HOUSE OF LORDS
Library Note

Police Reform and Social Responsibility Bill (HL Bill 62 of 2010–11)

This Library Note provides background reading on the Police Reform and Social Responsibility Bill, due to have its second reading in the House of Lords on 27 April. The Bill is broad in scope and application. Part 1 of the Bill contains provisions to replace Police Authorities with directly elected Police and Crime Commissioners, and to create Police and Crime Panels to oversee the work of those Commissioners. Part 2 amends and supplements the Licensing Act 2003, with the aim of 'rebalancing' it in favour of local authorities, the police and local communities. Part 3 provides a new framework for demonstrations in Parliament Square, including the repeal of the relevant sections of the Serious Organised Crime and Police Act 2005. Part 4 contains provisions for temporary drug banning orders and to make changes to the rules governing membership of the Advisory Council on the Misuse of Drugs. It also introduces a new requirement for the Director of Public Prosecutions to give consent before arrest warrants are issued in private prosecutions for universal jurisdiction offences.

This Note summarises proceedings on the Bill at report stage and third reading in the House of Commons, and is intended to be read in conjunction with House of Commons Library Research Papers *Police Reform and Social Responsibility Bill [Bill 116 of 2010–11]* (9 December 2010, RP 10/81) and *Police Reform and Social Responsibility Bill: Committee Stage Report* (24 March 2011, RP 11/28), which provide background to the Bill and cover proceedings at earlier stages in the Commons.

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1. Introduction

The Police Reform and Social Responsibility Bill 2010–11 is a wide ranging Bill with implications for police governance and accountability, alcohol licensing, the regulation of public protest in Parliament Square, drugs policy—especially the temporary banning of drugs and composition of the Advisory Council on the Misuse of Drugs—and the issue of arrest warrants in private prosecutions for universal jurisdiction offences.

Introduced in the House of Commons on 30 November 2010, it received its second reading on 13 December 2010 and then the Public Bill Committee considered the Bill over twenty sittings between 18 January 2011 and 17 February 2011. Report stage subsequently took place over two days on the floor of the House on 30 and 31 March 2011, immediately followed by third reading. This Note summarises the debate which took place and amendments made to the Bill at report stage, and the passage of the Bill at third reading.

2. Summary of the Bill

The provisions of the Bill are summarised by the accompanying Explanatory Notes as follows.

2.1 Police Reform

Part 1 of the Bill contains a number of reforms to police governance and accountability:

> Part 1: Police Reform contains provisions to abolish police authorities (excluding the City of London) and replace them with directly elected Police and Crime Commissioners for each police force outside London, and the Mayor's Office for Policing and Crime for the Metropolitan Police. Police and Crime Commissioners will be responsible for holding the Chief Constable of their police force to account for the full range of their responsibilities. The Chief Constable will retain responsibility for the direction and control of the police force. Part 1 also contains provisions for establishing Police and Crime Panels for each police area. The role of the Police and Crime Panel will be to advise and scrutinise the work of the Police and Crime Commissioner.
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> Part 1 states the basic duties of a Police and Crime Commissioner. These include publishing a police and crime plan, setting the local police and crime objectives, and setting the local precept and annual force budget (including contingency reserves) in discussion with the Chief Constable. Provisions are also included in Part 1 for Police and Crime Commissioners to appoint, suspend and dismiss the Chief Constable of their police force. The appointment of all other officers will remain a matter for the Chief Constable.
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> Part 1 makes provisions for replacing the Metropolitan Police Authority with the Mayor's Office for Policing and Crime, to be run by the Mayor of London. The Mayor's Office of Policing and Crime will have the same powers as a Police and Crime Commissioner, except appointing the Metropolitan Police Service Commissioner and Deputy Commissioner (the Queen will continue to appoint both the Metropolitan Commissioner and Deputy Metropolitan Commissioner on the advice of the Home Secretary). A committee of the London Assembly will act as the Police and Crime Panel for the metropolitan police district. The

composition of the panel is at the discretion of the London Assembly (and it may therefore include independent members).

Part 1 also contains provisions for the first and subsequent elections of Police and Crime Commissioners. Police and Crime Commissioners will hold office for four years and can only hold office for a maximum of two terms. The two terms need not be consecutive.

2.2 Licensing

Part 2 of the Bill alters existing powers for licensing authorities and other responsible bodies with regard to alcohol licensing:

Part 2: Licensing contains provisions to amend the Licensing Act 2003 to give licensing authorities, the police, local authorities with responsibility for controlling noise nuisance, and communities a greater say in licensing decisions. Provisions also enable Primary Care Trusts (and Local Health Boards in Wales) to have a say, for the first time, in licensing processes.

Part 2 gives greater powers to licensing authorities to remove or refuse licences by enabling them to fulfil the same functions as existing responsible authorities, and to communities to make representations in relation to licensing decisions or call for a review of licensed premises. There is provision for doubling the maximum fine for premises which persistently sell alcohol to those under 18, and increasing the period of suspensions which can be imposed on such premises. Provisions reduce the evidential burden on licensing authorities and the police when making decisions under the Licensing Act 2003. Provisions also give licensing authorities greater flexibility in making early morning restriction orders; they will be able to make such orders for the whole, or part, of their areas for a period of any duration between midnight and 6am, and will be able to impose different restrictions on different days.

In addition, Part 2 also introduces greater flexibility in relation to the scrutiny and utility of temporary event notices, and aims to bolster the ability of licensing authorities to enforce payment of unpaid fees by enabling them to suspend a premises licence or club premises certificate for non-payment of an annual fee.

