



Ministry
of Justice



Home Office

Rt Hon Kit Malthouse MP
Minister for Policing, Crime
and Probation

Tom Pursglove MP
Parliamentary Under
Secretary of State

Rt Hon Yvette Cooper MP
Steve Reed MP
House of Commons
London, SW1A 0AA

22 February 2022

Dear Yvette and Steve,

POLICE, CRIME, SENTENCING AND COURTS BILL: COMMONS CONSIDERATION OF LORDS AMENDMENTS

We are writing to let you have details of the attached motions and amendments we have tabled for Commons Consideration of Lords Amendments scheduled for 28 February.

1) Conferring powers under the Police and Criminal Evidence Act 1984 on the Food Standards Agency (Lords amendment 58)

The Government agrees, in principle, that search and seizure powers under the Police and Criminal Evidence Act 1984 (PACE) should be conferred upon the Food Standards Agency (FSA) in order to support their vital work tackling food crime. Food crime is a very serious issue and empowering the FSA to investigate these offences will ensure that their specialist knowledge is put to best use and that the burden on police forces is reduced.

However, before this can be done it will be necessary to fully work through the implications of these proposals to ensure that any exercise of PACE powers is necessary, legitimate and proportionate. There is currently no formal independent oversight arrangement for the FSA's use of these powers, and given that we are dealing with intrusive powers of the State we must ensure that all of the accountability arrangements are in place before a commitment to conferring the powers is made. For these reasons, we have tabled a motion to disagree with Lords amendment 58.

We are committed to taking this forward with the FSA, their sponsoring department (the Department of Health and Social Care) and other partners and will return with further legislative proposals once this consultation has been undertaken.

2) "Spiking" (Lords amendment 70)

Lords amendment 70 requires the Secretary of State to establish a review into the prevalence of, and the response of the criminal justice system to, the offence of

administering a substance with intent under section 61 of the Sexual Offences Act 2003. The Government shares the concern about “spiking” – whether spiking of drinks or spiking by needles – which has prompted this amendment and is taking the issue very seriously. In September 2021, the Home Secretary asked the National Police Chiefs’ Council to review urgently the extent and scale of the issue of needle spiking. It is clear that this behaviour is not exclusively linked to sexual activity and demands a response which goes beyond the criminal justice system. We are therefore tabling an amendment in lieu of Lords amendment 70 which is drafted more broadly. This will require the Home Secretary to prepare a report on the nature and prevalence of “spiking” (intentionally administering a substance to someone without their consent and with the intention of causing them harm) and to set out the steps that the Government has taken or intends to take to address it. The Home Secretary will be required to publish the report, and lay it before Parliament, within 12 months of Royal Assent. We believe that this addresses the concerns which prompted the Lords amendment but in a way which enables the Government to consider the issue in the round. Additionally, the Home Secretary has asked her officials to explore the need for a specific criminal offence to target spiking directly.

3) Duty of candour on the police workforce (Lords amendment 71)

In February 2020, we introduced a statutory duty of cooperation for serving police officers as part of wider integrity reforms (see Schedule 2 to the Police (Conduct) Regulations 2020). A failure to cooperate in this way constitutes a breach of the statutory standards of professional behaviour, by which all officers must abide, and could therefore result in a formal disciplinary sanction. This existing duty to cooperate puts a greater onus on officers than the duty of candour provided for in this amendment as they could ultimately be dismissed for a breach, so the Government is reluctant to dilute the existing measures in place to compel officers to cooperate. Nonetheless, we are closely monitoring the impact of this new legislation on police co-operation with inquiries and investigations. In addition, as the Government considers the case for a wider duty of candour for other public servants and bodies, we will determine whether there are gaps in the existing framework that need to be filled to ensure public confidence. We will set out our conclusions later this year. For these reasons, we have tabled a motion to disagree with Lords amendment 71.

4) “Making misogyny a hate crime” (Lords amendment 72)

The Government understands the strength of feeling regarding adding sex and gender to hate crime laws and shares the commitment to doing everything possible to tackle violence against women and girls (VAWG).

However, we are unable to support this amendment in light of the Law Commission’s conclusion, in its independent review of hate crime laws in December 2021, that such a step would potentially prove “more harmful than helpful, both to victims of violence against women and girls, and also to efforts to tackle hate crime more broadly”. It specifically noted that adding these characteristics may make the prosecution of crimes disproportionately affecting women and girls - such as sexual offences and domestic abuse - more difficult. This arises as establishing whether a hate crime has occurred would require additional proof to be demonstrated in court and where the Law Commission notes, by contrast, that “it might be practically difficult to prove a sex or gender-based aggravation in the context of VAWG crimes that usually take place in private”. As a result, it later notes, “we are particularly concerned about the potential for this to make some sexual offence prosecutions more difficult”.

