



Home Office

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Rt. Hon. Baroness Smith of Basildon  
House of Lords  
London  
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19<sup>th</sup> November 2013

*Dear Angela,*

**ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL**

I am writing to let you have details of the Government amendments for Committee stage that I have tabled today (copy attached). I apologise for the late tabling of the amendments to clauses 55 to 57 and 86 which are due to be debated tomorrow; these flow from recommendations made by the Delegated Powers and Regulatory Reform Committee in their report on the Bill that was only published on 1 November and, of course, we have had to contend with the third day of Committee being unexpectedly brought forward by a few days.

**Maximum penalty for an aggravated offence under section 3 of the Dangerous Dogs Act 1991 (amendment to clause 98)**

At Second Reading I announced that the Government would bring forward an amendment to increase the maximum penalty for an aggravated offence under section 3 of the Dangerous Dogs Act 1991. This follows a commitment we gave at Commons Committee to consider an amendment from Richard Fuller on this issue and a public consultation conducted by Defra over the summer.

The amendment to clause 98 in turn amends section 3 of the 1991 Act so that the maximum penalty for the aggravated offence (that is when a dangerously out of control dog injures a person or an assistance dog), currently set at two years imprisonment, is increased to:

- 14 years imprisonment if a person dies as a result of a dog attack;
- 5 years imprisonment if a person is injured by a dog attack; and
- 3 years imprisonment for an attack on an assistance dog whether the assistance dog is killed or injured.

**Powers of Police Community Support Officers (PCSOs) (new clause *Powers of community support officers*, new Schedule *Powers of community support officers*, amendments to clause 159 and Schedule 9)**

Following a debate in Commons Committee on an amendment tabled by Stephen Barclay, we have been giving further consideration to the powers that may be conferred by chief constables on PCSOs. In response to Stephen Barclay's amendment, the Government tabled a new clause at Commons Report stage (now clause 135) which confers a power on PCSOs to issue a fixed penalty notice (FPN) for cycling without lights. However, we consider that there is scope for going further. PCSOs play a key role in tackling low level crime and anti-social behaviour and we believe that a further strengthening of their powers will enhance their effectiveness.

Inconsistencies remain in the scope of PCSOs' powers to deal with cycling-related offences and that failing to comply with road regulations can place cyclists at risk. New Schedule *Powers of community support officers* therefore confer the power to stop a cyclist and issue a FPN for: cycling through a red light; failing to comply with a traffic direction; and carrying a passenger.

Contravening road regulations is not just an issue for cyclists and the new Schedule therefore also confers on PCSOs additional traffic related powers to tackle the issues associated with anti-social driving. The relevant powers are to issue a FPN for: failing to stop; driving the wrong way down a one-way street; contravening cycle lanes; sounding a horn when stationary; sounding a horn at night; not stopping engine when stationary; causing unnecessary noise; contravening route for buses/pedal cycles only sign; contravening a bus lane; and opening a door to cause injury/danger.

Before conferring these additional powers on PCSOs to issue FPNs, the chief officer will be required to consult each local authority in the policing area (see paragraph 3 of the new Schedule).

Dangerous parking outside schools is also an important issue and it is frustrating for parents, teachers and PCSOs who have limited powers to respond. The new Schedule therefore also confers on PCSOs the power to issue an FPN for parking in a restricted area outside schools.

PCSOs play an important role in crime prevention, tackling anti-social behaviour and community reassurance. In keeping with this role, the new Schedule also extends PCSO powers to include the power to issue an FPN to unlicensed street vendors and to require house-to-house charitable collectors to confirm their identity and proof of licence.

Finally, the new Schedule confers on PCSOs additional powers to seize and retain materials relevant to the investigation of a crime. Currently, when assisting a police officer in executing a search warrant, PCSOs can seize and retain material that relates to the offence for which the warrant was issued. By extending these powers to cover material relating to other offences identified during the execution of a search warrant and applying linked PACE provisions on access, copying and retention of

seized material, we will help ensure that both PCSO and police officer time is used most effectively.

**Use of hotels for child sexual exploitation (new clauses *Information about guests at hotels believed to be used for child sexual exploitation*, *Appeals against notice under section (Information about guests at hotels believed to be used for child sexual exploitation)*, and *Offences*, and amendment to clause 159)**

At Commons Second Reading, the Home Secretary undertook to consider a proposal from Kris Hopkins (then a backbench MP) to tackle child sexual exploitation taking place in hotels, guest houses and bed and breakfast accommodation. He pointed to cases in his constituency and elsewhere where children had been drugged and taken to hotels or guest houses where they were raped.

