

CORRESPONDENCE ABOUT GOVERNMENT AMENDMENTS

This document contains the text of letters sent by Ministers about Government amendments to the Bill.

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Co-Chairmen
Criminal Justice and Immigration Bill Committee
House of Commons
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13th October 2007
Dear Sir Nicholas and Mr O'Hara,

CRIMINAL JUSTICE AND IMMIGRATION BILL

To ensure proper Parliamentary scrutiny of the Bill, I am writing, in advance of the oral evidence sessions on 16 and 18 October, to let the Committee have details of a number of Government amendments which I intend to table in due course.

The Government amendments will include the following new provisions.

Incitement to homophobic hatred

The Justice Secretary gave notice at Second Reading (Hansard col. 67) that the Government would table amendments for Committee to make criminal incitement to hatred against persons on the basis of their sexuality. This follows previous legislation creating offences of incitement to racial and, more recently, religious hatred.

It is important that we do not interfere unjustifiably with the freedom of speech. People have a right to air their views, even if some of us may find those views distasteful. And people have a right to hear those views and make up their own minds about them. But stirring up hatred against a person or group because of their personal characteristics is never acceptable. The Government is determined to tackle such behaviour and ensure that everybody realises how unacceptable it is. It is divisive and damaging.

The Government is not minded, at this stage, to include disabled or transgendered people in the scope of the offence. This is because we lack substantial evidence that incitement to hatred of disabled or transgendered people takes place. However the Government is ready to listen to views on this in Committee and during the later stages of the Bill and to bring forward amendments if a case is made and evidence is produced that hatred is indeed being incited against groups of people based on disability or gender reassignment. If so, we envisage, in the case of the disability offence, that it would cover those with both mental and physical impairments.

Protection of children from sex offenders

On 13 June 2007 the then Home Secretary published a report on the Review of the Protection of Children from Sex Offenders (available at: <http://www.homeoffice.gov.uk/documents/CSOR/chid-sex-offender-review-130607>). The review identified a variety of short, medium and long term measures to strengthen the protection of children from sex offenders. Two of the actions identified in the review require primary legislation, namely:

Action 3

Introduce a legal duty for MAPPA authorities to consider the disclosure of information about convicted child sex offenders to members of the public in all cases. The presumption will be that the authorities will disclose information if they consider that an offender presents a risk of serious harm to a member of the public's children.

The Justice Secretary gave notice of this amendment at Second Reading (Hansard col. 68).

Action 13

Take a power to amend sex offender notification requirements by secondary legislation, and consider changes to the information registered to strengthen public protection.

Amongst the additional requirements that may be imposed under the new secondary legislation powers are requirements on registered sex offenders to:

- notify the police of any e-mail addresses;
- notify the police of passport numbers;
- notify the police of any bank account numbers;
- notify the police if they are living in the same household as a child under the age of 18;
- notify the police of *any* foreign travel (at present only trips of three days or longer must be notified); and
- report regularly to a police station if they register as homeless.

We have also identified three other measures in this area:

The threshold for Sexual Offences Prevention Orders.

The Sexual Offences Act 2003 introduced a number of civil orders including the Sexual Offences Prevention Order (SOPO). Currently a SOPO can be made against anyone convicted of a sexual offence included in Schedule 3 to the Act or an offence in Schedule 5, a list of other offences which, whilst not inherently sexual, could have had a sexual motive, such as murder. Schedule 3 is also relevant to whether someone is subject to the notification requirements ("the sex offender's register") and consequently contains a number of thresholds, such as sentence length, which must be met before an offender becomes eligible for the notification requirements. These thresholds also apply to eligibility for a SOPO. For example, a SOPO cannot be imposed on someone convicted of abuse of trust: causing a child to watch a sexual act unless the offender has been sentenced to at least a community sentence of 12 months.

However, where someone has been convicted of a Schedule 5 offence (i.e. one that is not inherently sexual), no such threshold exists and the court has unfettered discretion to make that individual subject to a SOPO (and consequently the notification requirements). We propose to remove this anomaly and allow courts the discretion to impose a SOPO on an offender convicted of a (Schedule 3) sexual offence, even where a relevant threshold has not been met, as long as there is evidence that there is a risk of serious sexual harm.

Grooming

The 2003 Act also established the offence of meeting a child following sexual grooming, which was specifically targeted at predatory offenders who entice children into meeting them, primarily by use of communication technology, with the intention of committing a sexual offence.

Currently the scope of the offence covers situations where an offender who has communicated with a child on two occasions, meets a child or travels to meet a child with the intention of committing a sexual offence but not where the child has travelled to meet the offender.

If the child actually meets the offender in his house, then an offence has been committed but it is not desirable to allow events to go this far. The police should be able to intervene and charge someone with grooming where all the preparatory steps have been taken to arrange a meeting regardless of whether the meeting has actually taken place, as they currently are if the offender travels to meet the victim. We intend to amend the offence to this end.

Offences outside the United Kingdom

Section 72 of and Schedule 2 to the 2003 Act currently allow for the prosecution of a UK national for a number of sexual offences against children under 16 committed overseas, but only where the act would also constitute an offence in the country where the act was committed. This last requirement is known as the principle of dual criminality.

The Council of Europe has recently agreed a Convention on the Protection of Children Against Sexual Exploitation and Abuse (available at: <https://wcd.coe.int/ViewDoc.jsp?id=1164093&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE>). The Convention will oblige signatories to remove the condition of dual criminality in relation to serious sexual offences against children under 18. To enable the UK to ratify the Convention we propose to make the necessary amendments to the 2003 Act.

Evidence in respect of previous sexual history

Section 41 of the Youth Justice and Criminal Evidence Act 1999 was introduced to protect rape complainants from cross-examination about their previous sexual history. We have identified a minor technical flaw in the 1999 Act affecting sexual offence cases prosecuted under pre-Sexual Offences Act 2003 legislation. Cases prosecuted under the 2003 Act are unaffected and protection against questions on previous sexual history applies. We would expect old cases to continue to be prosecuted under pre-2003 legislation for some time to come; consequently we need to ensure that the protection afforded by section 41 of the 1999 Act applies in such cases. In the meantime, all judges have common law powers to exclude irrelevant evidence.

Adoption and sexual offences

Under adoption legislation, adopted children are treated the same in law as any other child/children born to the adoptive parents. However, this does not apply for the purposes of sexual offences committed once the adopted child reaches adulthood. We propose to make sexual relationships between adoptive adults and their adoptive parents an offence; such an approach properly reflects the nature of the legal and personal relationship entered into by parents upon adopting a child. We will also bring forward amendments to remove various discrepancies in the way that sexual relationships between adopted persons and their birth and adoptive families are treated depending on whether a person was adopted before, or after, the Adoption and Children Act 2002 came into force.

Repatriation of prisoners

Amendments to the Repatriation of Prisoners Act 1984 are required to enable the UK to ratify the Additional Protocol to the Council of Europe Convention on the Transfer of Sentenced Persons. The Additional Protocol provides for the transfer of a prisoner, without the consent of that person, to his State of nationality to which he will be deported or to the State of nationality to which a prisoner has fled. Ratification of the Additional Protocol would enable further progress to be made in removing foreign national prisoners from the UK at an early stage in the sentence.

The United Kingdom already has in place sufficient legislation (the Repatriation of Prisoners Act 1984, as amended by section 44 of the Police and Justice Act 2006) to enable it to transfer prisoners under the Additional Protocol who would otherwise be deported. However, before the UK can ratify the Additional Protocol arrangements must be put in place to deal with those prisoners who have either fled from the UK to another signatory State or from another State to the UK. The amendments would provide:

- for the issue of a warrant to authorise execution abroad of a sentence imposed in the UK where an individual has fled to that other jurisdiction;
- for the issue of a warrant to authorise execution in the United Kingdom of a sentence imposed in a jurisdiction from which an individual has fled;
- a power to arrest and detain in the United Kingdom, subject to appropriate safeguards, a person who is suspected of having fled the execution of a sentence imposed abroad;
- for time spent in detention under the power of arrest is deducted from the length of the sentence to be served in the UK following formal transfer; and
- for a warrant to authorise a prisoner to be taken outside the United Kingdom by the UK authorities, rather than requiring handover to the enforcing authorities within the UK.

