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Policing and Crime Bill Committee Stage Report

Bill 7 of 2008-09

This is a report on the House of Commons Committee Stage of the *Policing and Crime Bill*. It complements Research Paper 09/04 prepared for the Commons Second Reading.

The Bill deals with a wide range of matters including: police accountability and effectiveness; prostitution; regulation of lap dancing clubs; alcohol misuse and licensing conditions; proceeds of crime; extradition; airport security; criminal records; importation restrictions on offensive weapons; and football banning orders.

Towards the end of Committee Stage, new clauses dealing with the prevention of gang-related violence and the retention of fingerprints and DNA samples were also added to the Bill. The DNA proposals proved particularly controversial, with both the Conservatives and the Liberal Democrats voting against them on division.

Sally Almandras

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Summary of main points

The *Policing and Crime Bill* deals with a wide range of matters including: police accountability and effectiveness; prostitution; regulation of lap dancing clubs; alcohol misuse and licensing conditions; proceeds of crime; extradition; airport security; criminal records; importation restrictions on offensive weapons; and football banning orders.

The Committee agreed a number of Government amendments to the Bill. No opposition or backbench amendments were agreed to, although ministers did give a number of undertakings to consider certain amendments further. There were 16 divisions.

In addition to a number of minor technical and clarificatory amendments, several substantive changes were agreed to the provisions on alcohol licensing, proceeds of crime, extradition and criminal records. The prostitution provisions, which have provoked significant debate both inside and outside Parliament, were not amended.

In relation to alcohol licensing, the requirement for a local authority to define a "particular locality" when imposing general licensing conditions was replaced with a requirement to specify two or more licensed premises. This would enable authorities to target particular groups of premises without penalising responsible premises in the same locality.

The following amendments were made to the proceeds of crime provisions:

- the police will be able to detain seized property until there is no further possibility of an appeal, rather than having to release it at an earlier stage;
- the proposed new search and seizure powers set out in the Bill were extended to third parties as well as suspects;
- the police will be able to recover expenses associated with the storage and sale of seized property; and
- legal aid will be available in respect of certain hearings relating to seized property.

The extradition provisions were amended to limit the circumstances in which a person detained under a provisional arrest warrant can be held for more than 48 hours without being brought before a court or a full European Arrest Warrant being lodged.

The criminal records provisions were amended to enable the Independent Barring Board (IBB) to:

- notify "interested parties" when it proposes to bar someone from working with children or vulnerable adults, in advance of a final decision having been taken; and
- provide information about people who come to its notice to the police.

New clauses creating civil injunctions to prevent gang-related violence and granting the Secretary of State order-making powers regarding the retention of fingerprints and DNA samples were also added to the Bill. The DNA proposals proved particularly controversial, with both the Conservatives and the Liberal Democrats voting against them on division.

CONTENTS

I Introduction

The Bill was introduced in the House of Commons on 18 December 2008 as Bill 7 of 2008-09 and was given a second reading, without division, on 19 January 2009.[1] Committee stage commenced on 27 January and continued until 26 February. There were 16 sittings, with oral evidence taken at the first four. The Bill required all of its sessions under the Programme Motion, which was amended to allow for an additional session on the afternoon of 26 February.[2] The Bill as amended was published on 27 February 2009 as Bill 66 of 2008-09.

Library Research Paper 09/04 *Policing and Crime Bill* describes the Bill and provides detailed background information. Details of the Bill's progress, together with links to further relevant documents, can be found on the Library's Bill Gateway pages.

This paper uses the clause numbers in the Bill as introduced and the new clause numbers as tabled in Committee; for ease of reference, the equivalent clause numbers in the Bill as amended are set out in Appendix 2.

II Second reading

Jacqui Smith, the Home Secretary, emphasised that the Bill's aim was to build "strong and secure communities where we support the law-abiding majority and protect the vulnerable by punishing those who do not play by the rules".[3] She defended the decision to drop proposals for directly elected police authorities from the Bill, indicating that although the Government remained "convinced of the merits of direct election as part of a responsive and fully accountable police service" there was further work to do before making any changes.[4]

Regarding alcohol misuse, the Home Secretary spoke of the need to "ban irresponsible promotions… without creating difficulties for responsible premises".[5] She could not promise that a draft of the proposed mandatory code for alcohol retailers would be available prior to the Committee stage, but indicated that the consultation on the detail of the code would be made available while the Bill was passing through both Houses so as to enable Members to consider the code alongside the enabling power set out in the Bill.

She also refuted arguments from a number of backbenchers that the new offence of paying for sex with a person controlled for gain would endanger vulnerable women by driving prostitution underground.

Chris Grayling, shadow Home Secretary, welcomed a number of the Bill's measures (for example tighter licensing of lap-dancing clubs and stronger powers to tackle binge-drinking) but raised concerns about their enforceability. He also referred to the "scourge

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1 HC Deb 19 December 2008 c1262 and HC Deb 19 January 2009 cc517-590
2 PBC Deb 24 February 2009 c461
3 HC Deb 19 January 2009 c517
4 HC Deb 19 January 2009 c521
5 HC Deb 19 January 2009 c523

of knives, guns and drugs",[6] arguing that even those proposals in the Bill that could be welcomed by the Conservatives would do little to tackle the issue of violent crime. He concluded by expressing concern that proposals regarding police modernisation, particularly in relation to accountability and bureaucracy, had been omitted from the Bill.

Chris Huhne, Liberal Democrat home affairs spokesman, expressed disappointment that the Government had dropped plans to make police authorities more locally accountable. He questioned the need for new legislation regarding alcohol misuse given that similar existing statutory powers, such as alcohol disorder zones, were not being used. He identified the Bill's prostitution provisions as its most controversial, arguing that they would force sex workers underground.

III Committee stage

The remainder of this paper summarises the main amendments agreed, other significant areas of debate and issues that a Minister said would be considered further. It does not cover all matters that were considered by the Committee or technical amendments.

A. Policing

1. Public accountability

The Committee considered a number of Conservative amendments to clause 1 that would have explicitly required police authorities to consult with the business and voluntary sectors and local authorities as well as "people", and to obtain the views of people and those bodies by way of independently conducted attitudinal surveys.[7] The Liberal Democrats supported the amendments in principle but raised concerns as to the cost and frequency of the surveys and the way in which police authorities would be required to respond to their results. The Government agreed that the voluntary and business sectors should be consulted, but argued that they were already included in the term "people". On division, the lead amendment was negatived by seven votes to six.[8]

On clause stand part the Committee considered new clauses tabled by the Liberal Democrats that would have introduced directly elected police authorities with complete control over precept-setting.[9] There was general consensus that a move towards some form of direct election was desirable, but disagreement as to the way in which police authorities should be restructured. Members of all parties expressed concern at the risks posed by extremist or single-issue candidates. On division, the Committee agreed by nine votes to six that clause 1 should stand part.[10]

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6 HC Deb 19 January 2009 c527
7 PBC Deb 3 February 2009 cc134-137
8 PBC Deb 3 February 2009 c148
9 PBC Deb 3 February 2009 cc156-157
10 PBC Deb 3 February 2009 c186

2. Appointment of senior officers

a. The Senior Appointments Panel

The Conservatives tabled a number of probing amendments to clause 2. One amendment sought to delete the requirement for the Senior Appointments Panel (SAP) to include representative members nominated by the Secretary of State, the Association of Police Authorities (APA) and the Association of Chief Police Officers (ACPO). Another would have required reports on the SAP's proceedings to be published and laid before Parliament. David Ruffley queried ACPO's proposed statutory role on the SAP given that ACPO itself is a company limited by guarantee with no statutory function; this echoed concerns expressed by the shadow Home Secretary on second reading[11] and Liberty in its oral evidence to the Committee.[12]

