



Ministry
of Justice



Home Office

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QC
Parliamentary Under
Secretary of State

Baroness Williams of
Trafford
Minister of State

Lord Rosser, Lord Coaker and Lord Ponsonby of Shulbrede

1 December 2021

Dear Richard, Vernon and Fred,

**POLICE, CRIME, SENTENCING AND COURTS BILL: GOVERNMENT AMENDMENTS
FOR LORDS REPORT STAGE**

We are writing to let you have details of a first tranche of Government amendments we have tabled for Lords Report stage. The amendments are in response to issues raised during Committee, the reports received from the Delegated Powers and Regulatory Reform Committee and Constitution Committee, and to the significant disruption we have seen over the last few months caused by Insulate Britain protestors.

**Amendments in response to the Delegated Powers and Regulatory Reform
Committee and Constitution Committee Reports (amendments to clauses 7, 8, 18,
31, 36, 40, 42, 56, 57, 62, 65, 100 and 141 and Schedule 13)**

We have today responded to the DPRRC's and Constitution Committee's reports on the Bill; in doing so, we have wholly or partly accepted many of those Committees' recommendations. As a result of the Government responses to these reports, we have tabled the following amendments:

- **Parliamentary scrutiny of statutory guidance.** The amendments require the guidance in relation to the serious violence duty, offensive weapons homicide reviews and unauthorised encampments to be laid before Parliament and for the guidance relating to serious violence reduction orders to be laid before parliament and subject to the negative procedure.
- **Serious Violence Duty – publication of strategies.** The Bill enables regulations to be made including in connection with, the publication and dissemination of a strategy to prevent and reduce serious violence. The amendments to clauses 7 and 8 provide for the publication of these strategies on the face of the Bill.

- **Extraction of information from electronic devices.** Clause 42 places a duty on the Secretary of State to make regulations about the extraction of confidential information, for example journalistic material. The DPRRC argued that provision should instead be included on the face of the Bill; we have tabled amendments to clauses 36, 40 and 42 to give effect to this recommendation.
- **Public order – power to define “serious disruption”.** Under the Public Orders Act 1986, as amended by the Bill, the police may attach certain conditions to a public procession, public assembly or one-person protest including where this is necessary to prevent “serious disruption”. The Bill enables the Secretary of State to define the meaning of “serious disruption” in regulations. Both the DPRRC and the Constitution Committee argued that the definitions should be on the face of the Bill, although the DPRRC agreed that there should be a power to amend the definition by regulations subject to the affirmative procedure. We have tabled amendments to clauses 56, 57 and 62 to give effect to these recommendations.
- **Problem solving courts.** The Bill currently contains a power to extend the initial 18-month Problem Solving Courts pilots for an indefinite period subject to the negative resolution procedure. The DPRRC recommended that regulations making indefinite provision should be subject to the affirmative resolution procedure. We have tabled amendments to give effect to this recommendation by requiring the Secretary of State’s ability to extend a Problem-Solving Court pilot indefinitely to be subject to the affirmative resolution procedure (rather than the negative procedure) and, separately, provide that the negative resolution procedure will apply where the Secretary of State extends the pilots by a limited time period.
- **Out of court disposals.** The Bill includes powers to attach conditions to a diversionary or community caution which require the offender to carry out unpaid work, attend a specified place, and/or pay a financial penalty. In turn, the Bill contains powers to set and amend the amount of the maximum financial penalty and amend the maximum number of unpaid work or attendance hours by regulations. The Bill provides that only proposed increases to these will be subject to the affirmative procedure, however, the DPRRC recommended that any changes are subject to this level of scrutiny. We have tabled an amendment to give effect to this recommendation, so that both increases and decreases in the maximum number of hours of unpaid work or attendance, or in the maximum financial penalty, to be subject to the affirmative resolution procedure (rather than increases alone).

Serious Violence Duty (amendments to clauses 9, 12, 15, 16, 19 and 22)

The Serious Violence Duty, introduced by Chapter 1 of Part 2 of the Bill, will require local authorities, the police, fire and rescue authorities, specified criminal justice agencies and health authorities to work together to formulate an evidence based analysis of the problems associated with serious violence in a local area, and then produce and implement a strategy detailing how they will respond to those particular issues.

Application to domestic abuse and sexual offences

The Government remains absolutely focused on tackling violence against women and girls. There is no place in our society for these abhorrent crimes. We are grateful to Baroness Bertin and other Noble Lords who raised these issues in Committee and

following this we have tabled amendments to clarify that the definition of violence for the purposes of the serious violence duty includes domestic abuse and sexual offences.

