



Home Office

**Rt Hon Damian Green MP**  
**MINISTER OF STATE FOR POLICING AND CRIMINAL JUSTICE**

2 Marsham Street, London SW1P 4DF  
www.homeoffice.gov.uk

Rt Hon David Hanson MP  
House of Commons  
London  
SW1A 0AA

*Dear David,*

07 OCT 2013

**ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL: GOVERNMENT AMENDMENTS FOR COMMONS REPORT STAGE**

I am writing to let you have details of amendments to the Bill (copy attached) which we have tabled today for Commons Report on 14 and 15 October 2013. As you will see many of them follow up commitments made in Committee to consider various amendments tabled by either the Opposition front bench or Government backbenchers.

**Powers to tackle anti-social behaviour**

Injunction to prevent nuisance and annoyance (IPNA) and criminal behaviour order (CBO) (amendments to clauses 1, 4, 8, 9, 12 and 21 and Part 1 of Schedule 8)

The Committee agreed non-Government amendments (now clause 1(5)(b) and 21(9)(b)) which require the court to avoid, so far as practicable, attaching prohibitions or requirements to an IPNA or to a CBO which conflict with the respondent's caring responsibilities. The Bill, as introduced, specified a list of other matters – such as the respondent's religious beliefs and any work or educational commitments – where the court is under a duty to ensure that, so far as practical, there is no conflict with any prohibitions and restrictions, but as Jeremy Browne indicated during the debate (Official Report, 25 June 2013, column 147-148) we do not believe that it is necessary or appropriate to afford caring responsibilities the same prominence. We would expect the court to take these and other relevant factors into account in any event and, indeed, there is a general requirement on the court to ensure that any requirements are both suitable and enforceable. Including such a provision on the face of the Bill will, in the view of enforcement agencies, make it harder to secure injunctions and orders with appropriate prohibitions and requirements attached and we have therefore tabled amendments to remove these provisions from the Bill. We

have instead included reference to caring responsibilities in the draft guidance for frontline professionals which we have published today to assist the further scrutiny of the Bill.

The Committee also agreed a non-Government amendment to clause 4 which added head teachers and the principals of further education colleges to the list of persons who may apply for an IPNA (now clause 4(1)(h) and (i)). Whilst the Government accepts that, in exceptional cases, the new injunction may have a place in the range of actions that can be taken to deal with the most persistent and serious forms of bullying – and our draft guidance for practitioners makes this point – our consultation with the teaching profession and others (including the Anti-Bullying Alliance) over the summer has confirmed that this is not a power they wish to see conferred on head teachers and college principals. An amendment to clause 4 therefore removes the provision from the Bill.

Other amendments to clause 4 add the National Resources Body for Wales (the equivalent of the Environment Agency) to the list of persons who may apply for an IPNA and amend subsection (1)(g) to ensure that however security management functions are exercised within the NHS in Wales those responsible for discharging that function, and therefore protecting NHS staff from anti-social behaviour, can apply for an IPNA.

By and large the injunction to prevent nuisance and annoyance will be a ‘tenancy-neutral’ power, available to practitioners to tackle anti-social behaviour perpetrated by persons regardless of where they live. There is, however, one specific provision in respect of the injunction which applies only where the respondent lives in local authority or social housing. That provision relates to a power to exclude the respondent from his or her own home where there is, or is likely to be, a threat of violence or a significant risk of harm to others. During the debate in Committee on an amendment tabled by Gloria De Piero (Official Report, 25 June 2013, columns 195-206) there was broad support for applying this power more widely and we undertook to consider the matter further. Subsequent consultation over the summer with the police, local authorities and social landlords has confirmed support for such an extension. The amendments to clause 12 therefore seek to apply the exclusion powers at large without regard to tenure. We expect this power to be rarely used. It will be subject to the restrictive test provided for in clause 12 and it will be a matter for the court to decide whether to attach an exclusion condition to an injunction. Moreover, any decision to do so would be open to appeal by the respondent.

