

CORRESPONDENCE ABOUT GOVERNMENT AMENDMENTS - REPORT STAGE IN THE HOUSE OF LORDS

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

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

19 March 2008

Dear Lord Kingsland

**CRIMINAL JUSTICE AND IMMIGRATION BILL: LORDS REPORT STAGE AMENDMENTS
– PARTS 1 TO 3**

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

Youth Rehabilitation Order (Part 1)

Breach

The amendments to Schedule 2 confer discretion on the responsible officer not to take breach action (in the form of laying information about the breach before a court) following a third breach of a Youth Rehabilitation Order (YRO) if he or she is satisfied that there are exceptional circumstances. Greater discretion would also be conferred on magistrates' and Crown Courts so that in cases where they are satisfied that a young offender has breached a YRO without reasonable excuse they may either allow the existing YRO to continue in force unamended or take one of the other steps listed in paragraph 6(2) and 8(2) of the Schedule. The amendment responds to points raised in Committee in the debate on your amendments 29 and 32 (Official report, 5 February 2008, col. 1040-1045 and 6 February 2008, col. 1070-1076).

The two amendments to paragraph 9 of Schedule 2 are consequential upon adding an intoxicating substance treatment requirement to the list of requirements that may be attached to a YRO.

Custody threshold

The amendments to paragraph 79 of Schedule 4 clarify the existing custody threshold for young offenders by placing a requirement on the court when sentencing a young offender to custody to, in effect, consider whether it can instead pass a sentence consisting of a YRO with Intensive Supervision and Surveillance or with intensive fostering, and where it concludes that such a sentence cannot be justified to set out its reasons for coming to such a conclusion. The amendments respond to the recommendation made by the Joint Committee

on Human Rights set out at paragraph 1.17 of their 5th Report (Session 2007/08) and to the debate in Committee on Lord Onslow's amendment 5 (Official Report, 5 February 2008, col. 986-1001).

The other amendments to Schedules 1, 4 and 28 are minor technical and consequential amendments.

Purposes of sentencing (clause 9)

These amendments restructure the clause to remove the perceived hierarchy as between the matters which the court must have regard to when sentencing an offender under 18. Under the revised new section 142A of the Criminal Justice Act 2003 the court would be required to have regard to the principal aim of youth justice system, the welfare of the offender and the purposes of sentencing listed in subsection (4). The principal aim of the Youth Justice System, as set out in Crime and Disorder Act 1998, will remain unchanged. But you will see there is to be no reference to having regard "primarily" to the principal aim. The amendment responds to points raised in Committee in the debate on Lord Thomas of Gresford's amendment 65 (Official Report, 6 February 2008, col. 1095-1117).

Restriction on power to make a community sentence (clause 12)

These are technical amendments which correct drafting infelicities in clause 12(3) to (5). The amendment to paragraph 76 of Schedule 4 is consequential upon the first amendment to clause 12.

Indeterminate sentences (clause 15 and Schedule 5)

These are technical and drafting amendments.

The amendment to Schedule 5 clarifies the term 'imprisonment for life' as used in the new Schedule 15A to be inserted into the Criminal Justice Act 2003. An offender under 21 would be sentenced to custody for life or detention for life; the new interpretation paragraph makes it clear that the references to "imprisonment for life" includes these other sentences.

Release of certain long-term prisoners under the Criminal Justice Act 1991 (clause 26)

This is a technical amendment.

Clause 26(2) provides for the release on licence, at the half way point of their sentence, of certain long term prisoners sentenced under the Criminal Justice Act 1991. Those sentenced for a sexual or violent offence listed in Schedule 15 to the Criminal Justice Act 2003 are excluded from these release arrangements. The amendment to this clause ensures that the reference to offences listed in Schedule 15 to the 2003 Act includes a reference to the corresponding service offences.

Power of Court of Appeal to disregard developments in the law (clauses 42 and 43)

The amendments to clauses 42 and 43 and to Schedule 8 are consequential upon the removal, at Committee stage, of what were clauses 42 and 43 of the Bill (Amendment of test for allowing appeals) as brought forward from the Commons.

I intend to table some further amendments shortly and I will write to you again once I have done so.

I am copying this letter to Lord Thomas of Gresford, Baroness D'Souza, Edward Garnier, Chris Huhne and to Andrew Dismore and to those peers who have contributed to the debates on the Bill. I am also placing a copy on the Ministry of Justice website.

PHILIP HUNT



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27 March 2008

Dear Lord Kingsland

CRIMINAL JUSTICE AND IMMIGRATION BILL: LORDS REPORT STAGE AMENDMENTS

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

Release and recall of prisoners (clauses 29 and 32)

These are technical amendments. They deal with two points. First, they ensure that the new recall arrangements will work effectively with the provisions governing the treatment of prisoners serving multiple sentences. Second, they add a new category of prisoners who will not be eligible for automatic re-release following recall, namely those prisoners who are released early on licence and are then recalled before their normal release date.

Referral Order (clause 35)

The amendment to clause 35 would confer a discretion on the court to sentence a young offender to a second referral order where it considers that there are exceptional circumstances and the Youth Offending Team has recommended that such a sentence would be suitable. The amendment responds to points raised in Committee in the debate on your amendment 101 (Official report, 27 February 2008, col. 674-682).

