# *Protection of Freedoms Bill*: Lords amendments


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The *Protection of Freedoms Bill* received its first reading in the House of Lords on 12 October 2011 (HL Bill 99), followed by second reading on 8 November 2011. Committee stage took place over five days between 29 November 2011 and 12 January 2012 (amended text available as HL Bill 121). Report stage took place over three days between 31 January and 15 February 2012 (amended text available as HL Bill 128), followed by third reading on 12 March 2012. The consolidated Lords amendments to the Bill are available as Bill 317 of 2010-12; accompany Explanatory Notes have also been published. The Bill is due to return to the Commons on 19 March 2012 for consideration of the Lords amendments.

The purpose of this note is to draw attention to the principal changes, additions and deletions that were made in the Lords. It does not cover minor or technical amendments.

One set of amendments to do with powers of entry were added to the Bill as a result of a Government defeat in the Lords, and the Government seeks to reverse this.

**Important amendments which would introduce a specific criminal offence of stalking are set out in a separate note, Library Standard Note 6261, *Stalking*.**

Commentary on the Bill as first introduced was provided in Library Research Paper 11/20 *Protection of Freedoms Bill*. Major changes and areas of debate arising during the Bill's committee stage in the Commons were set out in Library Research Paper 11/54 *Protection of Freedoms Bill: Committee Stage Report*. The House of Lords Library Note on the Bill (LLN 2011/033) summarises some of the key issues debated at report stage in the Commons.

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# 1 Retention of fingerprint and DNA data

## 1.1 Definition of "vulnerable adult"

New section 63F of the *Police and Criminal Evidence Act 1984* (PACE), which would be inserted by clause 3 of the Bill, would enable data from a person arrested for but not charged with a qualifying offence to be retained for up to three years (with a possible two year extension) in the following circumstances:

Clause 3 of the Bill would add a new section 63F to the *Police and Criminal Evidence Act 1984* (PACE). It would permit data from a person arrested for but not charged with a qualifying offence[1] to be retained for up to three years (with a possible two year extension), provided that the Commissioner for the Retention and Use of Biometric Material had consented to this retention in accordance with new section 63G of PACE.

New section 63G, also provided for in clause 3, provides that the police may apply to the Commissioner for consent where any alleged victim of the offence was, at the time of the offence:

- under the age of 18,
- a vulnerable adult, or
- associated with the person to whom the material relates.

[1] The full list of qualifying offences is set out in section 65A of PACE, as inserted by section 7 of the *Crime and Security Act 2010*

The Bill as introduced defined "vulnerable adult" by reference to the definition given in the *Safeguarding Vulnerable Groups Act 2006*. However, clauses 65 and 66 of the Bill will be amending this definition so that it will no longer define an adult as permanently vulnerable, but will instead define vulnerable adults on the basis that they are receiving specified activities (e.g. health or social care). The Government considered that this meant the definition would no longer be appropriate for use in clause 3. Baroness Stowell of Beeston therefore moved an amendment to replace the definition of vulnerable adult with one drawn from section 5(6) of the *Domestic Violence, Crime and Victims Act 2004*, so as to read:

> "vulnerable adult" means a person aged 18 or over whose ability to protect himself or herself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise".

The amendment was agreed.[2]

### 1.2 Destruction of samples

Clause 14 of the Bill would create a general rule requiring all physical DNA samples to be destroyed within six months. However, Baroness Stowell indicated that the Crown Prosecution Service considered that, in a limited number of cases, it might be necessary to retain samples in order to deal with any subsequent challenge by the defence to the comparison made between the defendant's DNA and that found at the crime scene:

> Prosecutors are concerned that, if they are not able to retain samples in these cases, they might be unable to withstand such a challenge and acquittals on technical grounds might result. An example of the type of case where such an issue might arise could be where the crime scene stain contained a mixture of, for example, the blood of both a murder victim and their attacker, and possibly a third person, such as an innocent housemate of the victim. In such a sample, the quantity of material from the victim is likely far to exceed that from the attacker and the innocent third party but, without retaining the reference samples from all three individuals, the chemistry and analysis used to derive the three individual profiles, and thus to make a match to the suspect, might be open to challenge in court.[3]

She therefore moved a Government amendment that would enable the police to apply to a district judge for an order to retain the sample beyond this six month period. The following conditions would have to be satisfied in order for the police to be able to make an application:

- the sample must have been taken in connection with the investigation of a qualifying offence;[4] and
- the responsible chief officer of police must consider that, having regard to the nature and complexity of other evidential material relating to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of:
    - disclosure to or use by a defendant; or
    - responding to any challenge by a defendant in respect of the admissibility that is evidence on which the prosecution proposes to rely.