In response, Vernon Coaker stated that as both ACPO and the APA are key members of the non-statutory selection panel that currently exists, carrying their role through to the new statutory SAP was an important reflection of the tripartite leadership of policing.[13] The Minister also stated that it had always been the Government's intention to publish reports on the SAP's performance; he put on record a commitment that the SAP's constitutional arrangements would include such a requirement. He indicated that the reports would not be laid before Parliament, although reference to the SAP's work would be included in the Home Office annual report.[14] The amendments were withdrawn.

b. Metropolitan police force appointments

Liberal Democrat amendments to clause 4 sought to remove the Home Secretary's power to approve the appointment of senior officers by the Metropolitan Police Authority.[15] The Committee also considered new clause 3, which proposed to remove the Home Secretary's power to approve the appointment and removal of chief and assistant chief constables in police forces outside London. Paul Holmes said that there should be "a major devolution of power away from the centre … to local authorities and local communities".[16] Vernon Coaker emphasised that many senior officers also held positions of national significance, for example as ACPO lead officers on knife crime or gangs. It was therefore appropriate for the Home Secretary to maintain a role in the appointment of these officers.[17] The amendments were withdrawn.

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11 HC Deb 19 January 2009 c528
12 PBC Deb 29 January 2009, Qq128-130
13 PBC Deb 29 January 2009 c194
14 PBC Deb 29 January 2009 c198
15 The amendments would not have removed the Home Secretary's role in approving the appointment of the Commissioner himself, as the Liberal Democrats acknowledged that the Commissioner has a special role as the head of the Government's national anti-terrorism strategy.
16 PBC Deb 3 February 2009 cc203-204
17 PBC Deb 3 February 2009 c206

3. Police co-operation

a. Collaboration agreements

The Committee agreed a Government amendment clarifying that collaboration agreements made by police authorities under clause 5 would not be permitted to capture staff under the direction and control of a chief officer.[18]

The Liberal Democrats tabled a series of amendments aimed at limiting the Home Secretary's involvement in collaboration agreements.[19] Paul Holmes questioned the need for central Government control over police force collaboration and asked why six was the proposed cut-off point for the maximum number of forces that could enter into a collaboration agreement without consulting the Home Secretary. Vernon Coaker said six had been chosen as it was the greatest number of forces in a police region; if an upper limit was not established then collaboration agreements covering an area "the size of the north of England" could be established without the Home Secretary's involvement.[20] The amendments were withdrawn.

The Conservatives also tabled a number of amendments to clause 5. The first sought to specifically require collaboration agreements to set out procedures for settling financial and legal liabilities upon a party's exit from the agreement.[21] The second would have deleted a sub-clause permitting publication of the fact that the agreement has been made (together with such other details as are appropriate) as an alternative to full publication. The third sought to clarify that, where the Home Secretary wished to terminate a collaboration agreement, the period of notice would be such as the Home Secretary saw fit. This would give the Home Secretary flexibility to take action in the face of immediate problems.

Vernon Coaker said that the amendment regarding notice periods addressed "an important point"; he asked that it be withdrawn but said that he would consider it further, coming back to it on Report if necessary. He also undertook to include certain points relating to financial and legal liabilities in the guidance to be issued by the Home Secretary under proposed new section 23F in clause 5. Regarding publication, he said that clause 5 as drafted achieved a balance between transparency and operational effectiveness; requiring full publication in all cases might result in matters such as the location of firearms units having to be published. The amendments were withdrawn.

b. Regulation of Investigatory Powers Act 2000

Clauses 7 and 8 of the Bill would make a number of procedural amendments to the *Regulation of Investigatory Powers Act 2000* (RIPA) in order to streamline the authorisation process in England and Wales for matters such as surveillance where a collaboration agreement is in place. The Committee agreed Government amendments replicating the streamlined RIPA procedures for police forces in Scotland.

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18 PBC Deb 3 February 2009 c207
19 PBC Deb 3 February 2009 cc207-210
20 PBC Deb 3 February 2009 c209
21 PBC Deb 3 February 2009 c211

During the clause stand part debate, David Ruffley expressed disappointment that the Government had not used the Bill as an opportunity to look at the statutory RIPA codes of practice. Paul Holmes raised concerns about the use of RIPA powers by non-law enforcement agencies. Vernon Coaker referred the Committee to a recent report by the House of Lords Constitution Committee, which included an analysis of the use of RIPA powers by local authorities, and said that the report was "being looked at".[22] He also confirmed that the Home Office would be publishing revised RIPA codes of practice for consultation in the "not too distant future".[23]

B. Sexual offences and sex establishments

1. Paying for sexual services of a prostitute controlled for gain

On division, the Committee agreed by eight votes to two that clause 13 should stand part.[24] The division was preceded by lengthy debate on the following issues.

a. Strict liability

A number of opposition amendments sought to change the strict liability nature of the new offence by requiring an element of reckless intent instead. Evan Harris referred to oral evidence from Shami Chakrabarti of Liberty, in which she had set out a hierarchy of intention.[25] He argued that framing the offence as one of strict liability prevented an appropriate punishment being imposed,[26] and might lead to a drop in the (already low) number of men who report concerns about exploited prostitutes to the authorities. David Ruffley was supportive of the "general thrust" of clause 13, but asked how the Government had arrived at strict liability rather than recklessness, intent or negligence.[27]

In response, Alan Campbell, Parliamentary Under-Secretary of State for the Home Department, stressed that strict liability was the "fundamental point" of the offence as it placed the risk on the buyer and would ensure they considered the circumstances of the prostitute providing the services.[28]

b. "Controlled for gain"

The next grouping of amendments related to the meaning of "controlled for gain". The amendments, including one drafted by Justice and tabled by the Liberal Democrats,[29] attempted in various ways to link "control" to matters such as force, coercion, blackmail, violence or trafficking. Evan Harris suggested that "control" required more detailed

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22 PBC Deb 3 February 2009 c234. For the House of Lords report see Constitution Committee, *Surveillance: Citizens and the State*, 6 February 2009, HL 18-I

23 PBC Deb 3 February 2009 c234

24 PBC Deb 10 February 2009 c305

25 PBC Deb 29 January 2009, Q134

26 PBC Deb 5 February 2009 cc 244-245

27 PBC Deb 5 February 2009 cc254-255

28 PBC Deb 5 February 2009 c257

29 PBC Deb 5 February 2009 c249. For further details see Justice, *Policing and Crime Bill – Part 2: Suggested amendments for Committee Stage House of Commons*, February 2009.

statutory definition, particularly given the strict liability nature of the offence and the number of people who might be caught by it; he raised particular concerns about the role of madams. David Ruffley raised similar concerns that "controlled for gain" might bring people ancillary to prostitution, such as maids, receptionists and drivers, within the scope of the new offence.[30]

Alan Campbell acknowledged that the term "controlled for gain" went wider than force, coercion or compulsion. However, he argued that it was the most appropriate and effective term to use, and that it would not be as widely interpreted as some had claimed.[31] He agreed to look further at the question of whether a madam might be caught by the new offence.[32]

c. Miscellaneous issues

Regarding the identity of the offender, Evan Harris considered the hypothetical case in which one person pays for another person to have sex with a prostitute controlled for gain. As the new offence criminalises the payment rather than the sexual activity, this means "the person who makes the payment, not the person who has the sex"[33] would be committing the offence in clause 13. He queried whether this would create a loophole. Alan Campbell said that in those circumstances the person receiving the sexual services would be guilty of aiding and abetting the clause 13 offence. Both the Liberal Democrats and the Conservatives argued that it would be preferable to make such conduct an offence on the face of the Bill. Alan Campbell undertook to look at the issue in more detail and to table an amendment on Report if it were thought necessary.[34]

Evan Harris also questioned the jurisdictional scope of the new offence, asking whether it would criminalise a person who made payment in this country to receive sexual services from a prostitute based in another jurisdiction, such as the Netherlands or Nevada, where prostitution is lawful.

