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Police Reform and Social Responsibility Bill Committee Stage Report

Bill 151 of 2010-11

RESEARCH PAPER 11/28 24 March 2011

This is a report on the House of Commons committee stage of the *Police Reform and Social Responsibility Bill*. It complements Research Paper 10/81 prepared for the Commons second reading.

Part 1 of the Bill would replace police authorities with directly elected police and crime commissioners. Part 2 would amend and supplement the *Licensing Act 2003* with the intention of "rebalancing" it in favour of local authorities, the police and local communities, while Part 3 sets out a new framework for regulating protests around Parliament Square. Clauses 150 and 151 would allow for temporary drug banning orders and would make changes to the rules on the membership of the Advisory Council on the Misuse of Drugs. Clause 152 would introduce a new requirement for private prosecutors to obtain the consent of the Director of Public Prosecutions prior to the issue of an arrest warrant for "universal jurisdiction" offences such as war crimes or torture.

During the committee stage, several Government amendments were made to the provisions on police reform. Some (for example, on police complaints, police and crime plans and disqualifying people convicted of imprisonable offences from becoming or being police and crime commissioners) were on matters of substance. By contrast, there were only minor amendments to the provisions on the misuse of drugs and no substantive amendments to the parts of the Bill covering licensing, protests in Parliament Square or universal jurisdiction.

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Research Paper 11/28

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ISSN 1368-8456

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Summary

The Public Bill Committee on the *Police Reform and Social Responsibility Bill* met for twenty sittings between 18 January 2011 and 17 February 2011. Most of the amendments the Committee made were to the Part 1 of the Bill, which deals with police reform, and all of these were Government amendments. Of these, the following were of particular significance:

- A whole new schedule on police complaints was added following a review of system by the Independent Police Complaints Commission. The changes are designed to simplify the system.

- The Bill as originally drafted would have given chief constables a veto over police and crime plans. An amendment removed this. Chief constables currently do not have a veto over the equivalent plans.

- There were changes to tighten up the rules on disqualification of people with certain criminal convictions from being elected, or serving, as police and crime commissioners. Originally the Bill reflected local government provisions, and would have disqualified those sentenced to at least three months in prison for any offence in the previous five years. This was amended to disqualify people convicted of any imprisonable offence at any point. This reportedly followed concerns expressed by the Association of Chief Police Officers (ACPO).

There were also changes to extend the functions of acting police and crime commissioners.

The issue of chief constables' operational independence was much discussed. The Government has committed itself to preparing a protocol on this in discussion with the Association of Chief Police Officers (ACPO), although the precise timetable for this is unclear.

There were only minor amendments to the provisions on the misuse of drugs and no substantive amendments to the parts of the Bill covering licensing, protests in Parliament Square or universal jurisdiction.

1 Introduction

The *Police Reform and Social Responsibility Bill* was introduced on 30 November 2010 and received its second reading on 13 December 2010. It had twenty sittings in Public Bill Committee between 18 January 2011 and 17 February 2011. The first four of these were oral evidence sessions. The Committee used all the sessions which were timetabled in the Programme Motion.

Background on the Bill can be found in Library Research Paper 10/81 which was prepared for the Bill's second reading. Further information on the Bill's progress can be found on the *Police Reform and Social Responsibility Bill* pages of the Parliament website and on the *Police Reform and Social Responsibility Bill* pages of the Home Office website. Members and their staff also have access to information on the Library's Bill Gateway pages of the parliamentary intranet.

This Research Paper roughly follows the order of the provisions in the Bill, although for brevity's sake it takes a thematic approach. Unless otherwise stated, clause numbers refer to the Bill as introduced into the House on 30 November 2010.

2 Second reading debate

The most controversial areas at second reading were the police reform measures (which Labour opposed) and arrest warrants for "universal jurisdiction" offences such as war crimes and torture (which Labour supported[1] but which a number of backbenchers opposed). Ed Balls, then Shadow Home Secretary, said that the Opposition intended to seek consensus on those aspects of the Bill which were not to do with police reform.[2]

The Home Secretary Theresa May argued that **police reform** was needed because the current governance arrangements were "simply not working".[3] Police authorities were "not properly accountable" for how public money was used; by contrast, the democratic mandate of PCCs would drive the efficiencies needed to ensure that resources were focused on the front line. Ed Balls criticised cuts to police budgets and argued that the reforms would "weaken police accountability by making it more personalised and less representative of local communities." He also said they would damage police independence.[4]

A number of Conservative and Liberal Democrat Members spoke in favour of the changes. The Conservative Aidan Burley argued that the Bill would improve, not weaken, the police's operational independence, and that deciding where to deploy limited resources was a political decision.[5] Tom Brake (Liberal Democrat) argued that they would improve accountability.[6] By contrast, Labour's Karl Turner said the proposals would "fundamentally undermine the foundations of policing, ending years of police independence from politicians" and that far right extremists might get elected.[7] Hazel Blears, a police minister in the previous Labour government, said that this was unlikely; she was concerned that PCCs would not be sufficiently connected to other agencies involved in the criminal justice system and other local services, however.[8]

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1 HC Deb 13 December 2010 c726
2 HC Deb 13 December 2010 c725
3 HC Deb 13 December 2010 c708
4 HC Deb 13 December 2010 c723
5 HC Deb 13 December 2010 c740
6 HC Deb 13 December 2010 c734
7 HC Deb 13 December 2010 c736
8 HC Deb 13 December 2010 c748

Other issues raised included the cost of PCCs, the electoral system, the relationship between PCCs and elected mayors and the large size of police force areas. Winding up the debate, the shadow minister for policing Vernon Coaker said that force-wide PCCs represented "the wrong level of accountability" and that it would be harder to maintain the operational independence of the police with "a single person who is politically motivated".[9] The Minister for Policing and Criminal Justice, Nick Herbert said PCCs would not be elected solely to run policing, but would have wider powers to fight crime and engage in crime prevention with the local community. They would not have the power to "direct" policing; the Government was "determined to protect the operational independence of chief constables".[10]

One important statement during the second reading concerned just this issue of operational independence. The Home Affairs Committee had issued a report shortly before the debate recommending that "that the concept of operational responsibility be developed and clarified in a memorandum of understanding between the Home Secretary, chief constables and Police and Crime Commissioners."[11] The Committee's chair, Keith Vaz, said during the debate that he hoped a way forward would be found on this.[12] Nick Herbert said:

> That is a good idea, and the Government have already said that we will sit down with ACPO once the Bill is enacted and agree on an extra-statutory protocol (...) that will set out the terms of agreement to ensure that operational independence is protected.[13]

On **universal jurisdiction**, Sir Gerald Kaufman (Labour) said that there was "no need whatsoever to change the law" and that without the legal deterrent that the Bill would remove, disapproval of the presence in the UK of those whom it might have deterred would take forms that he and many others would deplore.[14] Ann Clwyd said that universal jurisdiction was "a vital, agreed-on basis for tackling impunity in states that do not sign up to the International Criminal Court." By contrast, Robert Halfon (Conservative) believed the process had to be reformed to prevent it being used as a "political tool for campaigning and point scoring",[15] and Michael Ellis (Conservative) echoed this, and pointed to occasions where use of the power had disrupted high-level meetings.[16]

The new **licensing provisions** were broadly welcomed, although Nigel Mills was concerned about the fact that the late night levy would cover a whole borough when problems might be more localised than that.[17] Tom Brake[18] and Neil Carmichael (Conservative) both raised the problem of low-cost alcohol, which the Bill does not cover,[19] and Mr Carmichael called for greater controls on supermarkets supplying alcohol.[20] The Bill's provisions on the **misuse of drugs** were also fairly uncontroversial, although Liberal Democrats wanted to be certain that scientists would still be involved and that policies would be evidence based.[21] The issue of protests in Parliament Square was also touched on in the debate, with most of those who brought it up being broadly supportive of the changes; however Tom Brake expressed

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9 HC Deb 13 December 2010 c767 and c768
10 HC Deb 13 December 2010 c770
11 Home Affairs Committee, *Policing: Police and Crime Commissioners*, 23 November 2010, HC 511 2010-11, p20
12 HC Deb 13 December 2010 c756
13 HC Deb 13 December 2010 c769
14 HC Deb 13 December 2010 c733
15 HC Deb 13 December 2010 c761
16 HC Deb 13 December 2010 cc763-4
17 HC Deb 13 December 2010 c756
18 HC Deb 13 December 2010 c735
19 See Library Standard Note SN/HA/5021, *A minimum price for alcohol?,* 28 January 2011 for background
20 HC Deb 13 December 2010 c752-3
21 Tom Brake, c735 and Dr Julian Huppert, c754

concerns about the oral instructions and the use of force and forfeiture powers by Westminster and Greater London Authority employees.[22]

The Bill was given a second reading following a division (320 votes to 230).[23]

3 Police reform

Part 1 of the Bill replaces police authorities with directly elected Police and Crime Commissioners (PCCs). The main amendments to the Bill were to Part 1. All of these were Government amendments.