Youth Conditional Cautions (clause 48 and Schedule 9)

The purposes of the amendments to clause 48 and Schedule 9 (and the consequential amendments to clause 144 and Schedule 10) are twofold. First, they extend youth conditional cautions to 10 to 15 year olds. As the provisions of Schedule 9 may need to be adapted for this lower age group, as compared with 16 and 17 year olds, we propose to take a power to amend the provisions by order, subject to the affirmative procedure. These amendments responds to points raised in Committee in the debate on amendment 105 tabled by Baroness Falkner of Margravine (Official report, 27 February 2008, col. 700-706). Second, the amendments give effect to a recommendation by the Delegated Powers and Regulatory Reform Committee that an order bringing the first code of practice (as provided

for in new section 66G of the Crime and Disorder Act 1998) into force should require the affirmative procedure.

Compensation for miscarriages of justice (clause 61 and Schedule 25)

The amendments to clause 61 increases the limit on the total amount of compensation payable to a person under section 133 of the Criminal Justice Act 1988 to £1 million in any case where the victim of the miscarriage of justice has spent 10 or more years in detention. The amendment responds to points raised in Committee in the debate on amendment 121 tabled by Lord Thomas of Gresford (Official report, 3 March 2008, col. 878-885). The amendments to Schedule 25 make a parallel change to the provisions applicable under service law.

Violent Offender Orders (Part 7)

These amendments to Part 7 fulfil the commitment given by Lord West in Committee (Official Report, 5 March, col 1175) to bring forward amendments making seven separate changes to the provisions in respect of Violent Offender Orders. The amendments were further detailed in Lord West's letter to you of 20 March, but to recap they will:

- i. provide that Violent Offender Orders can not be made in respect of a person under the age of 18;
- ii. set out an indicative list of conditions which could be imposed as part of a Violent Offender Order or an Interim Violent Offender Order. The list is not an exhaustive one and the courts will retain the discretion to attach other conditions as they consider necessary for the purposes of public protection;
- iii. provide that an Interim Violent Offender Order may only be made where it appears to the court that an individual is a qualifying offender, that the court would be likely be make a Violent Offender Order in respect of that person, and that it is desirable to act before the application for the full Order is determined with a view to securing the immediate protection of the public from the risk of serious violent harm caused by that person;
- iv. provide that Interim Violent Offender Order cannot be renewed and can only be imposed for such period of time as specified within each individual Order;
- v. provide that a Violent Offender Order may only be in place for a maximum period of 5 years, unless renewed;
- vi. clarify that a Violent Offender Order may only be made on the basis of a current risk of serious violent harm;
- vii. provide that the individual in respect of whom Violent Offender Order has been applied for may make representations at the court hearing considering the application.

In addition the amendments to Part 7 amend the list of qualifying offences in clause 96(3) to cover the corresponding service offences.

Premises closure orders (clause 117 and Schedule 20)

In the debate in Committee (Official Report, 10 March 2008, col. 1304-1313) there was broad support for the principle of these new closure orders. However, there was understandable concern about the impact on any closure on children or vulnerable adults resident at the premises subject to a closure order. We have made clear that a closure order would only be sought as a last resort after other interventions had been tried and failed and that full consideration would first be given to the impact on any vulnerable persons living at the

premises. We have further made clear that these issues would be addressed in guidance issued to the police and local authorities about the exercise of these powers. In responding to the debate, Lord West indicated that he would be ready to consider the case for statutory guidance. The amendment to Schedule 20 fulfils that undertaking by placing the guidance on a statutory footing and requiring the police and local authorities to have regard to the guidance when discharging their functions in respect of premises closure orders.

Police misconduct and performance procedures (Schedule 22)

Following the enactment of the changes to police misconduct and performance procedures made by Schedule 22, the Home Office intend to make 3 sets of regulations, namely the Police (Conduct) Regulations, the Police (Complaints and Misconduct) (Amendment) Regulations and the Police Performance Regulations, each of which will include the exercise of powers conferred by section 84 of the Police Act 1996, as amended. The Delegated Powers and Regulatory Reform Committee recommended that the first exercise of the power under section 84 should attract the affirmative procedure. As the Home Office intend to make all three sets of Regulations at the same time, to comply with the spirit of the DPRRC recommendation and ensure clarity, the technical amendments to Schedule 22 will ensure that the affirmative procedure would apply in respect of all three sets of regulations in the first instance; not simply the first regulations made under the revised section 84. The negative resolution procedure will apply thereafter.

Industrial action by prison officers (clauses 137 and 138)

As currently drafted, the provisions in clauses 137 and 138 of the Bill apply to public sector prisons in England, Wales and Northern Ireland, as well as private sector prisons across the UK (including Scotland). Since the Justice Secretary announced these measures in January, we have been in further dialogue with the Scottish Executive and have now reached agreement that the clauses should also cover Scottish public sector prisons. Although, as employment law, this is a reserved matter, the running of the Scottish Prison Service is a matter for Scottish Ministers, and we have therefore sought to consult with them fully on this matter.