2. Loitering and soliciting by prostitutes

The Liberal Democrats moved an amendment to clause 15 aimed at decriminalising child prostitution, on the grounds that this would encourage child prostitutes to come forward and receive help. In response, Alan Campbell stated that it was important to retain criminal interventions as a "very last resort".[35] Evan Harris withdrew the amendment, although he indicated that he would consider tabling a similar one on Report.

The Committee also considered a number of probing amendments, all withdrawn, on the new element of persistence required for the amended offence of loitering or soliciting. Alan Campbell explained that the new persistence element was required due to the fact that clause 15 also proposed to remove the term "common prostitute":

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30 PBC Deb 5 February 2009 cc255-256
31 PBC Deb 5 February 2009 c264
32 PBC Deb 5 February 2009 cc264-265
33 PBC Deb 5 February 2009 c253
34 PBC Deb 5 February 2009 c269
35 PBC Deb 10 February 2009 c306

> The current practice of all police forces in England and Wales is to issue non-statutory prostitutes' cautions to people caught loitering on two occasions before charging them with an offence. That cautioning process is used to establish that a person is a common prostitute. Once the term is removed from the legislation, the need to prove persistency is required to ensure that that current practice continues.[36]

3. Meeting attendance orders

The Committee considered a Conservative amendment that would have made the new "meeting attendance orders" in clause 16 a form of community order under section 177 of the *Criminal Justice Act 2003*. The amendment sought to test whether the underlying causes of prostitution might be better addressed by a community order with (for example) a drug rehabilitation order attached to it.[37] Alan Campbell said that the new meeting attendance orders would be just as effective as community orders in enabling people to access drug rehabilitation services; it would also be inappropriate to make the new orders a form of community order as this would impose an unduly harsh penalty on anyone convicted of such an offence.[38] The amendment was withdrawn.

There was some discussion as to the penalty for breaching a meeting attendance order, with Alan Campbell confirming that there was no possibility of a prison sentence for breach or for failure to respond to a summons.[39]

Evan Harris moved an amendment to Schedule 1 of the Bill, which sought to replace the provision requiring an individual detained in breach of a rehabilitation order to be brought before the court "as soon as practicable" with a requirement that they be brought before the court within 24 hours.[40] Alan Campbell said that "as soon as practicable" was a sufficient safeguard to prevent the police from detaining people for unreasonably lengthy periods, while also providing flexibility.[41] The amendment was withdrawn.

4. Closure orders

During the clause stand part debate, the Conservatives questioned whether closure orders would drive vulnerable women underground or onto the streets. The Liberal Democrats asked whether the Government envisaged closure orders being used against establishments housing women who had set up a consensual profit-making organisation run by a madam.

Alan Campbell said that the orders were only intended for use against establishments where particularly exploitative offences were being committed. He also said that it would not be "reasonable or proportionate" to impose closure orders on premises where two or

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36 PBC Deb 10 February 2009 c308
37 PBC Deb 10 February 2009 cc320-321
38 PBC Deb 10 February 2009 cc325-326
39 PBC Deb 10 February 2009 cc329-330
40 PBC Deb 10 February 2009 cc331-332
41 PBC Deb 10 February 2009 c333

more women had set up together with a madam (assuming there is no control for gain).[42] He added that the Government would work with ACPO to develop guidance to ensure that closure orders were not used disproportionately.

Dr Evan Harris moved a number of probing amendments to Schedule 2, all of which were withdrawn. The amendments considered the extent to which the definition of "controlled for gain" might catch activities that fell short of intimidation or force (for example, the activities of a madam), the thresholds for issuing closure notices and orders, and whether (as the Bill proposes) persons other than police officers should be able to issue closure notices.

C. Lap dancing

The Committee considered two amendments to clause 25, both aimed at closing perceived loopholes in the proposed new licensing regime for lap dancing clubs.[43]

The first amendment proposed to remove the provision in clause 25 that would exempt premises providing lap dancing events less frequently than once a month from the new licensing regime. Lynda Waltho said that, as drafted, clause 25 would do nothing to prevent "mobile lap-dancing clubs" using temporary event notices to move around various venues in a town over a period of time.[44] Alan Campbell said that the purpose of the exemption was to draw a line between establishments where lap dancing is a "core part" of the business and establishments that occasionally run such events while operating primarily as another type of venue, for example a pub hosting a stag night where a stripper is booked to perform.[45] He did, however, express concern about the agency approach described by Lynda Waltho and undertook to look at the issue further. On this basis the amendment was withdrawn.

The second amendment proposed to make it mandatory rather than voluntary for local authorities to adopt the new licensing regime for lap dancing establishments. Roberta Blackman-Woods argued that a voluntary regime would create "an uneven licensing landscape and those local authorities that do not take up the clause might find that many lap-dancing clubs set themselves up in their area".[46] Alan Campbell said that a voluntary licensing regime was consistent with the Government's aim of giving more influence to local people; local authorities that wished to use the new regime would be able to adopt it quickly and without difficulty, while those that did not see a need for it would be under no obligation to adopt the new regime and its associated administrative costs. He reiterated his view that a voluntary approach was proportionate and appropriate, but agreed to look again at Dr Blackman-Woods' points to see if clause 25 could be made more watertight. The amendment was withdrawn.

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42 PBC Deb 10 February 2009 c342
43 PBC Deb 10 February 2009 cc354-368
44 PBC Deb 10 February 2009 c356
45 PBC Deb 10 February 2009 c361
46 PBC Deb 10 February 2009 c363

D. Alcohol misuse

1. Offence of persistently possessing alcohol in a public place

The Committee considered a Conservative amendment which would have required a young person in possession of alcohol in a public place to have parental permission rather than a "reasonable excuse". The amendment sought to clarify the Government's views on what would constitute a reasonable excuse. James Brokenshire gave the example of a 16 year old consuming (and therefore in possession of) alcohol in a park while having some food with their parents; he asked whether such actions, repeated three times within a year, could potentially constitute an offence under clause 29, even though the same actions carried out on licensed premises would not constitute an offence.[47] Sally Keeble gave the examples of young people walking along the street in possession of alcohol to take to a party, to celebrate exam results or to wet the head of their newborn baby. She considered each of these to be "perfectly reasonable excuses".