Amendments to the Criminal Appeals Acts

I intend to bring forward a number of essentially technical amendments to the Criminal Appeals Acts 1968 and 1995, and associated legislation, to strengthen the efficient and

effective operation of the Court of Appeal; these reflect proposals put to us by the senior judiciary. The amendments would:

- A. empower the Court of Appeal, when it quashes a conviction, to re-sentence the appellant for any other offence for which he was sentenced at the same time by the court below;
- B. transfer to the Court of Appeal certain powers relating to the renewal and termination of interim hospital orders (where such orders are originally imposed by the Court of Appeal) which are currently exercised by the courts below; and to allow a single judge to exercise these powers;
- C. extend the powers of the Court of Appeal to compel the production of documents and the attendance of witnesses so they are also available for the purpose of dealing with an application for leave to appeal;
- D. allow a single judge to exercise the power to give leave to appeal in certain interlocutory appeals;
- E. allow a single judge to issue directions which cannot be appealed to a full Court of Appeal;
- F. ensure that, when the prosecution successfully appeals to the House of Lords, the offender can be compelled to serve out any remainder of his sentence unless the Court of Appeal has made an order to the contrary;
- G. extend (from 28 to 56 days) the time during which a sentence imposed by the Crown Court can be altered by that Court; and
- H. impose a time limit (of 28 days) on the trial judge's power to grant a certificate of fitness for appeal.

Investigatory powers of the Serious Fraud Office

In March 2007, the then Home Secretary published the summary of responses (available at: <http://www.homeoffice.gov.uk/documents/cons-2005-bribery/?version=1>) and announced the next steps arising from the Government's consultation of the reform of the law on bribery and corruption (Hansard, 5 March 2007 col. 115WS-117WS). As foreshadowed in that announcement we have asked the Law Commission to undertake a thorough review of our bribery laws with a view to a fundamental reform; the Commission is expected to publish a consultation paper later in the year and a report and draft Bill in the autumn of 2008. The Government intends to bring forward proposals for legislation to reform the law of bribery as soon as possible once the Law Commission has reported. In the interim, we propose to take forward one specific measure on which we previously consulted, namely extending the Serious Fraud Office's investigatory powers (under section 2 of the Criminal Justice Act 1987) to the vetting stage in any cases involving allegations of bribery or corruption of overseas officials. The issue was discussed in more detail at paragraphs 52 to 58 of the Home Office consultation ('Reform of the Prevention of Corruption Acts and SFO Powers in Cases of Bribery of Foreign Officials: A Consultation Paper') published in December 2005.

Increase in sanctions against shops selling tobacco to under aged persons

As part of the Government's public health strategy to reduce the prevalence of smoking, the minimum age for the sale of cigarettes and other tobacco products was raised from 16 to 18 years with effect from 1 October 2007. To reinforce this change, we will be tabling

amendments to strengthen the sanctions against retailers who repeatedly flout the law. The amendments will confer powers on magistrates' courts to impose prohibition orders on retailers who have been found to have repeatedly sold tobacco to under-aged children and young people. Retailers subject to such an order would be barred from selling tobacco products for up to one year. Violation of an order would make the retailer liable to a fine of up to £20,000. The Department of Health consultation on this proposal (the consultation document ('Consultation on Under-Age Sale of Tobacco', July 2006) and the Report on the Consultation are available at http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH_065350) showed considerable support for tougher sanctions, particularly among the NHS, health organisations and local authorities.

Amendments to existing provisions in the Bill

I will also be tabling amendments to the existing provisions in the Bill. The majority of these will be minor technical and drafting amendments. In addition, the amendments would:

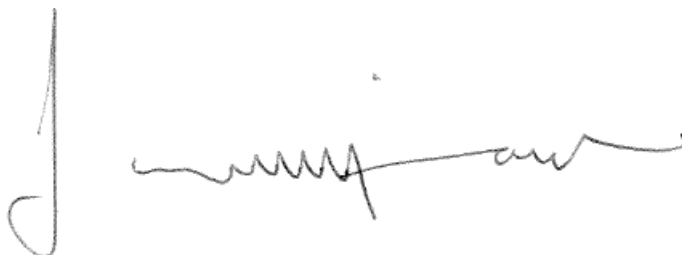
- Make equivalent provision for Northern Ireland in relation to clauses 26 (appeals against convictions), 28 (review of sentence on reference by the Attorney General) and 76 to 81 (mutual recognition of financial penalties) and Part 4 (placing the Prisoner Ombudsman for Northern Ireland on a statutory footing);
- Make equivalent provision for the Service Courts in relation to clauses 10 (abolition of suspended sentences for summary offences), 26 (appeals against convictions), 28 (review of sentence on reference by the Attorney General) and 62 (compensation for miscarriages of justice);
- Require all young offenders (not just those aged 14 or over as the Bill currently provides) to indicate their willingness to comply with a mental health treatment requirement, a drug treatment requirement or a drug testing requirement before such a requirement is attached to a Youth Rehabilitation Order;
- Revise clause 26 (Appeals against convictions) to ensure that it is open to the Court of Appeal in exceptionally serious cases of abuse of process to quash the conviction, even where the Court is satisfied as to the appellant's guilt or his or her guilt is not an issue in the appeal. The Justice Secretary gave notice of this amendment at Second Reading (Hansard col. 66), but it may be that our review of the clause cannot be completed in time to table an amendment for Committee;
- Confer on the Court of Appeal a discretion, when determining whether a conviction is unsafe following a reference by the Criminal Cases Review Commission, to disregard any developments in the common law since the date of conviction. The need to review this aspect of the law was highlighted by the senior judiciary in their response to the consultation on quashing convictions and by the President of the Queen's Bench Division in his judgment in the case of *Cottrell and Fletcher* (available at <http://www.bailii.org/ew/cases/EWCA/Crim/2007/2016.html>). The Justice Secretary gave notice of this amendment at Second Reading (Hansard col. 66); and
- Provide for the annual review of a Violent Offender Order made against a person under 18 and for the involvement of Youth Offending Teams in the decision to apply for an order in respect of a child or young person and, subsequently, to offer support

for the duration of the order. The amendments will also provide for a YOT to be involved in any decision to commence breach proceedings. These proposed changes were set out in the Home Office's summary of the responses to the consultation on Violent Offender Orders (available at: <http://www.homeoffice.gov.uk/documents/response-violent-offender.pdf>).

Finally, in his oral statement of 11 July on the draft legislative programme, the Prime Minister signalled that the Bill might be the vehicle for new measures flowing from Sir Ronnie Flanagan's Review of Policing. You will be aware that Sir Ronnie's Interim Report was published on 12 September (the Report is available at: http://police.homeoffice.gov.uk/news-and-publications/publication/police-reform/The_review_of_policing_inte1.pdf). There are no recommendations in the Interim Report which would require primary legislation to implement. I understand Tony McNulty will shortly be in touch with opposition policing spokespeople on the next steps on police reform.

To assist the Committee I attach drafts of the amendments relating to the duty on MAPPA authorities to consider the disclosure of information about child sex offenders, the investigatory powers of the SFO and the increase in sanctions against shops selling tobacco to under aged persons. These drafts are subject to minor revision; the final version of the amendments will be tabled in due course.

I am copying this letter to members of the Committee, Alan Beith (Constitutional Affairs Select Committee), Keith Vaz (Home Affairs Select Committee), Kevin Barron (Health Select Committee), Lord Kingsland, Lord Thomas of Gresford and the Scrutiny Unit. I am also placing a copy in the Library and on the Ministry of Justice website.

A handwritten signature in black ink, appearing to read 'David Hanson', written in a cursive style.

**DAVID HANSON MP
MINISTER OF STATE**



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16th October 2007
Jennifer Nicholas and Mr O'Hara,

CRIMINAL JUSTICE & IMMIGRATION BILL: COMMITTEE STAGE AMENDMENTS TO PARTS 1 TO 3

I am writing to let you have details of the Government amendments (copy attached for ease of reference) to Parts 1 to 3 of the Bill which I have tabled today for Committee Stage.

The amendments address the following matters:

Part 1 – Youth Rehabilitation Orders

The amendments to Part 1 (clause 7 and Schedules 1 to 4) are largely minor technical and drafting amendments. There are also a number of linked amendments to Schedules 21 to 23. The following amendments address more substantial issues.

Willingness to comply with drug testing, drug treatment and mental health requirements

Schedules 1 and 2 include requirements for youth offenders to indicate their willingness to comply with mental health, drug treatment or drug testing requirements from the age of 14, with the consent of the parent or guardian needed for younger children. As referred to in my letter to you of 15 October, we propose to remove the lower age limit through amendments. In practice these requirements will not be effective unless the child is willing to comply with the order. The issue of willingness to comply is now treated entirely separately to the right to reasonably refuse consent to medical treatment – paragraph 9 of Schedule 2 makes clear that reasonable refusal to consent to treatment will not be considered a breach.

