ibid, col 1062).

On 26 October 2011, the Ministry of Justice announced that the government had completed their review of IPP sentences. The government press release stated that the IPP regime would be replaced by:

- Mandatory life sentences—a "two strikes" policy so that a mandatory life sentence will be given to anyone convicted of a second very serious sexual or violent crime. This will mean that mandatory life sentences can be given for crimes other than murder;

- Extending the category of the most serious sexual and violent offences to include child sex offences, terrorism offences and 'causing or allowing the death of a child' so that the new provisions will apply to them;

- The extended determinate sentence—all dangerous criminals convicted of serious sexual and violent crimes will be imprisoned for at least two thirds of their sentence, marking an end to the regime which allowed the release of these offenders at the half-way point. Offenders convicted of the most serious sexual and violent crimes in this category will not be released before the end of their sentence without Parole Board approval;

- Extended licence period—criminals who complete an EDS must then serve extended licence periods where they will be closely monitored and returned to prison if necessary. The courts have the power to give up to an extra five years of licence for violent offenders and eight years for sexual offenders on top of their prison sentence; and

- Mandatory custodial sentence for aggravated knife possession—16 and 17 years olds—but not younger children—convicted of using a knife or offensive weapon to threaten and endanger will face a mandatory four

> month detention and training order. The government has already announced proposals for a mandatory six month sentence for adults convicted of the same offence.
>
> ('Clarke: Tough Intelligent Sentences', Ministry of Justice website, 26 October 2011)

The press release noted that "these changes will not apply retrospectively to current prisoners: those on existing IPPs will continue to be assessed on a case by case basis by the Parole Board".

At report stage, Mr Clarke introduced the new clauses and Schedules relating to the abolition of IPP sentences. He said:

> The new clauses and Schedules relate to the abolition of sentences of imprisonment for public protection, known as IPP sentences. They were introduced in the Criminal Justice Act 2003 and have been in operation since 2005. Since their introduction, there have been numerous problems with them. The government's policy is that they must be replaced, and we have brought forward proposals to do so. My proposals to replace them with tough determinate sentences have inevitably aroused criticism from both the right and the left—the story of my life, as I complained yesterday. We are replacing a regime that did not work as it was intended to with one that gives the public the fullest possible protection from serious, violent and sexual crime.
>
> The sentences in their present form are unclear, inconsistent and have been used far more than was ever intended or contemplated by either the government or parliament when the sentence was first created. The right hon Member for Sheffield, Brightside and Hillsborough (Mr Blunkett), who is in his place, was very much involved in their introduction. I have no idea exactly what his view is now, but I am sure that he never imagined that thousands of people would be detained in prison indefinitely under these sentences. The debates at the time contemplated only a few hundred people.
>
> (HC *Hansard*, 1 November 2011, col 785)

David Blunkett, Labour MP for Sheffield, Brightside and Hillsborough, and former Home Secretary, responded:

> There is no difference between those of us who accept that the original intention has not been followed through and those who think that the changes that my right hon Friend the Member for Blackburn (Mr Straw) introduced have not fully bitten as intended, but the propositions before us this afternoon do not meet the specific need that was identified back in the early 2000s by my right hon Friend the Member for Blackburn, and which I carried into being.
>
> (ibid, col 785)

He asked the Minister to assure the House that "reconsideration of the detail will take place in the House of Lords".

Mr Clarke argued that IPP sentences were unjust:

> What is wrong is that indeterminate sentences are unfair between prisoner and prisoner. The Parole Board has been given the task of trying to see whether a

> prisoner could prove that he is no longer a risk to the public. It is almost impossible for the prisoner to prove that, so it is something of a lottery and hardly any are released.
>
> (ibid, col 787)

He went on to describe the new regime:

> For the very serious offenders, the ones who are among the worst of the likely inhabitants of Her Majesty's prisons, there will be a new mandatory life sentence. That will apply in cases in which the offender has committed, on two consecutive occasions, two very serious sexual or violent offences, when each of which has been serious enough to merit a determinate sentence of 10 years or more...
>
> The most important sentence for serious offenders will be discretionary life—the ordinary life sentence—which is already the maximum sentence for the most serious crimes in the calendar... My new clauses make no changes to discretionary life. Both I and those who advise me anticipate that once IPP sentences are no longer available, much more use will again be made of discretionary life sentences. The worst people will go back to having life sentences, which we know works perfectly effectively and well. They will be under licence for life if they are ever released, before which there will be a Parole Board process.
>
> (ibid, cols 788–9)

Jack Straw, the Labour MP for Blackburn and former Lord Chancellor, asked the Minister:

> Will the right hon and learned Gentleman explain the practical difference between an offender who is given an IPP for, say, a minimum tariff of five years, who will then be released by the Parole Board on proof of meeting certain conditions, and someone who is given a discretionary life sentence with a tariff of five years who is released by the Parole Board on exactly the same conditions? What is the difference?
>
> (ibid, col 789)

Mr Clarke responded that "the right hon Gentleman makes my point":

> What is wrong with saying that the courts should use the ordinary life sentence? They will use a life sentence when they judge that a case is so serious, and when future risk is so high, that it is the only proper sentence.
>
> For other offenders, we are introducing a new extended determinate sentence. The offender will receive a custodial sentence plus a further long extended period of licence set by the court. Those will be quite long determinate sentences, and the offenders who receive them will serve at least two thirds of them. In serious cases, offenders must apply to the Parole Board for release, and the board may keep them inside until the end of the determinate sentence.
>
> (ibid)

Sadiq Khan suggested that the IPP sentence needed reform but should not be abolished:

> I am on record as saying that I want IPP sentences to be reformed so that they work as originally envisaged. I am happy to work on a cross-party basis to achieve that, so that IPP sentences protect the public from the most serious violent reoffenders. What I am not willing to do is play hard and fast with public safety.
>
> (ibid, col 797)

Mr Khan urged the government to look to experience in Northern Ireland:

> If the government think that further reform is required, they can take many positive lessons from Northern Ireland's successful introduction of indeterminate custodial sentences.
>
> (ibid, col 796)

Mr Khan went on to say that the proposed approach to prisoners on existing IPP sentences was problematic:

> We need to look at the backlog of prisoners who have served their minimum tariff but are still in prison. That involves addressing the shortage of suitable courses and programmes to support those on indeterminate sentences. This problem has been exacerbated by the cut of about 25 percent in the Justice budget.
>
> (ibid, col 795)

Alan Beith welcomed the government's proposals, describing IPP sentences as "a blot on the system". However, he also questioned the approach to prisoners on existing IPP sentences which was set out in new clause 34 (new clause 34 is now clause 117 of HL Bill 109):

> I think that it is well intentioned in that it is an attempt to deal with existing indeterminate public protection prisoners, but I am bound to question it because it gives to the Executive the power to direct the Parole Board on what should be done with an individual. That is a direction to a court—there have been court cases that have ruled that the Parole Board must be regarded as a court.
>
> (ibid, col 801)

Mr Clarke said that he would look again at new clause 34:

> The new clause was tabled at my request so that we can contemplate changing the test for release by statutory instrument. I shall explore whether it gives rise to the problems described. I certainly have no intention at the moment of intervening in individual cases and making judgments about IPP prisoners.
>
> (ibid, col 805)

New clause 30 was added to the Bill on a division (Ayes 311; Noes 235). New clauses 31 to 34 and new Schedules 4 to 7 were added to the Bill without a division. In the Bill as amended (HL Bill 109 of 2010–12), new clauses 30 to 34 have become clauses 113 to 117, and new Schedules 4 to 7 have become Schedules 16 to 19.

2.5 Referral Fees

As Kenneth Clarke had announced that they would, in his motion of 31 October 2011, on the second day of the Report Stage, 1 November 2011, the government introduced new clauses on referral fees, self-defence and squatting. The government tabled a series of new clauses, numbers 18 to 22, which would make it an offence for a "regulated person" to accept work on the basis of a referral fee, to pay or to receive referral fees. In the Bill as amended (HL Bill 109 of 2010–12), new clauses 18 to 22 have become clauses 54 to 58. Jonathan Djanogly announced that:

> New clauses 18 to 22 seek to prohibit the payment and receipt of referral fees in personal injury cases by regulated persons, namely solicitors, barristers, claim management companies and insurers.
>
> (HC *Hansard*, 1 November 2011, col 824)

Referral fees have been defined by the Legal Services Board as "any payment made for the referral or introduction of any client or potential client" (*Referral Fees, Referral Arrangements and Fee Sharing*, Legal Services Board, September 2010, page 16). For more information on referral fees, please see the House of Commons Library paper, *Referral Fees in Personal Injury Claims* (3 November 2011, SN06015).

In his *Review of Civil Litigation Costs: Final Report* (December 2009), Lord Justice Jackson had recommended that referral fees should be banned in personal injury cases. The LSB began a review of referral fees in November 2009. In September 2010, the LSB published proposals for consultation, *Referral Fees, Referral Arrangements and Fee Sharing*. On 27 May 2011, the LSB published a response to the consultation, *Referral Fees, Referral Arrangements and Fee Sharing Decision Document*. The LSB argued that there should not be an outright ban, but recommended increased transparency.