Alan Campbell said that police officers would use their discretion in each particular case, indicating that delivering alcohol as part of a job or helping a family member to transport alcohol from one location to another would be likely to constitute reasonable excuses. He did not see anything wrong with the scenario sketched by James Brokenshire, but was less confident that Sally Keeble's example of young people carrying alcohol on their way to a party would not fall foul of the new offence.[48]

The Committee also discussed Conservative and Liberal Democrat amendments that would have made it a requirement for a person be in breach of a current acceptable behaviour contract (ABC) in addition to being caught in possession of alcohol three times before the new offence could be committed. The amendments sought to clarify whether the Government envisaged the new offence operating on a "three strikes and you're out" approach, or whether it would operate in conjunction with early interventions such as ABCs. In response, Alan Campbell highlighted the voluntary nature of ABCs and the difficulties this would cause if breach of an ABC was made a pre-requisite to committing the new offence: "They are voluntary by nature, and if we somehow tag that on to the offence, it would not be long before the young person worked out that they should not enter into a contract".[49] The lead amendment was withdrawn.

2. General licensing conditions relating to alcohol

The Committee considered two groups of amendments: the first related to mandatory licensing conditions, and the second to general licensing conditions in particular localities.

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47 PBC Deb 12 February 2009 c385. Section 149(5) of the *Licensing Act 2003* permits 16 and 17 year olds to consume beer, wine or cider on licensed premises if they are also consuming a table meal and are with an adult.

48 PBC Deb 12 February 2009 cc394-396

49 PBC Deb 12 February 2009 c395

a. Mandatory licensing conditions

A Liberal Democrat amendment sought to remove the proposed ability for the Secretary of State to impose mandatory licensing conditions relating to the supply of alcohol. Paul Holmes argued that mandatory conditions would be a "retrograde step" reversing the greater local flexibility that had been introduced by the *Licensing Act 2003*.[50] He also questioned how the Government had arrived at nine as the maximum number of mandatory conditions that could be specified by the Secretary of State. Both the Conservatives and the Liberal Democrats stated that it was difficult to debate the impact of the enabling power in Schedule 4 without knowing what the mandatory code will contain. Alongside this amendment, the Committee also considered a number of probing Conservative amendments. These covered:

- a requirement for conditions to be "necessary and proportionate" rather than "appropriate", in part to ensure consistency with s18(4) of the 2003 Act;
- a prohibition on using mandatory conditions as a method of increasing the minimum statutory age for purchasing alcohol;
- removal of the upper limit of nine on the number of mandatory conditions that can be specified by the Secretary of State;
- a statutory requirement for the Secretary of State to undertake public consultation prior to specifying any mandatory conditions.

In response to this group of amendments, Alan Campbell stated that mandatory conditions would avoid creating a "postcode lottery" in relation to issues about which "there is almost universal concern … in every part of the country".[51] He said that the Government was keen for the mandatory code to be in place when the Bill receives Royal Assent and gave a commitment that he would share a draft of the mandatory code with the Committee as soon as it was in place.[52] The Minister agreed that any change to the minimum age for purchasing alcohol should be dealt with by way of primary legislation, adding that the Government had no plans to increase or decrease the age at which alcohol can be purchased. Paul Holmes withdrew the lead amendment, saying that "given the absolute lack of detail we will have to wait and see".[53]

The proposed content of the mandatory code, including issues such as minimum pricing, labelling and in-store alcohol displays, was revisited during the stand part debate. Alan Campbell described minimum pricing as "interesting" but said that at present the Government had ruled out including it as one of the mandatory conditions.[54]

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50 PBC Deb 12 February 2009 c411
51 PBC Deb 12 February 2009 c416
52 PBC Deb 12 February 2009 cc417-418
53 PBC Deb 12 February 2009 c419
54 PBC Deb 12 February 2009 cc439-440

b. General licensing conditions in particular localities

The second group of amendments concerned the power of licensing authorities to impose permitted general conditions (chosen from a list of conditions specified by the Secretary of State) in particular localities.

A Liberal Democrat amendment sought to remove the restriction limiting the general conditions that could be imposed by local authorities to "permitted" conditions specified by the Secretary of State. Paul Holmes argued that the concept of centrally approved permitted conditions would restrict the flexibility and democratic accountability of local authorities.[55] Alan Campbell said that the Government was not allowing licensing authorities to have "an entirely free hand in deciding which conditions they may impose on a group of premises" as a nationally set list would ensure greater consistency. Licensing authorities would also retain the discretion to impose conditions not on the list on an individual premises under existing powers in the 2003 Act.[56]

The Committee also considered a number of Conservative amendments that sought to clarify the Government's views on the relationship between general conditions in particular localities and existing legislation on alcohol disorder zones.[57]

Government amendment 131 (and consequential amendments 130, 132 to 133, 135 and 142 to 144) removed the requirement for a local authority to define a "particular locality" when imposing general licensing conditions, replacing it with a requirement to specify two or more licensed premises. This would enable authorities to use conditions to target specific premises that were contributing to alcohol-related harm, without catching other premises in the locality that were not contributing to such harm.[58] The amendment also removed "annoyance" as a reason for imposing general licensing conditions so as to ensure consistency with the 2003 Act. Government amendment 137 (and consequential amendments 136, 138 to 139, 141, 146 to 147 and 149) made the same changes to the equivalent provisions for club premises.

Schedule 6 contains a new requirement for licensees to display a list of all mandatory and generally locally applied conditions imposed upon them. However, the Government considered that this may impose an undue burden on some licensees; Government amendments 145 and 148 therefore replaced the requirement to display a list with a requirement to keep a list.[59]

Amendments 130 to 141, all relating to Schedule 4, were agreed by the Committee and added to the Bill.[60] However, amendments 142 to 149, all relating to Schedule 6, were not called and do not appear in the Bill as amended.

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55 PBC Deb 12 February 2009 c424
56 PBC Deb 12 February 2009 cc425-426
57 PBC Deb 12 February 2009 cc423-424
58 PBC Deb 12 February 2009 cc419-420
59 PBC Deb 12 February 2009 c422
60 PBC Deb 12 February 2009 cc426-427

c. Interested parties

During the stand part debate the Committee considered new clause 6, tabled by Lynda Waltho. The new clause proposed to add members of licensing authorities to the list of "interested parties" in the 2003 Act who can make representations regarding licences. Both James Brokenshire and Paul Holmes expressed support for the new clause. However, Alan Campbell expressed concern about the potential problems associated with councillors "wearing two hats", in particular that the impartiality of the licensing authority might be called into question.[61]

E. Proceeds of crime

1. Accredited financial investigators

The Committee considered a number of Conservative amendments that sought to remove the power of confiscation and retention of property from accredited financial investigators. James Brokenshire questioned whether it was appropriate to grant such powers to people who are not police officers or officers of the Serious Organised Crime Agency or Revenue and Customs. The amendments were withdrawn.[62]

2. Detention of property pending an appeal

Clauses 33 to 35 of the Bill would permit the police or other relevant officers to detain property seized under specified "relevant seizure powers" (for example property seized as evidence under the *Police and Criminal Evidence Act 1984*) where such property is subject to a restraint order. Clauses 36 to 38 would permit the police or other relevant officers to search for and seize property in anticipation of a confiscation order being made.

The Committee considered a number of Government amendments to these clauses, which would permit the continued detention of seized property until there is no further possibility of an appeal against its detention.[63] James Brokenshire asked how continued detention in such circumstances could be "appropriate, proportionate or reasonable", highlighting in particular the lack of any requirement for the relevant authorities to have to actually intend to appeal or seek a review.[64] There were divisions on several of the Government amendments but all were approved.