3.1 Pilots for the reforms

An Opposition amendment seeking pilots to trial the new system of police and crime commissioners provided a vehicle for general debate on the reforms.[24] Vernon Coaker argued that there was little support for the changes. He said that pilots would test what he saw as potential problems, including the "massive" size of police force areas, relationships with other criminal justice agencies and tensions between local policing requirements and strategic national policing requirements.[25] Steve McCabe criticised the pace of the changes, particularly in the light of police budget cuts.[26] Bridget Phillipson said there was no evidence to back up the changes and Chris Ruane also argued for pilots rather than fully implementing the legislation at a time of great upheaval.[27] Responding, Nick Herbert said that reform was needed because confidence in the police was still too low, and too few police authorities were performing effectively. He rejected the idea that the size of the police force area was a problem, pointing to the example of London, where the Mayor has responsibility for 5.6 million electors without them feeling "disconnected".[28] Strategic policing plans would reflect national and strategic policing priorities, and PCCs would be holding chief constables to account for them.[29] The amendment was withdrawn.

3.2 Labour's alternative model

During the debate on a large series of Opposition amendments, Vernon Coaker set out Labour's alternative model for police authority governance, under which the PCC would be the directly elected chair of the police and crime panel (PCP). Under the Bill, the PCP is the body of local councillors and independents which would scrutinise PCCs.[30] Vernon Coaker said that this model would meet the criticism that one person could not cover so large an area. Nick Herbert rejected this, arguing that under it an individual would "stand on a mandate but possibly be wholly unable to deliver it because in office they would only be the chair of a committee".[31] The Committee divided on the main amendment (that the PCC should sit as chair of the police and crime panel), and it was negatived by 9 votes to 7.[32]

3.3 How PCCs will work with local communities

A probing amendment from the Opposition would have required PCCs to attend quarterly meetings in each police neighbourhood and to meet regularly with victims of crime. The aim

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22 HC Deb 13 December 2010 c735
23 HC Deb 13 December 2010 cc777-781
24 PBC Deb 25 January 2011 cc137-166
25 PBC Deb 25 January 201 1cc145, 146 and 148
26 PBC Deb 25 January 2011 c150
27 PBC Deb 25 January 2011 152-155
28 PBC Deb 25 January 2011 c162
29 PBC Deb 25 January 2011 c163
30 See section 3.9 of this Research Paper below for further discussion of PCPs
31 PBC Deb 25 January 2011 c178
32 PBC Deb 25 January 2011 c180

was to illustrate the difficulties which Vernon Coaker felt PCCs would have in adequately representing local communities.[33] Responding, Nick Herbert refuted the suggestion that such matters should be set out in legislation.[34] The amendment was withdrawn.

3.4 The operational independence of the police

The vexed question of chief constables' operational independence was raised at various times throughout the committee stage. For example, Labour moved an amendment to **clause 1** to make sure PCCs could not ask chief constables to act in a manner which could put them in breach of their oath or conflict with their exercise of direction or control. Vernon Coaker asked the Minister if a draft of the memorandum of understanding could be published while the Bill was being debated. Other Labour Members also highlighted potential problems where a PCC had a mandate which conflicted with a chief constable's professional judgement. Bridget Phillipson gave the example of political demands for more frontline policing at the expense of specialist units such as those dealing with counter-terrorism. In response, Nick Herbert reiterated that there was "no intention on the part of the Government to interfere with the operational independence of the police". He differentiated strict operational independence, in the sense of a politician not being able to tell a police officer who to arrest, from matters such as resource issues, and the priorities of the public. The police service had not asked the Government to define operational independence because of the body of case law which had grown up on the subject. The aim was not to dismantle the tripartite system of policing, but to "rebalance it an end the distortion of the centre".[35] The amendment was negatived on division by 10 votes to 7.

The issue arose again in relation to **clause 2** on chief constables. The Opposition moved some probing amendments on the meaning of "direction and control", and Vernon Coaker asked when guidance on this might be available. Nick Herbert said that people should be careful "not to believe that a memorandum of understanding would seek to define operational independence in a close manner. If it did, it would immediately become bogged down and would cut across what the police service are asking, which is that we should not try to define it".[36] The amendment was withdrawn.

Before debate on clause 4, Nick Herbert announced that work had begun on a code of practice:

> I repeat the code of practice will not go into the detail of operational independence, or attempt to define it, but will set out the roles of the Home Office, chief constables and police and crime commissioners as determined by the Bill. It will evolve as the Bill goes through this House and the other place, I cannot give any further indication about the timing at the moment, but, as I said, work has started (...)[37]

Vernon Coaker later moved a new clause requiring the Secretary of State to publish a code of practice detailing where chief constables' actions should be independent of the Police and Crime Commissioner and that this should be subject to agreement by affirmative resolution of both Houses of Parliament. Nick Herbert said that the Government was instead committed to an extra-statutory protocol. He emphasised the need for care with the contents of this and the complexities involved. The document could not be produced

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33 PBC Deb 25 January 2011 cc183-4
34 PBC Deb 25 January 2011 c187
35 PBC 25 January 2011 c 210
36 PBC 27 January 2011 c 242
37 PBC 1 February 2011 c289

"overnight" but it would need to be in place before PCC elections are held in 2012.[38] He concluded:

> We can come to whether there should be statutory approval of the protocol in due course, but we are not yet in a place where we can decide this.

The New Clause was negatived on division (by 8 votes to 7).

3.5 Contracts and ownership of assets

Mike Crockart moved three probing amendments to **schedule 2** designed to clarify the chief constable's powers as a corporate sole.[39] The amendments would have limited these powers to employment purposes and prevented chief constables from entering into other contracts. Responding, Nick Herbert confirmed that it would be the PCC who owned the assets, and passed them to chief constables to manage on a day to day basis. He undertook to look again at whether the Government should provide further clarification. In the light of this Mr Crockart withdrew the amendment.[40]

3.6 Police and Crime Plans

Under the current law, the chief constable prepares a draft plan setting out policing objectives and submits it to the police authority. The police authority then issues the final plan, having consulted with the chief constable if this differs from the draft.[41]

Clause 5 of the Bill would give PCCs a duty to issue police and crime plans at the beginning of their four-year term of office (i.e. within the financial year in which the election was held). These plans could be varied or reissued at any time. The PCC, rather than the chief constable, would prepare the draft. Vernon Coaker moved a series of amendments to require plans to be issued at the beginning of each financial year (as is currently the case) and to remove the power to vary the plans. Rejecting the amendments, Nick Herbert said that "for too long, policing plans have simply been documents that sit on a shelf gathering dust"[42] and that the flexibility offered by the Bill was preferable. The amendment was withdrawn.

A series of Opposition amendments were designed to change the planning process, for example by requiring the chief constable to draft the plan as he or she does at present. Vernon Coaker pressed this particular amendment to a vote, where it was negatived on division (by 9 votes to 7).[43]

However, Government amendments to these arrangements were agreed to. As originally drafted, clause 5(8) would have effectively given a chief constable a veto over a plan. The Government moved two amendments to clause 5 to remove this veto. Rather than preventing a PCC from issuing or varying a plan without the agreement of the chief constable, the amendments would mean that he or she would simply have to consult the chief constable before doing so. Vernon Coaker said that this subsection went "to the heart of the Bill" and that the amendments represented a significant change.[44] Nick Herbert explained them as follows:

> We intend the PCC and the chief constable to draw up the plan together. That was the purpose behind the provision, but when we published the Bill, it was pointed out that

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38 PCB Deb 17 February 2011 c706
39 PBC 27 January 2011 c 251
40 PBC 27 January 2011 c253
41 Section 6ZB *Police Act 1996* (as amended)
42 PBC 1 February 2011 c298
43 PBC 1 February 2011 c308
44 PBC 1 February 2011 c302

> the drafting provides a de facto veto for the chief constable. All members of the Committee will agree that this is not desirable because an elected individual would be unable to implement the police and crime plan if the chief constable said "No, I don't agree."[45]

He went on to point out that the amended clause would not alter the status quo, in that chief constables currently do not have such a veto.

The Committee made a similar amendment to **clause 6,** which covers the equivalent arrangements in London.[46] An Opposition amendment to **clause 7** on the content on police and crime plans was withdrawn.[47] This would have provided for the objectives in the plans to be those of the police and crime panel rather than those of the PCC.

3.7 Police and Crime Commissioners' relationships with other criminal justice bodies

Clause 10 requires PCCs to act in co-operation with other bodies, such as probation providers and local authorities, when exercising their functions. It also requires PCCs and criminal justice bodies[48] to make arrangements to provide an efficient and effective criminal justice system in the police area. A caveat in the clause is that they must make such arrangements "so far as it is appropriate to do so".

In the clause stand part debate, Vernon Coaker asked "what on earth has an elected politician to do with prosecution?" He continued:

> I know the Minister's intention... in this clause is to deal with their frustrations with the criminal justice system, but essentially what we are starting to see in this clause is not only a police and crime commissioner but the beginnings of a criminal justice commissioner.[49]

Mr Coaker predicted that this would cause problems for the Government in the House of Lords.