Part 2 also makes provision for the introduction of a “late night levy” on premises which supply alcohol:

Part 2 makes provision to enable licensing authorities to introduce a levy in their areas which will be payable by premises which supply alcohol as a part of the late night economy. Licensing authorities will be able to impose the levy on such premises for a period of any duration between midnight and 6am, although some premises may benefit from an exemption or discount. At least 70 per cent of the funds generated by the levy will be paid to the police and crime commissioner and it is intended to also pay such funds to bodies which operate measures to address the effect of alcohol related crime and disorder.

2.3 Parliament Square and Surrounding Area

Part 3 of the Bill provides new regulations governing protest in Parliament Square:

Part 3: Parliament Square Garden and surrounding area contains a new legal framework for Parliament Square which aims to prevent encampments and other

disruptive activity. The provisions confer power on constables and authorised officers to prohibit persons from engaging in certain activities in a specified area of Parliament Square (being the central garden area and adjoining pavements), including the unauthorised operation of any amplified noise equipment; the erection and keeping of tents or other structures designed to facilitate sleeping or staying in a place for any period; the using of any tent or structure to sleep or stay in the area, and the placing or using of any sleeping equipment for the purpose of sleeping overnight in the area.

Part 3 also repeals existing provisions governing protests in the vicinity of Parliament set out in sections 132–138 of the Serious Organised Crime and Police Act 2005. The 2005 Act made it an offence to organise or take part in a demonstration in the designated area around Parliament without the authorisation of the Metropolitan Police or use a loudspeaker in the designated area. One of the effects of repeal is that section 14 of the Public Order Act 1986 (powers to impose conditions on assemblies) will once again apply to static demonstrations held in the area around Parliament, thereby bringing the policing of protests back in line with the policing of protests in the rest of the country.

2.4 Misuse of Drugs and Arrest Warrants

Part 4 of the Bill contains new powers for the regulation of drugs, and amends the constitution of the Advisory Council on the Misuse of Drugs (ACMD):

> Part 4: Misuse of drugs amends the Misuse of Drugs Act 1971 by introducing a new power for the Secretary of State to temporarily control a substance for up to one year by statutory instrument.
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> There are also measures in Part 4 to amend the constitution of the Advisory Council on the Misuse of Drugs by removing the statutory requirement on the Secretary of State to appoint members with experience in specified activities. This will allow for greater flexibility in the membership of the Advisory Council on the Misuse of Drugs.

Part 4 also includes provision requiring that the Director of Public Prosecutions consent before an arrest warrant is issued for universal jurisdiction offences:

> Part 4: Arrest warrants gives effect to a commitment of the Justice Secretary announced in a Written Ministerial Statement on 22 July 2010 that the Government intended to bring forward a legislative amendment to require the consent of the Director of Public Prosecutions (DPP) before an arrest warrant can be issued on the application of a private prosecutor in respect of offences over which the United Kingdom has asserted universal jurisdiction.

3. Debate at Report Stage

3.1 Police Reform

3.1.1 Calls for HM Inspectorate of Constabulary to Review the Establishment of Elected Police and Crime Commissioners (New Clause 4)

Opening the debate, Shadow Policing Minister Vernon Coaker MP moved New Clause 4, which would have the effect of delaying sections 1 to 103 of the Act concerning the

creation of Police and Crime Commissioners (PCCs) and Police and Crime Panels (PCPs) until HM Inspectorate of Constabulary (HMIC) had conducted an inquiry into the changes and the Secretary of State had considered their recommendations. Speaking to the amendment, Mr Coaker suggested that among the reasons why such an inquiry was necessary included that the Government had yet to present sufficient evidence in support of the proposals, the opposition on the part of organisations such as the Local Government Association and local authorities to the planned changes, and the results of surveys which purported to show that the majority of people did not support the introduction of elected Police Commissioners.

In response to an intervention from Mark Reckless MP (Conservative) that the crucial argument for the reforms was that the electorate had voted for them, Mr Coaker argued that the model of policing reform contained within the Bill had in fact appeared in neither the Liberal Democrat nor the Conservative Party 2010 general election manifestos. Challenged in turn by Dr Julian Huppert MP (Liberal Democrat) that the common ground between the two Coalition parties remained that elected representatives should oversee policing and provide democratic accountability, Mr Coaker responded that regardless of the arguments about direct elections, the Government's model was at the "totally wrong level of accountability" (HC *Hansard*, 30 March 2011, col 376). Instead, he argued that it was neighbourhood and street-level accountability that the public desired. Mr Coaker also argued that "real concerns" also existed regarding how the mandate of elected Police Commissioners would be determined and the lack of checks and balances on the proposed model—describing Police and Crime Panels in particular as "completely toothless watchdogs with no real power" (*ibid*, col 376). Mr Coaker cited a recent statement from the Association of Chief Police Officers (ACPO) which suggested that the "developing framework of safeguards is too undeveloped and uncertain, and in several respects too weak" to ensure impartiality of officers making decisions such as the deployment of resources.[1] Mr Coaker also outlined issues which he believed existed around individual Police and Crime Commissioners being expected to cover large geographical areas often with diverse problems, and in the cost of the introduction of such commissioners—a particularly important problem, he suggested, for HMIC to examine.

Paul Murphy MP (Labour) supported New Clause 4, particularly with regard to Wales following the decision of the National Assembly of Wales not to give legislative consent to Part 1 of the Bill. As Mr Murphy outlined, the Communities and Culture Committee of the National Assembly had recommended as a result that the establishment of Police and Crime Commissioners in Wales be deferred at least until the effectiveness of their impact had been assessed.

Chair of the Home Affairs Select Committee, Keith Vaz MP, suggested that a review conducted by HMIC might not be the best option, particularly considering the need for extra resources to be provided to them to accomplish it. However, Mr Vaz did say that enabling Parliament to consider in greater detail the plans advocated by the Government could be advantageous.