3. Definition of "relevant seizure power"

James Brokenshire moved an amendment to remove the Secretary of State's power to amend the definition of "relevant seizure power" in clause 33 by order, arguing that any such amendments should be by way of primary legislation.[65] In response, Vernon Coaker said that the proposed order-making power would only permit the Secretary of

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61 PBC Deb 12 February 2009 cc440-441
62 PBC Deb 12 February 2009 cc444-446
63 PBC Deb 12 February 2009 cc447-448
64 PBC Deb 12 February 2009 c449
65 PBC Deb 12 February 2009 c451

State to add or remove references to provisions in Acts; it would not allow her to provide for exceptions or to qualify statutory provisions.[66] The amendment was withdrawn.

4. Search and seizure of property

a. Extension to third parties

The Committee agreed a number of Government amendments to clauses 36 to 38 to extend the proposed new search and seizure powers to third party recipients of "tainted gifts" as well as defendants. Vernon Coaker indicated that the amendments had been requested by law enforcement officers in order to close a loophole whereby a suspect giving property to family members and friends could undermine the viability of the proposed new powers.[67] He added that searches of third parties would be dealt with in the codes of practice to be issued under the new clauses.[68]

b. Proportionality

The Committee considered a number of Conservative amendments to clause 36, which sought to introduce a variety of conditions relating to proportionality and oversight that would have to be satisfied before the new search and seizure powers could be exercised.[69] Vernon Coaker considered that clause 36 already contained numerous safeguards and thresholds but agreed to look again at the issue of proportionality.[70] At a subsequent Committee session, he signalled that having considered the issue he would be tabling a further amendment on Report.[71]

c. Representations regarding detention orders

The Committee approved Government amendments providing that any person affected by a detention order could apply for the discharge or variation of it, or appeal against any decision made on the order. The persons affected could be the defendant, a third party or the law enforcement officer who applied for the order.

The Committee also considered a Conservative amendment that would have given third parties with an interest in the seized assets the right to make representations to the court on an application for further detention.[72] Vernon Coaker agreed to consider the scope for allowing third parties the opportunity to make representations in respect of hearings to authorise further detention; on this basis James Brokenshire withdrew the amendment, indicating that he would "listen carefully" to the Minister's response on Report.[73]

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66 PBC Deb 12 February 2009 c455
67 PBC Deb 24 February 2009 c462
68 PBC Deb 12 February cc448-449
69 PBC Deb 12 February 2009 cc450-456
70 PBC Deb 12 February 2009 cc454-456
71 PBC Deb 24 February 2009 c473
72 PBC Deb 24 February 2009 cc474-477
73 PBC Deb 24 February 2009 c477

d. Judicial oversight

The Committee discussed two groups of Conservative amendments to clause 36 that would have required court authorisations to be provided by the Crown court rather than a justice of the peace or a magistrates' court.[74] James Brokenshire said that the seriousness of the seizure power and the complex legal issues at stake meant that the Crown court would be the most appropriate level of judicial oversight.

In response, Vernon Coaker said that the Government's decision to set the level of judicial oversight at a justice of the peace and a magistrates' court had been based on advice from law enforcement officers, in particular ACPO and the Serious and Organised Crime Agency. He also emphasised the procedural safeguards that would be set out in codes of practice regarding the use of the new search and seizure powers, although a draft of the codes would not be available before Report.[75] In response to the second group of amendments Vernon Coaker did, however, undertake to consider further whether a single justice of the peace, rather than a magistrates' court, would be properly equipped to hear detention order applications.[76]

On division, the lead amendment was negatived by seven votes to six.[77]

e. Continuing grounds to detain property during the initial detention period

New section 47J of the 2002 Act, set out in clause 36 of the Bill, would enable seized property to be detained for an initial period of 48 hours. The Committee considered Government and Conservative amendments, both of which sought to make it clear that seized property could only be detained for as much of that initial period as the conditions under new section 47B continued to be met.[78] If the conditions ceased to be met at any point during the initial period, the seized property would have to be released.

Vernon Coaker indicated that the Government amendments had been tabled in response to the Conservative amendment; the Government amendments were welcomed by James Brokenshire and agreed by the Committee.

5. Recovery of storage and sale expenses

The Committee agreed a number of Government amendments to clauses 39 to 41, which provided that the police and other law enforcement agencies will be able to claim back reasonable costs incurred by them when storing and selling seized property from the amount paid by a defendant in settlement of a confiscation order. The level of reasonable costs would be determined by a magistrates' court.[79]

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74 PBC Deb 24 February 2009 cc465-472 and 473-477
75 PBC Deb 24 February 2009 c469
76 PBC Deb 24 February 2009 cc475-476
77 PBC Deb 24 February 2009 c471
78 PBC Deb 24 February 2009 cc472-474
79 PBC Deb 12 February 2009 c443 and PBC Deb 24 February 2009 cc482-485

6. Legal aid

The Committee agreed a Government amendment to Schedule 6 that would make legal aid available for proceedings including an order authorising the further detention of seized property and proceedings for an order authorising the sale of seized property.[80]

F. Extradition

1. Transmission of European Arrest Warrants (EAWs)

James Brokenshire moved a probing amendment to clause 48 regarding the circumstances in which the Government envisaged EAWs being transmitted via electronic means other than through the Schengen Information System II (SIS II).[81] Vernon Coaker said that countries that are not yet part of the SIS II network might wish to continue sending EAWs by electronic means such as email, as may the UK. The amendment was withdrawn.

2. Extradition to category 1 and 2 territories

The Committee agreed a number of Government amendments aimed at ensuring the provisions of clauses 50 and 51, allowing a judge to defer proceedings on an extradition request at any point from the date of arrest until the start of the extradition hearing, were fully effective.[82] In particular, the amendments were designed to ensure that when an extradition court adjourns consideration of an extradition request until a UK sentence has been served, it would only have to deal with remand hearings every six months instead of every 28 days.

3. Return of prisoners from category 1 and 2 territories

The Committee considered probing Conservative amendments to clauses 53 and 54, which would have provided that time a prisoner spends outside the UK would be disregarded for the purposes of consideration for parole or early release.[83]

Vernon Coaker said that the clauses already made it clear that time spent in custody overseas would not count towards a UK sentence and would therefore not affect the date on which parole or early release falls to be considered. The only exception would be where a person had been temporarily surrendered to another country for the purposes of trial, held in custody and subsequently found not guilty; in such circumstances the period spent in custody overseas would be deducted from the UK sentence.

The Minister also clarified that where a person who was extradited while in custody returned to the UK and was entitled to be released on licence, they would be liable to be detained by a constable or immigration officer before being formally released. The detention period would enable the authorities "to ensure that the conditions of the licence

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80 PBC Deb 24 February 2009 c555
81 PBC Deb 24 February 2009 c496-500
82 PBC Deb 24 February 2009 cc500-503
83 PBC Deb 24 February 2009 cc503-506 and 509-511

fit the offender and that all the relevant bodies charged with dealing with offenders after release are aware of the situation".[84] The Minister considered that it was implicit in the Bill that the period of any such detention should be as short as possible; he did, however, indicate that he would give further thought to including an express provision to this effect in the Bill. The amendments were withdrawn.

4. Return to extraditing territory

The Committee considered a number of Liberal Democrat amendments to clause 55 regarding undertakings to return a person extradited to the UK to the country from which they were extradited.[85] The amendments would have:

- replaced the subjective decision of the Secretary of State as to whether a return would be incompatible with the *Human Rights Act 1998* with an objective test;

- required recognition not only for rights under the European Convention on Human Rights (ECHR) but also under other international treaties, for example the United Nations Convention Relating to the Status of Refugees. The amendment would also have required consideration to be given to the "interests of justice";

- clarified that where an undertaking to return was followed by a decision not to return a person on human rights grounds, both the undertaking *and* any powers flowing from that undertaking (for example the power to keep a person in custody until their return) would be of no effect.