In June 2011, Jack Straw wrote an article which called for Lord Justice Jackson's recommendation on referral fees to be implemented ('"Dirty secret" that drives up motor insurance; companies are selling drivers' details to claims firms exploiting the no-win, no-fee system', *The Times*, 27 June 2011). In September 2011, Jack Straw introduced a ten minute rule Bill, the Motor Insurance Regulation Bill, which proposed that "it shall be unlawful for any person to solicit, offer or pay any referral fee relating to a personal injury road traffic claim, and no such fee shall be recoverable as costs of any legal advice, assistance or actions" (HC *Hansard*, 13 September 2011, cols 896–8).

The government's consultation paper on Lord Jackson's reforms stated that the government would await the outcome of the LSB review before introducing any proposals on referral fees (*Proposals for Reform of Civil Litigation Funding and Costs in England and Wales: Implementation of Lord Justice Jackson's Recommendations*, 15 November 2010, paragraph 38). However, in September 2011, Jonathan Djanogly issued a written ministerial statement which announced that referral fees in personal injury cases would be banned (HC *Hansard*, 9 September 2011, col 32WS). In a press release published in October 2011, Kenneth Clarke announced that he would be tabling amendments to the Legal Aid, Sentencing and Punishment of Offenders Bill to ban referral fees in personal injury claims ('Better Protection from Intruders and Excessive Compensation Costs', Ministry of Justice website, 26 October 2011).

Introducing new clause 18, Jonathan Djanogly said:

> I pay tribute at the outset to the work of the right hon. Member for Blackburn (Mr Straw) in pursuing the case for a ban on referral fees. I know that there are some

> differences between us about the detail of how we should implement the ban—we will come to his amendments in due course—but those differences of detail should not obscure our agreement in principle on tackling this important issue.
>
> (HC *Hansard*, 1 November 2011, col 824)

Mr Djanogly went on to say:

> I strongly believe that the current arrangements under which lawyers and others are able to pay and receive fees for referring work have led to both higher costs and the growth of an industry that pursues claimants for profit. By introducing the new clause, the government are taking decisive and much needed action to remove these incentives.
>
> (ibid)

He explained that contravention of the new clause would constitute a regulatory offence:

> The new clause creates a regulatory offence for any breach of the prohibition. It will be for the appropriate regulators, for example the Law Society, the Financial Services Authority or the claims management regulator, to enforce the prohibition. The regulators will also be responsible for taking appropriate action against regulated persons for any breaches.
>
> (ibid)

Jack Straw moved amendment (e) to new clause 18, which would have made a breach of the rules on referral fees a criminal offence. Mr Djanogly argued this was unnecessary:

> Creating a criminal offence would be a very blunt instrument in this case. One would have to prove beyond reasonable doubt that consideration had changed hands for the referral of a potential claimant, but the grounds for determining whether something was or was not a referral fee could be blurred. It would be very difficult to convict in many cases on the basis of the complexity of those arrangements. That is why we consider a regulatory offence to be more appropriate, whereby the principle of what is happening can be looked at by the regulator and a view can be taken.
>
> (ibid, col 825)

Jack Straw spoke to his amendment, saying:

> I am glad that the Secretary of State proposes to make greater use of the regulatory authorities, and I would not for a moment suggest that that is unnecessary, because it is very necessary. However—this is where, with respect, I found his argument least convincing—there are many other areas of regulation, including, for example, of financial institutions, when conduct that is in clear breach of regulations leads to both a fine or penalty by civil regulatory authorities and a criminal offence. That is particularly true given the vicarious liability requirements imposed by section 7 and others of the Bribery Act 2011.
>
> (ibid, col 833)

Alan Beith responded to the Minister's comments to say that he supported banning referral fees but questioned whether the regulatory offence would be a sufficient deterrent:

> As my hon Friend has indicated, I strongly support the action he is taking, but is it not the case that in many of those circumstances a criminal offence may well have been committed by way of a breach of the Data Protection Act 1998? The problem then is that custodial sentences are not available for someone who is doing that on a large scale and making a great deal of money by releasing personal information and committing a criminal offence.
>
> (ibid, col 825)

He also said:

> I hope that there is a clear intention on the government's part, probably involving consultation, to move on to all the sectors in which referral fees have the potential to distort or damage competition or to undermine the position of the consumer. I would like a clear indication that the government are going to examine a number of other areas.
>
> (HC *Hansard*, 1 November 2011, col 840)

This reflects the views expressed by the Justice Committee, of which Alan Beith is Chair, in their report: *Referral Fees and the Theft of Personal Data: Evidence from the Information Commissioner*. (Justice Committee, 27 October 2011, HC 1473, session 2010–12, page 3)