The Law Commission subsequently recommended against adding these characteristics to the law. Most organisations responding to the Law Commission consultation also opposed adding these characteristics. This included Rape Crisis (the largest sexual violence support organisation in England and Wales), whilst others, like Women's Aid, said they would oppose a model which covered both sexes, as this amendment does.

The Government notes that the Lords amendment seeks to mitigate the most serious risks identified above by excluding certain offences from any hate crime designation, including sexual offences and domestic abuse. However, the Law Commission similarly identified such models would not be helpful, noting that this would then make the addition of the characteristics largely tokenistic, by excluding those most serious offences which frequently harm women and girls. It also noted the exclusion of these offences risks suggesting they are, by default, less serious or not rooted in misogynistic hostility, and would treat sex/gender unequally to other characteristics in the scope of hate crime laws. Finally, it noted that such an approach would make hate crime legislation more complex, undermining the coherence of the law as a whole.

Finally, the Government has observed that the Lords amendment turns on a non-statutory police and CPS definition of hate crime, which is designed to encourage reporting. This emphasises a perception of a victim or another person as determining what is a hate crime. However, this is not a valid legal definition: hate crimes require objective proof, tested by the courts to the criminal standard, to determine a crime was motivated by or demonstrated hostility. The Government is concerned that the use of this definition would undermine due process and fairness in the criminal justice system, as well as setting a different, lower legal test for convicting sex and gender-based hate crimes as compared to hate crimes targeting other characteristics.

The Government therefore shares the Law Commission's concern that adding sex and gender to hate crime laws in any form could prove unacceptably counterproductive. We will continue instead to pursue alternative measures to tackle VAWG, by considering the Law Commission's findings in full, including its suggestion that the Government review the need for a stand-alone, non-hate crime public harassment offence.

For these reasons, we have tabled a motion to disagree with Lords amendment 72.

5) Public order (Lords amendments 73, 80, 81, 82, 87 and 143)

The right to peaceful protest is a cornerstone of our democracy and the Bill does not change that. But the guerilla tactics we have seen in recent years cause misery to the public, cost millions in taxpayers' money and put lives at risk. That is why we brought forward measures in this Bill to give the police updated powers to better manage protests and prevent them from causing significant disruption which causes havoc for people trying to go about their daily lives. It is disappointing that the House of Lords has rejected many of the new measures we brought forward in response to the irresponsible and dangerous tactics of Insulate Britain and have sought to water down the measures in the Bill agreed by the House of Commons.

We do, however, welcome the House of Lords' recognition of the harm caused by disruptive protests outside of schools and vaccination centres. We therefore agree, in principle, with the aim of Lords amendment 143, which would enable a local authority to

quickly put in place a Public Space Protection Order (PSPO) to prevent the harm from such protests. We have tabled an amendment in lieu which will have similar effect to Lords amendment 143. The amendment in lieu provides for expedited PSPOs which may be made by a local authority without the need for prior consultation. As with the fast-track PSPOs provided for in the Lords amendment, an expedited PSPO must be made with the agreement of the relevant chief officer of police and, as the case may be, a person authorised by the appropriate school or NHS body and may last for six months. In providing for expedited PSPOs we are sought to build on the existing framework for PSPOs so far as possible.

But logic follows that it shouldn't just be schools and vaccination centres that are protected from harmful protests and the police should have the necessary powers to protect the public from disruptive protests in other locations such as our critical national infrastructure. That is why we remain strongly of the view that it is necessary for the police to be able to place conditions on a protest to prevent noise generated by those taking part in the protest causing harm to members of the public or serious disruption to the activities of an organisation. Equally, it is important that we end the anachronistic distinction made in the Public Order Act 1986 between the conditions that may be imposed on public processions and public assemblies. As we have previously stated, the police may only exercise these powers when it is necessary and proportionate, and in doing so they must not act incompatibly with the rights to freedom of expression and assembly under the European Convention on Human Rights.

For these reasons, we have tabled motions to disagree with Lords amendments 73 (a consequential drafting amendment is required to Lords amendment 74), 80 and 87. We have tabled amendments to clauses 56 and 61 as they would be restored to the Bill which make the changes proposed in the Government amendments to these clauses tabled at Lords Report stage (giving effect to the recommendation by the Delegated Powers and Regulatory Reform Committee that the meaning of "serious disruption" is set out on the face of the Bill, but with a power to amend the meaning by regulations, subject to the affirmative procedure).

Lords amendments 81 and 82 relate to the provisions in the Bill giving effect to a recommendation by the Joint Committee on Human Rights to ensure that protests do not prevent vehicular access to the parliamentary estate. These provisions do not prevent protests outside of Parliament, nor do they prevent the Greater London Authority from authorising assemblies in Parliament Square Gardens. As such, these amendments are unnecessary. For these reasons, we have tabled a motion to disagree with these two Lords amendments.