Vernon Coaker undertook to look at whether the Bill should incorporate other treaties as well as the ECHR. The amendments were withdrawn.

5. Provisional arrest

The Committee agreed several Government amendments to clause 58, which deals with the provisional arrest of a person prior to the issue of a full EAW.[86] Section 5 of the *Extradition Act 2003* requires the arrested person to be brought before a court and a full EAW to be provided within 48 hours of arrest. As originally drafted, clause 58 would have allowed the state requesting the provisional arrest to apply for a further 48 hour extension for both bringing the person before a court and providing a full EAW. The amendments made the following changes:

- The proposal to enable the requesting state to apply for an extension of the 48 hour period within which a person must be brought before a UK court, which was intended to remove problems arising from court closures at weekends and on public holidays, was deleted. It was replaced with a provision that weekends and public holidays should be excluded when calculating the initial 48 hour period.

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84 PBC Deb 24 February 2009 c510
85 PBC Deb 24 February 2009 cc512-521
86 PBC Deb 24 February 2009 cc521-524

- Where the requesting state applies for an extension of the 48 hour period within which it must provide full documentation, such applications must now be made while the arrestee is present in court (either in person or by live link).

G. Aviation security

The Committee considered a number of probing Conservative amendments to clause 60 and schedule 5, which would have made the following changes:

- an individual nominated to an airport's security executive group (SEG) would be required to "represent" (rather than "appear to represent") the interests of the operator, removing the perceived ambiguity;[87]

- the lead police officer in any collaboration agreement under which relevant aviation security services were being delivered would have been allowed to sit on an airport's risk advisory group;[88]

- the potential difficulties of the unanimity requirement in the agreement of aerodrome security plans (ASPs) would have been mitigated by providing that an individual should not 'unreasonably withhold' their agreement;[89]

- the mechanisms for referring and resolving disputes about security planning would have been clarified;[90]

- in relation to disputes, Schedule 5 would have been amended to require the police to provide full and transparent information about resources deployments. There would also have been a requirement for transparency and accountability in relation to policing costs, together with a system of benchmarking against other police providers.[91]

The Committee also agreed a number of minor Government amendments to clause 60, which included the following changes:

- the Secretary of State would be expressly permitted to revoke his nomination of observers to the SEG;[92]

- the Secretary of State would be expressly prevented, as part of any determination on an ASP, from requiring any other party to make payments to the chief officer of police for the relevant area; this would ensure consistency in relation to the provisions concerning the content of ASPs.[93]

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87 PBC Deb 24 February 2009 c529
88 PBC Deb 24 February 2009 c529
89 PBC Deb 24 February 2009 c533
90 PBC Deb 24 February 2009 c536
91 PBC Deb 24 February 2009 c540
92 PBC Deb 24 February 2009 c531
93 PBC Deb 24 February 2009 c538

H. Criminal records

The Committee agreed a number of Government amendments to clause 62, together with a number of new clauses.

New clause 27 would require the Independent Barring Board (IBB) to notify any registered party, and empower it to notify anyone else whom it was satisfied was an interested party, with reasons, when it proposed to bar someone from working with children or vulnerable adults. A further notification would have to be provided setting out the IBB's final decision. Alan Campbell explained that "interested parties" would usually be an employer engaged in regulated activity with vulnerable groups; guidance to employers would advise on the action they might take if they received such a notification.[94] New clause 28 would make equivalent provision for Northern Ireland.

New clause 29 would give the IBB an explicit power to provide information to the police about people who come to its notice, where such disclosure is necessary for the purposes of crime prevention, detection or investigation. The police might then notify any known employer, local children's services or adult social services.[95] New clause 30 would make equivalent provision for Northern Ireland.

New clause 31 would adjust the procedure for automatic barring so that it would be the IBB rather than the Criminal Records Bureau that would have to be satisfied that a person had met the prescribed criteria that will result in an automatic bar. This amendment reflects practical experience showing that IBB case officers would be the most appropriate people to determine whether the criteria had been met in any particular case.[96] New clause 32 would make equivalent provision for Northern Ireland.

Schedule 7 was amended to remove the status of "subject to monitoring and undergoing assessment" from the check of a person's status in the vetting and barring scheme, as this information is too sensitive to appear in a publicly available IT system.[97] The only available results would therefore be "subject to monitoring" or "not subject to monitoring".

I. Importation of offensive weapons

The Committee agreed a number of Government amendments to clause 77 and schedules 6 and 7.

Clause 77 was amended to reframe the proposed defences to the offence of importing offensive weapons as exceptions. This would enable the exceptions to be relied on in proceedings for *any* criminal offence, as well as in forfeiture proceedings under the *Customs and Excise Management Act 1979*.[98]

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94 PBC Deb 24 February 2009 c544
95 PBC Deb 24 February 2009 cc544-545
96 PBC Deb 24 February 2009 c545
97 PBC Deb 24 February 2009 c544
98 PBC Deb 24 February 2009 c551

Schedules 6 and 7 were amended to ensure that defences for the purposes of film, television and theatre that currently apply to the offences of sale, manufacture and hire of offensive weapons in England and Wales would also be available in Scotland.

J. Supplementary, incidental or consequential provisions

Clause 86 would give the Secretary of State the power to make supplementary, incidental or consequential provisions by order, including the amendment, repeal or revocation of provisions made under enactments. James Brokenshire moved an amendment that sought to delete subsections (7) and (8) of the clause:

> Those subsections provide that the negative resolution mechanism will apply in circumstances where the repeal, amendment or change does not apply to a public general Act. There may well be other statutory instruments approved by affirmative resolution that may then be captured and changed by virtue of these provisions, such that they are being amended, and on the basis of this language they would suddenly become subject to the negative resolution process. It is this mission creep in respect of these clauses that seems to extend the additional powers, moving not simply into statutory instrument territory but also into the negative resolution approach.[99]

Alan Campbell agreed that affirmative resolution was appropriate for orders amending or repealing public general Acts. However, he argued that it was unnecessary for all orders made under clause 86 to be subject to that procedure, and highlighted similar provisions in section 148 of the *Criminal Justice and Immigration Act 2008* and section 75 of the *Charities Act 2006*. On division the amendment was negatived by eight votes to five.

K. Gang-related violence

Civil injunctions against gang violence were pioneered by Birmingham City Council between August and December 2007, during which period it obtained some 30 interim injunctions under section 222 of the *Local Government Act 1972*.[100] The advantage of civil injunctions over anti-social behaviour orders (ASBOs) or criminal proceedings was that civil injunctions could be obtained using a lower burden of proof. However, in January 2008, Birmingham County Court dismissed an application by Birmingham City Council for civil injunctions against two alleged gang members. In October 2008 this decision was upheld by the Court of Appeal, which ruled that county courts should not grant civil injunctions in cases where an ASBO would be more appropriate:

> … the court should not indulge in parallel creativity by the extension of general common law principles… it seems to us that, where (as here) a council seeks an injunction in circumstances in which an ASBO would be available, the court should not, save perhaps in an exceptional case, grant an injunction but leave the

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[99] PBC Deb 24 February 2009 c554

[100] s222 of the 1972 Act enables local authorities to institute civil proceedings in their own name where they "consider it expedient for the promotion or protection of the interests of the inhabitants of their area".