Responding for the Government, the Minister for Policing and Criminal Justice, Nick Herbert MP, outlined his reasons why the provisions of New Clause 4 were not merited:

> I do not believe that there is time for delay, because the changes that we need to make to policing are urgent. The democratic deficit must be addressed, and there is a need to drive savings at a local level more strongly than they have been driven before. We therefore need to undertake this reform.

[1] Association of Chief Police Officers, 29 March 2011.

> Furthermore, if the Government do signal any kind of delay now, which the Government emphatically do not wish to do, we would create uncertainty at a time when subject to the further deliberations of the House and the other place, others outside are preparing in the expectation that the bill will become law... and that the first elections for police and crime commissioners will take place in 2012.
>
> (*ibid*, col 392)

With regard to Wales, Mr Herbert acknowledged that the Assembly Government did not support Police and Crime Commissioners, but reiterated that policing and crime is a reserved matter and thus it is up to Parliament to decide. On the matter of expense, Mr Herbert suggested that Mr Coaker had undermined his own argument about the cost of elected Police Commissioners being prohibitive through his support for the idea of directly elected chairs of police authorities, which would in fact be a more costly proposal. Mr Herbert also suggested that requiring HMIC to conduct an inquiry would place them in an invidious position, asking them to become judge and jury of a decision Parliament had made.

The House then divided on New Clause 4, which was defeated by 320 votes to 224.

3.1.2 Memorandum of Understanding (New Clause 5 and Amendments 149 and 155)

Mr Coaker moved New Clause 5 which would require the Government to publish a "Memorandum of Understanding" on the Operational Responsibility of Chief Constables detailing where their actions shall be independent of the Police and Crime Commissioner; to allow the Secretary of State to bring into force such a Memorandum by statutory instrument; and to dictate that such an instrument must be laid before and approved by resolution of each House.

Previously, during second reading of the Bill, Policing Minister Nick Herbert agreed to a recommendation from the Home Affairs Select Committee 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". Mr Herbert said at second reading:

> That is a good idea, and the Government have already said that we 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.
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> (HC *Hansard*, 13 December 2010, col 769)

Such a Memorandum had not been published in time for report stage. However as the Minister outlined in his response to New Clause 5, the Government had committed to publishing a Memorandum in time for it to be considered during the Bill's passage through the House of Lords.

Speaking to the New Clause, Mr Coaker first made the point that it was difficult to address the issues it raised without a draft of the code of practice, memorandum of understanding, or protocol as it is eventually defined. The purpose of New Clause 5, however, was to give that eventual document "some" statutory force, and it was submitted on the basis of a view from ACPO calling for "such a key document" to be

"specific and legally binding—such as through a Code of Practice founded in law" (HC *Hansard*, 30 March 2011, col 404). Mr Coaker cited further from the ACPO submission:

> ACPO has real concerns that the Bill does not fully recognise the uniqueness of the tripartite system between the Home Secretary, Chief Constables and local democratic governance. It is considered that the Bill places too much emphasis on local considerations giving disproportionate power to the PCC to the detriment of the necessary national and legal responsibilities placed upon the Home Secretary and Chief Constables. Our concern is to ensure that Chief Constables have sufficient operational independence, safeguarding their impartiality to balance the various duties and accountabilities they face. Currently, it is at best uncertain that the safeguards under development in parallel with the progress of the Bill will achieve that aim.
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> (*ibid*, col 404)

Mr Coaker suggested that New Clause 5 would help to address some of these perceived issues. He added that the protocol itself was vital to clarify the relationship between Police and Crime Commissioners and Chief Constables, and to ascertain exactly where the line of responsibility was drawn between the two, particularly with regard to police organisation and the funding of individual units. Mr Coaker closed his remarks by outlining his concern that individuals may run for the position of Police and Crime Commissioner on a manifesto which involves pledges with direct bearing to operational policing, and to the difficulties that this might cause for both the Commissioner and Chief Constable in the absence of a clear protocol.

Mark Reckless MP (Conservative) spoke to Amendment 149 tabled in his name, which sought to clarify explicitly that an elected Police and Crime Commissioner "shall have no involvement in decisions with respect to individual investigations and arrests" (*ibid*, cols 407–8). Acknowledging the difficulties posed by establishing a clear protocol, Mr Reckless said this was a probing amendment designed to emphasise the key point which arose from the 1962 Royal Commission on Policing that elected Commissioners should have no involvement in individual investigations or cases.

Speaking for the Liberal Democrat Front Bench, Tom Brake MP commented on both the need for flexibility in the protocol, and the distinction made by Amendment 149:

> It is interesting to note that initially senior officers had strong reservations about whether they wanted a protocol, so a degree of flexibility will be needed. I have some sympathy for Amendment 149, but I suspect the Minister will make it clear that there is every expectation that the police and crime commissioners will have no involvement in decisions on individual investigations and arrests.
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> (*ibid*, col 415)

Responding for the Government, Mr Herbert stated that the Bill did not change the legal position that the direction and control of police forces remains with the Chief Constable. However, he acknowledged that there was concern about ensuring the fundamental principle of operational independence. He pointed out that the key issue with providing such assurance was that there was no statutory definition of operational independence, and moreover, there was "general agreement that it would be unwise to attempt such a definition" (*ibid*, col 416). He added that ACPO, whilst concerned to ensure that operational independence is not threatened, also did not wish the Government to attempt to define it in law. Therefore, he argued that the debate over these principles would remain:

> The debate on the proper role of the Chief Constable and the proper role of the local body that holds them to account will continue—as it does between police authorities and chief officers and others, with the matter sometimes ending up in court. That is part of what Sir Hugh Orde, the ACPO president, described—not pejoratively—as the tension that should exist in the relationship. However, as I said in Committee, to some extent we are talking about shades of grey.
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> (*ibid*, col 416)

On the point of how assertive a Police Commissioner may be in putting forward their democratically provided mandate, and any tension that this may cause with the Chief Constable of a particular area, Mr Herbert cited the existing example of the Mayor of London:

> The Mayor of London stood on a manifesto of placing uniformed officers on public transport and tackling knife crime. Whether that cut across the operational independence of the Met has been debated but not resolved, but it is significant that those things have happened, and the Metropolitan police have willingly implemented them. We must accept that, to some extent, there are areas of negotiation and shades of grey, which is why all parties agree it would be a mistake to try to define in statute the notion of operational independence.
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> (*ibid*, cols 416–17)

Mr Herbert did confirm however that the Government were in the process of drawing up a protocol to set out the precise roles of the Police and Crime Commissioner and the Chief Constable in the new arrangements, and that such a protocol would also include the role of the Police and Crime Panel and of the Home Secretary. Regarding the status of the document, Mr Herbert said that he envisaged that this would be extra-statutory, and would be issued in the form of guidance. He added that he was willing to consider further that status; however this could not be done before it was published and it was known how the final version would look. In concluding his remarks he turned to Amendment 149, stating that it was existing common law principle, confirmed consistently by the courts, that the Executive must not interfere in operational law enforcement decisions, and so there was no need to enshrine it in the Bill.

The House subsequently divided on New Clause 5, which was defeated by 311 votes to 216. Amendment 149 was withdrawn without division.

3.1.3 Issuing Precepts (New Clause 6 and Amendments 151 and 152)

Mark Reckless MP moved New Clause 6, which would have the effect of clarifying the arrangements between an elected Police Commissioner and a Police and Crime Panel in setting the precept for the forthcoming year. Specifically New Clause 6 would provide an explicit veto to a Police and Crime Panel over a precept proposed by a Police and Crime Commissioner. Following such a decision a 14 day period of consultation would follow in order to provide the Commissioner and the Panel with the opportunity to agree an amended precept, and if they were unable to reach such agreement then a referendum would be held in order to decide between a precept proposed by the Commissioner and an alternative proposed by the Panel.

In moving the amendment, Mr Reckless outlined his reasons for seeking to clarify and enhance exactly what powers a Police and Crime Panel would have with regard to precepts, particularly the provision that a Police and Crime Commissioner must “have

regard" to that Panel in setting a precept. Responding to an intervention from Steve McCabe MP (Labour) regarding why he thought that Panels should have such powers of negotiation and veto over precepts but not in other areas, Mr Reckless said that in his view the power of the precept was an extremely important one, particularly over the whole elected term of a Commissioner, and that what was needed was in effect almost a reserve power to prevent Commissioners from setting either draconian or overly-expansive budgets against the will of a local area.

Speaking from the Liberal Democrat front bench, Dr Julian Huppert MP outlined his support for the New Clause, highlighting the increased local accountability contained within it. He added that he too believed that the precept was different from other areas and of key importance, and as a result was "surely the one for which we would want to provide the most control" (*ibid*, col 431). Dr Huppert also highlighted that even in cases of disagreement a referendum would not be guaranteed, pointing to the 14 day negotiation period outlined in the amendment where agreement would prevent further steps being taken.

In the limited time available for his response, Minister Nick Herbert said that Mr Reckless' approach was "interesting but wrong in relation to how the precept is dealt with" (*ibid*, col 433). He added:

> I explained in Committee the process following a veto, and the Home Secretary will set that out in regulations. They will require, as the amendment would, that the Police and Crime Commissioner considers the Panel's recommendations and then proposes an amended precept, which must take the panel's recommendations into account.
>
> That is where the Bill diverges from the proposed changes however. Under the regulations that we propose, we say that, if the amended precept is "excessive" under the definition in the Localism Bill, the Police and Crime Commissioner will set the precept but a referendum will be triggered. The Panel will not be able to prevent that, but will be able to propose an alternative precept with accompanying reasons that will have to be published. The public will then have to decide—having both sides of the story.
>
> (*ibid,* cols 433–4)

He said that the Government had decided not to take the approach of enabling a referendum in every incidence where a Commissioner and Panel may disagree on a proposed precept for reasons including the expense of holding a large number of referenda, all of which would have to be paid for by the Police and Crime Commissioner. Concluding, Mr Herbert said:

> I accept that the public must have a role in deciding what precept they pay, and under our policy they will have one, or potentially two, opportunities to do this—once when they elect their Police and Crime Commissioner, and again when a Police and Crime Commissioner sets an excessive precept.
>
> (*ibid*, col 434)

New Clause 6 and the associated amendments were subsequently withdrawn without division. The House then moved to resolve all remaining matters with regard to Part 1 of the Bill, accepting a number of Government amendments without division, and then dividing on Government New Schedule 1, which outlined the role, remit and powers of Police and Crime Panels. New Schedule 1 was accepted by 306 votes to 222.

3.2 Restriction on the Issue of Arrest Warrants in Private Prosecutions

Opening the debate on Part 4 of the Bill, Anne Clwyd (Labour) moved Amendment 2 which would have the effect of removing Clause 152 from the Bill introducing a new requirement that private prosecutors must obtain the consent of the Director of Public Prosecutions (DPP) prior to the issue of arrest warrants being issued for universal jurisdiction offences. Amendment 154, moved by Shadow Home Affairs Minister Vernon Coaker MP, was also discussed as part of the same grouping, and which would retain Clause 152 but would require that a specialist unit be established within the Crown Prosecution Service to ensure minimal delay on decisions taken under this process.