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2 HL Deb 31 January 2012 cc1515-1520
3 HL Deb 31 January 2012 c1521
4 See footnote 1 above

If satisfied that these conditions were met, the court would be able to order that the sample could be retained for an additional 12 month period, renewable (on one or more occasions) for further periods of up to 12 months.

The amendment was agreed.[5]

### 1.3 Retention of anonymous material obtained under terrorism law

Part 3 of Schedule 1 to the Bill deals with the retention of biometric data subject to section 18 of the *Counter-Terrorism Act 2008*. Several Government amendments to this part of the Bill were agreed. Lord Henley gave the following overview of the main substantive amendments in this group:

> Section 18 mostly covers biometric material acquired covertly and material supplied by overseas authorities.
>
> The Government are clear that material obtained under Section 18 of the 2008 Act should be subject to a clear and robust regime for the destruction and retention of such material. As such, we have proposed limiting retention to three years-on the basis of a national security determination extendable for renewable two-year periods-after which it must be destroyed.
>
> However, the proposed destruction requirements in Section 18 are not expressly limited to material obtained from known persons. We are concerned that this will lead to anonymous material and, in particular, material taken from crime scenes, having to be destroyed at the three-year point. Indeed, as currently drafted the Bill requires just that. This unintended consequence would result in the destruction of material before the police were able to identify the individual to whom it belonged, complete an investigation of an offence-potentially compromising prosecutions in the process-or make a case for its retention on national security grounds. For these reasons, the amendments are designed to prevent the automatic and premature destruction after three years of anonymous and unidentified crime scene material obtained by the police.
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> We do not consider that anonymous material or material taken from a crime scene-where it is also anonymous-should be subject to the same destruction requirements as material obtained from known individuals. Rather, it should still be possible for the police and other law enforcement authorities to retain such material indefinitely. However, we recognise that not all crime scene material will be anonymous in nature and as such want to make clear that where there is provision for indefinite retention of unidentified material, once identified, such material will be subject to the same retention and destruction requirements of material where the identity of its owner is known on acquisition.[6]

## 2 Biometric information of children in schools and colleges

Biometric identification systems are used in some schools and colleges for practical purposes such as registration, cashless canteens and library book borrowing. Part 1 chapter 2 of the Bill would require schools and further education institutions to:

- obtain the written consent of parents (or others with main parental responsibility) before processing biometric information from children under the age of 18 years;

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5 HL Deb 31 January 2012 cc1520--3
6 HL Deb 29 November 2011 cc174-5

- ensure that such information is not processed if a child objects, even where a parent has consented; and

- provide reasonable alternative arrangements for pupils who refuse or whose parents do not consent to biometric information being processed.

Under **Clause 26** of the Bill, as originally introduced, a child's biometric information could not be processed unless each parent consented (this has now changed – see below). There are certain exceptions as set out in **clause 27** (where a parent cannot be found, where a parent lacks the mental capacity to consent or where the child's welfare requires that a parent is not contacted, or it is otherwise not reasonably practicable to obtain the consent of a parent). Even where parental consent has been given, the processing of such data must not take place if the child objects (clause 26(4)). Schools and colleges would be under a duty to provide a reasonable alternative to a biometric system where the child objects to the processing of his or her biometric information, or where any parent does not consent to such processing (clause 26(6)). **Clause 28** defines various terms in relation to clauses 26 and 27.