During the same debate on the exclusion power in clause 12, Gloria De Piero also queried why the provisions in respect of tenancy injunctions (in clause 13) were similarly restricted to those living in social housing. The Bill makes special provision for tenancy injunctions so as to preserve powers in housing legislation which are valued by practitioners. In most respects tenancy injunctions are simply another form of IPNA, but the Bill includes express provision which enables a tenancy injunction to be made where a tenant in social housing breaches a tenancy agreement by allowing, inciting or encouraging another person, for example a visitor to the property or a lodger, to engage in anti-social behaviour. Having considered the matter further, we are satisfied that Part 1 of the Bill already enables the police, a housing provider or a local authority to obtain an IPNA to prevent a person from allowing, inciting or

encouraging any other person to engage or threaten to engage in anti-social behaviour. Accordingly, no amendment on this issue is required.

The first condition that must be met before a CBO may be made is that the court is satisfied that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to one or more persons *not of the same household as the offender*. In Committee, you tabled an amendment to remove this limitation and we undertook to reflect further on the debate (Official Report, 27 June 2013, column 224). Whilst, as Jeremy Browne indicated in Committee, the new CBO is not intended as a tool for tackling domestic violence, where other more suitable powers are available, we recognise that there may be cases of anti-social behaviour being inflicted by one member of a multi-occupancy household on another such member and where the flexibility to seek a CBO may be helpful. The amendment to clause 21(3) therefore removes this limitation.

An IPNA may be granted in the High Court, county court or youth court. Where a power of arrest is attached to an injunction and the respondent is arrested for breach of the injunction, the Bill requires the respondent to be brought before either a judge of the county court, where the injunction was granted by a county court, or a justice of the peace, if the injunction was granted by a youth court. As Jeremy Browne acknowledged in Committee (Official Report, 25 June 2013, column 191), the Bill omits to make equivalent provision where the injunction was granted in the High Court. The amendments to clauses 8 and 9 rectifies this omission; in cases where the injunction was made by the High Court it will be possible, following arrest on breach, to bring the respondent before either the High Court or County Court (or youth court if under 18).

The amendment to Part 1 of Schedule 8 makes a consequential amendment to the Government of Wales Act 2006. Amongst the exceptions to the legislative competence of the National Assembly for Wales in respect of local government matters are provisions in respect of 'anti-social behaviour orders'. The amendment updates this exception in recognition of the abolition of the ASBO. The amendment preserves the status quo in terms of delineating the extent of the Assembly's legislative competence.

#### Dispersal powers (amendment to clause 32)

In his letter to the Home Secretary dated 26 June, the Chair of the Joint Committee on Human Rights questioned why the Bill does not require the police officer authorising the use of the dispersal powers to have a "reasonable belief" that the specified test has been met. In legal terms, we consider that the requirement for the authorising officer to reasonably believe that the test is met is implicit, but this amendment makes this explicit on the face of the Bill.

#### Community Protection Notices (CPN) (amendments to clauses 40, 43 and 45)

In Committee, Gloria De Piero expressed concern about the impact on communities of the provision in the Bill suspending the effect of a CPN pending the outcome of an appeal (Official Report, 2 July 2013, columns 260-261). I undertook to consider the matter further. It would negate the whole purpose of the appeal mechanism if all of

the requirements attached to a CPN had to be adhered to regardless of the fact that an appeal had been lodged. However, we believe there is a middle way which can ensure some continued protection for those subject to a notice whilst also bringing immediate respite to the community. The amendments to clause 43 provide that whilst an appeal against a notice is in progress a requirement imposed by the notice to stop doing specific things remains in effect (save where the court orders otherwise), but any other requirement imposed by the notice that directs a person or organisation to do something would be suspended pending the outcome of the appeal. So, for example, where a householder was served with a notice requiring him to stop adding to a long-standing pile of building rubble in his front garden and requiring him to clear up the mess, the lodging of an appeal against the notice would suspend the latter requirement but not the former.