Sharing of patient information

We recognised the concerns voiced by Baroness Brinton and others that the information-sharing gateway, as it is currently drafted, could be used to share personal medical information and could risk undermining trust between doctors and their patients. We have tabled amendments to the Bill to provide that the information sharing provisions in Chapter 1 of Part 2 of the Bill do not authorise or require the disclosure of patient information or the disclosure of personal information by a health and social care authority.

Public Order (amendments to clause 61 and new clauses “*Interference with use or operation of key national infrastructure*” and “*Key national infrastructure*”)

Part 3 of the Bill introduces measures to allow the police to take a more proactive approach in managing highly disruptive protests causing serious disruption to the public.

As we have previously set out, recent actions by Insulate Britain have further demonstrated the need to ensure that public order legislation strikes an appropriate balance between protecting the rights of protesters and those of the wider public adversely affected by protest activity. The irresponsible actions we have seen in recent months around the M25 and elsewhere have put police officers’ and the travelling public’s (and indeed the protesters themselves) at serious risk of harm, as well have bringing unacceptable disruption to those simply wanting to get to work or otherwise go about their daily lives. These actions are wholly unacceptable, and it is for that reason we need to strengthen the measures in the Bill to ensure that the police have the powers they need to tackle such highly disruptive protests and protect the public

We have accordingly re-tabled the new clauses originally tabled for Committee stage (and detailed in our letter of 16 November), these:

- Increase the maximum penalty for the offence of wilful obstruction of highway;
- Introduce new offences relating to locking-on and the obstruction of major transport works;
- Strengthen police powers to stop and search; and
- Introduce Serious Disruption Prevention Orders (these provisions now make express provision to enable the court to adjourn proceedings for an SDPO on conviction until after sentencing the offender, mirroring provision for Criminal Behaviour Orders).

In addition, as referenced in our letter of 16 November, we have also now tabled amendments to introduce a new offence of interfering with the use or operation of key infrastructure, namely the major roads network, railways, seaports and airports, downstream oil infrastructure and newspaper printing infrastructure. The offence is subject to an exception for industrial action (which has also been applied to the new offence of obstruction of major transport works) and a defence of reasonable excuse. The new offence carries a maximum penalty of 12 months’ imprisonment, an unlimited fine, or both. The new stop and search powers have been revised to include this additional offence as one of the trigger offences for those powers.

We have also tabled some clarificatory amendments to the public nuisance offence in clause 61.

In its report on Part 3 of the Bill, the Joint Committee on Human Rights recommended as follows:

“The essence of the public nuisance offence is causing harm to the public or a section of the public. However, as drafted, the offence is confusing and could be read as meaning the offence is committed where serious harm is caused to one person rather than the public or a section of the public..... The Bill must be amended to make clear that the offence of public nuisance will only be committed where serious harm is caused to the public or a section of the public.”

We indicated in our response that we would reflect further whether the clarity of the drafting of what is now clause 61(2) could be strengthened and I (Baroness Williams) also undertook in Committee to consider further amendment 315 put forward by Lord Dubs. Having now done so, amendments to clause 61 address this point.

I (Baroness Williams) also undertook to consider Lord Etherton’s amendment 317 to clause 62(8)(b) which is intended to preserve the tort of public nuisance. As drafted, subsection (8)(b) may suggest that in future the tort of public nuisance should track the statutory offence. The intention, however, is that the tort should continue to follow the old common law offence. The amendments to this provision make the position clear.

Serious Violence Reduction Orders (amendments to clause 141)

In addition to making the guidance in relation to SVROs subject to the negative procedure, we are amending new section 342J of the Sentencing Code to widen the power to issue guidance so that guidance may be issued on any matter relating to serious violence reduction orders (and not just, as now, matters relating to the exercise by the police of their functions under new Chapter 1A of Part 11 of the Sentencing Code). The amendments also set out a non-exhaustive list of the matters that may be covered by guidance.

An amendment to new section 342A of the Sentencing Code makes it explicit that, if an application for a SVRO is made, the court may adjourn proceedings after sentencing the offender in order to deal with the SVRO at a later date. New clause “*Knife crime prevention order on conviction: adjournment of proceedings*” makes a similar clarificatory amendment to the provisions in the Offensive Weapons Act 2019 in relation to Knife Crime Prevention Orders.