Nick Herbert said that no-one disagreed about the fundamental importance of the independence of the judiciary. However, local criminal justice boards already brought leaders of local criminal justice agencies together. These are non-statutory, and, Mr Herbert said, they "overlap with community safety partnerships at the strategic level". The Government did not wish to prescribe how local arrangements might evolve, but it did "see a role for police and crime commissioners with respect to the wider criminal justice system, to bring about an efficient, effective service for victims, witnesses and the wider community."[50] Michael Ellis commented that the provision's reference to appropriateness would cover the House's concern not to interfere in the judicial process.[51]

3.8 The London model

The Bill introduces a different model for police governance in London. Under **clause 3**, the Metropolitan Police Authority would be replaced by a new body called the Mayor's Office for Policing and Crime rather than a PCC. Whoever was serving as Mayor of London would

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45 PBC 1 February 2011 c303
46 PBC 1 February 2011 c309
47 PBC 1 February 2011 c316
48 For example the Crown Prosecution Service, the Lord Chancellor and ministers when exercising prison or probation functions
49 PBC 1 February 2011 c321
50 PBC 1 February 2011 c324
51 PBC 1 February 2011 c324

automatically also be the occupant of the Mayor's Office for Policing and Crime, although these functions could be delegated to a deputy mayor for policing and crime.

During the stand part debate on clause 3, Shadow Home Office minister Clive Efford argued that the Government had made false comparisons between its proposals for PCCs and the current role of the Mayor of London. This ignored the role of the Metropolitan Police Authority (MPA), and the high profile of its chair. The Bill, he said, would blur the current "clear demarcation of responsibilities for scrutiny".[52] Responding, Nick Herbert said the Mayor currently has a considerable role in policing, and that there was agreement between senior police leaders in London and the Mayor of London and the Deputy Mayor for policing, that the MPA was an unnecessary tier and should go.[53] The Committee divided, and clause 3 was ordered to stand part of the Bill.[54] Mr Efford went on to raise the appointment of the Deputy Mayor for Policing and Crime, who under the Bill would not have to be directly elected. Nick Herbert responded that the current legislation allowed the Mayor, if he wished, to delegate the position of chair of the MPA to someone who might or might not be elected. The buck would ultimately stop with the Mayor, as was the case in London now.[55]

Minor Government amendments to do with the commencement of the financial year for the Mayor's Office for Policing and Crime were agreed to.[56]

The Government later moved an amendment to **clause 19,** which provides for the Mayor's Office to delegate functions to the Deputy Mayor for Policing and Crime. This was to prevent an unintended consequence which would have stopped the deputy Mayor from preparing the police and crime plan. As a result of the changes, the deputy Mayor would be able to exercise three functions which the original drafting would have prevented: determining police and crime objectives, attending meetings of the police and crime panel and preparing the annual report.[57]

Other amendments to clauses 24 and 25 were agreed to correct drafting errors. They would ensure that the Common Council of the City of London, which is currently charged with the governance of the City of London Police, could continue to receive police grants from the Home Office.[58]

3.9 Police and crime panels

Under **clauses 28-30** of the Bill, police and crime panels, formed of local councillors and two co-opted independent members, would scrutinise PCPs. There was much debate on whether the Bill gives them sufficient powers, or whether they would be, in the words of Vernon Coaker, "toothless watchdogs".[59]

Schedule 5 of the Bill gives detailed provisions on issuing precepts, the part of police funding which is raised locally from the council tax. Under these, PCPs have the power to veto precepts, but only by a majority vote of at least three quarters of the panel. Labour moved an amendment to give the PCP the power to issue the precept, rather than reviewing and possibly vetoing it. Both Mike Crockart and Vernon Coaker had tabled amendments to change the veto threshold from three quarters to two thirds; the Labour amendment was not selected. Mr Crockart's amendment on the veto, along with other amendments, was debated

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52 PBC 27 January 2011 c264
53 PBC 27 January 2011 c274
54 By 8 votes to 6; PBC 27 January 2011 c276
55 PBC 27 January 2011 c277
56 PBC 27 January 2011 c284
57 PBC 1 February 2011 cc339-342
58 PBC 1 February 2011 c345
59 PBC Deb 1 February 2011 c363

at the same time as Labour's amendment allowing PCPs to issue precepts. Vernon Coaker said:

> If the panel is to mean anything, if it is to be anything other than a talking shop, if it is to scrutinise properly and hold the Commissioner to account, it must have powers. It has only two major powers: one is vetoing the appointment of the chief constable; the other is vetoing the precept. If we establish a barrier that is so high that under any normal circumstances the panel will find it extremely difficult to get over it, we have to question whether the Government are serious about providing it with such powers.[60]

Mike Crockart said of his own amendment:

> ...we have 12 members. My amendment would move us from a position of needing nine members to vote to veto a precept to one in which we would need eight. I do not think that that is necessarily a huge change, but it would slightly alter the balance of power between the panel and the commissioner and would bring the powers more into line with what is used successfully in London. It would allow panels to scrutinise the work of thee commissioners more robustly.[61]

Responding, Nick Herbert pointed out that the *Localism Bill* would allow voters to reject excessive increases in council tax in a referendum, so that there would be two checks.[62] He also made the point that PCPs will be nominated from local authorities, and therefore will not have a direct mandate themselves:

> We have to take care about not handing the members of the panel a significant power to cut across the local mandate of the police and crime commissioner, who would have a clear mandate in respect of what he or she intended to do about the precept.[63]

In the event, Vernon Coaker withdrew his amendment to allow the PCP to issue the precept. However, following advice from the Chair, he went on to press Mike Crockart's amendment to a vote. It was negatived by 9 votes to 7.[64]

Both Vernon Coaker and Mike Crockart had tabled amendments to the provisions in clause 28. Amendment 288, which Mr Coaker moved, would have expanded the brief of PCPs, requiring them to review, report and make recommendations on a wide range of functions. Both tabled other amendments which were debated with amendment 288. A Labour amendment would have given PCPs the power to require chief constables to attend their meetings, and Mike Crockart's amendments would have required chief constables and other senior officers to attend and answer questions about the PCC's decisions and priorities. Mr Crockart emphasised that his intention was not for the PCP to scrutinise the chief constable's work (which was a matter for the PCC) but to be able to discuss the PCC's actions and decisions with the chief constable.[65]

Responding, Nick Herbert said:

> It is for the police and crime commissioner to hold the chief constable and the force to account. In looking at the powers of the police and crime panel, the Government have taken care to ensure that chief constables do not find themselves looking two ways,

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60 PBC Deb 1 February 2011 c348
61 PBC Deb 1 February 2011 c350
62 PBC Deb 1 February 2011 c351
63 PBC Deb 1 February 2011 c354
64 PBC Deb 1 February 2011 c357
65 PBC Deb 1 February 2011 c365

> both to the police and crime commissioner and to the panel. They cannot be answerable to two bodies.[66]

Vernon Coaker withdrew amendment 288.[67] Later there was a division on a Labour amendment to clause 29, which would have given PCPs the power to require chief constables to attend. The amendment was negatived by 9 votes to 6.[68]

During the stand part debate on clause 28 Nick Herbert countered the suggestion that police and crime panels would be toothless, listing powers they had other than the rights of veto over precepts and on the appointment of chief constables.[69] He concluded:

> The key point, which Opposition Members still have not understood, is that it is the police and crime commissioners who have a mandate. This requires us to think again about the panel's wider role. We cannot allow it to become a police authority, as it would create confusion and conflict, and result in unelected people being able to strike down the decisions of an elected individual, which would not make sense. That is why the Opposition's proposal for a directly elected police chair is such a nonsense.[70]

Mike Crockart tabled a series of amendments on the composition of PCPs designed to introduce the flexibility to make them more geographically and politically representative. Nick Herbert undertook to consider these:

> On the wider geographical and political balance raised by my hon. Friend the member for Edinburgh West, I have said that I shall reflect on that. There are significant difficulties in achieving overall political balance without creating complexity, but I am certainly willing to consider such proposals.[71]

In the light of this, Mr Crockart withdrew his main amendment.

In the stand part debate on **schedule 6**, Vernon Coaker raised the issue of elected mayors, who would automatically be members of PCPs, and whether this might give rise to a clash of mandates between them and PCCs. Nick Herbert responded that there were other examples in the world where there were elected officials in the same area who have different mandates "which electorates understand".[72] Schedule 6 was agreed to.

3.10 Suspension and disqualification of police and crime commissioners

Clause 30 of the Bill gives the PCP the power to suspend a police and crime commissioner if the commissioner has been charged with an offence which carries a maximum penalty exceeding two years imprisonment. **Clause 67** covers the disqualification of those who have actually been convicted of an offence. In the Bill as it was originally introduced, people who had been convicted in the last five years for any offence and sentenced to 3 months in prison or longer would have been disqualified from election or holding office as a PCC.

Mike Crockart moved an amendment to change the threshold in clause 30 (on suspensions) to cover offences with maximum terms exceeding six months, pointing out that this would catch some serious offences.[73] Nick Herbert pointed out that this clause referred to charges rather than convictions. However, he did say that, as a result of representations, the

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66 PBC Deb 1 February 2011 c366
67 PBC Deb 1 February 2011 c370
68 PBC Deb 3 February 2011 c409
69 PBC Deb 3 February 2011 c383
70 PBC Deb 3 February 2011 c385
71 PBC Deb 3 February 2011 c399
72 PBC Deb 3 February 2011 c409
73 PBC Deb 3 February 2011 c410

Government would be tabling an amendment to clause 67 which would reduce the threshold so that any conviction for an imprisonable offence would disqualify a PCC from office:

> That is a reflection of the fact that while we originally set the threshold for disqualification at three months which is the same as existing local government legislation that applies to councillors, we recognised, on the basis of representations made to us, that because police and crime commissioners have a responsibility to hold the police force to account, a higher standard should apply to them.[74]

The amendment to clause 30 was withdrawn.

