



Ministry  
of Justice



Home Office

**Lord Wolfson of Tredegar**  
QC  
Parliamentary Under  
Secretary of State

**Baroness Williams of  
Trafford**  
Minister of State

Lord Rosser, Lord Coaker and Lord Ponsonby

4 January 2022

Dear Richard, Vernon and Fred,

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

We are writing to let you have details of a second tranche of Government amendments we have tabled for Lords Report stage. These amendments are all in response to issues raised during Committee.

**Prosecution of common assault in domestic abuse cases (new clause “*Time limit for prosecution of common assault or battery in domestic abuse cases*”)**

We are grateful to Baroness Newlove and Lord Russell of Liverpool who brought to our attention a live issue of prosecution of common assault in domestic abuse cases and in the other place, our ministers committed to look carefully at this. We are pleased to announce that we have tabled an amendment which will change how the six-month time limit to commence a prosecution for common assault or battery involving domestic abuse is applied in England and Wales to run from the date of it being reported to the police through a formal witness statement or video recording given with a view to its use as evidence, rather than the date of the offence, subject to an overall limit of two years from the offence. This would give victims more time in which to seek justice given that domestic abuse is often reported late relative to other crimes, but with a two-year backstop to prevent the police from being inundated with historical reports.

**Breastfeeding voyeurism (new clause “*Voyeurism: breast-feeding*”)**

We are grateful to Baroness Hayman for raising awareness of this distressing issue. We are bringing forward an amendment to create new offences of recording images of a person who is breastfeeding, or operating equipment with the intention of enabling another person to observe a person who is breastfeeding, where that is done without consent and for the purposes of sexual gratification (on either the part of the person taking the image, or a third party), or to humiliate, alarm or distress the person depicted. This will build on

existing offences of voyeurism at sections 67 and 67A of the Sexual Offences Act 2003, as amended by the Voyeurism (Offences) Act 2019.

At our request, the Law Commission is currently conducting a wider review of the law on taking, making and sharing intimate images without consent, including photography of breastfeeding; we will consider the recommendations of the Law Commission's review when they are published (currently expected in Spring 2022) and any further changes to criminal offences in this area which may be needed to further protect victims.

**Non-crime hate incidents (new clauses “*Code of practice relating to non-criminal hate incidents*” and “*Further provision about a code of practice under section (Code of practice relating to non-criminal hate incidents)*”)**

Non-Crime Hate Incident (NCHI) recording is used to collect intelligence on ‘hate incidents’ occurring in communities which do not, by themselves, breach the criminal threshold, but could escalate into more serious harm. The police regard NCHIs as an important tool to record patterns of individual behaviour or local incident ‘hotspots’ which could give rise to safeguarding risks or community tensions.

During Committee stage, Lord Moylan and others suggested that guidance for the recording of NCHIs, and the retention of personal data in relation to these incidents, should be subject to parliamentary oversight.

We recognise the sensitivities around the recording and retention of such information by the police and we also recognise the considerable strength of feeling on this issue amongst Parliamentarians. On 20 December 2021, the Court of Appeal found in *Miller v College of Policing* that the recording of NCHIs amounted to a significant interference with an individual's right to freedom of expression, and so had to be justified in every instance in order to be lawful. Any such recording must also be proportionate. To strike the right balance between ensuring that the practice is subject to greater parliamentary scrutiny, whilst simultaneously respecting the operational importance of this type of recording for the police, these amendments enable the Home Secretary to issue statutory guidance to the police about the recording and retention of personal data relating to NCHIs. The Code will reflect the Court of Appeal judgment in *Miller*. The initial guidance will need to be debated and approved by both Houses through the affirmative procedure.

