

**Baroness Crawley:** My Lords, I am grateful to my noble friend and to the noble Lord, Lord Bradshaw, for moving this amendment. While I continue to applaud the good intentions behind this amendment, which has changed significantly since it was first introduced by the noble Viscount, the Government remain of the view that any individual exercising a right of audience before a magistrate should be required to demonstrate his competence to do so.

The proposed amendment would allow a police authority to designate certain members of that authority to have the same powers as a crown prosecutor, and an automatic right of audience in a number of road traffic cases. Subsection (3) of the amendment does not make it clear as to who would be the designated member of the police authority. I imagine that it is intended that the police authority would only designate police officers but that is not clear.

As noble Lords will know, a police authority is an independent body that holds the local police force to account on behalf of the people who live and work in that area. Most police authorities have 17 members made up of nine local councillors, five independent members and three magistrates. I am not convinced that any of these individual members would be best placed to act in the capacity of a prosecutor in road traffic cases.

As my noble friend is aware, judges have discretion to allow police officers to appear in court before them. If the road traffic case were straightforward, I expect that the judge would choose to exercise that discretion. We believe that this mechanism is more preferable than the creation of an automatic right that is not subject to any scrutiny or oversight. Such powers, given to those who are not trained or qualified in prosecuting may actually create delay or damage the case, thus potentially undermining confidence in the justice system. If this were to be the case, this amendment does not allow for any mechanism by

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which to remove those powers and rights from the designated individual, thus exacerbating the difficulties. For these reasons, and while thanking my noble friend for his persistence and for the excellent intentions in this amendment, I hope that he will withdraw it.

**Viscount Simon:** My Lords, I thank my noble friend for her reply. I will study what she says and I strongly suspect that the police, who have instigated this, will come back at Third Reading. In the mean time, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[Amendment No. 71 not moved.]

Schedule 6 [Repeals and revocations]:

**Lord Davies of Oldham** moved Amendment No. 72:

Page 114, line 4, leave out "entry relating to section 98A(7)" and insert "entries relating to sections 98A(7) and 99(5)"

The noble Lord said: My Lords, I rise to move Amendment No. 72 and speak to Amendments Nos. 73 and 74. They are technical amendments. I beg to move. On Question, amendment agreed to.

**Lord Davies of Oldham** moved Amendments Nos. 73 to 74:

Page 52, line 38, at end insert—

"(3A) Section 2B of the Road Traffic Act 1988 (c. 52) (inserted by section (Causing death by careless, or inconsiderate, driving)) has effect only in relation to driving occurring after the coming into force of that section; and section 3ZB of that Act (inserted by section (Causing death by driving: unlicensed, disqualified or uninsured drivers)) has effect only in relation to driving occurring after the coming into force of that section.

(3B) In relation to an offence under section 2B or 3ZB of the Road Traffic Act 1988 (c. 52) committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the references in column 4 of Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988 (c. 53) relating to offences under those sections have effect with the omission of the words "12 months (in England and Wales) or" and "(in Scotland)".

Page 53, line 19, at end insert "but section 44(6) has effect only in relation to offences committed on or after that day."

On Question, amendments agreed to.

## **Children and Adoption Bill [HL]**

7.39 pm

Read a third time.

**Baroness Walmsley** moved Amendment No. 1:

Before Clause 1, insert the following new clause—

### "POWERS OF COURT

In section 37 of the Children Act 1989 (c. 41) (powers of court in certain family proceedings), in subsection (1) omit "family".

The noble Baroness said: My Lords, I rise to move Amendment No. 1. Your Lordships will recall that at Report we moved another amendment about Section 37 powers, which are the vehicle in the Children Act 1989 by which children in private law are brought into public law when there is concern about possible harm

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to them, and the protection system then rolls into action. We asked for guidance to be published to ensure robust and consistent application of those powers in the family courts.

The Government assured us that the courts were operating these powers well, and we now accept that. However, during our research on the matter, another element came to light. There are situations in which judges in other kinds of proceedings—not family cases but criminal proceedings—uncover situations in which children are in danger, and they believe that they do not have the powers to invoke Section 37 simply because they are not hearing a family case. I call to mind one case described to me by a district judge, who sits both in family cases and in other kinds of proceedings, in which a father was up on a charge relating to drugs. It emerged that both parents were chaotic drug users and had a young child who was being appallingly neglected. The local authority did not even have the child on its "at risk" register, and the judge wanted to act immediately to protect the child. If she had had Section 37 powers, she could have invoked them right away and the child's situation would have been properly assessed as a matter of urgency. However, she believed that she did not have such powers.

Amendment No. 1, by the simple device of removing the word "family" from Section 37, makes

the same powers available to courts in all cases in which a child protection issue emerges during any court proceedings. That strikes me as sensible; naturally, you would expect judges to operate the powers in the same sort of way as they are operated—successfully, according to the Government—in the family courts. Will the Government either accept the amendment or guarantee to go away and look at how judges in other proceedings can use existing powers to do the same thing and, if the latter, ensure that a practice note is issued to ensure that they know what powers they have? If the Government believe that judges already have the power, clearly some of them do not know it, so a practice note is appropriate in that case, too. I beg to move.

**Baroness Morris of Bolton:** My Lords, I give cautious support to the amendment moved by the noble Baroness, Lady Walmsley. The amendment seems eminently sensible. Removing the word "family" may have impacts elsewhere, but it seems sensible, and I give it my support.

**Lord Adonis:** My Lords, we are very grateful to the noble Baroness for raising this issue. I should say straight away that we feel that the amendment raises what may be a point of substance; it is one that we wish to reflect on further, with a view either to introducing an amendment in the other place or issuing a practice note as she suggested.

The intention of Section 37 of the 1989 Act is to enable courts, in particular in the process of private law family proceedings, to ask the relevant local authority to undertake within eight weeks an assessment of the welfare of a child who is the subject

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of proceedings with a view to ascertaining his or her needs and determining whether the authority considers that it should initiate care proceedings. The issue is whether the powers under Section 37 could be used in other types of proceedings. The amendment moved by the noble Baroness would extend the process set out in the 1989 Act, in respect of family proceedings, to other types of court proceedings.

The question raised by the noble Baroness is whether that would assist the cause of child protection. In considering the noble Baroness's amendment, we have asked ourselves precisely that question. The answer is that it may do so, and we are therefore prepared to consider very seriously an amendment to extend the scope of proceedings covered by Section 37. The implications need careful consideration. In the light of what I have said, I hope that the noble Baroness will feel able to withdraw her amendment.