Jonathan Djanogly remarked that the question of breaches of the Data Protection Act 1998 was "not one that is covered by the Bill" (HC *Hansard*, 1 November 2011, col 825). However he acknowledged Mr Beith's concerns, and said that the government would look further at the matter:

> The government are keeping the question of whether to introduce custodial penalties for section 55 offences under review, and we will respond to the Justice Committee's report in due course.
>
> (ibid, col 842)

He said that the government had "no current plans" to extend the scope of the Bill beyond personal injury claims, but added that "this is provided for in the Bill and might be relevant in due course" (ibid, col 843). New clause 18 was added to the Bill without a division, while Jack Straw's amendment was defeated on a division (Ayes 208; Noes 302). New clauses 19 to 22 relate to referral fees and were all added to the Bill without a division. In the Bill as amended (HL Bill 109 of 2010–12), new clauses 18 to 22 have become clauses 54 to 58.

2.6 Self-Defence

The government introduced new clause 27 in order to clarify the law on self-defence. In the Bill as amended (HL Bill 109 of 2010–12), new clause 27 has become clause 131. The government had indicated in the Coalition Agreement that they intended to "ensure that people have the protection that they need when they defend themselves against intruders" (*The Coalition: Our Programme for Government*, Cabinet Office, 20 May 2010). On 21 June 2011, the day on which the Legal Aid, Sentencing and Punishment of

Offenders Bill had its first reading in the House of Commons, the Prime Minister gave a press conference in which he said:

> The public have rightly been outraged by some prosecutions of home owners defending their property from criminals. So we'll put beyond doubt that home owners and small shop keepers who use reasonable force to defend themselves or their properties will not be prosecuted.
>
> ('Press Conference given by Prime Minister David Cameron on Sentencing Reforms', Number 10 website, 21 June 2011)

The Legal Aid, Sentencing and Punishment of Offenders Bill did not contain provisions on self-defence when it was introduced on 21 June 2011. However, in an oral statement which he made on the same day, Kenneth Clarke announced that the government would "bring forward legislation to clarify the law on self-defence". A week later he confirmed that this would be achieved by amending the Legal Aid, Sentencing and Punishment of Offenders Bill (HC *Hansard*, 29 June 2011, col 750). For more information about the right to self-defence, please see the House of Commons Library paper *Householders and the Law of Self-Defence* (19 October 2011, SN02959).

Introducing new clause 27 at report stage, Crispin Blunt, Parliamentary Under-Secretary of State for Justice, said:

> Being confronted by an assailant in one's home, on the street or anywhere else can be a terrifying prospect. It is essential that the law in this area is clear, so that people who use reasonable force to defend themselves or to protect their properties can be confident that the law is on their side.
>
> (HC *Hansard*, 1 November 2011, col 857)

Several MPs suggested that the new clause was unnecessary, since provision for self-defence already existed under the law. Elfyn Llwyd asked:

> Will the Minister advise the House how the provisions change the common law doctrine and principle of a person being able to protect his or her property using force and the doctrine of self-defence, where reasonable force is used to defend oneself?
>
> (ibid)

Sadiq Khan said that "it was the previous government, through section 76 of the Criminal Justice and Immigration Act 2008, who placed the common law of self-defence into statute", and suggested "it is widely accepted by those at the coal face that the law on self-defence works pretty well and it is unclear in many quarters why the law would need strengthening" (ibid, cols 858–9). However, he indicated that the Opposition would not oppose the new clause.

Mr Blunt said that the new clause was necessary to clarify that existing provisions on self-defence applied to property, arguing this would reassure homeowners:

> The new clause will amend section 76 of the Criminal Justice and Immigration Act 2008 to make it clear that a person can use reasonable force to defend property in addition to defending themselves, other people or preventing crime...

> The home owner will have much greater reassurance about exercising their rights.
>
> (ibid, cols 857 and 864)

New clause 27 was added to the Bill without a division. In the Bill as amended (HL Bill 109 of 2010–12), new clause 27 has become clause 131.

2.7 Squatting

The government introduced new clause 26, to make it a criminal offence to squat in a residential building. In the Bill as amended (HL Bill 109 of 2010–12), new clause 26 has become clause 130.