Attendance centre requirement

Paragraph 12 of Schedule 1 sets out the number of hours that a young offender could be required to attend an attendance centre under a Youth Rehabilitation Order. The amendments to this paragraph bring the number of hours into line with the existing periods

set out in section 60 of the Powers of Criminal Courts (Sentencing) Act 2000. The amendments to Schedule 5 carry these changes through to youth default orders.

Child in care of local authority

The amendment to clause 7, and associated amendments paragraph 33 of Schedule 1, paragraph 4 of Schedule 3, and paragraphs 91 and 92 of Schedule 4, gives general effect to the proposition that where a local authority has parental responsibility for an offender, references (in Part 1 of the Bill and the Powers of Criminal Courts (Sentencing) Act 2000) to the offender's parent or guardian are to be read as references to the local authority.

Designation of places of detention for young offenders

The amendments to paragraph 9 of Schedule 21 repeals section 92(3) of the Powers of Criminal Courts (Sentencing) Act 2000 ("the Sentencing Act") which concerns the manner in which the Secretary of State makes arrangements for detention of young offenders sentenced under sections 90 or 91 of that Act. The requirement is currently for a direction to be made under the hand of a Minister or authorised officer; the repeal will enable the Secretary of State to give the Youth Justice Board a concurrent power to make arrangements for offenders sentenced under section 90 or 91 of the Sentencing Act, just as the Board can in respect of young people sentenced to a detention and training order. The amendment inserting a new paragraph 2A into Schedule 22 makes a similar minor change to section 38(3)(c) of the Criminal Justice Act 1961.

Part 2 – Sentencing

Restrictions on imposing community sentences (clause 11)

The drafting amendment to this clause simply ensures that the new section 148(5) of the Criminal Justice Act 2003 refers to the new Youth Rehabilitation Order.

Release of prisoners after recall (clause 16)

The substitute clause 16 is designed to achieve greater clarity for practitioners and others in respect of the new scheme for the recall and re-release of offenders. The amendment does not alter the substance of the scheme as set out in the Bill on Introduction. The revised clause inserts separate new sections into the Criminal Justice Act 2003 which deals, in turn, with 3 tiers of prisoners:

Tier 1

Non-dangerous determinate sentence prisoners who will automatically be re-released 28 days from the date on which the prisoner was returned to prison following the recall.

Tier 2

Potentially serious and dangerous determinate sentence prisoner who, following recall to prison will be liable to detention until their sentence has expired unless the Secretary of State decides that he/she should be released within 28 days of her/his return to prison. Such a decision will only be made in favour of release if the Secretary of State is satisfied that adequate arrangements are in place to ensure effective supervision in the community can take place following re-release. If no such decision has been taken within that 28 day period the Secretary of State will be obliged to refer the prisoner's case to the Parole Board.

Tier 3

Relates to extended sentence prisoners. These will be recalled in the same way as

determinate sentence prisoners but will have their cases referred to the Parole Board for a decision to be made about possible release. The Secretary of State will have no capacity to direct their release, prior to the Board becoming involved, contrary to the first two tiers.

Referral Orders (clause 21)

Clause 21 replaces section 17(1A) and (2) of the Powers of Criminal Courts Sentencing Act 2000, which set out the conditions for a Referral Order to be made. The Bill allows a Referral Order to be made when a youth offender has previously been convicted of one offence (as long as they have not previously been sentenced to a Referral Order). The amendment to this clause allows a Referral Order to be made where the youth offender has previously been convicted of either one offence or two or more connected offences which were dealt with together on one previous occasion.

Part 3 - Appeals

Appeals against convictions (clause 26)

As foreshadowed in my letter to you of 15 October, the amendment to clause 26 will confer on the Court of Appeal a discretion, when determining whether a conviction is unsafe following a reference by the Criminal Cases Review Commission, to disregard any developments in the common law since the date of conviction. The need to review this aspect of the law was highlighted by the senior judiciary in their response to the consultation on quashing convictions and by the President of the Queen's Bench Division in his judgment in the case of *Cottrell and Fletcher* (available at <http://www.bailii.org/ew/cases/EWCA/Crim/2007/2016.html>).

I will write to the Committee separately about our proposals to amend clause 26 more widely.

Review of sentence on reference by Attorney General (clause 28)

The amendments to clause 28 correct an ambiguity in the drafting of the substituted subsection (3A) of section 36 of the Criminal Justice Act 1988. The words "under that section" were intended to refer to an order under section 269 of the Criminal Justice Act 2003 or (as the case may be) section 82A of the Powers of Criminal Courts (Sentencing) Act 2000; the amendments make the position clear.

The last of the clause 28 amendments adapts section 36 of the Criminal Justice Act 1988, as amended by the clause, to reflect the sentencing regime in Northern Ireland.

I am copying this letter and enclosure to members of the Committee.



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14th November 2007
Jennifer Nicholson and Mr O'Hara,

CRIMINAL JUSTICE & IMMIGRATION BILL: COMMITTEE STAGE AMENDMENTS

I am writing to let you have details of the further Government amendments (copy attached for ease of reference) to the Bill which I have tabled today for Committee Stage. You will recall that I gave the Committee notice of many of these amendments in my letter to you of 13 October.

The amendments address the following matters:

Part 3: Appeals against convictions (clause 26) (amendments at Annex A)

At Second Reading, the Justice Secretary indicated (Hansard 8 October 2007, col. 66) that in the light of the responses to the consultation 'Quashing Convictions' the Government was reviewing clause 26 of the Bill and intended to bring forward replacement provisions. He was concerned that the Court of Appeal should retain discretion to quash a conviction, regardless of the appellant's guilt, in serious cases of prosecution misconduct. That objective is achieved by amendment 1 in Annex A which replaces the new subsections (1A) and (1B) of section 2 of the Criminal Appeal Act 1968 that are inserted by clause 26(2).

The revised new subsection (1A) is also designed to clarify that the Court of Appeal is a court of review and is not required to decide whether it is satisfied of the appellant's guilt. It replaces the test that the Court are satisfied that the appellant is guilty with one that the Court think that there is no reasonable doubt about the appellant's guilt.

This amendment also replaces the "Convention exception" in new subsection (1B) with one that enables the Court of Appeal to allow an appeal, notwithstanding subsection (1A), if they think that it would seriously undermine the proper administration of justice to allow the conviction to stand. This will ensure that the Court has a discretion to quash a conviction in cases involving serious procedural irregularities by the investigating or prosecuting authorities, or other agencies of the State, as in the *Mullen* case. In our view, all of the circumstances that would be caught by the existing Convention exception would also be covered by the revised subsection (1B).

Amendments 2 and 3 are consequential amendments to apply the changes effected by clause 26 to two other provisions (sections 13 and 16 of the Criminal Appeal Act 1968) which make use of the test of unsafety.

The new clause (*Power of Court of Appeal to disregard developments in the law*) replaces Government amendment 78 previously tabled (which applied only to section 2 of the 1968 Act) and applies it also to sections 13 and 16.

New clauses (*Meaning of unsafe: Northern Ireland, Power of Court of Appeal to disregard developments in the law: Northern Ireland and Determination of prosecution appeals: Northern Ireland*) make provision in respect of Northern Ireland equivalent to that in clauses 26 (as revised) and 27 and the new clause referred to in the preceding paragraph.

Part 4: Her Majesty's Commissioner for Offender Management and Prisons (amendments to be tabled 15 November)

The amendments to this Part:

- Clarify the extent of the provisions in Part 4;
- Exclude complaints about health care matters from the remit of the Commissioner (such complaints will, as now, be dealt with by the Parliamentary and Health Service Ombudsman);
- Make changes to the various order-making powers in Part 4 to confer on the Secretary of State the power to make consequential modifications to primary legislation; and
- Clarifies how the Commissioner is to handle complaints that are partly eligible complaints (as defined by clause 30) and partly outside his remit and therefore ineligible.

Part 5: Trial or sentencing in the absence of accused in magistrates' courts (clause 57) (amendments 1 and 2 in Annex B)

The purpose of these two amendments is to preserve the existing prohibition, in subsection (3) of section 11 of the Magistrates' Courts Act 1980, on imposing a custodial sentence in the offender's absence, but to limit it to proceedings that have been initiated by means of an information and summons (or written charge and requisition). The power to sentence to custody in absence will thus be available only in cases where the defendant has been bailed to appear and may therefore be presumed to have known the date of the hearing.

Part 6

Extreme pornography (clauses 64-67) (amendments 1, 8, 33, 48 and 57 in Annex C)

The new clause and schedule (*Special rules relating to providers of information society services*) will ensure that the new offence – which will cover material downloaded from the internet – complies with the requirements of the e-Commerce Directive (Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)).