The technical amendments to clause 45 – which makes it an offence to fail to comply with a CPN – clarify subsection (3) so that it refers to the conduct that is alleged to constitute a breach of the CPN.

Clause 40(5) of the Bill provides that a CPN may not be issued in respect of a matter that should be dealt with under the statutory nuisance regime (which is designed to cover, for example, noise or smoke-related nuisances). In Committee, Gloria de Piero tabled an amendment to remove this provision following representations she had received from the Social Landlords, Crime and Nuisance Group and the National Housing Federations. Having considered the matter further, we have concluded that this carve out in the Bill is too inflexible; there is currently no statutory prohibition on the issuing of Litter Clearing Notices and Street Litter Control Notices (which will be replaced by the CPN) in respect of a statutory nuisance. Amendments to clauses 40, 43 and 45 therefore remove this limitation.

#### Public Spaces Protection Orders (PSPOs) (amendments to clauses 60, 62 and 63)

Clause 62 enables interested parties to challenge the validity of PSPOs in the High Court. There is, however, currently no power to challenge the validity of a decision to vary an order. This is an unintended gap in the legislation. In varying an order, a local authority could significantly extend the restricted area to which a PSPO applied or introduce significant new restrictions on the activities that can be undertaken in the restricted area – it is appropriate that, in such circumstances, there should be the same ability by interested persons to challenge the validity of the revised order. The amendments to clause 62 provide for this.

In Committee, I undertook to consider an amendment tabled by Gloria De Piero requiring a local authority to consult with any relevant neighbouring authority before imposing restrictions on a right of way over a highway which straddled more than one local authority area (Official Report, 2 July 2013, column 278). In practice, the power to impose such restrictions as part of a PSPO is limited to unclassified roads, nonetheless we have concluded that the point is well made and the amendment to clause 60 introduces such a requirement to consult relevant neighbouring authorities.

Amongst the existing powers which will be replaced by the PSPO is the designated public place order which enables a local authority to place restrictions on public

drinking in areas that have experienced alcohol-related disorder and nuisance. Our intention here, as with the PSPO's predecessor, is that the police should be able to exercise their discretion in enforcing any ban on the consumption of alcohol in breach of a prohibition contained in a PSPO. There will be cases where the consumption of alcohol will be benign – a family picnic where the adults are enjoying a glass of wine – where it would be inappropriate to criminalise such activity. To reflect this intention, the amendment to clause 63 ensures that the consumption of alcohol in breach of a PSPO is only an offence where a person fails either to stop drinking or to surrender any alcohol in their possession when instructed to do so by a constable or other authorised person.

#### Closure powers (amendments to clauses 70, 73 and 81)

In Committee, Stephen Phillips queried the practicality of the requirement on the police to apply to the courts for a closure order within 48 hours of issuing a closure notice (Official Report, 2 July 2013, column 294 to 297). As I, indicated in the debate, the courts are used to sitting on Saturdays and on most bank holidays, and accordingly we are satisfied that in most cases the 48 hour time limit (which applies to existing closure powers) does not present a problem and it is in the interests of fairness that the application for a closure order can be tested in the courts at the earliest opportunity. Moreover, this time period has applied for many years in respect of the existing power that the closure powers replace, and practitioners are used to liaising with the court before deciding on which day to best issue a notice. However, the 48 hour time limit could be problematical where it includes Christmas Day; the amendment to clauses 70 and 73 therefore excludes that day from the calculation of the 48 hour period.

The Bill provides that the police or local authority, as the case may be, can apply to the courts for an order for the reimbursement of the costs of clearing, securing or maintaining premises subject to a premises closure order. Such an order for the reimbursement of costs may currently only be made against the owner of the relevant premises. However, as Stephen Phillips pointed out in Committee (Official Report, 4 July 2013, column 307), the anti-social behaviour that gave rise to the making of a closure order may have been committed by the occupier of the premises, with the owner being entirely blameless. In such circumstances, it should properly be the occupier who is held liable for reimbursing to the police or local authority any costs incurred. The amendments to clause 81 therefore provide that an order for the reimbursement of costs must be made against the person against whom the closure order was made, be it the owner or the occupier.