In March 2011 the Housing Minister, Grant Shapps, announced that the government would "look to take steps in the New Year to make squatting a criminal offence" ('Grant Shapps Signals an End to Squatters Rights', Department for Communities and Local Government, 21 March 2011). The Ministry of Justice published a consultation paper, *Options for Dealing with Squatting*, in July 2011. The government published responses on 26 October 2011, *Options for Dealing with Squatting: Government Response*. This paper states:

> Whilst there are civil remedies available to property owners and occupiers under Part 55 of the Civil Procedure Rules, the government is persuaded that, given the level of harm that squatting can cause, it is right that the criminal law should intervene to offer a greater degree of protection.
>
> (*Options for Dealing with Squatting: Government Response*, Ministry of Justice, 26 October 2011, page 36)

The government released an impact assessment on the proposed criminalisation of squatting, *Options for Dealing with Squatting: Impact Assessment* (Ministry of Justice, 26 October 2011). For more information about this subject, please see the House of Commons Library paper *Squatting in Residential Premises* (28 October 2011, SN00355).

Introducing new clause 26 at report stage, Crispin Blunt said:

> The government are very concerned about the harm that squatters can cause. Residential and non-residential property owners have contacted Ministers repeatedly about the appalling impact that squatting can have on their homes and businesses.
>
> (HC *Hansard*, 1 November 2011, col 865)

Mr Blunt explained that:

> The current law already offers some protection to both non-residential and residential property owners. Squatters may be guilty, in certain circumstances, of offences such as criminal damage and burglary. There is also an offence under section 7 of the Criminal Law Act 1977 that protects certain residential property owners. It applies when a trespasser fails to leave residential premises on being required to do so by or on behalf of a "displaced residential occupier" or a "protected intending occupier". This means that people who have effectively been

> made homeless by squatters can ask the trespasser to leave, and if the trespasser refuses to leave, they can report an offence to the police.
>
> (ibid)

However, he suggested:

> We do not think the existing legal framework goes far enough to tackle the problems I have just described. The offence under section 7 of the 1977 Act does not protect non-residential property owners or many residential property owners, including landlords, local authorities and second home owners, who cannot be classified as displaced residential occupiers or protected intending occupiers.
>
> (ibid)

Several MPs expressed concern about how the new clause would affect vulnerable people. Jeremy Corbyn said:

> The Minister will, like me, have read the documents presented by Crisis, which indicate that 40 percent of homeless people have been squatters at some time, and that because they are often single people, they have great difficulty in getting local authority or housing association accommodation, and there are 700,000 empty properties in the country. What are homeless people supposed to do?
>
> (ibid, col 866)

Mr Blunt responded that the government were "prioritising spending on homelessness prevention, investing £400 million over the next four years" (ibid, col 868).

Andy Slaughter drew a distinction in his speech between "lifestyle squatters" and others:

> There are, for want of a better term, lifestyle squatters—people who are part of the something-for-nothing society. We disagree with that, and we support the criminalisation of their activities. However, many squatters are homeless, and often have severe mental health or addiction problems. It may be a sign of the government's topsy-turvy logic that in one part of the Bill, which we support, they seek to divert those with mental health and drug problems from the criminal justice system, but this part may criminalise those very people.
>
> (ibid, col 870)

Mr Slaughter said that the law should distinguish between these two groups, and hoped that this matter would be considered in the House of Lords (ibid, col 872).

John McDonnell, Labour MP for Hayes and Harlington, tabled amendment (a) to new clause 26 which would mean that squatting was not an offence if the building had been empty for six months or more. He suggested it was right that properties which were standing empty should be used by homeless people:

> I have looked at the statistics cycle over the past five years and found that, on average, between 650,000 and 700,000 residential properties stood empty during that time. Most are private properties, and 300,000 have been empty for more than six months. When there are 40,000 homeless families, 4,000 people sleeping rough in the capital, and 1.7 million households on waiting lists, desperate for decent accommodation, it is immoral that private owners should be

> allowed to let their properties stand empty for so long. My amendment could force those irresponsible owners to bring their properties back into use.
>
> (ibid, col 878)

Simon Hughes suggested that sometimes local communities welcomed the squatting of empty buildings, giving an example:

> The council had determined to knock down a block over the other side of the river—the Pullens estate in my constituency, which is a fantastic old estate—but it was squatted, as were some estates in Surrey Docks. Had that not happened, these places would have been demolished. They were squatted, they were kept, they have been refurbished, and they are now properly let and in use. So this is not nearly as simplistic as it has been made out to be, and often people would rather a property was occupied than sitting empty.
>
> (ibid, col 883)

New clause 26 was added to the Bill on a division (Ayes 283; Noes 13). In the Bill as amended (HL Bill 109 of 2010–12), new clause 26 has become clause 130. John McDonnell's amendment was defeated on a division (Ayes 23; Noes 300).