Later, press articles indicated that these and other representations had been made by the Association of Chief Police Officers (ACPO).[75]

Accordingly, in the debate on clause 67, Nick Herbert moved an amendment so that people would be disqualified from election or from holding office as police and crime commissioners if they had been convicted of any imprisonable offence. The amendment was agreed to.[76]

Nick Herbert also moved a Government amendment to **clause 62** to extend the powers of an acting police and crime commissioner if the PCC were suspended. The result would be that the acting commissioner would be able to perform all functions except issuing and varying the police and crime plan.[77]

3.11 Appointment, suspension and removal of chief constables

Clause 38 and **schedule 8** would allow PCCs to appoint or suspend chief constables, and to make them retire or resign. A Labour amendment to require appointments to be made in consultation with the Police and Crime Panel was withdrawn[78] and another seeking to require the Secretary of State's approval before a chief constable was sacked was negatived on division.[79] A series of Labour amendments to **schedule 8** intended to increase the power of the police and crime panel in the processes. The main amendment was withdrawn following a debate over whether the Bill provided sufficient checks and balances to the power of PCCs.[80] Mike Crockart also moved amendments to lower the threshold at which the PCP could veto a candidate for appointment as chief constable from three quarters to two-thirds, and to limit the Secretary of State's power to make regulations about appointments if a veto was exercised. These, too, were withdrawn.[81] An Opposition amendment to allow the PCP to veto the removal of a chief constable was negatived on division by 10 votes to 6.[82]

In a debate on some Labour amendments on the appointment of the Commissioner of the Metropolitan Police, Nick Herbert confirmed that the Government did not intend to change the current arrangements whereby the Queen appoints the commissioner on the advice of the Home Secretary.[83]

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74 PBC Deb 3 February 2011 c415

75 Daily Mail, *Electing local police chiefs is perverse, warns top officer as ACPO attack government's plans for public involvement in forces*, 7 February 2011; see also "Head of ACPO seeks to explain commissioners comment leak", *Police Review*, 11 February 2011, p4

76 PBC 8 February 2011 c484

77 PBC 8 February 2011 c477

78 PBC 8 February 2011 c445

79 PBC 8 February 2011 c447

80 PBC 8 February 2011 cc447-453

81 PBC 8 February 2011 c457 and 439

82 PBC 8 February 2011 c463

83 PBC 8 February 2011 c468

3.12 Electoral issues

Vernon Coaker moved a probing amendment which would have required a minimum turnout of 40 per cent in the election of a PCC to reduce the chances of an extremist candidate being elected. This was withdrawn.[84] In the clause stand part debate which followed, Vernon Coaker asked why the Supplementary Vote system was to be used rather than the Alternative Vote system. Nick Herbert said that the Supplementary Vote system was already used in mayoral elections, which was why it was appropriate.[85]

3.13 The strategic policing requirement

Clause 79 of the Bill requires the Secretary of State to issue a document called the "strategic policing requirement" setting out national threats and appropriate national policing capabilities to counter those threats. A chief constable would have to "have regard" to this in exercising his functions. PCCs also have a duty under **clause 5(5)** to "have regard" to the document.

Vernon Coaker moved an amendment which would have given both the PCC and the chief constable a duty to "take account" of this requirement, which he argued was a stronger form of words. This, he said, followed concerns expressed by ACPO. Nick Herbert acknowledged ACPO's concerns, and said that he had discussed the issue with Sir Hugh Orde, its president. However, he said he was "currently advised that the duty is sufficiently strong that chief constables would be required to follow it and not depart from it without good reason." The wording in the amendment would, he believed, be a weakening of the duty.[86]

3.14 Police complaints

An amendment from Mike Crockart to ensure that PCCs would be involved in scrutinising the police complaints process elicited the response from Nick Herbert that Commissioners would be under the same duty to keep themselves informed about this as police authorities. However, he undertook to discuss the amendment with officials. Accordingly, Mr Crockart withdrew it.[87]

Later, the Government introduced a schedule of new provisions to make changes to the system of police complaints.[88] The existing system is set out in Library Standard Note SN/HA/2056, *The Independent Police Complaints Commission*. In brief, the Independent Police Commission's (IPCC's) remit covers complaints about the conduct of an officer or member of police staff; "conduct matters" (such as corruption) where no specific complaint has been made; and death and serious injury following police contact. Complaints about operational or "direction and control" issues do not fall within the IPCC's jurisdiction. There are three types of IPCC investigation:

- Supervised - an investigation conducted by the home or outside force under their direction and control. The IPCC sets the terms of reference and receives the final report.

- Managed - an investigation conducted by the home or outside force under the direction and control of the IPCC.

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84 PBC 8 February 2011 c475
85 PBC 8 February 2011 c474
86 PBC Deb 8 February 2011 c493
87 PBC Deb 25 January 2011 c196
88 New Clause 9 (clause 96 in the Bill as amended in committee) which would give effect to a new schedule (now schedule 14).

- Independent - an investigation led by the IPCC's own investigative teams and overseen by an IPCC Commissioner.

The majority of complaints are dealt with entirely by the home force themselves either by local investigation or using a process called Local Resolution which is a way of dealing with complaints at a local level without involving the disciplinary process.

The IPCC also provides an appeal mechanism. The IPCC may consider appeals into:

- The failure of the police force to record a complaint;
- The outcome of the local resolution process;
- The outcome of a local or supervised investigation,

Nick Herbert explained that the new provisions have resulted from a review which the Independent Police Complaints Commission had conducted into its first four years of operational experience. This review had resulted in ten proposals:

1 Remove the current distinction between conduct, maladministration and service failure matters.

2 All complaints to be dealt with at the lowest appropriate level (keeping a direct route to the IPCC for the most serious cases).

3 Local assessment and handling with the aim of resolving complaints and improving service through a range of techniques.

4 Separate consideration of whether a complaint is 'upheld' from any finding of misconduct / poor performance against an officer ('substantiated'). A complaint can be upheld regardless of whether there is evidence of individual misconduct or poor performance.

5 Review within the force if complainant still not satisfied.

6 Review the appeal structure. Introduce one overarching right of appeal to the IPCC, a public interest test and clearer standards showing how appeals to the IPCC will be handled.

7 Greater oversight role for the IPCC to check force handling of lower-level complaints.

8 Introduce measures to make complaints data more meaningful so that they drive improvement in the system.

9 Remove excessive bureaucracy from the complaints system.

10 IPCC to normally issue an early interim statement on independent investigations.[89]

Nick Herbert explained that the changes in the Bill are intended to give the IPCC greater flexibility in carrying out its functions. They "will simplify the process for complainants by ensuring that all matters of concern about the standard of service provided by the police are addressed within a single system." The main changes are as follows:

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[89] See IPCC, *Building on experience Taking stock of the new police complaints system after four years operational experience*, 2008

- The minimum number of commissioners required in the IPCC will be reduced from 10 to five, and the IPCC will no longer require the consent of the Secretary of State for the delegation of its functions.

- The changes will remove the provision that currently excludes complaints relating to the "direction and control" of a force from being handled in the police complaints system. Currently those complaints are dealt with under a parallel process of informal resolution governed by Home Office guidance.

- The definition of the conduct that can be the subject of a complaint is changing, making it clear that decisions, as well as acts, omissions and statements, are included.

- Complaints of a nature set out in regulations, such as those that are vexatious or an abuse of the complaints system, will no longer have to be recorded by the police. Currently police forces have to record these complaints and then apply to the IPCC to dispense with them.

- "Low-level complaints" will be the responsibility of police forces, which will have the flexibility to determine how best to respond to the complaint, whether by investigation or by other methods such as mediation. A complainant will have a right of appeal to the chief constable, rather than the IPCC, but the police and crime commissioner will have a power to direct the chief constable to comply with his or her obligations.[90]

- Police and crime commissioners will be able to ensure that chief constables have fulfilled their duty in the handling of such complaints.

- In cases where a complaint reveals that a police officer's performance is unsatisfactory, the IPCC will have the power to recommend and direct that unsatisfactory performance proceedings be brought against them, which is the same power that the IPCC has in respect of misconduct matters. The IPCC will retain its oversight of the whole system and direct involvement in dealing with the most serious complaints. It will continue to have the power to call in any complaint that it determines should be referred to it.