#### **Community Remedy (amendments to clause 93)**

Part 6 of the Bill gives victims a greater say over the form of out-of-court disposals through the introduction of the Community Remedy. Clause 93 requires Police and Crime Commissioners to prepare a community remedy document which sets out a menu of the out-of-court disposals (or "actions") which may be deployed by the police or prosecutor in any given case, following consultation with the victim. In Committee, Stephen Phillips argued that the Bill should contain further guidance as to the content of the community remedy document (Official Report, 4 July 2013, column 318). I subsequently wrote to Stephen Phillips (my letter of 15 July)

indicating that we would bring forward amendments to give effect to the substantive elements of his new clause 1. The amendments to clause 93 accordingly: (i) require the actions listed in the community remedy document to promote public confidence in out-of-court disposals; (ii) require such actions to include a punitive, restorative or rehabilitative element, or any combination of such elements; and (iii) confer a power on the Secretary of State to prepare and publish guidance on the exercise by PCCs of their functions under clause 93 of the Bill (with a commensurate duty on PCCs to have regard to such guidance).

**Forced marriage (new clause *Offence of forced marriage: Scotland* and amendments to clauses 104, 149, 151 and 152)**

The new offence of forced marriage currently extends to England and Wales only. Following a request from the Scottish Cabinet Secretary for Health and Wellbeing, new clause *Offence of forced marriage: Scotland* provides for a like offence in Scotland. The maximum penalties for this offence in Scotland have been aligned with those in Forced Marriage etc. (Protection and Jurisdiction) Scotland Act 2011. The new clause is subject to the adoption by the Scottish Parliament of the required legislative consent motion. The consequential amendments to clause 104 make it clear to the reader that the offence in that clause is limited to England and Wales. Those to clauses 149, 151 and 152 make consequential changes to the extent provisions and provide for the new clause to be commenced by the Scottish Ministers.

**Abolition of the Police Negotiating Board for the United Kingdom (amendments to clauses 112, 114 and 151 and Schedule 8)**

To complement the abolition of the UK-wide Police Negotiating Board in this Bill (and its replacement by a Police Remuneration Review Body in England, Wales and Northern Ireland), the Scottish Government has now introduced their own legislation (the Criminal Justice (Scotland) Bill) to establish a Police Negotiating Board for Scotland (PNBS). These amendments make a number of consequential amendments to UK legislation to refer to the PNBS. The amendment to clause 112 provides a mechanism for reimbursing any payments made by the Scottish Government and Northern Ireland Department of Justice towards defraying the costs of the Police Negotiating Board for the United Kingdom which are not needed following the abolition of that body.

**Powers to seize invalid passports etc (amendments to Schedule 6)**

These drafting amendments make it clear that the powers (for example, the power to use reasonable force) conferred on an 'examining officer' by paragraph 5 of Schedule 6 may only be exercised by a constable, and not other examining officers (such as an immigration officer), when exercised in relation to paragraph 3 of the Schedule (which relates to the power to search for and seize invalid passports away from the border).

**Extradition (amendments to clauses 129 and 134 and to Part 3 of Schedule 8 and new clause *Credit for time in custody awaiting extradition to United Kingdom to serve sentence*)**

Clause 134 makes the right of appeal against an extradition order subject to the leave of the High Court. This is intended to filter out unarguable appeals and thereby reduce the burden of unmeritorious appeals that currently delay hearings. In the interest of maintaining an equality of arms, the amendment to this clause provides that an appeal by a requesting State against a decision of a judge or the Secretary of State to discharge a person from extradition proceedings is also subject to the leave of the High Court. The amendments to this clause and to Schedule 8 also make some technical refinements to the appeals provisions which are required to take account of earlier amendments to relevant provisions of the Extradition Act 2003 made by the Crime and Courts Act 2013.