**Pardons and disregards (new clauses “*Disregard of certain convictions or cautions*” and “*Pardons for certain convictions or cautions*”)**

Under provisions in the Protection of Freedoms Act 2012, individuals who have convictions or cautions for specific repealed or abolished offences criminalising consensual sexual activity between men are able to apply for a “disregard”. If the prescribed legal criteria are met and the offence is ‘disregarded’, they are no longer required to disclose the conviction and it no longer appears on a criminal record certificate. A person who has a disregarded conviction or caution is to be treated for all purposes in law, as if the person has not committed the offence, and the person will no longer be required to disclose their historic conviction or caution during court proceedings or during vetting processes, for example. The current scheme only covers specified offences, both civilian and military. The Policing and Crime Act 2017 further provides for an automatic pardon for such offences. These amendments will extend the scheme to all individuals who hold convictions or cautions for same sex sexual activity, to include in scope any repealed or abolished offences that either expressly regulated consensual same sex sexual activity, or if not expressly, the offence was used to convict or caution individuals for conduct involving same sex sexual

activity. Safeguards will be in place to ensure to the greatest extent possible that we do not disregard convictions or cautions for conduct that would still be an offence today. In addition to the approach that only repealed or abolished offences will be eligible, we will continue to take the approach that we will only disregard cases where we are satisfied that both parties were 16 and over, and that the activity was consensual where consent is a relevant factor.

The amendments will also enable those who have died prior to the amendment coming into force, and within 12 months after the amendment coming into force, to obtain a posthumous pardon. Where a new offence, under which the individual was convicted or cautioned, is repealed or abolished after the provision comes into force, they will be able to obtain a posthumous pardon if they have died prior to the new offence being repealed or abolished, or within 12 months after the new repeal or abolition.

We are grateful to Lord Lexden and Lord Cashman for raising this important issue at Committee stage.

**Football Banning Orders (new clauses “*Football banning orders: relevant offences*” and “*Football banning orders: power to amend list of relevant offences*” and amendment to clause 178)**

Football Banning Orders prevent the subject of an order from attending regulated football matches for between three and ten years. The Prime Minister committed during PMQs on 14 July 2021 that, following the disgraceful online racist abuse of black England footballers following the Euro 2020 final, the legislation providing for football banning orders will be amended so that persons convicted of online abuse offences can be made subject to Football Banning Orders. These amendments will deliver on that commitment by extending the scope of Football Banning Orders to cover those convicted of online hate offences connected to football.

We are grateful to Lord Bassam of Brighton for raising this issue in Committee.

**Hare coursing (new clauses “*Increase in penalty for offences related to game etc*”, “*Trespass with intent to search for or to pursue hares with dogs etc*”, “*Being equipped for searching for or pursuing hares with dogs etc*”, “*Recovery order on conviction for certain offences involving dogs*”, “*Disqualification order on conviction for certain offences involving dogs*”, “*Seizure and disposal of dogs in connection with disqualification order*”, “*Termination of disqualification order*”, “*Section (Seizure and disposal of dogs in connection with disqualification order): supplementary*” and “*Disqualification orders: appeals*”)**

In our Action Plan for Animal Welfare, we committed to introduce legislation to crack down on illegal hare coursing. These amendments provide for a package of measures to strengthen the powers and penalties available to the police and courts on hare coursing, which is a serious problem in some rural areas. It involves cruelty to wild animals and brings a range of harms to individuals and communities affected, including theft, criminal damage, violence and intimidation.

Specially, the amendments will:

- increase the severity of the penalties for convictions under the Game Acts (specifically section 30 of the Game Act 1831 and section 1 of the Night Poaching Act 1828) to an unlimited fine and/or up to six months' imprisonment;

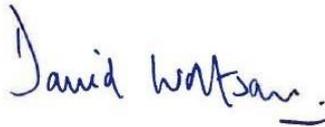
- introduce new criminal offences relating to trespassing on land with the intention of searching for or pursuing a hare with a dog; and
- give the courts new powers to make orders on conviction in relation to the reimbursement of kennelling costs and the disqualification of offenders from owning or controlling a dog.

We are grateful to the Bishop of St Albans for raising this matter at Committee stage.

All these amendments apply to England and Wales only.

We 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 Newlove, Lord Russell of Liverpool, Baroness Hayman, Lord Moylan, Lord Lexden, Lord Cashman, Lord Bassam of Brighton, the Bishop of St. Albans, Lord Blencathra (Chair, Delegated Powers and Regulatory Reform Committee), Baroness Taylor of Bolton (Chair, Constitution Committee), Harriet Harman (Chair, Joint Committee on Human Rights), 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**