What counts as "low level complaints" ("suitable for being subjected to local resolution") will be set out in regulations. However, under the new schedule,[91] a determination that a complaint is suitable for local resolution cannot be made unless the conduct complained about (even if it were proved) would not justify criminal or disciplinary proceedings, and would not involve an infringement of a person's rights under Articles 2 or 3 of the European Convention on Human Rights.[92] Regulations will set out that the IPCC would still be able to call in any case and investigate it if it had concerns.[93]

Nick Herbert confirmed to Vernon Coaker that regulations would determine what would count as a "low-level complaint."[94] He concluded:

> The measures will improve the handling of police complaints by removing bureaucratic processes from the system and ensuring a focus on dealing with the complainant's

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90 Schedule 14, paragraph 7
91 Schedule 14, paragraph 9
92 The right to life and the right not to be subjected to torture or to inhuman or degrading treatment or punishment
93 Home Office Official, personal communication, 24 March 2011
94 PBC Deb 17 February 2011 c694

> concern. Committee members may note that the written submission from the Independent Police Complaints Commission says:
>
> "The Independent Police Complaints Commission is pleased that the Government has tabled an amendment to the Bill to give effect to some of the ideas generated by our review of the police complaints system".
>
> It concludes:
>
> "The IPCC is committed to increasing confidence in the police complaints system and it will continue to work with Home Office officials to deliver this aim within the framework set by Parliament."
>
> I believe that the changes will deliver an improvement to the complaints system. We wanted to consult carefully with the IPCC before introducing the measures, which is why I have introduced them at this stage. I also wanted to introduce them in Committee rather than on Report. I hope that the hon. Gentleman will understand that I did so to give him a bit more time to consider before Report whether he is happy with the proposals, and perhaps to discuss them with the IPCC. I believe that they represent a sensible improvement and reflect police and crime commissioners' new role.[95]

Vernon Coaker confirmed that the IPCC was satisfied with the proposals. He identified the main issue as being what would count as a low-level complaint, but also asked the Minister to confirm whether or not people would still have the right to take a complaint to the IPCC. Currently, if people wish they can go straight to the IPCC rather than the force, and the IPCC will decide whether they or a police force are the "appropriate authority" to look into it. He also asked for further details about the role of the Police and Crime Commissioner. Nick Herbert responded:

> The hon. Gentleman is right to draw attention to the issue of low-level complaints. There were 31,259 complaints recorded by police authorities in England and Wales in 2008-09, of which 41% were dealt with by local resolution. The vast majority of complaints fell into two categories—21% under incivility, impoliteness and intolerance, and 24% under other neglect or failure in duty. There should be capacity to deal with those kinds of complaints, which are important to members of the public, but are not the result of misconduct and need to be investigated at a different level. Such complaints should be dealt with by the organisation through local resolution, while ensuring that there is a right of appeal to the chief constable if the complainant is not happy.
>
> That brings two matters into question. First, is the right to go to the IPCC still available? The answer is yes. Secondly, what is the role of the police and crime commissioner? I have considered that matter carefully, because one question I asked myself was whether the PCC should take responsibility for low-level complaints, although the IPCC would remain in charge of issues relating to misconduct. I concluded that the problem was, as I have said, that we would have to set up an entire complaints machinery in each PCC's office, which would duplicate the complaints machinery in each force.
>
> It is better that PCCs have oversight, as they will be under a duty to keep abreast of all of their force's activities. They will focus primarily on the direction and control of the force, but we will give them a specific power to direct chief constables to take action on complaints, where there has been a failure to deal appropriately with a complaint. That is an additional safeguard so that, where an appeal has gone to a chief constable and

[95] PBC Deb 17 February 2011 cc694-5

> someone is unhappy, there is oversight on how that matter has been dealt with. Of course, the PCC has a particular role on complaints against the chief constable.
>
> I think that we have arrived at a sensible balance. To some extent, the situation will evolve, depending on how far people address future complaints to the PCC rather than to the force, although that might still result in the complaint being handed to the force, and the PCC wanting to be certain that it has been appropriately dealt with. In general terms, the deputy mayor for policing in London said that when the change in arrangements was made in London, there was a big increase in the volume of correspondence received by the Mayor as that position became more visible in relation to policing. That is not the same as saying that they should have formal responsibility for a complaints procedure. We want to avoid unnecessary duplication.[96]

He said that he would write to Vernon Coaker giving further details. The new clause and new schedule were agreed to and are now clause 96 and schedule 14.

4 Licensing

Part 2 of the Bill introduces amendments to the Licensing Act 2003. Licensing authorities themselves and local health bodies will be given the power to make representations about new or existing licences. The "vicinity test" and the limited category of "interested party" will be abolished, enabling anyone to make relevant representations about new or existing licences. Temporary event notices (TENs) will be overhauled and penalties for underage sales strengthened. In addition, licensing authorities will acquire the power to introduce a late night levy on premises opening after midnight and to make blanket restrictions on sales between midnight and 6 am.

There were no successful amendments. Debate was particularly intense around the new late night levy, which provides for 70% of income to go to the police, the remainder to the local authority. The Minister undertook to consider at a later date granting local authorities the power to set fees locally. The Government was also sympathetic to adding an additional public health objective to the 2003 Act.

4.1 The addition of new categories of "responsible authority"

Diana Johnson (Labour) questioned the advisability of adding new categories to those entitled to object to a licence application. She suggested that, by adding licensing authorities themselves to the category of "responsible authority", an individual licensing authority will become both "prosecutor and judge"; there was potential for conflict of interests where the authority was, in effect, making representations to itself. She acknowledged that this point will be addressed in statutory guidance, but regretted that this guidance will be non-binding.[97] In reply, Home Office Minister James Brokenshire said that licensing authorities will be accountable as before for their decisions, and these decisions can be challenged in the courts. He said that statutory guidance will stipulate that, as is the case with the *Gambling Act 2005*, the licensing official acting as "responsible authority" will not be involved in the final determination of the same application.[98]

In Scottish licensing law, "public health" is one of the licensing objectives.[99] This is not the case in England and Wales. Clause 104 adds primary care trusts and local health boards to the list of "responsible authorities". Since these bodies will only be able to make representations based on the existing licensing objectives, Ms Johnson sought clarification of

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96 PBC Deb 17 February 2011 cc697
97 PCB Deb 10 February 2011 c524
98 PCB Deb 10 February 2011 cc525-6
99 *Licensing (Scotland) Act 2005* s4

how this will work. The Minister replied that measures such as attendance statistics at A & E departments could be used to support representations under the public safety and crime and disorder objectives.[100]

4.2 Removal of the "vicinity" test

Diana Johnson moved a probing amendment to test what she saw as lack of clarity in the decision to abolish the "vicinity" test. Will an individual or business be able to make representations regardless of where they are based geographically, or must they be based in the local authority area?[101] Steve McCabe raised the possibility that "someone in Brighton could object to a premises in Burton upon Trent".[102] In response, the Minister confirmed that the intention was to abolish any geographical restrictions. However, he stressed that any objection would still have to be "relevant" in the eyes of the licensing authority, in the sense that it spoke to the four licensing objectives and was not "frivolous or vexatious".[103] Ms Johnson withdrew her amendment. In later exchanges in the clause stand part debate, Ms Johnson reiterated her concern that licensing authorities may incur additional bureaucratic burdens; the Minister answered by pointing to estimates in the Impact Assessment.[104]

Julian Huppert (Liberal Democrat) moved a further probing amendment that would require all applications to be advertised on the council's website. He presented this as a cheaper alternative to newspaper advertising when council budgets are under strain. In reply, the Minister argued that greater flexibility can be achieved if such details are prescribed in secondary legislation. Accepting the point, Dr Huppert withdrew his amendment.[105]

4.3 Reducing the evidential burden

Clause 109 would reduce the threshold which licensing authorities must meet to achieve the promotion of the licensing objectives by replacing the word "necessary" with the word "appropriate". During the stand part debate on this clause, Diana Johnson questioned why the Government felt this was change was needed. She argued that the word "necessary" is susceptible of clear legal definition, whereas "appropriate" is not. She said that the change will allow for increasingly subjective decisions by licensing authorities and threatens to impose new costs on small businesses.[106]

In response the Minister, James Brokenshire, said that the change was prompted by the majority response to the 2010 consultation. Evidence suggested that some local authorities, worried that a particular condition would not be regarded as "necessary", adopted a "defensive approach". He added that the word "necessary" is not defined in statute and there is accordingly no reason why the new word would give rise to more litigation than the old. The statutory guidance will be amended to give advice on the interpretation of what is "appropriate", but the intention is to give licensing authorities "some flexibility to consider the effects of the decision on the promotion of the [licensing] objectives".[107]

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100 PCB Deb 10 February 2011 cc527-8
101 PCB Deb 10 February 2011 c530
102 PCB Deb 10 February 2011 c532. Later in the debate Mr McCabe made a similar point, suggesting that a housing body with nationwide connections might mobilise to object to a club premises certificate. The Minister replied in similar terms to those he used previously (cc542-3).
103 PCB Deb 10 February 2011 c533
104 PCB Deb 10 February 2011 cc538-9
105 PCB Deb 10 February 2011 cc534-7
106 PCB Deb 10 February 2011 cc544, 547-8
107 PCB Deb 10 February 2011 cc549-51

4.4 Temporary event notices

At present only the police can object to the giving of a Temporary Event Notice (TEN). **Clause 112** extends that right to environmental health officers also. Diana Johnson argued that this change would turn something "quick, effective and flexible" into a "mini-licence", with consequent increase in bureaucracy, especially for small community groups. The Minister responded that local residents often complain about noise nuisance associated with temporary events. For that reason, environmental health officers (and no other group) were being added to the list of potential objectors.[108]

Clause 113 would permit a licensing authority, for the first time, to attach conditions to a TEN, but only if it applied to premises which are already, at least in part, covered by a premises licence or club premises certificate. Diana Johnson moved a probing amendment which would have two effects: first, to require that whatever licence conditions were already in force for the premises in question applied automatically to the TEN; secondly, to permit licensing authorities to add appropriate conditions to a TEN given for unlicensed premises. The Minister rejected both these proposals on the grounds that they would impose additional costs on "what is intended to be a light-touch process for events of short duration". On division, the Labour amendment was defeated by eight votes to five.[109]