Lords amendment 88 increases the maximum penalty for the offence of obstructing a highway. The new clause as tabled by the Government at Lords Report stage provided for the higher maximum penalty of six months' imprisonment, an unlimited fine, or both to apply to the obstruction of any highway. The amendment as agreed by the Lords limited the increase in the maximum penalty to obstruction of a highway that is part of the Strategic Road Network. The Strategic Road Network only accounts for some 2% of England's road network; as a result, the increased maximum penalty would not apply to the obstruction of many other significant roads, including many A roads, leaving communities vulnerable to the dangerous and reckless tactics of Insulate Britain and other protest groups. The Government amendment to Lords amendment 88 would restore the original wording.

6) Repeal of the Vagrancy Act 1824 (Lords amendments 89 and 146)

This Government is committed to ending rough sleeping. As a result of our action we have seen an historic reduction in rough sleeping; since 2017 rough sleeping has reduced by 43%. We remain absolutely committed to delivering on our manifesto commitment, and as part of that, to complete our review of the Vagrancy Act 1824. We agree that this legislation is antiquated and no longer fit for purpose – that is why we have committed to repeal this outdated Act. However, we must balance our role in providing essential support for the vulnerable with ensuring that we do not weaken the ability of the police to protect communities. Therefore, while we have tabled an amendment in lieu that provides for the 1824 Act to be repealed in full in England and Wales, we will ensure that the repeal is not commenced until appropriate replacement legislation is in place. In the meantime, we will deliver a bold, new plan to end rough sleeping which will set out how we will build on recent success and ensure rough sleeping is prevented in the first instance and is effectively responded to in the rare cases where it does occur, but also that our police have the ability to intervene where needed and to keep people safe.

7) Secure academies (Lords amendment 107)

This amendment seeks to make express provision to enable local authorities to establish and maintain secure 16 to 19 academies. The Government does not believe there is any legal barrier to local authorities setting up and running academies and so we believe this amendment is unnecessary. In this context, it may also be confusing to specifically highlight local authorities as suitable organisations when they are already able to run secure schools. For these reasons, we have tabled a motion to disagree with Lords amendment 107.

8) Serious Violence Reduction Orders (Lords amendments 114 to 116)

The Government recognises that the application of any power to stop and search needs to be effectively monitored to ensure it is being appropriately used. This is why we will be piloting SVROs in four police force areas to ensure that these orders operate as effectively as possible. The assessment of the pilot will be conducted by an independent evaluator and the Government will consider thoroughly the findings of the evaluation report, which will be laid before Parliament, before any decision is made to roll SVROs out across England and Wales.

While we acknowledge the importance of allowing effective scrutiny of the SVRO pilot, commencement regulations are not generally subject to any parliamentary procedure and the Government does not agree that this approach should be changed for SVROs.

However, we are determined to act on the concerns that have been raised in relation to the SVRO pilot. This is why we have tabled an amendment in lieu setting out a non-exhaustive list of matters to be addressed in the report of the pilot. This includes information on the number of offenders with an SVRO; information about the offences that were the basis for an application for an SVRO; information about the exercise by constables of the stop and search powers in new section 342E of the Sentencing Code; an assessment of the impact of SVROs on people with protected characteristics and the impact of SVROs on reoffending; an assessment of the impact of SVROs on people with

protected characteristics within the meaning of the Equality Act 2010; an initial assessment of the impact of SVROs on reoffending; an assessment of the impact on offenders of being subject to an SVRO; and information about the number of offences committed under section 342G of the Sentencing Code and the number of suspected offences under that section that have been investigated.

9) “Sex for rent” (Lords amendments 141 and 142)

The Government is clear that exploitation through “sex for rent” has no place in our society, and we understand the motivation behind these amendments. There are existing offences in the Sexual Offences Act 2003 which can, and have, been used successfully to prosecute this practice (including the section 52 offence of causing or inciting prostitution for gain and the section 53 offence of controlling prostitution for gain).

As announced on 7 February (HCWS593), the Online Safety Bill will include relevant offences relating to the incitement and control of prostitution for gain in the list of “priority offences” which internet companies will need to take proactive steps to tackle. The Bill will capture user-to-user sites, where the majority of “sex for rent” advertising takes place. This will tackle the majority of behaviour which amendment 142 is aiming to capture.

Nonetheless, we recognise the importance of ensuring we have the right legislation in place to tackle those seeking to exploit others through this practice. Accordingly, we are pleased to announce that the Home Office will carry out a public consultation and launch this by the summer recess. That will enable us to further understand the issue, and ensure further engagement with victims, the police, CPS and others on how the current legislation works in practice.

All these amendments apply to England and Wales only.

We are copying this letter to Sarah Jones, Stuart McDonald, Alistair Carmichael, Lord Rosser, Lord Coaker, Lord Ponsonby of Shulbrede, Lord Paddick, Lord Marks of Henley upon Thames and Lord Judge. We are also placing a copy of this letter and enclosure in the library of the House.

With best wishes,

Yours ever,



RT HON KIT MALTHOUSE MP



TOM PURSGLOVE MP