

**Lord Bach**  
**Parliamentary Under**  
**Secretary of State**  
102 Petty France  
London SW1H 9AJ

T 020 3334 3626  
F 020 3334 4455  
E [general.queries@justice.gsi.gov.uk](mailto:general.queries@justice.gsi.gov.uk)

[www.justice.gov.uk](http://www.justice.gov.uk)

Lord Henley  
House of Lords  
London  
SW1A 0PW

14 October 2009

### **Coroners and Justice Bill: Report stage amendments**

I am writing to let you have details of the Government amendments for Report which I have tabled today.

#### **Coroners' juries (amendments to clauses 8 and 9 and Schedule 1)**

In Committee (Official Report, 10 June 2009, col. 701 and 702) I indicated, in response to an amendment from Lord Thomas of Gresford (amendment 21), that I would look again at the provisions in clause 8 which provide that a coroner's jury must consist of no fewer than 6 and not more than 9 people; this compares with the requirement in the Coroners Act 1988 for a coroner's jury to consist of no fewer 7 and not more than 11 people. These amendments restore the minimum and maximum number of jurors provided for in the 1988 Act.

#### **Suspension of coroner's investigation pending inquiry under the Inquiries Act 2005 (amendments to clause 170 and to paragraph 3 of Schedule 1 and new paragraph 3A of that Schedule)**

At Committee stage the House agreed Government amendments to remove what were clauses 11 and 12 of the Bill which provided for the Secretary of State to certify a coroner's investigation into a person's death if the investigation would have concerned or involved matters that should not be made public in order to protect the interests of national security, the relationship between the United Kingdom and another country, or preventing or detecting crime. In a Written Ministerial Statement of 15 May the Lord Chancellor explained that where it was not possible to proceed with an inquest under the current arrangements, the Government will consider establishing an inquiry under the Inquiries Act 2005 to ascertain the circumstances the deceased came by his or her death.

During the debate in Committee (Hansard, 9 June 2009, col. 621-628) both the late Lord Kingsland and Lord Pannick indicated that if an inquiry under the Inquiries Act was to be established in such circumstances that Act should be subject to certain modifications. I indicated that I would consider the points made. The Inquiries Act 2005 is a relatively new piece of legislation which established a unified framework for the establishment and conduct of inquiries irrespective of the issue to be the subject of an inquiry. It would be inappropriate in our view to amend that Act so as to make special arrangements for a particular class of inquiry. That said, I made clear in the debate that we would expect any inquiry established to investigate the circumstances of a person's death to be chaired by a senior judge (that is a High Court or more senior judge) and for the terms of reference of such an inquiry to include, as an irreducible minimum, the matters to be ascertained by a coroner as set out in clause 5. These amendments place these assurances on a statutory footing. The effect of the amendments is that the duty on a senior coroner (in paragraph 3 of Schedule 1) to suspend an investigation following a request by Lord Chancellor on the grounds that the cause of death is likely to be adequately investigated by an inquiry will only operate where a senior judge has been appointed to chair the inquiry and the terms of reference of the inquiry include the purposes of a coroner's investigation set out in clause 5.

### **Death of service personnel abroad (amendment to clause 12)**

During the debate in Committee on an amendment to (what was then) clause 14 (now clause 12) moved by Lord Craig of Radley (Official Report, 10 June 2009, col. 730-734), I undertook to look again at the drafting of subsection (6) of this clause which imports the definition of "active service" contained in section 8 of the Armed Forces Act 2008, a section which deals with the offence of desertion. This amendment redrafts subsection (6) so as to set out the definition of "active service" on the face of the clause, thereby removing the association with section 8 of the 2008 Act.

### **Indemnity for coroners (amendments to Schedules 7 and 8)**

In response to an amendment in Committee tabled by Baroness Finlay of Llandaff (Official Report, 23 June 2009, col. 1505-1510), Lord Tunnicliffe undertook to consider whether to clarify the Bill to put beyond doubt that the existing provisions for meeting the expenses of coroners and medical examiners were sufficiently broad to include provision for indemnifying coroners and medical examiners in respect of litigation costs. These amendments make it clear that regulations made under paragraph 9 of Schedule 7 containing provision for or in connection with meeting or reimbursing coroners' expenses may include provision for indemnifying coroners. Similarly, the amendment to Schedule 8 makes it clear that the Lord Chancellor may indemnify the Chief Coroner and Deputy Chief Coroners in respect of the costs of legal proceedings.

