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Rt. Hon. Baroness Smith of Basildon
House of Lords
London
SW1A 0PW

15th January 2014

Dear Angela,

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

I am writing to let you have details of a final tranche of Government amendments for Report stage that I have tabled (copy attached). These amendments relate to Parts 11, 12 and 13 of the Bill.

Port and border controls – Schedule 7 to the Terrorism Act 2000 (amendments to Schedule 8)

Paragraph 7 of Schedule 8 to the Bill amends Schedules 7 and 8 to the Terrorism Act 2000 to make provision for periodic reviews by a senior officer of persons detained under Schedule 7 to the 2000 Act for the purposes of an examination. The Bill provides for the review periods to be specified in a code of practice. At Committee stage, I undertook to consider amendments tabled by Lord Lester of Herne Hill (Hansard, 11 December 2013, column 810) which sought to provide for the review periods to be set out on the face of the 2000 Act. Having considered the matter further, we agree that it would be appropriate for the review periods and for aspects of the conduct of reviews to be in primary legislation. Revised paragraph 20K of Schedule 8 to the 2000 Act specifically provides for a first review of detention by a review officer no later than one hour after the start of detention, and subsequent reviews at intervals of no more than two hours. In addition to specifying the review periods, the amendments provide that the review officer must give a detained person an opportunity to make representations about their detention, must ensure the detained person is informed of their rights and must make a written records of the review (see new paragraphs 20L, 20M and 20N of Schedule 8 to the 2000 Act).

In addition, the amendments to Schedule 8 of the Bill respond to a recent High Court judgment in the case of Abdelrazzag Elosta. In that case, the Court ruled that a person detained for examination has the right to consult a solicitor privately, in person, at any time and before questioning. This ruling set aside long-standing practice which allowed for consultations with a solicitor by telephone and for questioning to proceed, and often conclude, without a solicitor being present, even when consultation in person was requested.

The implications of Elosta, as it stands, are that examining officers must allow a person detained for examination to consult privately with a solicitor in person, if they so wish, and that the right to consult in person may be exercised before detailed questions are put. This will have the effect of suspending questioning and extending periods of detention awaiting a solicitor, or transferring individuals from ports to police stations to be able to meet with a solicitor, and put pressure on police resources. Ports, and port facilities, are not the same as police stations.

We are appealing this judgment, and the Court of Appeal will hear argument in late February, but we have concluded that we should take the opportunity afforded by the Bill to make an amendment to the 2000 Act to clarify how the right to consult a solicitor may be exercised. This will put the legislative position beyond doubt – that where a person detained for examination requests to consult a solicitor privately they may not be questioned until the person has consulted a solicitor (or no longer wishes to do so). The amendments will also clarify that a detained person is entitled to consult a solicitor in person, but not if the examining officer reasonably believes the time it would take for that consultation would prejudice the purpose of the examination. These amendments uphold and clarify the right to consult a solicitor privately, but qualify the right to consult in person which reflects the time constraint attached to examinations and the very different operational circumstances of examining individuals in secure areas at ports (where facilities for private consultation may be limited and consultation is more likely to be by telephone or electronically) from those examined at police stations. See new paragraphs 7A and 16A of Schedule 8 to the 2000 Act.

In Committee, I indicated that ahead of the judgment in the judicial review in the David Miranda case and the report of the Independent Reviewer of Terrorism Legislation into Mr Miranda's case, there was a limit to which a number of issues relevant to any further amendments to Schedule 7 could be considered. The judgment is still pending and, by extension, we are still awaiting David Anderson's report. Once these are available we will naturally study them very carefully and decide how best to proceed. Should we conclude that further amendments to Schedule 7 to the 2000 Act are appropriate we will seek to bring these forward as soon as parliamentary time allows.

Extradition (new clauses *Extradition to the United Kingdom to be sentenced or to serve a sentence* and *Detention of extradited person for trial in England and Wales for other offences* and amendments to clauses 169 and Schedule 10)

We have identified two further changes which we propose to make to the Extradition Act 2003.

The first follows a recent court decision which has significant implications for securing the return to the UK of serious offenders to serve a sentence here which has already been imposed. The need for this amendment arises out of the case of a Romanian national, Marcel Vasile. Mr Vasile was extradited to the UK from Spain to face charges of trafficking, controlling prostitution and rape. He was at the time serving a sentence in Spain for other offences, so the Spanish authorities made surrender to the UK conditional on receiving an undertaking that he would be returned to Spain to serve the remainder of his sentence following the completion of the proceedings in the UK. An undertaking to that effect was given. Mr Vasile was duly convicted in the UK and returned to Spain. On completion of his Spanish sentence the CPS sought to extradite him a second time so that he could serve his sentence in this country. In accordance with standard practice, the CPS requested a European Arrest Warrant (EAW) under section 142 of the Extradition Act 2003 (the 2003 Act) which deals with sentenced offenders 'unlawfully at large'. However, at a hearing in October the District Judge declined to issue an EAW on the basis that, as Mr Vasile was lawfully detained in Spain, he could not be said to be 'unlawfully at large'. As I have indicated, this ruling goes against long standing practice in such cases. To address this issue, new clause *Extradition to the United Kingdom to be sentenced or to serve a sentence* amends the Extradition Act 2003 to clarify the definition of 'unlawfully at large' in section 142.