During the Lords' Report Stage, the Government introduced amendments to change the notification and consent requirements. The main change was to remove the requirement for the 'dual consent' of parents. This would mean that the written consent of only one parent would be required provided the other parent does not object in writing. Lord Henley introduced the Government Amendments as follows.

> We consider a child's biometric information to be highly personal and sensitive and, as such, it should be protected. It is right that schools and colleges should be required to obtain the written consent of a child's parents if they wish to take and process this information.
>
> We listened carefully to the concerns raised in Committee about these provisions. In particular, my noble friend Lord Lucas and the noble Lord, Lord Rosser, argued that the requirement to obtain the written consent of both parents would place too great a bureaucratic burden on schools and could have the effect of dissuading schools and colleges from using biometric recognition systems.
>
> The Government are persuaded that we should remove the "dual consent" requirement and instead provide for a system whereby all parents, and any other individual with parental responsibility for a child, must be informed in writing that the school or college intends to take and process the child's biometric information and that they have a right to object. As long as no one objects in writing, the written consent of only one parent will be required. This change strikes the right balance between ensuring that the views of both parents continue to be taken into account, with their right to object preserved, and ensuring that the administrative burden on schools and colleges is not too great.
>
> The Government's amendments also make the consent requirements in the Bill more consistent with all other forms of consent that schools and colleges are required to obtain, therefore alleviating any additional bureaucratic burden. The main difference in this instance is the express provision to notify all parents and the stipulation that, if any parent objects, the processing of their child's biometric information cannot take place. I beg to move.[7]

Lord Henley also said that the Department for Education would issue guidance on the provisions in this chapter of the Bill, and that this would include a template consent form for

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7 HL Deb 31 January 2012 c 1534

schools to use if they wish. It would also refer to the right of parents and pupils to refuse or withdraw their consent and the duty on schools to provide alternative arrangements for those pupils whose information cannot be processed.

In response to Baroness Hamwee's proposal that children should also be notified of the processing of biometric data and their right to object, Lord Henley said that the Government were not convinced that an express statutory provision to that effect was necessary but he stressed that the advice to schools would highlight the child's right to object, and would recommend that parents be made aware of the advice.

The Government amendments were agreed.[8]

The *Explanatory Notes on Lords Amendments* summarises the changes as follows.

> Lords Amendments to Chapter 2 of Part 1: Protection of Biometric Information of Children in Schools Etc.
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> 19. Lords Amendments 7 to 9 to clause 26 would remove the requirement that the consent of each parent is necessary before a child's biometric information can be taken and processed and would replace it with a requirement for schools and colleges to notify all parents of a child (which includes any individual who is not a parent but who has parental responsibility for the child) that they intend to take and process the child's biometric information and that parents may object, in writing, to the processing. As long as no parent objects to the processing, the written consent of only one parent will be required.
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> 20. Lords Amendments 10 to 13 to clause 27 would have the effect that the circumstances in which the relevant authority (the school or college) is not required to notify a parent are the same as those in which the consent of a parent would not be required.
>
> 21. The effect of Lords Amendment 14 to clause 28 would be to require that where none of the parents of a child can be notified or their consent obtained then notification must be sent to all those caring for the child and written consent must be obtained from at least one carer.[9]

## 3 Regulation of surveillance and powers of entry

Chapter 1 of Part 3 of the Bill deals with statutory powers of entry. Over 1,200 powers have been introduced over decades allowing officials to enter property without the owner's permission. There is little consistency about warrants, the use of force or the penalty for obstruction. Some argue that the combined effect makes it impossible for ordinary people to be aware of their rights.

Schedule 2 of the Bill repeals some specific powers of entry, and clause 39 would enable ministers (including Welsh Ministers) to repeal further "unnecessary or inappropriate" powers by order. Clause 40 would allow ministers to add safeguards to existing powers by order, and clause 41 would allow them to rewrite them by order. Under clause 43, they would have to consult before modifying powers under clauses 39 to 41.

Clause 42 would give each Secretary of State a duty to review certain existing powers of entry, and to report to Parliament.