Tracey Crouch, Conservative MP for Chatham and Aylesford, asked the Minister to consider the issue of squatting in commercial properties (ibid, col 865). Mr Blunt said that, while the government were "not proposing to criminalise such squatting with these measures", they had "not forgotten that the consultation identified the fact that 50 percent of the harm caused by squatters was to the owners of commercial premises" (ibid, col 866), promising to keep this matter "under review" (ibid, col 889).

2.8 Legal Advice in the Police Station

On the third day of the report stage, the Opposition tabled amendment 116, to delete clause 12 from the Bill. It enables people who are held in custody at a police station to obtain legal advice, usually from a solicitor. The Opposition's objection is that, whereas this advice has until now been free, clause 12 could enable the government to introduce means testing of the legal advice which is given in police stations, or to refuse access to this advice on grounds of "the interests of justice".

The *Explanatory Notes* on the Legal Aid, Sentencing and Punishment of Offenders Bill describe how the Director of Legal Aid Casework will have the power to determine whether the individual in custody "qualifies for advice and assistance". The *Explanatory Notes* state that:

> In making a determination, subsection (2) places a duty on the Director to have regard to the interests of justice. Subsection (3) allows the Lord Chancellor to make regulations which would require the Director to apply the provisions about means testing (clause 20) and any other criteria specified in the regulations. Advice and assistance described in clause 12 is not currently means tested under the equivalent provision of the Access to Justice Act 1999, but clause 12 provides the flexibility to make it so in the future if it is considered appropriate.

The "interests of justice" are defined by clause 16(2) of the Bill. It reads:

> In deciding what the interests of justice consist of for the purposes of such a determination, the following factors must be taken into account:

> (a) whether, if any matter arising in the proceedings is decided against the individual, the individual would be likely to lose his or her liberty or livelihood or to suffer serious damage to his or her reputation;
>
> (b) whether the determination of any matter arising in the proceedings may involve consideration of a substantial question of law;
>
> (c) whether the individual may be unable to understand the proceedings or to state his or her own case;
>
> (d) whether the proceedings may involve the tracing, interviewing or expert cross-examination of witnesses on behalf of the individual; and
>
> (e) whether it is in the interests of another person that the individual be represented.
>
> (HC Bill 205 of 2010–2012 (as introduced))

The matter of means testing legal advice in the police station was considered by the Public Bill Committee. Elfyn Llwyd and Karl Turner both tabled amendments to clause 12, suggesting that the clause would undermine the commitment to free and independent legal representation in the Police and Criminal Evidence Act 1984 (HC Official Report, 8 September 2011, cols 430–31). Jonathan Djanogly responded that the government had no immediate plans to introduce means testing, but clause 12 aimed to create flexibility:

> Clause 12 does not require means-testing. Rather it provides for flexibility to make regulations to apply means-testing if it were considered appropriate to do so in future.
>
> (HC Official Report, 8 September 2011, col 436)

For more information on this discussion, please see the House of Commons Library paper, *Legal Aid, Sentencing and Punishment of Offenders Bill: Committee Stage Report* (20 October 2011, RP 11/70).

Jenny Chapman, Labour MP for Darlington, spoke to amendment 116 on 2 November 2011, seeking to remove clause 12 from the Bill:

> Clause 12 would allow the government, based on either a means test or an interest of justice test, to choose not to provide an arrested person with an independent legal adviser. The powers that the government seek to gain were not subject to consultation and have generated significant controversy.
>
> (HC *Hansard*, 2 November 2011, col 999)

Mrs Chapman argued that:

> It is essential for people who are detained in police custody to have access to free, independent legal advice, not only because they are at their most vulnerable and because evidence obtained from people in custody may be inadmissible if they have not had access to independent legal advice, but because the presence of a solicitor makes a significant difference to the fairness of the investigation and the subsequent smooth progress of the case. It would therefore be utterly inappropriate to introduce a merit test that goes beyond the fact of arrest. As for a

> means test, it would in practice deprive many people who failed it of their right to a lawyer, as they would not feel able to afford to pay privately.
>
> (ibid, col 1001)

Mike Crockart, Liberal Democrat MP for Edinburgh West, suggested that the Scottish experience of means testing legal advice in police stations had not been positive:

> The current system of police station advice in Scotland is only a year old, but the Law Society of Scotland has already stated that it is a complex process to operate and to explain to clients, many of whom are in a vulnerable situation.
>
> The experience north of the border also shows that the provision of adequate verification undoubtedly lengthens the suspect's time in a police station and that the solicitor often has no evidential proof that the client is eligible or of what their contribution should be. Solicitors also find that the prospects of claiming the contribution from the client are limited when the detention ends without criminal charges. Consequently, in Scotland in the past year, uptake of advice in police stations has fallen to around 25 percent of cases—roughly half that in England and Wales.
>
> (ibid, col 961)

Simon Reevell, Conservative MP for Dewsbury, argued that conducting a means test would waste police time:

> The accused will not have details of his means on him. Surely we are not seriously suggesting that armed police who are looking for drugs, blood-stained clothing or weapons will be asked to look for three years' accounts or 12 months' pay slips.
>
> (ibid, cols 992–3)

Ben Gummer, Conservative MP for Ipswich, and Robert Buckland, Conservative MP for South Swindon, supported the means test in principle but suggested that it should be conducted retrospectively (ibid, cols 981 and 993).