> council to seek an ASBO so that the detailed checks and balances developed by Parliament and in the decided cases will apply.[101]

On 5 February 2009, following the Court of Appeal's ruling, the Home Office announced that new powers to grant injunctions to prevent gang-related violence would be added to the Bill:

> The proposed new injunction would enable a court to impose a range of restrictions or requirements on an individual such as:
>
> - not entering a specified place, for example, the neighbourhood that the gang regards as 'its' territory, or the area where the gang has offended because gangs' 'power bases' are partly the result of everyone in their territory knowing them and being frightened of them
> - not being with named members of a gang — gangs are able to intimidate people because they operate in significant numbers, alone gang members are much less able to threaten or commit violence
> - not using or threatening to use violence
> - not using the internet to encourage or facilitate violence
> - not wearing particular items of clothing such as gang colours or balaclavas which prevent identification
>
> Alongside this, the government proposes the court should have the power to require those given an injunction to take part in positive activities such as community outreach programmes or mediation sessions between rival gangs, to ensure that they are provided with alternatives to their gang lifestyle.[102]

During Committee stage the Government therefore tabled new clauses 11 to 26 and new schedule 2. The new clauses were given first and second readings without division.[103] An explanatory memorandum provided by Vernon Coaker to the Joint Committee on Human Rights provides an overview of the new clauses.[104] The human rights organisations Justice and Liberty have both published briefings on them.[105] The Committee's debate on the new clauses focused on the following areas.

1. Under-18s

Opening the debate on the new clauses, Vernon Coaker highlighted the increasing involvement of under-18s in gang-related activity. However, he went on to explain that while the new clauses would technically allow injunctions to be used against under-18s, in practice they would not be used for under-18s as they would be unenforceable:

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101 *Birmingham City Council v Shafi and another* [2008] EWCA Civ 1186. For press coverage of the Court of Appeal's decision see, for example, "Anti-gang injunctions thrown out", *BBC News*, 30 October 2008 and "Local government law – ASBOs, injunctions and anti-social behaviour", *Law Gazette*, 12 February 2009

102 Home Office press release, *Stronger power to tackle gangs*, 5 February 2009

103 PBC Deb 26 February 2009 cc561-582 and 585-604

104 Letter dated 23 February 2009 from Vernon Coaker MP to Andrew Dismore MP regarding gang injunction provisions in the *Policing and Crime Bill*, Appendix A

105 Justice, *Policing and Crime Bill – new clauses (Injunctions to prevent gang-related violence): Suggested amendments for Committee Stage House of Commons*, February 2009 and Liberty, *Liberty's Committee Stage Briefing on new government clauses for the Policing and Crime Bill in the House of Commons: 'Gang related violence injunctions'*, February 2009

> Technically, the injunctions can apply to under-18s. (…) Injunctions, however, have to be enforceable and it is unlikely that they would be enforceable for somebody under 18: the court cannot fine someone who does not have a source of income and most gang members would not have a legitimate source. Nor can the court sentence someone under 18 to detention in a young offenders institution – the penalty for breaching one of these orders – for a civil contempt of court.
>
> Changing the law to enable the courts to use injunctions for under-18s would involve a major change in how civil law interacts with minors – under 18s. However, I recognise that a tool for managing under-18s would be welcomed by those on the front line, seeking to manage gangs, and by those communities most affected by gangs. (…) I have asked my officials to work with others across Government to see whether we can amend how civil injunctions work to enable the provision to be used for under-18s.[106]

Given Vernon Coaker's indication that he did not expect the injunctions to be used for under-18s, James Brokenshire questioned whether the Bill should contain an express provision to this effect.[107] Paul Holmes agreed that the Bill should address an age limit in order to avoid any confusion about the applicability of injunctions to under-18s, particularly in relation to 16 and 17-year olds.[108]

2. Definition of "gang"

The Conservatives tabled an amendment to new clause 11, which sought to introduce a definition of "gang". James Brokenshire said that it was important to ensure that the powers being created were "structured and focused" such that, over time, they did not become applicable to people who would not ordinarily be defined as gangs.[109]

Vernon Coaker did not disagree with any of these points, but argued that a statutory definition would limit the court's flexibility to decide whether any particular case involved gang-related activity.[110] He also emphasised that injunctions preventing people from wearing certain items of clothing were aimed at gang colours; they were not intended to be used against football supporters or "somebody wearing a rosette or a scout badge".[111]

Paul Holmes was not content with Vernon Coaker's assurances, referring to the dangers of "mission creep" and highlighting an incident in November 2008 in which provisions of the *Violent Crime Reduction Act 2006* were used against a group of Stoke City football fans.[112] Vernon Coaker later revisited this point and undertook to reflect on whether it would be possible to incorporate a definition of gangs into the Bill.[113]

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106 PBC Deb 26 February 2009 c566
107 PBC Deb 26 February 2009 c580
108 PBC Deb 26 February 2009 c587
109 PBC Deb 26 February 2000 cc572-573
110 PBC Deb 26 February 2009 c572
111 PBC Deb 26 February 2009 c565
112 PBC Deb 26 February 2009 c587
113 PBC Deb 26 February 2009 c594

3. Evidential requirements

Before granting an injunction, new clause 11 would require the court to be satisfied that:

- the person's past conduct has included engaging in, encouraging or assisting gang-related violence; and

- the injunction is necessary to prevent the person engaging in, encouraging or assisting gang-related violence, and/or to protect the person from such violence.

In relation to the first of these conditions, Vernon Coaker said that the court would have to consider evidence of past behaviour to a civil standard, being the balance of probabilities.[114]

James Brokenshire raised the case of *R v Manchester Crown Court ex parte McCann* [2002] UKHL 39, which related to the standard of proof to be satisfied before granting an ASBO; in that case, the House of Lords had held that magistrates' courts should apply the criminal standard of proof to the requirement than a person's past conduct has included acting in an anti-social manner. This was notwithstanding the fact that ASBO proceedings are civil in nature. James Brokenshire asked Vernon Coaker whether he was satisfied that the use of the balance of probabilities test for the new injunctions would withstand challenge on the basis of existing case law such as McCann, which might otherwise suggest a higher hurdle for the burden of proof.[115]

Paul Holmes asked whether the real reason behind the new clauses was to allow a lower burden of proof to make it easier to get an injunction or, under existing law, an ASBO. He described the injunctions as "almost a control order" and queried whether a lower burden of proof was appropriate for injunctions that would have a major impact on a person's basic civil liberties. [116]

4. Consultation

New clause 15 would require the applicant for an injunction to consult other relevant bodies. For example, a chief constable who applied for an injunction would be required to consult relevant local authorities and other chief constables. The Conservatives tabled amendments to new clause 15 which would have added appropriate primary care trusts, mental health trusts, other NHS authorities, youth offending teams and local probation services to the list of bodies to be consulted. Vernon Coaker asked for the amendments to be withdrawn, but undertook to reflect on the issues they raised.[117]

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[114] PBC Deb 26 February 2009 c567
[115] PBC Deb 26 February 2009 cc576-578
[116] PBC Deb 26 February 2009 c588
[117] PBC Deb 26 February 2009 c569

5. Guidance

New clause 24 would require the Secretary of State to issue guidance relating to gang injunctions. Vernon Coaker said that he would consider this measure further to decide whether, for example, the guidance should be required to be laid before Parliament.[118]

L. RIPA: encrypted data

The Conservatives tabled new clause 9, which would have amended section 53 of the *Regulation of Investigatory Powers Act 2000* to provide for an increased penalty for encrypted data offences involving indecent photographs of children. Vernon Coaker asked for the new clause to be withdrawn, but stated that the Government accepted the clause in principle and would be redrafting it so that it could be reinstated on Report.[119]

M. Retention of fingerprints and DNA samples

During the Committee's final sitting, the Government moved new clauses 33 to 35 which proposed to grant the Secretary of State order-making powers in respect of the retention of fingerprints, photographs, footwear samples and DNA.[120] Opening the second reading debate, Alan Campbell explained that the new clauses were required to enable the Government to respond to the judgment of the European Court of Human Rights in the case of S and Marper.[121] The Court had held that the current law in England and Wales, under which DNA samples and fingerprints of people who are arrested but not charged or convicted can be retained indefinitely, constituted a disproportionate interference with the right to respect for private life and therefore violated article 8 of the European Convention on Human Rights.