Speaking to her amendment, Anne Clwyd argued that the inclusion of Clause 152 would undermine the UK's standing on international human rights issues, particularly the obligations to which the UK is a party under the Geneva Conventions to bring before a court those persons suspected of committing the gravest crimes against humanity. One of the key justifications provided by the Government as reason for the change, she continued, was that it was "too easy to obtain an arrest warrant" (*ibid*, col 449). However, in the past 10 years there had been only two successful applications for arrest warrants, and those warrants were either withdrawn or not acted upon. Ms Clwyd also commented on the case of Tzipi Livni, the former Israeli Foreign Minister, and her belief that the law was being changed in large result on the basis of that incident, and with potential negative ramifications for the UK being able to act as an international peace broker. Concluding her remarks, Ms Clywd said that a legal case for changing the current judicial process had not been made, undermining the system of deciding to issue a warrant on the basis of evidence alone, and that the changes would make the already highly difficult process of trying to prosecute suspected war criminals even harder.

Michael Ellis MP (Conservative) spoke against the amendment, arguing that the threshold currently needed to bring a prosecution was very low, and that as a result it had been used by "attention seeking lawyers and campaign groups" as a campaigning tool rather than as a genuine attempt to gain justice (*ibid*, col 456). He added that the proposed changes in the Bill would make no difference to those attempting to avoid justice, and that all the proposed change was accomplishing in his view was to "raise the test [for such prosecutions] to the same level as for prosecutions that occur by the thousands across the country" (*ibid*, col 457).

Responding for the Opposition Front Bench, Vernon Coaker MP outlined his support for Clause 152, arguing that the provision was "essential to maintain universal jurisdiction" and allow for the prosecution of war crimes and crimes against humanity anywhere in the world (*ibid*, col 459). He continued:

> We do not believe that there should be any weakening in the standards for and likelihood of prosecution, as that would be completely wrong. However, there is a difference between the standards and procedures for arrest and the standards and procedures for prosecution. For prosecution, a higher standard of proof and the agreement of the Attorney-General are needed, whereas for arrest they are not. That means that there could be cases where people are arrested but there is no likelihood of prosecution, because the evidence is not there and the Attorney-General will not give agreement, perhaps because of campaigning on international issues in this country. We do not believe that that is appropriate, especially if it deters people from coming to Britain for purposes associated with diplomacy or peace. So it is essential to make the change that the Government

> propose, which would bring arrest better into line with prosecution but would not affect the chances of a prosecution.
>
> (*ibid*, col 459)

Mr Coaker added however that it was crucial that the DPP took decisions in a timely manner, and that was why the Opposition had tabled Amendment 154 to ensure that there was no delay and that wherever possible the case at hand was dealt with speedily so that an arrest warrant could be granted and prosecution secured.

Dr Julian Huppert MP, responding for the Liberal Democrat Front Bench, outlined his support for Clause 152, and with regard to Amendment 154 also highlighted that the DPP had offered in Committee to look at evidence in advance and so to be ready to update what was needed and proceed at very short notice. Dr Huppert also pointed out that, with regard to the risk of politicisation of the process resulting from the dialogue between the Attorney-General and DPP which had been raised by some Members, the DPP had made it clear that though there would be such dialogue there would be a very powerful weight in favour of prosecuting because the crime was one of universal jurisdiction. Therefore the public interest case not to proceed would have to be overwhelming. Dr Huppert added that in fact involving the DPP would make it harder for the Attorney-General to intervene to stop a prosecution because the DPP would have already stated that there was a basis to proceed.

Responding for the Government, Home Office Minister Nick Herbert MP suggested that much of the criticism directed at the provision appeared to be that it would end the right of private prosecution of universal jurisdiction cases, and that by extension it would damage the principle of universal jurisdiction itself. Mr Herbert stated that this was unequivocally not the case:

> The provision has no effect at all on the ability of the police to investigate, and of the Crown Prosecution Service to prosecute, alleged offences of universal jurisdiction, but we think it is right that citizens should be able to prosecute these cases, grave as they are. That is why, under our proposal, anyone will still be able to apply to a court to initiate a private prosecution of universal jurisdiction offences by issuing an arrest warrant, where appropriate... All the provision will do is prevent a warrant being issued in cases where there is no realistic prospect of a viable prosecution taking place.
>
> (*ibid*, col 463)

Addressing the point raised by Amendment 154 that the involvement of the DPP may lead to delay in a warrant being issued, Mr Herbert acknowledged that this was a serious point, but said that it had been clearly addressed by the DPP who had made clear that the Crown Prosecution Service had suitably trained staff available around the clock and ready to act immediately in emergency cases. Mr Herbert also shared Dr Huppert's view that the DPP had made clear in his evidence to the Public Bill Committee that consultation between himself and the Attorney General "acts as no inhibition on the independence" that the DPP would bring to a decision (*ibid*, col 463).

Speaking to the necessity of the provision, Mr Herbert said that not all those who might be subject to such a warrant were already covered by immunity as had been suggested. On the point raised by Ms Clwyd and others about the number of arrest warrants which had been issued, Mr Herbert responded:

> It is said, too, that few warrants have been issued in universal jurisdiction cases, but the problem lies in the perception that a person who is not a British citizen, does not live here, and indeed has no connection with this country apart from being present here, might be at risk of arrest for a very grave crime where there is no prospect of a viable prosecution. That such an occurrence is rare misses the point. The fact is that people who are, or have been, in leading positions in their countries, with whom the Government would wish to engage in discussions, may be discouraged from coming here. That is our concern. That, in turn, creates a risk of damaging our ability to help in conflict resolution or interfere with foreign policy.
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> (*ibid*, col 464)

The House then divided on both amendments. Amendment 2 was defeated by 480 votes to 37, and Amendment 154 was defeated by 297 votes to 179.