Several MPs asked the government why they were introducing the clause if they did not necessarily intend to make the change. Simon Hughes said:

> May I say to Ministers that if clause 12 is not going to be used, it ought to go? I understand why the government might want a fall-back or safety-net position, but if it is not to be used they should let it go and say so.
>
> (ibid, col 987)

Jonathan Djanogly said that the government would look again at this matter in light of MPs' concerns:

> I appreciate that there are many deeply held concerns across the House and more widely on both the principle and the practicality of means-testing for advice and assistance for those in police custody... We will therefore carefully review our

> approach to these clause issues as the Bill goes through its stages in another place.
>
> (ibid, col 1006)

2.9 Conditional Fee Arrangements

On the third day of the report stage, discussion returned to conditional fee arrangements, or CFAs (which had been debated in relation to clinical negligence on the first day). The Bill's proposals on CFAs are discussed in detail in section four of the House of Commons Library paper, *Legal Aid, Sentencing and Punishment of Offenders Bill* (4 July 2011, RP 11/53). The Public Bill Committee discussed the matter at length; for an account of their deliberations see the House of Commons Library paper *Legal Aid, Sentencing and Punishment of Offenders Bill: Committee Stage Report* (20 October 2011, RP 11/70).

During the report stage, the House divided on two amendments which focused on this matter. Andy Slaughter tabled amendment 21, which would have removed clause 41 from the Bill. This clause, on "conditional fee arrangements: success fees" was originally number 41 in the Bill as introduced (HC Bill 205 of 2010–12); in the Bill as amended (HL Bill 109 of 2010–12) it has become clause 43. The *Explanatory Notes* on the Legal Aid, Sentencing and Punishment of Offenders Bill state that:

> A conditional fee agreement is a private funding agreement between a lawyer and a client under which the lawyer agrees to represent the client on a "no win, no fee" basis. Under the agreement, the lawyer does not generally receive a fee from the client if the case is lost. However, if the case is won, the lawyers' costs (the "base costs") are generally recoverable from the losing party. In these cases, the lawyer can charge an uplift on these base costs, which is currently recoverable from the losing party. This uplift is known as the 'success fee'. The maximum success fee that may be charged under a CFA is prescribed by secondary legislation. In all cases, the current maximum uplift that may be charged is 100 percent of the base costs.
>
> (*Legal Aid, Sentencing and Punishment of Offenders Bill: Explanatory Notes*, 21 June 2011, paragraph 239)

The *Explanatory Notes* go on to explain that clause 41 would remove the recoverability of the CFA success fee from the losing party in any civil proceedings. The clause allows that a lawyer could take a success fee from the damages awarded to a claimant but enables the Lord Chancellor to set a cap on the percentage of damages which could be claimed as a success fee. The government has proposed that the success fee should be capped at 25 percent of the damages awarded in personal injury claims (HC *Hansard*, 29 March 2011, col 182) and that damages should be increased by 10 percent (ibid, col 173).

Andy Slaughter said that the existing CFA agreements worked well:

> The idea of contingency fee agreements was to create a viable market in legal services by introducing success fees paid by losing defendants—wrongdoers, in other words—to compensate lawyers for the cases that they lost, for which, of course, they received no fees. For lawyers, that form of payment by results meant not that they would take on spurious cases, but that they were allowed to take on cases that might be 75:25 or 50:50. That has created a system that works, for the

> main part, very well. It has created a viable market in legal services and permitted access to justice for millions since it was introduced.
>
> (HC *Hansard*, 2 November 2011, col 1021)

He suggested the provisions in clause 41 would be unfair:

> Victims will have to pay the costs of their insurance and their lawyer's success fees from their damages—up to 25 percent of damages, aside from damages for future care, can be taken by the lawyer, and the insurance premium will take up even more of those damages, perhaps wiping them out altogether. To make up for part of those losses, the government plan a 10 percent increase in damages for pain, suffering and loss of amenity. Simple maths should be sufficient to show that that will not make up for all losses.
>
> (ibid, col 1022)

Chris Bryant, Labour MP for Rhondda, tabled amendment 163 which would allow successful claimants in defamation or privacy proceedings to continue to claim the success fee from the defendant. He said that:

> Some categories of proceedings are particularly expensive to advance, yet lead to relatively minor awards. For instance, the largest award in a privacy case is £60,000, and below that, £13,000. The vast majority of libel cases end up with awards of less than £100,000.
>
> (ibid, col 1023)

He argued that this would make it "completely uneconomic for a lawyer to come forward with a CFA", therefore the effect of clause 41 would be "to stop CFAs in libel, defamation and privacy cases".