Clause 129 provides that in cases where extradition proceedings have been deferred because the person has been charged with an offence in the UK or is in custody serving a sentence of imprisonment or other form of detention in the UK, the normal obligation on the court to fix a date for the extradition hearing to begin which is not later than 21 days after arrest does not apply. The technical amendment to this clause is designed to set a time frame within which an extradition hearing must be heard if it has been deferred for such reasons. This ensures that the court is required to restart the extradition process as quickly as possible after the end of the deferral period.

In the case of extradition to the UK, where the person is sentenced after extradition, time spent in custody in the requested State awaiting extradition must be credited. However, that is not the case where the person was sentenced before extradition to the UK. In these cases, time spent in custody in the requested State awaiting extradition is only credited if the Secretary of State so directs. To ensure that the Extradition Act 2003 is fully compliant with Article 26 of the EAW Framework Decision, which requires the crediting of time spent in custody awaiting extradition in all cases, new clause *Credit for time in custody awaiting extradition to United Kingdom to serve sentence* ensures that this happens automatically in all cases of extradition to the UK from other Member States. This new clause currently only makes provision for England and Wales; we will be discussing with the Scottish Government and Northern Ireland Department of Justice the making of parallel provision in Scotland and Northern Ireland.

### **Low value shop theft (amendments to clauses 144 and 151)**

In order to further improve the management of high-volume criminal cases, the Bill facilitates the police prosecution of cases of low-value (that is, £200 or less) shop theft. It does this by reclassifying such offences as summary only, in particular, so that the “guilty by post” procedure can be applied. The amendment to clause 144 ensures that certain police and other powers under the Police and Criminal Evidence Act – including the power of a constable to enter and search premises to arrest a person for an indictable offence and the ability for shop security staff to make a “citizen’s arrest” – which apply to indictable offences, will continue to apply to the summary-only shop theft offence. The amendment also makes analogous changes to Service law. The amendments to clause 151 make consequential changes to the extent provisions.

**Retention of DNA etc: amendments consequential on establishment of the Police Service of Scotland (amendment to Schedule 8)**

This technical amendment simply updates now obsolete references to the old police force structure in Scotland to take account of the creation of the Police Service of Scotland in the legislation governing the retention of DNA and other samples taken under the provisions of the Terrorism Act 2000 and Counter-Terrorism Act 2008.

**Powers of Police Community Support Officers (PCSOs) (new clause *Power of community support officer to issue fixed penalty notice for cycle light offence* and amendment to clause 151)**

In Committee, I undertook to consider further new clause 15 tabled by Stephen Barclay which would confer two new powers on PCSOs, namely the power to issue a Fixed Penalty Notice (FPN) for cycling without lights and the power to search individuals and vehicles for controlled drugs (Official Report, 16 July 2013, columns 525-526). This new clause confers the first of these new powers on PCSOs thereby remedying inconsistencies with the existing package of PCSO powers (they already have the power to issue a FPN for riding on a pavement). As a corollary to this, it is necessary to confer on PCSOs the power to stop a cycle where the PCSO reasonably believed that the rider has committed the offence of cycling without lights. We are continuing to consider the merits of conferring on PCSOs the power to search for drugs.

**Violent Offender Orders (new clause *Violent offender orders* and amendment to clause 151)**

In a report published in May into the circumstances of the death of Maria Stubbings, who was murdered by her ex-partner, Marc Chivers, the Independent Police Complaints Commission highlighted that gaps in the law in respect of the supervision of offenders convicted overseas presents a significant risk to public safety. Marc Chivers had a previous conviction for murder in Germany. One method of supervision open to the police is to seek a Violent Offender Order from the courts (under Part 7 of the Criminal Justice and Immigration Act 2008) where an offender returning from abroad on completion of their prison sentence continues to pose a potential risk. However, Violent Offender Orders are not available following foreign murder convictions; the offence of murder is not included in the list of specified offences in the 2008 Act because in the UK the offence attracts the mandatory life sentence. This new clause amends the 2008 Act so as to add to the list of specified offences an act resulting in a conviction abroad which would have been treated as murder if the act had been done in the UK. To ensure that the list of specified offences can be speedily updated in future, the new clause also enables the Secretary of State to prescribe further specified offences by order (subject to the affirmative procedure).