Alan Campbell said that before implementing a new retention framework to comply with the judgment, the Government would be carrying out a consultation exercise to ensure "sufficient public debate" on the issue. A white paper setting out proposals on retention and governance would be published before summer 2009.[122] Following the consultation procedure, the Government would then establish a new legal framework for the retention of samples using the enabling powers in the new clauses. Alan Campbell went on to confirm that the white paper would address the status of samples given by volunteers, and that there were no proposals for the new framework to be extended to non-notifiable offences.[123]

James Brokenshire agreed on the importance of DNA samples as an evidential tool. However, he argued that changes to the system for retaining DNA samples warranted primary legislation, saying that it was unacceptable to give the Home Secretary what

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118 PBC Deb 26 February 2009 c571
119 PBC Deb 26 February 2009 c598
120 PBC Deb 26 February 2009 cc608-634
121 *Case of S. And Marper v The United Kingdom*, Applications nos. 30562/04 and 30566/04. For further information on this case, and the provisions of the *Police and Criminal Evidence Act 1984* that it challenged, see Library Standard Note SN/HA/4049 *Retention of fingerprints and DNA samples*.
122 PBC Deb 26 February 2009 c611
123 PBC Deb 26 February 2009 c627

amounted to "almost blank-cheque authorisation" and that the Conservatives would oppose the new clauses "tooth and nail".[124]

Paul Holmes criticised the late introduction of the new clauses[125] and the proposed use of enabling provisions, describing it as

> …entirely wrong and unsatisfactory to ask us to simply give the Government advance permission to introduce regulations that would not be subject to major debate, vote and amendment in the House but rather to the affirmative resolution procedure.[126]

In response, Alan Campbell said that it would not have been possible to draft substantive primary legislation within the deadline required by the European Court of Human Rights judgment without bypassing "a full and proper debate".[127] On division, each new clause was given a second reading by seven votes to four.

N. Graffiti and fly-posting

New clause 1, tabled by the Liberal Democrats, proposed a new community punishment for graffiti and fly-posting based on restorative justice.[128] A person suspected of committing the offences of graffiti or fly-posting would have been given the opportunity to discharge any liability to prosecution and conviction by undertaking community-service punishment to rectify the damage they had caused. The new clause had two purposes: to implement a policy based on the "broken-window" theory[129] and to take a stance that criminalised fewer young people. Alan Campbell described the idea as "interesting", but highlighted the range of existing out-of-court disposals (for example conditional cautions) that are available to address low-level, low-risk offending. The clause was withdrawn.

O. Extraordinary rendition

New clause 5, moved by Paul Holmes, would have amended the *Aviation Security Act 1982* by introducing new powers for the Secretary of State to direct a plane crossing British airspace to land and be searched if it is suspected of involvement in extraordinary rendition.[130] Jim Fitzpatrick regarded the proposed new clause as unnecessary, stating that "sufficient powers are already in place under existing legislation to take action of the sort envisaged by this new clause, based on reasonable suspicion".[131] He highlighted existing powers under the *Chicago Convention on International Civil Aviation* and the *Police and Criminal Evidence Act 1984*. The clause was negatived.

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124 PBC Deb 26 February 2009 cc616-618
125 PBC Deb 26 February 2009 c618
126 PBC Deb 26 February 2009 c619
127 PBC Deb 26 February 2009 c629
128 PBC Deb 26 February 2009 cc634-642
129 The "broken-window" theory suggests that tackling low-level crime such as graffiti can help to reduce more serious crime.
130 PBC Deb 26 February 2009 cc642-647
131 PBC Deb 26 February 2009 c646

Appendix 1: Members of the Public Bill Committee

Chairmen:
Sir Nicholas Winterton, Hugh Bayley

Members:
Austin, Mr Ian (*Dudley North*) (Lab)
Blackman-Woods, Dr Roberta (*City of Durham*) (Lab)
Brokenshire, James (*Hornchurch*) (Con)
Burns, Mr Simon (*West Chelmsford*) (Con)
Campbell, Mr Alan (*Tynemouth*) (*Parliamentary Under-Secretary of State for the Home Department*)
Cawsey, Mr Ian (*Brigg and Goole*) (Lab)
Coaker, Mr Vernon (*Gedling*) (*Minister for Security, Counter-Terrorism, Crime and Policing*)
Dorries, Mrs Nadine (*Mid Bedfordshire*) (Con)
Fitzpatrick, Jim (*Poplar and Canning Town*) (*Parliamentary Under-Secretary of State for Transport*)
Harris, Dr Evan (*Oxford West and Abingdon*) (LD)
Holmes, Paul (*Chesterfield*) (LD)
Keeble, Ms Sally (*Northampton North*) (Lab)
Kirkbride, Miss Julie (*Bromsgrove*) (Con)
Ruffley, Mr David (*Bury St Edmunds*) (Con)
Waltho, Lynda (*Stourbridge*) (Lab)
Wilson, Phil (*Sedgefield*) (Lab)

Committee Clerks:
Chris Shaw, Andrew Kennon

Appendix 2: Clause Numbers

Clause and schedule numbers of the Bill as introduced, together with new provisions added in Committee, are set out in the middle column. Equivalent clause and schedule numbers of the Bill as amended in Committee are set out in the right-hand column.

	Bill as introduced and new provisions added in Committee	**Bill as amended**
Police reform	Clauses 1 to 12	Clauses 1 to 12
Sexual offences and sex establishments	Clauses 13 to 25	Clauses 13 to 25
	Schedules 1 to 3	Schedules 1 to 3
Alcohol misuse	Clauses 26 to 31	Clauses 26 to 31
	Schedule 4	Schedule 4
Injunctions: gang-related violence	New clauses 11 to 26	Clauses 32 to 47
	New schedule 2	Schedule 5
Proceeds of crime	Clauses 32 to 47	Clauses 48 to 63
Extradition	Clauses 48 to 59	Clauses 64 to 75
Aviation security	Clauses 60 to 61	Clauses 76 to 77
	Schedule 5	Schedule 6
Criminal records	Clauses 62 to 67	Clauses 78 to 83
	New clauses 27, 29 and 31	Clauses 84 to 86
	New clauses 28, 30 and 32	Clauses 87 to 89
	Clauses 68 to 72	Clauses 90 to 94
Retention and destruction of samples	New clauses 33 to 35	Clauses 95 to 97
Border controls	Clauses 73 to 77	Clauses 98 to 102
Football spectators	Clauses 78 to 82	Clauses 103 to 107
Other	Clauses 83 to 85	Clauses 108 to 110
General	Clauses 86 to 91	Clauses 111 to 116
	Schedule 6	Schedule 7
	Schedule 7	Schedule 8