To address this issue these new clauses provide for a targeted power for the police to require hotels (and other establishments providing accommodation for payment) to provide the name and address, and other prescribed information, to them about the guests staying at the accommodation. The main elements of this provision are:

- A power for the police, of at least the rank of inspector, to serve a notice on a hotel operator, the effect of which would be to require the operator to provide the police with the name and address and other prescribed information about hotel guests. The notice would specify the frequency with which such information must be provided. The requirement would apply for a specified period of no more than six months (but the police may serve a subsequent notice on the expiry of that period).
- Any categories of information, in addition to the name and address of guests, would be prescribed in secondary legislation subject to the negative resolution procedure. It would be limited to information that the hotel operator could reasonably be expected to obtain from guests, for example, the age of guests.
- The test for serving a notice would be that the officer reasonably believes that the hotel has been used for the purposes of child sexual exploitation, or conduct that is preparatory to, or otherwise connected with, child sexual exploitation.
- Breach of the requirements in a notice, without reasonable excuse, would be a criminal offence. It would also be an offence to provide information in response to a notice without taking reasonable steps to verify that information or knowing it to be incorrect. Such an offence would be tried summarily and be subject to a maximum penalty of a Level 4 fine.
- A person served with a notice would have a right of appeal to the magistrates' court in respect of the police decision to serve the notice.

The information supplied to the police through the notice would be a source of valuable intelligence to support the investigation of any criminal offences which may be perpetrated on the hotel premises.

We would not expect this targeted power to be used more than 10 times a year and, as such, the impact on business is expected to be minimal.

**DNA: Calculation of retention times and resampling of arrestees (new clauses *Power to take further fingerprints or non-intimate samples* and *Power to retain fingerprints or DNA profile in connection with different offence* and amendments to clauses 159 and schedule 9)**

The Protection of Freedoms Act 2012 introduced changes to the framework (set out in the Police and Criminal Evidence Act 1984 (PACE)) for the retention of DNA by the police in order to secure a better balance between the rights of those who have never been convicted of a criminal offence and the need to protect the public. The new retention regime came into force on 31 October 2013. As part of the work on implementation we have identified two issues which require attention.

The question as to whether a person should have their DNA retained should be determined by considering their entire criminal history. If a conviction in that history allows retention then it is important that a DNA profile can be retained regardless of whether the arrest for which the profile was obtained was itself followed by a conviction. This affects DNA sampling as normally only one DNA sample would be taken from a first arrest and none from any subsequent arrests because that would incur unnecessary costs to obtain the same profile. However, the language in the primary legislation does not clearly achieve this. New section 63P of PACE as inserted by new clause *Power to retain fingerprints or DNA profile in connection with different offence* makes the position clear.

The second issue is that PACE currently allows DNA sampling only once in an investigation. If the CPS decide not to proceed with a case where the accused person has not previously been convicted, or charged with a qualifying offence, the Protection of Freedoms Act requires that the accused person's DNA be deleted. However the CPS has now introduced a new procedure, *Victims' Right to Review*, under which the case may be restarted. If this is done, there is no power to retake DNA as it has already been taken during the investigation. A successful review of a decision not to prosecute will thus allow no way to retake DNA as it has already been taken during the investigation. New clause *Power to take further fingerprints or non-intimate samples* will allow the taking of fingerprints or DNA at each arrest in an investigation if the previous prints, samples or profile taken during that investigation had been deleted under the Protection of Freedoms Act.

Under existing legislation, if a person is arrested or charged then released without having had their DNA or fingerprints taken, the police may take them later, but only within the following six months. The consequential amendments to PACE made by the amendment to Schedule 9 to the Bill apply this principle to the scenario involving retaking above, putting a time limit of six months from the restarting of the investigation on the power to retake DNA or fingerprints.

## Response to report by Delegated Powers and Regulatory Reform Committee (DPRRC)

In their report on the Bill, of 1 November, the DPRRC made recommendations in respect of eight of the delegated powers in the Bill. The Committee's recommendations and our response in each case are set out below:

- a) **We consider clause 4(5) contains a significant Henry VIII power and accordingly in our view it should be subject to the affirmative procedure.** The Government accepts this recommendation (see amendment to clause 157).
- b) **We therefore recommend that an order under clause 50(4) should be subject to the affirmative procedure.** The Government accepts this recommendation (see amendment to clause 157).
- c) **It seems to us that clause 55 confers very wide ranging and significant powers on local authorities to control the way in which public spaces may be used. In the absence of a requirement to publicise the notice before it is made, we do not believe this to be an appropriate delegation of powers.** The Government is content to include a requirement to publicise a public spaces protection order. The amendments to clauses 55, 56 and 57 require a local authority to publish the text of a proposed order, any extension of the duration of an existing order or any variation of an order.
- d) **Accordingly we recommend that orders under section 84A(10) and (11) should be subject to the affirmative procedure.** The Government accepts this recommendation (see amendments to clause 86).
- e) **We believe that the matters covered by clause 110, and in particular the matters covered by regulations under section 53A of the Police Act 1996 governing the practices and procedures of police forces, deal with important policy issues which should ultimately be subject to Ministerial control. Accordingly we regard the delegation of powers by clause 110 as inappropriate in so far as it prevents the Secretary of State from making regulations with respect to these matters without the agreement of the College of Policing. Should the House consider it appropriate to transfer control of the content of the regulations to the College of Policing as proposed in clause 110, then in our view the regulations should in all cases be subject to the affirmative procedure.** The Government remains of the view that, given the central role of the College of Policing in setting professional standards for the police, clause 110 provides for an appropriate delegation of powers. We accept, however, that it is appropriate that regulations made under section 53A of the Police Act 1996 – which relate to police practices and procedures - should be subject to the affirmative procedure and the amendments to clause 110 provide for this. The Committee suggested that regulations under sections 50 and 51 of the Police Act 1996 and section 97 of the Criminal Justice and Police Act 2001 should also be subject to the affirmative procedure. The Government is not persuaded of the case for making this change. These regulation-making powers have hitherto been subject to the negative procedure and the switch to the affirmative procedure could adversely impact on our ability to make speedy changes, for example to the regulations made under section 50 of the Police Act 1996 (which relate to the “government, administration and

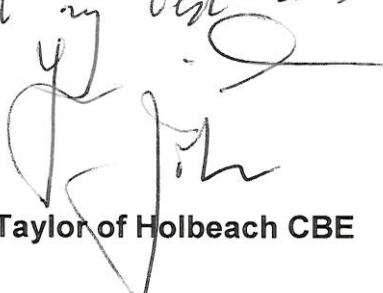
conditions of service of police forces”), which may from time to time prove necessary. The DPRRC drew particular attention to the regulation-making power in section 53A of the 1996 Act and we acknowledge that in that instance, given that any regulations will relate to police practices and procedures, that there should be a greater level of parliamentary scrutiny.

- f) **In our view, the same parliamentary procedure should apply to designations under clause 126 as apply to regulations under section 50 of the Police Act 1996.** The Government accepts this recommendation. The amendments to clause 126 provide for the list of approved overseas police forces and approved ranks within those forces to be specified in regulations subject to the negative procedure. The College of Policing will continue to take the lead in that it will make recommendations to the Home Secretary as to the approved overseas police forces and approved ranks to be designated; it will then be for the Home Secretary to determine whether to give effect to such recommendations.
- g) **No explanation is given in the memorandum why it is necessary for the power to be cast in such wide terms and the House may, therefore, wish to seek further reasons from the Minister. We consider that the nature of the powers being given to an authorised officer, which include the power to detain in custody, is such that an order under section 189E(1)(b) should be subject to the affirmative procedure if no limits are to be imposed on the types of person who may be specified in such an order.** The Government remains of the view that the delegated power in clause 147 should afford the flexibility to specify the description of persons to be an “authorised officer” in connection with facilitating transit through the UK of a non-UK extradition. However, in view of the Committee’s conclusion, the Government is content to make the power subject to the affirmative procedure (see amendment to paragraph 117 of Schedule 9).
- h) **Therefore, we recommend that the power to set an excess fee should be subject to the affirmative procedure unless the amendment is being made solely to reflect the change in the value of money.** The Government accepts this recommendation (see amendments to clause 155).

To assist the House’s consideration of the provisions in clause 88 of the Bill I also attach draft regulations to be made under new section 85ZA(7) of the Housing Act 1995. New section 84A of the 1985 Act 1985 (inserted by clause 86) provides for a new, absolute, anti-social behaviour ground for possession of a dwelling that is the subject of a secure tenancy. New section 85ZA of the Act provides secure tenants of local housing authorities and housing action trusts with a right to request a review of the landlord’s decision to seek possession under new section 84A. The landlord must review the decision if the tenant requests it. New section 85ZA specifies how requests should be made, the time limits that apply to the review procedure and how the outcome of the review should be communicated to the tenant. These draft Regulations make provision about the procedure to be followed in conducting such a review.

I attach supplementary ECHR and delegated powers memorandums in respect of these amendments.

I am copying this letter to all Peers who spoke at Second Reading and to Baroness Thomas of Winchester (Chairman, DPPRC), Baroness Jay of Paddington (Chairman, Constitution Committee), Dr Hywel Francis (Chair, JCHR), Keith Vaz (Chair, HASC), Jack Dromey, Richard Fuller, Stephen Barclay and Kris Hopkins. I am also placing a copy in the library of the House and on the Bill page of the Government website.

*W.H. my best wishes,*  


**Lord Taylor of Holbeach CBE**