Sentencing Act 2020 fixes (amendments to Schedule 20)

Subsequent to the consolidation of sentencing procedural law into the Sentencing Code by the Sentencing Act 2020, we have identified the need for two further minor and technical amendments to repeal redundant provisions in the 2020 Act and the Counter-Terrorism and Sentencing Act 2021. We are taking the opportunity to repeal the redundant provisions to avoid any potential confusion as to their operation.

Harper's Law (new clause "*Required life sentence for manslaughter of emergency worker*" and amendment to clause 178)

We know that Noble Lords from across the House will want to share our support for the family and friends of PC Andrew Harper and their campaign to strengthen the law so that no other families go through the same heartbreak they have suffered. We committed to looking at what action may be possible in this area and considered the proposals put forward by Andrew Harper's family carefully. We have tabled an amendment which will extend a mandatory life sentence to offenders found guilty of unlawful act manslaughter of an emergency worker who is acting in the exercise of their functions. This sentence would apply in cases where the victim was an emergency worker (defined in the same way as the Assaults on Emergency Workers (Offences) Act 2018) and was acting in the exercise of their functions. It will apply to 16 and 17-year-old offenders as well as adults, and will include a judicial discretion to impose a different sentence in 'exceptional circumstances'.

Driver disqualifications (amendment to clause 66)

The amendment to clause 66 deals with driver disqualification periods with the aim of improving road safety. The amendment increases the minimum driver disqualification periods from two to five years for the offences of:

- (i) causing death by dangerous driving, and
- (ii) causing death by careless driving whilst under the influence of drink or drugs

and increase the minimum period for repeat offending in relation to the latter offence from three to six years.

The Bill already increases from 14 years to life the maximum custodial sentences for these offences and this amendment builds on that measure to send a clear message about the serious nature of these offences. Judges will retain discretion to impose a shorter period of disqualification, or not to impose any disqualification, if there are exceptional reasons in any given case for doing so.

Child cruelty (new clauses "*Penalty for cruelty to children*" and "*Penalty for causing or allowing a child or vulnerable adult to die or suffer serious physical harm*" and amendment to clause 178)

At Commons Report stage, the Government committed to consider further an amendment from Tom Tugendhat MP who has campaigned tirelessly for years for "Tony's Law", named after Tony Hudgell. This amendment will amend section 5 of the Domestic Violence, Crime and Victims Act 2004 to increase the maximum penalty for the offence of causing or allowing the death of a child or vulnerable adult from 14 years' imprisonment to life imprisonment; and the maximum penalty for the offence of causing or allowing a child or vulnerable adult to suffer serious physical harm from 10 to 14 years' imprisonment. The amendment will also add the offence of causing or allowing the death of a child or vulnerable adult to Schedule 19 to the Sentencing Act 2020 (which sets out a list of offences where, in certain circumstances, a life sentence is mandatory) and increase the maximum penalty for the offence under section 1 of the Children and Young Persons Act 1933 of cruelty to a person under 16 from 10 to 14 years' imprisonment.

Assaults on retail workers (new clause “Assaults on those providing a public service etc”)

The Government shares the concern that was expressed during the debate on Lord Coaker’s and Baroness Neville-Rolfe’s amendments. It is totally unacceptable that retail workers should find themselves subject to abuse, when they play such an important role providing a service to the public and to local communities. Accordingly, this amendment will put into statute the aggravating factor currently set out in the Sentencing Council’s guidelines. This will apply to all workers providing a public service, performing a public duty or providing a service to the public. As such, the statutory aggravating factor will apply to a wide range of workers and will not be limited to retail workers.

This will be a very clear statement of the seriousness with which these crimes are viewed and complements ongoing work and engagement with the retail sector and the police.

I attach a supplementary ECHR memorandum and delegated powers memorandum in relation to these amendments.

We are copying this letter to Lord Paddick, Lord Marks of Henley upon Thames, Lord Judge, Baroness Neville-Rolfe, Lord Dubs, Lord Etherton, Lord Blencathra (Chair, Delegated Powers and Regulatory Reform Committee), Baroness Taylor of Bolton (Chair, Constitution Committee), Harriet Harman (Chair, Joint Committee on Human Rights), Tom Tugendhat, Yvette Cooper, Steve Reed and Sarah Jones. We are also placing a copy of this letter and enclosures in the library of the House.



Lord Wolfson of Tredegar QC



Baroness Williams of Trafford