



Ministry of JUSTICE

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Edward Garnier QC MP
House of Commons
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Dear Mr Garnier

CRIMINAL JUSTICE & IMMIGRATION BILL: COMMONS CONSIDERATION OF LORDS AMENDMENTS

I am writing to let you have details of the Government amendments I have tabled for Commons Consideration of Lords Amendments on 6 May.

Suspended Sentence Orders (Lords amendments 9, 301, 327)

Clause 10 of the Bill amends section 189 of the Criminal Justice Act 2003 so as to abolish the power of the court to suspend a custodial sentence where it is passing a sentence of imprisonment for a summary-only offence. The Government contends that since the introduction of suspended sentence orders in 2003 the courts have been using the new suspended sentence for substantial numbers of cases which would previously have received non-custodial sentences and that, once the option of passing such a sentence for summary only offences has been abolished, courts will by and large revert to community penalties in cases they would have previously passed a suspended sentence. The House of Lords disagreed with this view of the impact of the clause and contended that its effect would be to increase custody levels as, once the custody threshold had been passed, the courts would be obliged to pass an immediate custodial sentence. The Lords voted to remove the clause from the Bill at Report stage.

The Government proposes to invite Commons to disagree with the Lords amendment to remove clause 10, but to agree an amendment to the clause which seeks to respond to the concerns expressed during the debates in the Lords. The amendment would insert a new section 189A into the Criminal Justice Act 2003. New section 189A provides for a power to suspend the amendments to section 189 of the Criminal Justice Act 2003 made by clause 10: that is to say, it would restore the power to impose a suspended sentence order in summary only cases, if it should appear necessary to do so. Once the amendments to section 189 had been suspended, it would be open to the Secretary of State to revoke the original order, thereby restoring the effect of the amended section 189, that is to say restoring the abolition of suspended sentence orders for summary-only offences. The power to suspend and later revive the operation of section 189(1A) and (1B) may be exercised only once.

A parallel order-making power is to be inserted into section 196 of the Armed Forces Act 2006, as amended by paragraph 8 of Schedule 35 to the Bill, to enable service courts to keep in step with the implementation and possible suspension of amendments to the powers of magistrates' courts to suspend sentences.

Extension of powers of CPS Designated Caseworkers (Lords amendments 86-91)

Four opposition amendments were agreed by the Lords with the following effects:

- to provide for Designated Caseworkers to be subject to statutory regulation under the Legal Services Act;
- to restrict the trials remit of Designated Caseworkers so that they can only conduct proceedings in respect of non-imprisonable summary only offences; and,
- to limit the type of preventative civil orders in respect of which Designated Caseworkers can conduct proceedings.

The Government amendments in lieu address the substance of the Lords amendments. First, they would restrict the trials remit of Designated Caseworkers so that they can only conduct proceedings in respect of non-imprisonable summary-only offences, but include a power that would allow the restriction on conducting proceedings in respect of imprisonable summary offences to be lifted by order (subject to affirmative procedure). The amendments further provide that from 1 May 2011, Designated Caseworkers would cease to be exempt from the regulatory framework for persons who engage in legal activities provided for in the Legal Services Act 2007. It is anticipated that consequential amendments would be required to the 2007 Act to ensure that Designated Caseworkers could properly be catered for within the regulatory framework provided for by that Act. Consequently, an order-making power (subject to the affirmative procedure) would enable appropriate modifications to be made to the 2007 Act, and as necessary other enactments (including section 7A of the Prosecution of Offences Act 1985) to this end. We will invite the Commons to agree Lords amendment 90 which limited the type of preventative civil orders in respect of which Designated Caseworkers can conduct proceedings.

New Offence for the Unlawful Processing or Loss of Data (Lords amendment 115)

Lords amendment 115 seeks to introduce a new criminal offence for data controllers who intentionally or recklessly disclose personal information, repeatedly and negligently allow information to be disclosed, or intentionally or recklessly fail to comply with the data protection principles.

The Government intends to invite the House to disagree with this amendment but offer an amendment in lieu. The Lords' amendment is laudable in its intent, but its wide ranging application is capable of penalising minor and serious infringements alike.

Criminal proceedings require a significant call on the public purse in terms of court and judicial resources, and legal aid. A criminal conviction may also be a disproportionate response to the behavioural change that the Information Commissioner is trying to influence in information management.

In this respect, the Government believes that the Information Commissioner should have the necessary flexibility to influence change by being able to penalise offending data controllers in a manner that reflects the severity of their contravention. This can range from publicly naming and shaming offenders, which he is able to do, to imposing financial penalties, for which he currently does not have the power.

The Government amendment in lieu will seek to provide the Information Commissioner with a new power to impose and require a data controller to pay a monetary penalty where he is satisfied that there has been a serious contravention of the data protection principles and that the contravention was of a kind likely to cause damage or distress. The amendment will also provide for circumstances of deliberate contravention by a data controller and where the data controller was aware of the risks of contravention but failed to take reasonable steps to prevent that contravention.

We believe that this approach will be far more flexible and focused on the severity of the contravention. It will also enable the Commissioner to take remedial steps through civil sanction rather than criminal proceedings. A civil sanction is consistent with the Government policy on regulatory enforcement and it will carry the necessary appeal rights to the Information Tribunal. By way of further assurance, and to emphasise the flexibility of the proposed approach, the Data Protection Act does provide for criminal sanctions which the Information Commissioner will continue to consider as he thinks appropriate in each circumstance.

The Government has consulted the Information Commissioner over its amendment and I am pleased to say that he welcomes the flexibility that the proposed new powers will provide him with in his efforts to enforce the Data Protection Act more rigorously and proportionately.

Violent Offender Orders (Lords amendments 117 and 127)

Following a recommendation by the Joint Committee on Human Rights, the Government brought forward an amendment at Lords Report stage to Part 9 of the Bill which set out an indicative list of prohibitions, restrictions or conditions a court could impose in a Violent Offender Order or Interim Violent Offender Order. That amendment was not agreed by the Lords. The House instead agreed amendments 117 and 127 which provided for an exhaustive list of prohibitions, restrictions or conditions. Amendment 127 further provided for a power to amend the list of such prohibitions, restrictions or conditions by order subject to the affirmative resolution procedure. The Government intends to invite the Commons to disagree with Lords amendments 117 and 127, but agree Government amendments in lieu. The Government amendments mirror the effect of the Lords amendments but improve the drafting and ensure that Interim Violent Offender Orders are subject to the same exhaustive list as Violent Offender Orders (and thereby also meet the substance of the amendment to Lords amendment 130 tabled by Andrew Dismore and Evan Harris).

Release of prisons after recall (Lords amendment 28)

At Lords Third Reading, the Government agreed to the removal from clause 29 of two delegated powers that would have enabled the 28 day fixed term recall period to be varied by order. As a result of these amendments, clause 29(4) of the Bill is redundant; the Government amendment consequential upon Lords amendment 28 accordingly would delete this provision.

I am copying this letter to Nick Herbert, David Howarth, Andrew Dismore, Evan Harris, Lord Kingsland, Lord Thomas of Gresford and Baroness Miller. I am also placing a copy in the Library and on the Ministry of Justice website.

**DAVID HANSON MP
MINISTER OF STATE**

**(Approved by the Minister
and signed in his absence)**