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8 HL Deb 31 January 2012 cc 1534-42

9 Protection of Freedoms Bill, *Explanatory Notes on Lords Amendments*, Bill 137-EN, printed 12 March 2012

Clause 47 would require the Secretary of State to prepare a code of practice with guidance on the exercise of powers of entry.

Most of the amendments were Government amendments which were minor and technical in nature. However, during the second day of the Bill's report stage in the Lords, the Conservative peer Lord Marlesford, introduced three amendments to clause 40 of the Bill to which the Lords agreed in a defeat for the Government. These are now listed as Lords amendments 16, 17 and 18 of Bill 317 of 2010-12 and the Government seeks to reverse the defeat. The amendments would provide that any power of entry could only be exercised either with the agreement of the occupier of the premises or by warrant, unless the authority using the power "can demonstrate that the aim of the use of the power would be frustrated if a warrant or agreement were sought". This restriction would be disapplied where the power of entry is being exercised by a Trading Standards Officer, a constable or member of the Security Service, or in pursuance of the protection of a child or a vulnerable adult.

Lord Marlesford explained his reasons for introducing the amendments as follows:

> The first amendment makes the main point that powers of entry should be used only by agreement with the occupier of premises or with a magistrate's warrant. The second amendment allows for exceptions where it is obviously necessary to continue with routine inspections and checks without notice being given. The third spells out specific areas where I am not seeking to change existing practice in the use of powers of entry: trading standards, the police and security services, protection of children and vulnerable adults.
>
> The Trading Standards Institute explained to me why it needs its existing powers for its job of protecting consumers; for example, by checking goods in shops or the accuracy of a petrol pump at the petrol station, and so on. I am glad that the institute has been able to assure me and the Official Opposition that it is now content with the amendment, which would enable it to continue with its important and valuable work.
>
> Although the essence of my argument is that powers of entry should be subject to the same constraints as the police who normally and traditionally have to have a warrant, the Home Office has helpfully pointed out to me that the Terrorism Prevention and Investigation Measures Act 2011 has given constables certain new powers to enter without a warrant. That is why I have added Amendment 37ZC to cover the police and security services.
>
> It is also, of course, necessary to continue to allow unannounced entry to those charged with responsibility for the protection of children or vulnerable adults. Thus inspecting old people's homes, checking on children at risk or similar crucial monitoring functions must be allowed to continue without either warrant or agreement. However, I feel I must emphasise the principle underlying my amendments and why I am doing this at all.
>
> In our country, the right to privacy and to enjoy property or conduct legitimate businesses without state intrusion has been a long-standing freedom. Indeed, it has echoes going back 800 years to Magna Carta, which sought to protect individuals from the Crown and from officials of the Crown. The fact that the police cannot, in general, enter people's homes or businesses without a magistrate's warrant is a cherished freedom well-known to the public and has given rise to the ancient phrase, "An Englishman's home is his castle", which was coined by the great English jurist Sir Edward Coke, who was responsible for the Petition of Right in 1628.

> The law should protect the individual and must never be defied. In 1977, that great icon Lord Denning quoted Thomas Fuller's 1732 dictum, "Be you ever so high, the law is above you". The lesson in that, of course, is the huge responsibility that legislators have to ensure that the laws they make enhance and enshrine liberty rather than erode freedom. This, of course, is what this Protection of Freedoms Bill should be seeking to do.[10]

The Home Office minister Lord Henley said that he had "some sympathy" with what Lord Marlesford was trying to achieve, but that he favoured a different approach:

> Where I differ from my noble friend is over his general approach; in particular, we continue to question the wisdom of adopting what would be a blanket, one-size-fits-all approach, which is what he is seeking to do.
>
> I believe that the provisions already in the Bill offer a better way forward. Clause 42 places a duty-I stress that this is a duty-on the responsible Ministers to review each and every power of entry within two years of Royal Assent. I appreciate that there were some complaints from my noble friends Lord Cope and Lord Vinson about just how long that was going to take, but I have to make the point that there are some 1,200 of these powers of entry-of which getting on for half were introduced by the party opposite, the party in which the noble Baroness, Lady Royall, was such a luminary, and therefore I find her remarks on this subject somewhat interesting.
>
> It is important that we review those powers of entry carefully and go through them and we have given ourselves the job to do that within two years of Royal Assent. Clause 40 enables new safeguards to be added to particular powers of entry by order. Again, I make no apology for that, but I remind the House that many of these powers-the majority of them-will already have in them a need to obtain a warrant or some other consent. The idea that all these powers are giving unnamed officials broad powers of entry without having to seek a warrant is just not the case. The majority of them already require that. My noble friend and others have expressed a degree of scepticism that that review will be undertaken. However, I can assure him that it is down there in the Bill; it will be a requirement on us to make sure that review is done within the two years, and that is why it has been written into legislation.[11]

