Home Office

Lord Taylor of Holbeach CBE
LORDS MINISTER AND MINISTER FOR CRIMINAL INFORMATION
2 Marsham Street, London SW1P 4DF
www.homeoffice.gov.uk

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

23rd January 2014

Dear Angela,

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL: GOVERNMENT AMENDMENTS FOR LORDS THIRD READING

I am writing to let you have details of the Government amendments for Third Reading which I have tabled today (copy attached).

Test for the grant of an injunction under clause 1 (new clause *Meaning of "anti-social behaviour"* and amendments to clauses 1, 19, 100 and 101 and to Schedule 10)

The Government has reflected carefully on the Report stage debate on Lord Dear's amendment to clause 1 of the Bill modifying the test for the grant of an injunction. Having considered the matter further, the Government is content to accept the substance of the changes made by the House, subject to one modification. In the debate, both Lord Dear and yourself accepted that the "nuisance or annoyance" test was appropriate in the housing context given that victims would justifiably have a lower tolerance level to anti-social behaviour where it takes place in the vicinity of their own home. However, the amendment as passed is not tenure-neutral in that it only applies the "nuisance or annoyance" test in the social housing context. These Government amendments, in particular new clause *Meaning of "anti-social behaviour"*, apply the "nuisance or annoyance" test to all housing related anti-social behaviour (that is, including private rented accommodation and the owner occupied sector) and to such behaviour where it relates to a housing provider's or local authority's housing management functions. The "harassment, alarm or distress" test would be retained in all other circumstances. Only social landlords, the police and councils would be able to apply for an injunction where the "nuisance or annoyance" test applies (with social landlords limited to anti-social behaviour that affects their housing management function), with all bodies currently listed in clause 4 (save for

social landlords) being able to apply for injunctions where the "harassment, alarm or distress" test applies. The other amendments are consequential upon the new clause.

Forced marriage (amendments to clauses 119 and 120)

At Report stage on 14 January, Lord Ahmad undertook to consider further an amendment tabled by Baroness Thornton which sought to ensure that the offence of forced marriage captured cases involving persons who lacked the capacity to consent to marriage, regardless of whether there had been coercion (Hansard, column 212). The Government agrees that if a person lacks the capacity to consent to a marriage then that marriage must be viewed as a forced marriage, irrespective of whether there is coercion. Indeed, the long standing guidance, issued by the Forced Marriage Unit, on support for those with learning disabilities makes this clear; it states that "if a person lacks the capacity to consent, that marriage must be viewed as a forced marriage". Given this, the Government is content to amend the Bill to make this explicit. These amendments provide that, in the specific case of a victim who lacks the capacity to consent to marriage, the offence of forced marriage is capable of being committed *"by any conduct carried out for the purpose of causing the victim to enter into a marriage (whether or not the conduct amounts to violence, threats or any other form coercion)".*

These amendments provide greater clarity to professionals, victims and perpetrators on the definition of forced marriage and also ensure protection to the most vulnerable victims of this abuse.

I should add that on 22 January the Scottish Parliament agreed a legislative consent motion in respect of the provisions in clause 120.

Closure of premises used for child sexual exploitation (new clause *Use of premises for child sex offences*, new Schedule *Amendments to Part 2A of the Sexual Offences Act 2003* and amendment to clause 181)

On day two of Report Stage, I undertook to give sympathetic consideration to an amendment tabled by you which sought to strengthen the powers available to the police to close premises associated with child sexual exploitation (Hansard, 14 January 2014, column 116).

In the light of a number of recent cases in Rochdale and elsewhere, we agree that there is a gap in the current powers in Part 2A of the Sexual Offences Act 2003 to close temporarily premises used for child sexual exploitation.

The closure notice and order available under Part 2A of the 2003 Act operate in a similar way to the new closure powers in Part 4 of the Bill, although the 2003 Act power relates only to prostitution (involving adults and children) and child pornography offences. As the closure powers in the 2003 Act are circumscribed in this way they do not - for example – cover premises which are being used to perpetrate other sexual offences, including rape of a child under 13 and other child sex offences. This means the police at present cannot close premises where these offences have been or are likely to be committed.