3.3 Licensing

3.3.1 Power for Licensing Authorities to Set Fees (Government New Clause 1)

Government New Clause 1 provides measures enabling licensing authorities to set their own fees based on full cost recovery on the services they provide (though the total amount they can charge will be capped centrally). Introducing the New Clause, Minister James Brokenshire outlined why the Government had decided to take a local approach rather than setting fees at a national level:

> I have chosen to move to set fees locally because I consider that it may be difficult to achieve a close approximation of full cost recovery with nationally set fees. Different areas do not have the same costs, and it is unavoidable that a blanket fee level would leave some councils with a deficit or provide an excessive income to others. No system is ideal, but as a matter of principle, council tax payers in areas with higher costs should not subsidise the administration of the licensing regime, and fee payers in lower-cost areas should not fund wider council activities.
>
> (HC *Hansard*, 31 March 2011, col 554)

However, Mr Brokenshire clarified that this did not mean licensing authorities would be unrestricted in the fees that they would be able to set: firstly they would only be able to set the level of the fee, not to design new fees or their own fee structure, and nor would they be able to use the fee structure as an income stream. The only basis to set fees would be to recover the costs incurred in discharging their duties. Mr Brokenshire added that the Government would be bringing forth guidance to local authorities on the setting of fees to ensure that costs were kept to appropriate levels. He also confirmed as per the wording of the Clause that there would be a nationally set cap on fee levels, which would be provided in regulations following consultation.

Responding for the Opposition, Diana Johnson MP indicated support for the New Clause but said it would need to be clear to local authorities what funding will be available to them and what charges they will be able to set, and she asked the Minister when he believed such changes would be introduced so that local authorities could plan accordingly. She also questioned whether the new fees regime would be kept under regular review, whether the Government would be seeking to remove any other regulatory burden away from businesses in light of these changes, whether there were any plans to reduce the fee for those establishments that took part in schemes such as

Best Bar None, and whether the principle of full cost recovery included the work of those responsible authorities such as the Police who also incurred costs as part of the process. Liberal Democrat Home Affairs Spokesperson, Dr Julian Huppert MP, also indicated his support for the New Clause, adding that it was right that the system should not impose a cost on councils, the current system having constituted a considerable drain on resources. He hoped the Minister would provide assurance that the power to cap fees would be used rarely and not be the driving force behind what fees individual authorities set.

The Minister indicated that the Government would be reviewing the maximum fee level, and that it intended to consult fully on the proposals. As a result, Mr Brokenshire said he expected that the required regulations would be laid in October 2012, allowing such consultation to take place. He also made clear that the New Clause ensured that the costs a licensing authority may recover in its fees include those of other responsible authorities and other relevant parts of the licensing authority.

New Clause 1 was subsequently added to the Bill without division.

3.3.2 Alcohol Disorder Zones: Repeal (Government New Clause 2)

Government New Clause 2 would have the effect of repealing Alcohol Disorder Zones (ADZs), introduced in the Violent Crime Reduction Act 2006. Introducing the amendment, Minister James Brokenshire outlined the Government's belief that these measures were neither effective nor well-designed, pointing to the fact that since their introduction ADZs have been completely unused by local licensing authorities. Emphasising what he called the overly-bureaucratic and complicated nature of ADZs, Mr Brokenshire said that the proposal in the Bill for a 'late-night levy' would instead provide a simple power for licensing authorities to adopt to raise a contribution to costs incurred by police and local authorities in managing the late-night economy.

Responding for the Opposition, Diana Johnson MP indicated support for the amendment, but added her concern that the "blanket approach" adopted under the late-night levy, designed to combat some of the alcohol disorder issues posed by certain areas instead of ADZs, was disproportionate. She gave the example of a rural pub which chose to open late but required no extra policing or local authority action, but which as a result of the levy could be subject to the same charge as a bar or club in an area where there were particular problems of alcohol-related disorder. A number of other Members rose in the debate to make a similar point with regard to the experience of their local areas, including Justin Tomlinson MP (Conservative), who called for a venue-specific approach. Concluding her remarks, Ms Johnson also voiced concerns that businesses who already contribute towards voluntary arrangements aimed at combating disorder such as Best Bar None could be penalised if also asked to make a contribution towards the late-night levy. Dr Julian Huppert MP also indicated the Liberal Democrat's support for the amendment but suggested to combat the issue of a blanket approach across a licensing authority area, boundaries could be drawn according to council wards to allow for greater flexibility.

In response to concerns about flexibility, the Minister indicated that the Government had deliberately chosen a time-specific, rather than local-specific, approach with the late-night levy to avoid many of the problems associated with the ADZ scheme. He added that many community pubs would be likely to have shut before the late-night levy would come into effect, and with regard to venues opening later on a limited number of occasions, such as New Year's Eve, indicated that the Government would consider that issue in the regulations. Mr Brokenshire also made clear that the Government was

prepared to review the levy, particularly if it became clear that it was not effective, or was inappropriately penalising certain venues.

New Clause 2 was subsequently added to the Bill without division.

3.3.3 General Duties of Licensing Authorities—Public Health (New Clause 3) and Minor Government Amendments

For the Opposition, Diana Johnson MP moved New Clause 3, which would add the protection and improvement of public health to the licensing objectives which must be taken into account when a local authority carries out its licensing functions. Ms Johnson outlined three key reasons for the introduction of the amendment: the prominent role and importance of public health; to enhance the role of primary care trusts (and, in future, local authorities) as responsible authorities under Clause 104 of the Bill; and the current position in Scotland. Citing what she called the failure of the self-regulatory process with regard to the "responsibility deal" on alcohol, and the failure of the Government to include any provision in the Bill regarding minimum alcohol pricing, Ms Johnson suggested that the New Clause presented the Government a clear opportunity to reassert their commitment to improving public health and dealing with some of the public health problems associated with alcohol.

Responding for the Government, James Brokenshire MP indicated that he was supportive of the New Clause's aims, but that the issue required further consideration, alongside other wider Government work to address the harm that alcohol causes to health. In order to make what he viewed to be such a fundamental change to the aims of the Bill, it was essential that the potential impact of the change was properly evaluated to ensure that the changes were workable and did not have any unintended consequences. He added that the Government would be looking to learn any possible lessons from the introduction of similar measures in Scotland, and with regard to pricing the Government remained committed to bringing forth proposals in this area in the future.