In relation to medical examiners we have concluded that a similar clarification is not required. Clause 17(4)(b) includes provision in relation to "payment" of "expenses". In our view "payment" includes "reimbursement" and accordingly no express mention of reimbursement is required here. Whilst therefore it is not necessary to amend the Bill in respect of medical examiners, it is our intention that the regulations to be made in due course under clause 17(4)(b) would include express provision for indemnifying medical examiners in respect of litigation costs, although we expect that it would, in reality, be extremely unlikely that medical examiners would be personally liable for such costs.

**National Medical Examiner and Medical Adviser to the Chief Coroner (new clause and new Schedule '*Medical Adviser and Deputy Medical Advisers to the Chief Coroner*' and new clause '*National Medical Examiner*' and amendment to clause 171)**

In Committee there was an extensive debate on amendments tabled by Lord Alderdice and Baroness Finlay to provide for the appointment of a statutory national or chief medical adviser to the Chief Coroner (Official Report, 23 June 2009, col. 1490-1504). I undertook to reflect on the debate whilst making it clear that we did not consider it an appropriate role for the medical adviser to the Chief Coroner to undertake a leadership role in respect of medical examiners given that the Chief Coroner will not have responsibility for the oversight of the investigation of the generality of deaths but only those violent, unnatural or sudden deaths of unknown cause, or those deaths in state detention, which fall within the jurisdiction of senior coroners. These amendments place the separate posts of medical adviser to the Chief Coroner and National Medical Examiner on a statutory footing and sets out their core responsibilities. The Medical Adviser to the Chief Coroner will provide advice and assistance to the Chief Coroner as to medical matters in relation to the coroner system. The National Medical Examiner will have the function of issuing guidance to medical examiners with a view to securing that they exercise their functions in an effective and proportionate manner. The amendments confer a power on the Secretary of State to confer additional functions on the National Medical Examiner by regulations.

**Action to prevent future deaths (amendment to paragraph 6 of Schedule 5)**

In Committee the late Lord Kingsland argued for coroners to be under a duty (rather than the current discretionary power) to make a report under paragraph 6 of Schedule 5 in circumstances where he or she was of the opinion that action should be taken to prevent other deaths (Official Report, 23 June 2009, col. 1559-1566). We have considered the point further and agree that, in such circumstances, the coroner should indeed be under a duty to make a report; this amendment makes the necessary change to paragraph 6(1) of Schedule 5.

**Definition of service offences (amendments to clause 43 and Schedules 1, 5, 16 and 21)**

The provisions in the Bill in relation to coroners, investigation anonymity orders, witness anonymity orders and the treatment of convictions in other EU member States includes various references to a 'service offence'; this term is defined by reference to the Armed Forces Act 2006, which repeals the existing service disciplinary Acts. That definition is too narrow and these technical amendments are principally designed to ensure that it is sufficiently broad for those purposes.

**Sedition and seditious, defamatory and obscene libel (New clause '*Abolition of common law libel offences etc*', amendments to clauses 170 and 171 and to schedules 20 and 22)**

These amendments respond to the commitment I gave at Committee stage (Official Report, 9 July 2009, cols. 850), in response to amendments tabled by Lord Lester, to

bring forward Government amendments to abolish the common law offences of sedition and seditious and defamatory libel.

Lord Lester, Evan Harris (who tabled similar amendments in the Commons), English PEN, the Organisation for Security and Co-operation in Europe and others have argued that these common law offences are anachronistic and that the continuing existence of such laws in the United Kingdom, albeit seldom used, has been cited by other countries as justification for the retention of similar laws which have been actively used to restrict press freedom.

Having considered the representations from Evan Harris and various organisations we are satisfied that these offences can be abolished without further ado.