The amendment to Schedule 21 replaces the provisions in clause 67(5) and (6) (amendments 1 and 33). These subsections provide that in cases where the sentence given for an offence under clause 64 is for a term of imprisonment of at least 2 years, and where

the offender was 18 or over at the time of the offence, he or she will also be subject to the registration requirements under Part 2 of the Sexual Offences Act 2003. In transferring the substance of these subsections to Schedule 21 the amendments also add the possession of extreme pornography offence to the Northern Ireland part of the list of relevant offences in Schedule 3 to the Sexual Offences Act.

Rehabilitation of Offenders: orders under section 1(2A) of the Street Offences Act 1959 (clause 73) (amendment 3 in Annex B)

The Scottish Executive have now agreed that the amendments made by this clause to the Rehabilitation of Offenders Act 1974 (which is a GB statute, but relates to devolved matters in Scotland) may extend to Scotland. The amendment would remove subsection (4) which currently limits the extent of the amendments made to the 1974 Act to England and Wales.

Part 7: Mutual recognition of financial penalties (clauses 76-81) (Annex D)

These amendments make equivalent provision for Northern Ireland and clarify the arrangements for assigning requests from other EU Member States for the enforcement of financial penalties to the appropriate legal jurisdiction in the UK.

Part 8: Violent Offender Orders (amendments 2-6, 29 and 52 in Annex C)

The amendments to Part 8 provide for the annual review of a Violent Offender Order in respect of an individual under the age of 18; introduce a requirement on the police to consult with a Youth Offending Team before applying for an Order in respect of a person under 18; confer a requirement on Youth Offending Teams to coordinate support for persons under 18 who are subject to an Order; and enable the Secretary of State to make regulations specifying additional information that a person subject to an Order must provide to the police.

Part 10: Police misconduct and performance procedures (Schedule 19) (amendments 17-25, 30, 37, 45 and 46 in Annex C)

These amendments make minor and technical amendments to Schedule 19 (and associated amendments to Schedules 21 and 22). Amongst other things, they update the terminology used in the substituted section 84 of the Police Act 1996 to take account of the provisions of the Legal Services Act 2007.

Miscellaneous minor, technical, consequential and transitional amendments (amendment 5 in Annex B and amendments 7, 9, 10, 13-16, 28, 35, 44 in Annex C)

These amendments are minor and technical in nature. Amongst other things they:

- i. Make transitional provisions in respect of cautions given prior to the commencement of clause 54 (which brings cautions within the ambit of the Rehabilitation of Offenders Act 1974) (amendment 5 in Annex B);
- ii. Remove a redundant reference to the Central Police Training and Development Authority from section 54 of the Police Act 1996 (amendment 44 in Annex C);
- iii. Amend the Nuclear Materials (Offences) Act 1983 to include specific reference to incitement of offences to which that legislation relates. The amendments also include transitional arrangements to cover the law in Scotland and the amendments to the law

on incitement which will take effect with the Serious Crime Act 2007 (amendments 14-16 and 35 in Annex C).

New Provisions

Incitement to homophobic hatred (amendments 11, 27, 36, 42, 49 and 58 in Annex C)

The new clause and Schedule (*Hatred on grounds of sexual orientation*) amend the Public Order Act 1986 to extend the existing offences of inciting racial or religious hatred to cover hatred on grounds of sexual orientation. While we need to do more to tackle hate crime against gays and lesbians, it is not our purpose to prevent free speech or debate. The new offence will not prevent jokes or religious organisations explaining that they believe homosexual behaviour is morally wrong. We recognise that there are some concerns about the new offence and, in response to this, the Justice Secretary indicated at Second Reading that in framing the offence our starting point would be the religious hatred model.

Under the Public Order Act there is not, in fact, a single offence of inciting hatred but six separate offences. These offences involve the use of words or behaviour or display of written material; publishing or distributing written material; the public performance of a play; distributing, showing or playing a recording; broadcasting or including a programme in a programme service; and possession of inflammatory material.

In relation to each extended offence the amendments provide that the words, behaviour, written material or recordings or programme must be threatening, and intended to stir up hatred on the grounds of sexual orientation.

The offences will differ from the offences of stirring up racial hatred (in Part 3 of the 1986 Act) in two respects. First, the offences apply only to “threatening” words or behaviour, rather than “threatening, abusive or insulting” words or behaviour. Second, the offences apply only to words or behaviour if the accused “intends” to stir up hatred on grounds of sexual orientation, rather than if hatred is either intentional or “likely” to be stirred up.

No equivalent provision is made to section 29J of the 1986 Act which provides that the offences of stirring up religious hatred do not limit or restrict discussion, criticism or expressions of antipathy, dislike, ridicule or insult or abuse of particular religions or belief systems or lack of religion or the beliefs and practices of those who hold such beliefs or apply to proselytisation, evangelism or the seeking to convert people to a particular belief or to cease holding a belief. We remain to be persuaded that such a provision is needed given that the offences would only apply to threatening language or behaviour that is intended to stir up hatred, not to abusive or insulting language in itself.

I enclose with this letter a more detailed explanatory note on the effect of these amendments, together with a ‘Keeling Schedule’ which shows how Part 3A of the Public Order Act would appear in its amended form.

Protection of children from sex offenders (amendments 12, 31, 32, 34, 39-41, 50, 51, 53, 54, 55, 59 and 60 in Annex C)

These amendments address 5 separate issues. The first two implement actions identified by the Home Office review, published in June 2007. The amendments:

- introduce a legal duty on MAPPA authorities to consider the disclosure of information about convicted child sex offenders to members of the public in all cases. Where the MAAPA authorities believe that a child sex offender poses a risk of causing harm to children and the disclosure of information is necessary for the purposes of child protection, there will be a presumption in favour of disclosure;

- enable the Secretary of State to make regulations specifying additional information or changes in circumstances that a person subject to the notification requirements under the Sexual Offences Act 2003 must notify to the police;
- confer on courts the discretion to impose a Sexual Offences Prevention Order on an offender convicted of a sexual offence listed in Schedule 3 to the Sexual Offences Act 2003 Order where a relevant threshold (eg. minimum sentence length) has not been met, provided there is evidence of risk of serious sexual harm;
- Close a loophole in the offence of meeting a child following sexual grooming so that it captures circumstances where an offender entices a child to travel to meet him, but where the meeting does not take place because of police intervention; and
- Remove the dual criminality requirement in respect of serious sexual offences against children under 18 committed abroad but prosecuted in this country (this will support ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation).

Adoption and sexual history (amendment 59 in Annex C)

These amendments will:

- make it an offence for an adoptive parent to have a sexual relationship with their adoptive child when he/she is aged 18 or over; and
- correct discrepancies in the treatment of sexual relationships between adopted people and their birth and adoptive families depending on whether a person was adopted before, or after, commencement of the Adoption and Children Act 2002.

Investigatory powers of the Serious Fraud Office (amendment 47 in Annex C)

This amendment will extend the Serious Fraud Office's investigatory powers (under section 2 of the Criminal Justice Act 1987) to the vetting stage in any cases involving allegations of bribery or corruption of overseas officials. They implement a proposal to this effect in the Home Office consultation paper 'Reform of the Prevention of Corruption Acts and SFO Powers in Cases of Bribery of Foreign Officials' published in December 2005.

Increase in sanctions against shops selling tobacco to under aged persons (amendments 38 and 56 in Annex C)

These amendments aim to strengthen the sanctions against retailers who repeatedly flout the law by selling cigarettes to persons under the minimum age (which was raised to 18 on 1 October 2001). The amendments will confer powers on magistrates' courts to impose prohibition orders on retailers who have been found to have repeatedly sold tobacco to under-aged children and young people. Retailers subject to such an order would be barred from selling tobacco products for up to one year. Violation of an order would make the retailer liable to a fine of up to £20,000.

Retrial bail hearings (amendment 4 in Annex B)

This is a technical amendment to the provisions in the Criminal Justice Act 2003 governing the retrials (following acquittal) for serious offences. The Act sets strict time limits for bringing a person charged with an offence before a Court to consider whether he or she should be bailed or remanded in custody. For the purpose of calculating the time limit, the Act excludes

Sundays and bank holidays; the amendment would also exclude Saturdays given that Crown Courts do not open on such days.

Definition of a young offender institution (amendment 26 in Annex C)

This is a technical amendment to the definition of a young offender institution (YOI) (contained in section 43 of the Prisons Act 1952). The change in definition will enable the Secretary of State subsequently to exercise an order making power under section 41(6) of the Crime and Disorder Act 1998 which would allow the Youth Justice Board to exercise, concurrently with the Secretary of State, power to enter into contracts for the provision and running of YOIs.