The amendment was subsequently withdrawn without division. The Minister then spoke to a number of minor Government amendments, most to provide clarity and resolve drafting errors, but also Amendments 22, 23, 24 and 25, which ensured that licensing authorities were also able to deduct the cost of introductory processes required to establish the late-night levy from the levy revenue. The Amendments were all passed without division.

3.4 Parliament Square and Surrounding Area

John McDonnell MP (Labour) moved a number of amendments, grouped into three main sets of provisions, with regard to the clauses in the Bill on demonstrations in Parliament Square and the surrounding area. The Government also moved Amendments 57 and 58 which restricted the power of seizure of property to police officers, removing the right of authorised council officials to do so as in the original Bill.

The first set of amendments moved by Mr McDonnell (162 and 163–170) would have the effect of removing the provisions in both the Serious Organised Crime and Police Act 2005 and the current Bill regarding demonstrations in Parliament Square. Mr McDonnell argued that the provisions contained in SOCPA had proven to be "tedious, bureaucratic and unworkable", and had also failed in their key aim of removing the encampment of Mr Brian Haw, given the failure to make the provisions retrospective. He added that the permit system became "a mockery of what the legislation intended" when one person was arrested for reading out the names of those who had died in the conflicts in Iraq and Afghanistan. Mr McDonnell said that he supported the repeal of those SOCPA

provisions in this Bill, but that the provisions in the Police Reform and Social Responsibility Bill still acted to impede peaceful protest. Specifically Mr McDonnell argued:

> These proposals will put an unmanageable burden on police officers and local authority officers and increase their vulnerability to conflict rather than reducing it... They are unacceptably restrictive [and] replace one unworkable system with another and have the same effect of restricting... the right of peaceful protest and assembly and free speech in Parliament Square.
>
> (HC *Hansard*, 31 March 2011, col 585)

Mr McDonnell also pointed to the obligations enshrined within the Human Rights Act 1998, which allows that human rights are qualified and can be limited, but that any limit has to be proportionate and for a legitimate aim. He argued that the Government had not provided clarification on what "harm" was being inflicted in order to justify the restrictions contained within the Bill on those individual rights. Mr McDonnell said that he believed the key objections to the demonstrations to be aesthetic, rather than the result of any consideration of harm. Mr McDonnell also questioned why existing powers in planning legislation could not be employed to address protests in Parliament Square, and if there were a specific harm caused—for example if one protestor or group was preventing others from protesting—then it should be legislated against on that basis rather than the blanket approach prescribed by the Bill. Jeremy Corbyn MP rose to support Mr McDonnell's amendments, arguing that Parliament was a working building and the centre of national democracy, and as a result should be the centre of the right to support, protest, dissent and campaign.

Speaking to the second set of amendments (171–174), Mr McDonnell made clear that this was a less preferred option but would seek to attempt to "ameliorate the Government's proposals" by introducing an injunction process whereby those concerned about prohibited activity within the Square could apply to the High Court for an injunction. Amendment 174 would also reduce the overall penalty for an offence to Level 3 (from Level 5), attracting a £1,000 penalty rather than £5,000 for a Level 5 offence (*ibid*, col 586).

Turning to the last set of amendments (176 and 185 onwards), those of "last resort", Mr McDonnell outlined that these would address who would implement the legislation, specifically ensuring that a senior police officer should be required to take decisions regarding protests rather than a constable, and that the person to exercise powers under Clause 185 of the Bill should be at least a police constable, and not a local authority officer.

Mark Field MP (Conservative) rose to add his support for allowing protests in Parliament Square, and to share his concern that the legislation may be unworkable if only because of the number of different authorities involved in the process. However, Mr Field also argued that a distinction had to be made between legitimate one-off protests, and permanent encampments. It was unacceptable he said for a UNESCO world heritage site to be "blighted" by a permanent encampment, for reasons of aesthetics but also of damage to tourism, and he called for the impact on local residents to be taken into account. Michael Ellis MP (Conservative) spoke later in the debate in favour of this point, and argued on the question of "harm" that criminal damage, nuisance, hygiene, and health and safety issues caused by permanent protests constituted such harm.

Responding on behalf of the Liberal Democrat Front Bench, Dr Julian Huppert agreed on the critical right of peaceful protest and was very much in favour of repealing the

provisions under SOCPA. He also supported Mr McDonnell's assessment that a sufficient measure of "harm" had yet to be established. However, Dr Huppert also conceded that the idea of having no constraints was unlikely to garner support, and therefore the appropriate debate was how to achieve a system which interfered with the right to protest as little as possible. He added that one of the worst measures of the Bill, and which the Government was now seeking to amend in Amendments 57 and 58, was providing council officials with the power to seize property, which should properly be left to police officers.

Simon Hart MP (Conservative) favoured the original provisions in the Bill, but with the caveat that accessibility, affordability and spontaneity of protest must be maintained. Denis McShane MP (Labour) in contrast argued that the provisions in the Bill did not go far enough. In his view Parliament should be protected from demonstrations in order to allow Parliamentarians to go about their business unimpeded. Responding to an intervention from Jeremy Corbyn MP, Mr McShane confirmed that he did believe that a distinction should be drawn between Parliament and elsewhere, and that Parliament should be afforded special consideration.