## **Disclosure and Barring Service fees (new clause '*Fees for criminal record certificates etc*' and amendments to clauses 151 and 152)**

Since December 2012, the Disclosure and Barring Service (a Non-Departmental Public Body) has been responsible for issuing certificates to applicants containing details of their criminal records and other relevant information. This function was previously undertaken by the Criminal Records Bureau (a Home Office Agency). The Criminal Records Bureau had for some years issued criminal record certificates to volunteers free of charge with the cost of these free certificates being cross-subsidised by fee-paying applicants. In order to support volunteering, that practice has continued under the Disclosure and Barring Service. Following the change in the legal status of the body undertaking this function (from an Agency to an NDPB) we have concluded that it would be desirable in the interests of transparency and financial regularity to make express statutory provision for the cross-subsidisation of free criminal record certificates for volunteers. This new clause amends Part 5 of the Police Act 1997 to this end.

### **Other matters**

#### Independent Police Complaints Commission (IPCC)

You will recall that in Committee I undertook to consider further your new clause 12 which sought to bring complaints made by off duty police staff about the conduct of a person serving in a police force within the framework of the Police Reform Act 2002 (Official Report, 9 July 2013, column 440).

Since then Home Office officials have sought evidence about the scale of this problem and discussed the matter with the IPCC. Some of these discussions are ongoing, but at this stage the Home Office view remains that there is insufficient evidence of a problem that warrants a change in the law.

Although police officers and staff do not have access to the police complaints system in the same way as members of the public, they have access to internal force grievance procedures which the public do not. It is open to police forces to record serious allegations raised through a grievance as a conduct matter which means that, where appropriate, they can be referred to the IPCC who can then, where necessary, investigate.

#### Guidance

In Committee Jeremy Browne undertook to make available before Report draft guidance to frontline professionals on the new anti-social behaviour powers in Parts 1 to 6 of the Bill. I enclose a copy of such draft guidance. The Department of Environment, Food and Rural Affairs has also published a draft practitioners' manual on tackling irresponsible dog ownership. These drafts are intended to inform the further consideration of the Bill in both Houses and also enable us to consult with frontline professionals over the coming months. Both drafts take account of the Government amendments tabled for Report stage, but they are without prejudice to Parliament's further consideration of the Bill; the final versions would naturally reflect the provisions of the Bill as enacted.

To assist the further scrutiny of the Bill, we are also publishing a draft of the revised code of practice for examining officers under Schedule 7 to the Terrorism Act 2000. This draft, a copy of which is attached, reflects the amendments to Schedule 7 made by the Bill. It is a working document for illustrative purposes and is without prejudice to the draft required by the 2000 Act to be published and laid before Parliament for approval by both Houses before being issued.

A copy of this letter and enclosures goes to all members of the Public Bill Committee, Yvette Cooper, Keith Vaz (Chair, Home Affairs Select Committee), Dr Hywel Francis (Chair, Joint Committee on Human Rights), Baroness Smith of Basildon, Lord Laming, Baroness Browning and Baroness Hamwee. I am also placing a copy in the Library of the House and on the Bill page of the Government website<sup>1</sup>.

A handwritten signature in black ink, appearing to read 'Damian Green', with a small 'Yam' written above it.

**Rt Hon Damian Green MP**

Enclosures:

Government amendments;  
Draft guidance on anti-social behaviour powers;  
Draft practitioners' manual on tackling irresponsible dog ownership;  
Draft code of practice for examining officers under Schedule 7 to the Terrorism Act 2000 (as amended).

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<sup>1</sup> <https://www.gov.uk/government/organisations/home-office/series/anti-social-behaviour-crime-and-police-bill>