I expect to table further amendments in the coming days, including the amendments to the Criminal Appeals Acts, the Repatriation of Prisoners Act and the Youth Justice and Criminal Evidence Act which I referred to in my letter of 13 October.

To assist the Committee's scrutiny of the Bill I also attach a number of 'Keeling Schedules' showing how existing statutory provisions that are to be amended by provisions in the Bill would appear in their amended form.

I am copying this letter and enclosure to members of the Committee, Nick Herbert, Evan Harris, Alan Beith (Justice Select Committee), Keith Vaz (Home Affairs Select Committee), Kevin Barron (Health Select Committee), Lord Kingsland, Lord Thomas of Gresford and the Scrutiny Unit. I am also placing a copy in the Library and on the Ministry of Justice website.

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a smaller, more complex signature.

**DAVID HANSON MP
MINISTER OF STATE**



Ministry of JUSTICE

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Sir Nicholas Winteron MP and Edward O'Hara MP
Chairmen
Criminal Justice and Immigration Bill Committee
House of Commons
London
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22 November 2007
Dear Sir Nicholas and Mr O'Hara,

CRIMINAL JUSTICE & IMMIGRATION BILL: COMMITTEE STAGE AMENDMENTS

I am writing to let you have details of the further Government amendments (copy attached for ease of reference) to the Bill which I have tabled today for Committee Stage.

The amendments address the following matters:

Parallel provisions for Northern Ireland and armed services

These amendments:

- Make equivalent provision for Northern Ireland to Part 4 by placing the Prisoner Ombudsman for Northern Ireland on a statutory footing (annex A); and
- Make equivalent provision for the Service Courts in relation to 26 (appeals against convictions), 28 (review of sentence on reference by the Attorney General) and 62 (compensation for miscarriages of justice) (these amendments will be tabled shortly);

Evidence in respect of previous sexual history (amendments 1 and 3 in Annex B)

These technical amendments correct a couple of minor flaws in the Youth Justice and Criminal Evidence Act 1999 affecting protections for complainants in sexual offence cases covering cross-examination on previous sexual history; special measures applications and also a provision preventing cross-examination in person of child witnesses and adult complainants in all sexual offence cases prosecuted under pre-Sexual Offences Act 2003 legislation. The amendments are deemed to have effect as from 1 May 2004 when the Sexual Offences Act came into force; this gives statutory effect to the Court of Appeal recent judgment in the case of *R v Cartwright* which held that section 41 of the Youth Justice and Criminal Evidence Act applies to all prosecutions for sex offences, whether under the Sexual Offences Act 2003 or earlier legislation.

Amendments to the Criminal Appeals Act 1968

These essentially technical amendments to the Criminal Appeals Act 1968, and associated legislation, will strengthen the efficient and effective operation of the Court of Appeal; they reflect proposals put to us by the senior judiciary. The amendments would:

- A. empower the Court of Appeal, when it quashes a conviction, to re-sentence the appellant for any other offence for which he was sentenced at the same time by the court below;
- B. transfer to the Court of Appeal certain powers relating to the renewal and termination of interim hospital orders (where such orders are originally imposed by the Court of Appeal) which are currently exercised by the courts below; and to allow a single judge to exercise the renewal powers;
- C. extend the powers of the Court of Appeal to compel the production of documents and the attendance of witnesses and ensure that evidence can be received by the Court for the purpose of dealing with an application for leave to appeal;
- D. allow a single judge to exercise the power to give leave to appeal in certain interlocutory appeals;
- E. allow a single judge to issue directions which cannot be appealed to a full Court of Appeal;
- F. ensure that, when the prosecution successfully appeals to the House of Lords, the offender can be compelled to serve out any remainder of his sentence unless the Court of Appeal has made an order to the contrary;
- G. extend (from 28 to 56 days) the time during which a sentence imposed by the Crown Court can be altered by that Court; and
- H. impose a time limit (of 28 days) on the trial judge's power to grant a certificate of fitness for appeal.

Parallel provision is also made for Northern Ireland. (These amendments will be tabled shortly);

Amendment to defence disclosure requirements in the Criminal Procedure and Investigations Act 1996 (Annex C)

As part of the disclosure scheme introduced by the Criminal Procedure and Investigations Act 1996 (and amended by the Criminal Justice Act 2003), in Crown Court cases, the defence are subject to a mandatory requirement to serve the court and the prosecution with a statement setting out the nature of their defence and matters on which they take issue with the prosecution. This must be served within 14 days of receiving initial disclosure of relevant unused prosecution material. The sanction for failure to comply is the risk of adverse comment and/or an adverse inference being drawn by the jury. The purpose of the defence statement is both to assist the prosecution identify whether any further unused material should be disclosed and to assist the court in managing the trial by identifying the issues in dispute and so enabling the trial to be effectively focussed on these.

Despite these requirements, there continues to be a problem with late and inadequate defence statements, particularly in trials of terrorist and other complex cases resulting in unnecessary trial delays. This was commented upon in Observations made by the trial judge

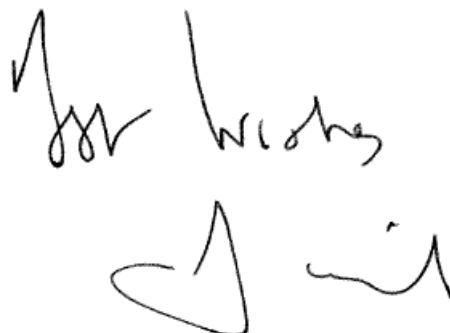
in the case of Ibrahim and others at Woolwich Crown Court on 11 July 2007. To address this, the propose amendment to the Criminal Procedure and Investigations Act will require the defence to disclose before the trial, particulars of its own factual case.

Miscellaneous

These technical amendments to:

- clause 128 is consequential upon the amendments previously tabled to clauses 76 to 81 (mutual recognition of financial penalties) (Amendment 2 in Annex B);
- Schedule 22 will delete paragraph 12 of that Schedule (trial or sentencing in the absence of the accused in magistrates' court); the paragraph will no longer be needed if the Committee agrees Government amendment 203 to clause 57 (Amendment 4 in Annex A);and
- clause 127 will ensure that amendments made by the Bill to existing legislation which already extends beyond the UK has the same extent as that legislation (this amendment will be tabled on Monday).

I am copying this letter and enclosure to members of the Committee, Lord Kingsland, Lord Thomas of Gresford and the Scrutiny Unit. I am also placing a copy in the Library and on the Ministry of Justice website.

A handwritten signature in black ink, appearing to read 'David Hanson', written in a cursive style.

**DAVID HANSON MP
MINISTER OF STATE**



Edward Garnier QC MP
House of Commons
LONDON
SW1A 0AA

19th
December 2007

CRIMINAL JUSTICE & IMMIGRATION BILL: REPORT STAGE AMENDMENTS

I am writing to let you and other opposition spokesmen have details of Government amendments to the Bill for Report Stage on 9 January. Many of the amendments respond to points raised in Committee and which Maria Eagle, Vernon Coaker or I undertook to consider further. I attach a copy of those amendments I have tabled today.

The amendments address the following matters (references to clause numbers are to those in the Bill as amended in Committee).

Youth Rehabilitation Orders: Intoxicating substance misuse requirement (amendments to clauses 1 and 7 and to Schedule 1)

The Bill already provides that one of the requirements that a court may attach to a Youth Rehabilitation Order (YRO) is a drug treatment requirement. In Committee, amendments were tabled seeking to add either a substance treatment requirement or an alcohol treatment requirement. In response I agreed to consider amending the YRO provision to include such a requirement (Official Report, Public Bill Committee, 23 October 2007, col. 208). These amendments insert a new intoxicating substance treatment requirement into Part 1. I have concluded that it would be sensible to retain the existing drug treatment, and associated drug testing, requirements; accordingly the new requirement will cover other intoxicating substances, including alcohol.

Purpose of sentencing (amendments to clause 9)

Clause 9 provides that when sentencing young offenders the court must have regard to the principal aim of the Youth Justice System, namely 'to prevent offending by children and other persons aged under 18'. In Committee, I undertook to reflect on one aspect of new clause 13 (tabled by David Heath) which sought to clarify that the reference to the prevention of offending includes the prevention of re-offending (Official Report, Public Bill Committee, 25 October 2007, col. 320). I agree that this would be a helpful clarification and these amendments amend clause 9 accordingly.