Following our examination of the detail of Evan Harris's amendments, we have concluded that as a corollary we can also abolish the offence of obscene libel. Obscene libel is one of the four forms of criminal libel originally covered by the common law. If seditious libel and defamatory libel are abolished, it will be the only form of libel that is criminal at common law. (Blasphemous libel was abolished by the Criminal Justice and Immigration Act 2008.) However, it has effectively been superseded by the Obscene Publications Act 1959, section 2(4) of which provides that a person who publishes an article shall not be proceeded against for an offence at common law consisting of the publication of any matter included in the article where the essence of the offence is that the matter is obscene. As the offence of obscene libel have been rendered nugatory by section 2(4) of the 1959 Act, the Government amendments abolish it alongside seditious and defamatory libel. The amendments also include a number of consequential amendments to and repeals of existing statutory provisions in respect of criminal libel.

The abolition of these offences will extend to England and Wales and to Northern Ireland. Any equivalent changes in Scotland would be a matter for the Scottish Parliament and Government; I understand that the Scottish Government is considering the issue.

#### **Witness anonymity orders (amendments to clause 87 and Schedule 21)**

Clauses 81 and 82 make provision for witness anonymity orders to be varied or discharged by the court that made the order. The technical amendment to clause 87 would ensure that where the court that made the order was a magistrates' court it will be open to a court in the same local justice area to vary or discharge the order. This change allows for the fact that it may not be possible to reconstitute the original magistrates' bench and is more consistent drafting practice. The amendments to Schedule 21 make transitional provisions in respect of the application of the witness anonymity order provisions to the armed forces to take account of the new service courts constituted by the Armed Forces Act 2006.

#### **Powers in respect of offenders who assist investigations and prosecutions (amendments to clause 103)**

Clause 103 extends to the Financial Services Authority and the Secretary of State for Business, Enterprise and Regulatory Reform the statutory powers in the Serious Organised Crime and Police Act 2005 for prosecutors to confer immunity from prosecution in respect of defendants who co-operate in the investigation and prosecution of others. There is also provision for defendants who turn Queen's evidence to receive a reduction in their sentence in return for their co-operation.

Following the machinery of government changes announced by the Prime Minister in June it is necessary to replace the various references to the Secretary of State for Business, Enterprise and Regulatory Reform with references to the Secretary of State for Business, Innovation and Skills. Following Royal Assent it will be possible, in response to any future machinery of government changes affecting this clause, to amend this provision through a Transfer of Functions Order.

These amendments replicate amendments 185C to 185D which I tabled at Committee stage but which were withdrawn at the conclusion of the debate on this clause (Official Report, 13 July 2009, col 991-993) so that we could respond fully to your suggestion that this clause should adopt the usual approach of referring to “the Secretary of State” at large rather than a particular Secretary of State. Lord Tunnicliffe subsequently wrote to you on 15 July to explain that we have deliberately sought to vest the powers in respect of defendants who turn Queen’s evidence in the Secretary of State for Business, Innovation and Skills given concerns that these powers should not be made more widely available than strictly necessary.

**Damages-based agreements (New clause ‘*Damages-based agreements*’ and amendments to clause 171, Schedule 20 and the long title)**

You will recall that at Second Reading (Official Report, 18 May 2009, col. 1209) I announced my intention to bring forward amendments to facilitate the regulation of damages based agreements. I subsequently tabled amendments for Committee stage (amendments 191E, 218DA, 223A, 223B and 225) but withdrew these to enable us to consider carefully a recommendation made by the Delegated Powers and Regulatory Reform Committee in their 11<sup>th</sup> report of 9 July. We have substantially tightened the new clause in the light of the Committee’s concerns.

The attached amendments will enable us to regulate damages based agreements (DBAs) on a similar basis to conditional fee agreements (CFAs) which are already subject to regulation under section 58 of the Courts and Legal Services Act 1990. DBAs are a type of ‘no win no fee’ agreement, primarily used in Employment Tribunal proceedings. They allow for the representative to claim a percentage of any damages awarded for bringing the case. CFAs, on the other hand, allow for an ‘uplift’ or success fee on top of the representative’s normal fee for taking on the case. The absence of any specific statutory regulation of DBAs is anomalous and contrary to the interests of consumers seeking redress through Employment Tribunals.