The second change flows from the UK's proposed ratification of the Fourth Additional Protocol to the European Convention on Extradition (ECE). The ECE is a multilateral treaty that governs extradition between Council of Europe Member States (other than extradition between EU Member States, where the EAW applies). The UK began operating the ECE in 1991. The Government has recently signed the Third and Fourth Additional Protocols. The Third Additional Protocol supplements the ECE in order to simplify and accelerate the procedure when the person consents to extradition – no legislation is required to implement its provisions. The Fourth Additional Protocol further supplements the ECE to 'modernise' the instrument and improve its operation. Article 3 of the Fourth Additional Protocol, which deals with the rule of specialty (that is the bar on a person being proceeded against for offences other than those listed in the extradition request), replaces the existing Article 14 of the ECE with a new Article 14 which provides an optional mechanism whereby States can restrict the personal freedoms of persons whilst a request to waive the rule of specialty is being considered by the State that originally extradited the person. Although an optional measure, we consider it desirable to implement this provision.

The new Article 14(3) allows the requesting State to derogate from the rule that prevents restrictions being applied to a person's personal freedoms whilst consent from the requested State to prosecute for other offences is pending, if both States have made a declaration to that effect. Under this Article, a person *may* be subject to restrictions if the requesting State notifies the date on which it intends to apply the restrictions, and the requested State acknowledges receipt of that notification. If objections are raised by the requested State, then any restrictions must end.

There will only be rare cases in which this could be of practical benefit, but in those cases the ability of the prosecuting authorities to apply for the person to be remanded in custody could be crucial to the successful prosecution of the case. There could be attendant benefits to public protection. Implementation of this provision requires an amendment to section 151A of the 2003 Act to allow a person to be detained in these circumstances. New clause *Detention of extradited person for trial in England and Wales for other offences* makes the appropriate changes to the 2003 Act, and allows for detention in these circumstances for a maximum period of 90 days. The amendments to clause 169 and Schedule 10 make consequential amendments to the extent provisions in the Bill and the 2003 Act.

Technical amendment to Part 3 of the Police Act 1997 (new clause *Jurisdiction of Investigatory powers Tribunal over Surveillance Commissioners* and amendments to clauses 169 and 170)

Our attention has been drawn to an error in legislation which could mean that the Investigatory Powers Tribunal has no jurisdiction to consider complaints against Surveillance Commissioners' decisions, including their approval of police and other agencies' use of intrusive and covert surveillance and of property interference.

This appears to be the result of a missed consequential amendment that should have been made to the Police Act 1997 when the Regulation of Investigatory Powers Act 2000 was enacted. Whilst the problem has not arisen in practice to date and the Home Office considers that the remit of the IPT is clearly set out in statute, it is desirable to put the matter beyond doubt. This new clause makes the necessary clarifying amendment to section 91 of the Police Act 1997 to this end. The other amendments to clauses 169 and 170 provide for UK extent and commencement on Royal Assent.

Hotels used for child sexual exploitation (amendments to clauses 132, 133, 134 and 167)

Clauses 132 to 134 to the Bill will enable the police, in cases where they reasonably believe that a hotel has been used for the purposes of or in connection with child sexual exploitation, to issue a notice to a hotel owner, operator or manager to require that person to provide the police with the name, address and *other prescribed information* (if any) about hotel guests. The power to prescribe additional information – for example the age of the guests – is subject to the negative resolution procedure. In their 14th Report, the Delegated Powers Committee recommended that the power should be subject to the affirmative procedure. We have accepted this recommendation and the amendment to clause 167 gives effect to it.

The amendments to clauses 132 to 134 simply move these provisions to Part 9 of the Bill which is a more appropriate location for them.

Inspection of the Serious Fraud Office (amendment to clause 140 and Schedule 10)

Clause 140 provides for the inspection of the Serious Fraud Office and amends the Crown Prosecution Service Inspectorate Act 2000 to that end.

The substituted section 2(4) of that Act also makes reference to the inspection of the Revenue and Customs Prosecution Office (RCPO). A draft of the Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 has now been laid before Parliament. The Order will abolish the office of the Director of Revenue and Customs Prosecutions and transfer his functions to the DPP. The Order accordingly repeals the existing section 2(4) of the 2000 Act. This impacts on the drafting of clause 140 which is addressed by the amendment to that clause. The amendment to Schedule 10 removes the repeal of paragraph 77 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 which is now repealed by the Order referred to above.

Abolition of defence of marital coercion (new clause *Abolition of defence of marital coercion* and amendments to clauses 169 and 170)

In Committee, Lord McNally in response to an amendment tabled by Lord Pannick undertook to return at Report stage with the Government's view on whether to abolish the defence of marital coercion (Hansard, 12 November 2013, column 720).

As things stand, it is a complete defence for a wife charged with a criminal offence other than treason and murder to show that the offence was committed in the presence, and under the coercion, of her husband. The defence was created by section 47 Criminal Justice Act 1925. The defence only applies for the benefit of a woman married to a man.

As far back as 1977 the Law Commission concluded the defence was not appropriate to modern conditions and called for it to be abolished. One of their concerns was that even other women, who may well be regarded as being in a similar position to a wife (such as a long-term partner or a child/dependant), do not have access to this defence. The same recommendation was repeated by the Law Commission in a further report in 1993. We are satisfied that the defence is indeed anachronistic and this new clause *Abolition of defence of marital coercion* abolishes the defence accordingly. The amendments to clauses 169 and 170 provide for England and Wales extent and commencement two months after Royal Assent.

I am copying this letter to Lord Rosser, Lord Beecham, Baroness Hamwee, Lord Greaves, Baroness Kennedy of The Shaws, Lord Avebury, Lord Lester, Lord Hodgson of Astley Abbotts, Lord Pannick, Keith Vaz (Chair HASC), Dr Hywel Francis (Chair, JCHR) and Jack Dromey. I am also placing a copy in the library of the House and on the Bill page of the Government website.

With my best

Lord Taylor of Holbeach, CBE