Indeterminate sentences: determination of tariffs (amendment to clause 12)

Clause 12 confers greater discretion on the judiciary in setting the tariff when they are imposing an indeterminate sentence in exceptionally serious cases. In Committee, I expressed some sympathy for amendment 137 (tabled by David Heath) which sought to limit the change to offenders over 18. I agree that tariff regimes should bear less heavily on young offenders on the grounds that they are more subject to change and development than adult offenders. The Criminal Justice Act 2003 already makes such a distinction in relation to murder tariffs. The amendment to clause 12 will disapply the discretion conferred by the clause when a person under 18 is being sentenced.

Early removal of prisoners from the United Kingdom (amendments to clauses 19 and 20 and to Schedule 34)

These clauses amend the criteria for eligibility for the early removal scheme, under which offenders liable to be deported may be removed from custody early. In Committee (Official Report, Public Bill Committee, 20 November 2007, col. 362-363) I advised that in amending the Criminal Justice Act 2003, clause 20 inadvertently removes the requirement that offenders must serve at least a quarter of their sentence before they can be removed under the scheme and that I would bring forward an amendment to rectify this. In addition to addressing this point, the amendments make minor technical changes to both clauses 19 and 20.

Referral Orders (New clauses (*Referral orders: power to revoke a referral order*) and (*Referral orders: extension of period for which young offender contract has effect*) and amendments to Schedule 32)

This clause extends the circumstances when a Referral Order (the main disposal for young offenders before the courts for the first time) may be imposed. In Committee, David Burrowes argued for courts to be given some latitude to extend the duration of a Referral Order by up to 3 months where circumstances require. I indicated that I saw some merit in the proposal and undertook to consider it in detail (Official Report, Public Bill Committee, 20 November 2007, col. 386). New Clause (*Referral orders: extension of period for which young offender contract has effect*) would confer such latitude on the court and thereby avoid the need in some cases to revoke a Referral Order which had not been completed in the required time and re-sentence the offender. As I indicated in Committee, to ensure that Referral Orders are completed within a reasonable time frame we do not propose to confer on courts the power to extend the current overall 12 month maximum duration for such orders.

As a complement to this power, we also propose to allow a court to revoke a Referral Order in the interests of justice, for example where the offender has responded exceptionally well. This is a power which will apply to the Youth Rehabilitation Order and there is an existing power to revoke a Reparation Order. New Clause (*Referral orders: power to revoke a referral order*) amends the Powers of Criminal Courts (Sentencing) Act 2000 to this end.

Her Majesty's Commissioner for Offender Management and Prisons and The Northern Ireland Commissioner for Prison Complaints (amendments to clauses 36, 37, 39, 40, 42, 49, 51, 54, 55, 59, 60, 61, 65, 67, 72, 77 and 79, and Schedule 9 and new clause (*Amendments consequential on Part 5*))

These amendments make minor drafting, technical and consequential amendments to Parts 4 and 5. In addition, with the agreement of the Scottish Executive, the amendments clarify the Commissioner's remit to investigate deaths in immigration custody in Scotland while

safeguarding the roles of the Lord Advocate and procurator fiscal in relation to criminal investigations and the investigation of deaths.

In Committee (Official Report, Public Bill Committee, 22 November 2007, col. 463-465) there was some discussion of clause 47 which makes provision for the Commissioner to co-operate with other specified ombudsman. David Heath suggested that the Independent Police Complaints Commission should be referred to on the face of the clause. We agree that it would be sensible to do so and aim to table further amendments for Report to address this point. We will, at the same time, aim to make some technical changes to the clause to ensure that the joint working can operate as intended and also add the Commissioner for Older People in Wales to the list of specified ombudsman.

SFO's pre-investigation powers in relation to bribery and corruption (amendment to clause 90)

This provision, which was added to the Bill in Committee, is currently confined to England and Wales and Northern Ireland, whereas the Serious Fraud Office's existing investigatory powers under section 2 of the Criminal Justice Act 1987 extend throughout the UK. With the agreement of the Scottish Executive, we propose to amend the clause so that the extended powers of the SFO apply throughout the UK.

Content of an accused's defence statement (amendment to clause 91)

Clause 91, which was added to the Bill in Committee, extends the requirements as to the content of the statement which the accused must submit before a case comes to trial in the Crown Court, and may submit voluntarily in magistrates' courts cases. Under the clause, defence statements must set out not only the information required at present – including the defences on which the accused intends to rely and matters of fact on which he takes issue with the prosecution – but also particulars of the matters of fact that he intends to rely on in his defence. This consequential amendment provides that, as with the existing defence statement duties, where the accused fails to comply with the new requirement the court or any other party can both comment and draw adverse inferences in deciding whether the accused is guilty.

Street offences: orders to promote rehabilitation (amendments to clause 105 and Schedule 32)

The Bill removes the outdated term 'common prostitute' and introduces a new order, as an alternative to a fine, for those convicted of soliciting or loitering. The purpose of the new order is to help an offender to address the causes of his or her offending behaviour. The amendment to clause 105 clarifies the terminology used to describe the new order.

The amendment to Schedule 32, which in turn amends the Bail Act 1976, provides that the usual rules on bail for non-imprisonable offences (which essentially say that the defendant has a right to bail unless certain criteria are met) will apply when a magistrate is dealing with an offender who has breached the new order.

Offences relating to nuclear material and nuclear facilities (amendment to Schedule 23)

Schedule 23 currently includes a power to extend certain provisions of the Customs and Excise Management Act 1979 (CEMA) to any of the Channel Islands, the Isle of Man or any British overseas territory. The Isle of Man Government has indicated that it would prefer to

amend its own equivalent of CEMA and not to have the 1979 Act extended to the Isle of Man; the amendment to Schedule 23 makes the appropriate change.

Imprisonment for unlawfully obtaining etc. personal data (amendment to clause 109)

This technical amendment removes the transitional provision in new section 60(3B)(b) of the Data Protection Act 1998. This is no longer required as the section 45(1) of the Criminal Proceedings etc (Reform) (Scotland) Act 2007 is now in force.

Mutual recognition of financial penalties (amendments to clauses 110, 112, 119, 121 and 174 and to Schedule 25)

These amendments make minor drafting and technical amendments to these provisions.

Violent Offender Orders and Sex Offender Prevention Orders – notification requirements (amendments to clauses 135, 140, 167, 170 and 174 and to Schedule 33)

Under the Bill it is an offence for a person subject to a Violent Offender Order to fail to comply, without reasonable excuse, with any prohibition, restriction or condition attached to the Order or with the notification requirements. At present, the offence is confined to England and Wales. Following discussions with the Scottish Executive and the NIO it is now proposed to extend this so that failure to comply with the terms of an Order while in Scotland or Northern Ireland would also be an offence. This touches on a point David Heath raised in Committee on 27 November (Official Report, col 616).

In Committee we amended the Bill to introduce a power to add to the notification requirements in respect of Sex Offenders and those subject to Violent Offender Orders by secondary legislation. We propose to make two changes to these provisions. First, we wish to provide for a requirement on homeless persons subject to notification requirements to report more regularly to a police station. In the case of Sex Offenders, the need for this amendment has arisen from the Review of the Protection of Children from Sex Offenders and we consider it would be sensible to impose the same requirement on violent offenders.

Second, as currently drafted, the new order-making powers are subject to the negative resolution procedure. On reflection, we have concluded that affirmative procedure would be more appropriate given the order-making powers could be used to impose quite onerous additional requirements on sex and violent offenders.

Police misconduct and performance procedures (amendments to Schedule 28)

Schedule 28 provides, amongst other things, for the Home Secretary to issue guidance concerning disciplinary proceedings to police authorities, chief constables and members of police forces. This amendment would extend this provision so that guidance may also be given to police staff.

Disclosure of information about convictions of child sex offenders to members of the public (amendments to clause 165)

This clause places a duty on MAPPA authorities to consider the disclosure of a child sex offender's convictions to members of the public and introduces a presumption in favour of disclosure if a sex offender poses a risk of causing harm to any child or children generally. In Committee, David Heath tabled an amendment to the Government's new clause which,

amongst other things, sought to alter the disclosure test so that it referred to 'serious harm'. Vernon Coaker undertook to consider this point (Official Report, 29 November 2007, col 696). It is indeed the case that the Home Office Review of the Protection of Children from Sex Offenders referred to the risk of 'serious' harm to a child or children generally, accordingly we are content to make this change.

Extent/Commencement (amendments to clauses 174 and 175)

These amendments make minor technical amendments to these clauses.