The amendments to clauses 137 and 150 are drafted in such a way that the prohibition on Scottish public sector prison officers taking industrial action will come into force in Scotland by commencement order (made by the UK Secretary of State), whereas in England, Wales, Northern Ireland and private sector prisons, they will take effect from the date of Royal Assent. We would not envisage making any commencement order unless specifically requested to do so by the Scottish Executive in the event of the failure of their separate voluntary agreement with the POA, and we have given an assurance to that effect to Scottish Ministers.

Council of Europe Convention against Trafficking in Human Being (New clause after clause 143)

The Home Secretary has made a public commitment on behalf of the Government to ratify the Council of Europe Convention against Trafficking before the end of 2008. In the main the Convention can be implemented through administrative means or by changes to secondary legislation, however there is one provision which requires primary legislation. We judge that this Bill is the most appropriate vehicle for this. The single new clause (and a consequential amendment to the long title) would make a small adjustment to the automatic deportation

provisions of the UK Borders Act 2007 to provide for a further exception to those provisions in respect of trafficked persons.

Minor and consequential amendments (Schedule 26)

Finally, the technical amendments to Schedule 26 make consequential amendments to the Repatriation of Prisoners Act 1984, the Crime (Sentences) Act 1997 and section 264 of the Criminal Justice Act 2003 arising from the provisions in Part 2 of the Bill in respect of the release and recall of prisoners subject to the Criminal Justice Act 1991 or, as regards section 264 of the 2003 Act, the release of certain prisoners serving consecutive sentences under that Act.

I am copying this letter to Lord Thomas of Gresford, Baroness D'Souza, Lord Goodhart, Edward Garnier, Chris Huhne and Andrew Dismore. A copy also goes to those peers who have contributed to the debates on the Bill. I am also placing a copy on the Ministry of Justice website.

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28 March 2008

Dear Lord Kingsland

CRIMINAL JUSTICE AND IMMIGRATION BILL: LORDS REPORT STAGE AMENDMENTS

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

Self-defence (clause 75)

Lord Davidson indicated in Committee (Official report, 3 March 2008, col. 958-972) that we were actively looking at whether the clause on self-defence could be clarified by an amendment which responded to the issues behind Lord Thomas' amendments 140, 141 and 142. His amendments reflected a concern that what is now clause 75 could be read as precluding a court from paying any regard whatsoever to the reasonableness of a mistaken belief relied on by a defendant. On reflection, we felt that the clause could benefit from some clarification. The amendments to this clause make it explicit that the reasonableness or otherwise of a belief is relevant to the question of whether it was genuinely held in the first place. The clause then confirms that once a defendant's belief is accepted by the court as genuine, he is entitled to use an objectively reasonable level of force in the circumstances as he believed them to be, even if his belief was mistaken or unreasonable.

Release and recall of prisoners (Schedules 26 and 27)

These are technical amendments. They ensure that prisoners repatriated to the UK to serve out their sentence in England and Wales in respect of an offence corresponding to murder or one of the offences specified in Schedule 15 to the Criminal Justice Act 2003 are excluded from the new release arrangements provided for in Part 2 of the Bill. This brings those prisoners in line with prisoners who committed offences in this jurisdiction.

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PHILIP HUNT



Rt Hon the Lord Kingsland QC
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3 April 2008

Dear Lord Kingsland

CRIMINAL JUSTICE AND IMMIGRATION BILL: LORDS REPORT STAGE AMENDMENTS

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

Penalty for unlawfully obtaining personal data (clause 76)

Section 60 of the Data Protection Act (DPA) currently specifies the penalties for offences committed under section 55 of the DPA (unlawful obtaining etc of personal data). It provides for a maximum penalty of £5000 on summary conviction and an unlimited fine for conviction on indictment. Clause 76 of the Bill increases the maximum penalty for an offence under section 55 to a custodial sentence of two years following conviction on indictment, in addition to the current fines.

As I explained at Committee stage (Official Report, 5 March 2008, col. 1115-1117), media organisations have expressed concerns to us about the 'chilling effect' of this increase in penalty on investigative journalism. It is not our intention to impede legitimate investigative journalism, but in view of the concerns that have been expressed I announced in Committee the Government's intention to withdraw the clause on Report unless a satisfactory solution could be found balancing, on the one hand, the need to strengthen the protection of individuals' rights and respect for their privacy and, on the other, freedom of expression and of the press.

Following extensive consultation with all parties involved, it is not now our intention simply to withdraw the clause; instead we propose to replace it with two new provisions. The first new clause would provide for an additional defence for section 55 offences where the offender acted with a view to publication for journalistic, literary or artistic purposes and in the reasonable belief that his actions were justified in the public interest. The second new clause would confer on the Secretary of State a power to make an order (subject to the affirmative procedure) altering the maximum penalty for an offence under section 55 of the DPA; as already provided for in the Bill the maximum penalty that could be specified in such an order would be two years imprisonment. The Secretary of State would be required to consult interested parties before making such an order.

There are a number of consequential amendments to clauses 144, 149 and 150 and to Schedule 27.

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