Jonathan Djanogly responded that:

> The government are aware of concerns about access to justice and the ability of those with modest means to pursue claims, often against powerful organisations. I am aware that there are slight definitional differences, which I will not go into. However, all hon members will be aware of one of the most high-profile cases, involving the Dowler family, who were successful in their claim against News International.
>
> (ibid, col 1028)

At this point, the debate was interrupted by the programme motion. Amendment 21, tabled by Andy Slaughter, was defeated on a division (Ayes 223; Noes 315) as was Chris Bryant's amendment 163 (Ayes 222; Noes 305).

3. Third Reading

Following the completion of the report stage, Kenneth Clarke moved that the Legal Aid, Sentencing and Punishment of Offenders Bill be given a third reading. He said:

> It is an enormous Bill representing a major reform of the criminal justice system and the justice system generally.
>
> (HC *Hansard*, 2 November 2011, col 1042)

He said the legal aid reforms would "make substantial savings":

> We have gone back to first principles and asked what is essential that the taxpayer pays for to assure access to justice on truly important matters for that section of society that must have access to justice in the public interest.
>
> (ibid, cols 1042–3)

Mr Clarke also highlighted the sentencing reforms introduced in the Bill:

> The introduction of indeterminate sentences never worked as people intended. It was a major mistake and a major blot on our justice system that would not have survived challenge in either the British courts or in Strasbourg if it had carried on much longer. We have put in place a system of long determinate sentences for the most serious criminals, which I think gives protection.
>
> (ibid, col 1045)

Mr Clarke referred to amendments which had not been reached during report stage on knife crime:

> We have not debated the other difficult area, knife crime, over which there was some controversy. The government are determined to get the message clearly across to the public that knife crime will not be tolerated. We wish to stop people believing that knife crime will not be punished properly in the criminal justice system. For that reason, we tabled proposals introducing a mandatory sentence of six months for adults who are guilty of threatening with a knife in circumstances where it might cause physical injury, which is a new offence we have created. That is in line with the six months already specified in the sentencing guidelines for that kind of offence, but it makes it clear that that sentence should normally be expected automatically for that offence, unless it would otherwise be unjust to do so.
>
> Amendments were tabled by my hon Friend the Member for Enfield North (Nick de Bois) and by the Opposition seeking to extend that proposal to juveniles. I am glad to say that, following discussions with my hon Friends the Members for Enfield North and for Enfield, Southgate (Mr Burrowes)—the latter is a Parliamentary Private Secretary and so cannot table amendments—we finally agreed, that as 30-odd back benchers supported the amendments, to introduce a mandatory offence for 16 and 17-year-olds.
>
> (ibid, col 1045)

For the Opposition, Sadiq Khan protested about "the way in which the Bill has been dealt with", saying:

> There have been three green papers, consultation, second reading and a long Committee stage upstairs, yet at the 11th hour the government have tabled new clauses at the last possible moment which have not been subjected to the proper due processes that have existed in the House for generations, and for good reason. The way in which the Bill has been drafted, managed and taken through the House has been shambolic. The Bill is bad for the most vulnerable in society; it is bad for the victims of crime; it is bad for reforming offenders; and it is bad for the safety of our communities. That is why we oppose it, and will vote against giving it a third reading.
>
> (ibid, col 1049)

Elfyn Llwyd told the Minister that "one of the Under-Secretaries gave an understanding in committee that there would be an undertaking to deal with appeals against the granting of bail" (ibid, col 1048). This issue had been raised during the Public Bill Committee, by MPs who were concerned that the prosecution should have the right of appeal in cases where a defendant is granted bail rather than being remanded in custody (for more information please see the House of Commons paper *Legal Aid, Sentencing and Punishment of Offenders Bill: Committee Stage Report*, 20 October 2011, RP 11/70). Kenneth Clarke replied that:

> We accept that in principle there is a good case for saying that there should be appeals against the allowing of bail in the Crown court. We are working on the details of that, and we propose to table amendments in the House of Lords to meet that point.
>
> (HC *Hansard*, 2 November 2011, col 1048)

The Bill received its third reading by 306 votes to 228.