New Provisions

Self-defence (New clause (*Reasonable force for purposes of self-defence etc.*) and amendments to clause 174 and to Schedule 33)

As Jack Straw announced at Second Reading, we are also tabling amendments on self-defence. New clause (*Reasonable force for purposes of self-defence etc.*) is the key amendment in this group. The new clause is intended to improve understanding of how the current law should work in practice. It uses key elements of existing common law to build a clearer picture of how and when the defence is to be employed, whilst retaining the integrity of the current test. It aims to give the public confidence that the law is on their side if they act reasonably using force in self defence, including the fact that:

- they acted instinctively;
- they feared for their safety or that of others, and acted based on their perception of the threat faced and the scale of that threat; and,
- the level of force used was not excessive, gratuitous or disproportionate in the circumstances as they viewed them.

The new clause retains a single test for self defence which can be applied to the full range of circumstances.

We have arrived at the new clause through an iterative process and very close engagement with interested parties, including senior practitioners. Discussions with you and other Opposition colleagues to date have been helpful in refining the approach.

Repatriation of Prisoners

These amendments to the Repatriation of Prisoners Act 1984 will enable the UK to ratify the Additional Protocol to the Council of Europe Convention on the Transfer of Sentenced Persons. In particular, the amendments provide:

- for the issue of a warrant to authorise execution abroad of a sentence imposed in the UK where an individual has fled to that other jurisdiction;
- for the issue of a warrant to authorise execution in the United Kingdom of a sentence imposed in a jurisdiction from which an individual has fled;
- a power to arrest and detain in the United Kingdom, subject to appropriate safeguards, a person who is suspected of having fled the execution of a sentence imposed abroad;

- for time spent in detention under the power of arrest is deducted from the length of the sentence to be served in the UK following formal transfer; and,
- for a warrant to authorise a prisoner to be taken outside the United Kingdom by the UK authorities, rather than requiring handover to the enforcing authorities within the UK.

With the agreement of the Scottish Executive, the amendments also extend to Scotland section 44 of the Police and Justice Act 2006 which amended the Repatriation of Prisoners Act to provide for the transfer of prisoners under international agreements without their consent.

Other matters

Following the concerns raised in Committee about the ambit of the new offence of possession of extreme pornographic images (clause 94), we are continuing to examine how best to clarify the offence so that it is clear that it is limited to extreme and explicit pornographic images. If it does not prove possible to table amendments in time for Report stage in the Commons we will seek to return to this provision in the Lords.

Finally, you will be aware that Jack Straw announced in his oral statement on 5 December that we will be bringing forward amendments to the Bill to make the changes to the sentencing framework proposed in Lord Carter's Review of Prisons. The proposed changes are summarised in Annex E to Lord Carter's report. I aim to table these amendments in due course.

I am copying this letter and enclosures to former members of the Public Bill Committee, Andrew Dismore (Chairman of the Joint Committee on Human Rights), Lord Kingsland and Lord Thomas of Gresford. I am also placing a copy in the Library and on the Ministry of Justice website.

Copies also go to Roger Gale, Patrick Mercer, Anne McIntosh and Shailesh Vara as previous sponsors of Private Members' Bills on self-defence.

A handwritten signature in black ink, appearing to read 'D. Hanson', written in a cursive style.

**DAVID HANSON MP
MINISTER OF STATE**



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28 January 2008

CRIMINAL JUSTICE AND IMMIGRATION BILL: LORDS COMMITTEE STAGE AMENDMENTS

I am writing to let you have details of amendments for Committee stage which I have tabled today.

You will recall that at Second Reading on 22 January I announced that the Government would be withdrawing Parts 4 (Her Majesty's Commissioner for Offender management and Prisons) and 5 (The Northern Ireland Commissioner for Prison Complaints). The amendments accordingly seek to remove clauses 50 to 97 and Schedules 9 to 17 and make consequential amendments to clauses 196 and 200 and to the long title.

As I indicated at Second Reading, the Government remains committed to placing the office of the Prison and Probation Ombudsman and that of the Prisoner Ombudsman for Northern Ireland on a statutory footing. Removing these provisions from the Bill will allow us time to properly consider, in consultation with the Ombudsmen and other interested parties, what changes may be necessary to address the concerns they and others have raised.

I am copying this letter to Lord Thomas of Gresford, Baroness D'Souza, Lord Ramsbotham, Baroness Stern, Edward Garnier and David Heath. I am also placing a copy on the Ministry of Justice website and in the libraries of both Houses.

PHILIP HUNT



Rt Hon the Lord Kingsland QC
House of Lords
London
SW1A 0PW

4 February 2008

CRIMINAL JUSTICE AND IMMIGRATION BILL: LORDS COMMITTEE STAGE AMENDMENTS

I am writing to let you have details of amendments to Part 1 of the Bill for Committee stage which I tabled on Friday.

These amendments cover two issues.

The first group of five amendments make technical amendments to armed forces legislation consequential on the provisions in Part 1 of the Bill. I aim to table further such consequential amendments in respect of other Parts of the Bill in due course.

The amendments to clause 7 remove from this interpretation clause the entry which provides that a "court" does not include a service court; on reflection we have concluded this is unnecessary given that in the context of the provisions of Part 1 it is already sufficiently clear that references to a "court" is not intended to include a service court. Such an approach is commonly adopted in other criminal justice legislation. The amendments to Schedule 1 ensure that the reference to a detention and training order in paragraph 30(2) includes the equivalent order under the Armed Forces Act 2006 (where there is a power for service courts to make a detention and training order which essentially replicates the civilian equivalent). The amendments to Schedule 36 make consequential amendments to the Armed Forces Act as a result of amendments made by Part 1 of the Bill to Schedule 8 to the Criminal Justice Act 2003.

The second group of technical amendments seek to align the provisions in Part 1 of the Bill with the new arrangements contained in the Offender Management Act 2007 for the provision of probation services. The 2007 Act will replace the current probation structure of local probation boards established by Part 1 of the Criminal Justice and Court Services Act 2000. The new arrangements are being implemented in phases; the first phase is to be implemented on 1 April 2008. This means that there will be a mixed economy of probation providers and local probation boards for a period of time. There are currently a number of references to local

probation boards and officers of those boards in Part 1 of the Bill. We need to amend these so as to refer to probation providers alongside all references to local probation boards.

I am copying this letter to Lord Thomas of Gresford, Baroness D'Souza, Lord Ramsbotham, Baroness Stern, Edward Garnier and David Heath. I am also placing a copy on the Ministry of Justice website.

A handwritten signature in black ink, appearing to read 'Philip Hunt', with a large, sweeping flourish at the end.

PHILIP HUNT



Rt Hon the Lord Kingsland QC
House of Lords
London
SW1A 0PW

8 February 2008

Dear Chris Toole

CRIMINAL JUSTICE AND IMMIGRATION BILL: LORDS COMMITTEE STAGE AMENDMENTS

I am writing to let you have details of further amendments to the Bill for Committee stage which I tabled today.

Indeterminate sentences for public protection (clauses 13, 15 and 17)

Clause 17 amends section 229 of the Criminal Justice Act 2003 which deals with the assessment of dangerousness in connection with public protection sentences. As currently drafted the amendment to section 229 would allow the court to take into account information available to it about any previous UK convictions. At Commons Report Edward Garnier asked why the provision was limited to UK convictions (Hansard, 9 January 2008, col 382); David Hanson undertook to consider the point. While the provision does not prevent the court from considering overseas convictions, we see merit in making express provision for this and propose to amend clause 17 to this end. These amendments would also broaden the previous convictions that a court may take into account so that it covers previous findings of guilt in service disciplinary proceedings.

The amendments to Schedule 6 add inchoate offences to the list of offences in the new Schedule 15A of the Criminal Justice Act 2003. This new Schedule contains serious offences which enable a court to impose on an offender, on subsequent conviction, a public protection sentence although his or her immediate offence does not justify a notional minimum term of 2 years.

CPS designated caseworkers (clause 105 and Schedule 38)

Clause 105 extend the powers of CPS designated caseworkers so that they can appear in a wider range of criminal hearings, thus enabling experienced Crown Prosecutors to devote more time to more complex and sensitive cases. We have listened carefully to the concerns that have been expressed about this provision both in and outside Parliament and, in

particular, to the concern that under the clause the extended remit of designated caseworkers would be drawn too widely. With this in mind, the amendments to clause 105 will limit the trial element of the clause so restricting designated caseworkers statutory powers to undertaking trials of summary only offences in the magistrates' courts.

In addition to this proposed change to the Bill, the CPS and the Institute of Legal Executives (ILEX) have agreed in principle that later this year that CPS designated caseworkers will be admitted into the Institute. Under these proposals, CPS caseworkers who have passed the ILEX accredited training programme and have been designated by the Director of Public Prosecutions to present hearings in magistrates' courts, will become CPS members of the Institute. Membership of ILEX will place CPS designated caseworkers within its regulatory framework and subject to the Institutes Code of Conduct.