New Schedule *Amendments to Part 2A of the Sexual Offences Act 2003* accordingly strengthen the closure power under the 2003 Act. New section 136BA of the 2003 Act enables a police officer of at least the rank of superintendent to issue a closure notice where three conditions are met: (i) the officer has reasonable grounds for believing that in the past three months the premises were used for activities related to a specified child sex offence, or the premises are likely to be used for such activities; (ii) the officer has reasonable grounds for believing that the making of a closure order is necessary to prevent the premises being used for such activities; and (iii) the officer is satisfied that reasonable efforts have been made to consult the relevant local authority, and to establish the identity of any residents or persons who have control of or responsibility for or an interest in the premises. In cases of urgency, where it is not possible to consult the local authority in advance, they must be consulted as soon as possible after the closure notice has been issued. A specified child sex offence is defined by reference to the offences in the 2003 Act (these include not just the specific child sex offences in sections 5 to 13 of that Act, but also other offences where the victim is under 18, including rape, sexual assault, abuse of position of trust, and abuse of children through prostitution and pornography).

Other existing safeguards provided for in Part 2A of the 2003 Act will continue to apply, in particular the requirement that the court must decide whether or not to make a closure order within 48 hours of the police closure notice taking effect.

Littering from vehicles (new clause *Littering from vehicles* and amendment to clause 181)

At Report stage on 20 January, I undertook to bring forward a Government amendment at Third Reading in response to one tabled by Lord Marlesford in respect of littering from vehicles (Hansard, column 494).

New clause *Littering from vehicles* inserts new section 88A into the Environmental Protection Act 1990 which, in turn, confers on the Secretary of State a power to introduce, by regulations, a scheme providing for the registered keeper of a vehicle to pay a civil fixed penalty in a case where a littering offence has been committed in respect of the vehicle. The new section 88A sets out the various matters which may or must be included in the scheme, including the amount of the fixed penalties (or how the amount is to be determined), provision for the issue of a written notice to the keeper, the persons authorised to issue a penalty notice, rights of appeal and enforcement. The first regulations made under this provision will be subject to the affirmative resolution procedure as will any amending regulations which deal with the amount of the fixed penalty notice or which make consequential amendments to Part 4 of the Environmental Protection Act 1990 or Part 2 of the London Local Authorities Act 2007.

The amendment to clause 181 provides for the new clause to extend to England and Wales, although the power to make regulations in new section 88A of the Environmental Protection Act 1990 is limited to littering offences in England (recognising that this relates to transferred matters in Wales).

Minor technical amendments (amendments to clause 20 and the title)

The amendments to clause 20 are consequential on the removal at Report stage of what was clause 13 of the Bill (tenancy injunctions). Those to the long title reflect additions made to the Bill since introduction.

I am copying this letter to Lord Rosser, Baroness Thornton, Baroness Hamwee, Lord Dear, Baroness Mallalieu, Lord Mackay of Clashfern, Lord Morris of Aberavon, Lord Faulks, Lord Forsyth of Drumlean, Lord Cormack, Lord Berkeley of Knighton, Lord Thomas of Gresford, Lord Elton, Lord Blair of Boughton, Lord Phillips of Sudbury, Lord Walton of Detchant, Baroness O'Loan, Lord Howarth of Newport, Lord Mawhinney, Lord Carswell, Baroness Howells of St. Davids, Lord Scott of Foscote, Lord Greaves, Baroness Newlove, Baroness Tonge, Lord Harris of Haringey, Lord Hope of Craighead, Lord Marlesford, Lord Sherbourne of Didsbury, Lord Deben, Lord Crickhowell, Keith Vaz (Chair, HASC), Dr Hywel Francis (Chair, JCHR), Baroness Thomas of Winchester (Chairman, Delegated Powers and Regulatory Reform Committee) 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 wishes.

Lord Taylor of Holbeach CBE