Speaking for the Opposition, Shadow Policing Minister Vernon Coaker MP said that they supported the repeal of the relevant SOCPA provisions, which despite their intention "went much further than any of us would have wanted", and maintained that his party's position had been and still was that there was a need to balance the right to protest with the right of others to enjoy Parliament, and to protect their freedom. Mr Coaker also expressed his "surprise" that the Government had only tabled two amendments (57 and 58) to address what in his view was one of the major problems of the Bill—that reasonable force (in the seizure of property) can be used not only by a constable but by an authorised officer of the council. Despite the amendments, Mr Coaker argued that the Bill still gave that authorised officer significant powers with regard to the seizure and retention of property, and suggested that given the nature of public protest in particular, the involvement of anyone but a warranted police officer was a "dangerous extension of power" (*ibid*, col 612). Concluding, Mr Coaker also pointed out that in his view there remained the issue of a lack of adequate definition of "sleeping equipment" in the Bill, which could well open the door for extensive litigation.

Responding for the Government, Home Affairs Minister James Brokenshire MP reaffirmed the Government's commitment to peaceful protest, arguing that in scrapping the SOCPA provisions the Bill would return Parliament Square, in many ways, to the same status as the rest of the country. The question was the extent of the right of protest, which was not exhaustive, and did not entail the right to permanent encampment. In response to those who suggested that it was not a sufficient problem to merit such a solution, Mr Brokenshire pointed to the fact that Parliament Square had been fenced off for six months to enable restoration work and so had been unavailable to protesters and the general public alike. On the issue of practicality and workability, the Minister said that with correct protocols in place between the Greater London Authority, Westminster Council and others, the proposals were indeed workable. On the language of the Bill and potential for litigation, Mr Brokenshire said the Government recognised that it would be tested, as with any proposals, but that the Government had purposefully allowed discretion, and it was important that the provisions in the Bill be used proportionately.

Turning specifically to the amendments tabled by Mr McDonnell, Mr Brokenshire argued that given Parliament Square's location and status, including that as a world heritage site, the Government was attempting to balance the needs of protestors with those such as tourists, local residents and Parliamentarians themselves to carry out their daily work and enjoy the space. Mr Brokenshire said that the Government was clear that no one

group or person should take over the area to the detriment of others, and this included one group of protesters preventing another from doing so. The Government was not seeking to limit the right of protest, but only to prevent encampments.

Finally the Minister specifically addressed Government Amendments 57 and 58, which he said were the result of listening to concerns which had been raised in the Public Bill Committee. However, Mr Brokenshire said that the Government continued to believe that the right of authorised officers to properly manage and support the activities in Parliament Square required them to have the ability to give directions and seize items, but not to use reasonable force because that was the role of the police.

As he had stated at the beginning of the debate, Mr McDonnell then moved Amendments 162 and 185 to a vote. Amendment 162 was defeated by 280 votes to 8. Amendment 185 was defeated by 276 votes to 158. Government Amendments 57 and 58 were added to the Bill without division, alongside Schedule 17 on temporary drug class orders.

4. Third Reading Debate

At third reading the Home Secretary, Theresa May MP, reinforced the Government's view that Police and Crime Commissioners would help "reconnect the police with the public they serve", ensuring that the police focus on the needs of their local communities rather than a centrally imposed mandate (HC *Hansard*, 31 March 2011, col 623). Responding to interventions from both Chris Bryant MP (Labour) and the Shadow Home Secretary regarding the potential impact of the plans at the same time as cuts to policing budgets, particularly on "front-line" services, Ms May responded that there might be a need to reform the police but that did not mean a reduction in such front-line services. The Home Secretary outlined many of the changes which had been made to the Bill as it passed through the House, including the promise of a protocol setting out the distinct role and powers of chief officers, PCCs and other bodies in the "new policing landscape". With regard to the issue of devolution she reiterated that policing was a reserved matter, and said that there could not be two tiers of governance for a police service whose officers and assets so regularly crossed the boundary between England and Wales in tackling crime.

Speaking to the other measures contained in the Bill, Ms May said that with regard to licensing the Bill would ensure that everyone affected by a licensed premises would be able to have a say in the licensing process, and the late-night levy and early morning restriction orders would help pay for the costs of policing and other services required by the late night economy. In addition the Bill would help to crack down on the damage caused by so-called legal highs through temporary class drug orders, and included tough but proportionate measures to deal with encampments and other disruptive activity in Parliament Square. Finally, the Bill also made "sensible changes" to the procedures for obtaining an arrest warrant for universal jurisdiction offences (*ibid*, col 625).

Responding for the Opposition, Shadow Home Secretary Yvette Cooper stated Labour's opposition to the Bill, arguing that its provisions "put at risk centuries of independent policing, free from political interference" and concentrated considerable policing powers in the hands of a single individual without appropriate checks and balances (*ibid*, col 628). Ms Cooper highlighted again that the proposed protocol establishing the demarcation of responsibility between a Police and Crime Commissioner and a Chief Constable was still not published, thus denying the House the opportunity to scrutinise it. Despite considerable debate and some amendment, the Bill had not changed in its

fundamentals, and though the public may want responsible and accountable policing, “they also want impartial policing that is accountable to the rule of law” (*ibid*, col 629). She concluded:

> Most importantly, this drastic re-engineering at the top of policing—this massive experimentation in governance—comes in the middle of the deepest cuts that police have had to face in many generations.
>
> (*ibid*, col 630)

Mark Reckless MP (Conservative) then rose to welcome the Bill, but to reiterate his concern over the setting of precepts, and in particular the lack of actual veto powers on the part of the Police and Crime Panels. David Blunkett MP (Labour) rose to outline his concern at the proposals, especially his belief that they would lead to “total confusion”, with policy decided by an elected Police Commissioner, delivery decided by a Chief Constable and no regard for proper, organised cross-boundary working (*ibid*, col 633). Finally Dr Julian Huppert MP (Liberal Democrat) rose to welcome the Bill, particularly the introduction of democracy into local policing and to undo the previous restrictions on demonstrations in Parliament Square.

The Bill was then given a third reading by 274 votes to 161.

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