An amendment moved by Julian Huppert for the Liberal Democrats was designed to test the Government's reasoning in extending the maximum duration of a TEN from four days to seven. Dr Huppert argued, with support from the Labour front bench, that the longer a temporary event lasts, the greater the likelihood of friction between operators, police, councils and the local community. The Minister explained that the extension was called for by touring theatres, voluntary groups and travelling circuses; the Government was keen to foster the "sense of community spirit" such organisations represent. He argued that adequate safeguards would be in place once the right to object was extended to environmental health officers as well as the police. On division, the Liberal Democrat amendment (which would have left the maximum unchanged at four days) was defeated by nine votes to five.[110]

4.5 Persistently selling alcohol to children

Labour moved two probing amendments here. At present, as an alternative to prosecution, a licensee may opt to close their premises for a maximum of 48 hours. Clause 118 amends the period to a minimum of 48 hours and a maximum of two weeks. Diana Johnson argued that the current system of 48-hour closure works well and is sufficient financial penalty for a small business in a difficult economic climate. The other amendment aimed to introduce, in addition to other penalties, a training order to educate the person who sold the alcohol and ensure that their behaviour was not repeated. This proposal was said to enjoy "widespread support".[111]

In his response, the Minister said he was not persuaded by the need for further training. As part of the mandatory code for alcohol sales there is already a requirement for retailers to implement an age verification policy for their premises. He said that retailers are encouraged to train their staff, and there are national award schemes such as Best Bar None. Ms Johnson nevertheless wished to test the Committee's opinion regarding training orders. On division, the Labour amendment was defeated by nine votes to five.[112]

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[108] PCB Deb 10 February 2011 cc552-3
[109] PCB Deb 10 February 2011 cc554-6
[110] PCB Deb 10 February 2011 cc557-9
[111] PCB Deb 10 February 2011 cc560-1
[112] PCB Deb 10 February 2011 cc562-5

Ms Johnson questioned why the Bill increases the maximum fine for persistent selling from £10,000 to £20,000, given that the average fine awarded to date has been £1,713. The Minister explained that the intention was to send "telegraphed messages" about the seriousness of the offence. Responding to an intervention by Michael Ellis, he confirmed that the Government will work with the Crown Prosecution Service and the Sentencing Guidelines Council to encourage magistrates to impose larger fines as a consequence of this change.[113]

4.6 Early morning alcohol restriction orders

An amendment to the *Licensing Act 2003* was added to the statute book late in the last Parliament. It enables the licensing authority to impose an "early morning restriction order" (EMRO) to prohibit the sale of alcohol between 3am and 6am in the whole or part of its area.[114] Although this section has not yet been brought into force, clause 119 of the present Bill seeks to replace it with a wider provision facilitating restriction orders for a period of any duration between midnight and 6am, if the licensing authority deems it "appropriate". Labour moved an amendment to replace the word "appropriate" with the word "necessary". In his reply the Minister referred to earlier discussions about these two terms, stressing that the same evidential threshold should apply to all licensing determinations. He explained that, if the wording were left unchanged, there was a real possibility that the new orders would not be used "because the test that would need to be established would be such a high hurdle." The expectation is that, under secondary legislation, particular kinds of premises such as hotels and bed-and-breakfasts will be exempted from the effects of EMROs; possible exemptions will be a matter for future consultation.[115]

Labour withdrew this amendment but pressed on with another to replace "midnight" with "1am" as the earliest start time for an EMRO. Ms Johnson argued that "midnight is too early and is out of step with the expectations of most modern customers in the night-time economy". In reply, the Minister said that the timings were chosen to give local authorities maximum discretion; they are free to set a start time of 1am for an EMRO if they so choose.[116] This amendment was also withdrawn, as were others, after brief debate, relating to the interaction of EMROs and TENs and the rights of personal licence holders.

4.7 Review of effect of amendments

Clause 123 requires the Secretary of State to review, after five years, the regulatory impact of the changes introduced by the Bill. Diana Johnson moved an amendment to reduce this period to two years. She argued that since several of these changes imposed financial burdens and were "based on limited evidence", they should be reviewed at the earliest opportunity. The Minister responded that five years was a standard review period for post-legislative scrutiny and there would be insufficient data available after two years to judge whether the policy objectives were being achieved. Ms Johnson withdrew the amendment.[117]

4.8 Late night levy

The Opposition was concerned that the "late night levy" as provided for in the Bill was indiscriminate in its application, since it would be levied on all late-opening premises in the area regardless of whether they experience problems or need additional policing. Diana Johnson moved amendments that would allow the local authority to apply the levy to one part of their area only. Nigel Mills (Conservative) echoed these concerns, suggesting that licensing authorities might feel discouraged from introducing the levy at all "because of the

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113 PCB Deb 10 February 2011 cc565-6
114 *Licensing Act 2003* s172A
115 PCB Deb 10 February 2011 cc567-9.
116 PCB Deb 10 February 2011 cc569-70
117 PCB Deb 10 February 2011 cc576-7

risk of harm to areas where it is not necessary". In his response, the Minister said that the levy must be simple to administer and must raise enough revenue both to cover administrative costs and to contribute to policing the night-time economy. He also said that more targeted measures will be available, such as EMROs. He also warned that the Opposition were seeking to re-establish Alcohol Disorder Zones (ADZs),[118] a targeted measure introduced by the last Government which had found no favour with local authorities; Ms Johnson replied that the lack of take-up was evidence that ADZs had had a deterrent effect. The Minister stressed that the design of the levy will include optional exemptions and opportunities for reductions, in order to give local authorities maximum flexibility and also that it will only apply to alcohol licences. On division, the Labour amendment was defeated by nine votes to five.[119]

Under **clause 125** premises could be liable for the levy if they open on just one night a year. The Opposition moved an amendment to increase that to 15 nights, arguing that as presently drafted the measure could adversely affect pubs opening late for New Year's Eve. The Minister responded that such premises could curtail their standard operating hours to avoid the levy and apply for late hours by way of a Temporary Event Notice. Ms Johnson sought an assurance that a TEN would be able to override the late night levy, but not an EMRO, and she received such assurance. On division, the amendment was defeated by nine votes to five.[120]

The Opposition moved a further amendment to provide that where a licensing authority has introduced an EMRO, they may not also apply a late night levy. The Minister said that he understood the concern that premises might have to pay the levy in addition to having their hours reduced by an EMRO. However, these were two "very different" provisions and he was "content" that licensing authorities would take that into account and refrain from combining these measures in an "unnecessarily punitive manner". On division, the amendment was defeated by nine votes to five.[121]

Diana Johnson then moved a probing amendment to test the evidential basis on which revenue from the levy would be divided. Clause 130 prescribes a split of 70% to the police, 30% to the local authority and other organisations. The Opposition amendment would change that to a 50/50 split. Dr Huppert and others expressed surprise that the Labour amendment sought to reduce the revenue going to the police, and debate then diverted into discussion of the overall 20% reduction in police budgets. In replying to the amendment, the Minister said that the 70/30 split was chosen to underline that the intention of the levy is to support extra policing in areas affected by alcohol-related crime. The Opposition amendment was withdrawn.[122]

A final group of Opposition amendments set out ways to permit a local authority to reduce the levy charge for licence holders falling into certain categories. The effect would be to place on the face of the Bill the titles of a number of well-recognised corporate responsibility initiatives such as Best Bar None and Purple Flag. Participation in these schemes would qualify the licence-holder for a reduction of 50% in levy payments. The Minister responded that the Government intends to consult with bodies of this kind on implementing the legislation and naming them on the Bill would pre-empt the consultation. He also said that licensing authorities are best placed to know which schemes work best locally and defining

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[118] See Library Standard Note SN/HA/4612, *Alcohol disorder zones*
[119] PCB Deb 10 February 2011 cc577-84
[120] PCB Deb 10 February 2011 cc585-6
[121] PCB Deb 10 February 2011 cc587-8
[122] PCB Deb 10 February 2011 cc589-92

national exemptions "would set the situation in stone". On division, the amendment was defeated by nine votes to six.[123]

At the final Committee sitting, the Opposition introduced two new clauses. New clause 4 would require police forces, where the levy applied, to provide an annual report of how the money had been spent, how much extra policing was provided and what impact it had had on crime and disorder in the area. New clause 5 would place a similar requirement on the local authority to account for how they had spent their 30% share of the levy income. Ms Johnson explained that the aim was transparency. The Minister replied that the amendment would impose additional bureaucratic burdens on local authorities and, in any case, such transparency is already provided for. He described how the new provisions for police and crime commissioners will allow the police and crime panel to see relevant documents, while "the ultimate accountability of the PCC will be at the ballot box". On the local authority's role, he stressed that there has to be a public consultation before an authority adopts the levy; the services that the authority intends to provide will inevitably form part of that consultation. The effects on crime would be measurable through existing modes of "crime mapping". Ms Johnson withdrew the new clause(s).[124]

4.9 Fee levels

One innovation of the *Licensing Act 2003* as it was originally framed is that, for the first time, fees were set centrally. Fees established under secondary legislation in 2005 have not been increased since then. In its response to the consultation on *Rebalancing the Licensing Act*, the Government announced:

> We... intend to enable licensing authorities to set licensing fees based on full cost recovery.[125]

In the final Committee sitting on the present Bill, Mr Brokenshire commented:

> There is widespread agreement that the current fees do not cover the legitimate costs of licensing authorities in discharging their functions under the Licensing Act 2003.[126]

New clause 6, proposed by the Opposition, would allow local authorities to set fees locally on the basis of full-cost recovery. It would also allow them to waive fees in specific circumstances. Ms Johnson presented the new clause as consistent with the Government's "localism agenda". She pointed to the precedent of the *Gambling Act 2005*, which grants discretion to local authorities to set fee levels within nationally set bands, and reminded the Minister that a review conducted by the Department for Culture, Media and Sport found that local authorities were acting reasonably within those bands and not automatically charging the maximum permissible fees.