The key amendment, which inserts a new section 58AA into the Courts and Legal Services Act 1990, takes the form of an enabling provision (similar to that in section 58 of the 1990 Act - as substituted by section 27 of the Access to Justice Act 1999) which would allow us to make an order prescribing the regulatory requirements aimed at controlling the operation of these agreements. We have consulted over the summer with the designated judges, Bar Council, Law Society and others on the detail of the regulatory requirements so that we are in a position to make the order (which will be subject to the affirmative procedure) at the earliest opportunity. This order is intended essentially as a consumer protection measure and could cover, amongst other things, the percentage that can be deducted from damages and the provision of clear and transparent information to clients on costs, alternative sources of funding (for example, from the client’s trade union), and other terms and conditions specified in these agreements.

A recent study based on claimants' experience of Employment Tribunals carried out by Professor Richard Moorhead, indicates that many claimants did not understand these fee arrangements which could sometimes include clauses which were unfair to the claimant, and that representatives were failing to inform claimants about alternative methods of funding. The regulatory gap that currently exists poses a risk to vulnerable claimants especially in the current economic climate and, in these circumstances, we believe there is a strong case for proceeding quickly to ensure that appropriate protection for claimants is put in place.

In response to the Delegated Powers and Regulatory Reform Committee's comments, our revised amendments ensure that the provisions for regulating DBAs resemble more closely the provisions for regulating conditional fee agreements in sections 58 and 58A of the 1990 Act. They will also ensure that the core conditions which all damages-based agreements must satisfy will be specified in primary legislation, albeit with some of the detail continuing to be left to secondary legislation. All regulations made under the new clause will be made using the affirmative resolution procedure, thus ensuring continued Parliamentary scrutiny of the Lord Chancellor's exercise of the powers provided by the Act.

We have gone further in revising the new section 58AA by also removing the power that would enable the Lord Chancellor to prohibit all DBAs or to extend their use, for example, in litigation. This power was originally included to provide for future regulatory flexibility on DBAs but go wider than our immediate concerns which are to regulate the existing use of these agreements to provide consumer protection. Under the new amendments DBAs cannot be used in court proceedings.

#### **Criminal memoirs (amendments to clauses 148, 151 and 155)**

In Committee (Hansard, 21 July 2009, col. 1541-1558) a number of concerns were raised about the provisions in Part 7, including about the scope of the scheme. In the light of that debate, we propose to make two changes. First, these amendments will limit the scheme to memoirs etc about offences at the more serious end of the spectrum, namely offences that may be tried on indictment. Second, we propose to remove from the list of matters that the court must consider when determining an application for an exploitation proceeds order the extent to which the general public is offended by the respondent obtaining benefits from exploiting his or her offence (we believe it is important to retain the reference to the extent to which the victim of the offence or the family of the victim being offended). Lord Tunnicliffe has separately written today to Baroness Miller responding to a number of the points raised in the debate.

#### **Data Protection Act (amendment to Schedules 19 and 22)**

The amendments to the Data Protection Act (DPA) 1998 made by Part 1 of Schedule 19 to the Bill allow regulations to be made to require data controllers to provide information to the Information Commissioner for the purpose of verifying that the correct annual notification fee is paid; this provision is consequential upon the move from the current unitary notification fee payable by all data controllers to the new tiered fee system. Our intention was that this information would be provided on first notification and thereafter each time the fee has to be paid. However, as currently drafted the Bill only allows for regulations to be made requiring data controllers to provide the information needed to enable the Information Commissioner's Office (ICO) to verify that the correct fee is paid in respect of the initial notification and not in respect

of the annual renewal of notifications. These amendments remedy this omission by amending section 20 of the DPA to enable regulations to be made requiring data controllers to notify the ICO of any changes to their registered particulars for the purpose of ensuring that the correct annual notification fee is paid. Such an approach would minimise the regulatory burden on data controllers as there would be no requirement on them to confirm their registered particulars on an annual basis, but simply to notify the ICO whenever there is a change in their registered particulars.

### **Youth Rehabilitation Orders (amendments to Schedules 20 and 22)**

Part 1 of the Criminal Justice and Immigration Act 2008 introduced a major reform of community penalties for young offenders. The Act brings together the existing community penalties into a single Youth Rehabilitation Order (YRO). We have for a number of months been working with the courts, Youth Offending Teams and others to implement these provisions from 30 November. In planning for implementation a flaw in these provisions has recently come to light in that paragraph 30 of Schedule 1 to the 2008 Act provides for a YRO to come into effect the day after it is made.