His most detailed remarks centred on what is now Lords Amendment 17 (then Amendment 37ZB):

> This amendment offers persons exercising a power of entry three options: first, they can obtain the consent of the occupier; secondly, they can obtain a warrant, usually from a magistrates' court; thirdly, the power may be exercised without a warrant or the agreement of the occupier in any case where it can be shown that the aim of the use of the power would be frustrated if a warrant or agreement were sought.
>
> I hope that there is general agreement that we cannot, in every case, demand that entry is effected only with the consent of the occupier or on the authority of a warrant. To illustrate that point, the House will recall the outbreak of foot and mouth disease where, had requirements such as these applied, I fear the consequences for livestock may have been much greater. Obviously, consent could have been withdrawn, and that carries its own risks.
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> To take another more recent example, the new Terrorism Prevention and Investigation Measures Act contains a number of powers that grant constables the right to enter and

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10 HL Deb 6 February 2012 c11-12
11 Ibid cc27-8

search premises without warrant. For instance, there is a power to enter and search premises if a constable has a reasonable suspicion that the individual who is subject to a TPIM has absconded. In such circumstances, the police clearly must act quickly to check whether the individual has absconded, and if he has, to try to find evidence to help locate him. The law is designed to protect our national interest and provide security to the public but could very well be frustrated by these amendments.

We must also consider the very serious questions of delay, where the exercise of overcaution or prolonged deliberation by the authorities might place at risk the health of animals, individuals or the wider public. Similarly, the need to obtain a warrant or, for instance, locate the occupier of the premises in question in order to get their permission to enter could lead to the loss of valuable time in some cases.

That is not to say, as I made clear at the beginning, that we do not support the use of warrants and seeking consent where that is appropriate. However, as we are all aware, there are a large number of powers of entry that exist today, and operational imperatives differ widely. We do not want to impede an authority's ability to respond to matters effectively and to take decisive action, and so we consider that such operational decisions are best taken by the relevant authorities. My noble friend has argued that his Amendment 37ZA caters for such circumstances by providing a let-out in stating that,

"where the authority using the power can demonstrate that the aim of the use of the power would be frustrated if a warrant or agreement were sought".

However, I do not accept that this provides the answer.

It is not entirely clear to whom any urgent or unannounced need to enter premises should be demonstrated and proven. The approach taken in this amendment could lead to endless, time-consuming and expensive litigation, with aggrieved persons challenging the lawfulness of the exercise of a power of entry in a particular case, as my noble friend Lady Hamwee made clear. Such a challenge could be mounted on the grounds that the public authority in question had not demonstrated that the given exercise of the power of entry would have been frustrated if the agreement of the occupier had been sought or a warrant obtained. I hope that was not what my noble friend was intending when he drafted his amendments, but I fear that it could be the likely outcome.[12]

Lord Marlesford, however, wished to test the opinion of the House, and his amendment 37ZA (now Amendment 16) was agreed to on division by 206 votes to 194.[13] The other two amendments were agreed to without division.[14]

## 4 Counter-terrorism powers

Minor Government amendments relating to pre-charge detention were made to Part 4 of the Bill, which deals with counter-terrorism powers. Please see Library Standard Note 5634 *Pre-charge detention in terrorism cases* for further details.

12 cc28-9
13 ibid c32
14 ibid c35

# 5 Safeguarding vulnerable groups and criminal records

## 5.1 The meaning of "day to day supervision"

Clause 64 of the Bill sets out the scope of regulated activity in relation to children. Anyone undertaking regulated activity will have to be checked against "barred lists" maintained by the Independent Safeguarding Authority,[15] which list those people considered to be unsuitable to work with children.