In his response, Mr Brokenshire said that the Government was mindful of the problem and gave this undertaking:

> ... at a later stage I intend to table an amendment introducing locally set fees based on full cost recovery.[127]

He went on to explain why the Government could not support the Opposition's approach. First, if fee levels are to be set locally, this must apply to all fees payable to the local

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123 PCB Deb 15 February 2011 cc595-7
124 PCB Deb 17 February 2011 cc712-15
125 Home Office, *Responses to consultation: Rebalancing the Licensing Act*, December 2010, p11
126 PCB Deb 17 February 2011 c718
127 PCB Deb 17 February 2011 c718

authority, not just the categories specified in the new clause. Secondly, there must be a nationally set fee cap. Thirdly, an unrestrained power to waive fees would be "inequitable". Satisfied that the Government was taking the issue seriously, Ms Johnson withdrew the new clause.[128]

4.10 A public health objective

In making decisions under the *Licensing Act 2003*, local authorities in England and Wales must always have regard to the four licensing objectives set out in the Act. As mentioned above, the corresponding Scottish legislation adds an additional objective, the protection and improvement of public health.[129] For Labour, Diana Johnson introduced a new clause (NC 7) to the present Bill which would add the protection and improvement of public health to the licensing objectives for England and Wales. She pointed out that such an addition would sit well with clause 104 of the Bill, which adds primary care trusts and local health boards as "responsible authorities" (see above). In response, the Minister said that he agreed with the sentiment behind the new clause. He repeated words he had used at earlier sitting, where he confirmed that the Government had this matter under review but wished to consider it "alongside wider work to address the harms of alcohol to health".[130] On the understanding that the Government would revisit this issue, either at Report stage, or in a subsequent Bill, Ms Johnson withdrew the clause.[131]

4.11 Alcohol monitoring requirement

At the final Committee session, Matthew Offord (Conservative) tabled new clauses (NC 10 and 11) and new schedules to introduce a compulsory sobriety scheme in London. The aim would be to introduce a new sentencing power through an alcohol monitoring requirement (AMR). Mr Offord explained:

> The new power would allow courts to impose a requirement on an offender to abstain from alcohol and be regularly tested to ensure compliance as part of any community or custodial sentence. If the offender failed the test, there would be a quick and coherent process of apprehension—immediate arrest, a night in a police cell and reappearance at a magistrates court. (...)
>
> ... the three objectives of the alcohol monitoring requirement are to reduce the number of alcohol-related incidents, especially violent incidents; to reduce the cost of alcohol-related crime to statutory services, including police, health and local authorities; and to support a long-term shift in public attitudes to the use of alcohol by making a clear statement about the acceptability of behaviour surrounding alcohol consumption, supported by clear consequences.[132]

In reply to a question from Diana Johnson, Mr Offord said that he saw the new power as supplementary to existing measures such as drug treatment orders, not as a replacement for them. For the Government, Mr Brokenshire said that it was "an interesting proposal that deserves further consideration" but will need to be founded on a "clear business case". He undertook to consider how a sobriety regime on the existing American model could be instituted in the UK. Satisfied that the Government was sympathetic to his proposal but accepting that it might not be appropriate for the present Bill, Mr Offord withdrew his new clause(s).[133]

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128 PCB Deb 17 February 2011 cc715-18
129 *Licensing (Scotland) Act 2005* s4
130 PCB Deb 10 February 2011 c528
131 PCB Deb 17 February 2011 cc719-20
132 PCB Deb 17 February 2011 cc724-5
133 PCB Deb 17 February 2011 cc721-7

5 Demonstrations in Parliament Square

Part 3 of the Bill repeals the provisions in the *Serious Organised Crime and Police Act 2005* (SOCPA) relating to demonstrations in the vicinity of Parliament, and replaces it with controls on a much narrower area – the central garden of Parliament Square and the footways immediately adjoining it. The main focus of the controls is preventing amplified noise equipment and the use of tents and sleeping equipment. The Bill also gives certain powers to civilian "authorised officers" as well as the police to seize and retain prohibited items and give directions. The repeal of SOCPA also means that the general provisions of the *Public Order Act 1986* will apply to the area around Parliament as it does in the rest of England and Wales.

In committee, there was a broad discussion on the principles in the stand-part debate on **clause 139**, which repeals the SOCPA provisions. Vernon Coaker, who had been a government whip in the Labour administration when the changes had been brought in, and was later its Policing Crime and Security Minister, set out in some detail the background to the problems with the legislation.[134] He summed up the current situation as follows:

> The Government have introduced their own proposals to deal with the problem, but I think that it is helpful to provide background. I have said this in private to the Minister, and I will say it again in public: everyone has been wrestling with the problem, and everyone has said that it should be possible to deal with it more effectively. Everyone says it and all of us think it, yet it seems to present an enormous problem for us when seeking to legislate in a fair but effective way. The Minister needs to put on record the Government's thinking behind the proposals in the Bill about the balance that they are seeking to strike in clause 139 and the following clauses between the right to protest, which the Government want to maintain—it would be idiotic to say that they are trying to stop that—and the right for people to go about their everyday business and to enjoy the square. We need to understand how the Government have arrived at their proposal in the Bill and how they have balanced those almost competing parts of the equation.[135]

The Minister for Crime Prevention, James Brokenshire, said he appreciated the manner in which the debate had been undertaken. He continued:

> In line with our commitment to restoring the right to non-violent protest, we seek to repeal sections 132 to 138 of the Serious Organised Crime and Police Act 2005. We considered that they imposed unnecessary restrictions on the right to peaceful protest around Parliament and have had an almost chilling effect on that right, which has in some ways led to a breakdown in trust between the Government, the police and those who wish to protest. Those sections have criminalised non-disruptive peaceful protest, but have done nothing to prevent the abuse of our public spaces by a determined few, to the detriment of the enjoyment of those spaces by the wider public. I think that that is at the core of the issue, and I will seek to address a number of questions posed by hon. Members.[136]

Questions which arose during the debate included the following:

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[134] PBC Deb 15 February 2011 c599
[135] PBC Deb 15 February 2011 c600
[136] PBC Deb 15 February 2011 c609

- Would people still be allowed to protest overnight? James Brokenshire said they would, but they would not be allowed to "erect temporary structures and take over public space to do so."[137]

- Would the prohibition on amplified noise equipment leave protestors free to use drums and other non-amplified instruments? The Minister pointed out that Greater London Authority byelaws require people to get the Mayor's permission before using musical instruments in Parliament Square Gardens.[138]

- How did the Government respond to the Metropolitan Police Service's suggestion that the *Public Order Act 1986* be amended to include single protestors in the small area around Parliament Square? James Brokenshire said that Government saw "no compelling reason for the police to have specific powers to control an individual who is protesting around Parliament.[139]

Responding to Vernon Coaker's questions about overnight protestors, Michael Ellis identified what he saw as being the purpose of the changes:

> Does not one have to consider the mischief that the Bill is trying to address? Would it not be preferable if the shadow Minister and Labour Members were to agree with the concept behind the clause? This is clearly designed to prevent the mischief of the permanence of the encampment on Parliament Square and the frequent noise that disturbs those who wish to work, live in and traverse the area. The purpose of the clause is to encourage tourism and, for example, to allow the quiet enjoyment of statues, many of which were placed in Parliament Square by public subscription. Do not people have the right of quiet enjoyment of a public place as well as the right to peaceful protest? This is not a protest; it is an encampment. Should not the shadow Minister and his Labour colleagues be fully behind clause 139 and the subsequent clauses?[140]

Mr Coaker replied that Labour agreed with the repeal of SOCPA and the need for further proposals, but he saw a need to scrutinise the powers thoroughly "otherwise in a year's time we will have an unworkable Bill and the Government will be introducing fresh revisions."[141]

Julian Huppert gave his assessment:

> It is not just that we should tolerate protest and allow it to happen in a controlled way, but we should welcome it. We should support and encourage the fact that people in this country protest peacefully. We should not allow violent and illegal protest, but we should be pleased when people are sufficiently engaged with issues to take the time to show how they care and that they care. Protest is a great thing in a democracy.
>
> While I am delighted that we are getting rid of the SOCPA provisions, and clearly some considerations must to be given to Parliament square for security and other reasons, we must ask the question that Shami Chakrabarti put very clearly in her evidence session: "What is the harm that we are trying to deal with?" I hope the Minister will answer that question. While it is possible that these protests affect tourism, I would be interested to hear evidence of that. I have heard comments that they are not very nice. There have certainly been comments that they have prevented other people from being able to protest, which is extremely serious, but while it is a fact that there is quite

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137 PBC Deb 15 February 2011 c612
138 PBC Deb 15 February 2011, c611
139 PBC Deb 15 February 2011 c612
140 PBC Deb 15 February 2011 c603
141 PBC Deb 15 February 2011 c612

> a lot of noise, we should not ban something just because we do not like it. I look forward to hearing the Minister explain how he has achieved such a balance. The direction of travel is excellent, however, and I am glad that it is sucking along members of the previous Government.[142]

In the debate on subsequent clauses, a number of amendments were moved, but none were agreed to. Steve McCabe moved a probing amendment to find out how the Government thought the Bill would prevent people from simply moving their protest across the road. James Brokenshire said the Bill targeted the "unique situation" of Parliament Square, and that Westminster City Council "supported strengthening and amending the byelaws to deal with the displacement issue".[143] The amendment was withdrawn.