The effect of the delay in the start of the sentence would result in at least a 24 hour gap between sentence and supervision/monitoring of an offender with no official role for the youth offending team or electronic monitoring contractors or power to intercede. During this period any further offending would not technically constitute a breach. This means that a high risk young offender may be at large over night – or over a weekend – and free to commit further offences with no immediate redress.

These amendments make good this defect by providing for a YRO to come into force on the day that it is made or on such later date as the court may specify.

I intend to table further amendments, in particular in respect of genocide, war crimes and crimes against humanity, shortly.

I am copying this letter to Lord Hunt of the Wirral, Lord Thomas of Gresford, Baroness Miller, Baroness Linklater, Lord Alderdice, Lord Lester, Baroness D'Souza, Lord Pannick, Lord Borrie, Baroness Finlay of Llandaff, Lord Neill of Bladen, Baroness Butler-Sloss, Lord Craig of Radley, Lord Walton of Detchant, Lord Colwyn, Dominic Grieve, Henry Bellingham, Edward Garnier, David Howarth, Jenny Willott, Evan Harris, Sir Alan Beith (Chairman, Justice Committee), Andrew Dismore (Chairman, JCHR), John Whittingdale (Chairman, Culture, Media and Sport Committee) and Lord Goodlad (Chairman, Constitution Committee). I am also placing a copy in the library of the House and on the Bill page of the Ministry of Justice website.

**WILLY BACH**

**Lord Bach**  
**Parliamentary Under**  
**Secretary of State**  
102 Petty France  
London SW1H 9AJ

T 020 3334 3626  
F 020 3334 4455  
E [general.queries@justice.gsi.gov.uk](mailto:general.queries@justice.gsi.gov.uk)  
[www.justice.gov.uk](http://www.justice.gov.uk)

Lord Henley  
House of Lords  
London  
SW1A 0PW

19 October 2009

### **Coroners and Justice Bill: Report stage amendments**

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

#### **Driving disqualification (Amendments to Schedules 15, 20 and 21)**

Clause 127 and Schedule 15 already contain provisions to ensure that driving bans are not eroded by time served in prison so that bans impact equally on all offenders.

The provisions in Schedule 15 would apply where the court imposes both a custodial sentence and disqualification from driving for the same offence. Following representations by Robert Goodwill, including at Commons Second Reading (Official Report, 26 January 2009, col. 41), and by Jenny Willott at Commons Committee stage (Public Bill Committee, 16<sup>th</sup> sitting, 10 March 2009, col. 658-659) we now propose to amend the Bill so as to deal with offenders whose driving disqualifications overlap partly or wholly with sentences of imprisonment imposed for different offences.

The amendments provide that the court when determining the length of disqualification from driving must have regard to the extent that disqualification may be undermined by time being served in custody for another offence that overlaps with the disqualification period. There are also some technical amendments to the original proposals in Schedule 15, these provide that where the extension period includes a fraction of a day the period is to be rounded up to a whole day in line with existing practice on sentence calculation. The original provisions in Schedule 15 are also amended to ensure that they provide in Northern Ireland, as they already do in England and Wales, for the situation where a court imposes a driving ban alongside a sentence of imprisonment for an offence in which a motor vehicle was used, so that the ban is not eroded by the prison sentence.

I am copying this letter to Lord Hunt of Wirral, Lord Thomas of Gresford, Dominic Grieve, Henry Bellingham, Edward Garnier, David Howarth, Jenny Willott, Robert Goodwill, Sir Alan Beith (Chairman, Justice Committee) and Louise Ellman (Chair, Transport Committee). I am also placing a copy in the library of the House and on the Bill page of the Ministry of Justice website.

**WILLY BACH**



# Ministry of JUSTICE

Lord Henley  
House of Lords  
London  
SW1A 0PW

**Lord Bach**  
**Parliamentary Under**  
**Secretary of State**  
102 Petty France  
London SW1H 9AJ

T 020 3334 3626  
F 020 3334 4455  
E [general.queries@justice.gsi.gov.uk](mailto:general.queries@justice.gsi.gov.uk)  
[www.justice.gov.uk](http://www.justice.gov.uk)

22 October 2009

## **Coroners and Justice Bill: Report stage amendments**

I am writing to let you have details of a final tranche of Government amendments for Report which I have tabled today.