Possession of extreme pornographic images (clauses 113-116)

These clauses introduce a new offence of possession of extreme pornographic images. At Second Reading, I acknowledged the concerns that the offence went too wide and undertook to bring forward amendments to clarify the drafting of the offence. The amendments to clauses 113 and 114 will clarify the threshold of the offence and sharpen the definitions of the extreme material to be covered.

In clause 113 the amendments will tighten up the drafting in respect of the definition of pornography (the first element of the offence) to make it clear that the question whether or not material is pornographic is a matter which a jury can take a view on by reference to the nature of the material before them, without having regard to the intentions of those who produced it. We propose to introduce an additional (third) element to the offence relating to the obscene character of the material to give greater certainty in respect of our policy intention to cover only material which it would be illegal to publish here. Further, we have proposed changes which we believe sharpen the definition of what was the second element of the offence, namely the listed extreme acts. We have removed all occurrences of the words "appears to" and have provided that the acts depicted must be "explicit and realistic". This should ensure that only graphic scenes are caught. The amendments in clause 114 are consequential on those to the preceding clause and make no changes of substance.

We consider that these amendments should put beyond doubt that extracts from popular mainstream films will not be caught by the offence.

Industrial action by prison officers (clause 190)

Clause 189 restores the statutory prohibition on inducing prison officers taking industrial action. We have made it clear that this is a reserve power and, to this end, clause 190 enables the statutory prohibition to be suspended should the POA voluntarily sign up to legally binding undertaking not to take industrial action. The power to suspend, and if necessary later revive, the statutory prohibition is currently exercisable by order subject to the negative resolution procedure. The Lord Chancellor undertook at Commons Report Stage (Hansard, 9 January 2008, col. 333) to strengthen the level of parliamentary oversight by providing for the affirmative resolution to apply. The amendment to clause 190 gives effect to this undertaking. You will be aware that the Delegated Powers and Regulatory Reform Committee have welcomed this change (4th Report, Session 2007/08, paragraph 19). No parliamentary procedure (negative or affirmative) would be required to bring the provision initially into force on Royal Assent.

Disclosure of information about child sex offenders (clause 191)

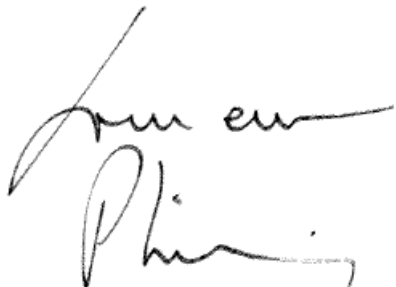
The amendments to clause 191 clarify our intention in respect of the new duty on MAPPA responsible authorities. We have acknowledged that the term 'children generally' could be interpreted as meaning that information should be disclosed in a wider degree of circumstances than the Home Office Review of the Protection of Children from Sex Offenders intended in developing the use of controlled disclosure. While we do not believe it would have this effect, we have, nonetheless, decided to replace this phrase to make clear that it is not our intention that this clause should lead to unduly widespread disclosure. We have also decided to remove sub-clause 4(b) which indicates that disclosure can be made to those who are not a member of the family of the child who is at risk. This also responds to concerns that this clause could be interpreted in a way that results in unduly widespread disclosure. This was certainly not our intention, and we do not believe that the clause, as drafted, would lead to unduly widespread disclosure. Nonetheless to address fears in this regard we are amending the Bill to remove this particular sub-clause.

Powers of the Attorney General in respect of the Serious Fraud Office

The Justice (Northern Ireland) Act 2002 helped pave the way for the devolution of criminal justice matters in Northern Ireland by providing for the appointment of an Advocate General for Northern Ireland and the removal of the Attorney General's responsibilities for prosecutorial matters either by delegating them to the DPP for Northern Ireland or by transferring them to the Advocate General. The 2002 Act inadvertently failed to make a consequential amendment to the provisions of the Criminal Justice Act 1987 in so far as they relate to the powers of the Attorney General in respect of the Serious Fraud Office. It would be contrary to the Government's settled policy for the Attorney General to continue to exercise superintending powers over the SFO in Northern Ireland following devolution of justice matters which is currently provisionally scheduled for May 2008. An amendment to Schedule 36 of the Bill will, in turn, make the necessary technical amendment to the 1987 Act.

The other amendments are of a technical and drafting nature; these predominately make consequential changes to armed forces legislation arising out of the provisions in the Bill.

I am copying this letter to Lord Thomas of Gresford, Baroness D'Souza, Lord Ramsbotham, Baroness Stern, Lord Graham of Edmonton, Baroness Kennedy of The Shaws, Lord Lloyd of Berwick, Edward Garnier and David Heath. I am also placing a copy on the Ministry of Justice website.

A handwritten signature in black ink, appearing to read 'Philip Hunt', written in a cursive style.

PHILIP HUNT



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Rt Hon the Lord Kingsland QC
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28 February 2008

**CRIMINAL JUSTICE AND IMMIGRATION BILL: LORDS COMMITTEE STAGE
AMENDMENTS – ABOLITION OF COMMON LAW OFFENCES OF BLASPHEMY AND
BLASPHEMOUS LIBEL**

You will recall that at 2nd Reading on 22 January, I gave notice that, subject to the outcome of our consultation with the Church of England, the Government intended to bring forward amendments to abolish the common law offences of blasphemy and blasphemous libel. The Archbishops of Canterbury and York have now reaffirmed the Church's long standing view that in the right context, namely the enactment of effective legislation outlawing the incitement of religious hatred, the blasphemy laws could be abolished. While it is fair to say that the Church has reservations about proceeding in the current wide-ranging Bill, and before the new offences of incitement to religious hatred have bedded in, the Archbishops have indicated the Church does not oppose abolition of the offences of blasphemy and blasphemous libel now.

The Government considers that this is the appropriate moment for Parliament to reach a settled conclusion on this issue and I have therefore now tabled amendments to repeal the two common law offences and make consequential repeals of section 1 of the Criminal Libel Act 1819 and sections 3 and 4 of the Law of Libel Amendment Act 1888. The amendments also provide for the repeals to come into force 2 months after Royal Assent.

I am copying this letter to Baroness Andrews, Lord Thomas of Gresford, Baroness D'Souza, Edward Garnier and David Heath. A copy also goes to Evan Harris who tabled a similar amendment at Commons Report Stage and to Lord Avebury, the Earl of Onslow and Baroness Stern who already have similar amendments down for Lords Committee stage. I am also placing a copy on the Ministry of Justice website.

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Rt Hon the Lord Kingsland QC
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29 February 2008

Dear Lord Kingsland

CRIMINAL JUSTICE AND IMMIGRATION BILL: LORDS COMMITTEE STAGE AMENDMENTS

I am writing to let you have details of further Government amendments I have tabled yesterday.

Following my announcement in Committee yesterday that the Government would be withdrawing the provisions relating to criminal appeals (in clauses 42 and 43) and prostitution in order that the Bill may receive Royal Assent by 8 May, I have given notice of my intention to oppose the question that clauses 123 to 125 and Schedule 25 stand part of the Bill. There are associated consequential amendments to Schedules 36, 37 and 38.

The amendments to clause 178 and to Schedules 32 and 33 (police misconduct procedures) implement a recommendation made by the Delegated Powers and Regulatory Reform Committee. I attach a copy of my response to the Committee which provides further details.

The amendments to Schedule 33 also ensures that the Secretary of State has the vires to specify who apart from a person's legal representative may make representations to the Independent Police Complaints Commission on behalf of a person under investigation. It is envisaged that police friends will be entitled to do so. The amendments also provide that the new requirements to be placed on an investigator, under new paragraphs 19A to 19D of Schedule 3 to the Police Reform Act 2002 (inserted by paragraph 3 of Schedule 33), will only apply to investigations involving police officers or special constables. These requirements include, for example, the need for the investigator to serve a severity assessment on the person being investigated, setting out whether the conduct if proved would amount to misconduct or gross misconduct. Police staff are not expected to be covered by these provisions as their terms and conditions are governed by their contracts with the force concerned rather than by uniform regulations.

I am copying this letter to Baroness Andrews, Lord Thomas of Gresford, Baroness D'Souza, Lord Goodhart, Lord Faulkner of Worcester, Baroness Miller of Chilthorne Domer, Baroness Stern, Baroness Howe of Idlicote, Edward Garnier and David Heath. I am also placing a copy on the Ministry of Justice website.

A handwritten signature in black ink, appearing to read 'PHILIP HUNT', with a stylized, cursive flourish at the end.

PH. PHILIP HUNT

(Approved by the Minister and signed in his absence)