Vernon Coaker moved amendments to delete references to "authorised officers" so that the powers should only be exercised by warranted police officers:

> I understand that the power that an authorised officer has, in Parliament square in particular, is limited; he cannot do many of the things that a warranted officer does outside Parliament square, and the Bill effectively excludes and leaves out the authorised officer. Notwithstanding that, there are significant powers that an authorised officer can use, including, in Parliament square, the use of reasonable force. Given the agendas of the hon. Members for Edinburgh West and for Cambridge in particular, I find it difficult to understand that they can actually support authorised personnel, who are not warranted police officers, being able to use reasonable force to police protest. It is an incredible increase in the powers we are willing to give people who are not warranted officers.[144]

James Brokenshire responded as follows:

> By removing the ability of the GLA and Westminster to enforce the new provisions on prohibited activity on their land, it would leave enforcement entirely as the police's responsibility. In practice, that would mean that where, for example, a GLA heritage warden sees a person erecting a tent on the garden, he or she would be unable to direct that person to stop what they are doing, and would have to ask a police officer to issue the direction instead. That seems bureaucratic, time consuming and puts the onus entirely on the police. By way of another example, a person operating a loud speaker, in breach of any conditions imposed by either the GLA or Westminster, under the authorisation scheme provided for in clause 145, could not be directed by either the GLA or Westminster to cease operating the loud speaker. Enforcement would be left to a police officer.
>
> Our provisions require a collaborative approach to enforcement by the Metropolitan police, the GLA and Westminster city council. That is a key to making our provisions work. By removing the ability of the GLA and Westminster to enforce the provisions, they are unlikely to work effectively to prevent encampments and other disruptive activity.[145]

The amendment was negatived on division by 10 votes to 5.

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142 PBC Deb 15 February 2011 c605
143 PBC Deb 15 February 2011 c617
144 PBC Deb 15 February 2011 c620
145 PBC Deb 15 February 2011 c628

There was further debate on what was meant by "sleeping equipment" and on what safeguards there should be to cover the direction making powers in the Bill.[146]

Responding to a question from Vernon Coaker, James Brokenshire confirmed that there would be non-statutory guidance.[147]

In the debate on **clause 144 (**which gives courts the power to make an order on conviction for an offence under the Bill) Mr Coaker also raised a potential problem identified by the Metropolitan Police's Assistant Commissioner Lynne Owens in her evidence to the Committee. This concerned rotating protests, where people who had been given orders prohibiting them from engaging in an activity or entering Parliament Square might simply hand over their protest to sympathisers. Responding, James Brokenshire emphasised that the provisions did not seek to prevent protest, but to prevent someone continuing to carry out activities that are prohibited under the Bill.[148]

6 Misuse of Drugs

Clause 150 and schedule 17 of the Bill introduce temporary class drug orders for substances that are not classified, and that in the view of the Secretary of State are likely to be misused and have a harmful effect. **Clause 151** amends the requirements for the composition of the membership of the Advisory Council on the Misuse of Drugs (ACMD). Both issues were debated in Committee but only minor Government amendments were made to the Bill. An amendment calling for three yearly reviews of the *Misuse of Drugs Act 1971* was rejected by the Government.[149]

6.1 Temporary Class Drug Orders

Several probing amendments were tabled. During the debate reference was made to a draft protocol or memorandum setting out how temporary drug orders would be enforced. This is not yet available although the Government has committed to making it available to the public.[150] In this the Government reportedly expresses the intention of consulting with and being advised by the ACMD before putting an order in place. It would also request a full assessment of a substance by the ACMD to determine the need for a permanent classification.[151] According to the Minister "the protocol will be a public document on which the Government should and will be held to account".[152]

The issues of penalties for possession of a substance under a temporary ban order and whether a substance should be judged to constitute a social problem to qualify – as the Bill currently stands it would not – were also debated.

6.2 Advisory Council on the Misuse of Drugs

The Bill would remove the requirements for any specific expertise amongst ACMD members. Since the Bill's publication the review of the ACMD by Sir David Osmond commissioned by the Home Office has been published. With regards to membership it concluded:

> 5. The ACMD should continue to provide a mix of independent scientific and expert practitioner based advice in meeting its remit under the 1971 MDA. (para 19). The composition of the ACMD should reflect this mix.

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[146] PCB Deb 15 February 2011 cc635-642
[147] PCB Deb 15 February 2011 c643
[148] PCB Deb 15 December 2011 c649
[149] PBC Deb [17 February 2011] c707
[150] PBC Deb [15 February 2011] c658
[151] ibid
[152] Ibid c660

> 6. Consequent on the amendment to the 1971 MDA being passed, the need for appropriate scientific representation on the ACMD should instead be included in the revised 'Ways of Working Document' to be agreed between the Home Secretary and the chair of the ACMD. (para 50). The Document should incorporate the previous understandings by the Government that it would respect the special status of the ACMD's advice under its statutory remit (para 19), and that it upholds the independence of scientific advice and academic freedom and would not prejudge the ACMD's advice in advance of receiving and considering a report. (paras 18 and 31). The Document must also specifically describe the future arrangements for consulting the ACMD and seeking advice in relation to the Temporary Banning Power. (para 65)[153]

During Committee stage the issue of membership was raised again. During the debate the Minister committed to a non-statutory list of expertise being included in the proposed protocol.[154]

7 Arrest warrants for universal jurisdiction offences

There were no amendments to **clause 151**, which would introduce a new requirement for the Director of Public Prosecutions (DPP) to consent to the issue of arrest warrants to private prosecutors in respect of universal jurisdiction offences.

Vernon Coaker moved a probing amendment that would have required the Crown Prosecution Service (CPS) to establish a specialist unit dealing with such arrest warrants, so as to minimise any delay in decisions about whether to give consent.[155] He said that human rights groups were concerned that obtaining consent would be "lengthy and time-consuming", giving suspected war criminals time to leave the UK before a warrant could be issued. In response, Nick Herbert referred to the DPP's evidence to the committee, during which he had said that the CPS had "people who can work around the clock and ... enough trained people so that someone is always available".[156] The minister went on to state that those dealing with applications to which clause 151 applied would be members of a specialist unit in the counter-terrorism division of the CPS. The amendment was withdrawn.

During the clause stand part debate, Nick Herbert explained that the rationale behind the clause was the perceived risk of arrest rather than the number of warrants actually being issued:

> The problem is not that large numbers of warrants are being issued – the Government are aware of only two – but in the perception that visitors to this country might be at risk of arrest. That such a perception exists is certain and it is not confined to Israel, although the two instances in which an arrest warrant was issued involved Israeli nationals. There are indications that some people may not be prepared to visit the UK for fear of a private arrest warrant being sought. We are concerned in particular that these may be people who are, or have been, in leading positions in their countries, with whom the Government would wish to engage in discussions. This is unsatisfactory and risks damaging our ability to help in conflict resolution and to pursue a coherent foreign policy.[157]

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[153] Home Office, Report of the 2010 NDPB Review of the Advisory Council on the Misuse of Drugs By Sir David Omand. December 2010
[154] ibid c672
[155] PBC Deb 17 February 2011 cc677-681
[156] PBC Deb 20 January 2011 c126, Q241
[157] PBC Deb 17 February 2011 c682

Vernon Coaker expressed support for the proposals, but said that it was important that they should not reduce the chances of successfully prosecuting war criminals. Julian Huppert said that clause 151 could potentially give the DPP a "pocket veto", where consent would be refused because the DPP and CPS did not have sufficient time or resources to consider a request. He said that he was not persuaded of the need for change, but that the proposals represented the "least bad step". Clause 151 was ordered to stand part without division.

Appendix 1 – Membership of the Committee

Chairs: Mr Joe Benton, Mr Christopher Chope, Mr George Howarth, Mr Gary Streeter

18 Members

James Brokenshire (Conservative: Parliamentary Under-Secretary of State for the Home Department)
Mr Aiden Burley (Conservative)
Vernon Coaker (Labour: Shadow Policing Minister)
Mike Crockart (Liberal Democrat)
Mr Jeffrey M. Donaldson (Democratic Unionist Party spokesman)
Clive Efford (Labour: Shadow Home Office Minister)
Michael Ellis (Conservative)
Nick Herbert (Conservative: Minister for Policing and Criminal Justice)
Dr Julian Huppert (Liberal Democrat)
Diana Johnson (Labour: Shadow Home Office Minister)
Steve McCabe (Labour)
Mary Macleod (Conservative)
Nigel Mills (Conservative)
Mr Matthew Offord (Conservative)
Bridget Phillipson (Labour)
Chris Ruane (Labour)
Mark Tami (Labour: Opposition Whip)
Jeremy Wright (Conservative: Government Whip)