In defining regulated activity, clause 64 draws a distinction between paid workers and unpaid volunteers. Work that would otherwise constitute regulated activity will not do so where it is carried out on an unpaid basis and is "subject to the day to day supervision of another person who is engaging in regulated activity relating to children". The rationale is that the supervisor will be carrying out regulated activity and so will have been checked against the barred list, so volunteers being supervised by them should not need to be checked themselves.

However, concerns had been expressed that the term "day to day supervision" lacked clarity and that employers and voluntary organisations might therefore have difficulty in determining whether a volunteer was receiving enough supervision to take them outside the scope of regulated activity.

Lord Henley therefore moved a Government amendment to provide that "day to day supervision" should be interpreted as "such day to day supervision as is reasonable in all the circumstances for the purpose of protecting any children concerned". He said:

> ...we heard about the particular circumstances of various types of sport, where adults often coach children in extensive playing fields or other wide-open spaces. The requirement that supervision must be,
>
> "reasonable in all the circumstances",
>
> will give sports organisations precisely the discretion they need in order to decide whether, in the circumstances of their sport, a volunteer-or indeed paid-coach or other helper should be supervised. If organisations want to encourage volunteers without requiring them to undergo a barred list check, they may do so, as long as they work out what would be a reasonable level of supervision in their case, and provide supervision accordingly. If on the other hand the organisation decides that the oversight it provides does not amount to supervision that is reasonable for child protection, it may conclude that the coach is not supervised and so is in regulated activity.[16]

The amendment was subject to extensive discussion but was ultimately agreed without division.[17]

## 5.2 Automatic barring and intention to work in regulated activity

Under the current vetting and barring system, **anyone** convicted of an offence resulting in automatic barring, or subject to discretionary barring because of other convictions or conduct, could find themselves placed on the barred list regardless of whether they had ever worked with children or vulnerable groups or ever intended to do so.

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15 The Independent Safeguarding Authority will be renamed the "Disclosure and Barring Service"

16 HL Deb 15 February 2012 c793

17 HL Deb 15 February 2012 cc792-804

Clause 67 would amend this by restricting the barring provisions to those individuals who had previously worked, or had expressed an intention to work in, regulated activity. People who had never worked in, or had no intention of working in, regulated activity would no longer be covered by the system and would not be entered on the barred lists even if convicted of a relevant offence.

However, Baroness Stowell said that the Government considered that it would be appropriate to bar a person convicted of an offence that leads to an automatic bar[18] even where that person had no intention of ever working in regulated activity:

> Clause 67 provides that a person will be barred by the Independent Safeguarding Authority from working with children or vulnerable adults only if that person has been, is or might in the future be engaged in regulated activity. As my noble friend has already made clear this afternoon and at all stages of the Bill so far, in seeking to scale back the disclosure and barring scheme, the Government believe that it is disproportionate to bar a person if they have never worked in regulated activity and have no prospect ever of doing so. However, having listened carefully to the concerns raised in this House and by organisations such as the NSPCC, we have concluded that where someone has been convicted of a crime on the list of the most serious offences-that is, an offence that leads to an automatic bar without the right to make representations-the Independent Safeguarding Authority should bar that person whether or not they work or intend to work in regulated activity. An automatic bar without representation would apply to convictions for the most serious sexual and violent offences, such as, in the case of the children's barred list, the rape of a child. In these cases, there are no conceivable mitigating circumstances-that is why representations are not permitted-and there can be no question that the person is a risk to vulnerable groups.[19]

The amendment was agreed.[20]

### 5.3 Tracking the progress of criminal records certificate applications

**Clause 79** of the Bill would amend the procedure for the Criminal Records Bureau (CRB) to issue a criminal records certificate following a check. At present, the CRB dispatches two copies of the certificate once a check has been completed: one to the individual applicant, and the other to the registered body that requested the check (e.g. a prospective employer or voluntary organisation).[21] Sunita Mason, the Government's Independent Advisor for Criminality Information Management, identified a number of difficulties with this parallel disclosure,[22] in particular the fact that there is no opportunity for the individual applicant to challenge any of the information on the certificate **before** it is seen by a potential employer. She therefore recommended that certificates should only be sent to the individual applicants, who would then be able to decide when and whether to forward the certificate to a potential employer. Clause 79 would implement this recommendation.