### **Genocide, war crimes and crimes against humanity (New clauses '*Genocide, crimes against humanity and war crimes*' and amendment to clause 170)**

These amendments fulfil a commitment I gave at Committee stage (Official Report, 7 July 2009, col. 658-661) to bring forward Government amendments in respect of the offences of genocide, war crimes and crimes against humanity.

The amendments do two things. First, they take the offences in the International Criminal Court Act 2001 back to 1991 as far as the legal principles applicable to retrospectation allow. Second, whilst preserving the existing jurisdiction of our courts to offences committed by UK nationals and residents they provide more certainty as to the meaning of the term 'resident' in this context.

In relation to tracking back the offences in the 2001 Act we are satisfied that this can be done in a straightforward way for genocide and for some of the categories of war crimes as it is clear that those offences (and all their elements) were fully recognised in international law by 1991. However, the position for the other areas is more difficult. Indeed it is likely that international law itself developed over the period in question. We have therefore adopted a hybrid approach, providing certainty where possible but elsewhere including a requirement that the offence amounted in the circumstances at the time to a criminal offence under international law. We remain convinced that 1991 is the right date to take the three areas back to. It allows us to adopt the same date for all three areas and one that is pivotal in the development of international law. Finally it is not too far back to make successful prosecution impractical.

The amendments broadly provide for the same penalties for the earlier period as in the 2001 Act – which are 30 years or life where murder is involved. However there are two areas where, because domestic offences already existed at the relevant time, we are limited by the ECHR as we cannot now impose a higher penalty than existed at that time. These are domestic genocide (covered at the time by the Genocide Act 1969) and grave breaches of the Geneva Conventions (covered at the time by the Geneva

Conventions Act 1957), except where murder is involved where a life sentence is available. Outside murder, the maximum penalty is 14 years. The amendments adopt this maximum penalty in these two areas only, but otherwise provide for a maximum penalty of 30 years.

We are proposing two strands to the clarification of the definition of 'resident'.

First we are providing a list of specific categories of people who will be treated as a resident to the extent this would not otherwise be the case. The first group covers all those in the UK who apply for indefinite leave to remain here including those who are still in the UK after their application has been rejected. Those who have such leave will be covered wherever they are. In similar vein we intend to cover all those who apply for asylum or make a human rights claim from the moment they arrive here to the moment they depart, irrespective of the stage reached in their application or failed application. This will therefore include those whose applications have failed but we cannot deport for any reason. Those whose claims have succeeded will also be covered wherever they are. Both these categories also cover anyone else who is here in the UK and who is covered in the claim – in other words dependents, including spouses, named in the claim. The amendment also covers any other person who is liable to be removed or deported from the UK but can't be removed or deported for human rights reasons or practical reasons. The third group comprises anyone who is here illegally, whether as an illegal entrant or who have over stayed their entrance conditions. The fourth group comprises those who are due to be deported on the ground that it is conducive to the public good to do so but who are still here because they are appealing that decision. The fifth group are all those here in custody. Finally we intend to include all those in the UK who have leave to enter or remain for purposes of work or study. This is because such people have indicated through their application an intention beyond that of the transient visitor.

Second, the amendments include a non-exhaustive list of considerations a court must take into account. These are at new section 67A(2) of the 2001 Act and basically cover time (the period someone has been or intends to be here); purpose (why the person has come here); family or other connections to the UK; and property. This list is non-exhaustive, but we think these are all points that it is worth ensuring a court bears in mind.

These provisions will extend to England and Wales and to Northern Ireland. Any similar changes in Scotland would be a matter for the Scottish Parliament and Government; I understand that the Scottish Government is considering the issue.

I am copying this letter to Lord Hunt of Wirral, Lord Thomas of Gresford, Baroness D'Souza, Lord Carlile, Lord Falconer, Lord Alton, Lord Hannay, Lord Elystan-Morgan, Dominic Grieve, Henry Bellingham, Edward Garnier, David Howarth, Sir Alan Beith (Chairman, Justice Committee) and Andrew Dismore (Chairman, JCHR). I am also placing a copy in the library of the House and on the Bill page of the Ministry of Justice website.

**WILLY BACH**