However, a number of registered bodies – including several sports governing bodies and Girlguiding UK – had expressed concern that this change might disrupt their recruitment

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18 The list of offences that lead to an automatic bar with no right to make representations are set out in the Schedule to the *Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Order 2009, SI 2009/37*

19 HL Deb 15 February 2012 c804

20 HL Deb 15 February 2012 cc804-6

21 Registered bodies are typically large employers or voluntary organisations that countersign individual applications for CRB checks

22 Sunita Mason, *A Common Sense Approach – Report on Phase 1*, February 2011 , pp24-27

processes, for example if there was a lengthy delay between an individual applicant receiving his or her certificate and sending it on to his prospective employer or voluntary organisation or if recruiting bodies had to spend time and money chasing up missing certificates.

Lord Henley therefore moved a Government amendment that would enable a registered body to check with the CRB as to whether individual certificates had been issued. If a certificate had been issued and was clear, the CRB would be able to inform the registered body of this fact. If the certificate had been issued but was not clear, the registered body would be informed of the date on which the certificate was issued but would not be told of its content. Lord Henley gave the following explanation of the amendment's aims:

> We believe that the government amendments in this group address the concerns that have been raised. Amendment 73 provides a clear legislative basis to enable a registered body to track the progress of an application online and be informed about its status. This tracking facility would also enable the registered body to ascertain whenever a certificate is clear: that is, that it contains no convictions or other police information. This is a significant point, as currently some 92 per cent of criminal record certificates are clear, so such a facility will ensure that in the overwhelming majority of cases the recruitment process can proceed with confidence, even if there is some small delay in the certificate being sent by the applicant to the registered body. Government Amendment 82 ensures that the same arrangements will apply to the up-to-date arrangements.
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> For the one in 10 cases where a criminal record certificate is not clear, the registered body will know the date on which the certificate was issued and, as such, will be able to take appropriate follow-up action if the applicant does not provide a copy of the certificate within a few days of that date. I should stress that there is no reason why sports governing bodies and others should not continue to run their recruitment processes from a central team. It follows that there is similarly no reason why these changes should require the local football coach or scout leader to become involved in individual recruitment decisions.[23]

The amendment was criticised on the grounds that it still allowed for individuals to "stall" the process of being checked by the CRB by delaying sending certificates on to registered bodies. Several members of the House of Lords tabled amendments calling instead for a system where a copy certificate would automatically be sent to registered bodies two weeks after the certificate had been sent to the individual applicant. This would give the applicant time to dispute any inaccuracies while maintaining a degree of automated process for registered bodies. Baroness Heyhoe Flint said:

> Currently governing bodies of sport receive the disclosure directly from the Government, which is an extremely important aspect of the system. I urge the Minister to consider the alternative, which is to ask a governing body to safeguard without full knowledge of the level of risk. If no disclosure is received from the individual after an agreed period, the governing body will have no choice but to presume that that person has something to hide and will act to suspend that person. It goes without saying that this will be hugely damaging to that individual, particularly if the reason for their non-compliance was innocent.
>
> There is another good reason to continue sharing disclosures with the registered bodies, and that is that they will be better equipped to deal with the minority of devious individuals who pose a real danger to vulnerable people. One governing body of sport recently had a case in which an individual presented only the first page of their criminal

[23] HL Deb 6 December 2011 c669

> record check, thereby concealing the serious sexual offences on pages two and three of that check. It was only because the governing body was able to compare it with its own copy of the disclosure that it could take the appropriate action without delay.[24]

After lengthy debate the Government amendment was agreed without division.[25]

### 5.4 Updated CRB checks

**Clause 82** provides for a new online system to enable employers to check if updated information is held on an individual, as recommended by Sunita Mason:

> I envisage a simple online system whereby an employer, with the consent of the applicant, can confirm the details contained on a criminal records certificate. If there has been a change since the certificate was issued, the employer will be prompted to request a new check. If there is no new information it will simply indicate there is no change.
>
> As previously stated, the result of the vast majority of repeated checks will show no change. Only at the point where an online check indicates that there is new information would a fresh disclosure application be required.[26]

Baroness Stowell moved a Government amendment to clause 79 that would (in certain circumstances) enable the CRB to send a registered body a copy of the certificate itself, rather than just a statement that a new check should be requested. She explained how this would operate in practice:

> This facility will apply where a registered body uses the new updating service ... and is informed that a new certificate should be applied for-in other words, that there has been new information since the most recent certificate. If the registered body informs the Secretary of State that the individual has not sent to it a copy of their certificate within a prescribed period-we envisage a period of some 21 days -and requests a copy of the new certificate, the Secretary of State must comply with that request.
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> However, a copy of the certificate will not be sent if prescribed circumstances apply, principally when the individual has challenged the information on the new certificate, which is what the noble Baroness and I were just discussing with regard to the last group of amendments. Any such requests made by a registered body will need to be made in a timely manner-there is provision to prescribe a time limit-to ensure the smooth operation of these arrangements.
>
> Our proposed change will be particularly relevant to large organisations which consider certificates centrally, and which will be able to advise their local branches of any issues arising. This applies in particular to the examples that my noble friend Lord Addington will no doubt draw on in his contribution to today's debate.
>
> We recognise that there may be occasional instances in which an applicant delays providing a copy of the certificate to their employer. The amendment provides a way for registered bodies to see a copy of the new certificate in those circumstances, while still ensuring that, when an applicant has challenged the contents of the certificate, the employer will not see that information until the challenge has been resolved.[27]

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24 HL Deb 6 December 2011 cc671-2
25 HL Deb 6 December 2011 cc667-676
26 Sunita Mason, *A Common Sense Approach – Report on Phase 1*, February 2011, p23
27 HL Deb 15 February 2012 cc808-9

The amendment was agreed.[28]

## 6 Human trafficking

Two new Government clauses relating to trafficking were added to the Bill.[29] The first new clause would consolidate the offences currently contained in sections 57 to 59 of the *Sexual Offences Act 2003* into a new section 59A of the 2003 Act. The current offences criminalise arranging or facilitating the trafficking of a person into, within or out of the UK for the purposes of sexual exploitation. The new clause would also extend the territorial scope of these offences. At present, they can be committed by anyone of any nationality anywhere in the world, provided the UK is the country to, from or within which the victim will be trafficked. This territorial scope would be extended in relation to UK nationals (whether based in the UK or elsewhere) by removing the requirement that the trafficking had to be into, from or within the UK.[30]

The second new clause would consolidate the offences currently contained in section 4 of the *Asylum and Immigration (Treatment of Claimants, etc) Act 2004*, which make it an offence to arrange or facilitate the trafficking of a person to or from the UK for the purposes of labour and other exploitation. It would also extend the existing offences to criminalise labour trafficking that takes place entirely within the UK.[31]

Lord Henley explained that the new clauses were required as a result of the Government's decision to opt in to a new EU Directive on anti-trafficking.[32] For full background to the EU Directive and the actions the Government is taking to comply, please see Library Standard Note 4324 *Human trafficking: UK responses*.

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28 HL Deb 15 February 2012 cc807-812

29 HL Deb 12 January 2012 ccGC60-7

30 So, for example, at present a UK national based in Thailand who facilitates the trafficking of another person from, say, Thailand to France for the purposes of sexual exploitation would not currently be committing an offence under the 2003 Act, but would be committing an offence under the new clause. Foreign nationals would continue to only commit an offence if any of the arranging or facilitating took place within the UK, or if the UK was the country or arrival, departure or travel.

31 At present trafficking within the UK is only caught by section 4 if the victim has been trafficked into the UK to start with – it does not cover the scenario where the victim was already legally in the UK and is then trafficked within the UK.

32 *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*